

Consultative Dialogue on the EPIRA Review

Presentor: Wendell V. Ballesteros

Sector : Distribution Sector

Issue	Specific Provision Affected	Proposal
<p align="center"><b>1. NPC PRIVATIZATION AND GENERATION SECTOR</b></p>		
<p>Privatization of the remaining assets of the National Power Corporation</p>	<p>Chapter V, Section 47. NPC Privatization</p> <p>Privatization of all generation assets, real estate, and other disposal assets as well as IPP contracts of NPC, except SPUG assets</p>	<ul style="list-style-type: none"> <li>▪ Maintain the existence of the National Power Corporation (NPC)</li> <li>▪ Except for the power barges, the remaining NPC generating assets as well as real estate will no longer be PRIVATIZED</li> <li>▪ National Power Corporation shall generate and sell electricity from its existing undisposed power plants and IPP contracts including new power supply portfolio which should not be less than the required ancillary capacity of each grid in Luzon, Visayas and Mindanao plus ten percent (10%).</li> <li>▪ In case of emergency and in order to stabilize the price in the Wholesale Electricity Market, NAPOCOR power plants will operate as base load plants whose generation cost will be determined by ERC based on the technology used.</li> <li>▪ <b>The Government to maintain a level of ownership of the Generation Capacity in a Grid to prevent Market Power Abuse and Anti-Competitive Behaviour of any power industry player</b></li> </ul>

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Privatization of Agus and Pulangui	<p>Chapter V, Section 47(f)</p> <ul style="list-style-type: none"> <li>▪ Exclusion of Agus and Pulangui complexes in Mindanao that will be initially privatized</li> </ul>	<p>Perpetual non-privatization of the Agus and Pulangi Hydro Complexes in Mindanao</p> <p>The government through the NPC shall ensure its immediate rehabilitation to maximize its capacity</p> <p>Creation of a Mindanao Power Corporation (MPC) that will manage and operate the Agus and Pulangi HEPP. The Mindanao Power Corporation shall be a Government Owned and Controlled Corporation (GOCC).</p> <p>Composition in its Board of Directors shall include only the Secretary of the Mindanao Development Authority as Chairman. Other Board members composed of a maximum of five excluding the Chairman shall be a representative of electric Cooperatives in Mindanao, privately owned DU's in Mindanao, consumer organization, business sector representative, and from Lake Lanao Watershed Protection and Development Council.</p>
Regulation of the Generation Sector	Chapter II, Section 6. Generation Sector	<ul style="list-style-type: none"> <li>▪ Remove paragraph 4 – “ Upon implementation of retail competition and open access, the prices charged by a generation company for the supply of electricity shall not be subject to regulation by the ERC except as otherwise provided in this Act.”</li> <li>▪ All sectors in the power industry must be regulated by the ERC.</li> </ul>

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		<p>All prices and rates charged by Generation Company, Transmission Company, Distribution Company and Supply Company shall be subject to regulation by the ERC.</p> <ul style="list-style-type: none"> <li>▪ Generation companies shall submit their CAPEX &amp; OPEX and development plans including their plant maintenance shutdowns to DOE and ERC.</li> <li>▪ Plant maintenance shutdown schedule upon finalization by the system operator shall be published and communicated to all the affected distribution utilities and WESM/IMEM participants.</li> </ul>
<b>2. WHOLESALE ELECTRICITY SPOT MARKET (WESM)</b>		
<p>Creation of a multiple Wholesale Electricity Spot Market with a trade limit of only ten percent (10%) of the market demand</p>	<p>Chapter II, Section 30</p> <ul style="list-style-type: none"> <li>▪ Establishment of WESM by DOE</li> <li>▪ Formulation of WESM Rules by DOE</li> <li>▪ Market Operator Composition</li> </ul>	<ul style="list-style-type: none"> <li>▪ Within six months from the effectivity of this amendatory act, the Energy Regulatory Commission shall accept and issue permits for applicants as a Wholesale Electricity Spot Market operator. For this purpose the existing Philippine Electricity Market Corporation (PEMC) including the Interim Mindanao Electricity Market operated by PEMC shall be abolish and a multiple market operator shall be establish in accordance with the rules and guidelines to be promulgated by ERC.</li> </ul>

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<p>Delete the provisions of the Wholesale Electricity Spot Market which is not feasible in the Philippine setting.</p> <p>Line Rental Cost imposed by WESM</p>	<p>Section 45 (c)</p> <p>For the first five (5) years from the establishment of the wholesale electricity spot market, no distribution utility shall source more than ninety percent (90%) of the total demand from bilateral power supply contracts.</p>	<ul style="list-style-type: none"> <li>▪ Delete this provision. The direct participation in the spot market should be a business driven decision.</li>   <li>▪ Revisit the Computation of line rental</li>   <li>▪ DOE to review its study on the best situation for WESM Visayas</li> </ul>
<p><b>3. CREATION OF PSALM</b></p>		
<p>PSALM</p>	<p>Chapter VI, Section 49, 50, 51, 52 53, 54 and 55, particularly the whole Chapter VI</p> <ul style="list-style-type: none"> <li>▪ Creation of PSALM</li> <li>▪ Purpose, Power, Functions, and Property of PSALM</li> </ul>	<ul style="list-style-type: none"> <li>▪ Abolition of the Power sector Asset and Liabilities Management Corporation (PSALM)</li>   <li>▪ To this end Section 50, 51, 52, 53, 54, 55, and 56 of R.A.9136 or EPIRA Law of 2001 is hereby repealed accordingly. Its function and purpose will now be turn-over and carried out by the National Power Corporation including its assets and liabilities in accordance with the new NAPOCOR, created pursuant to this act.</li> </ul>

## Consultative Dialogue on the EPIRA Review

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<b>4. OWNERSHIP</b>		
Ownership Limitations and Restrictions	<p>Chapter IV, Section 45(a)</p> <p>No Company or related group can own, operate or control more than 30% of the installed generating capacity of a grid and/or 25% of the national installed generating capacity</p>	<ul style="list-style-type: none"> <li>▪ No company or related group can own, operate or control more than fifteen percent (15%) of the installed generating capacity of a grid as in Luzon, Visayas and Mindanao grid, the same level of ownership shall be maintained on a per island grid basis even after the interconnection of the three main grids. Related Group includes a person business interest, including its subsidiaries, affiliates, directors or officers or any of their relatives of consanguinity or affinity, legitimate or common law, within the fourth civil degree.</li> <li>▪ The Securities and Exchange Commission (SEC) is hereby tasked to consider in their template of application for registration of all power industry players information relative to above and will be held responsible in case of violation of the provision for any power industry player that can register even not qualified pursuant to the above prohibition.</li> </ul>
Ownership Limitations and Restrictions	<p>Chapter IV, Section 45 (b)</p> <p>Section 45(b)</p> <p>Distribution utilities may enter into bilateral power supply contracts subject to review by</p>	<ul style="list-style-type: none"> <li>▪ For the purpose of preventing market power abuse between associated firms engaged in generation and distribution, Distribution Utility is only allowed to source from bilateral power supply contract of its total demand from its associated firms engaged in generation as follows:</li> </ul>

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	<p>the ERC: Provided, That such review shall only be required for distribution utilities whose markets have not reached household demand level. 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. An associated firm with respect to another entity refers to any person which, alone or together with any other person, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such entity;</p>	<table border="1" data-bbox="1192 391 1913 618"> <thead> <tr> <th><i>DU's Total Demand (MW)</i></th> <th><i>Allowed Bilateral Contract</i></th> </tr> </thead> <tbody> <tr> <td>50 and below</td> <td>60%</td> </tr> <tr> <td>51-100</td> <td>50%</td> </tr> <tr> <td>101-250</td> <td>40%</td> </tr> <tr> <td>251-500 MW</td> <td>30%</td> </tr> <tr> <td>501 and above</td> <td>25%</td> </tr> </tbody> </table> <ul style="list-style-type: none"> <li>▪ Distribution utilities may enter into bilateral power supply contracts subject to review by the ERC: Provided, That such review shall only be required for distribution utilities whose markets have not reached household demand level. <b><i>A distribution utility may be allowed to source from bilateral power supply contracts one hundred percent (100%) of its total demand from its own generating plant or an associated firm engaged in generation. PROVIDED, it will result to a least cost pass on generation charge</i></b> An associated firm with respect to another entity refers to any person which, alone or together with any other person, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such entity;</li> </ul>	<i>DU's Total Demand (MW)</i>	<i>Allowed Bilateral Contract</i>	50 and below	60%	51-100	50%	101-250	40%	251-500 MW	30%	501 and above	25%
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<p>Ownership Limitations and Restrictions</p>	<p>Chapter IV, Section 45(c)</p> <p>For the first 5 years from the establishment of WESM, no DU shall source more than 90% of its total demand from bilateral power</p>	<ul style="list-style-type: none"> <li>▪ Upon operation of the various Wholesale Electricity Market no Distribution Utility shall source more than 90% of its total demand from bilateral contract if the same is more than 15 MW and that there is no available renewable energy sources that can be developed in its franchise area. To the contrary a Distribution Utility with a total demand of 15 MW and below may opt secure its power</li> </ul>												

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Sector : Distribution Sector

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	supply contracts	<p>requirement through bilateral contract or develop its own generating plant especially if renewable energy is available (embedded) in its franchise area.</p> <ul style="list-style-type: none"> <li>▪ <b>DELETE THE PROVISION. THE DIRECT PARTICIPATION IN THE SPOT MARKET SHOULD BE A BUSINESS DRIVEN DECISION.</b></li> </ul>
<b>5. LIMITATIONS OF SHARE HOLDINGS</b>		
De-monopolization and Shareholding Proposal	<p>Section 28</p> <p>In compliance with the constitutional mandate for dispersal of ownership and de-monopolization of public utilities, the holdings of persons, natural or juridical, including directors, officers, stockholders and related interests, in a distribution utility and their respective holding companies shall not exceed twenty-five (25%) percent of the voting shares of stock unless the utility or the company holding the shares or its controlling stockholders are already listed in the Philippine Stock Exchange (PSE): Provided, That controlling stockholders of small distribution utilities are hereby required to list in the PSE within five (5) years from the</p>	<ul style="list-style-type: none"> <li>▪ In compliance with the constitutional mandate for dispersal of ownership and de-monopolization of public utilities, the holdings of persons, natural or juridical, including directors, officers, stockholders and related interests, in a distribution utility and their respective holding companies shall not exceed fifteen (15%) percent of the voting shares of stock unless the utility or the company holding the shares or its controlling stockholders are already listed in the Philippine Stock Exchange (PSE): Provided, That controlling stockholders of small distribution utilities are hereby required to list in the PSE within five (5) years from the enactment of this Act if they already own the stocks.</li> </ul>

## Consultative Dialogue on the EPIRA Review

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Sector : Distribution Sector

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	enactment of this Act if they already own the stocks. A small distribution company is one whose peak demand is equal to or less than TEN (10) MW.	
<b>6. REDUCTION OF ELECTRICITY RATES</b>		
Expanded Value Added Tax (EVAT)	<p>Chapter II Section 6 (4th paragraph)</p> <ul style="list-style-type: none"> <li>▪ Pursuant to the objective of lowering electricity rates to end-users, sales of generated power by generation companies shall be value added tax zero-rated</li> </ul>	<ul style="list-style-type: none"> <li>▪ Pursuant to the objective of lowering electricity rates to end-users, sales of generated power by generation, transmission of power, distribution of electricity and supply shall be exempted from 12% VAT or any form of taxes</li> </ul>
Imposition of National and Local taxes		<ul style="list-style-type: none"> <li>▪ The poles and lines of the ECs should be exempted from real property tax as assessed by the LGUs</li> <li>▪ The ECs should not be assessed of INCOME TAX – their rates approved by the ERC is based on REVENUE REQUIREMENT</li> </ul>
Application/implementation of the reduction of rates for all indigenous sources of energy	Section 35. Royalties, Returns and Tax Rates for Indigenous Energy Resources	<ul style="list-style-type: none"> <li>▪ These provisions of law should be strictly implemented.</li> </ul>



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<b>7. ADDITIONAL FUNCTIONS OF ERC</b>		
ERC to monitor the system operator/transmission company activities	Section 43. Functions of the ERC	<ul style="list-style-type: none"> <li>▪ Include monitoring the activities and operations of the transmission sector especially on the dispatch of generating plants</li> </ul>
<b>8. OBLIGATIONS AND FUNCTIONS OF INDUSTRY PLAYERS</b>		
The obligation of other electric power industry sectors such as the generation and transmission to also supply electricity in the least cost manner	Section 23. Functions of Distribution Utilities Section 6.Generation Sector	<ul style="list-style-type: none"> <li>▪ It should not be the sole responsibility and obligation of the DU to supply electricity in the least cost manner to its captive market. The generation and transmission charges are also component of the total electric bill, hence the need to contribute in making the electricity rate affordable and or lower. For the transmission company to ensure a generation mix/dispatch that will result to the least cost generation rate/charge.</li> </ul>
Aggregation of Power demand requirement by Small Distribution Utility particularly Electric Cooperative	Chapter II, Section 23. Functions of Distribution Utilities  4 <sup>th</sup> paragraph – To achieve economies of scale in utility operations, DUs may pursue structural and operation reforms	<ul style="list-style-type: none"> <li>▪ An addendum to be inserted in the fourth (4<sup>th</sup>) paragraph of Section 23 after the statement “Reduction of costs and Compliances to the performances standards prescribed in the IRR of this act” which includes among others reduction in generation cost through power demand aggregation in any form including but not limited to forming a corporation that will manage their bulk bilateral contract or power supply in as far as billing and settlement is concern.</li> </ul>

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<p align="center"><b>9. OPEN ACCESS AND RETAIL COMPETITION</b></p>		
<p>Threshold Level of Open Access</p>	<p>Section 31</p> <p>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. 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</p>	<ul style="list-style-type: none"> <li>▪ The threshold should be reviewed and considered as follows:               <ol style="list-style-type: none"> <li>1. Initial implementation – 4 MW and up</li> <li>2. After two years – 2 MW and up</li> <li>3. Every year thereafter – the ERC shall review the performance of the market and set the lowest threshold level.</li> </ol> </li> </ul>

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	upon the effectivity of this Act.	
<b>10. TRANSMISSION SECTOR</b>		
Revisit functions of the System, Grid and Market Operators	Section 9 and Section 4  (Functions and Responsibilities of TRANSCO)	<ul style="list-style-type: none"> <li>▪ Define and include in the definition of terms:               <ul style="list-style-type: none"> <li>a. System operator (Section 9a)</li> <li>b. Grid operator (Section 9e)</li> <li>c. Market operator (Section 9e)</li> </ul> </li> </ul>
Responsibilities of TRANSCO/CONCESSIONAIRE	Section 9. Functions and Responsibilities of TRANSCO	<ul style="list-style-type: none"> <li>▪ Add "Ensure the Dispatch Schedule to be optimum, efficient and economical resulting to a reliable and secure supply of electricity at a least cost.</li> </ul>
<b>11. MISSIONARY ELECTRIFICATION</b>		
Transfer of NPC-SPUG operation to the National Electrification Administration	Chapter XIII, Section 70.Missionary Electrification <ul style="list-style-type: none"> <li>▪ NPC, through SPUG, to perform the missionary electrification function and shall be responsible for providing power generation and its associated power</li> </ul>	<ul style="list-style-type: none"> <li>▪ Within one year from the effectivity of this amendatory act, the operation and function of NPC Small Utilities Group must be transferred to the National Electrification Administration (NEA) consistent with the objective to make NAPOCOR viable as it serves the Missionary areas of isolated franchise of electric cooperatives.</li> <li>▪ All collection from the Universal Charge now intended for the</li> </ul>

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	delivery systems in areas that are not connected to the transmission system	operation of the NPC-SPUG will be directly remitted to the NEA which will disburse the same in accordance with the program that will be approved by ERC.
<b>12. PROMOTION OF RURAL ELECTRIFICATION</b>		
Continuous promotion of rural electrification and implementation of the policies of PD 269	Chapter VII. Promotion of Rural Electrification  Section 59. Alternative Electric Service for isolated villagers	<ul style="list-style-type: none"> <li>▪ The use of the Universal Charge should also include Sitio Electrification Project of the government.</li> </ul>
<b>13. BENEFITS TO HOST COMMUNITIES</b>		
Ensure benefits to host communities	Section 66. Benefits to Host Communities	<ul style="list-style-type: none"> <li>▪ Host communities shall enjoy lower rates of generation companies and security of power supply (shall be supplied first).</li> <li>▪ Invoke the provision of RA 7638 (Local Government Code of 1991) to retain the benefits provided to host communities</li> <li>▪ Ensure implementation of prioritization of load dispatch to host communities</li> <li>▪ Make sure that the portion of the DOE law which is implemented by a DOE circular on the radial assignment of</li> </ul>

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		priority dispatch should be implemented to the benefit of the host community.
<b>14. POWERS AND FUNCTION OF THE DOE</b>		
Unify government efforts and coordination to facilitate the implementation of energy projects	Section 37 (m) (Powers and Functions of the DOE)	<ul style="list-style-type: none"> <li>▪ Include other government agencies such as the National Electrification Administration’s newly organized Office of the Renewable Energy Division, research institutions, universities and the DOST among others.</li> </ul>
Unify government efforts and coordination to facilitate the implementation of energy projects	Section 37 (o) (Powers and Functions of the DOE)	<ul style="list-style-type: none"> <li>▪ Include the words “support, endorse”. The establishment of <b>ONE-STOP SHOPS AND FAST LANES FOR ENERGY PROJECTS</b> should be implemented and coordinated with the LGUs and other agencies that investors and proponents have to go in pursuing energy projects.</li> </ul>
All government entities or agencies should be under the Salary Standardization Law.	<p>Section 17. Exemption from the Salary Standardization Law</p> <p>The salaries and benefits of employees in the TRANSCO shall be exempted from Republic Act No. 6758 and shall be fixed by the TRANSCO Board</p>	<ul style="list-style-type: none"> <li>▪ Delete this provision or rephrase as follows: Section (17) Adherence to Salary Standardization Law. The salaries and benefits of employees of TRANSCO shall be governed by Republic Act No. 6758</li> </ul>

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<b>15. FRANCHISING POWERS</b>		<ul style="list-style-type: none"> <li>▪</li> </ul>
Franchising power for Private Electric utilities and LGUs	<p>Chapter II Section 27. Franchising Power in the Electric Power Sector</p> <ul style="list-style-type: none"> <li>▪ The power to grant franchise to person engaged in the transmission and distribution of electricity shall be vested exclusively in the Congress of the Philippines</li> </ul>	<ul style="list-style-type: none"> <li>▪ For ECs, it should be delegated back to the National Electrification Commission under the National Electrification Administration.</li> </ul>
<b>16. POWER BILLS OF GOVERNMENT ENTITES</b>		
Unpaid power bills of the Local Government Units, government agency and other government entities	<p>Chapter II, Section 30, paragraph 12</p> <p>All electric cooperatives which have outstanding uncollected billings to any local government unit shall report such billings to NEA which shall, in turn, report the same to the Department of Budget and Management (DBM) for collection pursuant to <b>Executive Order No. 190 issued on December 21, 1990.</b></p>	<ul style="list-style-type: none"> <li>▪ The DBM shall automatically deduct the unpaid accounts from the IRA or APPROVED BUDGET of the concerned Local Government Units or Government Agency.</li> </ul>

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<b>17. UNIVERSAL CHARGE</b>		
Electric Cooperatives and other distribution utilities - collectors of the Universal Charge	Chapter II Section 34. Universal Charge	<ul style="list-style-type: none"> <li>▪ The electric cooperatives and the distribution utilities serve as collector of the universal charge should be given at least 1% service fee of the total amount collected. It shall be strictly treated as educational fund to be used by the electric cooperatives and the distribution utilities exclusively in education and information drive about the universal charge and other intricacies of the Act.</li> </ul>
<b>18. PROVISION FOR CALAMITY FUND</b>		
Provision for Calamity Fund for Electric Cooperatives and the Distribution Utilities	Include as additional provision	<ul style="list-style-type: none"> <li>▪ A provision for Calamity Fund shall be allowed as part of the rate of the distribution utilities to be used whenever any distribution utility is struck by typhoon. For the electric cooperatives, the Calamity Fund shall be administered by the National Electrification Administration and the DOE for the private distribution utilities.</li> </ul>
<b>19. LIFELINE RATE</b>		
Lifeline Subsidy	Chapter VIII, Section 73. Lifeline Rate	<ul style="list-style-type: none"> <li>▪ Strict compliance with said provisions to finally end its implementation.</li> </ul>