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SESSION NO. 73

Tuesday, May 6, 2008

**FOURTEENTH CONGRESS
FIRST REGULAR SESSION**

SESSION NO. 73
Tuesday, May 6, 2008

CALL TO ORDER

At 3:21 p.m., the Senate President, Hon. Manny Villar, called the session to order.

PRAYER

Sen. Joker P. Arroyo led the prayer, to wit:

Today, we start deliberations on the EPIRA which would have profound effect on the public.

Ask and you shall receive.

Now, we ask that You give us light, Lord, to do what is right. And knowing what is right, to do that right, to please You Lord, and to do justice to the people.

Amen.

ROLL CALL

Upon direction of the Chair, the Secretary of the Senate, Emma Lirio-Reyes, called the roll, to which the following senators responded:

Aquino III, B. S. C.	Lacson, P. M.
Arroyo, J. P.	Lapid, M. L. M.
Cayetano, A. P. C. S.	Legarda, L.
Defensor Santiago, M.	Pangilinan, F. N.
Ejercito Estrada, J.	Pimentel Jr., A. Q.
Enrile, J. P.	Revilla Jr., R. B.
Gordon, R. J.	Roxas, M.
Honasan, G. B.	Villar, M.

With 16 senators present, the Chair declared the presence of a quorum.

Senators Madrigal and Angara were on official mission, the latter abroad.

Senators Escudero and Zubiri arrived after the roll call.

Senator Cayetano (P), who was on official mission, also arrived after the roll call.

Senators Biazon was absent.

Senator Trillanes was unable to attend the session as he is under detention.

**DEFERMENT OF APPROVAL
OF THE JOURNAL**

Upon motion of Senator Pangilinan, there being no objection, the Body deferred the consideration and approval of the Journal of Session No. 72 to a later hour.

REFERENCE OF BUSINESS

The Secretary of the Senate read the following matters and the Chair made the corresponding referrals:

BILLS ON FIRST READING

Senate Bill No. 2241, entitled

AN ACT PROVIDING THE PROBATIONARY PERIOD OF EMPLOYMENT OF ACADEMIC PERSONNEL IN PRIVATE SCHOOLS, THEREBY AMENDING FOR THE PURPOSE PRESIDENTIAL DECREE NO. 442 (AS AMENDED), OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES

Introduced by Senator Miriam Defensor Santiago

To the Committees on Labor, Employment and Human Resources Development; and Education, Arts and Culture *MS*

Senate Bill No. 2242, entitled

AN ACT REQUIRING INDUSTRIES ENGAGED IN THE EXPLOITATION OF NATURAL RESOURCES TO GIVE PREFERENTIAL EMPLOYMENT TO LOCAL RESIDENTS, AMENDING FOR THE PURPOSE THE LABOR CODE OF THE PHILIPPINES

Introduced by Senator Miriam Defensor Santiago

To the Committee on Labor, Employment and Human Resources Development

Senate Bill No. 2243, entitled

AN ACT MAINTAINING THE PRESENT PROVISION ON PROBATIONARY EMPLOYMENT INCREASING AT THE SAME TIME THE GOVERNMENT'S PROTECTION TO PROBATIONARY EMPLOYEES, AMENDING FOR THIS PURPOSE ART 281 OF THE LABOR CODE

Introduced by Senator Miriam Defensor Santiago

To the Committee on Labor, Employment and Human Resources Development

Senate Bill No. 2244, entitled

AN ACT DEFINING AND PENALIZING THE CRIME OF AGRI-BIOTERRORISM

Introduced by Senator Miriam Defensor Santiago

To the Committees on Public Order and Illegal Drugs; and Justice and Human Rights

Senate Bill No. 2245, entitled

AN ACT PROVIDING FOR STRICT REGULATION AND STIFFER PENALTIES FOR THE ILLEGAL/UNLAWFUL IMPORTATION, MANUFACTURE, ACQUISITION, SALE, DISPOSITION OR POSSESSION OF EXPLOSIVES

AND CHEMICALS OR ACCESSORIES USED IN THE MANUFACTURE OF EXPLOSIVES, REPEALING EXECUTIVE ORDER NO. 522 AND AMENDING CERTAIN PROVISIONS OF PRESIDENTIAL DECREE NO. 1866, AS AMENDED

Introduced by Senator Miriam Defensor Santiago

To the Committee on Public Order and Illegal Drugs

RESOLUTIONS

Proposed Senate Resolution No. 380, entitled

RESOLUTION CONGRATULATING AND COMMENDING THE WORLD'S YOUNGEST CHESS GRANDMASTER, WESLEY SO, 14 YEARS OLD, FOR WINNING THE "BATTLE OF GRANDMASTERS TOURNAMENT" HELD AT THE CITY STATE HOTEL, MANILA LAST MAY 1-4, 2008

Introduced by Senator Manuel "Lito" M. Lapid

To the Committee on Rules

Proposed Senate Resolution No. 381, entitled

RESOLUTION DIRECTING THE APPROPRIATE SENATE COMMITTEES TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE STATUS AND PROGRESS OF THE PEACE PROCESS BETWEEN THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES (GRP) AND THE MORO ISLAMIC LIBERATION FRONT (MILF)

Introduced by Senator Biazon

To the Committees on Peace, Unification and Reconciliation; and National Defense and Security

Proposed Senate Resolution No. 382, entitled

RESOLUTION DIRECTING THE PROPER COMMITTEES TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, *AC*

ON THE ALLEGED UNSOUND REAL ESTATE BUSINESS PRACTICE OF PIEDRA ROSA DEVELOPMENT CORPORATION UPON MIRA VERDE HOMES IN BARANGAY SAN LUIS, ANTIPOLO CITY AND THE FAILURE OF THE CONCERNED GOVERNMENT HOUSING AGENCIES TO PUT TO STOP SUCH UNSOUND BUSINESS PRACTICE

Introduced by Senator Jinggoy Ejercito Estrada

To the Committee on Urban Planning, Housing and Resettlement

APPROVAL OF SENATE BILL NO. 2116 ON THIRD READING

Upon motion of Senator Pangilinan, there being no objection, the Body considered, on Third Reading, Senate Bill No. 2116, printed copies of which were distributed to the senators on April 30, 2008.

Pursuant to Section 67, Rule XXIII of the Rules of the Senate, upon motion of Senator Pangilinan, there being no objection, Secretary Reyes read only the title of the bill, to wit:

AN ACT STRENGTHENING AND EXPANDING THE COVERAGE OF THE SPECIAL PROGRAM FOR EMPLOYMENT OF STUDENTS, AMENDING FOR THE PURPOSE PROVISIONS OF R.A. 7323, OTHERWISE KNOWN AS THE SPECIAL PROGRAM FOR EMPLOYMENT OF STUDENTS.

Secretary Reyes called the roll for nominal voting.

RESULT OF THE VOTING

The result of the voting was as follows:

In favor

Aquino	Lapid
Arroyo	Legarda
Defensor Santiago	Pangilinan
Ejercito Estrada	Pimentel
Enrile	Revilla
Gordon	Roxas
Honasan	Villar
Lacson	

Against

None

Abstention

None

With 15 senators voting in favor, none against, and no abstention, the Chair declared Senate Bill No. 2116 approved on Third Reading.

PRIVILEGE SPEECH OF SENATOR PIMENTEL

Availing himself of the privilege hour, Senator Pimentel called the Body's attention to the plight of Myanmar which was struck by a cyclone that claimed more than 20,000 lives and rendered a million people homeless. He stressed that it is incumbent upon the Senate to express its sympathy to the people of Myanmar and to urge the government to undertake some concrete action like sending a medical team that would be greatly appreciated by the people and government of Myanmar.

As regards Myanmar's referendum on May 10 to approve a new Constitution, Senator Pimentel pointed out that holding a referendum and amending a Constitution are powers that belong to the sovereignty of a nation. Saying that no one has the right to tell Myanmar not to proceed with the exercise, he nonetheless expressed support for the suggestion of the European Council and the United Nations Security Council to allow the key players of Myanmar like Aung San Suu Kyi, among others, to fully participate in the referendum. He asserted that one of the things that observers in the Myanmar situation have found objectionable is the militarization of government functions given the fact that under the Constitution, a certain percentage of lawmakers shall come from the armed forces. In relation thereto, he suggested that the Senate express its concern that the referendum should be free in view of reports that people are getting arrested when they speak out and there is no guarantee of freedom of assembly even during the referendum period. He recalled that even at the height of the Marcos regime when the amendments to the Constitution were to be tackled, political debate was allowed on relevant issues.

In this light, Senator Pimentel proposed that the Senate express its sympathy to Myanmar and call for a free referendum, and urge the Philippine government to send medical assistance.

STATEMENT OF SENATOR DEFENSOR SANTIAGO

Senator Defensor Santiago stated that the prefatory portion of the United Nations Charter specifically prohibits interference with the domestic affairs of any sovereign state and it has been interpreted in the past to mean that no sovereign state can make an official statement about the human rights situation or any other political exercise for that matter of an equally sovereign state. This, she said, was considered illegal in international law and offensive in international diplomacy.

However, Senator Defensor Santiago stated that since the ratification of the UN Charter in 1945, International Human Rights Law has become part of the *corpus* of this particular subject and it is now considered an exception to the principle of non-interference in the domestic affairs of another state. As a rule, she stated, the 192 member-states of the UN are considered equal in terms of sovereignty. She underscored that because of the dominance of human rights law in international public opinion, questions about the human rights and the political situations of another country are considered acceptable exceptions to the non-interference rule.

Senator Defensor Santiago expressed support for Senator Pimentel's proposal that the government show concern for the victims of the calamity as well as the call for a free referendum.

REMARKS OF SENATOR GORDON

Preliminarily, Senator Gordon stated that one should give aid to neighboring countries during times of crisis. He said that as chair of the Philippine National Red Cross (PNRC) and Governor of the International Red Cross, he must remain neutral and impartial. He informed the Body that the PNRC has already communicated with its international counterpart for the organization of an international rescue team, in case the international federation needed one. He recalled that this has been done in the past, in the case of the earthquake in Pakistan and the tsunami in Indonesia. Certainly, he said, the PNRC would provide manpower resources as well as monetary aid. He disclosed that the PNRC contributed \$80,000 to the victims of the tsunami in Indonesia and \$25,000 to the victims of hurricane "Katrina" in the U.S. He expressed support for the proposal of Senator Pimentel that the government help the people of Myanmar.

REMARK OF THE CHAIR

At this juncture, the Chair remarked that a resolution could be adopted to express the Senate's sympathy to the people of Myanmar.

MOTION OF SENATOR PANGILINAN

Upon motion of Senator Pangilinan, the Body approved a resolution, subject to style, to be drafted by the Committee on Rules.

COMMITTEE REPORT NO. 42 ON SENATE BILL NO. 2121

(Continuation)

Upon motion of Senator Pangilinan, there being no objection, the Body resumed consideration, on Second Reading, of Senate Bill No. 2121 (Committee Report No. 42), entitled

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."

Senator Pangilinan stated that the parliamentary status was the period of interpellations.

Thereupon, the Chair recognized Senator Enrile, Sponsor of the measure, and Senator Defensor Santiago for her interpellation.

INTERPELLATION OF SENATOR DEFENSOR SANTIAGO

At the outset, Senator Defensor Santiago stressed that while she is supportive of the bill and had already completed her interpellations on the same in the last Congress, she wanted to raise clarificatory questions particularly since the measure had not been approved and had undergone modifications.

Adverting to Section 4(DD) of the bill, Senator Defensor Santiago noted that many of the contracts of the National Power Corporation (Napocor) with Independent Power Producers (IPPs) are not actually "Power Purchase Agreements" but "Fuel Conversion to Electricity" and "BOT and its variants" where the electricity is not really being purchased by Napocor. *AF*

Therefore, she wondered whether the term "Purchase Power Contract" could be changed to "POWER PURCHASE AGREEMENT OR ANY CONTRACT TO GENERATE ELECTRICITY." Senator Enrile replied that the suggestion would be considered at the proper time.

On Section 4(XX), Senator Defensor Santiago noted that the term "Stranded Contracts" should refer not only to eligible contracts that had been approved by ERB before December 31, 2000. She pointed out that with EPIRA's enactment, Napocor is prevented from building any additional power plants and from entering into IPP contracts and, as such, the Distribution Utilities (DUs) are required to source their power through bilateral contracts and from Wholesale Electricity Spot Market (WESM). She added that since the EPIRA implementation of the competitive market is by phase, meaning that wholesale competition comes first before retail competition, the DUs are required to enter into power supply contracts to supply all their customers, as all customers are deemed "captive" in the wholesale competition phase.

She pointed out that upon ERC's declaration of "open access and retail competition," the contracts of the DUs, which cover all customers, would be stranded. She said that these contracts, if approved by the ERC, must also be eligible. Moreover, she noted that the recovery of the stranded contract costs is a transitional mechanism in all countries that have restructured the power industry because of government's decision to change the structure of the industry. Therefore, she stressed, the electric utilities could not be forced to absorb the financial losses if they are not able to meet the volume of electricity under the take-or-pay provisions of their contracts with IPPs since they have nothing to do with the declaration of open access, thereby putting their customers in the contestable market.

Senator Defensor Santiago stated that when the EPIRA was still being deliberated in Congress, lawmakers assumed that Napocor would be privatized within two years and, as such, it provided that WESM shall be established within one year starting from the promulgation of market rules and the retail competition shall be declared not later than three years upon effectivity of Republic Act No. 9136 or the EPIRA. In addition, she said that Section 31 of RA 9136 provides that the NPC shall offer transition supply contracts to DUs. She noted that these

provisions were the basis of the December 31, 2000 deadline for the IPP contracts to be strandable. Consequently, she suggested that the definition of "Stranded contract costs of NPC or distribution utility" in Section 4(XX) be rewritten as follows:

Section 4 (XX) "Stranded contract costs of NPC or of a distribution utility" refer to the excess of the contracted cost of electricity under THE ELIGIBLE IPP CONTRACTS OF NPC OR A DISTRIBUTION UTILITY over the actual selling price of the contracted energy output of such contracts in the market; *PROVIDED, THAT IPP CONTRACTS, TO BE DEEMED ELIGIBLE, IN THE CASE OF NPC, HAD BEEN APPROVED BY THE ERB ON OR BEFORE DECEMBER 31, 2000; PROVIDED FURTHER, THAT IPP CONTRACTS, IN THE CASE OF A DISTRIBUTION UTILITY, HAD BEEN APPROVED BY THE ERB ON OR BEFORE 31 DECEMBER 2000 AND AFTER 31 DECEMBER 2000 HAD BEEN APPROVED BY THE ENERGY REGULATORY COMMISSION.*

She explained that she made the proposal since it would be erroneous to assume that the Napocor would be privatized within two years or that the WESM would be established within one year starting from the promulgation of market rules.

Senator Enrile replied that he is not prepared to commit to accept amendments on the matter since the Committee is proposing the deletion of the provision on "stranded contract cost." He believed that it is time that legislators looked into the recoveries of the Napocor, PSALM, Meralco and other distribution utilities particularly since with the implementation of the EPIRA, it would not be possible to have a stranded contract cost since all contracts, whether from generation, distribution or transmission, would now be subject to the rate-making power of the ERC.

Senator Defensor Santiago suggested that the definition of "Sub-transmission Assets" in Section 4(ZZ) be deleted as the EPIRA seeks to supply electricity to end-users at least cost. She noted that the amendment would result in the reclassification of customers who are the large end-users connected directly and in the future to Transco's transmission system as customers of distribution utilities. She said that this would, in effect, mean that aside from paying for the transmission-wheeling charges, the customers would pay additional wheeling charges. She expressed concern that this runs counter to the declared principles of Section 2(c) of RA 9136 and

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further make the Philippine industries less globally competitive.

She pointed out that the purpose of transmission is to transport bulk power while the purpose of distribution is to deliver electricity to small users. She said that both the Transco and the DUs are franchised entities which are granted right-of-way to use public property and the Power of Eminent Domain to use private property, provided that it is accompanied by just compensation to private owners. Therefore, she said that as long as the structures or assets are operated by Transco, there is no violation of franchise if a large, industrial end-user needing bulk power is directly connected to Transco's transmission system, unless the Senate would like to disallow the practice. She pointed out that the decision to connect to the transmission or distribution system is simply a matter of economics.

For his part, Senator Enrile clarified that the franchising requirement for generation has been removed and, as such, the provision refers only to franchise of transmission and distribution. He explained that a transmission company is not supposed to be retailing electricity while any facility from the end of the sub-station entering the system of the distribution company would form a part of the distribution function of the distribution utility. This, he stated, means that any investment in the distribution facility would be included in the rate to be charged to the user of the electricity. He wondered who would bear the cost of the facility if Section 4(ZZ) were to be deleted. Senator Defensor Santiago pointed out that this would not be an issue if Transco is merely connecting to obtain bulk power for its own transmission system unless it concerns a distribution utility like the Meralco.

Senator Enrile noted that as Transco is not a power producer but only a highway for electricity, it could not deliver electricity directly to a retail outlet unless there is open access as it would, in effect, be intruding into the rights of a distribution utility that has a franchise over the area. Senator Defensor Santiago remarked that she would bring the matter up during the period of amendments.

Senator Defensor Santiago suggested that the definitions of the terms "supplier" in Section 4(AAA) and "supply of electricity" in Section 4(CCC) be expounded. For instance, she noted that Section 29 of RA 9136 should be amended since the supply of electricity to the contestable market by the distribution

utility, whose business was unbundled in accordance with the EPIRA into distribution and supply, should not also be subject to regulation by the ERC. Further, she stated that generation companies have access to large end-users according to the design of the EPIRA.

She proposed that the Sections 4(AAA) and (CCC) be amended, to wit:

(AAA) "Supplier" refers to any person or entity, OTHER THAN A GENERATION COMPANY OR A DISTRIBUTION UTILITY LICENSED BY THE ERC TO ENGAGE IN THE BUSINESS OF BUYING AND SELLING, BROKERING, AND MARKETING TO END-USERS OF ELECTRICITY, IN THE FRANCHISE TERRITORY OF A DISTRIBUTION UTILITY, USING FOR THE PURPOSE THE WIRES AND FACILITIES OF DISTRIBUTION UTILITY CONCERNED.

(CCC) "Supply of Electricity" SHALL REFER TO THE BUSINESS OF BUYING AND SELLING, BROKERING, AND MARKETING ELECTRICITY BY A PERSON OR ENTITY TO END-USERS OF ELECTRICITY.

Senator Enrile welcomed the suggestion which, he said, would be considered by the Committee at the proper time.

Senator Defensor Santiago stated she would like to insert the term "DEREGULATION" in Section 4 (*Definition of Terms*) as there is a need to clarify its meaning especially because EPIRA does not intend to deregulate all services in the power industry and only calls for a more stringent regulation of the transmission and distribution sectors. She said that many DUs, particularly the Board of Directors of Electric Cooperatives, have expressed concern about competition when the only sector being deregulated and being subjected to competition is the supply of electricity and not the distribution of electricity. She suggested the insertion of the following definition:

'DEREGULATION' REFERS TO THE REMOVAL OF PRICE CONTROLS IN THE SUPPLY OF ELECTRICITY.

Senator Enrile said that he would consider the proposal at the proper time. Nonetheless, he stated that his understanding is that the supplier of electricity would be entering into a contract with a customer and the price of the electricity would be a matter of contract. He affirmed that the only sector being deregulated and being subjected to competition is the

supply of electricity and not the distribution, but the supplier of electricity is neither a distribution utility nor a generator of power, but it acquires a bulk of power that it can actually sell and retail to big users.

On Section 31(d) and (e), Senator Defensor Santiago pointed out that the bill reduces the 70% requirement to only 50% for the declaration of retail competition and open access in distribution. She observed that the amendment seek to accelerate the declaration of retail competition and open access which is intended to start for large end-users, with at least 1-megawatt demand, who are supplied exclusively by the DUs. She said that the provisions would potentially reduce the prices for large end-users as they would be offered discounts by IPPs. However, she feared that with the reduction of rates for large end-users, there is also the possibility that the rates to captive customers would increase. Further, she stated that the amendment also mandates the ERC to establish safety nets to avoid market abuse by the Napocor and PSALM.

She said that Republic Act No. 9136 was enacted with the assumption that at least 70% of NPC power plant assets and IPP contracts would be privatized within two years, hence, EPIRA provides that retail competition and open access at the distribution level shall be declared not later than three years from the enactment of the law. She added that it was not envisioned that Napocor rates would continue to be regulated while WESM is fully operational as it is currently operating now. She agreed that the threshold of privatization may be reduced to 50% because the share of the IPPs in the market is significant as this would effectively result in 70% of the total capacity being out of control of PSALM/Napocor.

However, Senator Defensor Santiago said that if the privatization threshold as pre-condition to the declaration of retail competition and open access is reduced to 50%, the large end-users which are currently connected to the distribution system would immediately be offered lower rates by IPPs of Napocor and DUs. She stated that this is possible since the IPPs' investments in the existing power plants are already assured to be recovered through their contracts with take-or-pay provisions that are mostly at 80% capacity factor and the remaining 20% of the capacity can be offered at lower rates since the IPPs would be spending only for the variable fuel costs of the generating plants. She noted that this is what the IPPs have been doing in

the WESM, which, at one time, forced PSALM to increase its offered rates and effectively set a very high price for the marginal plant to be dispatched. She added that this led to the controversial price manipulation issue against PSALM by the Surveillance Committee of WESM and investigation of ERC.

Further, Senator Defensor Santiago said that Napocor would further reduce its market share while it has the highest share of installed capacity since there exists an "oversupply" in Luzon, which would most likely result in Napocor losing its market as it would be forced to increase its rates which would not be regulated anymore in the open access regime in order to recover from financial losses. Unfortunately, she said, some residential customers who could hardly afford the current rates would remain captive. She urged the DOE to conduct an impact study with sensitivity analysis on the worst-to-best scenarios for the amendments as the proposal to reduce the privatization threshold has been submitted for debates for more than three years now since PSALM has been experiencing difficulties in the privatization. She lamented that the DOE has never conducted studies that could shed light for the lawmakers to pursue a well-calibrated, stable and predictable law. She noted that other countries took at least 15 years to declare retail competition but some sectors of the Philippine society seem to be in a hurry as if the core reason for the high electricity rates in the country is the absence of retail competition.

Senator Enrile said that the suggestions would be considered at the proper time. Nonetheless, he stated that the matter has already been discussed with the distribution utilities, especially MERALCO, and the Committee has inserted enough safeguards to address certain concerns. He stated that the EPIRA was passed in 2001 but until now, the open access regime has not been attained because it is hard to dispose 70% of the generation assets of Napocor. To reach the open access regime, he said that the Committee decided to reduce the very stringent requirement of the law such that once the 50% is reached, a regime of open access may be allowed without prejudice to the continuation of the effort to privatize the generation assets of the Napocor until the 70% level.

As regards the deletion of Section 33 (*Distribution Utilities Stranded Contract Costs Recovery*),

Senator Defensor Santiago stated that under the original law, only the contract that were approved on or before 31 December 2000 are eligible to be declared as "stranded." She noted that the recovery of the stranded contract costs is a transitional mechanism in restructuring the power industry. In the case of the Philippines, she said that it is a transition from the wholesale competition industry structure to retail competition industry structure. She stated that government's decision to change the structure of the industry should not result in financial losses to DUs which have been entering into contracts with the Napocor and IPPs for their customers who are incidentally all captive customers. In this light, she suggested that the phrase: "...AND AFTER 31 DECEMBER 2000, HAD BEEN APPROVED BY THE ENERGY REGULATORY COMMISSION" be appended to Section 33. Senator Enrile explained that the deletion of stranded contract cost was discussed with the distribution companies and this was suggested by a particular sector of the power industry due to the fact that it distorts the actual price of electricity. He said that if a distribution company would be allowed to recover stranded contract cost and it has a very high power cost, it can compete with another power producer with a more efficient system and with least cost because it can offer an equal bid. Senator Defensor Santiago said she would yield to the opinion of the technical consultants.

As regards Section 38, (*Creation of the Energy Regulatory Commission*), Senator Defensor Santiago said that since the job of the ERC is highly technical and specialized, there should be a requirement for specific skills corresponding to the responsibilities of the Commission. She pointed out that since the regulation of the electric power industry is essentially economic regulation, there should be a requirement for a regulatory economist, which is a specialization in the field of economics, and for a power engineer, which is a specialization in the field of electrical engineering. Among its key mandates, she said that the ERC must ensure the financial viability of the regulated utilities, therefore, what is needed in the Commission is a specialist in financial management, which is more than mere accounting skills.

Relative thereto, Senator Defensor Santiago proposed that Section 38, paragraph 3, be amended to read:

The Commission shall be composed of a Chairman and four (4) members to be appointed

by the President of the Philippines. The Chairman and the members of the Commission shall be natural-born citizens and residents of the Philippines, persons of good moral character, at least thirty-five (35) years of age, and of recognized competence in any of the following fields: energy, law, economics, finance, commerce, or engineering, with at least three (3) years actual and distinguished experience in their respective fields of expertise: *Provided*, That [out of the four (4) members of the Commission] one (1) MEMBER shall be a member of the Philippine Bar with at least ten (10) years experience in the active practice of law, [and] one (1) MEMBER shall be a certified public accountant with at least ten (10) years experience in active practice IN FINANCIAL MANAGEMENT, ONE (1) MEMBER SHALL BE AN ENGINEER WITH AT LEAST TEN (10) YEARS EXPERIENCE IN POWER SYSTEM ENGINEERING, AND ONE (1) MEMBER SHALL BE A REGULATORY ECONOMIST WITH TEN (10) YEARS EXPERIENCE IN UTILITY ECONOMICS.

On the same section, Senator Defensor Santiago suggested that the membership in the Philippine Bar as a requirement be deleted. She stated that in the exercise of its quasi-judicial powers involving highly specialized and technical matters, the Commission can always refer to the lawyer member of the Commission or consult a lawyer over questions of law, adding that the chairman of the ERC was given by law the responsibility of a chief executive officer that is best given to a person with experience in governance.

INTERPELLATION OF SENATOR ROXAS

Asked by Senator Roxas on the rationale behind the provision on the stranded cost and the non-recovery thereof, Senator Enrile replied that recovery of the stranded cost of distribution utilities would no longer be allowed. He explained that the stranded cost is a function of one that contracted to buy the power from the generating company. Considering the relationship of Meralco, its stockholders and the two generating companies, San Lorenzo and Sta. Rita, and assuming there was indeed a contracted cost for the power they produced which is over and above the retail price that is being charged to the public, the distribution utilities should not pass it on to the people because there is some degree of suspicion regarding the arms-length nature of the contract. *MS*

Queried whether there would be greater competition for the purchase of power that would bring down its price, Senator Enrile said that open access would bring about open competition because the market shall be divided between a captive market, which is subject to regulation, and a contestable market, which is open to competition.

Asked how the provision on open access would be implemented, Senator Enrile explained that if the distribution utility has a stranded contract cost, it cannot be charged to the public through the universal levy.

Since the distribution utility cannot charge the stranded contract cost through the universal levy, Senator Roxas stated that the cost would remain in its books and may exist as a prepaid asset which is either written off or amortized over a much longer period to the extent that it can be passed on to consumer.

INTERPELLATION OF SENATOR LEGARDA

Initially, Senator Legarda expressed support for the bill which seeks to lower the cost of power. She believed that Section 32, on page 28 which states that "Non-recovery of stranded debts and contract costs of all industry participants. In order to reflect the true costs of power and to avoid additional burden to the consumers, there shall henceforth be no recovery of stranded debts and contract costs for the National Power Corporation, PSALM, Generation Companies and Distribution Utilities," is a laudable amendment which would redound to the benefit of the consumers. She asked if there are other possible means by which Napocor, PSALM, the generation companies and distribution utilities in some way could pass on the costs to the consumers. Senator Enrile replied that the way the original EPIRA was crafted, stranded contract debt and stranded contract cost are recover-able through the so-called universal levy. However, under the bill, he said that recovery of these types of costs is no longer allowed and the ERC shall ensure that these are not passed on to the consumers.

Asked what percentage of the cost of power would be lessened from the present cost upon enactment of the measure, Senator Enrile replied that the base of the franchise tax being collected by local governments would be lowered which means a reduction of the financial burden to the consumer. Also, he said, at least P0.40 per kilowatt hour would be deducted if stranded costs are not allowed.

Senator Legarda recalled that in 2001, EPIRA was supposed to lighten the burden of the consumers but it did not. She asked how the public can be assured that the amendment would have a tangible effect on the consumers. Senator Enrile replied that the burden on the consumers would be much less than that at present.

Asked who the cost would actually be passed on to, Senator Enrile replied that government assumed P200 billion of Napocor's losses, so it has passed on the cost to the taxpayers, not to the consumers. He informed the Body that to date, Napocor still has to answer for \$5.8 billion out of \$14.3 billion. He said that Napocor and PSALM were able to discharge about \$9 billion of their obligations through recoveries of the power that they have sold to the public and through actual assets privatization. This, he said, excludes the P200 billion assumed by government.

On whether the amendment would take away the burden from the consumers and bring down the cost of power, Senator Enrile stated that Napocor or Meralco can now afford to carry the burden as it has almost recovered its losses from the contract cost it incurred.

As regards the P.40 per kilowatt hour reduction, Senator Enrile stated that under the EPIRA, the stranded contract cost incurred by any distribution utility is recoverable over a period of 15 to 25 years at a price of P0.40 per kWh.

As to lowering the required minimum privatization of NPC from 70% under the EPIRA to 50%, Senator Enrile explained that maintaining the 70% would not allow open access even after 2016. He said that given the global situation, it would be difficult to look for buyers of Napocor assets, affirming that Napocor has now sold 49% of 70% of its assets and 50% by August.

Senator Legarda expressed concern that by the time the amendment to the EPIRA is enacted into law, it becomes moot and academic because the 50% mark would have been exceeded.

As regards the privatization of the Tiwi Geothermal Power Plant (TGPP), Senator Enrile stated that he does not know if TGPP would be privatized but some of the generating assets of PSALM and/or Napocor are being bought by Meralco. He clarified that the bill has set certain limitations to prevent

market abuse by the industry players and to protect consumers. He said that Meralco, for instance, cannot buy more than 50% of its demand from its affiliates and that the 50% must not exceed 20% of a particular grid. He noted that Meralco has locked itself into some generating companies through investments but it would be unfair to compel Meralco to unload them. Rather than tinker with the problem of cross-ownership, he bared that the Committee agreed with Meralco's position that it be allowed cross-ownership of only 50% not to exceed 20% of the grid requirement.

Asked whether the 20% limitation is a new feature of the bill, Senator Enrile replied in the affirmative. To illustrate, he stated that in 2007, Meralco's supply requirement was 4.774 million kilowatts; First Gas, a subsidiary of the Lopez Group of Companies, has two plants – Sta. Rita and San Lorenzo, with a total output of 2,046,823 kilowatts and another plant with a capacity of 78,204 kilowatts; the total supply in the Luzon grid was 10,867,220 kilowatts, 20% of which is 2,173,444 kilowatts, hence, Meralco is still within the 20% limit. He clarified that the purpose of the 20% restriction is to allow competition within the grid so nobody can control the supply for the grid.

Queried if the total ban on any form of cross-ownership is practical, Senator Enrile stated that he agreed with the position of the distribution utilities, what matters is not cross-ownership but the control of the supply. He explained that one who has 50% control of the grid could dictate the rates which is why many distribution utilities would like Napocor to bring down its generating power from the present 100% to 30%.

Asked if this is the rationale behind the 50% cross-ownership limitation, Senator Enrile replied that under the bilateral contract, if Meralco buys power from other suppliers, it would come out with the average cost for the total power supply and pass it on to consumers.

As to how the 20% would redound to the benefit of the consumers, Senator Enrile stressed that nobody should dictate the price. He maintained that limiting the control of supplier in the grid to not more than 20% would allow others to come in.

Asked how the ERC has fared in protecting the interest of the consumers and how a representative from the consumer group would help protect

consumers' rights and welfare, Senator Enrile opined that it would be laudable to put someone from the consumer group but even ERC commissioners are consumers themselves.

Senator Legarda stated that at the proper time, she would propose an amendment to include a representative from the consumer group in the ERC. Senator Enrile gave assurance that the Committee is open to suggestions.

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 4:58 p.m.

RESUMPTION OF SESSION

At 4:58 p.m., the session was resumed.

RESERVATION TO INTERPELLATE

Senator Pangilinan manifested that Senators Madrigal, Aquino, Gordon, Cayetano (P), Angara, Zubiri and Arroyo made reservations to interpellate on Senate Bill No. 2121.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 2121

Upon motion of Senator Pangilinan, there being no objection, the Body suspended consideration of the bill.

COMMITTEE REPORT NO. 53 ON SENATE BILL NO. 2150


(Continuation)

Upon motion of Senator Pangilinan, there being no objection, the Body resumed consideration, on Second Reading, of Senate Bill No. 2150 (Committee Report No. 53), entitled

AN ACT GRANTING THE RIGHT OF REPLY AND PROVIDING PENALTIES FOR VIOLATION THEREOF.

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 5:00 p.m. 

RESUMPTION OF SESSION

At 5:07 p.m., the session was resumed with Senate President Pro Tempore Ejercito Estrada presiding.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 2150

Upon motion of Senator Pangilinan, there being no objection, the Body suspended consideration of the bill.

APPROVAL OF THE JOURNAL

Upon motion of Senator Pangilinan, there being no objection, the Body dispensed with the reading of the Journal of Session No. 72 and considered it approved.

PROPOSED SENATE RESOLUTION NO. 380

Upon motion of Senator Pangilinan, there being no objection, the Body considered Proposed Senate Resolution No. 380, entitled

RESOLUTION CONGRATULATING AND COMMENDING THE WORLD'S YOUNGEST CHESS GRANDMASTER, WESLEY SO, 14 YEARS OLD, FOR WINNING THE "BATTLE OF GRANDMASTERS TOURNAMENT" HELD AT THE CITY STATE HOTEL, MANILA LAST MAY 1-4, 2008.

With the permission of the Body, only the title of the resolution was read without prejudice to the insertion of its full text into the Record of the Senate.

ADOPTION OF PROPOSED SENATE RESOLUTION NO. 380

Upon motion of Senator Pangilinan, there being no objection, Proposed Senate Resolution No. 380 was adopted by the Body.

ADDITIONAL REFERENCE OF BUSINESS

The Deputy Secretary for Legislation, Atty. Edwin B. Bellen, read the following matters and the Chair made the corresponding referrals:

MESSAGES FROM THE HOUSE OF REPRESENTATIVES

Letters from the Secretary General of the House of Representatives, informing the Senate that on April 29, 2008, the House of Representatives passed the following House bills in which it requested the concurrence of the Senate:

House Bill No. 737, entitled

AN ACT EXTENDING PREFERENCE OF EMPLOYMENT TO ANY ONE CHILD OF VETERANS IN THE GOVERNMENT, INCLUDING GOVERNMENT-OWNED AND/OR GOVERNMENT-CONTROLLED CORPORATIONS AND FOR OTHER PURPOSES

To the Committees on Civil Service and Government Reorganization; and National Defense and Security

and House Bill No. 3693, entitled

AN ACT AMENDING SECTION 57 OF REPUBLIC ACT NO. 8754, OTHERWISE KNOWN AS THE CHARTER OF THE CITY OF MALOLOS

To the Committees on Local Government; and Constitutional Amendments, Revision of Codes and Laws

BILLS ON FIRST READING

Senate Bill No. 2246, entitled

AN ACT PROVIDING GUIDELINES FOR THE ESTABLISHMENT AND OPERATION OF LOCAL COLLEGES AND UNIVERSITIES AND FOR OTHER PURPOSES

Introduced by Senator Manny Villar

To the Committees on Education, Arts and Culture; and Local Government

Senate Bill No. 2247, entitled

AN ACT STRENGTHENING THE OPEN LEARNING SYSTEM OF HIGHER

EDUCATION IN THE PHILIPPINES,
APPROPRIATING FUNDS THEREFOR
AND FOR OTHER PURPOSES

Introduced by Senator Manny Villar

**To the Committees on Education, Arts and
Culture; Ways and Means; and Finance**

RESOLUTIONS

Proposed Senate Resolution No. 383, entitled

RESOLUTION DIRECTING THE COMMITTEE ON ACCOUNTABILITY OF PUBLIC OFFICERS AND INVESTIGATIONS TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, INTO THE ALLEGATION OF BRIBERY AND COUNTER-ALLEGATION OF EXTORTION BETWEEN HANJIN HEAVY INDUSTRIES CONSTRUCTION COMPANY, LTD. AND LOCAL GOVERNMENT OFFICIALS OF MISAMIS ORIENTAL INVOLVING THE CONSTRUCTION OF A 2-BILLION U.S. DOLLAR SHIP-YARD PROJECT IN THE AREA

Introduced by Senator M.A. Madrigal

**To the Committees on Accountability of
Public Officers and Investigations; and Local
Government**

Proposed Senate Resolution No. 384, entitled

RESOLUTION DIRECTING THE PROPER SENATE COMMITTEE TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE ILLEGAL ENTRY OF FOREIGN FISHING VESSELS AND THE PREVALENT USE OF TOXIC CHEMICALS FOR FISHING

Introduced by Senator Miriam Defensor
Santiago

**To the Committee on Environment and
Natural Resources**

Proposed Senate Resolution No. 385, entitled

RESOLUTION DIRECTING THE PROPER SENATE COMMITTEE TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE NOTORIOUS REPUTATION OF THE COUNTRY AS A SOURCE OF ILLEGAL DRUGS AND ITS TRANSSHIPMENT IN ASIA

Introduced by Senator Miriam Defensor
Santiago

**To the Committee on Public Order and
Illegal Drugs**

**SECOND ADDITIONAL
REFERENCE OF BUSINESS**

**MESSAGE OF THE
PRESIDENT OF THE PHILIPPINES**

Letter of Her Excellency, President Gloria Macapagal-Arroyo, dated May 5, 2008, submitting to the Senate for its consideration and concurrence the *Charter of the Association of Southeast Asian Nations*, signed on 20 November 2007 in Singapore.


To the Committee on Foreign Relations

ADJOURNMENT OF SESSION

Upon motion of Senator Pangilinan, there being no objection, the Chair declared the session adjourned until three o'clock in the afternoon of the following day.

It was 5:12 p.m.

I hereby certify to the correctness of the foregoing.


EMMA LIRIO REYES
Secretary of the Senate

Approved on May 7, 2008