



3 June 2014

## **POSITION PAPER TO FULLY IMPLEMENT THE ELECTRIC POWER INDUSTRY REFORM ACT (EPIRA)**

The Makati Business Club has prepared this position paper in response to the call of some sectors to amend the provisions of Republic Act No. 9136 or the Electric Power Industry Reform Act:

We support the view of our colleagues in the other business associations that rather than opening up EPIRA now for amendments or changes, what is needed is the full implementation of its provisions as written in the law. While EPIRA is not perfect, we believe it provides a reasonable and generally acceptable regulatory framework. Further, we believe that opening up EPIRA now for review and amendments will reinforce concerns about an unstable and unreliable regulatory framework, and these concerns may cause the deferment or cancellation of pending investments in the power sector. As we recognize that providing adequate and stable power supply is critical for our national interests, it is imperative that we maintain an environment that is consistent with the need to generate investments in the electric power industry to meet the current and future power requirements of the Philippines.

Without amending EPIRA, there are changes in the regulatory framework that can be made to further promote and protect long-term consumer interests and encourage a more competitive market.

Since the Department of Energy (DOE) is the department of the government that is mandated to prepare, integrate, coordinate, supervise, and control all plans, programs, projects, and activities of the government relative to energy exploration, development, utilization, distribution, and conservation, the DOE should:

1. Avoid further delay of the establishment of a reserve market, in compliance with Section 37 of EPIRA; and
2. Execute the much delayed transfer of functions, assets, and liabilities of the market operator to an Independent Market Operator (IMO) in compliance with Section 30 of EPIRA and IRR Rule 9 Section 6a, which should have occurred within one year of the establishment of the Wholesale Electricity Spot Market (WESM).

As the Energy Regulatory Commission (ERC) has the mission to promote and protect long-term consumer interests in terms of quality, reliability, and reasonable pricing of a sustainable supply of energy, the following actions can be taken:

1. Complete the implementation of open access by 30 June 2015 to allow end-users with loads of 750kw (both single and aggregated loads) and above to source their own power as provided in Section 21 of the EPIRA;
2. Further accelerate open access through allowing end-users with loads of 500kw (both single and aggregated loads) and above to source their own power by 30 June 2016;

3. Amend Automatic Generation Rate Adjustment (AGRA) rules applicable to distribution utility (DU) generation charges by:
  - a. Allowing complete pass-through of ERC-approved bilateral contracts;
  - b. Allowing complete pass-through of WESM purchases if prices are equal to or less than ERC-approved bilateral contract prices;
  - c. For WESM purchases above approved bilateral contract prices, require prior ERC approval for pass-through of the price differentials;
4. Establish policy on the treatment of wholesale aggregators executing Power Supply Agreements (PSAs) with distribution utilities:
  - a. Utilize a combination of market- and cost-based methods as a means of determining reasonable price levels for bilateral contracts of distribution utilities accompanied by the issuance of bidding rules, to widen supplier choices available to distribution utilities;
5. Reference the 4% threshold level of DOE Circular DC2013-12-0029 to offered capacity, in this connection, the “must offer rule” should be maintained; and
6. Diligently monitor anti-competitive behaviour and take action accordingly.

To further encourage a competitive market, the privatization of the remaining government power assets and contracts such as Casecnan, Mt. Apo, Pulangi, STEAG, Gensan, and Zamboanga should be accelerated by the Power Sector Assets and Liabilities Management (PSALM) Corporation.

In order for distribution utilities to plan ahead, the system operator of the National Grid Corporation of the Philippines (NGCP) should publish on a regular basis the annual planned outages of power plants. This list should also be reviewed by the ERC in anticipation of potential shortages in power supply, improve transparency, and avoid providing unfair advantages.

The National Transmission Company (TRANSCO) should revisit the Transmission Development Plan (TDP) and accelerate the implementation of the Leyte-Mindanao underground cable interconnection. TRANSCO should also ensure that the grid can accommodate all the required new capacity for the next five years.

We implore the government to act decisively and with urgency towards the full implementation of EPIRA. This would be in the best interest of the Philippines as it protects the national patrimony and consumers by ensuring that competitive market forces continue to prevail. A lack of consistency in policy and implementation will discourage future investment in power generation, exacerbating projected power shortages. While the Philippines has enjoyed robust economic growth in the recent past, it is imperative that we improve our competitiveness through stable policy direction and by creating an environment that is conducive to investment.

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