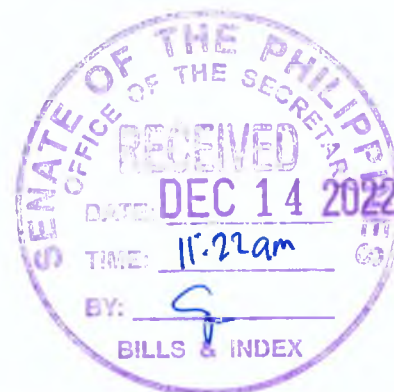


NINETEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)



SENATE

S. B. No. 1612

Introduced by **SENATOR JOEL VILLANUEVA**

AN ACT
AMENDING REPUBLIC ACT NO. 9136, OTHERWISE KNOWN AS THE
ELECTRIC POWER INDUSTRY REFORM ACT OF 2001

EXPLANATORY NOTE

Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA) restructured the country's power sector from a vertically integrated state monopoly to a sector that allows competition for subsectors, such as generation and retail supply, while also recognizing the importance of regulated subsectors (transmission and distribution) in ensuring a stable supply of electricity throughout the Philippines.¹

The Philippine Energy Plan 2020-2040 projects that the country's peak demand² will increase by almost four-folds with 6.6 percent annual increment for the 20-year period, from 15,282 megawatts (MW) in 2020 to 54,655 MW in 2040.³

At present, in light of the unprecedented high fuel costs in the international market, the Department of Energy has been performing a balancing act in addressing the high prices of electricity vis-à-vis the viability of private investments to ensure supply security and encourage new investments in the power generation sector. The DOE reports that the Philippines has the second highest residential and commercial electricity rates in ASEAN, next to Singapore, at PhP11.24/kWh and PhP9.52/kWh, respectively.⁴

This proposed measure seeks to promote the policy of the State, as declared in Section 2 of the EPIRA, to ensure the quality, reliability, security, and affordability of the supply of electric power, and to enhance the inflow of private capital and broaden the ownership base of the power generation sector.

¹ Philippine Institute for Development Studies. Brucal, A. and Ancheta J. *Assessment of the Philippine Electric Power Industry Reform Act*. Published in December 2018. Available at <https://pidswebs.pids.gov.ph/CDN/PUBLICATIONS/pidsdps1821.pdf> (Accessed on 4 November 2022).

² The highest electricity consumption occurred in a given day or year, which depicts the trend of electricity sales forecast with a uniform load factor.

³ Department of Energy. *Philippine Energy Plan 2020-2040*. Available at https://www.doe.gov.ph/sites/default/files/pdf/pep/PEP_2020-2040_signed_01102022.pdf (Accessed on 4 November 2022).

⁴ Letter of DOE Sec. Raphael P. M. Lotilla to the Majority Leader dated 23 September 2022 (page 24 of 58)

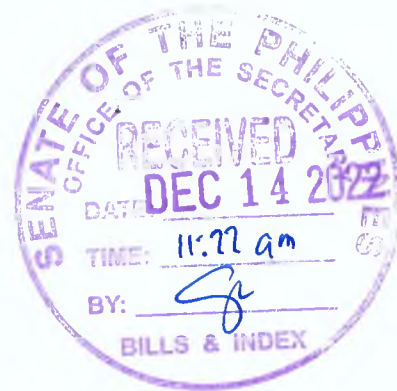
To achieve these, this proposed measure amends Section 28 of the Law, decreasing the holdings cap for persons, natural or juridical, including directors, officers, stockholders, and related interests, in a distribution utility and their respective holding companies, from 25% to 15% of the voting shares of stock. To further guarantee the independence and competence of the Energy Regulatory Commission (ERC), this bill puts in place additional qualifications as well as prohibitions for the appointive members of the Commission during and after their term. Additional transparency measures, such as opening the ERC's meetings to the public and guaranteeing consumers' right to access relevant information on the energy sector. Finally, in order to put in place a more sustainable solution to the problems of the sector, this proposed measure seeks to amend Section 47 of EPIRA to authorize the government, through the National Power Corporation (NPC), or any other Government -Owned and -Controlled Corporation to generate and sell power/electricity from renewable energy sources.

These amendments are envisioned to help open up the power sector to more investments and further increase the ownership base of the sector, especially for renewable energy, and ultimately, to protect consumers.

The passage of this measure is earnestly sought.


JOEL VILLANUEVA @

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



SENATE

Senate Bill No. 1612

Introduced by **SENATOR JOEL VILLANUEVA**

AN ACT
AMENDING REPUBLIC ACT NO. 9136, OTHERWISE KNOWN AS THE
ELECTRIC POWER INDUSTRY REFORM ACT OF 2001

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

1 **SECTION 1. *Decrease in Holdings Cap.*** – Section 28 of Republic Act No. 9136,
2 otherwise known as the Electric Power Industry Reform Act (EPIRA) of 2001, is hereby
3 amended to read as follows:
4

5 “SEC. 28. *De-Monopolization and Shareholding Dispersal.* – In
6 compliance with the constitutional mandate for dispersal of ownership and de-
7 monopolization of public utilities, the holdings of persons, natural or juridical,
8 including directors, officers, stockholders, and related interests, in a
9 distribution utility and their respective holding companies shall not exceed
10 ~~[twenty-five percent (25%)]~~ **FIFTEEN PERCENT (15%)** of the voting shares of
11 stock unless the utility or the company holding the shares or its controlling
12 stockholders are already listed in the Philippine Stock Exchange (PSE):
13 *Provided*, That controlling stockholders of small distribution utilities are hereby
14 required to list in the PSE within five (5) years from the enactment of this Act if
15 they already own the stocks. New controlling stockholders shall undertake
16 such listing within five (5) years from the time they acquire ownership and
17 control. A small distribution company is one whose peak demand is equal to
18 or less than ten megawatts (10MW).
19

20 The ERC shall, within sixty (60) days from the effectivity of this Act,
21 promulgate the rules and regulations to implement and effect this provision.
22

23 This section shall not apply to electric cooperatives.”
24

25 **SEC. 2. *The Energy Regulatory Commission.*** – Section 38 of the EPIRA is hereby
26 amended to read as follows:
27

28 “SEC. 38. *Creation of the Energy Regulatory Commission.* – There is
29 hereby created an independent, quasi-judicial regulatory body to be named
30 the Energy Regulatory Commission (ERC). For this purpose, the existing
31 Energy Regulatory Board (ERB) created under Executive Order No. 172, as
32 amended, is hereby abolished.
33

1 The Commission shall be composed of a [Chairman] **CHAIRPERSON**
2 and four (4) members to be appointed by the President of the Philippines. The
3 [Chairman] **CHAIRPERSON** and the members of the Commission shall be
4 natural-born citizens and residents of the Philippines, persons of good moral
5 character, at least thirty-five (35) years of age, **OF RECOGNIZED PROBITY**
6 **AND INDEPENDENCE**, and of [recognized] **DISTINGUISHED** competence in
7 any of the following fields: energy, law, economics, finance, commerce, [or]
8 engineering, **OR OTHER EXPERIENCE RELEVANT TO THE ENERGY**
9 **SECTOR**, with at least [~~three (3)~~] **TEN (10)** years **OF ACTIVE** [actual] and
10 distinguished experience in their respective fields of expertise: *Provided*,
11 **THAT NO MEMBER SHALL HAVE BEEN A CANDIDATE FOR ANY**
12 **ELECTIVE NATIONAL OR LOCAL OFFICE IN THE IMMEDIATE**
13 **PRECEDING ELECTIONS, WHETHER REGULAR OR SPECIAL:**
14 **PROVIDED, FURTHER**, That out of the four (4) members of the Commission,
15 [at least] one (1) shall be a member of the Philippine Bar [~~with at least ten (10)~~
16 ~~years of experience in the active practice of law~~], **ONE (1) SHALL BE AN**
17 **ECONOMIST, ONE (1) SHALL BE AN ENGINEER**, and one (1) shall be a
18 certified public accountant **OR HAVE A BACKGROUND IN FINANCE** [~~with at~~
19 ~~least ten (10) years of experience in active practice~~].
20

21 x x x

22
23 Members of the Commission shall enjoy security of tenure and shall
24 not be suspended or removed from office except for just cause as specified
25 by law.
26

27 **MEMBERS OF THE COMMISSION, WITHIN THE DURATION OF**
28 **THEIR TERM, ARE PROHIBITED FROM:**

- 29
30 **A. TAKING UP ANY EMPLOYMENT OR CONSULTANCY**
31 **ARRANGEMENT WITH ANY ELECTRIC POWER INDUSTRY**
32 **PARTICIPANT;**
33 **B. HOLDING ANY CONNECTION TO AND ANY PECUNIARY**
34 **INTEREST IN AN ELECTRIC POWER INDUSTRY**
35 **PARTICIPANT;**
36 **C. HOLDING ANY OTHER OFFICE OR EMPLOYMENT; AND**
37 **D. DIRECTLY OR INDIRECTLY PRACTICING ANY**
38 **PROFESSION, PARTICIPATING IN ANY BUSINESS, OR BE**
39 **FINANCIALLY INTERESTED IN ANY CONTRACT WITH, OR**
40 **ANY FRANCHISE, OR SPECIAL PRIVILEGES GRANTED BY**
41 **THE GOVERNMENT OR ANY SUBDIVISION, AGENCY, OR**
42 **INSTRUMENTALITY THEREOF, INCLUDING GOVERNMENT**
43 **-OWNED AND -CONTROLLED CORPORATIONS (GOCCs)**
44 **OR THEIR SUBSIDIARIES.**
45

46 **AFTER THE CESSATION OF THEIR SERVICE, MEMBERS OF THE**
47 **COMMISSION ARE PROHIBITED FROM:**

- 48
49 **A. RUNNING FOR OFFICE IN THE ELECTION IMMEDIATELY**
50 **SUCCEEDING THEIR CESSATION FROM OFFICE; AND**
51 **B. PERSONALLY APPEARING OR PRACTICING AS COUNSEL**
52 **OR AGENT ON ANY MATTER PENDING BEFORE THE**
53 **COMMISSION FOR TWO (2) YEARS FOLLOWING THE**
54 **CESSATION OF THEIR SERVICE.**
55

56 The Chairman and members of the Commission or any of their
57 **SPOUSE, PARTNER, AND** relative within the fourth civil degree of

1 consanguinity or affinity, legitimate or common law, shall be prohibited from
2 (1) holding any interest whatsoever, either as invested, stockholder, officer,
3 or director in any company or entity engaged in the business of transmitting,
4 generating, supplying, or distributing any form of energy and must,
5 therefore, divest through sale or legal disposition of any and all interests in
6 the energy sector upon assumption of office; (2) **TAKING UP ANY**
7 **EMPLOYMENT OR CONSULTANCY ARRANGEMENT WITH AN**
8 **ELECTRIC POWER INDUSTRY PARTICIPANT DURING THE**
9 **INCUMBENCY OF THE MEMBER OF THE COMMISSION TO WHOM**
10 **THE SPOUSE, PARTNER, OR RELATIVE CONCERNED IS RELATED;**
11 **AND (3) APPEARING AS COUNSEL OR AGENT ON ANY MATTER**
12 **PENDING BEFORE THE COMMISSION OR TRANSACTING BUSINESS**
13 **DIRECTLY OR INDIRECTLY THEREIN DURING THE INCUMBENCY OF**
14 **THE MEMBER OF THE COMMISSION TO WHOM THE SPOUSE,**
15 **PARTNER, AND RELATIVE CONCERNED IS RELATED, AND WITHIN**
16 **TWO (2) YEARS FROM THE CESSATION OF THEIR SERVICE.**

17
18 The presence of at least three (3) members of the Commission shall
19 constitute a quorum and the majority vote of two (2) members in a meeting
20 where a quorum is present shall be necessary for the adoption of any rule,
21 ruling, order, resolution, decision, or other act of the Commission in the
22 exercise of its quasi-judicial functions: *Provided*, That in fixing rates and
23 tariffs, an affirmative vote of three (3) members shall be required.

24
25 **ALL MEETINGS OF THE COMMISSION SHALL BE OPEN TO THE**
26 **PUBLIC: PROVIDED, THAT THE PUBLIC MAY ONLY PARTICIPATE**
27 **DURING PUBLIC HEARINGS: PROVIDED, FURTHER, THAT A LIVE**
28 **WEB STREAMING OR ANY RELATED TECHNOLOGY OF THE OPEN**
29 **MEETING SHALL BE POSTED: PROVIDED, FINALLY, THAT THE**
30 **TRANSCRIPT OF STENOGRAPHIC NOTES AND MINUTES OF THE**
31 **OPEN MEETING SHALL BE MADE AVAILABLE TO THE PUBLIC,**
32 **WHETHER ON THE WEBSITE OR ANY OTHER PLATFORM, WITHIN**
33 **ONE (1) WEEK FROM THE DATE OF THE OPEN MEETING.**

34
35 **THE COMMISSION, UPON A MAJORITY VOTE, MAY DECIDE TO**
36 **MEET IN AN EXECUTIVE SESSION: PROVIDED, THAT BEFORE GOING**
37 **INTO AN EXECUTIVE SESSION, THE COMMISSION MUST CONVENE**
38 **IN AN OPEN MEETING, IDENTIFY THE REASON FOR THE EXECUTIVE**
39 **SESSION WHILE STATING ALL THE SUBJECTS THAT MAY BE**
40 **REVEALED WITHOUT COMPROMISING THE PURPOSE FOR WHICH**
41 **THE EXECUTIVE SESSION WAS CALLED, DECLARE WHETHER THE**
42 **COMMISSION WILL RECONVENE IN AN OPEN MEETING AT THE END**
43 **OF THE EXECUTIVE SESSION, AND TAKE A ROLL CALL VOTE TO**
44 **ENTER INTO EXECUTIVE SESSION.**

45
46 **EXECUTIVE SESSIONS MAY BE CALLED FOR THE FOLLOWING**
47 **REASONS:**

- 48
49 **A. TO DISCUSS THE DISCIPLINE OR DISMISSAL OF OR**
50 **COMPLAINTS OR CHARGES BROUGHT AGAINST A**
51 **PUBLIC OFFICER, EMPLOYEE, OR STAFF OF ERC**
52 **B. TO DISCUSS TRADE SECRETS, CONFIDENTIAL,**
53 **COMPETITIVELY SENSITIVE, OR OTHER PROPRIETARY**
54 **INFORMATION"**

55
56 **SEC. 3. Enhanced Promotion of Consumer Interests.** – Section 41 of the EPIRA
57 is hereby amended to read as follows:

1 "SEC. 41. *Promotion of Consumer Interests.* – The ERC shall handle
2 consumer complaints and ensure the adequate promotion of consumer
3 interests.
4

5 **A SUPPORT DESK SHALL BE MADE AVAILABLE TO THE PUBLIC**
6 **WHICH WILL SUPPLY ASSISTANCE TO CONSUMERS FOR A BETTER**
7 **UNDERSTANDING OF ALL PROCEEDINGS AND ISSUANCES OF THE**
8 **COMMISSION, AS WELL AS ANY AND ALL MATTERS WHICH AFFECT**
9 **THE ELECTRICITY RATES CHARGED TO CONSUMERS: PROVIDED,**
10 **THAT THE INFORMATION IS NOT CONFIDENTIAL IN NATURE.**

11
12 **EVERY CONSUMER HAS THE RIGHT TO INFORMATION AND**
13 **SHALL, ON REQUEST, BE GIVEN ACCESS TO SUCH INFORMATION OF**
14 **PUBLIC CONCERN AND WITHIN THE CONTROL OF THE COMMISSION:**
15 **PROVIDED, THAT ACCESS TO INFORMATION SHALL NOT BE GRANTED**
16 **IF:**

- 17 **A. THE INFORMATION IS CONSIDERED CONFIDENTIAL UNDER**
18 **THE ERC RULES OF PRACTICE AND PROCEDURE;**
19 **B. THE INFORMATION CONSISTS OF MINUTES OR RECORDS OF**
20 **ADVICE GIVEN, OR OF OPINIONS EXPRESSED DURING**
21 **DECISION-MAKING OR POLICY FORMULATION IN THE**
22 **COURSE OF EXECUTIVE SESSIONS;**
23 **C. THE INFORMATION REQUESTED CONSISTS OF DRAFTS OR**
24 **ORDERS, RESOLUTIONS, DECISIONS, OR MEMORANDA OF**
25 **THE COMMISSION IN THE EXERCISE OF ITS REGULATORY**
26 **FUNCTION; OR**
27 **D. THE INFORMATION REQUESTED PERTAINS TO TRADE**
28 **SECRETS, COMPETITIVELY SENSITIVE, OR OTHER**
29 **PROPRIETARY INFORMATION, WHENEVER THE**
30 **REVELATION THEREOF WOULD PREJUDICE THE INTERESTS**
31 **OF A NATURAL OR JURIDICAL PERSON IN TRADE,**
32 **INDUSTRIAL, FINANCIAL, OR COMMERCIAL COMPETITION.**
33

34 **SEC. 4. *Generation and Sale of Power/Electricity from Renewable Resources.***

35 – Section 47 (j) of the EPIRA is hereby amended to read as follows:
36

37 "SEC. 47. *NPC Privatization.* – Except for the assets of the SPUG, the
38 generation assets, real estate, and other disposable assets as well as IPP
39 contracts of NPC shall be privatized in accordance with this Act. Within six (6)
40 months from the effectivity of this Act, the PSALM Corp shall submit a plan for
41 the endorsement by the Joint Congressional Power Commission and the
42 approval of the President of the Philippines, on the total privatization of the
43 generation assets, real estate, other disposable assets, as well as existing IPP
44 contracts of NPC and thereafter, implement the same, in accordance with the
45 following guidelines, except as provided for in paragraph (f) herein:
46

47 x x x
48

- 49 (j) ~~[NPC may generate and sell electricity only from the undisposed~~
50 ~~generating assets and IPP contracts of PSALM Corp. and shall not~~
51 ~~incur any new obligations to purchase power through bilateral~~
52 ~~contracts with generation companies or other suppliers]~~ **THE**
53 **GOVERNMENT, THROUGH THE NPC OR ANY OTHER**
54 **GOVERNMENT -OWNED OR -CONTROLLED CORPORATION,**
55 **IS HEREBY AUTHORIZED TO GENERATE AND SELL**
56 **POWER/ELECTRICITY FROM RENEWABLE ENERGY**
57 **SOURCES, AS DEFINED IN REPUBLIC ACT NO. 9513, OR THE**

1 **“RENEWABLE ENERGY ACT OF 2008,” AND TO INCUR NEW**
2 **OBLIGATIONS TO PURCHASE POWER THROUGH BILATERAL**
3 **CONTRACTS WITH GENERATION COMPANIES OR OTHER**
4 **SUPPLIERS.”**

5
6 **SEC. 5. *Implementing Rules and Regulations.*** – The Energy Regulatory
7 Commission (ERC) shall, in consultation with the Department of Energy (DOE), other
8 relevant government agencies, the electric power industry participants, consumers, and
9 other public and private stakeholder, promulgate the Implementing Rules and Regulations
10 of the Act within ninety (90) days from its effectivity.

11
12 **SEC. 6. *Separability Clause.*** – If, for any reason, any part, section, or provision of
13 this Act is held invalid or unconstitutional, the remaining provisions not affected shall
14 continue to be in full force and effect.

15
16 **SEC. 7. *Repealing Clause.*** – All laws, decrees, executive orders, proclamations,
17 rules and regulations, and other issuances, or parts thereof which are inconsistent with
18 the provisions of this Act are hereby repealed, amended, or modified accordingly.

19
20 **SEC. 8. *Effectivity.*** – This Act shall take effect fifteen (15) days after its publication
21 in the Official Gazette or in a national newspaper of general circulation.

Approved,