

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

SENATE
OFFICE OF THE SECRETARY

10 JUL 26 P3:18

SENATE

Senate Bill No. 2037

RECEIVED BY: 

Introduced by SENATOR EDGARDO J. ANGARA

EXPLANATORY NOTE

From 1998 to 2002, the electric bills of end-users for the same usage tripled, increasing by 201%. Nearly half of the amount billed to end-users consists of the Purchase Power Adjustment, or PPA. The PPA is an automatic monthly adjustment to basic electric bills to recover the changes in the cost of power purchased from private producers. The PPA is broad enough to allow power generators and distributors to pass on to consumers the cost of its mistakes and inefficiencies as well as the burden of the onerous contracts entered into by the National Power Corporation and distribution utilities with independent power producers.

Although end-users have been charged the PPA since the early 1990s, it was only during the passage of Republic Act No. 9136, or the Electric Power Industry Reform Act ("EPIRA"), in 2001 that charging the PPA to end-users was recognized. The EPIRA also authorizes the imposition of a "universal charge" on end-users to replace the PPA.

It is no coincidence therefore, that the passage of the EPIRA was accompanied by increases in electric bills, this, despite the escalating poverty in the country and the assurances by President Arroyo that the EPIRA would translate to lower electric bills.

The EPIRA is evidently anti-poor and anti-people, benefiting only a few power generators and distributors. It results in electricity cost that is ore burdensome on consumers.

It is in our national interest to pass an amendatory law that is pro-people, lessening the hardship of the majority of consumers that can no longer afford to pay for their electric bills. We need a drastic, real and substantial solution to make the cost of electricity affordable to the consumers.

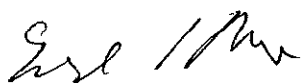
This bill seeks to lessen the hardships on consumers by preventing power generators and distributors from passing on the costs of their inefficiency, mistakes and questionable onerous contracts they have entered into to the end-users through the following means:

1. Cost-sharing of stranded costs of NPC between the NPC and the end-users, the amount to be shouldered by end-users shall be limited to twenty three centavos (P0.23);
2. Mandatory requirement by distribution utilities to refinance their stranded contract costs, the cost of refinancing together with the stranded cost recovery being capped at a maximum of twenty three centavos per kilowatt hour (PO.23/kwh);
3. Limitation of PPA charged by distribution utilities to twenty three centavos (P0.23);

4. Exemption from PPA of end-users consuming less than 100 KWH a month;
5. 50% discount on PPA or universal charge for end-users consuming 100 KWH to less than 300KWH a month;
6. Retail competition and open access on distribution wires by 1 June2004, subject only to the conditions of establishment of the wholesale electricity spot market and approval of unbundled transmission and distribution wheeling charges;
7. Stringent review by the NPC of its stranded costs;
8. Performance Based Revenue forms of rate setting for transmission and distribution utilities by June 2003; and a review of the Return on Rate Base method currently adopted, including disallowance of certain deductions from the return on rate base;
9. Prohibition of cross-ownership and bilateral contracts between generation companies and distribution utilities and limited crossownership among generation companies; and
10. Arms-length review and renegotiation of all IPP contracts, the benefits from the renegotiation directly translating the lower PPA and stranded cost charges to the end-users by an international panel of experts.

Through these measures, it is anticipated that both the PPA and the basic rate will be significantly reduced, directly translating to lower cost of electricity to end-users.

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


EDGARDO J. ANGARA
Senator

10 JUL 26 P3:18

SENATE

Senate Bill No. 2037

RECEIVED BY: 

Introduced by SENATOR EDGARDO J. ANGARA

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

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

1 SEC. 1. Section 2 of Republic Act No. 9136 is hereby amended to read as
2 follows:

3 "**Sec. 2. Declaration of Policy.** It is hereby declared the policy of the
4 State:

- 5 (a) To ensure and accelerate the total electrification of the country;
- 6 (b) To ensure the quality, reliability, security and affordability of the supply of
7 electric power;
- 8 (c) To ensure transparent and reasonable prices of electricity in a regime of free
9 and fair competition and full public accountability to achieve;
- 10 (d) To enhance the inflow of private capital and broaden the greater operational
11 and economic efficiency and enhance the competitiveness of Philippine
12 products in the global market; ownership base of the power generation,
13 transmission and distribution sectors;
- 14 (e) To ensure fair and non-discriminatory treatment of public and private sector
15 entities in the process of restructuring the electric power industry;
- 16 (f) To protect the public interest as it is affected by the rates and services of
17 electric utilities and other providers of electric power;
- 18 (g) To assure socially and environmentally compatible energy sources and
19 infrastructure;
- 20 (h) To promote the utilization of indigenous and new and renewable energy
21 resources in power generation in order to reduce dependence on imported
22 energy;
- 23 (i) To provide for an orderly and transparent privatization of the assets and
24 liabilities of the National Power Corporation (NPC), THE DILIGENT

1 MITIGATION, SEGREGATION AND FAIR DISTRIBUTION OF ITS
2 STRANDED OBLIGATIONS AND THE ORDERLY LIQUIDATION ITS
3 STRANDED COSTS;

4 (j) To establish a strong and purely independent regulatory body and system to
5 ensure consumer protection and enhance the competitive operation of the
6 electricity market; and

7 (k) To encourage the efficient use of energy and other modalities of demand side
8 management [.] , INCLUDING ENSURING, TO THE GREATEST
9 POSSIBLE EXTENT, THAT ELECTRIC SUPPLY DOES NOT OVERLY
10 EXCEED DEMAND;

11 (l) TO DEVELOP CONCRETE STRATEGIES TO STRENGTHEN RURAL
12 ELECTRIC COOPERATIVES 'I.

13
14 **SECTION 2.** Section 6 of the Act is hereby amended to read as follows:

15 **"Sec. 6. Generation Sector.** -- Generation of electric power, a business
16 affected with public interest, shall be competitive and open.

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

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

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

32 Pursuant to the objective of lowering electricity rates to endusers, sales of
33 generated power by generation companies shall be value added tax zero-rated. The
34 ERC shall, in determining the existence of market power abuse or anti-competitive
35 behavior, require from generation companies the submission of their INDIVIDUAL
36 PRICING FORMULA, AS WELL AS THEIR financial statements, POWER
37 PURCHASE AGREEMENTS, AND ANY AGREEMENTS THAT AFFECT
38 COSTS, TERMS, AND GUARANTEES, AMONG OTHERS."

1 **SEC. 3.** Section 31 of the Act is hereby amended to read as follows:

2 **"SEC. 81. Retail Competition and Open Access.** - Any law to the contrary
3 notwithstanding, retail competition and open access on distribution wires shall be
4 implemented BY 1 JUNE 2003 [not later than three (3) years upon the effectivity of
5 this Act], subject to the following conditions:

- 6 (a) Establishment of the wholesale electricity spot market;
7 (b) Approval of unbundled transmission and distribution wheeling charges;
8 (c) Initial implementation of the cross subsidy removal scheme;
9 (d) Privatization of at least seventy (70%) percent of the total capacity of
10 generating assets of NPC in Luzon and Visayas; and
11 (e) Transfer of the management and control of at least seventy percent (70%) of the
12 total energy output of power plants under contract with NPC to the IPP
13 Administrators.]

14 Upon the initial implementation of open access, the ERC shall allow all electricity
15 end-users with a monthly average peak demand of at least one megawatt (1MW) for the
16 preceding twelve (12) months to be the contestable market. Two (2) years thereafter, the
17 threshold level for the contestable market shall be reduced to seven hundred fifty
18 kilowatts (750kW). At this level, aggregators shall be allowed to supply
19 electricity to end-users whose aggregate demand within a contiguous area is at least
20 seven hundred fifty kilowatts (750kW). Subsequently and every year thereafter, the ERC
21 shall evaluate the performance of the market. On the basis of such evaluation, it shall
22 gradually reduce threshold level until it reaches the household demand level. In the case
23 of electric cooperatives, retail competition and open access shall be
24 implemented not earlier than five (5) years upon the effectivity of this Act.

25
26 **SEC. 4.** Section 32 of the Act is hereby amended to read as follows:

27 **"Sec. 32. NPC Stranded Debt and Contract Cost Recovery.-** Stranded
28 debt of NPC shall refer to any unpaid financial obligations of NPC.

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

33 TO PROTECT THE PUBLIC FROM ONEROUS AND GROSSLY
34 DISADVANTAGEOUS PROVISIONS ARISING FROM PRIVATELY
35 NEGOTIATED CONTRACTS, [the national government shall be made to
36 assume a portion of the financial obligations of NPC in an amount not to exceed
37 FIVE [Two] hundred billion pesos (P500,000,000,000.00) [(P200,
38 000,000,000.00) UPON SHOWING OF PROOF TO THE ERC THAT THE NPC

1 HAS UNDERTAKEN A STRINGENT AND EXHAUSTIVE PROCESS OF
2 MITIGATION, SEGREGATION AND DISPOSITION.

3 The *ERC* shall verify the reasonable amounts and determine the manner
4 and duration for the full recovery of stranded debt and stranded costs as defined
5 herein; Provided, That the duration for such recovery shall not be shorter than
6 fifteen (15) years not longer than twenty-five (25) years. The ERC shall, at the
7 end of the first year of the implementation of stranded cost recovery and every
8 year thereafter, conduct a review to determine whether there is under-recovery or
9 over-recovery and adjust (true-up) the level of *stranded* cost recovery charge
10 accordingly. Any amount to be included for stranded cost recovery shall be
11 reflected as a separate item in the consumer billing statement.

12 THE ERC SHALL CONDUCT A COMPREHENSIVE REVIEW OF
13 THE EXTENT OF THE STRANDED COSTS OF NPC ON A SEMIANNUAL
14 BASIS AND ENSURE THAT THE NPC HAS UNDERTAKEN A STRINGENT
15 AND EXHAUSTIVE PROCESS OF MITIGATION, SEGREGATION AND
16 DISPOSITION.”

17
18 **SEC. 5.** Section 33 of the Act is hereby amended to read as follows:

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

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

1 REFINANCING SCHEME TO THE ERC FOR ITS APPROVAL PRIOR TO
2 ITS IMPLEMENTATION.

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

15 TO PROTECT THE PUBLIC FROM ONEROUS AND GROSSLY
16 DISADVANTAGEOUS PROVISIONS ARISING FROM PRIVATELY
17 NEGOTIATED CONTRCTS, THE ERC SHALL STRICTLY REVIEW THE
18 FAIRNESS AND REASONABLENESS OF THE STRANDED COSTS OF THE
19 DISTRIBUTION UTILITIES IN RELATION TO THE AVERAGE PRICE OF
20 IPP PROJECTS ENTERED INTO BY IT AT THE TIME THEY WERE
21 CONTRACTED, TAKING INTO CONSIDERATION ALL FACTORS THAT
22 AFFECT THE TOTAL COST OF IPP CONTRACTS OF THE DISTRIBUTION
23 UTILITY, INCLUDING BUT NOT LIMITED TO DIRECT AND INDIRECT
24 SUBSIDIES OR INCENTIVES PROVIDED BY THE GOVERNMENT,
25 BEFORE IT WOULD ALLOW RECOVERY OF STRANDED COSTS;
26 *PROVIDED*, THAT THE DISTRIBUTION UTILITY MUST PROVE TO THE
27 SATISFACTION OF THE ERC
28 THATTHESTRANDEDCOSTCOULDNOLONGERBEFURTHER
29 MITIGATED, SEGREGATED AND DISPOSED.

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

36 "Any distribution utility which seeks to recover stranded *cost* shall have a
37 duty to mitigate its potential stranded contract costs by making reasonable best
38 efforts to:

- 1 a. reduce the costs of its existing contracts with IPPs to a level not exceeding the
2 average buying price of other land-based electric power generators; and
3 b. submit to an annual earnings review by the ERC and use its earnings above its
4 authorized rate of return to reduce the book value of contracts until the end of
5 the stranded cost recovery period.

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

10 "The relevant distribution utility shall submit to the ERC quarterly reports
11 showing the amount of stranded costs recovered and the balance remaining to be
12 recovered.

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

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

24 "The ERC shall, at the end of the first year of the implementation of
25 stranded cost recovery and every year thereafter, conduct a review to determine
26 whether there is under recovery or over recovery and adjust (true-up) the level of
27 stranded cost recovery charge accordingly. In case of an over-recovery, the ERC
28 shall ensure that any excess amount shall be remitted to the Special Trust Fund
29 created under Section 34 hereof. A separate account shall be created for these
30 amounts which shall be held in trust for any future claims of distribution utilities
31 for stranded cost recovery. At the end of the stranded cost recovery period, any
32 remaining amount in the account shall be used to reduce the electricity rates to the
33 end-users. *PROVIDED, THAT IN NO CASE SHALL THE AMOUNT OF*
34 *RECOVERABLE STRANDED CONTRACT COSTS OF A DISTRIBUTION*
35 *UTILITY EXCEED TWENTY THREE CENTAVOS PER KILOWATT HOUR*
36 *(PO. 23/KWH).*

37
38 **SEC. 6.** A new Section 33-A is hereby added, to read as follows:

1 "SEC. 33-A. A DISTRIBUTION UTILITY SHALL NOT BE
2 ALLOWED TO CHARGE END-USERS POWER PURCHASE ADJUSTMENT
3 (PPA) ARISING FROM ITS OWN IPP'S IN EXCESS OF TWENTY THREE
4 CENTAVOS (P0.23) PER KILOWATT HOUR; *PROVIDED*, THAT THIS
5 SHALL BE WITHOUT PREJUDICE TO THE REVIEW AND
6 RENEGOTIATION OF IPP CONTRACTS TO FURTHER REDUCE THE PPA
7 AS REQUIRED IN SECTION 68 OF THIS ACT."

8
9 **SEC. 7.** Section 34 of the Act is hereby amended to read as follows:

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

13 (a) Payment for the stranded debts in excess of the amount assumed by the
14 National Government and stranded contract costs of NPC and as well as
15 qualified stranded contract costs of distribution utilities resulting from the
16 restructuring of the industry [;I: *PROVIDED*, THAT END-USERS SHALL
17 BE CHARGED NOT MORE THAN TWENTY THREE CENTAVOS
18 (P0.23) PER KWH FOR THE STRANDED COSTS OF NPC. THE
19 BALANCE OF THE STRANDED COSTS OF NPC SHALL BE ASSUMED
20 BY THE NATIONAL GOVERNMENT; *PROVIDED, FURTHER*, THAT IN
21 NO CASE SHALL THE AMOUNT OF RECOVERABLE STRANDED
22 CONTRACT COSTS OF A DISTRIBUTION UTILITY EXCEED TWENTY
23 THREE CENTAVOS PER KILOWATT HOUR (PO .23/KWH).

24 (b) Missionary electrification;

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

27 (d) An environmental charge equivalent to one-fourth of one centavo per
28 kilowatt-hour (PO.O025/kwh), which shall accrue to an environmental fund to
29 be used solely for watershed rehabilitation and management. Said fund shall
30 be managed by NPC under existing arrangements; and

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

33 The universal charge shall be non-by passable charge, which shall be
34 passed on and collected from all end-users on a monthly basis by the distribution
35 utilities. Collections by the distribution utilities and the TRANSCO in any given
36 month shall be remitted to the PSALM Corp. on or before the fifteenth (15th) of
37 the succeeding month, net of any amount due to the distribution utility. Any end-

1 user or self-generating entity not connected to a distribution utility shall remit its
2 corresponding universal charge directly to the TRANSCO.

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

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

10 "SEC. 34-A. **EXEMPTIONS AND REDUCTION OF PPA.** -
11 ENDUSERS CONSUMING LESS THAN ONE HUNDRED KILOWATT
12 HOURS (100 KWH) PER MONTH ARE EXEMPTED FROM PAYMENT OF
13 THE NPC'S PPA.

14 END-USERS CONSUMING ONE HUNDRED KILOWATT HOURS
15 BUT NOT MORE THAN THREE HUNDRED KILOWATT HOUR
16 (300/KWH) PER MONTH SHALL ONLY BE REQUIRED TO PAY FOR
17 FIFTY PER CENT (50%) OF THE PPA CORRESPONDING TO NPC.

18 A DISTRIBUTION UTILITY MUST IMMEDIATELY EFFECT A
19 PROPORTIONATE REDUCTION IN THE POWER PURCHASE
20 ADJUSTMENT (PPA) AND SUBSEQUENTLY, THE COMPONENT OF THE
21 UNIVERSAL CHARGE PERTAINING TO THE STRANDED CONTRACT
22 COSTS OF ELIGIBLE CONTRACTS OF SUCH DISTRIBUTION UTILITY
23 BY REASON OF THE EXEMPTION AND REDUCTION OF NPC'S PPA
24 PURSUANT TO THE FIRST AND SECOND PARAGRAPHS OF THIS
25 SECTION."

26
27 **SECTION 9.** Section 43(f) of the Act is hereby amended as follows:

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

29 (a) xxx

30 (f) In the public interest, establish and enforce a methodology for setting
31 transmission and distribution wheeling rates and retail rates for the captive
32 market of a distribution utility, taking into account all relevant considerations,
33 including the efficiency or inefficiency of the regulated entities. THE ERC
34 SHALL ADOPT PERFORMANCE BASED REVENUE ("PBR") FORMS
35 OF RATESETTING BY JUNE 1, 2003. PRIOR TO SUCH DATE, THE ERC
36 SHALL ADOPT RATE-SETTING FORMS WHERE the rates must be such
37 as to allow the recovery of just and reasonable costs and a reasonable return
38 on rate base (RORB) to enable the entity to operate viably. The ERC may

1 adopt alternative forms of internationally accepted rate-setting methodology
2 as it may deem appropriate. The rate-setting methodology so adopted and
3 applied must ensure a reasonable price of electricity. The rates prescribed
4 shall be non-discriminatory. To achieve this objective and to ensure the
5 complete removal of cross subsidies, the cap on the recoverable rate of system
6 losses prescribed in Section 10 of Republic Act No. 7832, is hereby amended
7 and shall be replaced by caps which shall be determined by the ERC based on
8 load density, sales mix, cost of service, delivery voltage and other technical
9 considerations it may promulgate, The ERC shall determine such form or rate-
10 setting methodology, which shall promote efficiency. In case the rate setting
11 methodology used is RORB, it shall be subject to the following guidelines:

- 12 (i) For purposes of determining the rate base, the TRANSCO or any distribution
13 utility SHALL NOT BE ALLOWED TO REVALUE ITS ELIGIBLE
14 ASSETS FOR PURPOSES OF INCREASING ITS RATE BASE:
15 *PROVIDED*, THAT ASSETS WHICH ARE NOT USED AND USEFUL
16 FOR THE TRANSMISSION OR DISTRIBUTION OF ELECTRICITY
17 SHALL

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

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

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

- 32 (iv) Further, in determining rate base, the TRANSCO or any distribution utility
33 shall not be allowed to include management inefficiencies like cost of project
34 delays not excused by force majeure, penalties and related interest during
35 construction applicable to these unexcused delays; and

- 36 (v) Any significant operating costs or project investments of the *TRANSCO and*
37 distribution *utilities* which shall become part of the RETURN ON rate base
38 AND SIGNIFICANT OPERATING COSTS THAT ARE PASSED ON TO

1 THE CONSUMERS shall be subject to verification by the ERC to ensure
2 that the contracting and procurement of the equipment, assets and services
3 have been subjected to [transparent and accepted industry procurement and
4 purchasing practices] PROCUREMENT PROCEDURES NO
5 LESSSTRINGENT AND TRANSPARENT THAN GOVERNMENT
6 PROCUREMENT GUIDELINES, AND SUBJECT TO OPEN
7 COMPETITIVE PUBLIC BIDDING IN ORDER to protect the public
8 interest.”
9

10 SEC. 10. - Section 45 of the Act is hereby amended to read as follows:

11 “Sec. 45. Cross Ownership, Market Power Abuse and Anti-
12 Competitive Behavior. - No participant in the electricity industry or any other
13 person may engage in any anti-competitive behavior including, but not limited to,
14 cross-subsidization, price or market manipulation, or other unfair trade practices
15 detrimental to the encouragement and protection of contestables market.
16

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

25 No generation company, distribution utility, or its respective subsidiary or
26 affiliate or stockholder or official of a generation company or distribution utility,
27 or other entity engaged in generating and supplying electricity specified by ERC
28 within the fourth civil degree of consanguinity or affinity, shall be allowed to hold
29 any interest, directly or indirectly, in TRANSCO or its concessionaire. Likewise,
30 the TRANSCQ, or its concessionaire or any of its stockholders or officials or any
31 of their relatives within the fourth civil degree of consanguinity or affinity, shall
32 not hold any interest, whether directly or indirectly, in any generation company or
33 distribution utility. Except for *ex officio* government-appointed representatives, no
34 person who is an officer or director of the TRANSCO or its concessionaire shall
35 be an officer or director of any generation company, distribution utility or
36 supplier. A GENERATION COMPANY MAY BE PERMITTED TO HOLD
37 INTEREST, DIRECTLY OR INDIRECTLY, IN ANOTHER GENERATION
38 COMPANY: PROVIDED, THAT THE EXTENT OF SUCH INTEREST SHALL

1 BE LESS THAN THE AMOUNT OF SHARES NEEDED TO VOTE ONE
2 MEMBER OF THE BOARD OF DIRECTORS.

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

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

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

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

28 (c) For the first five (5) years from the establishment of the wholesale
29 electricity spot market, no distribution utility shall source more than 90% of its
30 total demand from bilateral power supply contracts: PROVIDED, THAT NO
31 BILATERAL POWER SUPPLY CONTRACT SHALL BE ENTERED INTO
32 EXCEPT PURSUANT TO AN OPEN, COMPETITIVE AND TRANSPARENT
33 BIDDING SUPERVISED BY THE ERC: PROVIDED FURTHER, THAT
34 AFTER THE FIRST FIVE (5) YEARS FROM THE ESTABLISHMENT OF
35 THE WHOLESALE ELECTRICITY SPOT MARKET, THE ERC SHALL
36 ISSUE GUIDELINES GOVERNING BILATERAL POWER SUPPLY
37 CONTRACTS TO ENSURE INCREASED USAGE OF WHOLESALE
38 ELECTRICITY SPOT MARKET.

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

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

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

- 17 (a) the relevant markets for purposes of establishing abuse or misuse of monopoly or
18 market position;
19 (b) areas of isolated grids; and
20 (c) the periodic reportorial requirements of electric power industry participants as
21 may be necessary to enforce the provisions of this section.

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

29 The ERC shall, within one (1) year from the effectivity of this Act,
30 promulgate rules and regulations providing for a complaint procedure that, without
31 limitation, provides the accused party with notice and an opportunity to be heard."
32

33 **SEC. 11.** Section 68 of the Act is hereby amended to read as follows:

34 **"SEC. 68. Review of IPP Contracts** - An inter-agency committee chaired by
35 the Secretary of Finance AND CO-CHAIRER BY THE SECRETARY OF
36 ENERGY, with [the Secretary of the Department of Justice and] the Director General
37 of the National Economic and Development Authority AND FOUR (4)
38 INTERNATIONAL ENERGY EXPERTS TO BE APPOINTED BY THE

1 PRESIDENT as members thereof is hereby created upon the effectivity of this Act.
2 The Committee shall immediately undertake a thorough ARMS-LENGTH Review of
3 all IPP contracts ENTERED INTO BY NPC AND ANY DISTRIBUTION UTILITY.
4 In cases where such contracts are found to have provisions which are grossly
5 disadvantageous, or onerous to the Government OR THE END- USERS, the
6 Committee shall RENEGOTIATE THE CONTRACTS WITH THE IPPS, IN
7 ADDITION TO CAUSING [cause] the appropriate government agency to file an
8 action under the arbitration clauses provided in said contracts or INITIATING
9 [initiate] any appropriate action' under Philippine laws. The PSALM Corporation
10 shall diligently seek to reduce stranded costs, if any; *PROVIDED*, THAT ANY
11 REDUCTION IN CONTRACT COST AS A RESULT OF ANY REVIEW OR
12 RENEGOTIATION BY THE COMMITTEE SHALL TRANSLATE DIRECTLY
13 INTO LOWER UNIVERSAL CHARGES FOR THE END-USER."
14

15 **SEC. 12. *Separability Clause.*** - If any provision of this Act is held to be
16 unconstitutional or invalid, the same shall not affect the remainder thereof.
17

18 **SEC. 13. *Repealing Clause.*** --- All laws, presidential decrees, executive orders, rules
19 and regulations, and part thereof, which are inconsistent with the provisions of this Act,
20 are hereby repealed or modified accordingly.
21

22 **SEC. 14. *Effectivity,*** --- This Act shall take effect fifteen (15) days after publication
23 in the Official Gazette or two (2) newspapers of general circulation.
24

25 *Approve.*