



# Policy Brief

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## Accelerating Power Sector Reforms: Amending the EPIRA

*Lower power rates, sufficient capacity and an environment equally protective of investors and consumers –these were the end goals of the Electric Power Industry Reform Act when it was enacted seven years ago. The pace of its implementation, however, has been slower than expected, prompting the Senate to propose specific amendments to expedite the much-envisioned power reforms.*

### I. Introduction

The Electric Power Industry Reform Act (EPIRA) was enacted in 2001 with the intention of ensuring affordable and reliable electricity to all power consumers in the Philippines. The EPIRA seeks to achieve this through the introduction of sweeping reforms including the restructuring and deregulation of the entire power industry and the privatization of most state-owned power generation and transmission assets. Such reforms were intended to introduce more competition and choices for consumers while leveling the playing field in the power industry in order to encourage greater private sector participation.

Unfortunately, for the most part, the pace of reforms in the power sector has been slower than most people have hoped for. Almost seven years since the EPIRA was passed into law, several of its provisions have yet to be fully implemented and the promise of consumer choice and lower power rates has yet to be realized.

### II. Power Sector Situation

In terms of access to electricity, the Philippines performs quite adequately. At the end of last year, 96.63 percent of all 41,980 barangays in the country are already electrified. The vast majority of the remaining 1,413 unelectrified barangays are located in the franchise areas of electric cooperatives. The Autonomous Region of Muslim Mindanao (ARMM) has the lowest electrification level among all regions in the country with a mere 83 percent, followed by Regions XII and V with 94.39% and 94.47% electrification levels, respectively.

Local power rates, however, remain among the highest in Asia next only to Japan. This is partly due to the Philippines' continued dependence on imported fuel for its power plants and the slow pace of privatization which derailed the promotion of competition in the sector. Many of the country's generation plants are still heavily dependent on imported fossil fuels such

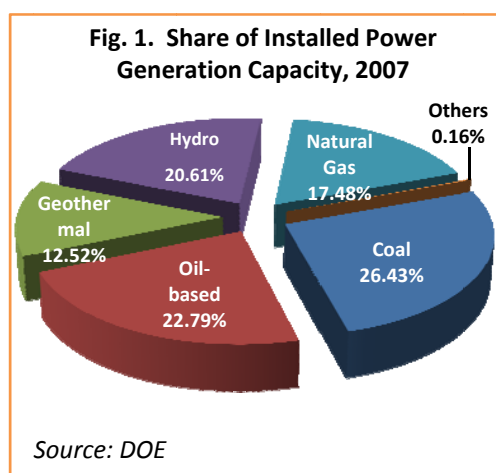


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**Table 1. Barangay Electrification Status as of 31 December 2007**

REGION	Electrified Barangays	Unelectrified Barangays	Electrification Level (%)
NCR	1,694	0	100
CAR	1,122	54	95.41
I	3,264	1	99.97
II	2,219	92	96.02
III	3,092	10	99.68
IV-A	3,946	66	98.35
IV-B	1,350	107	92.66
V	3,246	225	93.52
<b>Luzon</b>	<b>19,933</b>	<b>555</b>	<b>97.29</b>
VI	4,008	42	98.96
VII	2,999	4	99.87
VIII	4,098	292	93.35
<b>Visayas</b>	<b>11,105</b>	<b>338</b>	<b>97.05</b>
IX	1,724	180	90.55
X	1,918	102	94.95
XI	1,155	5	99.57
XII	1,103	91	92.38
CARAGA	1,279	31	97.63
ARMM	1,869	592	75.94
<b>Mindanao</b>	<b>9,048</b>	<b>1,001</b>	<b>90.04</b>
<b>Philippines</b>	<b>40,086</b>	<b>1,894</b>	<b>95.49</b>

Source: Department of Energy (DOE)



as coal and oil-based fuels. At the end of last year, 26.43% of the installed generation capacity was from coal-powered-plants while 22.79% was oil-based.

In recent months, power rates in the country have risen further, averaging P7.43/kwh in December 2007 to P8.3/kwh in April 2008 in Metro Manila mainly because of higher generation costs. Allegations that the largest distribution utility in the country, MERALCO, has been overcharging and passing on “undue” charges to its customers have also surfaced. Moreover, as per the latest power supply and demand projections of the Department of Energy’s (DOE), power shortages will likely occur in the Mindanao grid by 2011, in the Visayas grid by 2012 and in the Luzon grid by 2014 if no new generation capacity is added. Despite the recent improvements in the country’s financial condition, the high cost of building and maintaining new power plants makes it very difficult for the government to fund the necessary expansion of the country’s power infrastructure. Given that it takes an average of five years<sup>1</sup> for a new power plant to come on stream, it is imperative that the government encourage greater private sector participation and attract new investments in the power industry.

In light of these developments, lawmakers have sought to introduce amendments to the EPIRA in order to address the perceived weaknesses and to clarify the ambiguous provisions in the law. Senate Bill 2121 consolidates several of these proposals and is currently in the period of interpellations in the Senate.

### III. Comments on the Proposed Amendments

This paper seeks to explore the various options for amendments in the EPIRA while discussing the implications of these proposals on the various sectors concerned.

#### 3.1 Transco Privatization

Section 4 of SB 2121 is aimed at easing the requirements for privatizing the National Transmission Corporation (Transco) by proposing a number of alternative methods of privatization—either through a contract of sale or through a concession agreement. It was claimed that the difficulty of securing a franchise has led to a number of failed attempts to privatize the transmission network.

<sup>1</sup> The number of years needed to construct a power plant depends on the type of fuel it uses. Coal-powered plants usually take 6 years, hydropower and geothermal 5 years, while diesel, gas turbine and wind-powered plants are constructed in about 4 years.

The bill proposes that if the awardee of the concession contract is merely hired under a compensation scheme then there will be no need to obtain a national franchise from Congress. However, if the winning bidder (in case of a sale) or awardee (in the case of a concession contract), takes over possession and control of the transmission assets and facilities, and operates Transco as its own business then there will be a need for a national franchise as well as compliance with the nationality requirements of the Constitution. In any case, there are sufficient safeguards in the EPIRA which help ensure that the concessionaire does comply with its mandate. The EPIRA requires the concessionaire to comply with the Grid Code and Transmission Development Plan which sets certain performance targets and expansion requirements for transmission network. There are also several performance indicators set in the law with which the concessionaire must comply.

*...the implementation of retail competition and open access is dependent on having in place the prerequisites which Congress believes are necessary to sustain a fair and robust competitive market and are in the public interest.*

However, with the awarding of the 25-year concession agreement for Transco to the consortium of Monte Oro Grid Co., Calaca High Power Corp. and the State Grid Corp. of China on 12 December 2007, there might no longer be a need for these amendments. As of today, the Monte Oro consortium has already applied for a congressional franchise and the House of Representatives is already deliberating on the bill.

The amendments proposed in the bill will probably only come into play if the Monte Oro consortium is unable to secure a congressional franchise to operate Transco. If they fail to do so, the Power Sector Assets and Liabilities Management Corporation (PSALM) must conduct yet another round of bidding for Transco and in such a case, this amendment will become useful.

### **3. 2 Retail Competition and Open Access**

One of the most important reforms which the EPIRA intends to bring about is the implementation of open access and retail competition in the electric power industry in the Philippines. At present, distribution utilities (DUs) have the exclusive right to supply electricity to consumers connected to their network (the "Captive Market"). Under a regime of open access and retail competition as envisioned in the EPIRA, DUs will no longer enjoy this exclusivity and must allow competing electricity suppliers to transmit power through their distribution network thus allowing certain consumers within their franchise area (the "Contestable Market") their choice of supplier. The Contestable Market will initially consist of consumers with a monthly average peak demand of 1 MW. The threshold level for the Contestable Market will be reduced progressively over the

years until it eventually reaches the household level. It is hoped that with retail competition, electricity suppliers will compete with each other to sell electricity to end-users, thus, eventually driving down power rates.

**Table 2. Generation Assets Sold as of June 2007**

Power Plant	Rated Capacity (MW)	Location	Winning Bidder	Price (USD mill)
<b>TYPE OF FUEL : HYDRO</b>				
Talomo HEPP	3.5	Davao	Hydroelectric Dev't Corp	1.37
Agusan HEPP	1.6	Bukidnon	First Generation Holdings	1.53
Barit HEPP	1.8	Camarines Sur	Atty. Ramon Constancio	0.48
Cawayan HEPP	0.4	Sorsogon	Sorsogon II Electric Cooperative	0.41
Loboc HEPP	1.2	Bohol	Sta. Clara International Corporation	1.42
Pantabangan-Masiway HEPP	112	Nueva Ecija	First Gen Hydropower Corp	129
Magat HEPP	360	Isabela	SN Aboitiz Power Corp	530
Ambuklao-Binga HEP Complex	175	Benguet	SN Aboitiz Power Corp	325
<b>TYPE OF FUEL : COAL</b>				
Masinloc	600	Zambales	Masinloc-Power Partners Co. Ltd	930
Calaca	600	Batangas	Calaca Holdco Inc.	787

Source: PSALM

However, the EPIRA sets forth five pre-conditions which must be achieved by the government before declaring open access. These pre-conditions, as stated in Section 31 of the EPIRA include:

- a) establishment of the Wholesale Electricity Spot Market (WESM);
- b) unbundling of transmission and distribution charges;
- c) initial removal of cross-subsidies;
- d) privatization of at least 70% of total generating capacity of NPC assets in Luzon and Visayas; and
- e) transfer of management and control of at least 70% of the total energy output of the National Power Corp.- Independent Power Producer (NPC-IPPs) to IPP administrators

The pre-conditions regarding the unbundling of charges and the removal of cross-subsidies have already been substantially completed. After more than a year of preparation and testing, the WESM commenced its full commercial operations for the entire Luzon grid on June 26, 2006. The establishment of a Visayas WESM however, which was initially set for January 2008, will likely be deferred in the near future after it was determined that conditions in the market were less than optimal at present. Reasons cited for these include the lack of preparedness of some market participants, and the tight supply and demand balance in the Visayas grid. Preparations are also being undertaken for the establishment of a WESM reserve market with the petitions for such currently being reviewed by the Energy Regulatory Commission (ERC). The government has also had great difficulty attaining the pre-conditions of privatization in a timely manner. The PSALM was tasked to privatize generating plants with a total capacity of 4,335.7 MW in Luzon and Visayas. At present, the total capacity of plants privatized in Luzon and Visayas is 1,850.4 MW representing only 43% of the total. Meanwhile, not a single NPC-IPP has been transferred to an IPP administrator.

Because of the difficulty faced by the government in privatizing NPC power plants and NPC-IPPs, the bill proposes to lower the privatization thresholds for both NPC generation plants and NPC-IPPs from 70% to 50%, in order to hasten the implementation of open access and retail competition.

*The present fiscal condition of the government makes it difficult for it to invest in constructing new power plants, hence the need to encourage the private sector to invest in expanding the generation sector.*

Amending the pre-conditions set in the EPIRA, however, might have a negative effect on the proper implementation of open access. The pre-conditions were set in the law with the intention of first fostering an environment which can sustain a fair and robust competitive market for all players in the electric power industry before moving forward with a regime of open access. For this regime to be most effective, there is a need for a truly competitive market with a number of competing generators, on a level playing field, without a single dominant generator. The requirement for NPC to divest itself of at least 70% of its power plants and IPPs is to ensure that they would not have undue market power in the new regime while allowing more players to actively compete in the market.

While it is certainly possible that NPC will choose not to abuse its dominant position in the market, recent history has shown that it is quite capable of doing this. It will be recalled that sometime around September 2006, concerns were raised over possible price-fixing by the NPC and PSALM, which collectively controlled around 80% of the power plants participating in the WESM. Although the subsequent investigations conducted by the ERC found no evidence against PSALM for anti-competitive behavior and market power abuse, which contradicted the results of the internal investigation conducted by the WESM itself, the mere perception of abuse and manipulation in the wholesale market could serve as a disincentive towards greater private sector participation in the power sector. The ERC further concluded that much of the pricing result was due to the market being in its infancy and that there was experimentation with the trading. Regardless, this behavior resulted in significant price increases over and above the ERC-approved time of use (TOU) rates. Letting NPC and PSALM retain ownership or control of 50% of their power plants (albeit temporarily), as proposed by the bill, gives the government too much leverage in the marketplace. This might also serve as a disincentive towards greater private sector investment in the generation sector which could lead to potential capacity shortages in the medium term. The present fiscal condition of the government makes it difficult for it to invest in constructing new power plants, hence the need to encourage the private sector to invest in expanding the generation sector. Reducing the government's share in the entire power industry by accelerating the privatization of government-owned power plants should help reduce the risk of anti-competitive behavior in the future, whether in the Spot Market or in the Contestable Market while enticing greater private investment and averting a potential power crisis.



### 3.3 Non-recovery of Stranded Debts and Contract Costs of All Industry Participants

**Table 2. Total Indicative Stranded Debt and Stranded Contract Cost as of end December 2007 (in US\$ million)**

Particulars	Principal Only	Principal & Interest
Indicative Privatization Proceeds	8,480.71	13,210.5
NPC Debt Obligations	7,391.00	10,445.0
IPP Lease Obligations	6,896.28	10,945.0
Total NPC Obligations	14,287.28	21,390.0
<b>Total Indicative Shortfall</b>	<b>(5,806.57)</b>	<b>(8,179.5)</b>

*Assumptions:*

1. Privatization Proceeds inclusive of Genco & Transco
2. Zero NPC Cash flow before IPP obligations

The Universal Charge (UC) is a non-bypassable charge collected from all end-users and remitted to PSALM for various purposes specified in the EPIRA. The UC at present is composed of the following: a) payment for stranded debts and contract costs, b) missionary electrification, c) the equalization of taxes and royalties for indigenous energy sources vis-à-vis imported fuels, d) an environmental charge which shall accrue for watershed management and rehabilitation, and e) a charge to account for all cross-subsidies. The bill proposes to amend the items which constitute the UC by disallowing the recovery of stranded debts and stranded contract costs in the determination of the UC. Eliminating these items will ultimately serve to lower the electric bills of consumers but will have implications on the government budget. The most recent estimates from PSALM indicate that the government will still incur a shortfall of US\$ 8.179 billion which must be recovered through the UC.

The EPIRA mandates that the proceeds arising from the sales and privatization of NPC assets would be used to liquidate the financial obligations of the NPC. In addition to this, the national government has already assumed two hundred billion pesos of NPC's debts. PSALM is optimistic that with the privatization proceeds and the debt absorption, it can minimize or even completely eliminate all stranded debts, and thus, perhaps negate the need to pass this on to power users via the UC. Their optimism is supported by the fact that the latest attempts at privatizing generation assets have yielded better than expected results, with several entities participating in the bidding and winning bids being way over the reserve price set. If this trend continues then there will be no need after all for a UC for stranded debts. However, if privatization proceeds will be less than expected, the government will be forced to absorb even more of NPC's debts if the new law disallows recovery of the debts through the UC.

Stranded contract costs, on the other hand, are bound to arise in two instances: 1) when the volume of electricity contracted from IPPs is greater than the actual electricity consumed and 2) when the price of contracted electricity from IPPs is greater than the actual market price (as determined by the WESM). In both instances, because of "take-or-pay" provisions embedded in most IPP contracts, the cost of the excess volume or the price differential becomes a "stranded" cost which will then have to be absorbed by the government or recovered through end-users via the UC. The volume differential will likely be reduced over time as electricity demand grows either through economic or population growth. To a certain extent, the government has

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already taken some steps to reduce stranded contract costs through the review and renegotiation of IPP contracts. As mandated by the EPIRA, PSALM, along with several other agencies, was tasked to undertake a thorough review of all existing IPP contracts with the ultimate goal of renegotiating provisions which are found to be grossly disadvantageous or onerous to the government. PSALM has substantially completed the review and renegotiation of all eligible IPP contracts and they have reported that this has resulted in approximately US\$ 1.03 billion in savings for the government. Savings arising from these renegotiations were the result of IPPs reducing nominated capacity, spreading out total contract obligations over longer contract periods, assumption of NPC's obligations to host communities and the implementation of rural electrification projects.

However, the renegotiated IPP contracts will not completely eliminate all stranded contract costs and someone will have to bear the cost in the transition period until the reform period is completed and the power market has sufficiently stabilized. This could be any one or a combination of the following:

- a) the IPP contract holder, which may be in the public sector (in the case of NPC-IPPs) or the private sector;
- b) the taxpayers at large, on the basis that power sector reform is in the public interest; or
- c) the consumers of electricity, because they are the ultimate direct beneficiaries of the power sector reforms.

It could be argued that the IPP contract holders have already borne some of the costs due to the IPP contract renegotiations although this does not rule out the possibility of another round of renegotiations altogether. This option, however, would send a negative message to potential investors in the power sector and present the risk of the government undermining its credibility. Voluntary renegotiation would be a more acceptable alternative though, such as the "firm but fair" approach used by California wherein if an IPP wanted to change any element of its contract (size, location, fuel type, etc.) the purchaser would attempt to restructure the financial terms in return.

In the case of NPC-IPPs, the proposed amendment disallowing the recovery of stranded costs through the UC would also mean that the government, through taxpayers would also end up paying for these costs. Allowing power consumers to bear the stranded costs however, is usually considered to be a more equitable method of pursuing this as this means that larger power users will bear a proportionately higher share of the costs. Also, as with stranded debts, passing on the burden to the

government will further strain the national budget. However, this could also be a calculated risk for the government to take if it believes that reducing power rates by essentially subsidizing stranded contract costs could ultimately attract more foreign investors and appease residential users (albeit at the expense of other government services).

There is also the possibility that market prices will grow beyond the contracted price of electricity from the IPPs during the period which would instead result in “stranded benefits” instead of stranded costs. Should the government disallow the recovery of stranded costs as proposed in the amendment, then power consumers will also lose out on the possibility of gaining from possible stranded benefits.

*It is the duty of the electric utility to improve system efficiency (by investing in better equipment and facilities) in order to reduce technical systems losses while it should be the joint responsibility of the State and the DU to reduce losses due to pilferage.*

### **3.4 Rate-setting**

The EPIRA mandates the ERC to establish and enforce the methodology by which transmission and distribution wheeling rates and retail rates for the captive market of a distribution utility are determined. While the ERC currently uses the return on rate base (RORB)<sup>2</sup> methodology in setting the rates of distribution utilities, the law also allows them to adopt alternative forms of internationally-accepted rate-setting mechanisms as it deems appropriate. The law also includes specific guidelines to be followed by the ERC in cases where the RORB methodology is applied. The proposed EPIRA amendments greatly expand on the guidelines to be observed in determining a just and reasonable rate using the RORB. In addition to the existing rules for RORB determination, the amendments proposed to include the following specific guidelines:

- i. defining the methodology for valuation method for determining the rate base using the “average investment method” which computes the proportionate value of the property by getting the average value of the properties, facilities and improvements at the beginning and at the end of the fiscal year;
- ii. disallowing the inclusion of the value of the utility’s franchise in determining the rate base; and
- iii. ensuring that income tax payments of Transco and the DUs shall not be passed on to the end-users of electricity

These proposed amendments serve to tighten the rules further, and leave little room for argument as to what items may or may not be included in determining the rate base. While this may

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<sup>2</sup> Using the RORB methodology, DUs are allowed to recover a 12% return on their investments related to electricity distribution



seem to tie the hands of the ERC with regards to flexibility in rate-setting, the expanded guidelines might actually be necessary to eliminate any gray areas in RORB computation.

The bill also proposes changes to the cap for systems loss recovery as a component of end-user electricity rates. The present law on systems losses and pilferage losses, RA 7832, allows for a 9.5% cap for private DUs and a 14% cap for rural electric cooperatives. The proposed amendments uphold the 9.5% systems loss cap for densely populated urban areas while mandating the ERC to determine a new cap for rural areas taking into account the inefficiencies inherent in rural electric cooperatives in performing their missionary electrification functions. Given the recent outcry from the consuming public with regard to being charged for systems losses, this amendment needs to be examined further. Systems losses, which include both technical systems losses and losses due to pilferage, have routinely been passed on to consumers in most markets all over the world. However, it is the duty of the electric utility to improve system efficiency (by investing in better equipment and facilities) to reduce technical systems losses while it should be the joint responsibility of the State and the DU to reduce losses due to pilferage. The establishment of progressively lower caps for systems loss recovery over a reasonable amount of time might be worth considering to encourage greater efficiency in the sector. The exact level for the systems loss cap though, must be studied carefully to consider the investment capacity of local DUs.

**Table 3. Market Share Limitations**

Grid	Installed Generating Capacity (kW)	% Market Share Limitation	Installed Generating Capacity Limit (kW)
Luzon	10,060,904.0	30%	3,018,271.2
Visayas	1,637,270.4	30%	491,181.1
Mindanao	1,703,348.0	30%	511,004.4
National	13,401,522.4	25%	3,350,380.6

Source: PSALM

### **3.5 Cross-ownership, Market Power Abuse and Anti-Competitive Behavior**

It is important to place strict limits on market share and cross-ownership in the electric power industry to prevent market power abuse. The EPIRA currently limits generation companies to a 30% share of the market in a single grid and a 25% share of the national grid. For 2008, the ERC has determined the total installed generating capacity in each grid and has set the market share limitations shown in Table 3.

At present, the ERC has determined that none of the generation companies has violated the mandated market share limitations. The leading private sector participant in the generation industry is First Gas Power Corporation and its affiliates with a 16 percent share in the Luzon grid and 12.4 percent of the national grid.

While the law disallows generators or DUs from participating in the transmission sector, cross-ownership between generators and DUs is allowed. As a safeguard to abuse though, the law prevents DUs from sourcing more than 50 percent of its total power demand from bilateral contracts with its related generation companies.

*Given the present state of the Philippine power industry, completely restricting cross-ownership between generators and distribution utilities might prove to be too much of a barrier to investment and entry into the market and could also cause privatization to become somewhat more difficult.*

Ideally, cross-ownership between generating and distributing companies must be severely limited from the beginning and guarded against after privatization, so that DUs that also own generators cannot prevent other generators from accessing customers through their distribution networks. The market share of generation companies must also be strictly limited to prevent abuse and anti-competitive behavior.

However, completely disallowing all cross-ownership between generation and distribution companies might not be feasible given the present state of the Philippine power industry. Until the industry achieves a sufficient level of maturity and development, with several companies participating actively in the sector, a limited level of cross-ownership should be allowed between generators and DUs in order to help investors manage some of the inherent risks of the power industry. Unfortunately, in the Philippines, very few companies have shown the willingness to venture into the power industry, as can be noted from the fact that the same companies bid for the NPC generation assets that have been offered for privatization. Completely restricting cross-ownership between generators and DUs might prove to be too much of a barrier to investment and entry into the market and could also cause privatization to become somewhat more difficult.

Instead of completely disallowing cross-ownership, the caps on bilateral contracts and grid capacity ownership proposed in the amendments to the EPIRA may be enough to promote competition in the power sector. If one wished to be even stricter in this regard, further restricting the allowable level of bilateral contracts between related generation and distribution companies from the proposed 50% cap to 33% could also be considered. In the end, however, grid caps and bilateral caps can only do so much and there is still no substitute for good regulation and strong anti-trust and anti-monopoly enforcement which should be the job of a truly strong and independent ERC.

It is interesting to note that various electricity markets around the world have different approaches to the question of cross-ownership. In Brazil, it has been recommended that ownership of generation by distribution companies should not exceed 25 percent. In UK, distribution companies are allowed to own only a limited share of generation. In the US, regulators in California required the major utilities to sell half of their fossil-fueled generation, and the two largest voluntarily sold 100 percent. Finally, some utilities in the US are selling all of their generation to satisfy regulators that they will not be able to control the emerging wholesale markets. Thus, while there are examples of markets which have no levels of cross-ownership at all, it is still unclear how such a situation will play out in the Philippines. One

could consider the period of EPIRA implementation as a transition phase for the power sector in the country and completely restricting cross-ownership in the power sector could perhaps be considered once the industry has sufficiently matured.

### **3.6 Royalties and Taxes for Indigenous Energy Resources**

The EPIRA seeks to reduce the royalties and taxes collected for the exploitation of indigenous energy sources such as natural gas and geothermal steam to promote greater use of these resources as well as to ultimately reduce power rates. At present, three different laws govern the extraction of indigenous fuels in the Philippines, specifically:

*In removing the royalties for indigenous fuel, one must also consider the impact that such a move would have on the revenues of the affected local governments as these are usually poor rural communities.*

- a) PD 87 or the Oil Exploration and Development Act of 1972, which governs natural gas exploration and development and allows the government to take a minimum 60 percent share from the net proceeds;
- b) PD 1442 which governs the exploration and development of geothermal resources and allows the government to take a minimum 60 percent share of the net proceeds; and
- c) PD 972 which governs the extraction and exploitation of indigenous coal and allows the government to take a 30 percent share of net proceeds

Forty percent of the total government share from these operations is then given to the affected local government units while 60 percent is remitted to the national government. While removing the royalties for indigenous fuel will likely lead to the reduction of power rates, estimates are still unavailable at this time as to the extent of the reduction. One must also consider the impact that such a move would have on the revenues of the affected local governments as these are usually poor rural communities. A possible compromise to this would involve eliminating only the portion remitted to the national government while retaining the portion of the royalties paid to the local government.

### **3.7 Granting PEZA the Power to Regulate DUs Within Ecozones**

The proposal to allow the Philippine Economic Zone Authority (PEZA) to exercise regulatory powers over DUs operating within economic zones is also questionable. For one, it will create confusion among the DUs who will very likely be confronted with the possibility of having to comply with conflicting regulatory requirements imposed by two regulatory agencies, i.e., ERC and PEZA. Furthermore, the technical competence of PEZA to

regulate the DUs located within the ecozones is highly suspect. On the other hand, the ERC, since its creation in 2001, has been slowly but surely building its staff capabilities, through institutional development and training, to enable it to effectively meet its new responsibilities. Even assuming that PEZA will ultimately have the technical capability to effectively regulate the DUs, one must question whether the cost of maintaining two regulatory agencies having jurisdiction over the same sub-sector is justified and in the public interest.

### ***3.8 Distribution-Related Businesses***

SB 2121 proposes that DUs must first undergo hearings and gain approval from the ERC before engaging in related businesses. This amendment aims to ensure that the distribution business does not subsidize the related enterprise nor encumber its distribution assets to support such related business.

While this amendment might seem to be putting too much regulatory intervention into the affairs of DUs, thus hindering the competitiveness of the utility as well as adding to the already heavy work load of the ERC, this might have to be a necessity in order to avoid abuse on the part of the DU.

### ***3.9 Self-generated Electricity***

The amendment also proposes that self-generated electricity should be exempted from paying the Universal Charge except for the environmental charge component. This amendment should encourage the development of more alternative generation sources in the country while further promoting competition in the market. The charge for the environmental fund must be retained though.

### ***3.10 Other Amendments***

In addition to the proposed amendments discussed above, SB 2121 also proposes several other changes to the EPIRA aimed mostly at clearing up vague provisions, improving or adding definitions and strengthening consumer protection. The most important of these is the expansion of the section detailing the rights of electricity consumers. The bill explicitly spells out these rights as well as the mandates of the ERC to ensure that these rights are protected.

#### IV. Conclusion

While some sectors have argued that it is probably too soon to amend a law such as the EPIRA which has only been around for a very short time, one cannot ignore the clamor of power consumers for cheaper and better electricity service. It is hoped that the amendments arising from the current debates in the Senate will result in an improved version of the law which ensures that the reforms envisioned in the EPIRA will come to pass, ultimately leading to reasonable power rates, sufficient capacity and an environment equally protective of investors and consumers.

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