



Republic of the Philippines  
**HOUSE OF THE REPRESENTATIVES**  
Constitution Hills, Quezon City

**EIGHTEENTH CONGRESS**  
*First Regular Session*

**HOUSE RESOLUTION NO. 35**



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Introduced by  
**REPRESENTATIVE BERNADETTE HERRERA-DY**

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**RESOLUTION**

**URGING THE COMMISSION ON AUDIT TO CREATE A UTILITIES AUDIT OFFICE EMPOWERED TO AUDIT THE RATE-SETTING PROCESSES AND RATES CHARGED TO THE FILIPINO CONSUMER BY WATER, ELECTRICITY, AND TELECOMMUNICATIONS UTILITIES AND CONCESSIONAIRES**

**WHEREAS**, the Philippines is a developing country, with over 21.6% of the population living below the national poverty line<sup>1</sup>;

**WHEREAS**, the Philippines is also one of the most expensive countries in the world for basic utilities and necessities;

**WHEREAS**, Philippine water rates are among the most expensive per cubic meter in Asia<sup>2</sup>;

**WHEREAS**, Philippine electricity rates are the highest in Southeast Asia<sup>3</sup>;

**WHEREAS**, these rates are due to high costs incurred by the public utilities and concessionaires duly approved by their regulatory authorities such through rate-rebasing processes and procedures whereby the utilities and concessionaires raise their rates to cover for corporate expenses;

**ELECTRICITY**

**WHEREAS**, such authorities have been under fire for various actions that have been fraught with irregularities and conflicts of interest. For instance, the current Energy Regulatory Commission (ERC) is a commission of one, as its Chairperson was dismissed, and four commissioners were ordered suspended from service due to actions tantamount

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<sup>1</sup> Asian Development Bank, "Poverty in the Philippines" [<https://www.adb.org/countries/philippines/poverty>]

<sup>2</sup> Japan External Trade Organization, "The 21th Comparative Survey of Investment-Related Costs in 31 Major Cities and Regions in Asia and Oceania" (2011), [<https://app.box.com/s/9edx31q38ikjk7ebq5mc>]

<sup>3</sup> Danessa Rivera, The Philippine Star, "Philippine electricity rates still the highest in Southeast Asia" [<https://www.philstar.com/business/2017/08/24/1732332/philippine-electricity-rates-still-highest-southeast-asia>]



to “conduct prejudicial to the best interest of the service aggravated by simple misconduct and simple neglect of duty”<sup>4</sup>;

**WHEREAS**, the commissioners were suspended upon finding of granting of favors to a Meralco and its subsidiary companies through outright violations of bidding requirements for the competitive selection process (CSP), a process meant to elicit the best price among suppliers in favor of the consumers<sup>5</sup>;

**WHEREAS**, the mandate and charter of these regulators include the monitoring and approval of rates and services, acting as an impartial and independent body governed strictly by prevailing rules and procedures;

**WHEREAS**, the regulators have displayed on various occasions a bias towards the public utilities and concessionaires and to the detriment of the Filipino people, such as in the instances surrounding the manner by which the ERC approved and implemented measures allowing Meralco to charge fees for speculative, contingent, and non-existent projects;

**WHEREAS**, the ERC is mandated to enforce an empirically sound methodology for setting transmission and distribution wheeling rates, as well as the retail rates for the captive market of a distribution utility, a methodology which takes into account the “efficiency test”. Electricity rates must allow for the recovery of just and reasonable costs and a reasonable Return on Rate Base (RORB);<sup>6</sup>

**WHEREAS**, the Supreme Court has ruled that such rates and fees shall not exceed twelve percent (12%) on a return on rate base (RORB) composed of the sum of its assets in operation, as revalued from time to time, plus operating capital.<sup>7</sup> Emphasis must be made on the term “assets in operation” contemplating that the assets already exist and are working assets, as opposed to mere planned assets;

**WHEREAS**, the ERC has instead implemented an “innovation” called the “Future Performance Base Rate Setting” system, which allows precisely the opposite, enabling energy utilities to bill consumers for speculative, contingent projects that may or may not exist, and that the consumers have not derived benefits from;

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<sup>4</sup> ABS-CBN News, January 23, 2018, “Palace orders ERC to enforce suspension order on officials”

<sup>5</sup> *ibid*

<sup>6</sup> Section 43 (f), Republic Act No. 9136 states:

(f) In the public interest, establish and enforce a methodology for setting transmission and distribution wheeling rates and retail rates for the captive market of a distribution utility, taking into account all relevant considerations, including the efficiency or inefficiency of the regulated entities. **The rates must be such as to allow the recovery of just and reasonable costs and a reasonable return on rate base (RORB) to enable the entity to operate viably.** The ERC may adopt alternative forms of internationally-accepted rate-setting methodology as it may deem appropriate. The rate-setting methodology so adopted and applied must ensure a reasonable price of electricity. The rates prescribed shall be non-discriminatory. To achieve this objective and to ensure the complete removal of cross subsidies, the cap on the recoverable rate of system losses prescribed in Section 10 of Republic Act No. 7832, is hereby amended and shall be replaced by caps which shall be determined by the ERC based on load density, sales mix, cost of service, delivery voltage and other technical considerations it may promulgate. The ERC shall determine such form or rate-setting methodology, which shall promote efficiency... (emphasis supplied)

<sup>7</sup> *Republic v MERALCO*, G.R. No. 141314, November 15, 2002; *Republic v MERALCO*, G.R. No. 141314, April 9, 2003.



**WHEREAS**, the ERC has yet again failed the general public by not exercising its duty to conduct a Rate Reset as part of the Performance Based Regulation (PBR). Such Rate Reset should cover eighteen (18) privately-owned distribution utilities and the National Grid Corporation of the Philippines (NGCP) who have availed of the PBR pre-approved and pre-collected rates. Such Rate Reset is critical to the PBR process because under the current ERC rules, it is through this process that PBR-participating utilities are called to account for the advance rate collections based on those so-called plans and projections, a once in every four-year occurrence;

**WHEREAS**, the Third Regulatory Period (RP) of MERALCO and other distributors lapsed on 30 June 2015 and the Fourth RP began on 1 July 2015. However, as the ERC failed to issue an order to these distributors to file for Rate Reset, no review of the Third RP revenues and expenditures took place. Instead, MERALCO and the other distributors were given an "Interim Average Rate" without any hearing on the merits and review of past performance, and has effectively set aside any semblance of a proper rate audit;

## **WATER**

**WHEREAS**, recent rate rebasing applications of Maynilad and Manila Water sought to increase rates to the consuming public to cover corporate expenses such as donations, travel, arbitration, legal fees, sports, and corporate income taxes<sup>8</sup>;

**WHEREAS**, concerned individuals have sent letters seeking an explanation as to the rate rebasing submittals to Maynilad and Manila Water, such letters remain unanswered;

**WHEREAS**, during the public hearing conducted by the MWSS on 27 July 2018, exactly 20 days since the letters were marked as received by Maynilad and Manila Water, the same questions regarding the basis of rate rebasing were ignored;

**WHEREAS**, failure to respond to requests from the public on matters of public interest constituted violations of Republic Act No. 9485 or the Anti-Red Tape Act, Republic Act No. 6713 or the Code of Conduct and Ethical Standards for Public Officials and Employees, and Executive Order No. 13, among others;

**WHEREAS**, the clear refusal of the MWSS, Maynilad, and Manila Water to provide the public with the simple answers backing up the request for rate rebasing of the latter two casts a massive cloud of doubt in the integrity of the rate setting procedure;

**WHEREAS**, such actions have already prompted certain groups to file cases against the officials concerned;

**WHEREAS**, from all the foregoing, which are only a few of the many issues surrounding water, electricity, and telecommunications in the Philippines, it has become clear that the regulators supposedly safeguarding the interests of the Filipino consumer are entangled in a web of irregularities and conflicts of interest;

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<sup>8</sup> Bernadette Reyes, GMA News "Maynilad, Manila Water asked to explain 'questionable' expenses" [<http://www.gmanetwork.com/news/money/companies/659219/maynilad-manila-water-asked-to-explain-questionable-expenses/story/>]; Atty. Victor Mario Dimagiba, LabanKonsumer Inc. "LKI wrote to Coa to audit water rates", July 18, 2018 [<http://labankonsyumer.com/lki-wrote-coa-to-audit-water-rates/>]

**WHEREAS**, there is a need for stronger oversight in the form of an outside independent auditor in the form of the Commission on Audit, one that will eliminate all doubts and provide true transparency with regard to the rate setting and rate rebasing procedures of these public utilities and concessionaires.

**BE IT RESOLVED, AS IT IS HEREBY RESOLVED**, by the House of Representatives of the Philippines, urging the Commission on Audit to create a utilities audit office empowered to audit the rate-setting processes and rates charged to the Filipino consumer by water, electricity, and telecommunications.

*Adopted,*

  
**BERNADETTE HERRERA-DY**