

October 15, 2007

Senator Edgardo J. Angara

Senate of the Philippines

GSIS Building

Pasay City

Dear Senator Angara:

Thank you for the opportunity to provide our comments on Senate Bill No. 899, entitled An Act Amending Republic Act No. 9136, Otherwise Known as the Electric Power Industry Reform Act of 2001 for Other Purposes, which you sponsored.

The Philippine Exporters Confederation, Inc. (PHILEXPORT) extends its full support to bills filed in both Houses of Congress seeking to correct the defects of Republic Act No. 9136, the Electric Power Industry Reform Act (EPIRA) so it will serve its goals of opening up the industry to competition and bringing down power rates in the Philippines.

Like any business operation, a price-competitive, reliable and continuous power supply is critical to their operations. This is especially important in the case of electronics and other firms and sectors that apply precision technology.

Six years after the law's enactment, competition in the power sector remains a dream while power rates have continued to rise, especially in Luzon. Increasing power rates has become the single biggest factor in making the cost of doing business in the Philippines one of the most expensive in the world. It has had an added impact of eroding the price competitiveness of Philippine products in the global marketplace.

In sum, loopholes in the law that have prevented it from achieving its twin goals urgently need to be plugged. In particular:

7 On high electricity rates:

- a. We support your bill, particularly the proposal to amend the prerequisites to open access that the National Power Corporation (NPC) has failed to accomplish, that of selling 70% of its generating assets before open access is allowed. We then recommend the reduction of the required privatized generation capacity of Napocor in Luzon and Visayas to 50% from 70% to enable the accelerated implementation of open-access. This will facilitate competition among power generators who will then vie for consumers, hopefully influencing reasonable rates, unlike the 'artificial' rates charged by Napocor.
- b. We likewise support the proposal to put a cap on what part of the stranded

costs may be passed on to end-users. This is consistent to the intent of the bill which is “to lessen the hardship on electricity consumers by preventing certain industry players to pass on the costs of their inefficiencies, mistakes and questionable/onerous contracts or dealings.” However, It will be appreciated if the consumers are offered a basis for the computation of a P1 per kilowatt hour cost of transmission to see if it can be brought down further.

- c. We appreciate that the proposed bill has new provisions that thoroughly discuss the mechanisms and guidelines in determining a just and reasonable return on the rate base of the Transco or distribution utility. The ratemaking proposed to be adopted must neither be extortionary to the end-users nor confiscatory to the Transco or distribution utilities. In view of this, the Commission shall adopt performance-based revenue forms of rate-setting for the said regulated entities, including systems losses, interruption frequency rates and collection efficiency for purposes of determining cost of services that will be passed on to the end-users of electricity.
 - d. There is an urgent need to fast track the guidelines on the appointment of independent power producers (IPP) administrators so more players could come in once there is already open access.
- 8 On the creation of a Technical Working Group:
- 9 We also welcome the suggestion of Energy Secretary Angelo Reyes for a technical working group to be organized by the Senate not only to simplify highly technical and complex aspects of the industry when translated in the language of the law, but also in the determine its loopholes, and in the review of present rates especially in Luzon where electric rates are about twice those in the Visayas and Mindanao. Our organization is willing to send a representative to the technical working committee to articulate consumers’ interests in the reform bills.
 - 10 We further propose that the technical working group will equally address head-on the issue on excessively rates. They may uncover the mystery behind the fact that power rates in Luzon are much higher than those in the other grids and find policy options that prevent over-pricing.
 - 11 In further addressing the issue on high power rates, we suggest that the technical working group will:
 - 12 Scrutinize closely the different components of the generation rates to find out what constitutes the basic cost of power, how much is government royalty and hidden taxes and how much is the margin of the power generator. This will give policy makers an objective basis in determining what constitutes basic generation rates.
 - 13 Find out the basis in arriving at a P1 per kilowatt hour cost of transmission with the end in view of bringing it down to more reasonable levels;
 - 14 Further study other costs charged by the distribution utilities besides distribution costs like the passing on to consumers of all systems

losses (an incentive to inefficiency), exchange rate gains or losses that are passed on when the peso depreciates but kept to themselves when it appreciates, and fluctuating metering charges.

15 On the mandate of the Energy Regulatory Commission (ERC):

16 Review the mandate of the ERC to allow consumer groups or end users to petition for the reduction of power rates in any franchise area. This could serve as a counterfoil to what former NEDA Director General Romulo Neri calls a regulatory capture where the supply side of the electric power sector exercises too much power over regulators and only petition for, and are often granted, power rate increases.

17 PHILEXPORT also fully supports the provisions of the amendatory bill that explicitly indicate that the ERC should monitor and penalize monopolization, cartelization, abuse of market power, anti-competitive and discriminatory acts committed by any electric industry power participant.

To ensure this, we agree to the following recommendations:

- propose the banning of new distribution utilities to acquire an interest in any generation company and vice-versa, and for generation companies to own shares in another generation company;
- seek to review independent power producer (IPP) contracts and take efforts to renegotiate such to dispel or mitigate burdensome effects;
- revert any reduction in the cost of the renegotiated IPP contract for use in reducing the universal charge;
- allow the ERC to be given fiscal autonomy and require it to ensure distribution utilities to supply the cheapest electricity to end-users;
- authorize the ERC to issue a cease and desist order to the offending party and thereafter permanently stop, impose price control and/or injunctive relief, compel divestment of excess profits or impose fines and penalties pursuant to the applicable provisions of the Act.

18 Other concerns:

We hope the bill can also include/address the following:

19 lifting of the imposition of the universal levy on self-generating end-users especially since these are mainly stand-by generators. A related issue on stand-by generators of exporters from Region 10 covers the “ridiculously high” and “very long forms” in complying with the Certificate of Compliance (COC);

20 insulating the Philippine economy against the effects of a power crisis should be ensured through specific policies and programs;

21 empowering consumers and industry to be strengthened to provide checks and balances in a restructured power industry;

22 recognizing vested rights arising from contracts entered into between NPC and power consumers prior to the enactment of EPIRA;

23 guaranteeing rights and privileges of directly connected power consumers

who own the transmission lines and rights of way in the setting of transmission charges; and
25 expanding the scope of application of the environmental charge of the Universal Charge to more than just watershed rehabilitation.

Finally, we are convinced that open access, if done tomorrow, will only benefit the industrial and big commercial establishments. Taking a deeper look at the above suggestions as part of the reform proposals will move it a step farther towards bringing down the retail rates of electric power in the whole country.

We hope that our position merits your consideration. Thank you for your attention and support.

Sincerely yours,

Sergio R. Ortiz-Luis Jr.
President

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