

EPIRA is a FAILURE.

OVERHAUL

**MAJOR CHANGES ARE NEEDED
TO REALIZE THE PROMISE OF
QUALITY, RELIABLE, SECURE,
and AFFORDABLE SUPPLY OF
ELECTRICITY IN THE COUNTRY**

ALU-TUCP

GENERATION and SUPPLY SECTORS ARE PUBLIC UTILITY OPERATIONS, SUBJECT TO REGULATION

- **Section 6: Generation Sector.**

- Power generation is considered a public utility operation, therefore subject to regulation including putting a cap of 12% return on rate

“When private property is used for a public purpose and is affected with public interest, it ceases to be *juris privati* only and becomes subject to regulation. The regulation is to promote the common good.” (LAMP, Lualhati vs. Meralco SC case Nov. 2012)

Power generation is an operation imbued with public interest; it is a public utility – a business or service engaged in regularly supplying the public with some commodity or service of public consequence, or essential to general public

DISPERSE or BROADEN OWNERSHIP in the INDUSTRY; PREVENT ANTI-COMPETITIVE MARKET BEHAVIOR

- De-monopolization of industry:
- Strict prohibition of cross-ownership between and among the subsectors: transmission, generation, distribution, supply
- Prohibit bilateral contracts between sister companies in the generation and distribution sectors
- Promote consumers/workers ownership
- Suspension of implementation of retail competition and open access until there is “suppliers market”

- **Sec. 28. De-monopolization and shareholding dispersal:**
 - holdings of participating entities must not exceed 15% of voting shares of stocks.
- **Sec.45. cross-ownership:**
 - effective prohibition of cross-ownership between subsectors.
- **Sec. 45 (a).** No company or related group can own, operate or control more than 15% of installed generating capacity of a grid and/or 15% of the national installed generating capacity.

- **Sec.45 (b)...** Prohibit bilateral power contracts between sister companies
- **Sec.57. Conversion of Electric Cooperatives**
 - the NEA in coordination with SEC and CDA, under guidance from the Office of the President, shall undertake a referendum to determine if they wish to register with SEC or CDA; for purposes of this section, the quorum requirement is 20% of all bonafide members in good standing

CONSUMERS & LABOR REPRESENTATION IN REGULATORY/MONITORING BODIES

- **Sec.38. Creation of ERC**
 - include 2 additional members (representatives from consumers and labor groups)
- **New chapter or Section: On protection of consumer interests and welfare**
 - Create an independent consumers affairs office (as consumers lawyer)

STOP PRIVATIZATION OF AGUS PULANGUI and other remaining government-owned power plants esp. those using natural resources

- **Sec.47 (f)** : The Agus and Pulangui hydropower complexes in Mindanao **shall be excluded** from among the generation companies that will be privatized... **It shall be operated by government or publicly owned corporation (Mindanao Power Corporation) that will be created**

IMPLEMENT TRANSPARENT, PRUDENT, JUST AND AFFORDABLE POWER RATES

- **Sec.43. Functions of ERC**
 - Adopt a rate setting methodology (RORB) that is simple, transparent, and puts a 12% cap on profits of elec. Companies;
- **SEC. 32. NPC Stranded Debt and Contract Cost Recovery.** – REVIEW OF CONTRACTS, DON'T ALLOW RECOVERY IN CASES WHERE THERE ARE BREACHES OF OBLIGATIONS (I.E. TAKE-OR-PAY)
- **Sec. 60. Debts of Electric Cooperatives** (refund to consumers P2.1 billion which was an over-collection from an interest on loans already condoned under this Section).
- Review VAT, in the immediate REMOVE VAT on systems loss
- Stop indexation of natural gas and geothermal to coal and petroleum prices abroad



END

- In third world countries like the Philippines, equal justice will have a synthetic ring unless the economic rights of the people, especially the poor, are protected with the same resoluteness as their right to liberty. The cases at bar are of utmost significance for they concern the right of our people to electricity and to be reasonably charged for their consumption. In configuring the contours of this economic right to a basic necessity of life, the Court shall define the limits of the power of respondent MERALCO, a giant public utility and a monopoly, to charge our people for their electric consumption. The question is: should public interest prevail over private profits?
- The facts are brief and undisputed. On December 23, 1993, MERALCO filed with the ERB an application for the revision of its rate schedules. The application reflected an average increase of 21 centavos per kilowatthour (kwh) in its distribution charge. The application also included a prayer for provisional approval of the increase pursuant to Section 16(c) of the Public Service Act and Section 8 of Executive Order No. 172.

- The regulation of rates to be charged by public utilities is founded upon the police powers of the State and statutes prescribing rules for the control and regulation of public utilities are a valid exercise thereof. When private property is used for a public purpose and is affected with public interest, it ceases to be *juris privati* only and becomes subject to regulation. The regulation is to promote the common good. Submission to regulation may be withdrawn by the owner by discontinuing use; but as long as use of the property is continued, the same is subject to public regulation.[9]
- In regulating rates charged by public utilities, the State protects the public against arbitrary and excessive rates while maintaining the efficiency and quality of services rendered. However, the power to regulate rates does not give the State the right to prescribe rates which are so low as to deprive the public utility of a reasonable return on investment. Thus, the rates prescribed by the State must be one that yields a fair return on the public utility upon the value of the property performing the service and one that is reasonable to the public for the services rendered.[10] The fixing of just and reasonable rates involves a balancing of the investor and the consumer interests.[11]
- [9] *Munn v. People of the State of Illinois*, 94 U.S.113, 126 (1877).
- [10] IV A. F. Agbayani, *Commentaries and Jurisprudence on the Commercial Laws of the Philippines* 500 (1993).
- [11] *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591.

- **In determining the just and reasonable rates to be charged by a public utility, three major factors are considered by the regulating agency: a) rate of return; b) rate base and c) the return itself or the computed revenue to be earned by the public utility based on the rate of return and rate base.**[22] The rate of return is a judgment percentage which, if multiplied with the rate base, provides a fair return on the public utility for the use of its property for service to the public.[23] The rate of return of a public utility is not prescribed by statute but by administrative and judicial pronouncements. This Court has consistently adopted a 12% rate of return for public utilities.[24] The rate base, on the other hand, is an evaluation of the property devoted by the utility to the public service or the value of invested capital or property which the utility is entitled to a return.[25]
- [22] P. Garfield and W. Lovejoy, *Public Utility*, p. 116.
- [23] Nichols and Welch, *Ruling Principles of Utility Regulations, Rate of Return*, Supp. A, 1 (1964).
- [24] *Manila Electric Company v. Public Service Commission*, 18 SCRA 651, 665-666 (1966).
- [25] Susan F. Fendell, *Public Ownership of Public Utilities: Have Stockholders Outlived Their Useful Economic Lives?*, 43 *Ohio St. L. J.* 821 (1982); 64 *Am Jur 2d* § 138.

IMPLEMENT TRANSPARENT, PRUDENT, JUST AND REASONABLE POWER RATES

- Use RORB instead of PBR
- Refund of P2.1 billion overcollection by EC
- Don't allow stranded cost recovery from contracts that are ---
- “The ERB was created under Executive Order No. 172 to regulate, among others, the distribution of energy resources and to fix rates to be charged by public utilities involved in the distribution of electricity. In the fixing of rates, **the only standard** which the legislature is required to prescribe for the guidance of the administrative authority is that the **rate be reasonable and just**. It has been held that even in the absence of an express requirement as to reasonableness, this standard may be implied.[14] **What is a just and reasonable rate is a question of fact calling for the exercise of discretion, good sense, and a fair, enlightened and independent judgment.** The requirement of reasonableness comprehends such rates which must not be so low as to be confiscatory, or too high as to be oppressive. In determining whether a rate is confiscatory, it is essential also to consider the given situation, requirements and opportunities of the utility.”