

PROPOSED AMENDMENTS TO THE EPIRA LAW (RA 9136)

PIPPA AND GENERATORS
17 January 2014 Legend Hotel Villas

PROPONENT/SUMMARY OF PROPOSED AMENDMENTS	SPECIFIC PROVISION(S) AFFECTED	PROPOSED REWORDINGS OF PROVISION	RATIONALE/DISCUSSION
CHANGES IN THE WESM RULES AND MANUALS			
<p>General Discussions in amending EPIRA</p>			<p>MR. ERNIE PANTANGCO</p> <p>Citing a recent study of USAID on how to address the current high power cost compared among our ASEAN neighbors, Mr. Pantangco emphasized that there are specific recommendations made in the report. He noted that the tax component of our power bill has a significant increase in the cost structure. He recommended to the DOE to ensure that the cost of power is reasonable. He also highlighted what needs to be done such as addressing impositions of the local government which should be realistic. He likewise cautioned the limited time it would take for the whole process of amending a law noting that Presidential election is forthcoming by 2016.. The period of time of conducting public consultations and its finalization will be overtaken by time before its endorsement to the JCPC or Power Commission.</p> <p>MR. ALLAN ORTIZ (SAN MIGUEL)</p> <p>Mr. Ortiz expressed his reservation in amending EPIRA noting that if this will be pursued it will open a “Pandora’s Box” since all issues will be heavily debated. He instead proposed to enact a new power bill to serve as EPIRA Part 2. He reasoned out that EPIRA 2 would complement the original RA 9136. He also opined</p>

			<p>that with a new law there would be new provisions and components that will probably be more efficient and quicker rather than having a numerous opinion and recommendations. He further cautioned to avoid debate and to keep EPIRA 1 not open and prone to heavy debate among combative group.</p> <p>On the issue of the result of the USAID study where our current power rate ranks high among our ASEAN neighbors, Mr. Ortiz explained that WESM is currently not operating as a fully functioning market. WESM is not complete yet since we have no sufficient supply and reserve capacities. As a result of short in supply, WESM prices increases and thus this should not be compared with other ASEAN market. Our market is not yet fully operational we are still going there.</p> <p>JOE MAGUILA</p> <p>Ms. Maguila acknowledge the comments discussed and noted that the Focus Group Discussion (FGD) would proceed with an improve design for its succeeding series of consultations with a theme of achieving energy security at reasonable cost.</p>
<p>Modification of Must Offer Rule:</p> <ul style="list-style-type: none"> Allow the plants that do not want to offer any capacity to be called only on a last resort without setting the market price; 	<p>EPIRA Section 30 Wholesale Electricity Spot Market</p>		<p>Mr. MIGUEL ABOITIZ (PIPPA)</p> <p>Mr. Aboitiz highlighted that PIPPA’s proposal is divided into two major changes. The first is on the WESM Rules and the other covers policies of the regulatory commission.</p> <p>He noted that between the months of November up to December 2013 prices in WESM were set at maximum even during off-peak period which was very unusual among electricity spot market. He explained that this was as a result of the provision on must offer</p>

<ul style="list-style-type: none"> • Use a "day ahead" price 			<p>rule wherein traders offer at a maximum offer price hoping not to be dispatched but with no intention to set and clear at such a high price.</p> <p>He proposed to change or to remove the provision of the must offer rule; or if this will be retained, this should be modified with no offer status. He consider that the plant would be on a call-on status where the plant will not set and clear the price but will only be available during emergency operation.</p> <p>MR. ALLAN ORTIZ (SAN MIGUEL)</p> <p>Mr. Ortiz explained that the WESM provision on the must offer rule was originally designed as an anti-collusion among market traders. Traders are required to bid and be exposed in the market, however, since there exist a lack of supply bids this created a problem. Currently we don't have yet a fully operational market.</p> <p>Mr. MIGUEL ABOITIZ (PIPPA)</p> <p>Mr. Aboitiz also pointed out that most power plants ideally want to run and operate more than one hour. He proposed to consider having a day-ahead market to efficiently plan for the next day operation. He noted that there is no need to change the Market Management System (MMS) but would only entail amending the WESM Rules.</p> <p>As experienced of having unplanned plant outages, both the Malaya and Limay thermal plants are needed to provide stand by capacities and should be allowed to be dispatched.</p>
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<p>discovery and allow plants that are not running to submit offers ;</p> <ul style="list-style-type: none"> • Allows plants like Malaya time to start-up; 			
<p>Switching to "day-ahead" delivery market:</p> <ul style="list-style-type: none"> • Does not require any change of software, only a change in the rules; • Most other markets operate this way; • More resistant to hourly price volatility; 	<p>EPIRA Section 30 Wholesale Electricity Spot Market</p>		
<p>Establishment of a forward market for power:</p> <ul style="list-style-type: none"> • Based on Contract For Differences or "CFDs", which the WESM is originally designed to have; 	<p>EPIRA Section 30 Wholesale Electricity Spot Market</p>		<p>PIPPA proposed to establish a forward market for WESM where there will be a generator- to-generator transaction based on Contract for Differences (CFD). It was noted that current practice among most Distribution Utilities is to use a derivative wherein any gains are passes to its consumers, however, cost are exclusively charged to utilities. Under the CFD scheme, this can be</p>

<ul style="list-style-type: none"> • Encourage utilities to trade in this market to cover any future exposure they may have; • Most markets have an active forward and CFD market; • Makes contracts quicker to negotiate; only three values to agree on; 			<p>tied up with financial markets where financing banks can also compete. CFDs are simple in principle and are similar to swot agreement where contracts can be signed within one day period.</p>
<p>Turn on demand bidding in WESM:</p> <ul style="list-style-type: none"> • Utilities and industries have the option to curtail themselves when the price of power becomes too high; • Most other markets have active demand bidding; • Provides utilities with an <u>optional</u> tool to limit customer price volatility; • Allows customers to have an indirect method of taming/controlling the prices offered by generators; 	<p>EPIRA Section 30 Wholesale Electricity Spot Market</p>		<p>Another proposal that was presented was to consider changing the WESM Rules and consider demand bidding. Under this scheme, utilities and consuming industries can dictate their off take level in the market. This should be considered as an option which may hurt most generators but will result to stable prices.</p>
<p>Further enhancement of Administrative Pricing mechanism:</p>	<p>EPIRA Section 30 Wholesale Electricity Spot</p>		<p>PIPPA proposed to consider enhancing the Administrative Pricing</p>

<ul style="list-style-type: none"> • Revise the (recently introduced) trigger for the Administrative Pricing to include (in addition to the 4% supply shortfall): <ul style="list-style-type: none"> ○ The exhaustion of all possible Must Run generators and; ○ A trigger related to Price- the market can be short on reserves but prices might still remain low 	Market		Mechanism. The application of this mechanism should further be reviewed.
<p>Publish and explain methodology for setting the WESM price ceiling :</p> <ul style="list-style-type: none"> • Explanation/basis on how WESM offer cap or price cap was determined; 	EPIRA Section 30 Wholesale Electricity Spot Market		There is a need to publish the methodology for setting WESM price offer cap. This should be presented in a more detailed presentation. The DOE is requested to explain this to the public for a clear understanding.
ERC REGULATORY ISSUES			
<p>Requiring utilities to contract 100% of their projected peak demand:</p> <ul style="list-style-type: none"> • We propose 100% contracting of their peak demand for the next 3 years; • Chile does this; 			

<ul style="list-style-type: none"> • However, ECs/DUs should not be penalized if their actual load is less than what they contracted because their projections were not met; 			
<p>Publishing of annual planned outages by the System Operator:</p> <ul style="list-style-type: none"> • All distribution utilities will see when are the critical weeks and find cover during these periods; • Currently, it is treated as confidential information; 			<p>It was noted that the publication of annual planned outages of NGCP are treated as confidential in nature. If this is treated as confidential matter, why is it that there are other entities (as alleged) which has access to have this information creating disadvantages to other traders.</p>
<p>OTHER ISSUES DISCUSSED</p>			
<p>“Writ of Kalikasan”</p>			<p>Mr. MIGUEL ABOITIZ (PIPPA)</p> <p>PIPPA during its regular meeting on their discussion on EPIRA conclude that there are no shortage of interest where investors are wanting to put up power plants. It was observed that most of these projects are put on hold causing delay on their construction schedules. It was highlighted that most Renewable Energy (RE) electric power generating plants were greatly affected by the “writ of kalikasan” rulings which were based on violation of environmental rules.</p> <p>PIPPA proposed to closely study and review the said <i>Writ of</i></p>

<p>Securing Permits and Required Documents (DOE, SEC, BOI, and GIS)</p>			<p><i>Kalikasan</i> rulings to allow RE technologies comply with the environmental rules. It was also reported that currently it is too difficult to secure ASPA and SAPA agreement.</p> <p>Other issue that was raised by Mr. Aboitiz was the long process in securing endorsement from the DOE. It was stressed that it is taxing among applicants to obtain separate applications from SEC, BOI, and GIS (grid impact study). It was suggested that why not simplify the application process like having a single endorsement document for one (1) project. For the record it was reported that it takes three (3) months to secure a certificate and this must be addressed by the DOE. In jest, Mr. Aboitiz noted that it takes 150 signatures to build a power plant and 120 permits must be secured.</p> <p>Finally on the regulatory issue, it was suggested that the ERC should review its regulatory restrictions on the pass-on provisions among the distribution utilities.</p>
<p>Regulatory Pass-On Rulings</p>			<p>MERALCO (POWER GEN)</p> <p>The Writ of Kailkasan previously issued by the Supreme Court last June 2012 sought to deal with environmental damage posed by the construction of power plant resulted in the delay for 2 years on Meralco PowerGen’s coal-fired power plant in Subic. The plant construction was supposed to be finished end of 2015.</p> <p>Aside from Supreme Court’s issuance of Writ of Kalikasan against</p>

<p>Supreme Court's TRO Decision on Meralco's Power Rate Hike for November and December</p>			<p>the construction of the said coal-fired power plant; the Court of Appeals' declaration as invalid the environmental compliance certificate (ECC) issued in favor of Meralco's PowerGen posed additional problems in the construction schedule. Both issuance of Writ of Kalikasan by the Supreme court and invalidation of ECC by the Court of Appeals caused financial impacts among investors among coal-fired power plant projects.</p> <p>MR. ERNIE PANTANGCO</p> <p>As Chairman of the Committee on Energy, Mr. Pantangco expressed that members of the Board during its regular meetings are conscious as to the conduct of FGD consultative meetings in the review of EPIRA. However, the Supreme Court's issuance of a TRO on Meralco's power rate hike for the December 2013 incident posed an alarming issue since it will impact their financing agencies. Supreme Court's decision preventing Meralco to imposed an increase in its rates will cause a big concern among creditors of power companies.</p> <p>It was likewise stressed that the DOE should reconsider amending EPIRA noting that if this will be amended it will cause a certain regulatory uncertainty given that the sanctity of current contract will be put in question. He reported that several power plants about to pursue financial closure among its creditors were held off. Primarily, their current concern is on the regulatory affects of having moving contracts what more with future contracts. He expressed that they are willing to consider other options to avoid regulatory uncertainty.</p>
			<p>JOHN (GMC?)</p> <p>It was reiterated that the FGD should focus in ensuring energy security at reasonable cost. Concern was raised wherein the challenge lies among power plant investors having no idea on the environment. If EPIRA will be amended this will serve as a signal that the environment is not yet solid posing problems how to finance their plans in putting up power plants. This will result to</p>

			<p>hesitation among investors on their planned investment.</p> <p>USEC. RAUL B. AGUILOS (DOE)</p> <p>Usec. Aguilos clarified that objectively the FGD is not directly aiming towards amending EPIRA but these are meant to solicit recommendations coming from various sector of the industry. The DOE would not push for amendments but solely to consolidate all inputs and finalize gathered issues and concerns from various sectors.</p>
<p>BIR VAT Issue</p>			<p>MR. ERNIE PANTANGCO</p> <p>Mr. Pantangco informed that PIPPA previously prepared and submitted their proposed draft VAT circular which is still pending with no resolution yet. He also posed a query whether PEMC is tax exempt or is a taxable entity. This issue has been pending for the past 4 years. He likewise reiterated the USAID study which compared our power rates with those among our ASEAN neighbors. He noted that our local rates are subjected with VAT being a major cost component. He proposed to review the imposition of VAT resulting to our being uncompetitive with our ASEAN neighbors.</p> <p>ATTY. AMANDA BENGSON (RESA)</p> <p>Concern was raised how to impose withholding of taxes among customers. There is confusion how to apply tax exemption within their franchise area. It was reported that two years ago imposition of VAT was deferred in the books of company. As</p>

			<p>required in the collection of VAT, the DUs are required to have a separate account and automatically collect such charges. Up to the present, the collection of VAT charges is still uncertainty and has not been resolved. The BIR allowed status quo which is initially good for DUs. Among the RES/Suppliers it is not clear what charges are pass thru or not. RES impose a 12% charges though the customers' status are currently VAT exempt. RES will pay for this VAT charges but are not pass-thru.</p> <p>It was noted that since the imposition of VAT is not yet final, this situation creates difficulty to discuss the collection among its customers especially for those exempted. It was expressed that utilities could not rely on the BIR ruling; and at least give a level of comfort since it takes years to collect these charges.</p> <p>It was likewise proposed that both the distribution utilities and generators should come up with a standard book keeping in the imposition of Tax.</p> <p>DIR. MYLENE C. CAPONGCOL (DOE)</p> <p>It was reported that a meeting was held with the representatives of the BIR but was informed that the final approval of VAT imposition is still for approval. How to move forward is a need to issue a Department Circular which will be submitted.</p>
Preparation for 2014 Summer Months			<p>MR. ALLAN ORTIZ (SAN MIGUEL)</p> <p>Mr.Ortiz recalled that consumers' anger was ignited by the November to December 2013 high power rate charges. He then reminded that a heat wave was experienced in Australia last</p>

			<p>December being its summer month. He then posed that instead of amending the law attention must be focused this forthcoming summer months and determine whether there will be a looming power outages. He recommended that we need to prepare for these summer months especially in Visayas and Mindanao. Noting that with zero additional power supply anger will spill over. He opined that it will be a wrong approach to focus our current attention in amending EPIRA but instead we to focus and prepare for the summer months on any possible occurrence of heat wave . He noted that we only have two months period to prepare.</p>
<p>Previous DOE BIR Meeting Agreement on VAT</p>			<p>MR. JAY LAYUG (PUNO LAW OFFICE)</p> <p>Mr. Layug expressed his reservation and stressed not to solely focus FGD effort to amend EPIRA. Attention should be focused on other important issues such as local government units concern. The Supreme Court decision should not be openly discussed.</p> <p>He likewise expressed his observation on other issues such as absence of issuance among upstream sector contractors. He likewise shared that in the previous administration, several meetings with the BIR were held in which a regulation was supposed to have been issued already. He called the attention of Usec. Aguilos for assistance to arrange a meeting with the BIR and to follow up previous agreements and finalize the issue.</p>
<p>NGCP Outage Schedules</p>			<p>MS. CHERRY JAVIER (APC)</p>

			Aboitiz representative openly proposed to have access on information on NGCP's maintenance schedule to be know among all market participants. She noted that NGCP treat this as confidential information.
VAT on RE Technologies			<p>HEDCOR</p> <p>It was highlighted that for renewable energy technologies, currently there are no clear regulations issued by the BIR. Based from the current situation, offered incentives and tax reliefs are still uncertain and are just written on papers. The BIR should finalize and offer more incentives. Numerous permits that applied had been issued and this needs to be fast track that needs government actions.</p>
BIR, BOI, RE Issues			<p>MR. ERNIE PANTANGCO</p> <p>Mr. Pantangco proposed to have a separate meeting with the DOE to present a format prepared by NREB which delineates the specific role for the BIR and the DOE.</p> <p>It was likewise cited that despite the approval of several permits why is it that there are limited new capacities that are on stream? He observed that the basic problem lies in harmonizing the policies of each department. Typically, the BOI must revisit the one- stop-shop. If this is doable, there will be lots of power to take off and thus the need to revisit the basic requirements. Despite all enacted RE laws we are still awaiting for the escalation and the full development of RE.</p>

Integrated National Grid

USEC. RAUL AGUILOS

Usec. Aguilos responded that there is a need to streamline current procedures among approving agencies with various sectors in a fast track manner in order to address security of supply.

MR. ALLAN ORTIZ (SAN MIGUEL CORPORATION)

Mr. Ortiz reiterated that there are no shortage of investors in the power sector, however, by 2017 and 2018 possible surplus of power would just start within these years. He raised concern about the coming 2014 up to 2015 wherein only a limited power would come in. He raised concern about the new regulation whether possible amendments or a new law is needed to have a transmission grid development. He proposed to formulate a regulation geared towards an integrated national grid in order to improve transmission of power between grids; and likewise strengthen existing transmission line. Further, he cited the need to set up a national grid in order to have a fully functioning transmission grid system.

CHERIE JAVIER (ABOITIZ)

Ms. Javier requested the DOE to provide copies of proposed comments and suggestions that will be generated from the focus group discussions.

MR. MIGUEL ABOITIZ (APC)

<p>Provision of Copies of FGD Consultation Highlights</p> <p>Lifting of Visayas Grid Market Suspension</p>			<p>Mr. Aboitiz clamored to lift the suspension of Visayas grid after this was suspended as a result of Typhoon Yolanda. He informed that currently some plants are suppressed to run even though it can commit available MW capacities. He suggested lifting the market suspension to be integrated with Luzon WESM. Director Capongcol replied that it is ERC's mandate to determine and lift market suspension.</p>
<p>Summary of Agreements</p>			<p>The following is a summary of agreements that were presented and discussed among the members of PIPPA, RESA, Generators and Suppliers</p> <ol style="list-style-type: none"> 1. The DOE will provide copies of the presentation and proposed EPIRA amendments presented during the FGD consultations. These will be forwarded among the nominated Sectoral representatives upon consolidation of respective positions. 2. It was proposed that the FGD discussion should include issues among SPUG/missionary areas and should not be confined solely within the main grids. 3. PIPPA to provide a copy of the draft circular that was previously prepared and submitted to Congress for DOE's review and reference to facilitate BIR processing. 4. DOE to arrange a meeting with the BIR to request for update

			<p>and current status of pending imposition of VAT.</p> <ol style="list-style-type: none"> 5. DOE to include transmission related concerns such as the interconnection of Mindanao with the main grid or the formation of a national grid. 6. The DOE will accept additional comments/suggestion either EPIRA or energy security related issues that were not discussed during the scheduled FGD by sending it thru email. 7. DOE to include all other related discussions done in the past and/or ongoing energy studies that maybe useful for amending EPIRA. 8. Conduct a separate meeting aimed to harmonize the EPIRA and the Renewable Energy Law. 9. Aside from reviewing the EPIRA Law, DOE to consider spot market operation issues and concerns as presented by PIPPA.
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