



**SENATE**

**P.S. RES. No. 226**

'19 NOV 27 P4:51

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Introduced by Senator WIN GATCHALIAN

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**A RESOLUTION DIRECTING THE SENATE COMMITTEE ON ENERGY TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE COMPLIANCE OF THE ENERGY REGULATORY COMMISSION WITH ITS COMMITMENT TO RESOLVE WITH URGENCY THE PENDING ISSUES OF THE TRANSMISSION GRID OPERATOR FOR THE BENEFIT OF ALL ELECTRIC POWER END USERS**

1 WHEREAS, Republic Act No. 9136, or the Electric Power Industry Reform Act of  
2 2001 (EPIRA), creates the Energy Regulatory Commission (ERC)<sup>1</sup> and empowers it to  
3 establish and enforce a methodology for setting transmission wheeling rates<sup>2</sup> and to  
4 act on applications by franchised electric utilities in accordance with law;<sup>3</sup>

5 WHEREAS, Republic Act No. 9511 or the National Grid Corporation of the  
6 Philippines (NGCP) Franchise grants to NGCP, as the transmission operator,<sup>4</sup> the right  
7 to file the necessary application and submissions with the ERC for the review of its  
8 rates every five (5) years,<sup>5</sup> and the obligation to make an initial public offering (IPO)  
9 of shares representing at least twenty percent (20%) of its outstanding capital stock  
10 within ten (10) years from the commencement of its operations;<sup>6</sup>

11 WHEREAS, the fourth (4<sup>th</sup>) regulatory period for the review of NGCP's rates  
12 covering the years 2016 to 2020 has been delayed for four (4) years already;

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<sup>1</sup> Sec. 38 of Republic Act No. 9136, or the Electric Power Industry Reform Act of 2001 (EPIRA) (Approved 8 June 2001)

<sup>2</sup> Sec. 43 (g), Id.

<sup>3</sup> Sec. 43 (q), Id.

<sup>4</sup> Republic Act No. 9511 or the National Grid Corporation of the Philippines (NGCP) Franchise (Approved on 1 December 2008)

<sup>5</sup> Sec. 7.1.4, Article VII. Rules for Setting Transmission Wheeling Rates. (16 September 2009)

<sup>6</sup> Sec. 8 of Republic Act No. 9511 or the National Grid Corporation of the Philippines (NGCP) Franchise (Approved on 1 December 2008)

1 WHEREAS, the National Transmission Corp. (TransCo) estimated the effect of  
2 the delay in the review of NGCP's rates, and found that had the regulatory rate review  
3 been conducted on time in 2015, the weighted average cost of capital of NGCP should  
4 have been 7.14% and not the current 15.04%. This would have meant a reduction in  
5 the transmission rate of 34% or Php 0.2375 per kilowatt hour (kWh);<sup>7</sup>

6 WHEREAS, when it comes to the requirement to undertake an IPO, the ten-  
7 year period lapsed already last 15 January 2019;

8 WHEREAS, NGCP filed a petition before the ERC on 13 November 2018 to  
9 extend the date of its IPO due to, among others, unfavorable market conditions;<sup>8</sup>

10 WHEREAS, the public would have been able to receive around Php 33.98 billion  
11 in dividends or 20% of NGCP's total cash dividends<sup>9</sup> in the past nine (9) years had  
12 there been an IPO at the start of NGCP's operations;<sup>10</sup>

13 WHEREAS, an IPO promotes transparency and participation in NGCP's  
14 governance because it establishes the transmission concessionaire as a public  
15 corporation, and as such NGCP will be mandated to have at least two (2) independent  
16 directors out of its present ten (10) members of its board of directors;<sup>11</sup> disclose  
17 detailed, descriptive, balanced, and comprehensible assessment of the corporation's  
18 performance to shareholders;<sup>12</sup> regularly submit reports to shareholders<sup>13</sup> and to the  
19 Securities and Exchange Commission (SEC);<sup>14</sup> and to be accountable to shareholders  
20 who shall communicate or seek to obtain redress for any violations of shareholder's  
21 rights;<sup>15</sup>

22 WHEREAS, the Senate Committee on Energy conducted a hearing on 3 April  
23 2019 to determine how soon the ERC can address the delays in transmission rate  
24 review and how soon the ERC can decide on whether or not NGCP can extend its IPO  
25 deadline;<sup>16</sup>

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<sup>7</sup> Transco WACC Study and Projected WACC's Impact on Transmission Rates. (31 August 2018)

<sup>8</sup> ERC Case No. 2018-014 MC "Petition for the Approval of the Extension of the Period for Listing of the Shares of Stock of the National Grid Corporation of the Philippines, National Grid Corporation of the Philippines (NGCP) applicant" Order. (28 January 2019)

<sup>9</sup> Sec. 8 of Republic Act No. 9511 or the National Grid Corporation of the Philippines (NGCP) Franchise (Approved on 1 December 2008). The total cash dividends in the past nine (9) years would have amounted to Php 169.893 billion.

<sup>10</sup> NGCP Audited Financial Statements (2008-2017)

<sup>11</sup> Sec. 22 of Republic Act No. 11232 or the Revised Corporation Code (Approved: 20 February 2019)

<sup>12</sup> Sec. 49 (c), Id.

<sup>13</sup> Sec. 49 (d), (g), (h), and (i), Id.

<sup>14</sup> Sec. 117, Id.

<sup>15</sup> Sec. 154, Id.

<sup>16</sup> Transcript of Stenographic Notes. Senate Committee on Energy Hearing on NGCP's IPO and Rate Regulatory Reset. (3 April 2019) Page 96.



1           WHEREAS, the ERC submitted to the Senate Committee on Energy a timetable  
2 which sets December 2021 as the target completion date of the final decision on rate  
3 review of NGCP and the second week of January 2020 as target for the promulgation  
4 of a decision concerning NGCP's IPO.<sup>17</sup> The timelines provided by the ERC show that  
5 consumers will have to wait a substantial period of time before reaping any of the  
6 benefits which can come from NGCP's rate review and its IPO;

7           WHEREAS, it is necessary for Congress to be updated by the ERC of the  
8 progress of NGCP's petitions and to seek accountability from the ERC concerning  
9 regulatory delays and hear the steps undertaken to resolve these matters with  
10 urgency;

11           NOW THEREFORE BE IT RESOLVED, as it is hereby resolved, to direct the  
12 Senate Committee on Energy to conduct an inquiry, in aid of legislation, on the  
13 compliance of the Energy Regulatory Commission with its commitment to resolve with  
14 urgency the pending issues of the transmission grid operator for the benefit of all  
15 electric power end users.

Adopted,



**WIN GATCHALIAN**

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<sup>17</sup> Submission of the ERC to the Senate Energy Committee. (18 November 2019)