

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

EIGHTEENTH CONGRESS
First Regular Session

House Bill Number 469



Introduced by:

REP. PRESLEY C. DE JESUS (PHILRECA PARTYLIST), REP. SERGIO C. DAGOOC (APEC PARTY-LIST), REP. GODOFREDO N. GUYA (RECOBODA PARTYLIST), AND REP. ADRIANO A. EBCAS (AKO PADAYON PARTY-LIST)

**AN ACT AMENDING REPUBLIC ACT NO. 9136,
OTHERWISE KNOWN AS THE "ELECTRIC POWER INDUSTRY REFORM ACT
OF 2001 OR EPIRA", AND FOR OTHER PURPOSES**

EXPLANATORY NOTE

This proposed bill intends to revisit the 12 year old Electric Power Industry Reform Act or commonly known as the EPIRA, passed in 2001.

In the 10th year commemoration of the said law, various member-consumer-owners have strongly manifested the need to review the said law expressing discontent on its supposed function which is to at least provide a mechanism that would rationalize the cost of per kilowatt hour of power consumed. While the explanation of the authors of the said law was deemed acceptable for the consuming public; "that it was not the intention of EPIRA to reduce the price of power", it is generally found out that EPIRA has even functioned the opposite and instead unjustifiably gave way to rising costs of electricity.

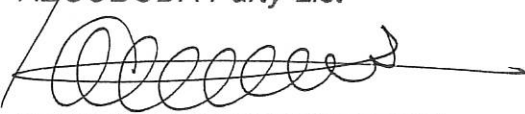
In Mindanao, for the past years of persistent undersupply of electricity, the stakeholders found out that the certain provisions of the current law will certainly perpetuate the same situation. Hence, the stronger resolve for the Mindanaoans to

oppose the privatization of the Pulangui and Agus Hydro Electric Power Plants, having identified this same as one of the provisions.

In Luzon, it is found out that the transition to market operations is not paved well; that rising costs are not avoided for, which, the liberalization of the industry promoted by EPIRA pre-supposing competition to lower the costs, was not realized. This immediate experience is what this measure is trying to avoid experimenting for in areas like Mindanao.

We agree on the apprehensions of those who wish to protect and rather strengthen those parts of EPIRA which have taken off and did their functions well in the industry, from being tinkered. It is for the preceding reason why we only choose for this proposal, those few provisions that require necessary examination. Now, ten years are more than enough for giving EPIRA unconditional support and we, consumers, are starting to feel the consequences. We cannot further this adverse effect especially with the poor consumers not only in Mindanao, but in the entire nation. We must examine again EPIRA and introduce amendments to improve its function to the entire power industry.

The passage of the bill is earnestly sought.


Rep. **PRESLEY C. DE JESUS**
PHILRECA Party-List
Rep. **SERGIO C. DAGOOC**
APEC Party-List
Rep. **GODOFREDO N. GUYA**
RECOBODA Party-List
Rep. **ADRIANO A. EBCAS**
AKO PADAYON Party-List

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

EIGHTEENTH CONGRESS
First Regular Session

House Bill Number 469

Introduced by:
REP. PRESLEY C. DE JESUS (PHILRECA PARTYLIST),
REP. SERGIO C. DAGOOC (APEC PARTY-LIST), REP. GODOFREDO N. GUYA
(RECOBODA PARTYLIST), AND REP. ADRIANO A. EBCAS (AKO PADAYON
PARTY-LIST)

**AN ACT AMENDING REPUBLIC ACT NO. 9136,
OTHERWISE KNOWN AS THE "ELECTRIC POWER INDUSTRY REFORM ACT
OF 2001 OR EPIRA", AND FOR OTHER PURPOSES**

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

CHAPTER I – POLICY AND DEFINITIONS

SECTION 1. Title. - This act shall be known as the "Revised Electric Power Industry Reform Act or REPIRA". It shall hereinafter be referred to as the Act.

Section 2. Declaration of Policy. – It is hereby declared the policy of the State to ensure that the right policy direction is provided in the power industry in order to provide the right support for sectors that deliver direct benefits to consumers such as the rural electrification program. Towards this end, the State shall strengthen the support mechanism to enable electric cooperatives do their mandate in delivering electricity to the countryside even in the economically marginalized areas.

CHAPTER II – AMENDATORY PROVISIONS

Section 3. Section 8 of EPIRA shall be amended to read as follows: "SEC. 8. *Creation of the National Transmission [company]* **CORPORATION.-XXX...**

'The sub transmission functions, assets, **FACILITIES, AND LIABILITIES, IF ANY**, shall be segregated from the transmission functions, asset, **FACILITIES**, and liabilities for transparency and **DISPOSAL**: Provided, That **IN THE MEANTIME** the sub-transmission **FUNCTIONS, assets, AND FACILITIES** shall be **PERFORMED** operated, and maintained by **THE TRANSCO, OR ITS CONCESSIONAIRE**, until **SUCH FUNCTIONS, ASSETS, AND FACILITIES ARE SOLD OR OTHERWISE DISPOSED AND TRANSFERRED** to qualified distribution utilities which are **CAPABLE** to take over the responsibilities of operating, maintaining, upgrading, and expanding said assets. All transmission and sub-transmission related liabilities of NPC shall be transferred to and **SHALL BE** assumed by the PSALM Corp.

'**THE TRANSCO OR ITS CONCESSIONAIRE**, shall negotiate with and thereafter, transfer such functions, assets, **FACILITIES**, and associated liabilities to the qualified distribution utility or utilities connected to such sub transmission **ASSETS AND** facilities not later than two (2) years from the effectivity of this Act or **FROM** the start of open access, whichever comes earlier Provided, That in case **THE WINNING BIDDER OR BIDDERS ARE** electric cooperatives, the TRANSCO, **AND/OR WHICHEVER AGENCY ASSUMES RESPONSIBILITY IN THE DISPOSITION OF SUB-TRANSMISSION FACILITIES**, shall grant **THE ELECTRIC COOPERATIVES** concessional financing over a period of twenty (20) years: Provided, However, That the instalment payments to **THE TRANSCO** for the sub-transmission **ASSETS AND** facilities shall be given by the **WINNING** electric cooperatives **FIRST PREFERENCE TO** the net income derived from such **ASSETS AND** facilities. The TRANSCO shall **HIRE AT LEAST TWO INDEPENDENT, COMPLEMENT, AND REPUTABLE APPRAISERS TO ESTABLISH AND DETERMINE, FOR THE PURPOSE OF DISPOSING SAID SUBTRANSMISSION ASSETS AND FACILITIES, THEIR TRUE AND FAIR MARKET VALUE BASED ON THEIR REVENUE POTENTIAL.**

'**DISPUTES OR DISAGREEMENTS IN THE** valuation, procedures, ownership participation, and other issues **RELATED TO THE DISPOSITION OF THE SUBTRANSMISSION ASSETS AND FACILITIES SHALL BE RESOLVED EXPEDITIOUSLY BY THE ERC, AFTER DUE NOTICE TO ALL INTERESTED PARTIES AND PUBLIC HEARING.**

'The **ACQUISTION AND** take-over of any sub transmission **FUNCTION, asset, AND FACILITY BY A DISTRIBUTION UTILITY OR BY DISTRIBUTION UTILITIES, AS THE CASE MAY BE, MUST NOT RESULT IN** a diminution of **THE QUALITY AND RELIABILITY OF THE** service **BEING RENDERED** to the end-users **OF ELECTRICITY. IN THE EVENT THAT** two or more **ELECTRIC COOPERATIVES ARE CONNECTED TO THE SAME SUBTRANSMISSION ASSET AND FACILITY, A** consortium or juridical entity shall be formed **TO ACQUIRE AND TAKE OVER SUBTRANSMISSION FUNCTION, ASSET, AND FACILITY, AND THE CONSORTIUM OR JURIDICAL ENTITY SHALL BE** composed of all of **SUCH ELECTRIC COOPERATIVES. IN SUCH A CASE, THE SUBSCRIPTION RIGHTS OF EACH OF THE DISTRIBUTION UTILITIES INVOLVED SHALL BE PROPORTIONATE TO THEIR RESPECTIVE LOAD REQUIREMENTS, UNLESS THEY AGREE OTHERWISE AMONG THEMSELVES. THE CONSORTIUM OR JUDIRICAL ENTITY SHALL,** thereafter, be granted a

franchise **BY THE NATIONAL ELECTRIFICATION ADMINISTRATION** to **PERFORM AND** operate the sub-transmission **FUNCTION, asset, AND FACILITY. PROVIDED FURTHER, THAT ANY SUB-TRANSMISSION FACILITIES WHICH WILL NOT BE ASSUMED BY THE ELECTRIC COOPERATIVES AND BY ANY DISTRIBUTION UTILITIES WILL BE CONSIDERED TRANSMISSION FACILITIES.**

'EXCEPT FOR THE PSALM Corp., THE TRANSCO, and THE connected distribution utilities, no **OTHER** party shall be allowed **ANY SHARE IN THE ownership OF AND /or IN THE** management, in whole or in part, **OF THE CONSORTIUM OR JUDICIAL entity THAT SHALL ACQUIRE AND TAKE OVER THE SUB-TRANSMISSION FUNCTION, ASSET, AND FACILITY.**

'The TRANSCO may exercise the power of eminent domain subject to the requirements of the Constitution and existing laws. Except as provided **OTHERWISE IN THIS ACT**, no person, company, or entity, other than the **TRANSCO**, shall own any transmission **ASSETS AND facilities IN THE COUNTRY.**

'BEFORE the transfer of the transmission functions by NPC to TRANSCO and before the promulgation of the Grid Code, **THE ERC shall DIRECT AND** ensure that NPC shall provide to all electric power industry participants open and non-discriminatory access to NPC'S transmission system. Any violation **HEREOF shall RENDER THE PARTY RESPONSIBLE FOR SUCH VIOLATION LIABLE** to the **APPROPRIATE** fines and penalties imposed **IN SECTION 44 OF THIS ACT.**

Section 4. Section 31 of the EPIRA, shall be amended to read as follows: "SEC. 31. *Retail competition and Open Access.* – Any law to the contrary notwithstanding, retail competition and open access on distribution wires **OF DISTRIBUTION UTILITIES** shall be implemented **ONLY UPON THE REALIZATION OF EXCESS OF POWER SUPPLY EQUIVALENT TO 30% OF THE BASELOAD REQUIREMENT IN EACH OF THE LUZON, VISAYAS, AND MINDANAO GRID, FROM THE DATE OF THE** effectivity of this Act, subject to the following conditions:

- (a) Establishment of the wholesale electricity spot market;
- (b) Approval of unbundled transmission and distribution wheeling charges; and
- (c) Initial implementation of the cross subsidy removal scheme;
- (d) Privatization of at least seventy (70%) percent of the total capacity of generating assets of NPC in Luzon and Visayas; and
- (e) Transfer of the management and control of at least seventy percent (70%) of the total energy output of power plants under contract with NPC to the IPP Administrators.

'THE initial implementation of open access **AND RETAIL COMPETITION SHALL BE DECLARED BY** the ERC **IN A RESOLUTION AND, IN THE SAME ORDER TO BE ISSUED AFTER DUE NOTICE TO ALL INTERESTED PARTIES AND PUBLIC HEARING, SHALL ALSO DECLARE THAT** all end-users **OF ELECTRICITY** with a monthly average peak demand of **NOT LESS THAN ONE POINT FIVE MEGAWATT (1.5MW)** for the **IMMEDIATELY** preceding twelve (12) **BILLING** months to be the contestable market. **AFTER TWO (2) years IMMEDIATELY FOLLOWING THE INITIAL IMPLEMENTATION OF OPEN**

ACCESS, the threshold level for the contestable market shall be reduced to **ONE MEGAWATT (1MW)**. At **THAT** level, aggregators shall be allowed to supply electricity to end-users whose aggregate demand within a contiguous area is at least **ONE MEGAWATT (1MW)**. **LOAD LEVEL BELOW ONE MEGAWATT (1MW) WILL REMAIN AS CAPTIVE MARKET IN THE FRANCHISE AREAS OF ELECTRIC COOPERATIVES TO MAINTAIN THE MISSIONARY SERVICE IN THE UNVIABLE AREAS**. EVERY year thereafter, the ERC shall **REVIEW AND** evaluate the performance of the **CONTESTABLE** market **AND, ON** the basis of such **YEARLY REVIEW AND** evaluation, **THE ERC** shall gradually reduce the threshold level **IN AREAS UNDER THE FRANCHISE OF THE PRIVATE DISTRIBUTION UTILITIES** until **THE CONTESTABLE MARKET SHALL FINALLY COVER** the household **END-USERS OF ELECTRICITY**. In the case of electric cooperatives, **THESE AFOREMENTIONED LEVELS SHALL NOT BE APPLICABLE**.

Section 5. Section 34 of the EPIRA shall be amended to read as follows: "**SEC. 34. Universal Charge.** – Within one (1) year from the effectivity of this Act, a universal charge to be determined, fixed and approved by the ERC, shall be imposed on all electricity end-users for the following purposes:

- (a) x x x
- (b) x x x
- (c) x x x
- (d) An environmental charge equivalent to one-fourth of one centavo per kilowatt-hour (P0.0025/kWh), which shall accrue to an environmental fund to be used solely for watershed rehabilitation and management. Said fund shall be managed by NPC under existing arrangements;
- (e) A charge to account for all forms of cross-subsidies for a period not exceeding three (3) years. The universal charge shall be non-by passable charge which shall be passed on and collected from all end-users on a monthly basis by the distribution utilities. Collections by the distribution utilities and the TRANSCO in any given month shall be remitted to the PSALM Corp. on or before the fifteenth (15th) of the succeeding month, net of any amount due to the distribution utility. Any end-user or self-generating entity not connected to a distribution utility shall remit its corresponding universal charge directly to the TRANSCO. The PSALM Corp., as administrator of the fund, shall create a Special Trust Fund which shall be disbursed only for the purposes specified herein in an open and transparent manner. All amounts collected for the universal charge shall be distributed to the respective beneficiaries within a reasonable period to be provided by the ERC; **AND**
- (f) **TO FUND THE REHABILITATION OF LINES PREVIOUSLY CONSTRUCTED USING NEA-SUBSIDY FUNDS AND/OR PRIORITY DEVELOPMENT ASSISTANCE FUND (PDAF) TO ELECTRIFY FAR-FLUNG UNVIABLE AREAS.**

Section 6. Section 35 of the EPIRA, is hereby amended to read as follows: "**SEC.35. Royalties, Returns and Tax Rate-** The provision of Section 79 of Commonwealth Act No. 137 (C.A. No. 137) and any law to the contrary

notwithstanding, the President of the Philippines shall reduce the royalties, returns and taxes collected for the **FOLLOWING**:

1. **INDIGENOUS ENERGY RESOURCES.** *For the* exploitation of all indigenous sources of energy, including but not limited, natural gas and geothermal steam, so as to effect parity of tax treatment with the existing rates for imported coal, crude oil, bunker fuel and other imported fuels.
2. **TAX FOR ELECTRIC COOPERATIVES.**

To ensure lower rates for end-users, the ERC shall forthwith reduce rates of power from all indigenous sources of energy.

Section 7. Section 43 of EPIRA is further amended to read as follows: "SEC. 43. *Functions of the ERC.* -XXX..."

'(a) Enforce the implementing rules and regulations of this Act **RELATIVE TO INDUSTRY COMPETITION AND MARKET ABUSE TOGETHER WITH OTHER AGENCIES AUTHORIZED TO MONITOR THE STANDARDS IN ACCORDANCE WITH THE EXISTING RULES AND REGULATIONS SET.**

'(b) Within six (6) months from the effectivity of this Act, promulgate and enforce, in accordance with law, a National Grid Code and a Distribution Code which shall include, but not limited to, the following:

'(i) Performance standards for TRANSCO O & M Concessionaire, and suppliers: *Provided*, That in the establishment of the performance standards, the nature and function of the entities shall be considered: and

'(ii) Financial capability standards for the generating companies, the TRANSCO, distribution utilities and suppliers: *Provided, further*, That such standards are set to ensure that the electric power industry participants meet the minimum financial & **TECHNICAL** standards to protect the public interest. **PROVIDED FURTHERMORE THAT MONITORING, SUPERVISION & ENFORCEMENT OF FINANCIAL & TECHNICAL STANDARDS OF THE ELECTRIC COOPERATIVES WILL BE IMPLEMENTED BY THE NATIONAL ELECTRIFICATION ADMINISTRATION, INCLUDING EXISTING GUIDELINES PROMULGATED BY THE ENERGY REGULATORY COMMISSION, PRIOR TO THIS AMENDMENT.**

'(iii) Determine, fix, and approve, after due notice and public hearings the universal charge, to be imposed on all electricity end-users pursuant to Section 34 hereof. .

Section 8. Section 47 of the EPIRA is hereby amended as follows: "SEC. 47. *NPC Privatization.* - Except for **THE AGUS & PULANGUI HYDRO ELECTRIC PLANTS COMPLEXES**, the generation assets, real estate, and other disposable assets as well as IPP contracts of NPC shall be privatized in accordance with this Act **AND** the following guidelines, except as provided for in Paragraph (f) herein:

- (a) Xxx...
- (b) Xxx...

- (c) Xxx...
- (d) Xxx...
- (e) Xxx...

'(f) The Agus and the Pulangui complexes in Mindanao shall be excluded from among the generation companies that will be privatized. Their ownership shall be transferred to the PSALM Corp. and both shall continue to be operated by the NPC. Said complexes **SHALL BE RETAINED TO GENERATE POWER WHICH WILL SERVE AS BUFFER SUPPLY TO AVERT POWER CRISES. ELECTRIC COOPERATIVES SHALL BE PRIORITIZED IN CONTRACTING THESE COMPLEXES' CAPACITY TO SERVE THE NEED OF THE RESIDENTIAL CONSUMERS.**

(g)XXX

(h)XXX

(i)XXX

(j) NPC **SHALL** generate and sell electricity **AND SHALL CONSTRUCT AND MAINTAIN ADDITIONAL CAPACITY EQUIVALENT TO THE CAPACITY OF THE BIGGEST POWER PLANT IN EVERY GRID, FOR ANCILLARY PURPOSES AND TO STABILIZE THE GRID IN ANY GIVEN TIME THAT A BASE PLANT EXPERIENCE OUTAGE.**

Section 9. Section 58 of the EPIRA is hereby amended, to read as follows:
"SEC. 58. *Additional Mandate of the National Electrification Administration (NEA).* – NEA shall develop and implement programs:

'(a) To prepare electric cooperatives in operating and competing under the deregulated electricity market **AND IN AN OPEN ACCESS AND RETAIL COMPETITION ENVIRONMENT, INCLUDING SETTING UP MANAGEMENT SYSTEM, PROMOTING JOINT ACTIONS IN POWER PURCHASE POOLING, OPERATION OF SUB-TRANSMISSION LINES, SHARING OF COMMON SERVICE FACILITIES AND REGULATION-RELATED TRAINING AND TECHNICAL INTERVENTIONS,** within five (5) years from the effectivity of this Act;

'(b) To **CONTINUE STRENGTHENING** the technical capability and financial viability of rural electric cooperative **AND FOR THAT PURPOSE, WITHIN ONE (1) YEAR FROM THE EFFECTIVITY OF THIS ACT, DEVELOP, SUBMIT AND IMPLEMENT PROGRAMS TO ENABLE THE ELECTRIC COOPERATIVES TO BE FINANCIALLY VIABLE AND INDEPENDENT**

'(c) To **CREATE AN APPROPRIATE TECHNICAL STAFF TO ASSIST ELECTRIC COOPERATIVES IN CONDUCTING PERIODIC REVIEW OF RATES AND OTHER RELATED ACTIVITIES AND**

'(d) TO ACT AS PLANNING AND IMPLEMENTING AGENCY INVOLVING MISSIONARY ELECTRIFICATION AND INTEGRATING GRID AND OFF-GRID EXPANSION PROGRAMS AND TO SUBMIT THE SAME TO DOE FOR REVIEW, APPROVAL AND PROPER IMPLEMENTATION.

Section 10. Section 66 of the EPIRA is hereby amended to read as follows:
"SEC. 66. *Benefits to Host Communities.*.-The obligations of generation companies and energy resource developers to communities hosting energy generating facilities and/or energy resource developers as defined under Chapter II, Sections 289 to 294 of the Local Government Code and Section 5(i) of Republic Act No. 7638 and their implementing rules and regulations and applicable orders and circulars **INCONSISTENT WITH THIS ACT ARE HEREBY AMENDED TO SIMPLIFY THE DISTRIBUTION OF THE SHARES IN NATIONAL WEALTH TAX.**

'THE COMMUNITIES HOSTING ANY SOURCE OF ENERGY SHALL BE ENTITLED TO THE EIGHTY PERCENT (80%) OF THE NATIONAL WEALTH TAX; PROVIDED, THAT THE GENERATION FACILITIES AND/OR ENERGY RESOURCE DEVELOPERS SHALL DEDUCT THIS AMOUNT FROM THE POWER BILLS OF THE ELECTRIC COOPERATIVES/DISTRIBUTION UTILITIES; PROVIDED FURTHER, THAT THIS SHALL HAVE RETROACTIVE EFFECT FROM THE TIME THE GENERATION FACILITIES AND/OR ENERGY RESOURCE DEVELOPERS STARTED TO OPERATE IN THE HOST COMMUNITIES.

Section 11. Section 70 of EPIRA is hereby amended to read as follows:

"SEC. 70. *Missionary Electrification.* **THE MISSIONARY ELECTRIFICATION FUNCTIONS OF NPC-SPUG SHALL BE PERFORMED BY THE NATIONAL ELECTRIFICATION ADMINISTRATION AS AN ADDITIONAL MANDATE IN ACCORDANCE UNDER SECTION 58 OF THIS ACT WHICH IS TO ASSIST THE ELECTRIC COOPERATIVES IN COMPLYING WITH THIS ACT. THE NEA SHALL BE RESPONSIBLE IN PROVIDING POWER GENERATION AND ITS ASSOCIATED POWER DELIVERY SYSTEMS IN AREAS THAT ARE NOT CONNECTED TO THE TRANSMISSION SYSTEM.** The missionary electrification function shall be funded from the revenues from sales in missionary areas and from the universal charge to be collected from all electricity end-users as determined by the ERC **AND TO BE REMITTED AND ADMINISTERED TO NEA. THE NEA MAY OPT TO TRANSFER OR RELINQUISH THE OPERATION OF THE OFF-GRID POWER PLANTS TO THE ELECTRIC COOPERATIVE AFTER A SOUND EVALUATION OF THE SAID EC, IF EC IS TECHNICALLY AND FINANCIALLY CAPABLE OF MAINTAINING THE PLANT AND IF SO DOING THE ASSETS OF NPC-SPUG BE TRANSFERRED TO NEA."**

Section 12. Section 71 of EPIRA is hereby amended to read as follows:
"SEC. 71. *Electric Power Crisis Provision.*.-Upon the determination by the President of the Philippines of an imminent shortage of the supply of electricity, **THE PRESIDENT SHALL** authorize the establishment of additional generating capacity."

CHAPTER III - GENERAL PROVISIONS

Section 13. Implementing Rules and Regulations. The Secretary of the Department of Energy, in coordination with the other agencies involved in power, shall create a technical writing group that will be tasked to draft the Implementing Rules and Regulations.

Section 14. Separability Clause. If any part or section of this Act is declared unconstitutional, such declaration shall not affect in any manner other parts or sections of this Act.

Section 15. Repealing Clause. – All laws, decrees, proclamations, issuances, or ordinances that are contrary to or inconsistent with the provisions of this Act are hereby amended, repealed or modified accordingly.

Section 16. Effectivity Clause. This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

Approved,