S. No. 1712, 16211 1943 and 2000 H. No. 8457 / 97 OG No. 36, 5285 (Sept. 3, 2001) ; Star 6/11/01 ; Standard 6/16/01 ; 15 VLD 2d 488

[REPUBLIC ACT NO. 9136, June 08, 2001]

AN ACT ORDAINING REFORMS IN THE ELECTRIC POWER INDUSTRY, AMENDING FOR THE PURPOSE CERTAIN LAWS AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

CHAPTER I

TITLE AND DECLARATION OF POLICY

SECTION 1. *Short Title.* — This Act shall be known as the "Electric Power Industry Reform Act of 2001." It shall hereinafter be referred to as the Act.

SEC. 2. *Declaration of Policy.* — It is hereby declared the policy of the State:

a. To ensure and accelerate the total electrification of the country;
b. To ensure the quality, reliability, security and affordability of the supply of electric power;
c. To ensure transparent and reasonable prices of electricity in a regime of free and fair competition and full public accountability to achieve greater operational and economic efficiency and enhance the competitiveness of Philippine products in the global market;
d. To enhance the inflow of private capital and broaden the ownership base of the power generation, transmission and distribution sectors;
e. To ensure fair and non-discriminatory treatment of public and private sector entities in the process of restructuring the electric power industry;
f. To protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power;
g. To assure socially and environmentally compatible energy sources and infrastructure;
h. To promote the utilization of indigenous and new and renewable energy resources in power generation in order to reduce dependence on imported energy;
i. To provide for an orderly and transparent privatization of the assets and liabilities of the National Power Corporation (NPC);
j. To establish a strong and purely independent regulatory body and system to ensure consumer protection and enhance the competitive operation of the electricity market; and
k. To encourage the efficient use of energy and other modalities of demand side management.

SEC. 3. *Scope.* — This Act shall provide a framework for the restructuring of the electric power industry, including the privatization of the assets of NPC, the transition to the desired competitive structure, and the definition of the responsibilities of the various government agencies and private entities.

SEC. 4. *Definition of Terms.* —

a "Aggregator" refers to a person or entity, engaged in consolidating electric power demand of end-users in the contestable market, for the purpose of purchasing and reselling electricity on a group basis;

b "Ancillary Services" refer to those services that are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of the transmission system in accordance with good utility practice and the Grid Code to be adopted in accordance with this Act;

c "Captive Market" refers to electricity end-users who do not have the choice of a supplier of electricity, as may be determined by the Energy Regulatory Commission (ERC) in accordance with this Act;

d "Central Dispatch" refers to the process of issuing direct instructions to electric power industry participants by the grid operator to achieve the economic operation and maintenance of quality, stability, reliability and security of the transmission system;

e "Co-Generation Facility" refers to a facility which produces electrical and/or mechanical energy and forms of useful thermal energy such as heat or steam which are used for industrial commercial heating or cooling purposes through the sequential use of energy;

f "Commission" refers to the decision-making body of the ERC composed of a Chairman and four (4) members as provided under Section 38 hereof;

g "Concession Contract" refers to the award by the government to a qualified private entity of the responsibility for financing, operating, expanding, maintaining and managing specific Government-owned assets;

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;

i "Customer Service Charge" refers to the component in the retail rate intended for the cost recovery of customer-related services including, but not limited to, meter reading, billing administration and collection;

j "Demand Side Management" refers to measures undertaken by distribution utilities to encourage end-users in the proper management of their load to achieve efficiency in the utilization of fixed infrastructures in the system;

k "Department of Energy" or "DOE" refers to the government agency created pursuant to Republic Act No. 7638 whose expanded functions are provided herein;

l "Department of Finance" or "DOF" refers to the government agency created pursuant to Executive Order No. 127;

m "Distribution Code" refers to a compilation of rules and regulations governing electric utilities in the operation and maintenance of their distribution systems which includes, among others, the standards for service and performance, and defines and establishes the relationship of the distribution systems with the facilities or installations of the parties connected thereto;

n "Distribution of Electricity" refers to the conveyance of electric power by a distribution utility through its distribution system pursuant to the provisions of this Act;

o "Distribution System" refers to the system of wires and associated facilities belonging to a franchised distribution utility extending between the delivery points on the transmission or sub-transmission system or generator connection and the point of connection to the premises of the end-user;

p "Distribution Wheeling Charge" refers to the cost or charge regulated by the ERC for the use of a distribution system and/or the availment of related services;

q "Distribution Utility" refers to any electric cooperative, private corporation, government-owned utility or existing local government unit which has an exclusive franchise to operate a distribution system in accordance with this Act;

r "Electric Cooperative" refers to a distribution utility organized pursuant to Presidential Decree No. 269, as amended, or as otherwise provided in this Act;

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United States of America s "Electric Power Industry Participant" refers to any person or entity engaged in the generation, transmission, distribution or supply of electricity;

t "End-user" refers to any person or entity requiring the supply and delivery of electricity for its own use;

u "Energy Regulatory Board" or "ERB" refers to the independent, quasi-judicial regulatory body created under Executive Order No. 172, as amended;

v "Energy Regulatory Commission" or "ERC" refers to the regulatory agency created herein;

w "Franchise Area" refers to a geographical area exclusively assigned or granted to a distribution utility for distribution of electricity;

x "Generation Company" refers to any person or entity authorized by the ERC to operate facilities used in the generation of electricity;

y "Generation of Electricity" refers to the production of electricity by a generation company or a co-generation facility pursuant to the provisions of this Act;

z "Grid" refers to the high voltage backbone system of interconnected transmission lines, substations and related facilities;

aa "Grid Code" refers to the set of rules and regulations governing the safe and reliable operation, maintenance and development of the high voltage backbone transmission system and its related facilities;

bb "Independent Power Producer" or "IPP" refers to an existing power generating entity which is not owned by NPC;

cc "Inter-Class Cross Subsidy" refers to an amount charged by distribution utilities to industrial and commercial end-users as well as to other subsidizing customer sectors in order to reduce electricity rates of other customer sectors such as the residential end-users, hospitals, and streetlights;

dd "Inter-Regional Grid Cross Subsidy" refers to an amount embedded in the electricity rates of NPC charged to its customers located in a viable regional grid in order to reduce the electricity rates in a less viable regional grid;

ee "Intra-Regional Grid Cross Subsidy" refers to an amount embedded in the electricity rates of NPC charged to distribution utilities and non-utilities with higher load factor and/ or delivery voltage in order to reduce the electricity rates charged to distribution utilities with lower load factor and/or delivery voltage located in the same regional grid;

ff "IPP Administrator" refers to qualified independent entities appointed by PSALM Corporation who shall administer, conserve and manage the contracted energy output of NPC IPP contracts;

gg "Isolated Distribution System" refers to the backbone system of wires and associated facilities not directly connected to the national transmission system;

hh "Lifeline Rate" refers to the subsidized rate given to low-income captive market end-users who cannot afford to pay at full cost;

ii "National Electrification Administration" or "NEA" refers to the government agency created under Presidential Decree No. 269, as amended, and whose additional mandate is further set forth herein;

jj "National Power Corporation" or "NPC" refers to the government corporation created under Republic Act No. 6395, as amended;

kk "National Transmission Corporation" or "TRANSCO" refers to the corporation organized pursuant to this Act to acquire all the transmission assets of the NPC;

ll "Open Access" refers to the system of allowing any qualified person the use of transmission, and/or distribution system and associated facilities subject to the payment of transmission and/or distribution retail wheeling rates duly approved by the ERC;

mm "Philippine Energy Plan" or "PEP" refers to the overall energy program formulated and updated yearly by the DOE and submitted to Congress pursuant to Republic Act No. 7638;

nn "Power Development Program" or "PDP" refers to the indicative plan for managing electricity demand through energy-efficient programs and for the upgrading, expansion, rehabilitation, repair and maintenance of power generation and transmission facilities, formulated and updated yearly by the DOE in coordination with the generation, transmission and distribution utility companies;

oo "Power Sector Assets and Liabilities Management Corporation" or "PSALM Corp." refers to the corporation created pursuant to Section 49 hereof;

pp "Privatization" refers to the sale, disposition, change and transfer of ownership and control of assets and IPP contracts from the Government or a government corporation to a private person or entity;

qq "Renewable Energy Resources" refer to energy resources that do not have an upper limit on the total quantity to be used. Such resources are renewable on a regular basis and the renewable rate is rapid enough to consider availability over an indefinite time. These include, among others, biomass, solar, wind, hydro and ocean energy;

rr "Restructuring" refers to the process of reorganizing the electric power industry in order to introduce higher efficiency, greater innovation and end-user choice. It shall be understood as covering a range of alternatives enhancing exposure of the industry to competitive market forces;

ss "Retail Rate" refers to the total price paid by end-users consisting of the charges for generation, transmission and related ancillary services, distribution, supply and other related charges for electric service;

tt "Small Power Utilities Group" or "SPUG" refers to the functional unit of NPC created to pursue missionary electrification function;

uu "Stranded contract costs of NPC or distribution utility" refer to the excess of the contracted cost of electricity under eligible contracts over the actual selling price of the contracted energy output of such contracts in the market. Such contracts shall have been approved by the ERB as of December 31,2000;

vv "Stranded Debts of NPC" refer to any unpaid financial obligations of NPC which have not been liquidated by the proceeds from the sales and privatization of NPC assets;

ww "Subtransmission Assets" refer to the facilities related to the power delivery service below the transmission voltages and based on the functional assignment of assets including, but not limited to step-down transformers used solely by load customers, associated switchyard/substation, control and protective equipment, reactive compensation equipment to improve customer power factor, overhead lines, and the land where such facilities/ equipment are located. These include NPC assets linking the transmission system and the distribution system which are neither classified as generation nor transmission;

xx "Supplier" refers to any person or entity authorized by the ERC to sell, broker, market or aggregate electricity to the end-users;

yy "Supplier's Charge" refers to the charge imposed by electricity suppliers for the sale of electricity to end-users, excluding the charges for generation, transmission and distribution wheeling;

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;

aaa "Transmission Charge" refers to the regulated cost or charges for the use of a transmission system which may include the availment of ancillary services;

bbb "Transmission Development Plan" or "TDP" refers to the program for managing the transmission system through efficient planning for the expansion, upgrading, rehabilitation, repair and maintenance, to be formulated by DOE and implemented by the TRANSCO pursuant to this Act;

ccc "Transmission of Electricity" refers to the conveyance of electricity through the high voltage backbone system; and

ddd "Universal Charge" refers to the charge, if any, imposed for the recovery of the stranded cost and other purposes pursuant to Section 34 hereof.

CHAPTER II

ORGANIZATION AND OPERATION OF THE ELECTRIC POWER INDUSTRY

SEC. 5. *Organization.* — The electric power industry shall be divided into four (4) sectors, namely: generation, transmission, distribution and supply.

SEC. 6. *Generation Sector.* — Generation of electric power, a business affected with public interest, shall be competitive and open.

Upon the effectivity of this Act, any new generation company shall, before it operates, secure from the Energy Regulatory Commission (ERC) a certificate of compliance pursuant to the standards set forth in this Act, as well as health, safety and environmental clearances from the appropriate government agencies under existing laws.

Any law to the contrary notwithstanding, power generation shall not be considered a public utility operation. For this purpose, any person or entity engaged or which shall engage in power generation and supply of electricity shall not be required to secure a national franchise.

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.

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.

The ERC shall, in determining the existence of market power abuse or anti-competitive behavior, require from generation companies the submission of their financial statements.

SEC. 7. *Transmission Sector.* — The transmission of electric power shall be a regulated common electricity carrier business, subject to the ratemaking powers of the ERC.

The ERC shall set the standards of the voltage transmission that shall distinguish the transmission from the subtransmission assets. Pending the issuance of such new standards, the distinction between the transmission and subtransmission assets shall be as follows: 230 kilovolts and above in the Luzon Grid, 69 kilovolts and above in the Visayas and in the isolated distribution systems, and 138 kilovolts and above in the Mindanao Grid: *Provided,* That for the Visayas and the isolated distribution system, should the 69 kilovolt line not form part of the main transmission grid and be directly connected to the substation of the distribution utility, it shall form part of the subtransmission system.

SEC. 8. *Creation of the National Transmission Company.* — There is hereby created a National Transmission Corporation, hereinafter referred to as TRANSCO, which shall assume the electrical transmission function of the National Power Corporation (NPC), and have the powers and functions hereinafter granted. The TRANSCO shall assume the authority and responsibility of NPC for the planning, construction and centralized operation and maintenance of its high voltage transmission facilities, including grid interconnections and ancillary services.

Within six (6) months from the effectivity of this Act, the transmission and subtransmission facilities of NPC and all other assets related to transmission operations, including the nationwide franchise of NPC for the operation of the transmission system and the grid, shall be transferred to the TRANSCO. The TRANSCO shall be wholly owned by the Power Sector Assets and Liabilities Management Corporation (PSALM Corp.).

The subtransmission functions and assets shall be segregated from the transmission functions, assets and liabilities for transparency and disposal: *Provided,* That the subtransmission assets shall be operated and maintained by TRANSCO until their disposal to qualified distribution utilities which are in a position to take over the responsibility for operating, maintaining, upgrading, and expanding said assets. All transmission and subtransmission related liabilities of NPC shall be transferred to and assumed by the PSALM Corp.

TRANSCO shall negotiate with and thereafter transfer such functions, assets, and associated liabilities to the qualified distribution utility or utilities connected to such sub transmission facilities not later than two (2) years from the effectivity of this Act or the start of open access, whichever comes earlier: *Provided,* That in the case of electric cooperatives, the TRANSCO shall grant concessional financing over a period of twenty (20) years: *Provided, however,* That the installment payments to TRANSCO for the acquisition of subtransmission facilities shall be given first priority by the electric cooperatives out of the net income derived from such facilities. The TRANSCO shall determine the disposal value of the subtransmission assets based on the revenue potential of such assets.

In case of disagreement in valuation, procedures, ownership participation and other issues, the ERC shall resolve such issues.

The take over by a distribution utility of any subtransmission asset shall not cause a diminution of service and quality to the end-users. Where there are two or more connected distribution utilities, the consortium or juridical entity shall be formed by and composed of all of them and thereafter shall be granted a franchise to operate the subtransmission asset by the ERC.

The subscription rights of each distribution utility involved shall be proportionate to their load requirements unless otherwise agreed by the parties.

Aside from the PSALM Corp., TRANSCO and connected distribution utilities, no third party shall be allowed ownership or management participation, in whole or in part, in such subtransmission entity.

The TRANSCO may exercise the power of eminent domain subject to the requirements of the Constitution and existing laws. Except as provided herein, no person, company or entity other than the TRANSCO shall own any transmission facilities.

Prior to the transfer of the transmission functions by NPC to TRANSCO, and before the promulgation of the Grid Code, ERC shall ensure that NPC shall provide to all electric power industry participants open and non-discriminatory access to its transmission system. Any violation thereof shall be subject to the fines and penalties imposed herein.

SEC. 9. *Functions and Responsibilities.* — Upon the effectivity of this Act, the TRANSCO shall have the following functions and responsibilities:

a. Act as the system operator of the nationwide electrical transmission and subtransmission system, to be transferred to it by NPC;
b. Provide open and non-discriminatory access to its transmission system to all electricity users;
c. Ensure and maintain the reliability, adequacy, security, stability and integrity of the nationwide electrical grid in accordance with the performance standards for the operation and maintenance of the grid, as set forth in a Grid Code to be adopted and promulgated by the ERC within six (6) months from the effectivity of this Act;
d. Improve and expand its transmission facilities, consistent with the Grid Code and the Transmission Development Plan (TDP) to be promulgated pursuant to this Act, to adequately serve generation companies, distribution utilities and suppliers requiring transmission service and/or ancillary services through the transmission system: *Provided,* That TRANSCO shall submit any plan for expansion or improvement of its facilities for approval by the ERC;
e. Subject to technical constraints, the grid operator of the TRANSCO shall provide central dispatch of all generation facilities connected, directly or indirectly, to the transmission system in accordance with the dispatch schedule submitted by the market operator, taking into account outstanding bilateral contracts; and
f. TRANSCO shall undertake the preparation of the TDP.

In the preparation of the TDP, TRANSCO shall consult the other participants of the electric power industry such as the generation companies, distribution utilities, and the electricity end-users. The TDP shall be submitted to the DOE for integration with the Power Development Program and the Philippine Energy Plan, provided for in Republic Act No. 7638 otherwise known as "The Department of Energy Act of 1992."

A generation company may develop and own or operate dedicated point-to-point limited transmission facilities that are consistent with the TDP: *Provided,* That such facilities are required only for the purpose of connecting to the transmission system, and are used solely by the generating facility, subject to prior authorization by the ERC: *Provided, further,* That in the event that such assets are required for competitive purposes, ownership of the same shall be transferred to the TRANSCO at a fair market price: *Provided, finally,* That in case of disagreement on the fair market price, the ERC shall determine the fair market value of the asset.

SEC. 10. *Corporate Powers of the TRANSCO.* — As a corporate entity, TRANSCO shall have the following corporate powers:

a. To have continuous succession under its corporate name until otherwise provided by law;
b. To adopt and use a corporate seal and to change, alter or modify the same, if necessary;
c. To sue and be sued;
d. To enter into a contract and execute any instrument necessary or convenient for the purpose for which it is created;
e. To borrow funds from any source, whether private or public, foreign or domestic, and issue bonds and other evidence of indebtedness: *Provided,* That in the case of the bond issues, it shall be subject to the approval of the President of the Philippines upon recommendation of the Secretary of Finance: *Provided, further,* That foreign loans shall be obtained in accordance with existing laws, rules and regulations of the Bangko Sentral ng Pilipinas;
f. To maintain a provident fund which consists of contributions made by both the TRANSCO and its officials and employees and their earnings for the payment of benefits to such officials and employees or their heirs under such terms and conditions as it may prescribe;
g. To do any act necessary or proper to carry out the purpose for which it is created, or which, from time to time, may be declared by the TRANSCO Board as necessary, useful, incidental or auxiliary to accomplish its purposes and objectives; and,
h. Generally, to exercise all the powers of a corporation under the corporation law insofar as they are not inconsistent with this Act.

SEC. 11. *TRANSCO Board of Directors.* — All the powers of the TRANSCO shall be vested in and exercised by a Board of Directors. The Board shall be composed of a Chairman and six (6) members. The Secretary of the Department of Finance (DOF) shall be the *ex officio* Chairman of the Board. The other members of the TRANSCO Board shall include the Secretary of the Department of Energy (DOE), the Secretary of the Department of Environment and Natural Resources (DENR), the President of TRANSCO, and three (3) members to be appointed by the President, each representing Luzon, Visayas and Mindanao.

The members of the Board so appointed by the President of the Philippines shall serve for a term of six (6) years, except that any person appointed to fill-in a vacancy shall serve only the unexpired term of his/her predecessor in office. All members of the Board shall be professionals of recognized competence and expertise in the fields of engineering, finance, economics, law or business management. No member of the Board or any of his relatives within the fourth civil degree of consanguinity or affinity shall have any interest, either as investor, officer or director, in any generation company or distribution utility or other entity engaged in transmitting, generating and supplying electricity specified by ERC.

SEC. 12. *Powers and Duties of the Board.* — The following are the powers of the Board:

a. To provide strategic direction for TRANSCO, and formulate medium and long-term strategies pursuant to the vision, mission, and objectives of TRANSCO;
b. To develop and adopt policies and measures for the efficient and effective management and operation of TRANSCO;
c. To organize, re-organize, and determine the organizational structure and staffing pattern of TRANSCO; abolish and create offices and positions; fix the number of its officers and employees; transfer and re-align such officers and personnel; fix their compensation, allowance, and benefits;
d. To fix the compensation of the President of TRANSCO and to appoint and fix the compensation of other corporate officers;
e. For cause, to suspend or remove any corporate officer appointed by the Board;
f. To adopt and set guidelines for the employment of personnel on the basis of merit, technical competence, and moral character; and
g. Any provisions of the law to the contrary notwithstanding, to write-off bad debts.

SEC. 13. *Board Meetings.* — The Board shall meet as often as may be necessary upon the call of the Chairman of the Board or by a majority of the Board members.

SEC. 14. *Board Per Diems and Allowances.* — The members of the Board shall receive per *diem* for each regular or special meeting of the Board actually attended by them, and, upon approval of the Secretary of the Department of Finance, such other allowances as the Board may prescribe.

SEC. 15. *Quorum.* — The presence of at least four (4) members of the Board shall constitute a quorum, which shall be necessary for the transaction of any business. The affirmative vote of a majority of the members present in a quorum shall be adequate for the approval of any resolution, decision or order, except when the Board shall otherwise agree that a greater vote is required.

SEC. 16. *Powers of the President of TRANSCO.* — The President of TRANSCO shall be appointed by the President of the Philippines. In the absence of the Chairman, the President shall preside over Board meetings.

The President of TRANSCO shall be the Chief Executive Officer of TRANSCO and shall have the following powers and duties:

a. To execute and administer the policies and measures approved by the Board, and take responsibility for the efficient discharge of management functions;
b. To oversee the preparation of the budget of TRANSCO;
c. To direct and supervise the operation and internal administration of TRANSCO and, for this purpose, may delegate some or any of his administrative responsibilities and duties to other officers of TRANSCO;
d. Subject to the guidelines and policies set up by the Board, to appoint and fix the number and compensation of subordinate officials and employees of TRANSCO; and for cause, to remove, suspend, or otherwise discipline any subordinate employee of TRANSCO;
e. To submit an annual report to the Board on the activities and achievements of TRANSCO at the close of each fiscal year and upon approval thereof, submit a copy to the President of the Philippines and to such other agencies as may be required by law;
f. To represent TRANSCO in all dealings and transactions with other offices, agencies, and instrumentalities of the Government and with all persons and other entities, private or public, domestic or foreign; and
g. To exercise such other powers and duties as may be vested in him by the Board from time to time.

SEC. 17. *Exemption from the Salary Standardization Law.* — The salaries and benefits of employees in the TRANSCO shall be exempt from Republic Act No. 6758 and shall be fixed by the TRANSCO Board.

SEC. 18. *Profits.* — The net profit, if any, of TRANSCO shall be remitted to the PSALM Corp. not later than ninety (90) days after the immediately preceding quarter.

SEC. 19. *Transmission Charges.* — The transmission charges of the TRANSCO shall be filed with and approved by the ERC pursuant to Paragraph (f) of Section 43 hereof.

SEC. 20. *TRANSCO Related Businesses.* — TRANSCO may engage in any related business which maximizes utilization of its assets: *Provided,* That a portion of the net income derived from such undertaking utilizing assets which form part of the rate base shall be used to reduce transmission wheeling rates as determined by the ERC. Such portion of net income used to reduce the transmission wheeling rates shall not exceed fifty percent (50%) of the net income derived from such undertaking.

Separate accounts shall be maintained for each business undertaking to ensure that the transmission business shall neither subsidize in any way such business undertaking nor encumber its transmission assets in any way to support such business.

SEC. 21. *TRANSCO Privatization.*— Within six (6) months from the effectivity of this Act, the PSALM Corp. shall submit a plan for the endorsement by the Joint Power Commission and the approval of the President of the Philippines. The President of the Philippines thereafter shall direct PSALM Corp. to award, in open competitive bidding, the transmission facilities, including grid interconnections and ancillary services to a qualified party either through an outright sale or a concession contract. The buyer/concessionaire shall be responsible for the improvement, expansion, operation, and/or maintenance of its transmission assets and the operation of any related business. The award shall result in maximum present value of proceeds to the national government. In case a concession contract is awarded, the concessionaire shall have a contract period of twenty-five (25) years, subject to review and renewal for a maximum period of another twenty-five (25) years.

In any case, the awardee shall comply with the Grid Code and the TDP as approved. The sale agreement/concession contract shall include, but not limited to, the provision for performance and financial guarantees or any other covenants which the national government may require. Failure to comply with such obligations shall result in the imposition of appropriate sanctions or penalties by the ERC.

The awardee shall be financially and technically capable, with proven domestic and/or international experience and expertise as a leading transmission system operator. Such experience must be with a transmission system of comparable capacity and coverage as the Philippines.

SEC. 22. *Distribution Sector.*— The distribution of electricity to end-users shall be a regulated common carrier business requiring a national franchise. Distribution of electric power to all end-users may be undertaken by private distribution utilities, cooperatives, local government units presently undertaking this function and other duly authorized entities, subject to regulation by the ERC.

SEC. 23. *Functions of Distribution Utilities.*— A distribution utility shall have the obligation to provide distribution services and connections to its system for any end-user within its franchise area consistent with the distribution code. Any entity engaged therein shall provide open and non-discriminatory access to its distribution system to all users.

Any distribution utility shall be entitled to impose and collect distribution wheeling charges and connection fees from such end-users as approved by the ERC.

A 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 the ERC.

To achieve economies of scale in utility operations, distribution utilities may, after due notice and public hearing, pursue structural and operational reforms such as but not limited to, joint actions between or among the distribution utilities, subject to the guidelines issued by the ERC. Such joint actions shall result in improved efficiencies, reliability of service, reduction of costs and compliance to the performance standards prescribed in the IRR of this Act.

Distribution utilities shall submit to the ERC a statement of their compliance with the technical specifications prescribed in the Distribution Code and the performance standards prescribed in the IRR of this Act. Distribution utilities which do not comply with any of the prescribed technical specifications and performance standards shall submit to the ERC a plan to comply, within three (3) years, with said prescribed technical specifications and performance standards. The ERC shall, within sixty (60) days upon receipt of such plan, evaluate the same and notify the distribution utility concerned of its action. Failure to submit a feasible and credible plan and/or failure to implement the same shall serve as grounds for the imposition of appropriate sanctions, fines or penalties.

Distribution utilities shall prepare and submit to the DOE their annual distribution development plans. In the case of electric cooperatives, such plans shall be submitted through the National Electrification Administration.

Distribution utilities shall provide universal service within their franchise, over a reasonable time from the requirement thereof, including unviable areas, as part of their social obligations, in a manner that shall sustain the economic viability of the utility, subject to the approval by the ERC in the case of private or government-owned utilities. To this end, distribution utilities shall submit to the DOE their plans for serving such areas as part of their distribution development plans. Areas which a franchised distribution utility cannot or does not find viable may be transferred to another distribution utility, if any is available, who will provide the service, subject to approval by ERC. In cases where franchise holders fail and/or refuse to service any area within their franchise territory and allowed another utility to service the same, then the status quo shall be respected.

Distribution utilities may exercise the power of eminent domain subject to the requirements of the Constitution and existing laws.

SEC. 24. *Distribution Wheeling Charge.* — The distribution wheeling charges of distribution utilities shall be filed with and approved by the ERC pursuant to Paragraph (f) of Section 43 hereof.

SEC. 25. *Retail Rate.* — The retail rates charged by distribution utilities for the supply of electricity in their captive market shall be subject to regulation by the ERC based on the principle of full recovery of prudent and reasonable economic costs incurred, or such other principles that will promote efficiency as may be determined by the ERC.

Every distribution utility shall identify and segregate in its bills to end-users the components of the retail rate, as defined in this Act.

SEC. 26. *Distribution Related Businesses.* — Distribution utilities may, directly or indirectly, engage in any related business undertaking which maximizes the utilization of their assets: *Provided,* That a portion of the net income derived from such undertaking utilizing assets which form part of the rate base shall be used to reduce its distribution wheeling charges as determined by the ERC: *Provided, further,* That such portion of net income used to reduce their distribution wheeling charges shall not exceed fifty percent (50%) of the net income derived from such undertaking: *Provided, finally,* That separate accounts are maintained for each business undertaking to ensure that the distribution business shall neither subsidize in any way such business undertaking nor encumber its distribution assets in any way to support such business.

SEC. 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.

SEC. 28. *De-monopolization and Shareholding Dispersal.*— 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 percent (25%) 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. New controlling stockholders shall undertake such listing within five (5) years from the time they acquire ownership and control. A small distribution company is one whose peak demand is equal to or less than Ten megawatts (10 MW).

The ERC shall, within sixty (60) days from the effectivity of this Act, promulgate the rules and regulations to implement and effect this provision.

This Section shall not apply to electric cooperatives.

SEC. 29. *Supply Sector.* — The supply sector is a business affected with public interest. Except for distribution utilities and electric cooperatives with respect to their existing franchise areas, all suppliers of electricity to the contestable market shall require a license from the ERC.

For this purpose, the ERC shall promulgate rules and regulations prescribing the qualifications of electricity suppliers which shall include, among other requirements, a demonstration of their technical capability, financial capability, and creditworthiness: *Provided,* That the ERC shall have authority to require electricity suppliers to furnish a bond or other evidence of the ability of a supplier to withstand market disturbances or other events that may increase the cost of providing service.

Any law to the contrary notwithstanding, supply of electricity to the contestable market shall not be considered a public utility operation. For this purpose, any person or entity which shall engage in the supply of electricity to the contestable market shall not be required to secure a national franchise.

The prices to be charged by suppliers for the supply of electricity to the contestable market shall not be subject to regulation by the ERC.

Electricity suppliers shall be subject to the rules and regulations concerning abuse of market power, cartelization, and other anti-competitive or discriminatory behavior to be promulgated by the ERC.

In its billings to end-users, every supplier shall identify and segregate the components of its supplier's charge, as defined herein.

SEC. 30. *Wholesale Electricity Spot Market.* — Within one (1) year from the effectivity of this Act, the DOE shall establish a wholesale electricity spot market composed of the wholesale electricity spot market participants. The market shall provide the mechanism for identifying and setting the price of actual variations from the quantities transacted under contracts between sellers and purchasers of electricity.

Jointly with the electric power industry participants, the DOE shall formulate the detailed rules for the wholesale electricity spot market. Said rules shall provide the mechanism for determining the price of electricity not covered by bilateral contracts between sellers and purchasers of electricity users. The price determination methodology contained in said rules shall be subject to the approval of ERC. Said rules shall also reflect accepted economic principles and provide a level playing field to all electric power industry participants. The rules shall provide, among others, procedures for:

a. Establishing the merit order dispatch instructions for each time period;
b. Determining the market-clearing price for each time period;
c. Administering the market, including criteria for admission to and termination from the market which includes security or performance bond requirements, voting rights of the participants, surveillance and assurance of compliance of the participants with the rules and the formation of the wholesale electricity spot market governing body;
d. Prescribing guidelines for the market operation in system emergencies; and
e. Amending the rules.

The wholesale electricity spot market shall be implemented by a market operator in accordance with the wholesale electricity spot market rules. The market operator shall be an autonomous group, to be constituted by DOE, with equitable representation from electric power industry participants, initially under the administrative supervision of the TRANSCO. The market operator shall undertake the preparatory work and initial operation of the wholesale electricity spot market. Not later than one (1) year after the implementation of the wholesale electricity spot market, an independent entity shall be formed and the functions, assets and liabilities of the market operator shall be transferred to such entity with the joint endorsement of the DOE and the electric power industry participants. Thereafter, the administrative supervision of the TRANSCO over such entity shall cease.

Subject to the compliance with the membership criteria, all generating companies, distribution utilities, suppliers, bulk consumers/end-users and other similar entities authorized by the ERC shall be eligible to become members of the wholesale electricity spot market.

The ERC may authorize other similar entities to become eligible as members, either directly or indirectly, of the wholesale electricity spot market. All generating companies, distribution utilities, suppliers, bulk consumers/end-users and other similar entities authorized by the ERC, whether direct or indirect members of the wholesale electricity spot market, shall be bound by the wholesale electricity spot market rules with respect to transactions in that market.

NEA may, in exchange for adequate security and a guarantee fee, act as a guarantor for purchases of electricity in the wholesale electricity spot market by any electric cooperative or small distribution utility to support their credit standing consistent with the provisions hereof. For this purpose, the authorized capital stock of NEA is hereby increased to Fifteen billion pesos (P15,000,000,000.00).

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 Executive Order No. 190 issued on December 21,1999.

The cost of administering and operating the wholesale electricity spot market shall be recovered by the market operator through a charge imposed to all market members: *Provided,* That such charge shall be filed with and approved by the ERC.

In cases of national and international security emergencies or natural calamities, the ERC is hereby empowered to suspend the operation of the wholesale electricity spot market or declare a temporary wholesale electricity spot market failure.

SEC. 31. *Retail Competition and Open Access.* — Any law to the contrary notwithstanding, retail competition and open access on distribution wires shall be implemented not later than three (3) years upon the effectivity of this Act, subject to the following conditions:

a. Establishment of the wholesale electricity spot market;
b. Approval of unbundled transmission and distribution wheeling charges;
c. Initial implementation of the cross subsidy removal scheme;
d. Privatization of at least seventy (70%) percent of the total capacity of generating assets of NPC in Luzon and Visayas; and
e. Transfer of the management and control of at least seventy percent (70%) of the total energy output of power plants under contract with NPC to the IPP Administrators.

plants under contract with NPC to the IPP Administrators.

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 (750 kW). 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 (750 kW). Subsequently and every year thereafter, the ERC shall evaluate the performance of the market. On the basis of such evaluation, it shall gradually reduce the 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.

SEC. 32. *NPC Stranded Debt and Contract Cost Recovery.*— Stranded debt of NPC shall refer to any unpaid financial obligations of NPC.

Stranded contract costs of NPC shall refer to the excess of the contracted cost of electricity under eligible IPP contracts of NPC over the actual selling price of the contracted energy output of such contracts in the market. Such contracts shall have been approved by the ERB as of December 31, 2000.

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).

The ERC shall verify the reasonable amounts and determine the manner and duration for the full recovery of stranded debt and stranded contract costs as defined herein: *Provided,* That the duration for such recovery shall not be shorter than fifteen (15) years nor longer than twenty-five (25) years. The ERC shall, at the end of the first year of the implementation of stranded cost recovery and every year thereafter, conduct a review to determine whether there is under-recovery or over-recovery and adjust (true-up) the level of stranded cost recovery charge accordingly. Any amount to be included for stranded cost recovery shall be reflected as a separate item in the consumer billing statement.

SEC. 33. *Distribution Utilities Stranded Contract Costs Recovery.* — Stranded contract costs of distribution utilities shall refer to the excess of the contracted cost of electricity under eligible contracts of such utilities over the actual selling price of such contracts in the market. Such contracts shall have been approved by the ERB as of December 31, 2000.

A distribution utility shall recover stranded contract costs: *Provided, however,* That such costs of the IPPs of distribution utilities are subject to review by ERC in order to determine fairness and reasonableness in relation to the average price of land-based IPP projects entered into by NPC at the time they were contracted. The ERC shall take into consideration all factors that affect the total cost of NPC IPP generation projects, including direct or indirect subsidies or incentives provided by the Government.

Within one (1) year from the start of open access, any distribution utility that seeks recovery of stranded contract costs shall file with the ERC notice of such intent together with an estimate of such obligations, including the present value thereof and such other supporting data as may be required by the ERC. Any distribution utility that does not file within the date specified shall not be eligible for such recovery.

Any distribution utility which seeks to recover stranded cost shall have a duty to mitigate its potential stranded contract costs by making reasonable best efforts to:

a. reduce the costs of its existing contracts with IPPs to a level not exceeding the average buying price of other land-based electric power generators; and
b. submit to an annual earnings review by the ERC and se its earnings above its authorized rate of return to reduce the book value of contracts until the end of the stranded cost recovery period.

Other mitigating measures which are reasonably known and generally accepted within the electric power industry shall be utilized. The ERC shall not require the distribution utility to take a loss to reduce stranded contract costs or divest assets, unless the divestiture is imposed as a penalty as provided herein.

The relevant distribution utility shall submit to the ERC quarterly reports showing the amount of stranded costs recovered and the balance remaining to be recovered.

Within three (3) months from the submission of the application for stranded cost recovery by the relevant distribution utilities, the ERC shall verify the reasonable amounts and determine the manner and duration for the full recovery of stranded contract costs as defined herein: *Provided,* That the duration for such recovery shall not be shorter than fifteen (15) years nor longer than twenty-five (25) years. Any amount to be included for stranded cost recovery shall be reflected as a separate item in the consumer billing statement.

The ERC shall, at the end of the first year of the implementation of stranded cost recovery and every year thereafter, conduct a review to determine whether there is under-recovery or over-recovery and adjust (true-up) the level of stranded cost recovery charge accordingly. In case of an over-recovery, the ERC shall ensure that any excess amount shall be remitted to the Special Trust Fund created under Section 34 hereof. A separate account shall be created for these amounts which shall be held in trust for any future claims of distribution utilities for stranded cost recovery. At the end of the stranded cost recovery period, any remaining amount in this account shall be used to reduce the electricity rates to the end-users.

SEC. 34. *Universal Charge.*— Within one (1) year from the effectivity of this Act, a universal charge to be determined, fixed and approved by the ERC, shall be imposed on all electricity end-users for the following purposes:

a. Payment for the stranded debts in excess of the amount assumed by the National Government and stranded contract costs of NPC and as well as qualified stranded contract costs of distribution utilities resulting from the restructuring of the industry;
b. Missionary electrification;
c. The equalization of the taxes and royalties applied to indigenous or renewable sources of energy *vis-à-vis* imported energy fuels;
d. An environmental charge equivalent to one-fourth of one centavo per kilowatt-hour (P0.0025/kWh), which shall accrue to an environmental fund to be used solely for watershed rehabilitation and management. Said fund shall be managed by NPC under existing arrangements; and
e. A charge to account for all forms of cross-subsidies for a period not exceeding three (3) years.

The universal charge shall be a non-bypassable charge which shall be passed on and collected from all end-users on a monthly basis by the distribution utilities. Collections by the distribution utilities and the TRANSCO in any given month shall be remitted to the PSALM Corp. on or before the fifteenth (15th) of the succeeding month, net of any amount due to the distribution utility. Any end-user or self-generating entity not connected to a distribution utility shall remit its corresponding universal charge directly to the TRANSCO.

The PSALM Corp., as administrator of the fund, shall create a Special Trust Fund which shall be disbursed only for the purposes specified herein in an open and transparent manner. All amounts collected for the universal charge shall be distributed to the respective beneficiaries within a reasonable period to be provided by the ERC.

SEC. 35. *Royalties, Returns and Tax Rates for Indigenous Energy Resources.* — The provisions of Section 79 of Commonwealth Act No. 137 (C.A. No. 137) and any law to the contrary notwithstanding, the President of the Philippines shall reduce the royalties, returns and taxes collected for the exploitation of all indigenous sources of energy, including but not limited to, natural gas and geothermal steam, so as to effect parity of tax treatment with the existing rates for imported coal, crude oil, bunker fuel and other imported fuels.

To ensure lower rates for end-users, the ERC shall forthwith reduce the rates of power from all indigenous sources of energy.

SEC. 36. *Unbundling of Rates and Functions.* — Within six (6) months from the effectivity of this Act, NPC shall file with the ERC its revised rates. The rates of NPC shall be unbundled between transmission and generation rates and the rates shall reflect the respective costs of providing each service. Inter-grid and intra-grid cross subsidies for both the transmission and the generation rates shall be removed in accordance with his Act.

Within six (6) months from the effectivity of this Act, each distribution utility shall file its revised rates for the approval by the ERC. The distribution wheeling charge shall be unbundled from the retail rate and the rates shall reflect the respective costs of providing each service. For both the distribution retail wheeling and supplier's charges, inter-class subsidies shall be removed in accordance with this Act.

Within six (6) months from the date of submission of revised rates by NPC and each distribution utility, the ERC shall notify the entities of their approval.

Any electric power industry participant shall functionally and structurally unbundle its business activities and rates in accordance with the sectors as identified in Section 5 hereof. The ERC shall ensure full compliance with this provision.

CHAPTER III

ROLE OF THE DEPARTMENT OF ENERGY

SEC. 37. *Powers and Functions of the DOE.* — In addition to its existing powers and functions, the DOE is hereby mandated to supervise the restructuring of the electricity industry. In pursuance thereof, Section 5 of R.A. No. 7638 otherwise known as "The Department of Energy Act of 1992" is hereby amended to read as follows:
"(a) Formulate policies for the planning and implementation of a comprehensive program for the efficient supply and economical use of energy consistent with the approved national economic plan and with the policies on environmental protection and conservation and maintenance of ecological balance, and provide a mechanism for the integration, rationalization, and coordination of the various energy programs of the Government;

(b) Develop and update annually the existing Philippine Energy Plan, hereinafter referred to as "The Plan," which shall provide for an integrated and comprehensive exploration, development, utilization, distribution, and conservation of energy resources, with preferential bias for environment-friendly, indigenous, and low-cost sources of energy. The plan shall include a policy direction towards the privatization of government agencies related to energy, deregulation of the power and energy industry, and reduction of dependency on oil-fired plants. Said Plan shall be submitted to Congress not later than the fifteenth day of September and every year thereafter;

(c) Prepare and update annually a Power Development Program (PDP) and integrate the same into the Philippine Energy Plan. The PDP shall consider and integrate the individual or joint development plans of the transmission, generation, and distribution sectors of the electric power industry, which are submitted to the Department: *Provided, however,* That the ERC shall have exclusive authority covering the Grid Code and the pertinent rules and regulations it may issue;

(d) Ensure the reliability, quality and security of supply of electric power;

(e) Following the restructuring of the electricity sector, the DOE shall, among others:

i. Encourage private sector investments in the electricity sector and promote development of indigenous and renewable energy sources;
ii. Facilitate and encourage reforms in the structure and operations of distribution utilities for greater efficiency and lower costs;
iii. In consultation with other government agencies, promote a system of incentives to encourage industry participants, including new generating companies and end-users to provide adequate and reliable electric supply; and
iv. Undertake, in coordination with the ERC, NPC, NEA and the Philippine Information Agency (PIA), information campaign to educate the public on the restructuring of the electricity sector and privatization of NPC assets;

(f) Jointly with the electric power industry participants, establish the wholesale electricity spot market and formulate the detailed rules governing the operations thereof;

(g) Establish and administer programs for the exploration, transportation, marketing, distribution, utilization, conservation, stockpiling, and storage of energy resources of all forms, whether conventional or non-conventional;

(h) Exercise supervision and control over all government activities relative to energy projects in order to attain the goals embodied in Section 2 of R.A. No. 7638;

(i) Develop policies and procedures and, as appropriate, promote a system of energy development incentives to enable and encourage electric power industry participants to provide adequate capacity to meet demand including, among others, reserve requirements;

(j) Monitor private sector activities relative to energy projects in order to attain the goals of the restructuring, privatization, and modernization of the electric power sector as provided for under existing laws: *Provided,* That the Department shall endeavor to provide for an environment conducive to free and active private sector participation and investment in all energy activities;

(k) Assess the requirements of, determine priorities for, provide direction to, and disseminate information resulting from energy research and development programs for the optimal development of various forms of energy production and utilization technologies;

(l) Formulate and implement programs, including a system of providing incentives and penalties, for the judicious and efficient use of energy in all energy-consuming sectors of the economy;

(m) Formulate and implement a program for the accelerated development of non-conventional energy systems and the promotion and commercialization of its applications;

(n) Devise ways and means of giving direct benefit to the province, city, or municipality, especially the community and people affected, and equitable preferential benefit to the region that hosts the energy resource and/or the energy-generating facility: *Provided, however,* That the other provinces, cities, municipalities, or regions shall not be deprived of their energy requirements;

(o) Encourage private enterprises engaged in energy projects, including corporations, cooperatives, and similar collective organizations, to broaden the base of their ownership and thereby encourage the widest public ownership of energy-oriented corporations;

(p) Formulate such rules and regulations as may be necessary to implement the objectives of this Act; and

(q) Exercise such other powers as may be necessary or incidental to attain the objectives of this Act."

CHAPTER IV

REGULATION OF THE ELECTRIC POWER INDUSTRY

SEC. 38. *Creation of the Energy Regulatory Commission.* — There is hereby created an independent, quasi-judicial regulatory body to be named the Energy Regulatory Commission (ERC). For this purpose, the existing Energy Regulatory Board (ERB) created under Executive Order No. 172, as amended, is hereby abolished.

The Commission shall be composed of a Chairman and four (4) members to be appointed by the President of the Philippines. The Chairman and the members of the Commission shall be natural-born citizens and residents of the Philippines, persons of good moral character, at least thirty-five (35) years of age, and of recognized competence in any of the following fields: energy, law, economics, finance, commerce, or engineering, with at least three (3) years actual and distinguished experience in their respective fields of expertise: *Provided,* That out of the four (4) members of the Commission, at least one (1) shall be a member of the Philippine Bar with at least ten (10) years experience in the active practice of law, and one (1) shall be a certified public accountant with at least ten (10) years experience in active practice.

Within three (3) months from the creation of the ERC, the Chairman shall submit for the approval by the President of the Philippines the new organizational structure and plantilla positions necessary to carry out the powers and functions of the ERC.

The Chairman of the Commission, who shall be a member of the Philippine Bar, shall act as the Chief Executive Officer of the Commission.

All members of the Commission shall have a term of seven (7) years: *Provided,* That for the first appointees, the Chairman shall hold office for seven (7) years, two (2) members shall hold office for five (5) years and the other two (2) members shall hold office for three (3) years: *Provided, further,* That appointment to any future vacancy shall only be for the unexpired term of the predecessor: *Provided, finally,* That there shall be no reappointment and in no case shall any member serve for more than seven (7) years in the Commission.

The Chairman and members of the Commission shall assume office at the beginning of their terms: *Provided,* That, if upon the effectivity of this Act, the Commission has not been constituted and the new staffing pattern and plantilla positions have not been approved and filled-up, the current Board and existing personnel of ERB shall continue to hold office.

The existing personnel of the ERB, if qualified, shall be given preference in the filling up of plantilla positions created in the ERC, subject to existing civil service rules and regulations.

Members of the Commission shall enjoy security of tenure and shall not be suspended or removed from office except for just cause as specified by law.

The Chairman and members of the Commission or any of their relatives within the fourth civil degree of consanguinity or affinity, legitimate or common law, shall be prohibited from holding any interest whatsoever, either as investor, stockholder, officer or director, in any company or entity engaged in the business of transmitting, generating, supplying or distributing any form of energy and must, therefore, divest through sale or legal disposition of any and all interests in the energy sector upon assumption of office.

The presence of at least three (3) members of the Commission shall constitute a quorum and the majority vote of two (2) members in a meeting where a quorum is present shall be necessary for the adoption of any rule, ruling, order, resolution, decision or other act of the Commission in the exercise of its quasi-judicial functions: *Provided,* That in fixing rates and tariffs, an affirmative vote of three (3) members shall be required.

SEC. 39. *Compensation and Other Emoluments for ERC Personnel.* — The compensation and other emoluments for the Chairman and members of the Commission and the ERC personnel shall be exempted from the coverage of Republic Act No. 6758, otherwise known as the "Salary Standardization Act." For this purpose, the schedule of compensation of the ERC personnel, except for the initial salaries and compensation of the Chairman and members of the Commission, shall be submitted for approval by the President of the Philippines. The new schedule of compensation shall be implemented within six (6) months from the effectivity of this Act and may be upgraded by the President of the Philippines as the need arises: *Provided,* That in no case shall the rate be upgraded more than once a year.

The Chairman and members of the Commission shall initially be entitled to the same salaries, allowances and benefits as those of the Presiding Justice and Associate Justices of the Supreme Court, respectively. The Chairman and the members of the Commission shall, upon completion of their term or upon becoming eligible for retirement under existing laws, be entitled to the same retirement benefits and privileges provided for the Presiding Justice and Associate Justices of the Supreme Court, respectively.

SEC. 40. *Enhancement of Technical Competence.* — The ERC shall establish rigorous training programs for its staff for the purpose of enhancing the technical competence of the ERC in the following areas: evaluation of technical performance and monitoring of compliance with service and performance standards, performance-based rate-setting reform, environmental standards and such other areas as will enable the ERC to adequately perform its duties and functions.

SEC. 41. *Promotion of Consumer Interests.* — The ERC shall handle consumer complaints and ensure the adequate promotion of consumer interests.

SEC. 42. *Budget of the ERC.* — The amount of One hundred fifty million pesos (P150,000,000) is hereby allocated from the existing budget of the ERB for the initial operation of the ERC. Any balance shall initially be sourced from the Office of the President of the Philippines. Thereafter, the annual budget of the ERC shall be included in the regular or special appropriations.

SEC. 43. *Functions of the ERC.* — The ERC shall promote competition, encourage market development, ensure customer choice and penalize abuse of market power in the restructured electricity industry. In appropriate cases, the ERC is authorized to issue cease and desist order after due notice and hearing. Towards this end, it shall be responsible for the following key functions in the restructured industry:

a. Enforce the implementing rules and regulations of this Act;
b. Within six (6) months from the effectivity of this Act, promulgate and enforce, in accordance with law, a National Grid Code and a Distribution Code which shall include, but not limited to, the following:

    i. Performance standards for TRANSCO O&M Concessionaire, distribution utilities and suppliers: *Provided,* That in the establishment of the performance standards, the nature and function of the entities shall be considered; and
    ii. Financial capability standards for the generating companies, the TRANSCO, distribution utilities and suppliers: *Provided,* That in the formulation of the financial capability standards, the nature and function of the entity shall be considered: *Provided, further,* That such standards are set to ensure that the electric power industry participants meet the minimum financial standards to protect the public interest. Determine, fix, and approve, after due notice and public hearings the universal charge, to be imposed on all electricity end-users pursuant to Section 34 hereof;

c. Enforce the rules and regulations governing the operations of the electricity spot market and the activities of the spot market operator and other participants in the spot market, for the purpose of ensuring a greater supply and rational pricing of electricity;
d. Determine the level of cross subsidies in the existing retail rate until the same is removed pursuant to Section 74 hereof;
e. Amend or revoke, after due notice and hearing, the authority to operate of any person or entity which fails to comply with the provisions hereof, the IRR or any order or resolution of the ERC. In the event a divestment is required, the ERC shall allow the affected party sufficient time to remedy the infraction or for an orderly disposal, but shall in no case exceed twelve (12) months from the issuance of the order;
f. In the public interest, establish and enforce a methodology for setting transmission and distribution wheeling rates and retail rates for the captive market of a distribution utility, taking into account all relevant considerations, including the efficiency or inefficiency of the regulated entities. The rates must be such as to allow the recovery of just and reasonable costs and a reasonable return on rate base (RORB) to enable the entity to operate viably. The ERC may adopt alternative forms of internationally-accepted rate-setting methodology as it may deem appropriate. The rate-setting methodology so adopted and applied must ensure a reasonable price of electricity. The rates prescribed shall be non-discriminatory. To achieve this objective and to ensure the complete removal of cross subsidies, the cap on the recoverable rate of system losses prescribed in Section 10 of Republic Act No. 7832, is hereby amended and shall be replaced by caps which shall be determined by the ERC based on load density, sales mix, cost of service, delivery voltage and other technical considerations it may promulgate. The ERC shall determine such form of rate-setting methodology, which shall promote efficiency. In case the rate setting methodology used is RORB, it shall be subject to the following guidelines:

    i. For purposes of determining the ratebase, the TRANSCO or any distribution utility may be allowed to revalue its eligible assets not more than once every three (3) years by an independent appraisal company: *Provided, however,* That ERC may give an exemption in case of unusual devaluation: *Provided, further,* That the ERC shall exert efforts to minimize price shocks in order to protect the consumers;
    ii. Interest expenses are not allowable deductions from permissible return on rate base;
    iii. In determining eligible cost of services that will be passed on to the end-users, the ERC shall establish minimum efficiency performance standards for the TRANSCO and distribution utilities including systems losses, interruption frequency rates, and collection efficiency;
    iv. Further, in determining rate base, the TRANSCO or any distribution utility shall not be allowed to include management inefficiencies like cost of project delays not excused by *force majeure,* penalties and related interest during construction applicable to these unexcused delays; and
    v. Any significant operating costs or project investments of the TRANSCO and distribution utilities which shall become part of the rate base shall be subject to verification by the ERC to ensure that the contracting and procurement of the equipment, assets and services have been subjected to transparent and accepted industry procurement and purchasing practices to protect the public interest.

g. Three (3) years after the imposition of the universal charge, ensure that the charges of the TRANSCO or any distribution utility shall bear no cross subsidies between grids, within grids, or between classes of customers, except as provided herein;
h. Review and approve any changes on the terms and conditions of service of the TRANSCO or any distribution utility;
i. Allow the TRANSCO to charge user fees for ancillary services to all electric power industry participants or self-generating entities connected to the grid. Such fees shall be fixed by the ERC after due notice and public hearing;
j. Set a lifeline rate for the marginalized end-users;
k. Monitor and take measures in accordance with this Act to penalize abuse of market power, cartelization, and anticompetitive or discriminatory behavior by any electric power industry participant;
l. Impose fines or penalties for any non-compliance with or breach of this Act, the IRR of this Act and the rules and regulations which it promulgates or administers;
m. Take any other action delegated to it pursuant to this Act;
n. Before the end of April of each year, submit to the Office of the President of the Philippines and Congress, copy furnished the DOE, an annual report containing such matters or cases which have been filed before or referred to it during the preceding year, the actions and proceedings undertaken and its decision or resolution in each case. The ERC shall make copies of such reports available to any interested party upon payment of a charge which reflects the printing costs. The ERC shall publish all its decisions involving rates and anti-competitive cases in at least one (1) newspaper of general circulation, and/or post electronically and circulate to all interested electric power industry participants copies of its resolutions to ensure fair and impartial treatment;
o. Monitor the activities in the generation and supply of the electric power industry with the end in view of promoting free market competition and ensuring that the allocation or pass through of bulk purchase cost by distributors is transparent, non-discriminatory and that any existing subsidies shall be divided pro-rata among all retail suppliers;
p. Act on applications for or modifications of certificates of public convenience and/or necessity, licenses or permits of franchised electric utilities in accordance with law and revoke, review and modify such certificates, licenses or permits in appropriate cases, such as in cases of violations of the Grid Code, Distribution Code and other rules and regulations issued by the ERC in accordance with law;
q. Act on applications for cost recovery and return on demand side management projects;
r. In the exercise of its investigative and quasi-judicial powers, act against any participant or player in the energy sector for violations of any law, rule and regulation governing the same, including the rules on cross-ownership, anti-competitive practices, abuse of market positions and similar or related acts by any participant in the energy sector or by any person, as may be provided by law, and require any person or entity to submit any report or data relative to any investigation or hearing conducted pursuant to this Act;
s. Inspect, on its own or through duly authorized representatives, the premises, books of accounts and records of any person or entity at any time, in the exercise of its quasi-judicial power for purposes of determining the existence of any anti-competitive behavior and/or market power abuse and any violation of rules and regulations issued by the ERC;
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: *Provided, however,* 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; and
u. The ERC shall have the original and exclusive jurisdiction over all cases contesting rates, fees, fines and penalties imposed by the ERC in the exercise of the abovementioned powers, functions and responsibilities and over all cases involving disputes between and among participants or players in the energy sector.

All notices of hearings to be conducted by the ERC for the purpose of fixing rates or fees shall be published at least twice for two successive weeks in two (2) newspapers of nationwide circulation.

SEC. 44. *Transfer of Powers and Functions.*— The powers and functions of the Energy Regulatory Board not inconsistent with the provisions of this Act are hereby transferred to the ERC. The foregoing transfer of powers and functions shall include all applicable funds and appropriations, records, equipment, property and personnel as may be necessary.

SEC. 45. *Cross Ownership, Market Power Abuse and Anti-Competitive Behavior.* — No participant in the electricity industry or any other person may engage in any anti-competitive behavior including, but not limited to, cross-subsidization, price or market manipulation, or other unfair trade practices detrimental to the encouragement and protection of contestable markets.

No generation company, distribution utility, or its respective subsidiary or affiliate or stockholder or official of a generation company or distribution utility, or other entity engaged in generating and supplying electricity specified by ERC within the fourth civil degree of consanguinity or affinity, shall be allowed to hold any interest, directly or indirectly, in TRANSCO or its concessionaire. Likewise, the TRANSCO, or its concessionaire or any of its stockholders or officials or any of their relatives within the fourth civil degree of consanguinity or affinity, shall not hold any interest, whether directly or indirectly, in any generation company or distribution utility. Except for *ex officio* government-appointed representatives, no person who is an officer or director of the TRANSCO or its concessionaire shall be an officer or director of any generation company, distribution utility or supplier.

An "affiliate" means 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 another person. As used herein, "control" shall mean the power to direct or cause the direction of the management policies of a person by contract, agency or otherwise.

To promote true market competition and prevent harmful monopoly and market power abuse, the ERC shall enforce the following safeguards:

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 subsidiaries, affiliates, directors or officers or any of their relatives by consanguinity or affinity, legitimate or common law, within the fourth civil degree;
b. 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. 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; and
c. 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 its total demand from bilateral power supply contracts.

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.

Exceptions from these limitations shall be allowed for isolated grids that are not connected to the high voltage transmission system. Except as otherwise provided for in this Section, any restriction on ownership and/or control between or within sectors of the electricity industry may be imposed by ERC only insofar as the enforcement of the provisions of this Section is concerned.

The ERC shall, within one (1) year from the effectivity of this Act, promulgate rules and regulations to ensure and promote competition, encourage market development and customer choice and discourage/penalize abuse of market power, cartelization and any anti-competitive or discriminatory behavior, in order to further the intent of this Act and protect the public interest. Such rules and regulations shall define the following:

a. the relevant markets for purposes of establishing abuse or misuse of monopoly or market position;
b. areas of isolated grids; and
c. the periodic reportorial requirements of electric power industry participants as may be necessary to enforce the provisions of this Section.

The ERC shall, *motu proprio,* monitor and penalize any market power abuse or anti-competitive or discriminatory act or behavior by any participant in the electric power industry. Upon finding that a market participant has engaged in such act or behavior, the ERC shall stop and redress the same. Such remedies shall, without limitation, include the imposition of price controls, issuance of injunctions, requirement of divestment or disgorgement of excess profits and imposition of fines and penalties pursuant to this Act.

The ERC shall, within one (1) year from the effectivity of this Act, promulgate rules and regulations providing for a complaint procedure that, without limitation, provides the accused party with notice and an opportunity to be heard.

SEC. 46. *Fines and Penalties.*— The fines and penalties that shall be imposed by the ERC for any violation of or non-compliance with this Act or the IRR shall range from a minimum of Fifty thousand pesos (P50,000.00) to a maximum of Fifty million pesos (P50,000,000.00).

Any person who is found guilty of any of the prohibited acts pursuant to Section 45 hereof shall suffer the penalty of *prision mayor* and a fine ranging from Ten thousand pesos (P10,000.00) to Ten million pesos (P10,000,000.00), or both, at the discretion of the court.

The members of the Board of Directors of the juridical companies participating in or covered in the generation companies, the distribution utilities, the TRANSCO or its concessionaire or supplier who violate the provisions of this Act may be fined by an amount not exceeding double the amount of damages caused by the offender or by imprisonment of one (1) year or two (2) years or both at the discretion of the court. This rule shall apply to the members of the Board who knowingly or by neglect allows the commission or omission under the law.

If the offender is a government official or employee, he shall, in addition, be dismissed from the government service with prejudice to reinstatement and with perpetual or temporary disqualification from holding any elective or appointive office.

If the offender is an alien, he may, in addition to the penalties prescribed, be deported without further proceedings after service of sentence.

Any case which involves question of fact shall be appealable to the Court of Appeals and those which involve question of law shall be directly appealable to the Supreme Court.

The administrative sanction that may be imposed by the ERC shall be without prejudice to the filing of a criminal action, if warranted.

To ensure compliance with this Act, the penalty of *prision correccional* or a fine ranging from Five thousand pesos (P5,000.00) to Five million pesos (P5,000,000), or both, at the discretion of the court, shall be imposed on any person, including but not limited to the president, member of the Board, Chief Executive Officer or Chief Operating Officer of the corporation, partnership, or any other entity involved, found guilty of violating or refusing to comply with any provision of this Act or its IRR, other than those provided herein.

Any party to an administrative proceeding may, at any time, make an offer to the ERC, conditionally or otherwise, for a consented decree, voluntary compliance or desistance and other settlement of the case. The offer and any or all of the ultimate facts upon which the offer is based shall be considered for settlement purposes only and shall not be used as evidence against any party for any other purpose and shall not constitute an admission by the party making the offer of any violation of the laws, rules, regulations, orders and resolutions of the ERC, nor as a waiver to file any warranted criminal actions.

In addition, Congress may, upon recommendation of the DOE and/or ERC, revoke such franchise or privilege granted to the party who violated the provisions of this Act.

CHAPTER V

PRIVATIZATION OF THE ASSETS OF THE NATIONAL POWER CORPORATION

SEC. 47. *NPC Privatization.* — 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. Within six (6) months from the effectivity of this Act, the PSALM Corp. shall submit a plan for the endorsement by the Joint Congressional Power Commission and the approval of the President of the Philippines, on the total privatization of the generation assets, real estate, other disposable assets as well as existing IPP contracts of NPC and thereafter, implement the same, in accordance with the following guidelines, except as provided for in Paragraph (f) herein:

a. The privatization value to the National Government of the NPC-generation assets, real estate, other disposable assets as well as IPP contracts shall be optimized;
b. The participation by Filipino citizens and corporations in the purchase of NPC assets shall be encouraged;

   In the case of foreign investors, at least seventy-five percent (75%) of the funds used to acquire NPC-generation assets and IPP contracts shall be inwardly remitted and registered with the Bangko Sentral ng Pilipinas.

c. The NPC plants and/or its IPP contracts assigned to IPP Administrators, its related assets and assigned liabilities, if any, shall be grouped in a manner which shall promote the viability of the resulting generation companies (gencos), ensure economic efficiency, encourage competition, foster reasonable electricity rates and create market appeal to optimize returns to the government from the sale and disposition of such assets in a manner consistent with the objectives of this Act. In the grouping of the generation assets and IPP contracts of NPC, the following criteria shall be considered:

   1. A sufficient scale of operations and balance sheet strength to promote the financial viability of the restructured units;
   2. Broad geographical groupings to ensure efficiency of operations but without the formation of regional companies or consolidation of market power;
   3. Portfolio of plants and IPP contracts to achieve management and operational synergy without dominating any part of the market or of the load curve; and
   4. Such other factors as may be deemed beneficial to the best interest of the National Government while ensuring attractiveness to potential investors.

d. All assets of NPC shall be sold in an open and transparent manner through public bidding, and the same shall apply to the disposition of IPP contracts;

e. In cases of transfer of possession, control, operation or privatization of multi-purpose hydro facilities, safeguards shall be prescribed to ensure that the National Government may direct water usage in cases of shortage to protect potable water, irrigation, and all other requirements imbued with public interest;
f. The Agus and the Pulangui complexes in Mindanao shall be excluded from among the generation companies that will be initially privatized. Their 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 privatization of Agus and Pulangui complexes shall be left to the discretion of PSALM Corp. in consultation with Congress;
g. The steamfield assets and generating plants of each geothermal complex shall not be sold separately. They shall be combined and each geothermal complex shall be sold as one package through public bidding. The geothermal complexes covered by this requirement include, but are not limited to, Tiwi-Makban, Leyte A and B (Tongonan), Palinpinon, and Mt. Apo;
h. The ownership of the Caliraya-Botokan-Kalayaan (CBK) pump storage complex shall be transferred to the PSALM Corporation;
i. Not later than three (3) years from the effectivity of this Act, and in no case later than the initial implementation of open access, at least seventy percent (70%) of the total capacity of generating assets of NPC and of the total capacity of the power plants under contract with NPC located in Luzon and Visayas shall have been privatized: *Provided,* That any unsold capacity shall be privatized not later than eight (8) years from the effectivity of this Act; and
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.

SEC. 48. *National Power Board of Directors.*— Upon the passage of this Act, Section 6 of R.A. No. 6395, as amended, and Section 13 of R.A. No. 7638, as amended, referring to the composition of the National Power Board of Directors, are hereby repealed and a new Board shall be immediately organized. The new Board shall be composed of the Secretary of Finance as Chairman, with the following as members: the Secretary of Energy, the Secretary of Budget and Management, the Secretary of Agriculture, the Director-General of the National Economic and Development Authority, the Secretary of Environment and Natural Resources, the Secretary of the Interior and Local Government, the Secretary of the Department of Trade and Industry, and the President of the National Power Corporation.

CHAPTER VI

POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT

SEC. 49. *Creation of Power Sector Assets and Liabilities Management Corporation.* — There is hereby created a government-owned and -controlled corporation to be known as the "Power Sector Assets and Liabilities Management Corporation," hereinafter referred to as the "PSALM Corp.," which shall take ownership of all existing NPC generation assets, liabilities, IPP contracts, real estate and all other disposable assets. All outstanding obligations of the NPC arising from loans, issuances of bonds, securities and other instruments of indebtedness shall be transferred to and assumed by the PSALM Corp. within one hundred eighty (180) days from the approval of this Act.

SEC. 50. *Purpose and Objective, Domicile and Term of Existence.* — The principal purpose of the PSALM Corp. is to manage the orderly sale, disposition, and privatization of NPC generation assets, real estate and other disposable assets, and IPP contracts with the objective of liquidating all NPC financial obligations and stranded contract costs in an optimal manner.

The PSALM Corp. shall have its principal office and place of business within Metro Manila.

The PSALM Corp. shall exist for a period of twenty five (25) years from the effectivity of this Act, unless otherwise provided by law, and all assets held by it, all moneys and properties belonging to it, and all its liabilities outstanding upon the expiration of its term of existence shall revert to and be assumed by the National Government.

SEC. 51. *Powers.* — The PSALM Corp. shall, in the performance of its functions and for the attainment of its objective, have the following powers:

a. To formulate and implement a program for the sale and privatization of the NPC assets and IPP contracts and the liquidation of NPC debts and stranded contract costs, such liquidation to be completed within the term of

existence of the PSALM Corp.;

b. To take title to and possession of, administer and conserve the assets transferred to it; to sell or dispose of the same at such price and under such terms and conditions as it may deem necessary or proper, subject to applicable laws, rules and regulations;
c. To take title to and possession of the NPCIPP contracts and to appoint, after public bidding in transparent and open manner, qualified independent entities who shall act as the IPP Administrators in accordance with this Act;
d. To calculate the amount of the stranded debts and stranded contract costs of NPC which shall form the basis for ERC in the determination of the universal charge;
e. To liquidate the NPC stranded contract costs, utilizing the proceeds from sales and other property contributed to it, including the proceeds from the universal charge;
f. To adopt rules and regulations as may be necessary or proper for the orderly conduct of its business or operations;
g. To sue and be sued in its name;
h. To appoint or hire, transfer, remove and fix the compensation of its personnel: *Provided, however,* That the Corporation shall hire its own personnel only if absolutely necessary, and as far as practicable, shall avail itself of the services of personnel detailed from other government agencies;
i. To own, hold, acquire, or lease real and personal properties as may be necessary or required in the discharge of its functions;
j. To borrow money and incur such liabilities, including the issuance of bonds, securities or other evidences of indebtedness utilizing its assets as collateral and/or through the guarantees of the National Government: *Provided, however,* That all such debts or borrowings shall have been paid off before the end of its corporate life;
k. To restructure existing loans of the NPC;
l. To collect, administer, and apply NPC's portion of the universal charge; and
m. To structure the sale, privatization or disposition of NPC assets and IPP contracts and/or their energy output based on such terms and conditions which shall optimize the value and sale prices of said assets.

SEC. 52. *Power Sector Assets and Liabilities Management Corporation, Meetings, Quorum and Voting.* — The Corporation shall be administered, and its powers and functions exercised, by a Board of Directors which shall be composed of the Secretary of Finance as the Chairman, the Secretary of Budget and Management, the Secretary of the Department of Energy, the Director-General of the National Economic and Development Authority, the Secretary of the Department of Justice, the Secretary of the Department of Trade and Industry and the President of the PSALM Corp. as *ex officio* members thereof.

The Board of Directors shall meet regularly and as frequently as may be necessary to enable it to discharge its functions and responsibilities. The presence at a meeting of four (4) members shall constitute a quorum, and the decision of the majority of three (3) members present at a meeting where there is quorum shall be the decision of the Board of Directors.

SEC. 53. *Powers of the President of PSALM Corp.* — The President of the PSALM Corp. shall be appointed by the President of the Philippines. In the absence of the Chairman, the President shall preside over Board meetings.

The President of the PSALM Corp. shall be the Chief Executive Officer of the PSALM Corp. and shall have the following powers and duties:

a. To execute and administer the policies and measures approved by the Board, and take responsibility for the efficient discharge of management functions;
b. To oversee the preparation of the budget of the PSALM Corp.;
c. To direct and supervise the operation and internal administration of the PSALM Corp. and, for this purpose, may delegate some or any of his administrative responsibilities and duties to other officers of the PSALM Corp.;
d. Subject to the guidelines and policies set up by the Board, to appoint and fix the number and compensation of subordinate officials and employees of the PSALM Corp.; and for cause, to remove, suspend, or otherwise discipline any subordinate employee of the PSALM Corp.;
e. To submit an annual report to the Board on the activities and achievements of the PSALM Corp. at the close of each fiscal year and upon approval thereof, submit a copy to the President of the Philippines and to such other agencies as may be required by law;
f. To represent the PSALM Corp. in all dealings and transactions with other offices, agencies, and instrumentalities of the Government and with all persons and other entities, private or public, domestic or foreign; and
g. To exercise such other powers and duties as may be vested in him by the Board from time to time.

SEC. 54. *Exemption from the Salary Standardization Law.*— 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.

SEC. 55. *Property of the PSALM Corp.* — The following funds, assets, contributions and other property shall constitute the property of the PSALM Corp.:

a. The generation assets, real estate, IPP contracts, other disposable assets of NPC, proceeds from the sale or disposition of such assets and the residual assets from B-O-T, R-O-T, and other variations thereof;
b. Transfers from the National Government;
c. Proceeds from loans incurred to restructure or refinance NPC's transferred liabilities: *Provided, however,* That all borrowings shall be fully paid for by the end of the life of the PSALM Corp.;
d. Proceeds from the universal charge allocated for stranded contract costs and the stranded debts of NPC;
e. Net profit of NPC;
f. Net profit of TRANSCO;
g. Official assistance, grants, and donations from external sources; and
h. Other sources of funds as may be determined by PSALM Corp. necessary for the above-mentioned purposes.

SEC. 56. *Claims Against the PSALM Corp.* — The following shall constitute the claims against the PSALM Corp.:

a. NPC liabilities transferred to the PSALM Corp.;
b. Transfers from the National Government;
c. New loans; and
d. NPC stranded contract costs.

CHAPTER VII

PROMOTION OF RURAL ELECTRIFICATION

SEC. 57. *Conversion of Electric Cooperatives.* — Electric cooperatives are hereby given the option to convert into either stock cooperative under the Cooperatives Development Act or stock corporation under the Corporation Code. Nothing contained in this Act shall deprive electric cooperatives of any privilege or right granted to them under Presidential Decree No. 269, as amended, and other existing laws.

SEC. 58. Additional Mandate of the National Electrification Administration (NEA). — NEA shall develop and implement programs:

a. To prepare electric cooperatives in operating and competing under the deregulated electricity market within five (5) years from the effectivity of this Act, specifically in an environment of open access and retail wheeling;
b. To strengthen the technical capability and financial viability of rural electric cooperatives; and
c. To review and upgrade regulatory policies with a view to enhancing the viability of rural electric cooperatives as electric utilities.

NEA shall continue to be under the supervision of the DOE and shall exercise its functions under Presidential Decree No. 269, as amended by Presidential Decree No. 1645 insofar as they are consistent with this Act.

SEC. 59. *Alternative Electric Service for Isolated Villages.* — The provision of electric service in remote and unviable villages that the franchised utility is unable to service for any reason shall be opened to other qualified third parties.

SEC. 60. *Debts of Electric Cooperatives.* — Upon the effectivity of this Act, all outstanding financial obligations of electric cooperatives to NEA and other government agencies incurred for the purpose of financing the rural electrification program shall be assumed by the PSALM Corporation in accordance with the program approved by the President of the Philippines within one (1) year from the effectivity of this Act which shall be implemented and completed within three (3) years from the effectivity of this Act. The ERC shall ensure a reduction in the rates of electric cooperatives commensurate with the resulting savings due to the removal of the amortization payments of their loans. Within five (5) years from the condonation of debt, any electric cooperative which shall transfer ownership or control of its assets, franchise or operations shall repay PSALM Corp. the total debts including accrued interests thereon.

CHAPTER VIII

GENERAL PROVISIONS

SEC. 61. *Reportorial Requirements.* — The DOE shall take the necessary measures to ensure that the provisions of this Act are properly implemented, and shall submit to the Power Commission a sem-annual report on the implementation of this Act on or before the last week of April and October of each year.

SEC. 62. *Joint Congressional Power Commission.* — Upon the effectivity of this Act, a congressional commission, hereinafter referred to as the "Power Commission," is hereby constituted. The Power Commission shall be composed of fourteen (14) members with the chairmen of the Committee on Energy of the Senate and the House of Representatives and six (6) additional members from each House, to be designated by the Senate President and the Speaker of the House of Representatives, respectively. The minority shall be entitled to pro rata representation but shall have at least one (1) representative in the Power Commission.

The Commission shall, in aid of legislation, perform the following functions, among others:

a. Set the guidelines and overall framework to monitor and ensure the proper implementation of this Act;
b. Endorse the initial privatization plan within one (1) month from submission of such plan to the Power Commission by PSALM Corp. for approval by the President of the Philippines;
c. To ensure transparency, require the submission of reports from government agencies concerned on the conduct of public bidding procedures regarding privatization of NPC generation and transmission assets;
d. Review and evaluate the performance of the industry participants in relation to the objectives and timelines set forth in this Act;
e. Approve the budget for the programs of the Power Commission and all disbursements therefrom, including compensation of all personnel;
f. Submit periodic reports to the President of the Philippines and Congress;
g. Determine inherent weaknesses in the law and recommend necessary remedial legislation or executive measures; and
h. Perform such other duties and functions as may be necessary to attain its objectives.

In furtherance hereof, the Power Commission is hereby empowered to require the DOE, ERC, NEA, TRANSCO, generation companies, distribution utilities, suppliers and other electric power industry participants to submit reports and all pertinent data and information relating to the performance of their respective functions in the industry. Any person who willfully and deliberately refuses without just cause to extend the support and assistance required by the Power Commission to effectively attain its objectives shall, upon conviction, be punished by imprisonment of not less than one (1) year but not more than six (6) years or a fine of not less than Fifty thousand pesos (P50,000.00). but not more than Five hundred thousand pesos (P500,000.00) or both at the discretion of the court.

The Power Commission shall adopt its internal rules of procedures; conduct hearings and receive testimonies, reports and technical advice; invite or summon by *subpoena ad testificandum* any public official, private citizen or any other person to testify before it, or require any person by *subpoena duces tecum* to produce before it such records, reports, documents or other materials as it may require; and generally require all the powers necessary to attain the purposes for which it is created. The Power Commission shall be assisted by a secretariat to be composed of personnel who may be seconded from the Senate and the House of Representatives and may retain consultants. The secretariat shall be headed by an executive director who has sufficient background and competence on the policies and issues relating to electricity industry reforms as provided in this Act. To carry out its powers and functions, the initial sum of Twenty-five million pesos (P25,000,000.00) shall be charged against the current appropriations of the Senate. Thereafter, such amount necessary for its continued operation shall be included in the annual General Appropriations Act.

The Power Commission shall exist for period often (10) years from the effectivity of this Act and may be extended by a joint concurrent resolution.

SEC. 63. *Separation Benefits of Officials and Employees of Affected Agencies.* — National Government employees displaced or separated from the service as a result of the restructuring of the electricity industry and privatization of NPC assets pursuant to this Act, shall be entitled to either a separation pay and other benefits in accordance with existing laws, rules or regulations or be entitled to avail of the privileges provided under a separation plan which shall be one and one-half month salary for every year of service in the government: *Provided, however,* That those who avail of such privileges shall start their government service anew if absorbed by any government-owned successor company. In no case shall there be any diminution of benefits under the separation plan until the full implementation of the restructuring and privatization.

Displaced or separated personnel as a result of the privatization, if qualified, shall be given preference in the hiring of the manpower requirements of the privatized companies.

The salaries of employees of NPC shall continue to be exempt from the coverage of Republic Act No. 6758, otherwise known as "The Salary Standardization Act."

With respect to employees who are not retained by NPC, the Government, through the Department of Labor and Employment, shall endeavor to implement re-training, job counseling, and job placement programs.

SEC. 64. *Fiscal Prudence.* — To promote the prudent management of government resources, the creation of new positions and the levels of or increases in salaries and all other emoluments and benefits of TRANSCO and PSALM Corp. personnel shall be subject to the approval of the President of the Philippines. The compensation and all other emoluments and benefits of the officials and members of the Board of TRANSCO and PSALM Corp. shall be subject to the approval of the President of the Philippines.

SEC. 65. *Environmental Protection.* — Participants in the generation, distribution and transmission sub-sectors of the industry shall comply with all environmental laws, rules, regulations and standards promulgated by the Department of Environment and Natural Resources including, in appropriate cases, the establishment of an environmental guarantee fund.

SEC. 66. *Benefits to Host Communities.* — The obligations of generation companies and energy resource developers to communities hosting energy generating facilities and/or energy resource developers as defined under Chapter II, Sections 289 to 294 of the Local Government Code and Section 5(i) of Republic Act No. 7638 and their implementing rules and regulations and applicable orders and circulars consistent with this Act shall continue: *Provided,* That the obligations mandated under Chapter II, Section 291 of Republic Act No. 7160, shall apply to privately-owned corporations or entities utilizing the national wealth of the locality.

To ensure the effective implementation of the reduction in cost of electricity in the communities where the source of energy is located, the mechanics and procedures prescribed in the Department of the Interior and Local Government (DILG)-DOE Circulars No. 95-01 and 98-01 dated October 31, 1995 and September 30, 1998, respectively, and other issuances related thereto shall be pursued.

Towards this end, the fund generated from the eighty percent (80%) of the national wealth tax shall, in no case, be used by any local government unit for any purpose other than those for which it was intended.

In case of any violation or noncompliance by any local government official of any provision thereof, the DILG shall, upon prior notice and hearing, order the project operator, through the DOE, to withhold the remittance of the royalty payment to the host community concerned pending completion of the investigation. The unremitted funds shall be deposited in a government bank under a trust fund.

SEC. 67. *NPC Offer of Transition Supply Contracts.* — Within six (6) months from the effectivity of this Act, NPC shall file with the ERC for its approval a transition supply contract duly negotiated with the distribution utilities containing the terms and conditions of supply and a corresponding schedule of rates, consistent with the provisions hereof, including adjustments and/ or indexation formulas which shall apply to the term of such contracts. The term of the transition supply contracts shall not extend beyond one (1) year from the introduction of open access. Such contracts shall be based on the projected demand of such utilities less any of their currently committed quantities under eligible IPP contracts as defined in Section 33 hereof: *Provided,* That the total generation capacity of such signed transition supply contracts shall not exceed the level of NPC owned, controlled or committed capacity as of the effectivity of this Act. Such transition supply contracts shall be assignable to the NPC successor generating companies.

Within six (6) months from the date of submission of the transition supply contract by NPC, the ERC shall notify NPC of their approval of the rates contained therein.

The ERC shall maintain a record of the contract terms and rates offered by NPC. Likewise, the ERC shall update monthly, the rates using the appropriate adjustment and/or indexation formula.

Notwithstanding the provisions of Section 25 hereof, the rates charged by a distribution utility for the generation component of the supply of electricity in their retail rate shall, for the term of the transition supply contracts, not exceed the transition supply contract rates, as updated monthly. The recovery of costs incurred by a distribution utility for any generation component in excess of the transition supply contract rates shall be disallowed by the ERC, except for eligible contracts as defined under Section 33 hereof: *Provided,* That such limitation on the recovery of generation component costs by a distribution utility shall apply only to the equivalent quality and quantity of electricity still available to the distribution utility from NPC.

SEC. 68. *Review of IPP Contracts.* — An inter-agency committee chaired by the Secretary of Finance, with the Secretary of the Department of Justice and the Director General of the National Economic and Development Authority as members thereof is hereby created upon the effectivity of this Act. The Committee shall immediately undertake a thorough review of all IPP contracts. In cases where such contracts are found to have provisions which are grossly disadvantageous, or onerous to the Government, the Committee shall cause the appropriate government agency to file an action under the arbitration clauses provided in said contracts or initiate any appropriate action under Philippine laws. The PSALM Corporation shall diligently seek to reduce stranded costs, if any.

SEC. 69. *Renegotiation of Power Purchase and Energy Conversion Agreements between Government Entities.* — Within three (3) months from the effectivity of this Act, all power purchase and energy conversion agreements between the PNOC-Energy Development Corporation (PNOC-EDC) and NPC, including but not limited to the Palinpinon, Tongonan and Mt. Apo Geothermal complexes, shall be reviewed by the ERC and the terms thereof amended to remove any hidden costs or extraordinary mark-ups in the cost of power or steam above their true costs. All amended contracts shall be submitted to the Joint Congressional Power Commission for approval. The ERC shall ensure that all savings realized from the reduction of said mark-ups shall be passed on to all end-users.

SEC. 70. *Missionary Electrification.* — Notwithstanding the divestment and/or privatization of NPC assets, IPP contracts and spun-off corporations, NPC shall remain as a National Government-owned and -controlled corporation to perform the missionary electrification function through the Small Power Utilities Group (SPUG) and shall be responsible for providing power generation and its associated power delivery systems in areas that are not connected to the transmission system. The missionary electrification function shall be funded from the revenues from sales in missionary areas and from the universal charge to be collected from all electricity end-users as determined by the ERC.

SEC. 71. *Electric Power Crisis Provision.* — Upon the determination by the President of the Philippines of an imminent shortage of the supply of electricity, Congress may authorize, through a joint resolution, the establishment of additional generating capacity under such terms and conditions as it may approve.

SEC. 72. *Mandated Rate Reduction.* — Upon the effectivity of this Act, residential end-users shall be granted a rate reduction from NPC rates of thirty centavos per kilowatt-hour (P0.30/kWh). Such reduction shall be reflected as a separate item in the consumer billing statement.

SEC. 73. *Lifeline Rate.* — A socialized pricing mechanism called a lifeline rate for the marginalized end-users shall be set by the ERC, which shall be exempted from the cross subsidy phase-out under this Act for a period often (10) years, unless extended by law. The level of consumption and the rate shall be determined by the ERC after due notice and hearing.

SEC. 74. *Cross Subsidies.* — Cross subsidies within a grid, between grids and/or classes of customers shall be phased out in a period not exceeding three (3) years from the establishment by the ERC of a universal charge which shall be collected from all electricity end-users. Such level of cross subsidies shall be made transparent and identified separately in the billing statements provided to end-users by the suppliers.

The ERC may extend the period for the removal of cross subsidies for a maximum period of one (1) year upon finding that cessation of such mechanism would have a material adverse effect upon the public interest, particularly the residential end-user; or would have an immediate, irreparable, and adverse financial effect on distribution utility.

CHAPTER IX

FINAL PROVISIONS

SEC. 75. *Statutory Construction.* — This Act shall, unless the context indicates otherwise, be construed in favor of the establishment, promotion, preservation of competition and people empowerment so that the widest participation of the people, whether directly or indirectly, is ensured. With respect to NPC's debts and IPP and related contracts, nothing in this Act shall be construed as: (1) an implied waiver of any right, action or claim, against any person or entity, of NPC or the Philippine Government arising from or relating to any such contracts; or (2) a conferment of new or better rights to creditors and IPP contractors in addition to subsisting rights granted by the NPC or the Philippine

Government under existing contracts.

SEC. 76. *Education and Protection of End Users.* — End-users shall be educated about the implementation of retail access and its impact on end-users and on the proper use of electric power. Such education shall include, but not limited to, the existence of competitive electricity suppliers, choice of competitive electricity services, regulated transmission and distribution services, systems reliability, aggregation, market, itemized billing, stranded cost, uniform disclosure requirements, low-income bill payment, energy conservation and safety measures.

The DOE, in coordination with the NPC, NEA, ERC and the Office of the Press Secretary-Philippine Information Agency (OPS-PIA), shall undertake an information campaign to educate the public on the restructuring of the electric power industry and privatization of NPC.

SEC. 77. *Implementing Rules and Regulations.* — The DOE shall, in consultation with relevant government agencies, the electric power industry participants, non-government organizations and end-users, promulgate the Implementing Rules and Regulations (IRR) of this Act within six (6) months from the effectivity of this Act, subject to the approval by the Power Commission.

SEC. 78. *Injunction and Restraining Order.* — The implementation of the provisions of this Act shall not be restrained or enjoined except by an order issued by the Supreme Court of the Philippines.

SEC. 79. *Separability Clause.* — If for any reason, any provision of this Act is declared unconstitutional or invalid, the other parts or provisions hereof which are not affected thereby shall continue to be in full force and effect.

SEC. 80. *Applicability and Repealing Clause.* — The applicability provisions of Commonwealth Act No. 146, as amended, otherwise known as the "Public Services Act"; Republic Act No. 6395, as amended, revising the charter of NPC; Presidential Decree No. 269, as amended, referred to as the National Electrification Decree; Republic Act No. 7638, otherwise known as the "Department of Energy Act of 1992"; Executive Order No. 172, as amended, creating the ERB; Republic Act No. 7832 otherwise known as the "Anti-Electricity and Electric Transmission Lines/Materials Pilferage Act of 1994," shall continue to have full force and effect except insofar as they are inconsistent with this Act.

The provisions with respect to electric power of Section 11(c) of Republic Act No. 7916, as amended, and Section 5(f) of Republic Act No. 7227, are hereby repealed or modified accordingly.

Presidential Decree No. 40 and all laws, decrees, rules and regulations, or portions thereof, inconsistent with this Act are hereby repealed or modified accordingly.

SEC. 81. *Effectivity Clause.* — This Act shall take effect on the fifteenth day following its publication in at least two (2) national papers of general circulation.

Approved,

(Sgd.) AQUILINO Q. PIMENTEL JR.
President of Senate

(Sgd.) FELICIANO BELMONTE JR.
Speaker of the House of Representatives

This Act which is a consolidation of House Bill No. 8457 and Senate Bills No. 1712, 1621, 1943, 2000 was finally passed by the House of Representatives and Senate on May 31, 2001 and June 4, 2001, respectively.

(Sgd.) LUTGARDO B. BARBO
Secretary of Senate

(Sgd.) ROBERTO NAZARENO
Secretary General House of Representatives

Approved: Jun 08 2001

(Sgd.) GLORIA MACAPAGAL - ARROYO
President of the Philippines

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