

SENATE

S. No. 3167

Introduced by Senator Antonio "Sonny" F. Trillanes IV

EXPLANATORY NOTE

When President Fidel V. Ramos assumed presidency in 1992, he was welcomed by a crippling power crisis throughout the country prompting him to seek emergency powers from Congress. Republic Act No. 7648, otherwise known as the "Electric Power Crisis Act of 1993" granted emergency powers to then President Ramos to respond to the alarming shortage of the supply of electricity during that period.

RA 7648 allowed special constitutional powers to issue licenses to independent power producers (IPP) for the construction, repair, rehabilitation, improvement or maintenance of power plants, projects and facilities. This effectively fast tracked the usually long and tedious process required to bid out government projects. Moreover, said law also created an oversight committee in each House of Congress to monitor the implementation of the same and the exercise of authority granted under the law.

However, the authority granted under RA 7648 was only valid and effective for a period of one (1) year from its effectivity. Further, as recently stated by Senator Sergio Osmeña III, Chair of the Senate Committee on Energy, in 2001,

"... the residents of Mindanao, through their representatives, pushed for a 10 year exemption from the privatization program of the NPC-owned plants in Mindanao, notably the Agus-Pulangui hydropower complex which at that time supplied about 75% of the power needs of Mindanao at the lowest rate... [E]ven worse, the bicam committee agreed to postpone the construction of the transmission line interconnection between Leyte and Surigao."

Thus,

"Unlike the rest of the country which has already transitioned to the new market oriented regime, Mindanao remains isolated from the national transmission grid which prevents excess power in the Visayas from being fed into Mindanao."

Sadly, until now, Mindanao continues to suffer intermittent power brownouts. In fact, President Benigno Aquino III recently admitted that the power problem in Mindanao had been neglected for years.

It is in the light of all the foregoing that this measure granting emergency powers to the President, to address the shortage of electricity in Mindanao, has been filed.

Out of the abundance of caution, however, this measure expressly prohibits the government from granting sovereign guarantee for the payment of obligations incurred by the Independent Power Producers (IPPs).

Likewise, this measure proscribes the inclusion of onerous "take or pay" contracts or similar provisions which appeared to have been abused in the past.

Similarly, the rate of return on rate base which may be fixed shall be limited to a maximum of twelve percent (12) per annum only.

Subject to these safeguards, it is expected that the President will be able to expeditiously act and adequately address the power crisis in Mindanao with the emergency powers provided in this Act.

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



ANTONIO "SONNY" F. TRILLANES IV
Senator

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AN ACT
PRESCRIBING URGENT RELATED MEASURES NECESSARY AND PROPER TO
EFFECTIVELY ADDRESS THE ELECTRIC POWER CRISIS AND FOR OTHER
PURPOSES

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

1 SECTION 1. *Short Title.* – This Act shall be known as the “*Electric Power Crisis Act of*
2 *2012*”.

3
4 SEC. 2. *Declaration of Policy.* – It is hereby declared the policy of the State to adopt
5 adequate and effective measures to address the electric power crisis that has disrupted the
6 country’s economic and social life and assumed the nature and magnitude of a public crisis if not
7 a calamity.

8
9 SEC. 3. *Negotiated Contracts.* – Pursuant to the above declared policy and in the public
10 interest and whenever it is advantageous to the Government, the President may enter into
11 negotiated contracts for the construction, repair, rehabilitation, improvement or maintenance of
12 power plants, projects and facilities, subject to the following requirements:

13 a) In order to inform competitive contractors, the list of projects to be undertaken under
14 this Act, together with their description, the budgetary estimates involved and other
15 salient features, shall be published in a newspaper of general circulation thirty (30)
16 days after the effectivity of this Act;

- 1 b) Upon perfection of the contract, the terms and conditions of the same, with the name
2 and qualifications of the contractor, shall likewise be published in a newspaper of
3 general circulation two (2) weeks before the signing of the contract;
- 4 c) The contracts shall be awarded only to contractors with:
- 5 i) proven competence and experience in similar projects;
- 6 ii) competent key personnel and sufficient and reliable equipment; and
- 7 iii) sound financial capacity; and
- 8 d) All the awarded projects shall be subject to existing government auditing rules and
9 regulations governing negotiated contracts.

10 *Provided*, That the President shall not grant sovereign guarantee for the payment of
11 obligations incurred by the independent power producers (IPPs); *Provided further*, That the
12 President shall not enter into negotiated contracts which will bring the total production capacity
13 in excess of the power requirements of the country as projected by the Department of Energy;
14 *Provided finally*, That no take-or-pay contracts or similar onerous provisions shall be entered
15 into in the exercise of the powers provided in this Act.

16

17 **SEC. 4. Return on Rate Base.** – Further pursuant to the above declared policy, the
18 President is hereby authorized, whenever it is necessary for the national welfare and in the public
19 interest, to fix the rate of return on rate base of IPPs to a certain percentage of the rate base, as
20 may be determined by the President in consultation with IPPs and other stakeholders; *Provided*,
21 That said rate of return on rate base shall not exceed twelve percent (12%) per annum.

22 Any increase in power rates shall take effect only upon approval of the Energy
23 Regulatory Commission (ERC), and only after proper notice, hearing and due proceedings.

24

25 **SEC. 5. Duration of Grant of Powers.** – The authority granted to the President under this
26 Act shall subsist, be valid and effective for a period of one (1) year from the effectivity of this
27 Act, unless sooner withdrawn by a resolution of Congress, without prejudice to rights and
28 benefits that may have been vested, and culpabilities and liabilities that may have been incurred.

1 **SEC. 6. Oversight Committees.** – There is hereby created an Oversight Committee in
2 each House of Congress to be composed of five (5) members each, as may be designed by the
3 Senate President and the Speaker of the House of the Representatives, to monitor the
4 implementation of this Act and ensure compliance with the provisions hereof and the exercise of
5 the authority granted thereunder.

6 The Oversight Committees shall submit periodic reports, evaluations and
7 recommendations to the Senate and the House of Representatives.

8
9 **SEC. 7. Report to Congress.** – The President shall submit a quarterly report to Congress
10 on the implementation of this Act.

11
12 **SEC. 8. Separability Clause.**– If for any reason any provision of this Act is declared
13 unconstitutional or invalid, other parts or provisions hereof which are not affected thereby shall
14 continue to be in full force and effect.

15
16 **SEC. 9. Repealing Clause.** – All laws, decrees, orders, rules and regulations, or portions
17 thereof, inconsistent with this Act are hereby repealed or modified accordingly.

18
19 **SEC. 10. Effectivity Clause.** – This Act shall take effect on the day following
20 its publication in at least two (2) national newspapers of general circulation.

Approved,

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