

**PROPOSED AMENDMENTS TO THE EPIRA LAW (RA 9136)**

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| PROPONENT/SUMMARY OF PROPOSED AMENDMENTS                                                                   | RATIONALE/DISCUSSION                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | SPECIFIC PROVISION(S) AFFECTED | PROPOSED REWORDINGS OF PROVISION |
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| <p>Government’s political will to stop P4.15/kWh power rate hike; Meralco and IPPs are not ‘scot-free’</p> | <p>The P4.15/kWh power rate increase announced and started to be collected by Meralco last December is not the first of the power rates increases that we have had. But it is definitely the first rate increase that high – more than three hundred per cent (300%) than the usual power rate hikes that we’ve had so far in the country – and it is probably one of the highest, if not the highest rate of increase in the world. This makes the power rates in the Philippines – a lower middle income country where 60 percent of its labor force live with about \$2 or less a day – undoubtedly the highest in Asia, and also one of the highest in the world.</p> <p>It is already immoral that consumers are always held hostage and taken advantage of by the power firms – Meralco, its independent power producers and other generation companies in this case. And it is greed at its highest form when these immoral acts are done even under a situation when the country is in a state of national calamity.</p> <p>The Malampaya scheduled maintenance shutdown and forced power outages that Meralco claims are unacceptable excuses for this high increase in its electricity charges for the period November-December 2013. The power firms must exercise prudence in their charges to consumers; they should not be allowed to pass on to the consumers the unwarranted costs resulting from their wrong business decisions or practices nor they be allowed to continue doing business scot-free if they are engaging in predatory pricing and other abusive and anti-competitive business practices.</p> <p>The Trade Union Congress Party (TUCP Party-list) recognizes the initiatives of the Committees on Energy in both Chambers of Congress and of the Executive Department to find solution to this mess. But it should not be quick-fix remedy; it should be able to hit the nail where the head is. Using Malampaya funds to pay for the high generation rate may not be our best solution, it just makes the power companies scot-free from their anti-competitive and abusive practices that resulted in this record-high power rates charged to customers.</p> <p>We want to find immediate recourse to stop this unfathomable and unconscionable power rate increase of Meralco. It is also our desire to look for long-term redress in order to protect all electricity consumers against future unjust power rates hikes or spiralling cost of electricity.</p> <p>When the Electric Power Industry Reform Act (EPIRA) was passed almost thirteen years ago, the intention was</p> | <p>xxx</p>                     | <p>xxx</p>                       |

not only to stop the financial bleeding of the National Power Corporation and its consequent financial burden to the government and the taxpayers; above all, the objective was to ENSURE QUALITY, RELIABLE, SECURE, and AFFORDABLE supply of electricity.

The P4.15/kWh power rate increase of Meralco goes against the above and other objectives of EPIRA such as ensuring transparent and reasonable price of electricity to enhance the competitiveness of Philippine products in the global market; to ensure fair and non-discriminatory treatment of public and private sector entities in the process of restructuring the electric power industry; and to protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power.

THE GOVERNMENT IS NOT HOPELESS IN THIS CASE. IT CAN DO SOMETHING TO STOP THE P4.15/kWh MERALCO POWER RATE HIKE as well as PREVENT UNWARRANTED RATES INCREASES IN THE FUTURE. IT IS JUST A MATTER OF POLITICAL WILL TO REALIZE THESE.

- **The President can exercise his police powers as public interest so requires. He can ask the power companies to lower their profit margins.**

This can be done. In fact, this was already done by the Department of Energy (DoE) and the Philippine Electricity Market Corporation (PEMC) when they lowered the price offer cap of generation companies at the Wholesale Electricity Spot Market (WESM) to P32/kWh from P62/kWh – this was based on their testimony at the Energy Committee hearing last week. If the price cap can be reduced by half of its original amount, then there could be so much leeway or room for negotiation to lower the amount to be collected by generation companies that supplied power last November-December 2013 between P62/kWh and P32/kWh. At P62/kwh, as the clearing price in WESM between November-December 2013, all power companies that supplied power at that period have undoubtedly raked-in so much profit.

- **The Energy Regulatory Commission should withdraw its December 9 approval of Meralco rate hike. Instead, it should immediately conduct due process where consumers can participate, and determine as well if there was gaming or market abuse before granting the power rate increase being sought by Meralco and the generation companies.**

The approval of the Meralco price hike by the ERC without undertaking public hearings and concomitant investigations as to the simultaneous shutdowns of the Malampaya plant and the other independent power producers and the market behaviour of Meralco is violative of the EPIRA mandate for the ERC to protect consumers against anti-competitive behaviour and market abuse.

Red alert bells should already have been ringing when ERC saw a Php. 4.15 per kwh tariff increase and a

WESM where some IPPs were selling at Php. 62 per kwh. The ERC should already have been forewarned as to the danger of overrecovery of generation costs.

Apologists for the power industry want us to accept that when the Malampaya facility was shutdown for scheduled maintenance and when coincidentally the other power providers of MERALCO were hit by force majeure outages, all of these fell within the allowable market activities of the EPIRA and also within bounds of the implementing rules and regulations of the ERC. They would have us believe that some IPPs saw the opportunity and just took advantage of the rules and the law to make significant profits, that no one is at fault and therefore no one is to blame.

- **The Executive Branch can step-in to either lower the price cap on offers at the Wholesale Electricity Spot Market or totally suspend the operations of WESM if public interest and or national security is at stake.**

The P32/kWh price cap that the tripartite government body decided to implement should be made retroactive from the time the country was put under a state of national calamity. This will compel recourse so that MERALCO and the power producers enter into cheaper bilateral contracts between themselves. Without WESM, the power producers have no choice but to sell under bilateral contracts to MERALCO which constitutes 70% of the market, and has market dominance. In short it should be a buyer's market (in this case, MERALCO), thus generation companies will be forced to lower their rates.

- **The rate-setting practices and methodologies such as the Performance-Based Rate Methodology (PBR) as well as the Automatic Generation Rate Adjustment (AGRA) should be suspended and replaced by a more transparent mechanism of determining the power rates.**

Both PBR and AGRA violate the EPIRA mandate of having a transparent and reasonable price of electricity. The automatic rate adjustment for generation costs violates due process and the mandate of EPIRA against market abuse; the automatic rate adjustment is tantamount to a surrender by the ERC of its regulatory powers.

The grant of an automatic rate adjustment prevents consumers from raising valid concerns and real objections even as it mandates the collection of additional charges from them. It effectively precludes any prior challenge to the claims of MERALCO for additional generation charges without subjecting those claims to the legal standards of whether those economic costs being recovered by MERALCO are PRUDENT and REASONABLE, as to whether such constitutes the obligation of MERALCO to provide its customers power "AT LEAST COST," and whether in passing through the generation charges, MERALCO acted in compliance with its obligations under its franchise.

- **Revoke franchise license of abusive or misbehaving power companies.**

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|  | <ul style="list-style-type: none"><li>• <b>The 16<sup>th</sup> Congress should change EPIRA in order to strengthen protection of consumers from market power abuse.</b> These changes shall include:<ul style="list-style-type: none"><li>○ Declaring power generation a public utility, thus subject to profit regulation;</li><li>○ Replacing the current un-transparent rate-setting methodology (PBR) with a simplified and transparent formula based on a 12% ceiling on profits and net income</li><li>○ Effective prohibition of cross-ownership between the generation, distribution, and transmission sectors.</li><li>○ Ensuring representation of workers and consumers in the Energy Regulatory Commission as well as in the oversight body over WESM.</li><li>○ Ensuring shareholding dispersal to broaden ownership base, de-monopolize the power industry, and prevent or limit market control of few companies or families.</li></ul></li></ul> |  |  |
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