



SENATE
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RESOLUTION

DIRECTING THE COMMITTEE ON ENERGY OF THE SENATE TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, INTO THE ALLEGED ANOMALOUS CONTRACTS AND/OR AGREEMENTS ENTERED INTO BY POWER ONE CORPORATION AND/OR ITS DESIGNATED PROJECT COMPANIES/AFFILIATES WHICH HAVE RESULTED TO THE CONTINUED UNSTABLE POWER SUPPLY SITUATION IN ITS AREAS OF OPERATION IN THE ISLAND PROVINCES OF CATANDUANES, MINDORO AND PALAWAN, AS WELL AS TO THE CHARGING OF BLOATED POWER RATES AND UNDUE PAYMENT OF "FOREGONE ENERGY" AND/OR "STANDBY ENERGY" CHARGES BY MEMBER-CONSUMERS OF ELECTRIC COOPERATIVES COVERING SAID PROVINCES PURPORTEDLY WITH THE CONNIVANCE OF OFFICIALS OF THE NATIONAL POWER CORPORATION, THE ENERGY REGULATORY COMMISSION AND/OR LOCAL GOVERNMENT OFFICIALS, IN ORDER TO ESTABLISH THE TRUE AND REAL EXTENT OF SAID ANOMALY AND DETERMINE WHETHER OR NOT THERE IS A NEED FOR REMEDIAL LEGISLATION IN THIS REGARD.

WHEREAS, under *Section 2* of Republic Act No. 9136 otherwise known as the *Electric Power Industry Reform Act of 2001* or *EPIRA Law*, it is the *Declared Policy of the State*:

- (a) Xxx;
- (b) To ensure the quality, reliability, security and affordability of the supply of electric power;
- (c) To ensure transparent and reasonable prices of electricity in a regime of free and fair competition and full public accountability to achieve greater operational and economic efficiency and enhance the competitiveness of Philippine products in the global market;
- (d) To enhance the inflow of private capital and broaden the ownership base of the power generation, transmission and

distribution sectors;

(e) Xxx;

(f) To protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power;

(g) Xxx;

(h) Xxx;

(i) To provide for an orderly and transparent privatization of the assets and liabilities of the National Power Corporation (NPC);

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

(k) Xxx.

[Emphasis supplied]

WHEREAS, instead of working to achieve these declared policies of the State, the series of energy supply agreements (ESA) or contracts purportedly entered into and/or signed by *Power One Corporation* (“*Power One*”) and/or its designated Project Companies/Affiliates with the electric cooperatives operating in the island Provinces of Catanduanes, Palawan and Mindoro have actually resulted to a more unstable power situation, as well as the charging of bloated power rates and undue payment of “*foregone energy*” or “*standby energy*” charges by member-consumers of the electric cooperatives in the said provinces, purportedly with the connivance of officials of the National Power Corporation (“*NPC*”), the Energy Regulatory Commission (“*ERC*”) and/or Local Government Officials, to the grave and utter prejudice of the members-consumers;

WHEREAS, the fraudulent scheme employed by *Power One* is undertaken by actively participating in the bidding for electricity supply agreements (ESAs) and/or contracts for various electric cooperatives, submitting false proposals and/or claims as to its capability of delivering the power supply needs of the province, and, once the energy supply agreement (ESA) or contract is awarded in its favor, subsequently assigning said agreements to other power providers for the sole purpose of evading their contractual obligations under the original energy supply agreements (ESAs) and/or contracts;

WHEREAS, this fraudulent scheme or *modus operandi* employed by *Power One* can be seen as an established pattern which said company similarly applied, employed and/or implemented in the island

provinces of Catanduanes, Palawan and Mindoro, thus, clearly showing premeditation and a deliberate attempt on the part of the said company to attain its illicit purposes and/or unduly profiting from the unsuspecting member-customers of the electric cooperatives operating in the said island provinces by unduly charging them for “foregone energy” or “standby energy” charges when the same are clearly not due and/or owing to Power One and/or its Project Companies and/or Affiliates due to the fact that they never actually build and/or invest in the establishment of power generation facilities to justify these charges, but only end-up leasing power generators from the NPC and/or the electric cooperatives themselves;

WHEREAS, the established pattern which Power One has employed blatantly disregards of the long-standing doctrine when it comes to public bidding, as held in the leading case of **AGAN ET AL. VS. PIATCO, G.R. No. 155001, May 5, 2003**, where the Supreme Court enunciated that “[w]hile we concede that a winning bidder is not precluded from modifying or amending certain provisions of the contract bidden upon, such changes must not constitute substantial or material amendments that would alter the basic parameters of the contract and would constitute a denial to the other bidders of the opportunity to bid on the same terms. Hence, the determination of whether or not a modification or amendment of a contract bidden out constitutes a substantial amendment rests on whether the contract, when taken as a whole, would contain substantially different terms and conditions that would have the effect of altering the technical and/or financial proposals previously submitted by other bidders. The alterations and modifications in the contract executed between the government and the winning bidder must be such as to render such executed contract to be an entirely different contract from the one that was bided upon”;

WHEREAS, member-consumers of the respective electric cooperatives in the island provinces of Catanduanes, Palawan and Mindoro have been experiencing frequent and unnecessary power outages causing undue disturbance and/or grave inconvenience to their day-to-day lives due to failure of Power One and/or its designated Project Companies/Affiliates to install the required generation capacity as they originally contracted in their energy supply agreements (ESAs) or contracts for said island provinces;

WHEREAS, said resulting frequent power outages are not only disadvantageous to the member-consumers, the same also results to the undue loss of earning and/or persistent economic disruptions in the said island provinces;

WHEREAS, the threat of continuous and/or unabated power outages in the years to come in the island provinces of Catanduanes, Palawan and/or Mindoro is very evident and inevitable because of the deliberate failure and/or refusal of Power One and/or its designated Project Companies/Affiliates to comply with the obligations it has

contracted when it first signed and/or entered into the electricity supply agreement (ESAs) or contracts with the electric cooperatives in the said island provinces of putting up base load power plants therein.

WHEREAS, instead of being charged lower generation rates, members-consumers of the respective electric cooperatives of these island provinces have been compelled to pay excessive and/or exorbitant power rates, as well as unwarranted payments for “*undelivered energy*”, through “*foregone energy*” and/or “*standby energy*” charges, even if such charges are never properly reflected in their electric bills;

WHEREAS, there are persistent reports that officials of the electric cooperatives of the concerned island provinces, together with certain local government officials therein, have failed and/or refused to take appropriate actions and/or have in fact sanctioned and/or tolerated the unfair charges imposed by the former for “*undelivered energy*” or “*standby energy*” charges and/or have tolerated the inefficiencies and/or anomalous practices of Power One and/or its designated Project Companies/Affiliates for many years already, thus, indicating possible connivance on their part;

WHEREAS, the anomalous practices of Power One and/or its designated Project Companies/Affiliates, as well as the inaction of the officers of the concerned electric cooperatives and/or local government units have caused unwarranted disadvantages and/or undue injury not only to the interest of the Philippine Government but also to the welfare of the long-suffering people in the provinces of Catanduanes, Mindoro and Palawan;

WHEREAS, all Filipinos are greatly affected by these anomalous practices because all of us are paying for the universal charge that is being imposed for the recovery of the debts and costs of operations of the National Power Corporation and since the same is a non-bypassable charge, it shall be passed on and collected from all end-users in the Philippines on a monthly basis by the distribution utilities which is causing the additional burden or increase in the price of electricity;

WHEREAS, in view of the distressing and dismal state of things in the provinces of Catanduanes, Palawan and Mindoro, there is an urgent need and/or imperative necessity to conduct an investigation, in aid of legislation, into the apparently anomalous energy supply agreements (ESAs) and/or contracts entered into by Power One Corporation and/or its designated Project Companies/Affiliates, which have reportedly resulted to the unstable power supply situation in the island Provinces of Catanduanes, Palawan and Mindoro, as well as resulted to the unfair and/or undue charging of bloated power rates and/or unwarranted payment for “*foregone energy*” and/or “*standby energy*” charges upon the member-consumers of the said electric cooperatives in the said provinces, purportedly with connivance of

officials of the NPC, the ERC and/or the Local Government Units (LGUs), in order to establish the true and/or real extent of said anomaly, with a view of determining whether or not there is a need for remedial legislation in this regard;

NOW, **THEREFORE**, BE IT **RESOLVED**, as it is hereby **RESOLVED**, by the Philippine Senate to direct the Senate Committee on Energy to conduct an inquiry and/or investigation, in aid of legislation, into the apparent anomalous contracts and/or agreements entered into by Power One and/or its designated Project Companies/Affiliates, with the electric cooperatives operating in the island Provinces of Catanduanes, Palawan and Mindoro, which has reportedly resulted to the continuing unstable power supply situation in the said provinces, as well as the charging of bloated power rates and the undue imposition of "*foregone energy*" and/or "*standby energy*" charges upon the member-consumers of the concerned provinces, purportedly with connivance of officials of the NPC, the ERC and/or Local Government Units in the area, in order to establish and/or determine whether or not the regulators are actually involved, as well as to determine and decide on whether or not there is a need for remedial legislation in this regard;

RESOLVED, FINALLY, for the Committee to recommend the prosecution of any public officials and/or private individuals, who may be shown and/or proven to be involved in the said anomaly, or who may have failed to perform their duties to protect the public, whether directly or indirectly, through fraud, negligence, connivance and/or otherwise.

Adopted,


ANTONIO "SONNY" F. TRILLANES IV
Senator