

Consultative Dialogue on the EPIRA Review

Presenter: _____

Sector : Business/Chambers

Issue	Specific Provision Affected	Proposal
Requirement for generation companies and DUs to offer and sell 15.0 percent of their shares of stock to the public	<p>Sec. 43 Functions of the ERC paragraph (t) Perform such other regulatory functions as are appropriate and necessary in order to ensure the successful restructuring and modernization of the electric power industry, such as, but not limited to, the rules and guidelines under which generation companies, distribution utilities which are not publicly listed shall offer and sell to the public a portion not less than fifteen percent (15%) of their common shares of stocks:</p> <p><i>Provided, however,</i> That generation companies, distribution utilities or their respective holding companies that are already listed in the PSE are deemed in compliance. For existing companies, such public offering shall be implemented not later than five (5) years from the effectivity of this Act. New companies shall implement their respective public offerings not later than five (5) years from the issuance of their certificate of compliance.</p>	<p>Exclude RE facilities generating small capacities from Sec. 43 paragraph t.</p> <ul style="list-style-type: none"> • Define small capacities
Compliance of self-generation facilities to various regulations for generation companies	Sec. 4. Definition of terms. Paragraph (x) Generation companies	Differentiate self-generating facilities from regular generators selling electricity to the grid
Classification of building with own generators	EPIRA definition of terms. (bb) Independent Power Producer” or “IPP” refers to an existing power generating entity which is not owned by NPC;	- Building with their own generators should not be regarded as an IPP which are required to undergo registration process with ERC.
Acceleration of retail competition and open access	<p>Sec. 31 of EPIRA <i>Retail Competition and Open Access.</i></p> <p>XXX</p>	<p>open access should be accelerated down to the household level</p> <p>the threshold level for the contestable customer should be downgraded to 750 kW</p>

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	<p>Two (2) years thereafter, the threshold level for the contestable market shall be reduced to seven hundred fifty kilowatts (750kW). At this level, aggregators shall be allowed to supply electricity to end-users whose aggregate demand within a contiguous area is at least seven hundred fifty kilowatts (750kW). Subsequently and every year thereafter, the ERC shall evaluate the performance of the market. On the basis of such evaluation, it shall gradually reduce threshold level until it reaches the household demand level. In the case of electric cooperatives, retail competition and open access shall be implemented not earlier than five (5) years upon the effectivity of this Act.</p>	
<ul style="list-style-type: none"> - Open Access Implementing Rules and Regulations 	<ul style="list-style-type: none"> - SEC. 31. Retail Competition and Open Access. xxx Upon the initial implementation of open access, the ERC shall allow all electricity end-users with a monthly average peak demand of at least one megawatt (1MW) for the preceding twelve (12) months to be the contestable market. 	<p>Open Access should not be mandatory but voluntary</p> <p>1 MW in case of building it should be for the whole building, should be added up</p> <p>Mindanao and small electric cooperatives should be exempted specifically utilities with less than 50MW requirement</p>
<ul style="list-style-type: none"> - Allow contestable customers to source power directly from generators or IPPS not just from RES or local RES 	<ul style="list-style-type: none"> - Section 4. Definition of Terms (h) "Contestable Market" refers to the electricity end-users who have a choice of a supplier of electricity, as may be determined by the ERC in accordance with this Act; 	<p>Contestable Customer should be allowed to source power directly from generators or IPPs not just from RES or local RES.</p>

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	<p>(xx) "Supplier" refers to any person or entity authorized by the ERC to sell, broker, market or aggregate electricity to the end-users;</p> <p>(zz) "Supply of Electricity" means the sale of electricity by a party other than a generator or a distributor in the franchise area of a distribution utility using the wires of the distribution utility concerned;</p>	
- Giving the contestable customers the right or option to remain within the present DU	- The same as above	<p>To optimize the rationale of the law which is to give the customers the power of choice, then DOE to give this particular option to the contestable customers.</p> <p>Contestable Customers should be allowed to remain/return to their franchised DU</p>
- Allow economic zones and industrial estates to directly connect to the grid	- The same as above	relax the present rules and allow contestable customers to directly connect to the grid.
- Providing electricity supply in least cost manner for the captive market.	- Section 23 The distribution utility shall have the obligation to supply electricity in the least cost manner to its captive market, subject to the collection of retail rate duly approved by ERC.	Expound on the safeguards of the captive market

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Franchising power	<p>- Section 27 Franchising Power in the Electric Power Sector. The power to grant franchises to persons engaged in the transmission and distribution of electricity shall be vested exclusively in the Congress of the Philippines and all laws inconsistent with this Act particularly, but not limited to, Section 43 of PD 269, otherwise known as the “National Electrification Decree”, are hereby deemed repealed or modified accordingly: Provided, That all existing franchises shall be allowed to their full term: Provided, further, That in the case of electric cooperatives, renewals and cancellations shall remain with the National Electrification Commission under the National Electrification Administration for five (5) more years after the enactment of this Act.</p>	<p>detailed discussion on embedded generators should be included</p> <p>there should be an anti-trust law</p>
Privatization of Agus and Pulangui	<p>Section 47 (f) The Agus and Pulangui complexes in Mindanao shall be excluded from among the generation companies that will be initially privatized. The ownership shall be transferred to the PSALM Corp. and both shall continue to be operated by the NPC. Said complexes may be privatized not earlier than ten (10) years from the effectivity of this Act, and except for Agus III, shall not be subject to Build-Operate-Transfer (B-O-T), Build-Rehabilitate-Operate-Transfer (B-R-O-T) and other variations thereof pursuant to Republic Act No. 6957, as amended by Republic Act No. 7718. The</p>	<p>The hydroelectric power plant facilities like Agus I to Agus VII and Pulangui IV may be operated through concession, operation and maintenance contract.</p> <p>The treatment of these complexes should be the same as the conditions accorded to Transco in Sec. 21, i.e., option of privatization through an outright sale or (O&M) concession contract.</p>

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	privatization of Agus and Pulangui complexes shall be left to the discretion of PSALM Corp. in consultation with Congress.	
	<p>Section 47 <i>NPC Privatization</i> – Except for the assets of SPUG, the generation assets, real estate, and other disposable assets as well as IPP contracts of NPC shall be privatized in Accordance with this Act.</p>	<p>To remove period after the word “Act,” <i>replace it with a comma and add “unless these assets are necessary for the maintenance and security of supplies.”</i></p> <p>(f) “The operating Agus and Pulangui Plant complexes in Mindanao shall not be privatized and may be operated by the private sector under Operation and Maintenance under Concessionaire Contract”.</p>
		<p>Section 47, <u>NPC Privatization,</u> EPIRA Law Additional Part (k)</p> <p>(k) The unique Mindanao Grid with Energy Storage facility - Lake Lanao - shall be operated based on its Rule Curve (RC) for its optimal operation. Hybrid Economic Dispatch (HED) shall be adopted in this manner:</p> <p>In case of <u>dry months</u> when actual lake elevation is below the RC, the NPC is authorized to “Buy Fossil Energy” to limit water withdrawal and store energy in the lake to be reserved</p>

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		<p>for “Day Peak” operation, thereby making Fossil Energy resources as Based Plants and Hydro Plants as “Peaking” plants.</p> <p>In case of <u>wet months</u> when actual Lake elevation is above the RC, Hydro Plants shall be the Based Plants (priority dispatched being the cheapest) and assigning Fossil Energy as “Peaking” Plants (OIL based).</p>
		<p>Section 47, NPC Privatization, EPIRA Law</p> <p>Additional Part (I)</p> <p>Scope of Privatization of NPC assets covers the generation assets(operating), real estates, disposable assets and IPP contracts as provided by EPIRA Law, Section 47.</p> <p>Per Rule 23, IRR of EPIRA, Section 2, Scope of Privatization are: (i) generating assets, machineries & equipment, (ii) real estates and improvements, (iii) facilities & properties.</p> <p>Whether existing Agus & Pulangui Plant complexes are privatized or not, it has no relevance on development of potential hydro projects by the Private Sector.</p>

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Non-privatization of MALAYA	Section 47	Malaya should not be privatized
Ownership of hydropower resources		Available hydropower in Mindanao should be reserved for the government
Emergency Power Crisis	<p>Section 71 <i>Electric Power Crisis Provision</i> – Upon the determination by the President of the Philippines of an imminent shortage of the supply of electricity, the Congress may authorize, through a joint resolution, the establishment of additional generating capacity under such terms and conditions as it may approve.</p>	<p>We should not wait for the approval of the Congress because it is an emergency situation. The acquisition of additional generating capacity alone would take 3-5 years.</p> <p>Emergency power should not emanate from legislative process of Congress as debates will only worsen a crisis, but given to the executive branch directly. Emergency power is temporary in nature, just as the President has trade-related taxation power to issue Executive Orders for temporary tax measures when Congress is not in session. Tariff Commission initially processes such EO before bringing to the Cabinet. In the case of power crisis, the initial step may be brought to ERC for prompt disposition and elevate to the Cabinet for final disposition of the President to pronounce a Crisis Situation and issue the mitigating EO.</p> <p>The President should be given automatic power to procure from other sources of power, maybe through DOE or PSALM.</p>

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		<p>Upon the determination by the President of the Philippines of an imminent shortage of the supply of electricity, “the president shall procure additional power supply from operating power plants of Independent Power Producers (IPP).”</p>
	<p>Section 47 (j) NPC may generate and sell electricity only from the undisposed generating assets and IPP contracts of PSALM Corp. and shall not incur any new obligations to purchase power through bilateral contracts with generation companies or other suppliers.</p>	<p>To be suspended or amended by placing a comma instead of a period after the word “<i>suppliers</i>” and add “<i>except during emergency situations.</i>”</p> <p>The proposed amendment of Section 71, which bestows power upon the President of the Philippines to automatically procure additional power supply in case of imminent shortage, must suspend or amend Section 47 (j) of the Act, so that NPC, PSALM or DOE could engage in temporary short-term contract to patch up some deficiencies in the grid.</p>
<p>Monopoly and Market Power Abuse</p>	<p>Section 45 (a) No company or related group can own, operate or control more than thirty percent (30%) of the installed generating capacity of a grid and/or twenty-five percent (25%) of the national installed generating capacity. “Related group” includes a person’s business interests, including its</p>	<p>To reduce from 30% to 25% and to specify/indicate that 25% refers to the grids: Luzon, Visayas and Mindanao.</p> <p>Include provision for cartel</p> <p>Revisit the cap to a level that would prevent market</p>

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	subsidiaries, affiliates, directors or officers or any of their relatives by consanguinity or affinity, legitimate or common law, within the fourth civil degree.	concentration
	Section 45 (b, 2nd sentence) For the purpose of preventing market power abuse between associated firms engaged in generation and distribution, no distribution utility shall be allowed to source from bilateral power supply contracts more than fifty percent (50%) of its total demand from an associated firm engaged in generation but such limitation, however, shall not prejudice contracts entered into prior to the effectivity of this Act.	They should not be sourcing from their own affiliates. Moreover, 50% is a bit high and might be prone to abuse. If they truly want to be free from political abuse, they should limit cross-ownership to 10%.
	Section 45 (8th paragraph) For purposes of this Section, the grid basis shall consist of three (3) separate grids, namely Luzon, Visayas and Mindanao. The ERC shall have the authority to modify or amend this definition of a grid when two or more of the three separate grids become sufficiently interconnected to constitute a single grid or as conditions may otherwise permit.	To be removed
NPC Stranded Debt	Section 32 (3rd paragraph) The national government shall directly assume a portion of the financial obligations of NPC in an amount not to exceed Two hundred billion pesos (P200,000,000,000.00).	To amend the 3 rd paragraph of Section 32 or to restudy the whole EPIRA and determine whether to repeal or abolish it. The NPC system must be improved by looking for investors. Removal of stranded cost, VAT, benefits to host

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		communities
Exemption of PSALM from the Salary Standardization Law	Section 54 <i>Exemption from the Salary Standardization Law –</i> The salaries and benefits of employees in the PSALM Corp. shall be exempt from Republic Act No. 6758 and shall be fixed by the PSALM Corp. Board.	To be removed or to insert <i>“upon the approval of the President of the Philippines;” “upon the approval of the Department of Energy;” or “upon the approval of the Energy Regulatory Commission.”</i>
Implementation of Wholesale Electricity Spot Market in Mindanao		Allow WESM in Mindanao but revisit/redefine the WESM rules .
Responsibilities of DOE	Rule 3, <u>Responsibilities of DOE, etc.</u> IRR Section 1, Section 37, <u>Powers and Functions of the DOE</u> EPIRA	In addition to its existing power and function, the DOE shall supervise not only the restructuring of the electricity industry but also oversee the <u>implementation of the EPIRA Law.</u>
	New Provision To be inserted wherever is appropriate in amended EPIRA Law	Professionalize the appointment of key officers of DOE, ERC and related agencies that their expertise, experience and skills shall be relevant to the “energy sector” for <u>better technical understanding of complex energy management, efficient problem solving and</u>

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		<u>decision making, effective implementation and administration of the EPIRA Law.</u>
Prioritization of Renewable Energy		Whatever law we have, we need to see to it that renewable energy should always be given top priority. There should be strict implementation as to the dispatching of all renewable energy resources.

Consolidated Issues on EPIRA Implementation – Business/Sector/Chamber

Sector: Business and Chambers of Commerce

Date/Venue: 18 February 2014

Rapporteur: LGB et al

Facilitator: May Militante

Issue	Specific Provision Affected	Proposed Policies/Programs/Changes
IRR of EPIRA and Rules on WESM regulation	IRR of EPIRA and Rules on WESM regulation	<ul style="list-style-type: none"> - Modify the must offer rule - Switch to day-ahead delivery market - Establish a forward market for power - Turn on demand bidding in WESM - Stream line approval process for new power plants (ERC) - Resolve impediments to the construction of new power plants - Provide incentives for the power industry (BOI) - Push open access - Put pressure on NGCP to fulfill their mandate to contract quantities - Monitor the behavior of monopolies
Grid Impact Studies	Philippine Grid Code 5.3.3. Grid Impact Studies	Allow third party consultancy in the preparation of the GIS and not to limit it into the monopoly of NGCP
Systems Operations		Remove from NGCP the Systems Operations and transfer to the National Transmission Company or other appropriate government entities
WESM Rules	WESM Rules	ERC and WESM To look into the suggested article and maybe adopt it in Philippine WESM – Adoption of Capacity Market
<ul style="list-style-type: none"> - Rate base revaluation - Pricing of Electricity 		<ul style="list-style-type: none"> - Go back to rate base revaluation to reduce the price of electricity

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Malampaya Funds		To use Malampaya Funds to lower the electricity rates - There should be another law to cover this
Electricity Rates		- Revive Nuclear Power Program
- Impediments to the construction of new power plants - Benefits to host communities (ER 1-94)	ER 1-94 Benefits to Host Communities	- Declare energy projects as projects of national interest to overturn oppositions from the local governments and indigenous peoples - Fix the dis-harmonization between the benefits to host communities between the EPIRA and the Renewable Energy Law
- Taxes		- Removal of energy taxes
- Optimal Load Dispatch -		- To go on optimal load dispatch