

**EFFECTS OF THE ELECTRIC POWER
INDUSTRY REFORM ACT OF 2001 (EPIRA) ON
MERALCO CONSUMERS**

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Bachelor of Arts Major in Political Science

by

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1.0
Good work
JA


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APPROVAL SHEET

In partial fulfillment of the course requirements for the Degree of Bachelor of Arts in Political Science, this thesis entitled, "*Effects of the Electric Power Industry Reform Act of 2001 on Meralco Consumers,*" has been prepared and submitted by **Ronald John B. Decano.**


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Abstract

Effects of the Electric Power Industry Reform Act to Meralco Consumers

by

Ronald John B. Decano

The Electricity Industry in the Philippines has been burdened with a lot of problems. The financial situation of Napocor and an impending power crisis led the government to restructure the industry. The task of providing electricity to the people would be passed on into the hands of the private sector to relieve the government of some concerns so that it could concentrate on other important matters.

The Power Reform Act provided the solution to the query of the government. It contained provisions that would permit private companies to enter the industry. Competition would ensue due to the influx of competitors resulting to better services and eventually affordable prices. As a consequence, investors would gain confidence on our economy. They would invest capital providing stability to the country. This would be good in terms of the status of the government especially to President Gloria Macapagal-Arroyo.

Meralco for its part has provided its consumers with quality, reliable and secure electricity. This has been validated by respondents constituting roughly 75%. However, their only complaint is the expensive rate that is charged to them.

As a final note, a stable economy and satisfied constituents would yield high ratings for the President. These things would make EPIRA effective in solving the problems of the industry.

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Chapter 1

Introduction

Every Filipino wants to experience a comfortable life. After a day's work, one would like to relax in a couch enjoying the soothing effect of air conditioning and drinking a glass of cold water fresh from the refrigerator. Alongside, one would like to hear his favorite music played on the radio or maybe play counterstrike or any other games in the computer.

However, one would not enjoy these things without electricity. Electricity is very important. It is like oil. One could not do away with it in his life. Now and then, electricity has played an important role in our lives. Imagine the time before that famous kite experiment of Benjamin Franklin. Life was gloomy since there was no electricity that time. They had to deal with night without something that illuminates except for a small candle. This was before. Now, we could readily enjoy in front of us the things that were deprived from the people a long time ago.

Unfortunately, the electricity industry in the country is on the rocks. The industry is currently faced with several problems which could be detrimental to every citizen. The industry has been plagued with mismanagement, inefficiency, corruption and high rates. To top it all, the Philippines has the most expensive electricity rates in Southeast Asia second only to Japan. Our local industry is at the tail of development. We are way behind other countries in terms of development of the power sector. The country cannot advance in this way.

The Electric Power Industry Reform Act of 2001 provides some answers to the problems of the government. Since the Act will privatize the electric industry, it will

relieve the government of its burden of saving the losing corporation. Under the private sector, the electric industry will surely climb the ladder slowly towards development. This will lead to a better economy and a better country. Legislators are thinking of ways on how to improve the industry and this is their solution.

Since the Power Act has just been implemented, let us wait and see if this Power Act can indeed provide consumers with quality, secure, reliable and affordable electricity.

Definition of Research Problem

A lot of people were saying that the electricity industry through the efforts of the National Power Corporation has not been providing the best services to the Filipino people. The Napocor has not provided their consumers with quality, reliable, secure and affordable electricity. Economists and the business sector on the other hand were saying that the privatization and deregulation of the electric industry would solve this problem.

In response to this impasse, Congress passed the "*Electric Power Industry Reform Act of 2001*". This act sought to restructure the power industry which would provide the consumers with quality, reliable, secure and affordable electricity through the privatization of the assets of Napocor and the entry of private sector to promote competition.

The main problem of this research is to find out whether the Electric Power Industry Reform Act has been effective in the delivery of electricity to its end-users: the consumers. This research would answer the following questions:

1. Has EPIRA been effective in restructuring the electricity industry? What wonders has it done to Meralco as Metro Manila's distributor of electricity?

2. Has Meralco provided its consumers with quality, reliable, secure and affordable electricity?
3. What would be the short term and long-term effects of the Power Act?
4. What would be the effects of the Power Act to the government of President Gloria Macapagal-Arroyo?

Research Objectives

A. General Objectives

To assess the effectiveness of the Electric Power Industry Reform Act of 2001 in providing quality, reliable, secure and affordable electricity to Metro Manila consumers.

B. Specific Objectives

1. To know the historical background of the electric industry in the Philippines and its importance in the country.
2. To study the provisions and content of EPIRA and its implementation and accomplishments.
3. To validate with MERALCO consumers the effectiveness or non-effectiveness of the Power Act.
4. To determine the short term and long-term effects of the Power Act.
5. To determine the effects of the Power Reform Act to the government of President Arroyo.
6. To analyze the effectiveness of the Power Act in terms of quality, reliable, secure and affordable electricity based on the data gathered.

7. To give recommendations and alternative models on how to further improve the electric industry in the Philippines.

Thesis Statement

The Electric Power Industry Reform Act of 2001 will be effective in providing quality, reliable and secure but not affordable electricity to Metro Manila consumers.

Review of Related Literature

The researcher considered a lot of references that were related to the study on the Power Reform Act. The researcher read various books on Public utilities and privatization. Research papers by well-known professors in the academe and proceedings from symposia were considered. Some of them were published in books that were regarded by the researcher. Journalistic articles from IBON Facts and Figures were likewise included in the literature which dealt with privatization and the Power Reform Act. Undergraduate theses with the same topic as that of the researcher helped a lot in the formulation of this literature review. Experiences of some countries on privatization were also included in the literature. Finally, articles from the Internet related to the literature review were also incorporated such as an assessment of privatization by the World Bank and some numerical data by Napocor, Meralco and DOE. Senate and House journals should have been included in the literature but the researcher did not have adequate time to go to the House of Representatives while the journals and committee reports in the Senate were unavailable since it was months ago when the Power Reform Act was passed. Moreover, the archive section of the two chamber's in their website did not

contained the journals that the researcher needed. The site only contained journals of the 12th Congress. EPIRA was enacted during the 11th Congress.

Public utility is a collective name covering diverse industries which it is common practice to group under this designation because certain common characteristics give them unity. The status of public utilities is between governmental function on one hand and private functions on the other. It is a governmental function because it is the social responsibility of the government to serve the people through these utilities. On the other hand, it is a private function because it is a business where the private sector should be participating and where government intervention should be limited (Glaeser, 1957).

In the American economy, public utilities assumed two roles – the economic role and the social function (Farris and Sampson, 1973). According to Farris and Sampson (1973), the economic role of utilities in the United States is unique and it is important from three points. First, the services provided by public utilities are essential for economic growth and development. They cited that the transportation, communication and power utilities are the foundation of economic growth and development. Second is the dependence upon public utilities. Services such as electricity, telephone and water are essentials in daily living and life would be difficult and unthinkable without them. Lastly is the economic impact of utilities. Public utilities are large users of resources and capital. Though utilities employ few workers, wages and salaries are much higher. It also collects payments from the people they service. From these revenues, taxes are collected which are used by the government for its programs (Farris and Sampson, 1973).

The three economic roles of public utilities set the framework for the second function which is the social function. Farris and Sampson (1973) said that the

government should not intervene in economic matters. Intervention should only be in the form of enforcement of laws or rules of the economy such as control of the new entry of firms, setting rules under which businesses operate, police protection and legislation (Farris and Sampson, 1973).

Privatization is an economic policy reform adopted by various countries to attain sustainable growth. It is appealing to governments of developed and developing nations because it offers a quick solution to the fiscal deficits caused by inability of government revenues to cope up with rising expenditures (Patalinghug, 1996).

Patalinghug (1996) stressed that public enterprises can be improved even without privatization by adopting reform programs like privatizing management (e.g. management contracts, leases or concessions), removing direct budgetary subsidy, eliminating easy access to the credit market, abolishing interest rate subsidy, freeing managers of public enterprises from non-commercial and conflicting goals, less government interference in decision-making, removing tax and tariff privileges and developing institutional mechanisms such as managerial evaluation systems.

One of the lessons of privatization stipulated by Patalinghug (1996) is that “the odds of succeeding are much improved when privatization is part of a more general liberalization process.”¹ He said that privatization efforts would have produced desirable results if it were accompanied by reforms to make the firm competitive or if free entry of other private firms were encouraged. Another lesson derived by Patalinghug (1996) is the critical role of transparency and lastly is the creation of the Committee on Privatization

¹ Patalinghug quoted this lesson in page 245 from Kikeri, Sunita, John Nellis and Mary Shirley. 1994. “Privatization: Lessons from Market Economies,” World Bank Research Observer (July 1994), pp 241-272.

and the Asset Privatization Trust² which has the central privatization authority answerable to the President and the Congress.

Boncodin and Sto. Tomas (1987)³ in Privatization – Its Impact on Labour Relations in ASEAN defined privatization as the transfer of ownership and control of state enterprises or parts thereof to the private sector. They cited two explanations on why privatization takes place. First is ideological which means that there should be less participation of the government in business matters and second is the economic argument stating that public enterprises are less efficient than their private sector counterparts (Boncodin and Sto. Tomas, 1987).

Boncodin and Sto. Tomas (1987) spoke of the problems of privatization which were the lack of private capital, lack of managerial or entrepreneurial skills relevant to the operations of a particular company, lack of investors due to the negative view of the political and economic climate in the country and the possible adverse effects on labour relations and employment. The last problem was the one which they emphasized. They enumerated certain issues that were critical such as the loss of jobs, the preservation of benefits already won, rehiring, worker's organization and foreign ownership and capitalization (Boncodin and Sto. Tomas, 1987).

Boncodin and Sto. Tomas (1987) offered solutions to the government to arrest this problem. This includes the encouragement of workers' companies or cooperatives to pool resources and by state-run enterprises scheduled for privatization, establishment of

² The COP and APT were created primarily for the purpose of seeing and supervising the disposal of Non-performing assets and the privatization of GOCCs. Former President Corazon Aquino signed a proclamation creating the two agencies in December 1986.

³ This research by Boncodin and Sto. Tomas was presented in the ASEAN Tripartite Symposium in Chiang Mai, Thailand in 17-20 February 1987. It was published on the same year together with the other papers in the book Privatization – Its Impact on Labour Relations in ASEAN under the auspices of the Joint ILO/UNDP/ASEAN Programme of Industrial Relations for Development.

an ad-hoc privatization arbitration board where the peculiar employer-employee difficulties of transitional companies may be brought for final decision-making, provision of formal transitional arrangements for employees in a buyout by private parties including payments of benefits, rights to rehire, etc, encouragements of workers associations if unions are not allowed to ensure protection and bargaining leverages of workers and finally, the provision of government –initiated training or retraining activities to allow employees to assume new positions in the bigger labour market (Boncodin and Sto. Tomas, 1987).

Phiphat Thaiarry (1987)⁴ defined privatization as the process of establishing business discipline in public sector operations or public enterprise. It is the development of management and ownership systems towards private sector styles and practices.

Thaiarry (1987) chose another work added to the research of Boncodin and Sto. Tomas on the impact of privatization on labour by reiterating that the job security of workers will be affected and privatization is a revenge of the government to the workers because of their high bargaining power.

On the other hand, Thaiarry (1987) said that privatization would implement a new management style that is more business-like. The usually relaxed atmosphere will be replaced by a business-oriented work condition such as cost effectiveness and quality control.

Young (1987)⁵ affirmed the impacts of privatization on labour as established by Boncodin and Sto. Tomas (1987) and Thaiarry (1987). Young (1987) recommended that

⁴ This paper was also presented in the ASEAN Tripartite Symposium in Chiang Mai, Thailand in 17-20 February 1987.

⁵ This paper was also presented in the ASEAN Tripartite Symposium in Chiang Mai, Thailand in 17-20 February 1987.

government through the COP and APT should establish policies to prevent or minimize mass lay-offs or retrenchments of public sector employees as a result of privatization. Congress could help through legislation of bills pertaining to the protection of workers' rights.

The book *Asset Privatization: The Philippine Experience* by Leonor Briones and Aileen Zosa (1989) asserts a need to privatize government companies due to the huge debts incurred over the years and the economic crisis of the 90's. These corporations were said to be secretly abused as 'laundry units' for transferring public funds to private hands. They found out that while financial returns were huge, massive losses has yet to be settled especially the transition cost⁶ and the assumed liabilities or debts by the government. The government is at a disadvantage because the assumed liabilities were greater than the value of the transferred assets. Government continued paying the debts of the corporations while the assets are yet to be sold. Moreover, they emphasized its effect on the workers. They were anxious that workers might be displaced and benefits, incentives and compensations might not be given to the displaced employees. Finally, they concluded that the Philippine experience on privatization showed that it might not give all the answers to the inefficiency of the government (Briones and Zosa, 1989).

In the October 15, 2001 issue of IBON Facts and Figures, the privatization of the Manila Waterworks and Sewerage System brought about numerous problems and issues. The two concessionaires Maynilad Water Services Incorporated and Manila Water Company did not carry out their promise of better service and lower rates. It has been found out that after privatization, water rates rose along with the added cost like the

⁶ Defined as the costs of disruptions associated with the transition from a government entity to a private organization like costly labor problems, litigations, administrative costs, and so on (Briones and Zosa, 1989).

FCDA or the automatic currency differential adjustment.⁷ Services to some places in Quezon City were cut. Moreover, privatization cost big in the workers sector. More than half of the original employees of MWSS lost their jobs as a result of retrenchments and forced early retirements.

In the October 30, 1997 issue of IBON Facts and Figures, the writer disclosed that Transnational Corporations would not invest in developing Congress unless there were assurances of superprofits, loan guarantees or any other guarantees that may hamper the profitability of their investments. In order to encourage foreign as well as local investors, Congress inserted numerous benefits, incentives, loan guarantees, tax exemptions and tax holidays in the Power Reform Act. This means that the people subsidize the TNCs and local corporations and also shoulder the risk of loan defaults and other problems that might arise.

Of the countries in Europe, the United Kingdom has gone the farthest (Mohnot, 1991). Since it was the first country to undergo such privatization, it encountered a lot of problems especially in its implementation. The United Kingdom has become the model of the other countries embarking on the same program. But in the final analysis, the reforms made by the government are delivering efficiency gains and innovations that were totally absent from the nationalized industries (Clarke & Pitelis, 1993). The water industry in the United Kingdom particularly in England and Wales was also privatized. Initially, the industry was burdened with debts and suffered from underinvestment. Its sale to the private sector was unpopular to the people but later, it proved to be a success and the objectives of privatization have been met (Saunders, 1994).

⁷ FCDA resembles the Power Purchase Adjustment imposed by MERALCO. FCDA reflects the peso-dollar rate fluctuations on a quarterly basis.

Privatization in Turkey is part of a process of economic restructuring and developing the financial markets. Overall, it has been successful in developing and deepening the capital markets by diverging shares of privately controlled companies from the state's responsibility. The success earned the private owners substantial amounts of equity capital (Ramanadham, 1993).

In Vietnam, economic reforms intended at liberalizing the economy and encouraging privatization proved to be effective in spite of some problems encountered such as displacement of workers, lack of sufficient financial infrastructures and sound accounting practices and insufficient foreign capital. In order for Vietnam to achieve its goals, its should establish a comprehensive commercial code, commercial banks must be administratively independent, sound accounting methods must be instituted and infrastructures must be renovated to raise productivity living standards and to attract foreign capital (Ramanadham, 1993).

Zooming in the electric industry, the following articles comprise of studies about the electric industry and the Power Reform Act.

In the 2001 Annual Report of MERALCO, the company disclosed the things that they were doing to ensure efficient and quality services to its consumers. The company upgraded its system, repaired its lines and equipment and trained its personnel to ensure that the quality of service is at its best.

There have been some studies regarding the electric industry in the Philippines. In the report *"Developing Best Practices For Promoting Private Sector Investment in Infrastructure"* of the Asian Development Bank (1998), it recommends private sector participation in the market to ensure competition. The bank named four sectors in the

restructuring process: generation, transmission, distribution and retail. There should be minimal intervention by the government in the generation sector. The transmission and distribution sector on the other hand should remain regulated in addition to incentives given to the companies that perform well.

A discussion paper by Bacon and Besant-Jones (2002) studied the progress of privatization and liberalization of the power sector in developing countries. It examined the forces influencing it and suggested some steps to take to attain success. Some data regarding the steps taken and initial information on its impact were presented in the paper. Lessons were likewise included in the paper.

Some of the forces behind the reforms according to Bacon and Besant-Jones (2002) were (a) the poor performance of the state-run electricity sector in terms of high costs, inadequate expansion of access to electricity service for the population, and/or unreliable supply; (b) the inability of the state sector to finance needed expenditures on new investment and/or maintenance; (c) the need to remove subsidies to the sector in order to release resources for other pressing public expenditure needs; and (d) the desire to raise immediate revenue for the government through the sale of assets from the sector. The authors further said that state ownership resulted in excessive costs, low service quality, poor investment decisions, and lack of innovation in supplying customers since there is an absence of the forces of competition or the profit motive to improve performance. State-owners adapt slowly to changes in technology. The private sector could offer solutions to this problem which includes innovations in customer service and cost recovery mechanisms. Privatization would lead to proper allocation of resources, efficient use of inputs and competition. Two conditions are necessary before the reform

could be attempted and these are the desirability of the reform in the country and that it is politically feasible.

An undergraduate thesis of Richard Doria entitled “*The Effects of the Omnibus Electricity Industry Reform Act to Rural Electrification and Electric Cooperatives,*” was quite useful in studying the effects of the Power Act to rural electrification as to its short term and long-term effects and whether the new Act will lessen electricity rates in the rural areas. Doria (2001) stated that rural electrification in the Philippines is still unsuccessful. Forty percent of the total households in the country are still unelectrified. At present, the government has been pushing through plans and bills particularly the Power Reform Act to meet their mission of total electrification of the country.

Doria (2001) however lamented that this might not be the case because electric cooperatives might be busy coping with the transition period in the power sector brought about by the passage of the Power Reform Act. Rural electrification may come to a halt if these reforms push through. He also concluded that if the provisions of the Power Act were enforced on electric cooperatives, it would affect them in a negative way. It will just aggravate the problems that these cooperatives are facing. These cooperatives might not obtain the necessary revenues to pay the salaries of employees because of the competition in the area with the entry of new suppliers. This will just supplement the burden in addition to corruption and to an almost bankrupt cooperative. In the case study of Doria (2001), he found out that CASURECO III or Camarines Sur Electric Cooperative III has been laden with debts and its general manager is optimistic that the Power Act will help CASURECO III recover through efficient collection, debt servicing and better services.

The research also discussed two alternative models proposed by two lawmakers. One was the Liberalized-Regulated Model by former Senator Juan Ponce Enrile. It provided for a leeway for the entrance of new producers but prices of electricity rates remains regulated and control stays in the hands of the government. Representative Prospero Pichay suggested another one and that is by letting these cooperatives produce their own power. Pichay took the case of Davao where its electric cooperative produces its own power making it more efficient and not at the mercy of the Independent Power Producers (Doria, 2001).

An undergraduate thesis of Jacqueline Ong (2002) entitled, "*Policy Analysis ad Consumer Perception of the R.A. 9136 or the New Power Reform Act,*" analyzed the provisions of the law and what consumers think of it. Ong (2002) said that the law was good because it responded to a necessity. The law was enacted in response to the ailing electric industry. The privatization of Napocor would bring about positive as well as negative effects. It would raise price in the long run which happens in a privatized industry whereas in theory, it should have been the market forces that should dictate the price.

Ong (2002) further said that consumers were helpless because they were passive on the issue even though they oppose it very much. She advised that regulation in the industry should be properly enforced and consumer education and consultation be given importance.

Seeing through the literatures mentioned above, we could see that privatization does have positive and negative effects. It may have adverse effects in the short run and it

would outweigh the benefits but in the long run, consumers would benefit from it and the costs would be outweighed by the benefits.

Theoretical Framework

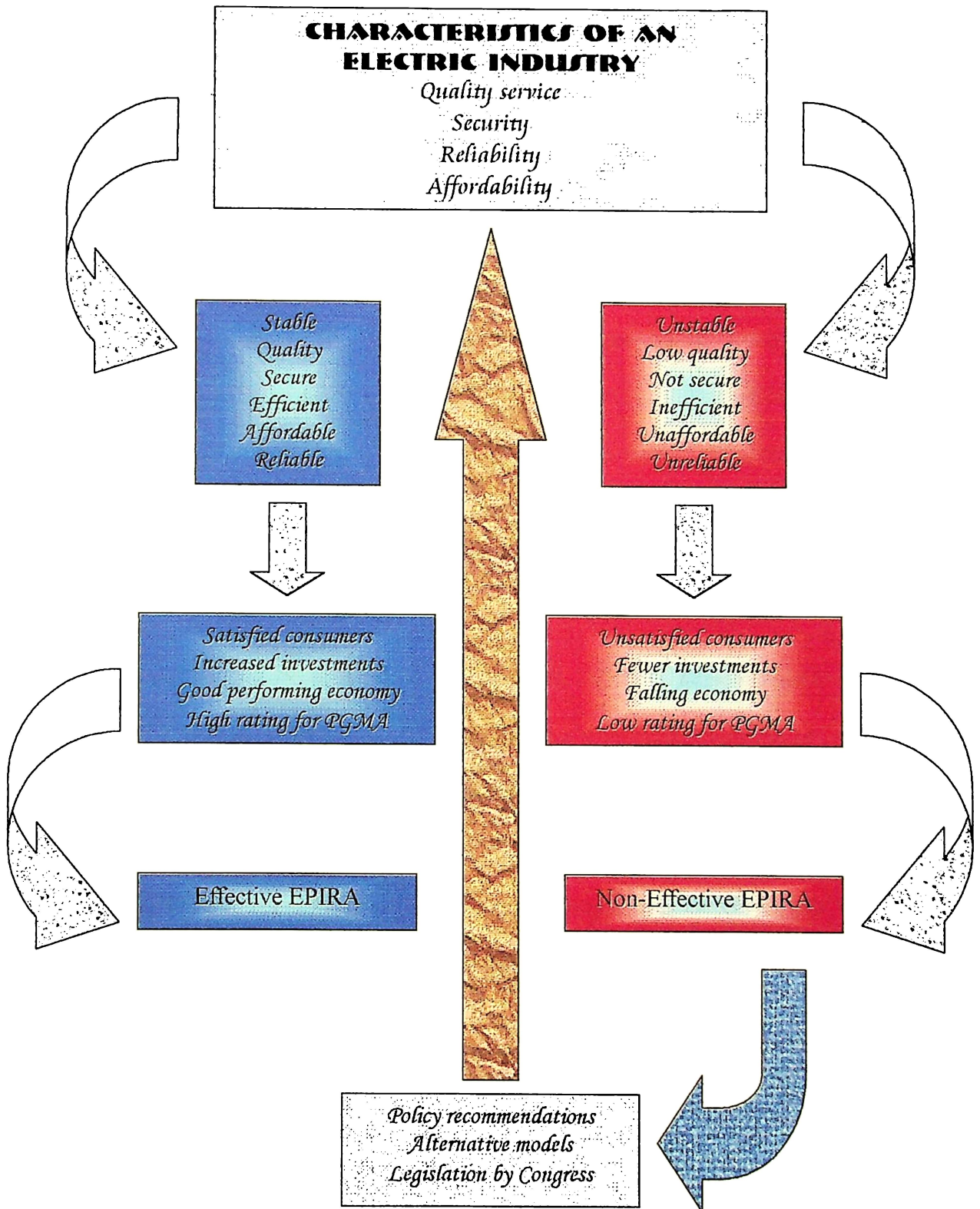
This research will be based on the theory that companies under private hands can provide quality, secure, reliable and affordable electricity rates.

This premise assumes that private companies have a social duty to fulfill. If the electricity industry is privatized under the provisions of EPIRA, these companies would serve the consumers with quality, secure, reliable and affordable electricity since they become the supplier of electricity and their profits depend on their services to the people.

The goals of privatization includes a revenue raising capability for the government, enhancing efficiency, broadening the ownership base, promoting private entrepreneurship, reducing the role of government in the economy (Patalinghug, 1996).

A privatized company will generate benefits for the consumers because these companies have a greater incentive to produce goods and services in the quantity and variety consumers prefer (Beesley, 1993).

Conceptual Framework



The conceptual framework specified the characteristics of an effective electricity industry. The four characteristics were quality service, security, reliability and affordability. There will be two scenarios that might occur in the course of this research.

The first scenario speaks of the positive side. The Electric Power Industry Reform Act of 2001 when implemented would produce positive results. During its implementation especially after privatization, the private sector will provide consumers with stable electricity, quality and efficient service, secure and reliable service and affordable electricity rates. When this happens, consumers would be satisfied, investments would increase due to the stability of the power sector which is a basis of a good economy and a relatively high rating for President Gloria Macapagal Arroyo. This setup would indeed mean that EPIRA has been effective in the restructuring of the power sector and would give President Arroyo a high satisfaction rating and approval from the people.

The second scenario speaks of the opposite. After the implementation of EPIRA when it produced unstable electricity, low quality and inefficient service, not secure and unreliable service and affordable rates would be tantamount to unsatisfied customers, fewer investments, failing economy and low ratings for the President. The setup would mean that EPIRA was not effective in its implementation and the concept as well and it would give President Arroyo a very low satisfaction rating and approval from the people. In order to provide a solution to this, the President should make policy recommendations or alternative models while Congress should legislate laws to further improve the industry.

Definition of Terms

- Stable / secure / reliable – constant supply of electricity from the producers to the consumers; should have no fluctuations.
- Constant supply of electricity – is the continuous generation, transmission, supply, and distribution of electricity to consumers.
- Quality / efficient – characteristic of product or service to be free from deficiencies and bear on its ability to supply implied needs. It also means consumer satisfaction.
- Affordable – characterized by rates that are within the reach of the majority of the consumers of electricity usually the payment for the electricity used less the Power Purchased Adjustment or PPA.
- Effective – able to cause some desired result such as consumer satisfaction, increased investments, good-performing economy and high rating for the President.
- Policy recommendations – policies or measures to further improve the industry.
- Alternative models – frameworks to be followed in place of the failed solution.
- Legislation – piece of work by Congress aiming to solve the impending problem of the power industry.

Methodology

A. Archival research

The researcher browsed through the books in the library to obtain information regarding the role of public utilities in general and the historical background of the electricity industry in the Philippines.

The researcher looked for papers, reports, handouts, journals, periodicals and theses which can be helpful in the making of the research.

Finally, the researcher requested data, figures and facts from various government agencies and institutions such as Napocor, National Electrification Administration, Senate and the House of Representatives. Other data will similarly be solicited from Meralco.

B. Interview

The researcher interviewed key informants. The researcher considered the officials of Napocor, NEA and Meralco. But, Officials from these departments did not want to be interviewed. They just gave the researcher relevant data, pamphlets and brochures that would be useful to this research. They also advised the researcher to browse through their website for some of the information. After all, all of queries of the researcher could be answered by these documents according to them. The Senator and the Congressman who filed the bills regarding the electricity industry were originally planned to be interviewed but they declined for some reasons. Representatives from the different pro and anti groups on the passage of EPIRA were interviewed such as Bayan Muna, Freedom from Death Coalition and Napocor Employees and Workers Union.

To compensate for the lost interviews, the researcher took note of the previous speeches, discussions, interviews and fora made by the pertinent authorities on the issue. These proved to be helpful in the research since it contributed a lot of information that was very much needed in this research.

C. *Survey*

The researcher conducted a survey on a specific barangay in Metro Manila to verify whether EPIRA has been effective or not. This was done with the use of random sampling method. The choosing of the sample was a multi-staged sampling method.

For this method, the researcher used random sampling by putting the cities and municipalities of Metro Manila in a tambol. The researcher picked one. After which, the names of barangays and finally the street. The chosen street was the sample of the survey. Every home in the chosen street was considered. Only one representative of the family preferably the one who pays the electric bill was made as the respondent in the survey.

Scope and Limitations

This research focused on the Electric Power Industry Reform Act of 2001, its provision and implementation. This paper assessed the extent of its implementation over the years whether its provisions were implemented according to plan and whether it has brought improvement to the ailing power sector in the Philippines.

The provisions of the Power Act were discussed in this paper. The analysis covered the present setup of the power industry, the reforms undertaken to strengthen the

power industry and the future prospects for the power industry. A further analysis based on the findings of the survey was incorporated in order to verify from the point of view of consumers themselves whether the implementation of the law turned out to be positive or negative. The findings were used in recommending steps to further improve the industry and if possible apply the same process to the other public utilities and government corporations.

This paper was limited on the discussion of the Power Reform Act and the electric industry itself. Constitutional provisions will be set aside in the analysis in order to fully explain and comprehend the issue at hand. Moreover, the analysis was based on the data gathered by the researcher. Objectivity instead of subjectivity was applied in this research.

Significance

Studying the Power Reform Act entailed a lot of significance. It was significant to the electricity industry because the provisions if implemented properly contributed to the improvement of the industry assuming that it would bring about positive effects. If it were otherwise, then the government would have the authority to recuperate by stopping the implementation of the law.

It was significant to the market because the provisions entailed the entry of more producers. More producers would mean competition among them. Interaction of the market forces between the many producers and the consumers would lead to efficient, better and quality services and of course lower rates.

It was significant to the consumers because they were rewarded with better services and lower rates.

The implementation of the Power Reform Act provided a venue for all in determining whether to advocate it or not. If proven to be successful, the same program could be used on other public utilities and government corporations. After all, a model already existed that would prove the success of privatization.

The study could be of big help to lawmakers. This study would contribute to the knowledge of lawmakers in dealing with situations with the same problem and to legislate future laws that would further the interests of the country. The findings of this research could be used to analyze its implementation and recommend the necessary ways to come up with a better industry.

Chapter 2

Historical Background

The electricity industry in the Philippines has gone through many changes in the past. It developed from a primitive industry into a more technologically advanced industry at present. This of course did not come about without some problems and controversies which would be discussed later. This chapter would take a short glimpse on the Manila Electric Company as an electricity carrier in Metro Manila and the latter part would be a colloquy of the events leading to the restructuring of the country's electricity industry including the pertinent laws, Executive Orders, Circulars, bills and important events that contributed to the present situation of the electricity industry.

The responsibility of providing electricity in the Metropolis was vested in the hands of the Manila Electric Company or Meralco. Meralco began its services a century ago which by the way is celebrating their 100 years of service this 2003 (Annual Report, 2001). It was in 1903, in the early days of American colonization in the Philippines, that Meralco was born (History, 2003).

By providing the first and only mass transportation system in Manila for more than four decades and electric power for ten decades, Meralco stimulated the lethargic colonial outpost to a new life. Thus, contributing to an indispensable support in the growth and development of the metropolis. Commerce and industry in the metropolitan area flourished partly because of the availability of Meralco services which were not readily available in other regions of the country (History, 2003).

Meralco's franchise covers 9,337 square kilometers and accounts for 48% of the country's Gross Domestic Product with 30% produced within Metro Manila. The company is serving 22 key cities and 89 municipalities with over 19 million people residing within its territory. The company administers the distribution of electricity in Metro Manila and some provinces nearby (Annual Report 2001).

Aside from the business of electricity distribution, the company is also engaged in strategic alliances and partnerships into power generation, industrial construction and engineering, business process re-engineering, information technology consultancy, e-business, energy-related solutions and real estate development (Annual Report 2001).

In 2001, Meralco sold 22.7 kilowatt hours of electricity to residential, commercial and industrial customers. Residential customers constitutes 36% of the total sales while commercial customers making up 35% and 29% for industrial customers (Annual Report 2001).

In its 2001 Financial and Operating Results (2002), the company stated that the number of customers increased from 3,672,420 million in 2000 to 3,805,117 million in 2001. With this, KWH sales also rose from 21,881 million to 22,689 million. However, net income decreased from 2,490 million in 2000 to 1,481 million in 2001. This was due to the fact that the operational costs increased because of maintenance, construction works and Transmission and Distribution costs.

In the 2001 Annual Report of MERALCO, the company disclosed the things that they were doing to ensure efficient and quality services to its consumers. The company upgraded its system, repaired its lines and equipment and trained its personnel to ensure that the quality of service is at its best.

The energy industry in the Philippines started from a totally liberal economic regime to one of government regulation giving rise to state-owned monopolies before returning to one of liberalization and increased private sector participation. Until the early 1970s, the energy industry was characterized by heavy private sector involvement. Multinational and foreign private companies dominated the oil industry while the power industry was on the hands of local private companies. The industry was very much dependent on imported oil and when an oil crisis occurred in the 1970s, the country was very much affected. In dealing with this crisis, the country began to regulate the energy industry. The newly created state-owned monopolies started a program of fuel diversification and indigenous energy development. These programs were financed by government funds and foreign borrowings. However, the monopoly system and the need for funds caused distortions in the market. The ensuing years were characterized by financial and political crises that resulted in increased foreign debt burden, flight of capital, drying up of foreign long-term loans, big government deficits and high interest rates. These factors crippled the government which led it to embark on a program of privatization and liberalization. From an authoritarian government, it transformed into a more open, transparent and democratic administration that was favorable to liberalization. The liberalization program of the government involved the privatization of Petron, a state-owned refining and marketing company; allowing private sector participation in the generation of electricity; and broadening the applicability of BOT to all public infrastructure projects (Austria, 2001).

Up to 1984, the power projects of the late President Ferdinand Marcos that were stipulated in the Ten-year Energy Program had been met. However, after that year, none

of the other generating plants under the program were continued. The ouster of President Marcos in 1986 left the 620 MW Bataan Nuclear Power Plant completed but prohibited from operation due to safety and environmental reasons as well as the corruption that hounded its planning (Doria, 2001).

Former President Aquino who succeeded Marcos was vested with greater confidence from the business sector. During her term, economic activity expanded which caused an acceleration in the demand for energy. The Aquino government drew up the Medium-Term Energy Plan (1988-1992) increase the generating capacity of the existing plants. Unfortunately, this did not meet the increasing demand for electricity. The shortfall in the supply of electricity was even aggravated by the prolonged drought that limited hydropower, the breakdown of old and poorly maintained plants and failure to adequately raise electricity tariffs to generate income. The industry was short of 3,077 GWh of electricity, 78% of which was credited to the Luzon Grid. As a result of these power outages, daily brownouts reached up to 12 hours which caused an economic slowdown and losses. According to the World Bank calculations, the losses were estimated between \$600 million and \$800 million per year or roughly 1.5% of the country's Gross Domestic Product (Austria, 2001).

Former President Aquino started the restructuring of the Power industry when she signed Executive Order No. 215 in 1987. The said EO laid the foundation for the entry of private sector into power generation which for years has been monopolized by the National Power Corporation. Republic Act No. 6957 was also enacted into law which authorized the financing, construction, operation and maintenance of infrastructure projects by the private sector. Investments incentives such as tax holidays and reduced

tariffs on imported capital equipment were offered along with transparent solicitation process, establishment of one-stop shops to speed up interagency clearances and the adoption of a power development program. The government and NPC assumed market risk, foreign exchange and fuel risk. The Independent Power Producers were assured by the government that it would comply to its commitments and agreements thereby ensuring the earnings and remitted capital of the IPPs (Austria, 2001).

President Aquino also signed Executive Order No. 172 on May 8, 1987 creating the Energy Regulatory Board or ERB. Among the powers of the Board is the regulation of the business of importing, exporting, re-exporting, shipping, transporting, processing, refining, marketing and distributing energy resources. The Board can fix and regulate the prices of energy products and can conduct notices and hearings (EO 172, 1987).

On July 27, 1992, Republic Act No. 7638, otherwise known as the "*Department of Energy Act of 1992*" was approved by Congress. It is the policy of the State to ensure a continuous, adequate, and economic supply of energy with the end in view of ultimately achieving self-reliance in the country's energy requirements through the integrated and intensive exploration, production, management, and development of the country's indigenous energy resources, and through the judicious conservation, renewal and efficient utilization of energy to keep pace with the country's growth and economic development and taking into consideration the active participation of the private sector in the various areas of energy resource development and to rationalize, integrate, and coordinate the various programs of the Government towards self-sufficiency and enhanced productivity in power and energy without sacrificing ecological concerns (R.A. 7638, 1992).

To carry out such policies, the Department of Energy was created which shall prepare, integrate, coordinate, supervise, and control all plans, programs, projects, and activities of the Government relative to energy exploration, development, utilization, distribution, and conservation. In addition to this, the Act also contained the powers, responsibilities, functions and obligations of the Department, its composition and its attached agencies (R.A. 7638, 1992).

The electric industry in the Philippines has been a problem for the government especially in the early 1990s. If we could still remember, the Philippines experienced a power crisis during the time of Marcos which contributed to the slowdown of the country's economy. In continuation of this crisis, another one occurred in the year 1991. Congress during that time tried to restructure the current monopolistic model that we had and turn it into a competitive model.

The 1991 Power Crisis resulted from three things. One was the miscalculation in the demand for power. Second was the anticipation of the opening of the BNNP or the Bataan Nuclear Power Plant and lastly, there were no additional power plants built by Napocor. Because of this, the supply of electricity went short of demand causing blackouts in the metropolis and the rest of the country. The three reasons stated above aggravated the power crisis (Doria, 2001).

April 5, 1993 marked the day of a sudden increase in the assets and liabilities of Napocor. This day was the day when Congress approved Republic Act No. 7648 or the "*Electric Power Crisis Act of 1993*" giving former President Fidel V. Ramos the power to adopt adequate and effective measures to address the electric power crisis that has

disrupted the country's economic and social life and assumed the nature and magnitude of a public calamity (R.A. 7648, 1993).

President Fidel Ramos, with powers given by Congress, entered into agreements with private corporations, mostly foreign, to build plants for generating electricity. The President entered into negotiated contracts for the construction, repair, rehabilitation, improvement or maintenance of power plants, projects and facilities that are deemed advantageous to the Government and in accordance with public interest. Because of this special power of the President, Ramos signed numerous BOT contracts constituting building of power plants in a desperate move to end the power crisis that was crippling the economy (R.A. 7648, 1993).

These contracts however were made in a way that it benefited the contractors more than usual leading to our present problem: expensive electricity. The provision on “take or pay” was likewise disadvantageous to the government because it required the government to pay the Independent Power Producer or private entity A the amount equal to its whole potential generating capacity even if it was not used and even if the IPP produced lesser than its whole potential generating capacity (Doria, 2001). This amount is the primary reason on why there is a Purchase Power Adjustment that we are paying now in our bills to cover up Napocor’s loses (Freedom from Debt Coalition, March 2003).

Republic Act No. 7832 otherwise known as the *"Anti-electricity and Electric Transmission Lines/Materials Pilferage Act of 1994"* was approved by Congress in December 8, 1994. The Act contained provisions on a number of occasions that an act of any person, whether natural or juridical, public or private, constitutes an illegal use of

electricity and is therefore considered unlawful. Such unlawful acts are called "*Theft of Electric Power Transmission Lines and Materials*." (R.A. 7832, 1994).

The Department of Energy Circular No. 95-11-009 provided for the Guidelines and Procedures for the Granting of Financial Benefits under Energy Regulations No. 1-94. The Circular adopted the guidelines and procedures for the granting to the host local government unit (host LGU) financial benefits established under E. R. 1-94, as follows: electrification fund; development and livelihood fund; and reforestation, watershed management, health and/or environment enhancement fund (DOE, 1995).

Secretary Francisco Viray signed it on November 8, 1995.

The Department of Energy Circular No. 2000-03-004 of the Department of Energy further Amended Energy Regulations No. 1-95 dated January 2, 1995 entitled "Rules and Regulations Implementing Executive Order No. 215 on Private Sector Participation in Power Generation" as Amended by Department Circular No. 97-01-001 dated January 21, 1997 (DOE, 2000).

The DOE adopted and promulgated certain amendments to Energy Regulations No. 1-95 as amended by Department Circular No. 97-01-001. Among them were Part I, Article IV, Section I of Energy Regulations No. 1-95 as amended by Department Circular No. 97-01-001, Part I, Article VI, Section 3 of the same Energy Regulations as amended by Department Circular No. 97-01-001, Part II, Article II, Section 3 of the same Energy Regulations as amended by Department Circular No. 97-01-001, Part I, Article III, Section 6 of the same Energy Regulations as amended by Department Circular No. 97-01-001 and Part III, Article I, Section 2 of the same Energy Regulations as amended by Department Circular No. 97-01-001 (DOE, 2001).

The Department Circular averred the contents of the application for accreditation as a qualified Private Sector Generation Facility (PSGF), the provision on Spinning Reserves, Cogeneration Facilities Utilizing Renewable Energy Sources, the Economic Criteria, and the Formulation and Submission of Power Development Plans of NAPOCOR and/or Other Electric Utilities (DOE, 2001).

Secretary Mario Tiaoqui signed the Circular in March 2000.

The Department of Energy Circular No. 2000-10-11 provided the Revised Rules and Procedures to Implement the Electrification Program Funded Through Energy Regulations No. 1-94, implementing Section 5 (i) of Republic Act No. 7638, otherwise Known as the "*Department of Energy Act*" (DOE, 2000).

The said Circular provided the provisions on the evaluation and approval of electrification projects, the release of funds and projects implementation and post project implementation. Secretary Tiaoqui signed it on October 2, 2000.

The Implementing Rules and Regulations of Republic Act No. 9136 was promulgated by the Department of Energy to implement the provisions of the Act in consultation with the appropriate government agencies such as the Energy Regulatory Commission (ERC), Department of Finance (DOF), National Electrification Administration (NEA), National Power Corporation (NPC), Department of Trade and Industry (DTI), Department of Justice (DOJ), Department of Budget and Management (DBM), Power Sector Assets and Liabilities Management Corporation (PSALM), the Electric Power Industry Participants, and with the approval of the Joint Congressional Power Commission or simply the Power Commission.

The Implementing Rules and Regulations basically provided the general provisions to be followed in implementing the major structural reforms for the electric power industry and the Privatization of the state-owned NPC (IRR, 2002).

Secretary Vicente Perez, Jr. signed the IRR on February 27, 2002.

Overall, President Ramos remedied the power crisis during the 90s. He was able to bridge the gap between the demand and supply for electricity. He succeeded in saving the country from the dreadful effects of the power crisis. However, all was not over yet. The Philippines was confronted with another problem that again tested its strength.

In 1997, Asia was hit by a financial crisis. The economies of Japan, Singapore, Thailand, Malaysia, Indonesia and the other Asian countries were badly hit. The Philippines was not spared in this crisis. The country experienced what the other Asian countries experienced. Factories closed down, heavy industries slowed down, the peso devaluated which escalated the debts of Napocor and devaluation as well as a reduction in foreign investment and brought down demand for electricity. As a result, Napocor profited less and the revenues acquired were not enough to pay its bills. All of this reasons sparked the call again for the restructuring of the power industry (Napocor, 1998).

In response to this, Representative Arnulfo Fuentesbella from the 3rd District of Camarines Sur filed House Bill 8457 or the Omnibus Electric Industry Reform Bill in the House of Representatives. Rep. Fuentesbella's bill was the third bill that dealt with the restructuring of Napocor and the electricity industry. The first one was filed in 1994

while the second was in 1997. House Bill 8457 was passed in April 13, 2000 but not without a controversy enclosing it.

House bill 8457 proposed that the electricity industry be divided into five segments. These segments were the generation companies (gencos), the National Transmission Corporation, Distribution utilities, retail suppliers and the end users. The bill advocated the eventual privatization of the National Power Corporation. The bill also mandated a 5% reduction in the rates imposed to the consumers (HB 8457, 1999).

The single most controversial issue on the passage of the bill was the HB 8457 Payola. Days after its passage, Party-list Representatives Renato Magtubo of SANLAKAS and Loretta Ann Rosales of AKBAYAN exposed to media that all members of the House of Representatives were given half a million pesos. They said that it was a bribe so that the bill would be passed without hassle.

According to Rep. Magtubo, he was approached and asked by an administration Congresswoman whether he already received his bonus. This occurred at around 10 in the evening. He was told to go to the office of Minority Floor Leader Feliciano Belmonte. When he arrived, Belmonte's Chief of Staff handed to him an envelope containing the said payola and was told to open it privately. He was astonished when he learned that the envelope contained a huge sum of money. He kept it as evidence afterwards (Doria, 2001).⁸

Rep. Rosales likewise received the same amount. Unlike Rep. Magtubo, she refused to accept what she termed as bribe money. Both of them were oppositionists in

⁸ Mr. Doria interviewed Rep. Magtubo when he was doing his baby thesis.

the passage of the bill. If both of them received half a million pesos, how much more did the bill's protagonists received?

SANLAKAS later traced the source of the money through its serial numbers. SANLAKAS learned that the money came from the Bangko Sentral ng Pilipinas. Rep. Magtuob said that only two entities could withdraw money directly from BSP: the government and the big corporations. This being the situation, we could possibly deduct that the money came from the big corporations who have interests in the electricity industry. Rep. Fuentebella later denied the allegations of Reps. Magtubo and Rosales especially the existence of the payola (Doria, 2001).

His counterpart, Committee on Energy Chairman Senator John Osmeña filed four separate bills namely SB 1621 or "An Act Amending Republic Act 7638," SB 1712 or "The National Transmission Company Act," SB 1910 or "An Act Amending Certain provisions of Executive Order No. 172, Creating the Energy Regulatory Board As Amended by Republic Act No. 7489" and SB 2000 or the "Electricity Power Industry Policy Act of 2000." All of these bills were integrated as one and thus becoming the Electric Power Industry Reform Act of 2001.

SB 1621 amended the powers of the Department of Energy. From supervision of the energy industry, it transformed into monitoring the industry and encouraging private sector participation to increase capital in energy projects. The bill tasked the DOE to implement the said reforms in the industry (Fajardo, 1999).

SB 1712 created the National Transmission Corporation or TRANSCO which would be an independent corporation and would relieve NPC of its transmission duties.

The Act provided for equal representation in the Board of Directors. Three seats would be allocated for representatives from Luzon, Visayas and Mindanao. Cross-ownership is also prohibited in the transmission sector. No generation company or distribution utility would be allowed to be partial owners of NTC so as to avoid quandaries in the future (Fajardo, 1999).

SB 1910 amended the powers and functions of the Energy Regulatory Board. The ERB was now authorized to fix and regulate the industry and instigate power over the participants in the private sector. ERB was now a price regulator and market regulator as well (Doria, 2001).

SB 2000 split the electricity market into 5 sectors similar to the House version: generation sector, transmission sector, distribution sector, electricity supply sector and end-user sector.

The generation sector would not be considered as a public utility. Thus, it would not require a national franchise. The Energy Regulatory Board has no authority to regulate the prices in this sector (Doria, 2001).

The transmission sector would be exclusive to TRANSCO. Market prices would be regulated by the ERB. Senator John Osmeña specified in his bill that there would be a specific amount of kilovolts required before the transmission of electricity would be subject to the services of TRANSCO. For the Luzon grid, it would be 230 kilovolts and above. For the Visayas grid, it would be 69 kilovolts and above. For the Mindanao grid, it would be 138 kilovolts while for the isolated grids, it would be at least 69 kilovolts. The transmission costs would be determined by the minimum efficiency performance of

TRANSCO. Cost project delays and management efficiencies could not be used to increase rates (Fajardo, 1999).

The distribution sector would be considered a public utility. Therefore, distribution companies need to secure a franchise from Congress before it could operate. The distribution rates would be regulated by the ERB (Fajardo, 1999).

In the supply sector, the generation companies would secure a certificate from ERB permitting them to supply electricity which should be based on the provisions set forth in this act as well as health, safety and environment permits and clearances from appropriate government agencies. The rates charged by the generation company would not be regulated by the ERB (Doria, 2001).

Another important feature of the bill is that all transactions carried out in the electricity industry would be watched over by a Joint Legislative and Executive Committee to be chaired by the Chairman of the Committee on Energy of both the Senate and the House of Representatives. The members of the panel would include the secretaries of the Departments of Finance, Energy, Budget and Management, Justice and the National Economic Development Authority. The other members would consist of the Majority and Minority Floor Leaders of both Houses, three additional members of the majority and one from the minority from both Houses of Congress (SB 2000, 1999).

Both versions of the two Houses were consolidated into one by the Senate-House Conference Committee which came to be known as Republic Act No. 9136 or the “Electric Power Industry Reform Act of 2001.” The differences and disparities in the two versions were reconciled by the members of the Joint Committee during their meetings.

After several discussions, debates and consultations, they came up with a single version of the Electric Power Industry Reform Act.

The Senate-House conference committee approved the bicameral report on the proposed Power Sector Reform Bill on May 31, 2001. Sen. John Osmeña and Rep. Melvyn Evalle, heads of the Senate and House contingents said that the approval of the bill would pave the way for the restructuring of the country's power industry (Danao, 2001)

The following day, the House of Representatives approved the bicameral conference committee report on the Omnibus Power Sector Reform (OPSR) bill, with an assurance of its passage into a law (Diaz and Danao, 2001).

President Arroyo was very happy that lawmakers have been very cooperative since she was the one who called for special marathon sessions in order for Congress to approve the long-delayed bill. The House plenary session spent until the early morning of the following day to conduct the final debate over the provisions of the bill. The opposition came primarily from lawmakers who oppose it. After several antagonizing hours, the bill was passed at about 4:00 o' clock in the morning with a vote of 131-14 with three abstentions. The marathon session likewise resulted in the approval of the P10.9 billion supplemental budget for 2001 of the President (Diaz and Danao, 2001).

The Power Reform Act was full of clamor. Juliet L. Javellana (2001) said in her article that the Power bill was railroaded and it excluded some solons in its ratification. The controversial Power Reform Bill bicameral committee "report" was ratified by the House of Representatives at 4 in the morning hours after the four-day special session called by President Arroyo had ended causing accusations from those who oppose the

bill. The Freedom from Debt Coalition (FDC) said that the committee approved the bicameral committee report after excluding members who opposed to the measure. Eleven out of the 17 members of the House panel, including party-list Rep. Etta Rosales of Akbayan and Rep. Tet Garcia of Bataan, were excluded from the bicameral proceedings.

Senator Enrile questioned the ratification of the bill. He was also excluded from the seven-member Senate panel when the bicameral committee adopted the reconciled version. "This is railroading pure and simple," says FDC President Ma. Teresa Diokno-Pascual. She criticized the ratification procedure which was not freed from irregularities (Javellana, 2001).

Meanwhile in the Senate, the Senators ratified the bicameral conference committee report on the Omnibus Power Sector Reform bill on June 4, 2001 giving an end to one of the most highly debated bill ever sent to the 11th Congress. The final vote was 13-1, with one abstention which belonged to Sen. Juan Ponce Enrile. Sen. Vicente Sotto III was the one who abstained. As proof of the strong support by the majority block to the Arroyo administration, even Sen. Robert Barbers attended the session to vote in favor of the bill even if he was still recuperating from his operation in the throat (Danao, 2001).

The Power Act aimed to accelerate the total electrification of the country and to ensure the quality, reliability, security and affordability of the supply of electric power. It separates the assets of Napocor into the generation, Transmission, Distribution and Supply Sector which will be privatized in due time. Republic Act 9136 would be discussed in detail in the next chapter. However, not all of the provisions of the Act

would be included since some of the provisions were irrelevant to this research. Only pertinent provisions would be discussed in the next chapter.

In a speech⁹ of President Arroyo at a Conference on the Philippine Electricity 2001 in the Manila Peninsula Hotel, she reported the achievements of her administration regarding the electricity industry especially the passage of the Power Reform Act in front of the participants most of them investors. The President outlined the reforms already made for the past six months. The PSALM Corporation and TRANSCO were created to take over the distribution and transmission sectors of the industry. The Energy Regulatory Commission was established to oversee and regulate the industry. The automatic 30-centavo rate reduction was already implemented. The Implementing Rules and Regulations were submitted to the Joint Congressional Power Commission for deliberation and approval. The PSALM Corporation submitted its privatization plan to the Power Commission for endorsement and approval of the President. Lastly, the Department of Energy conducted public consultations regarding the draft rules that would govern the administration and operation of the WESM or the Wholesale Electricity Spot Market (PGMA's speech, 2001).

The President also encouraged investors to participate in the industry. She stated that with a 78 million population and 3.7 GNP growth rate, it would surely be a favorable environment to invest in the industry. More capital investments would translate to more jobs which the country needed to improve on its economy (PGMA's speech, 2001).

⁹ President Gloria Macapagal- Arroyo delivered this speech at a conference on the Philippine Electricity 2001 held at Manila Peninsula Hotel in Makati City last December 3, 2001. The Conference was organized by Knowledge Institute and the Credit Suisse First Boston and participated in by local and foreign investors who were interested in the electricity industry.

Meanwhile, the 30-centavo rate reduction has disappeared in thin air. Months after the scheduled reduction, the PPA once again increased. This has caused widespread clamor from the people. Several groups bawled for its suspension. The Freedom From Debt Coalition even threatened to question the legality of government contracts with electric companies in the charging of PPA in the Supreme Court. Lidy Nacpil, secretary-general of FDC, said that they prepared the necessary petitions to be filed in the Supreme Court in the belief that the contracts were disadvantageous on the part of the government. FDC also asked SC to release a temporary restraining order or injunction order to stop the payment of PPA and the said contracts (Amargo, 2002).

Meanwhile, the Joint Congressional Power Commission averred statements that they would file a bill in both houses that would suspend the collection of PPA until further studies and investigations were finished. Senator Renato Cayetano, head of the Power Commission who replaced Sen. John Osmeña, said that the lawmakers should respond to the clamors of the people. Since there was no administrative remedy to the problem, legislation should push through (Andal, 2002).

On the other hand, President Arroyo affirmed that Malacañang has done its part to relieve the consumers from the very expensive electricity rates. The President said that Sen. Cayetano already filed Senate Bill No. 2109 suspending PPA for six months from July 2002 until January 2003 or until the ERC has made a decision regarding the universal charge of Napocor. The bill of Sen. Cayetano excluded consumers with a monthly consumption of not more than 75 kilowatt-hour in the payment of PPA. The current rate of Php 1.25 per kilowatt-hour would also be reduced to 40 centavos (Saludar and Andal, 2002).

At present, not all of the provisions of the Power Act have been implemented. The mandatory power rate reduction was useless because the rates eventually went up again. The other provisions still remain in paper. Napocor is yet to be privatized. Let us wait and see if this Power Reform Act will really answer the country's ailing electricity industry.

Chapter 3

Republic Act 9136 or the Electric Power Industry

Reform Act of 2001¹⁰

The Electric Power Industry Reform Act of 2001 was a vital bill of the Arroyo Administration. President Gloria Macapagal-Arroyo herself labeled this bill as urgent thereby obligating lawmakers to speed up its legislation and passage. The Power Reform Act did not pass into law without encountering some problems and controversies. Some of which were already discussed in the previous chapter.

The Power Reform Act is a law that contains numerous provisions. This research would not discuss the law in full detail. Rather, it would just focus on some of its important provisions that are relevant to this research paper.

Republic Act No. 9136 is an Act Ordaining Reforms in the Electric Power Industry, amending for the purpose certain laws and for other purposes. This Act is known as the "Electric Power Industry Reform Act of 2001." The 11th Congress of the Senate and the House of Representatives enacted this.

The Power Reform Act provided the framework for the restructuring of the electricity industry that included the privatization of Napocor's assets, the transition to the desired competitive structure, and the definition of the responsibilities of the various government agencies and private entities (Features, 2002).

¹⁰ The discussion on this chapter is based on Republic Act 9136, otherwise known as the Electric Power Industry Reform Act of 2001.

The policy of the State regarding the electricity industry was stipulated in Section 2 of Republic Act 9136. This policy included the following:

- 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 establish a strong and purely independent regulatory body and system to ensure consumer protection and enhance the competitive operation of the electricity market; and*
- j. *To encourage the efficient use of energy and other modalities of demand side management (R.A. 9136, 2001).*

There were numerous terms used in the electricity industry. To better understand the industry, these terms should first be understood. Section 4 of R.A 9136 listed the

terms in alphabetical order. These terms were provided in the R.A. 9136, a copy of which can be found in the appendices of this paper.

Based on the Power Reform Act, the electric power industry would be divided into four sectors, namely: generation, transmission, distribution and supply (DOE-ITMS, 2002).

Generation Sector

The generation of electric power shall be competitive and open. New companies can generate electricity provided that it secures the necessary requirements needed before it can operate such as compliance certificate from the Energy Regulatory Commission, health, safety and environmental clearances from appropriate government agencies.

Power generation shall not be considered as a public utility operation. Thus, any person, entity or company engaged or shall engage in power generation and supply shall not anymore be required to secure a national franchise as what public utilities normally do (Restructuring, 2001).

Prices for the supply of electricity charged by generation companies shall not be regulated by the Energy Regulatory Commission. Moreover, taxes will not be collected from the power generated by these companies in order to attain the objective of lower electricity rates to its end-users (Pricing, 2001).

The ERC has the power to require the generation companies to submit their financial statement so as to determine whether there exists market power abuse or anti-competitive behavior (R.A. 9136, 2001).

Transmission Sector

The transmission of electric power shall be controlled by electricity carrier companies and subject to the ratemaking powers of the ERC.

A National Transmission Corporation, referred to as TRANSCO, assumes the electrical transmission function of the National Power Corporation. The TRANSCO assumes the authority and responsibility of NPC for the planning, construction and centralized operation and maintenance of its high voltage transmission facilities. Within six months after the Act takes into effect, 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, will be transferred to the TRANSCO which will be owned by the Power Sector Assets and Liabilities Management Corporation or PSALM Corp (Features, 2001)

The subtransmission functions and assets shall be separated from the transmission functions, assets and liabilities. The subtransmission assets will be operated and maintained by TRANSCO until their disposal to qualified distribution utilities which have the capabilities to take over the responsibility for operating, maintaining, upgrading, and expanding the said assets. All transmission and subtransmission related liabilities of NPC will be transferred to and assumed by the PSALM Corp (R.A. 9136, 2001).

TRANSCO will negotiate with distributors and after which transfer such functions, assets, and associated liabilities to the qualified distribution utility or utilities connected to such subtransmission facilities. In the case of electric cooperatives, the TRANSCO will grant concessional financing over a period of twenty (20) years. The take

over by a distribution utility of any subtransmission asset will not cause a cutback of service and quality to the end-users (R.A. 9136, 2001).

The TRANSCO have several functions and responsibilities all of which were stated in section 9 of the law. Again, these functions could be found in the appendices.

The PSALM Corporation within six month after the Power Act took effect will submit a plan for the privatization of TRANSCO subject to the approval of the President of the Philippines. PSALM Corporation, under the direction of the President, will 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 concessionaire will 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 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 (R.A. 9136, 2001).

The concessionaire shall comply with the Grid Code and TDP as approved. The contract shall include, but not be limited to, the provision for performance and financial guarantee 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 (R.A. 9136, 2001).

The concessionaire must 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 (R.A. 9136, 2001).

Distribution Sector

The distribution of electricity to end-users requires a national franchise which will come from the Congress of the Philippines. Distribution of electric power to all end-users may be carried out by private distribution utilities, cooperative, local government units presently undertaking this function and other duly authorized entities, subject to regulation by the ERC (R.A. 9136, 2001)

A distribution utility has 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 will have to provide a non-discriminatory access to its distribution system to all users (Restructuring, 2001).

Any 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. The distribution utilities may undergo structural and operational reforms to achieve economies of scale in utility operations, improved efficiencies, reliability of service, reduction of costs and compliance to the performance standards prescribed in the Implementing Rules and Regulations of this Act (Restructuring, 2001).

The retail rates charged by distribution utilities for the supply of electricity in their captive market will 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 (Pricing, 2001).

Supply Sector

The supply sector is a business affected with public interest wherein all suppliers of electricity are required to procure a license from the ERC. Suppliers need not acquire national franchise from Congress (R.A. 9136, 2001).

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. The ERC has the 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 (R.A. 9136, 2001).

The prices to be charged by the suppliers for the supply of electricity to the end users will not be subject to regulation by the ERC (Pricing, 2001).

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 (R.A. 9136, 2001).

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 (R.A. 9136, 2001).

Universal Charge

Within one (1) year from the effectivity of this Act, a universal charge is to be determined, fixed and approved by the ERC. This universal charge will be imposed on all

electricity end-users for the 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; equalization of the taxes and royalties applied to indigenous or renewable sources of energy vis a vis imported energy fuels; and an environmental charge equivalent to one-fourth of one centavo per kilowatt-hour (P 0.0025/kWh), which will accumulate to an environmental fund to be used solely for watershed rehabilitation and management (R.A. 9136, 2001).

The universal charge will be a non-bypassable charge that shall be passed on and collected from all end-users on a monthly basis by the distribution utilities. Collections will then be remitted to the PSALM Corporation which shall create a Special Trust Fund to be disbursed only for the purposes specified in the Power Act. All amounts collected for the universal charge shall be distributed to the respective beneficiaries (R.A. 9136, 2001).

Role of the Department of Energy

The Department of Energy or DOE was mandated to supervise the restructuring of the electricity industry. The Department of Energy assumed several roles in the industry with the passage of EPIRA. These functions were enumerated in Section 37 of the law (R.A. 9136, 2001).

Regulation of the Electric Power Industry

To regulate the electric power industry, the Republic Act 9136 created the Energy Regulatory Commission which will replace the existing Energy Regulatory Board or ERB. The ERC is an independent, quasi-judicial regulatory body that shall promote competition, encourage market development, ensure customer choice and penalize abuse of market power in the restructured electricity industry. It can likewise issue cease and desist order after due notice and hearing. It has the responsibility to perform the functions stipulated in Section 43 of the law (R.A. 9136, 2001).

Section 45 of the law explained that 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, should be allowed to hold any interest, directly or indirectly, in TRANSCO or its concessionaire and vice versa (Restructuring, 2001).

In promoting true market competition and prevent monopoly and market power abuse, the ERC enforced several safeguards which can be found in section 45 (R.A. 9136, 2001).

Privatization of the National Power Corporation

The generation assets, real estate, and other disposable assets as well as IPP contracts of NPC will be privatized in accordance with this Act. Within six months after this Act takes effect, PSALM Corp. shall submit a plan on the total privatization of the generation assets, real estate, other disposable assets as well as existing IPP contracts of

NPC. This will be done with the endorsement of the Joint Congressional Power Commission and the approval of the President of the Philippines. The privatization must be optimized and the participation of Filipino citizens and corporations in the purchase must be encouraged (Features, 2001).

In the case of foreign investors, at least seventy-five percent (75%) of the total funds used in NPC-generation assets and IPP contracts shall be inwardly remitted and registered with the Bangko Sentral ng Pilipinas (R.A. 9136, 2001).

The disposal of the assets of NPC should promote the viability of the resulting generating companies, 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. Such privatization should be accomplished in an open and transparent manner through public biddings (R.A. 9136, 2001).

Power Sector Assets and Liabilities Management Corporation

A government-owned and controlled corporation known as the "Power Sector Assets and Liabilities Management Corporation," referred to as the "PSALM Corporation," will be created and shall take ownership of all existing NPC generation assets, liabilities, IPP contracts, real estate and all other disposable assets. All outstanding obligations of the National Power Corporation arising from loans, issuances of bonds, securities and other instruments of indebtedness will be transferred to and assumed by the PSALM Corporation (R.A. 9136, 2001)

The purpose of the PSALM Corporation 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. It shall exist for a period of 25 years. After which, 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 will revert to and be assumed by the National Government (R.A. 9136, 2001).

Section 51 empowered PSALM Corporation with several functions and responsibilities.

Mandated Rate Reduction

Upon the effectivity of this Act, residential end-users will be granted a reduction of thirty centavos per kilowatt-hour (P 0.30/kWh) in their electric rates. This reduction reflected as a separate item in the consumer billing statement after a few months (R.A. 9136: Effect, 2002). Bayan Muna (2003), FDC (2003) and other groups contested this move. They said that the Purchased Power Adjustment should not just be reduced but scrapped. This reduction in the rates however was accepted. After all, it was still a reduction and the money saved from it would be a big help to the masses

Arguments against the law

Privatizing Napocor goes with the fact that the government would shoulder around P200 billion worth of Napocor's net stranded cost and part of its debts. Since the government assumed NPC debts, it would just mean that the burden of paying for these

debts would shift from the consumers to the taxpayers. In simple words, the Filipino people would end up paying for it. It would still be a burden to the people. The effect of the privatization just became indirect. Along with this, the Asian Development Bank recommended that the government raise the value added tax from 10% to 10.5% and the income tax raised by 2%. This clearly shows that the Filipino people are at the losing end of the knot (Points, 2001).

The law states that the rates would decrease under privatization because of competition among private companies. While this could be true, certain areas in Mindanao could expect the opposite. People from Mindanao could expect higher rates as a consequence of the withdrawal of existing government subsidies given to Mindanao. This withdrawal or abolition of cross-subsidies is stipulated in the Power Reform law which has a direct impact on power rates (Ong, 2002).

People could likewise expect power rate hikes due to the universal charge that would be added to the electricity bills of consumers aside from the Purchased Power Adjustment. Deregulation in the rates of electricity suppliers would also have an impact on electricity rates. Suppliers could anytime increase the price without any restraints or oppositions from the people or from the government (Bayan Muna, 2003).

Competition would bring about lower electricity rates. According to IBON Facts and Figures (May 2001), this is wishful thinking because from the country's experience with deregulation showed that corporations would consider any opportunity to gain more profit. A prime example of this would be the oil industry.

Power is similar to oil. It is a basic necessity. People need it for their everyday living. They would still avail it even if it were expensive. Capitalists would surely know

this fact and would readily exploit and capitalize by ensuring higher returns on their investment through increase in rates (FDC, 2003).

Meralco for example charges a PPA of P1.82/kWh, franchise tax and systems loss of P0.26/kWh and the basic rate of P1.784/kWh. Adding all of these would sum to P3.846. Comparing this rate with Napocor's Luzon grid rate of P3.5906/kWh, Meralco obviously charged more. If a household consumes an average of 200 kWh monthly, this would translate to P772.80, P54.68 more than Napocor's rate (Points, 2001).

Another point of contention against the Power Reform Act is the displacement of workers of Napocor. The total human resources of Napocor have dropped from 14,742 in 1995 to 9,862 in 1999 as shown in the table below. This shows that many workers have already lost their jobs as a result of the impending privatization of Napocor. Interestingly, this took place in 1995 when the restructuring of the industry was still in the planning stage. It could be deduced from here that the reduction in human resources by 33% has been done in preparation to make the corporation "leaner and meaner" in time for the privatization (NEWU, 2003).

Section 63 of the Power Reform Act states that Napocor employees should be given preference in the hiring of the manpower requirements of the privatized companies only if they are qualified. This restrictive clause has been the worry of the workers since the owners could easily not rehire them on the basis of their lack of qualification (What About the Worker?, 2001).

Table 3.1
Human Resources of Napocor 1995 to 1999

	1995	1996	1997	1998	1999	Decrease 95-99
Utility Operations	10,720	9,809	10,281	8,892	7,795	-27.3%
Engineering	2,578	3,217	1,953	1,608	927	-64.3%
Support Services	1,444	1,660	1,277	1,543	1,140	-21.1%
Total	14,742	14,686	13,511	12,043	9,862	-33.1%

Source: IBON Facts and Figures

As proof of this, only 200 out of the 5,500 employees of the Metropolitan Waterworks and Sewerage System (MWSS) were retained when it was privatized in 1997. Almost all of the MWSS employees were technically terminated from work (IBON Facts and Figures, 30 October 1997). This same fate is what Napocor employees were worried of.

Arguments in favor of the law

The government said that the investment requirement for additional generation and transmission facilities amounts to 387.1 billion for the next ten years representing 29% of the total amount needed to implement the Philippines Energy Plan 2000-2009 totaling \$32.5 billion. In the absence of such funds for the power sector, there would surely be a power outage in Luzon by the year 2007, earlier in Visayas in 2004 and 2006 in Mindanao. The private sector could surely provide these funds allowing government to rechannel funds to other basic services and projects (DOE Statement, 2001).

Moreover, restructuring the power sector provides access to a \$950 million worth of loans from international financial institutions, \$200 million of which would be

allocated to the government's budgetary purposes while another \$200 million would be set aside for Napocor. The excess \$550 million would be used to finance Napocor's Leyte-Mindanao interconnection project. However, the Asian Development Bank and Japan Export and Import Bank did not release the second and third chunks of the loans because the administration failed to pass the power bill in 1999 which was a condition of the loans. The two unreleased loans amounted to \$600 million. The International Monetary Fund on the other hand said that the \$300 million rehabilitation loan would only be released on the early passage of the Power Bill (Why the Rush?, 2001).

The government and lawmakers perceived the impending power crisis due to the supply shortfall similar to what happened in the 1990s. Moreover, rates would be increasing and global competitiveness of Philippine industries would decrease. Furthermore, this would be a negative signal to the international community regarding the economic policy agenda of the Arroyo government (Why the Rush?, 2001).

These were the reasons why the President asked Congress to conduct a marathon session for the speedy approval of the Power Bill. Failure to do so would transmit signals to foreign creditors and investors of the government's lack of commitment to restructure the electricity industry and the privatization of Napocor.

Bayan Muna (2003) and FDC (2003) said that these reasons were not enough to restructure the industry. They believed that electricity is a public good that should be provided by the government. It should not be left on the hands of the private sector since it would only lead to manipulations and exploitations.

Chapter 4

Philippine Electricity Industry

Reforms in the Philippine electricity industry have been going on since the time of former President Ferdinand E. Marcos. The restructuring of the power sector that time stemmed from the fact the total energy supply fell short of the total energy demand. Reforms took the form of liberalization in the industry through the entry of the private sector in the generation of electricity. More power plants were constructed to meet growing energy demands the most notable of which is the well-known white elephant or the Bataan Nuclear Power Plant.

This scenario continued during the succeeding term of President Corazon Aquino. Embattled with the colossal economic problem inherited from the past regime especially in the power sector, she continued the reforms in the industry. Her dedication to save the country from economic turmoil proved to be insufficient because of the several coup d'etat staged against her government which has a detrimental effect on the country's economy.

The power crisis in the 1990s started the genuine reforms in the industry. Since then, lawmakers have been trying to come up with a law that would solve the problem of the industry. Laws reforming the industry were expedited when the financial crisis broke up. The National Power Corporation, the country's electricity carrier, was experiencing bankruptcy coupled with increasing foreign and local debt due to the devaluation of the peso.

The country's situation hindered its growth. This finally led Rep. Arnulfo Fuentesbella to file the Omnibus Electricity Industry Reform Bill followed by Senator John Osmeña's version in the Upper Chamber. These bills were consolidated into what was now known as Republic Act 9136 which provided the framework for the restructuring of the electricity industry, the highlights of which were the entry of the private sector and the privatization of Napocor.

Reasons for Reforming the Electricity Industry

Why did we have to restructure the electricity industry? There were four reasons why there was a need for such process. The first reason was the status of Napocor. Napocor was a losing corporation. It had incurred liabilities more than its assets. Its debts swelled due to the financial crisis making it futile and immobile. Its debts were more than what it earned. Moreover, the government was lumbered with paying more than 50 billion pesos debt amortization annually incurred by Napocor during the past years. Thus, the impending need for privatization (Napocor, 2001).

The second reason was to prevent an impending power crisis. Every year, the Department of Energy assessed the demand for electricity. The Department predicted that the demand would increase. To compensate for this increase in demand, additional plants should be built. But due to Napocor's financial situation, it could not engage in such endeavor (Napocor, 2001). The non-committal of Napocor to comply with it created uncertainties for long-term investment requirements of the country. Only by restructuring could this be met (Doria, 2001).

The third reason was to break the monopoly and lower electricity rates. With the passage of the Power Reform Act, a mandatory 5% reduction in the rates would ensue. The entry of the private sector would create competition making the electricity industry more efficient and cheaper. The monopoly of Napocor would be stopped along with corruption, mismanagement and inefficiency (Doria, 2001).

The last reason was to promote rural electrification. The Power Reform Act mandated Napocor to electrify the whole country and to provide electricity services to areas without electricity. This would be a step in the country's fight for total electrification especially in the rural areas (Doria, 2001).

Status of the National Power Corporation

Napocor was without a doubt the country's number one earning corporation. But this was before. Now, it is a losing corporation and the number one economic saboteur of the country. Former Energy Secretary Mario Tiaoqui said that, "*Napocor is earning on a debt to equity ratio of 95:5 and no corporation can survive with that kind of ratio.*" Napocor has not earned more than its yearly liabilities for the past ten years. It is operating with a bad record. Furthermore, the government bore the brunt of paying for its debts since it is government owned. The corporation's yearly debt amortization amounted to almost 50 billion pesos. Money this big would be a big depletion to the country's treasury which could be used for other purposes. There would be no other way to remedy this but to privatize the assets of Napocor.

Table 4.1

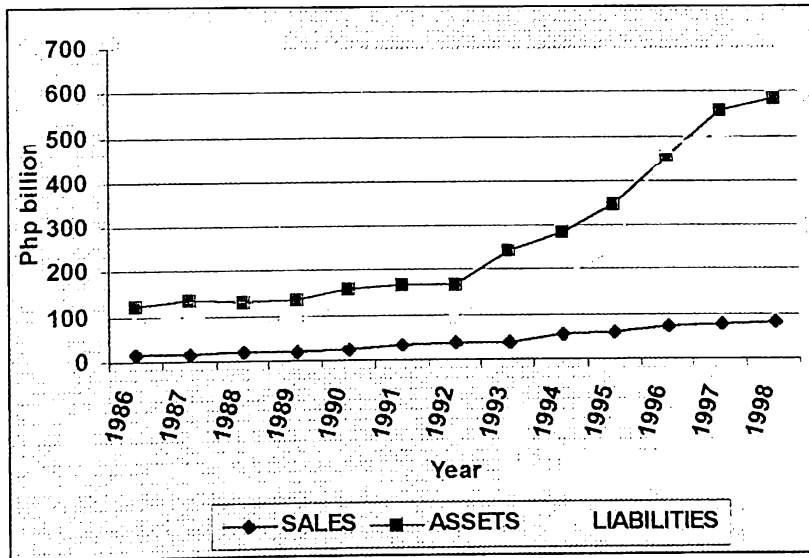
**Total Sales, Assets and Liabilities of the National Power Corporation
from 1986 to 1998 (In Billions of Pesos)**

YEAR	SALES	ASSETS	LIABILITIES
1986	17.47	125.60	90.90
1987	19.47	139.90	102.50
1988	21.50	133.70	82.30
1989	22.30	137.10	101.50
1990	27.40	160.46	127.55
1991	34.60	170.60	133.54
1992	38.81	168.47	100.69
1993	41.80	247.16	171.75
1994	59.66	289.17	185.01
1995	60.70	351.11	245.13
1996	75.05	457.70	479.10
1997	80.11	259.90	507.13
1998	86.61	287.10	517.01

Source: Napocor

Figure 4.1

A Line Graph showing the total sales, assets and liabilities of Napocor (1986-1998)



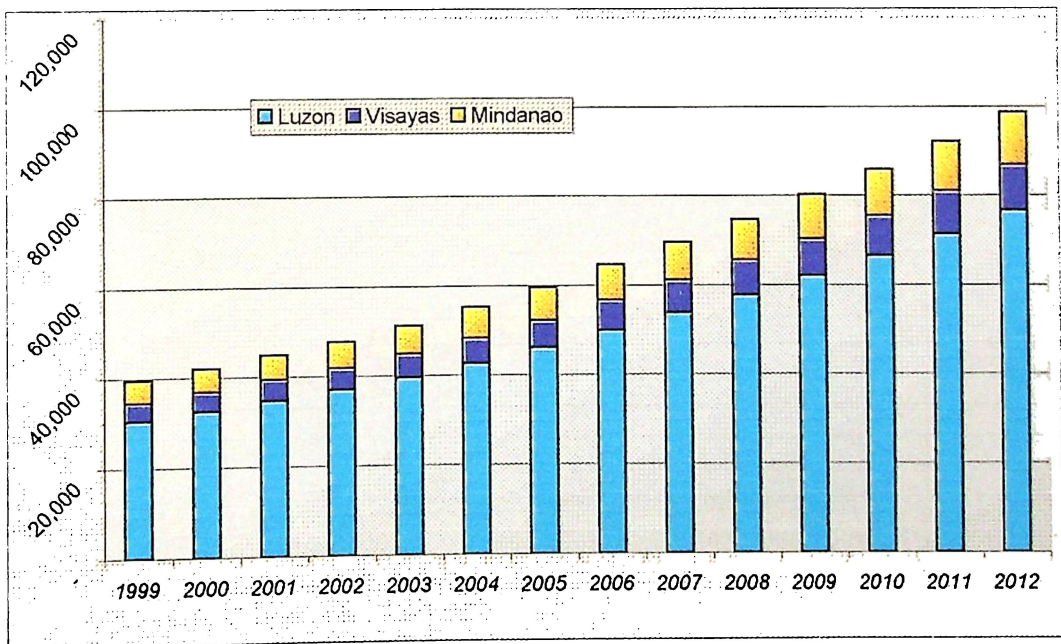
Looking at table 4.1, yearly sales of Napocor have been increasing as well as its assets. The increase in sales could be attributed to the increase in the number of

customers of Napocor while the assets could be attributed to the increase in the number of power plants owned by Napocor. On the other hand, the increase in liabilities could be credited to the power crisis in 1991. Figure 4.1 shows that the annual sales of Napocor have been increasing in a regular pattern while the increase in both assets and liabilities were immense. All of these were due to the power crisis. With this corporate situation, Napocor indeed could not carry on. Continuing this would be perilous to the country and would jeopardize its economic growth.

Electricity Demand Projections

The DOE yearly makes its projections on the demand for electricity through its Philippine Energy Plan. With Napocor’s finances at present, it could not in any way meet the country’s demands.

Figure 4.2: Bar Graph showing the demand for electricity for the next ten years.

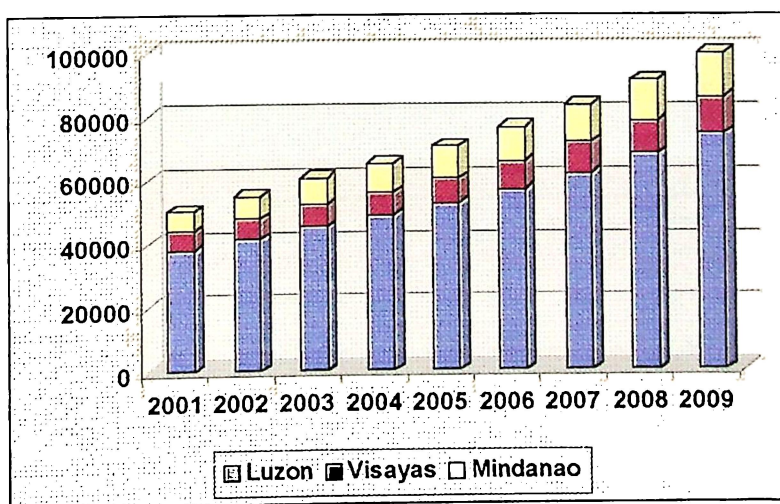


Source: Philippine Energy Plan 2003-2012 by the Department of Energy

Figure 4.2 shows the projections made by DOE on electricity demand until 2012. In the graph, we could readily see the increase in the demand for electricity. There would be an increase in Luzon, Visayas and Mindanao. Luzon posed the biggest increase owing to the fact that most of the factories and industrial plants were located in the island (Philippine Energy Plan 2003-1012, 2003). Napocor's non-compliance with these projections would create qualms for future long-term investments. By restructuring the industry, private investors in the distribution sector would be forced to expand in order to meet the demand. Besides, they have the much needed capital which the government has no luxury of. Thus, restructuring is a must.

Comparing the Philippine Energy Plan of 2003-2012 with Philippine Energy Plan 2001-2008, we could see a disparity in the projections of the DOE. The earlier plan's projections (see Figure 4.3) were much higher than the latter's plan (see Figure 4.2). Thus, there would be a need to check projections every year because of the developments going on in the country.

Figure 4.3: Bar Graph showing the demand for electricity



Source: Philippine Energy Plan of 2001-2008 by the Department of Energy

Zooming in on Meralco, this research would first take a glimpse on its corporate holdings and later assess its operations. Meralco is celebrating its 100 years of service this 2003. It has been servicing Metro Manila residents for many years. Recently, Congress approved the Meralco's renewal of franchise which would last for another 25 years. Meralco would still be controlling the Metropolis' electricity utility.

Customer Services

Meralco has served a total of 3.8 million customers in 2001, the bulk of which was comprised by the residential sector totaling about 91%. The remaining 9% consisted of commercial, business establishments, industries and streetlight customers. From Meralco's energy sales of 22.7 billion kWh for 2001, 35.9% was served to residential customers, 34.8% to commercial customers, 28.7% to industrial customers and 0.6% to streetlight customers. To have a better view of the allotment of customers and electricity sales, see figure 4.4 below (Customer Service Profile, 2002).

Table 4.2

Customer Class, Number of Customers and Electricity Sales of Meralco in 2001

Customer Class	Number of Customers	% of Total	Electric Sales (million kwh)	% of Total
Residential	3,459,231	90.9	8,138.3	35.9
Commercial	329,768	8.7	7,905.8	34.8
Industrial	12,004	0.3	6,503.3	28.7
Streetlights	4,114	0.1	141.9	0.6
Total	3,805,117	100.0	22,689.3	100.0

Source: Meralco

Figure 4.4: Pie graphs showing electricity sales and number of customers

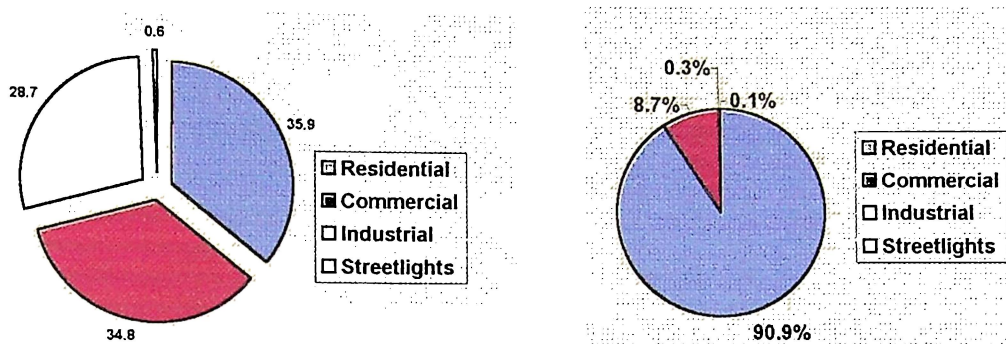


Table 4.3 on the other hand illustrates the customers of Meralco since 1991. Every year, total customer base increases. If separated into their component parts, it would yield increasing figures for residential customers while the other three components decreased in some years and increased in the other years. This was due to the economic slowdown that the country experienced during those years.

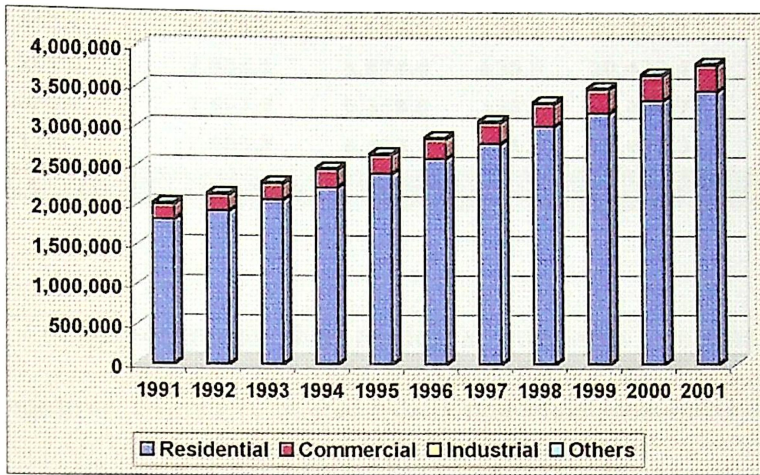
Table 4.3

Number of Meralco Customers from 1991 to 2001

NUMBER OF CUSTOMERS						
Year	Residential	Commercial	Industrial	Others	Total	% Change
1991	1,818,553	192,525	11,144	3,097	2,025,319	5.1%
1992	1,935,736	201,384	11,099	3,362	2,151,581	6.2%
1993	2,072,642	209,159	11,719	3,562	2,297,082	6.8%
1994	2,234,052	226,889	12,246	3,789	2,476,976	7.8%
1995	2,406,959	237,576	12,936	4,044	2,661,515	7.5%
1996	2,596,687	255,640	13,073	4,132	2,869,532	7.8%
1997	2,787,974	269,382	13,287	3,999	3,074,642	7.1%
1998	3,010,868	286,591	13,453	3,845	3,314,757	7.8%
1999	3,181,751	298,846	12,553	3,834	3,496,984	5.5%
2000	3,341,738	314,383	12,291	4,008	3,672,420	5.0%
2001	3,459,231	329,768	12,004	4,114	3,805,117	3.6%

Source: Meralco

Figure 4.5: Bar Graph showing Meralco Customers from 1991 to 2001



In 1991, Meralco sold a total of 11.9 million kWh to its customers (see table 4.4). This almost doubled to 22.7 million kWh in 2001. Meralco’s customer base has a direct relationship with its energy sales. It just shows that as customer base increases, so as its energy sales. Energy sales to residential customers increased each year except in 1999. Commercial and Industrial customers fell in some years and climbed in the other years. Again, the economic turmoil during these years led these establishments to shut down its operations thereby contributing to the decline in energy sales (Meralco’s Energy Sales, 2002).

Table 4.4

Total Energy Sales of Meralco

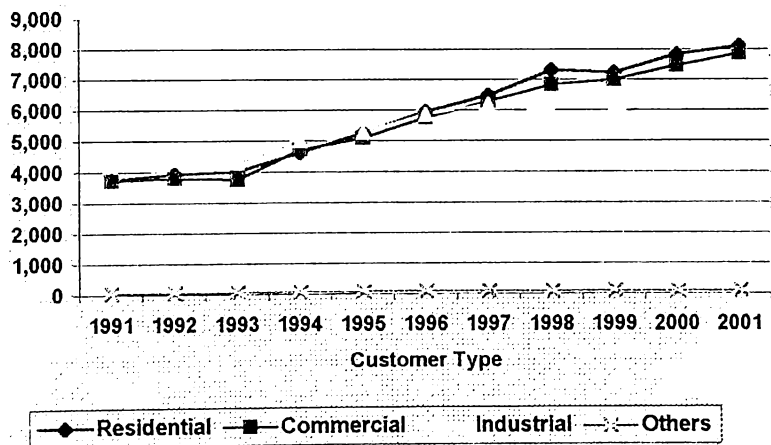
ENERGY SALES (In Million kWh)						
Year	Residential	Commercial	Industrial	Others	Total	% Change
1991	3,753.6	3,750.8	4,335.1	91.9	11,931.4	3.2%
1992	3,940.8	3,815.8	4,430.4	92.4	12,279.4	2.9%
1993	4,029.1	3,781.8	4,333.1	106.8	12,250.7	-0.2%
1994	4,652.4	4,747.0	5,048.2	107.4	14,555.1	18.8%
1995	5,293.6	5,140.3	5,327.2	115.3	15,876.4	9.1%

1996	5,975.8	5,805.1	5,909.2	120.4	17,810.4	12.2%
1997	6,526.2	6,313.6	6,213.4	126.6	19,179.8	7.7%
1998	7,348.4	6,870.4	5,952.6	134.7	20,306.1	5.9%
1999	7,284.3	7,038.1	5,974.4	136.6	20,433.4	0.6%
2000	7,880.4	7,507.2	6,359.9	133.2	21,880.7	7.1%
2001	8,138.3	7,905.8	6,503.3	141.9	22,689.3	3.7%

Source: Meralco

Figure 4.6 below reveals that residential customers are continuing to rise overstepping industrial customers in mid 90s. Commercial customers improved along with residential customers. Industrial customers on the other hand, did not maintained its increase. Statistics show that it encountered increase in a decreasing rate (See figure 4.6).

Figure 4.6: Line Graph Showing Energy Sales of Meralco



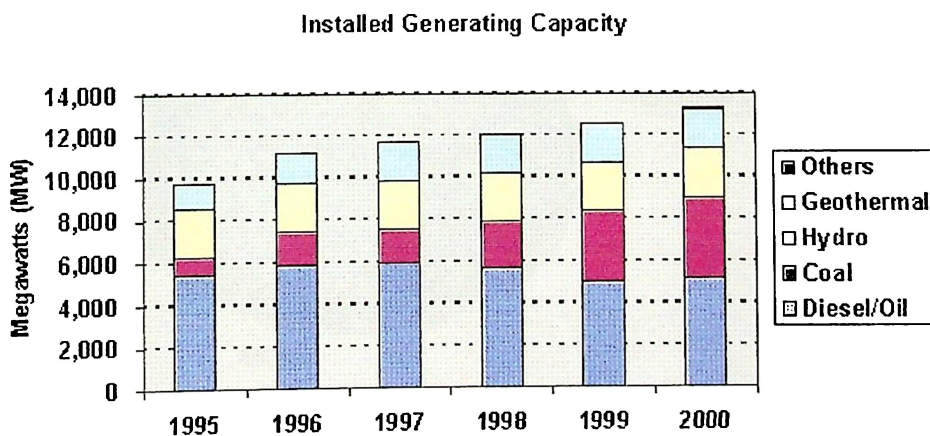
Generation of Electricity

The Philippines had generated a total capacity of 13,264-MW in 2000. Diesel and oil-fired power plants constituted the largest share, followed by coal-fired plants. The

remaining was generated by hydroelectric and geothermal power plants respectively. See figure 4.7 for a better look (Generation Capacity, 2002).

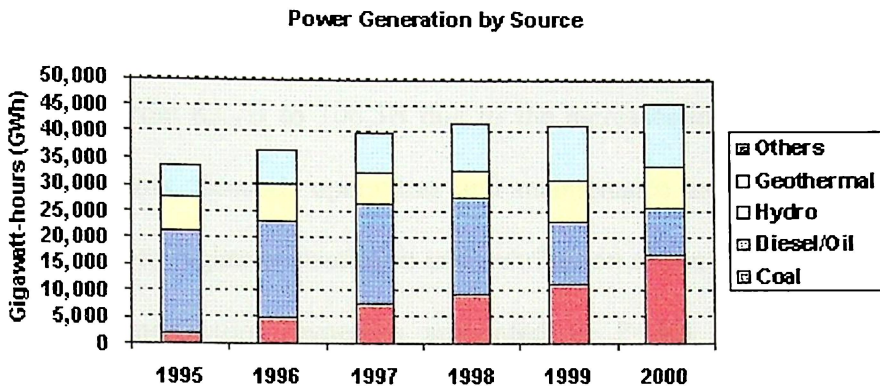
In that same year, a total of 45 billion kWh of electricity was generated throughout the country. The largest share came from coal-fired power plants followed by geothermal plants. Oil-fired and hydroelectric plants trailed after the two respectively (see figure 4.8). Napocor and its Independent Power Producers' constituted 92 percent of all electricity produced in 2000. Meralco and its IPPs produced about 6% while other power plants generated 2%. The pie graph shows that NPC has a monopoly in terms of power generation because of the numerous power plants it owned (see figure 4.9) (Generation Capacity, 2002).

Figure 4.7: Bar Graph Showing the Installed Generating Capacity of the Philippines in 2000



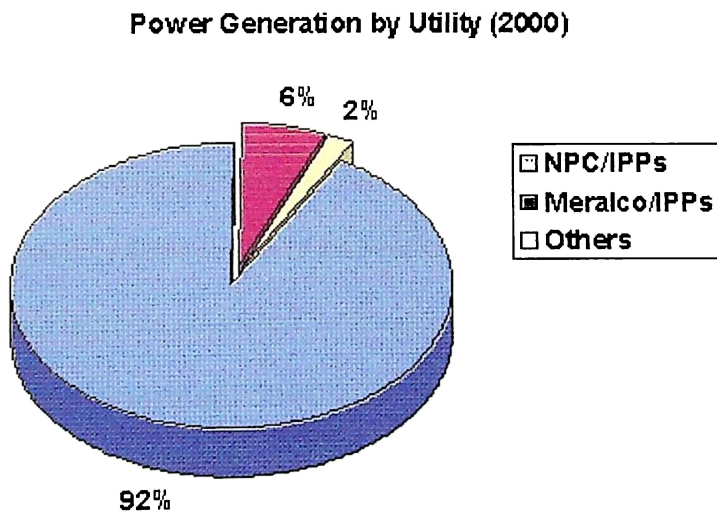
Source: Meralco

Figure 4.8: Bar Graph Showing Power Generation by Source



Source: Meralco

Figure 4.9: Pie Graph Showing Power Generation by Utility



Source: Meralco

Review of Operations

Amidst all of these figures and statements, what has Meralco been doing in the past and at present to improve its services and facilities?

Financially, Meralco obtained a net income of P1.48B in 2001. This was 40% lower compared to last year's P2.49B. This sudden decrease in income was attributed to a number of reasons. First, the purchased power from Napocor and other power suppliers posted an increase from 82.7B to 106.3B due to the increases in the prices imposed by these generating plants. Second, operations and maintenance expenses increased from P8.0B to P9.5B due to higher transmission and distribution expenses of electricity. Third, depreciation and amortization expenses amounted to P4.8B due to additions and reevaluation of the company's fixed assets to a more reasonable current appraised value. Fourth, net interest expenses grew to P2.5B because of higher debt level and the unstable exchange rate the country experienced in 2001. Lastly, capital expenditures of the company reached P7.2B for the improvement of the electric distribution system. All of these reasons contributed to the decrease in the Meralco's profit (Financial Report, 2001).

Meralco obtained loans from local multilateral and bilateral lending institutions and commercial banks amounted to P600M which were used for upgrading and expansion of the subtransmission and distribution system. Improvements in the company's system were effected despite decreasing profit. And these were implemented to ensure better services to its customers (Annual Report, 2001).

Meralco infused a total of P5.92B in ECPs or electric capital projects to upgrade the distribution system in order to meet the growing needs of its customers. Most of the investment was allocated to the construction and expansion of existing substations and the energization of new distribution feeders. The ECPs involved the construction of five new substations, expansion of two substations and the energization of two capacitor banks which would adjust abnormal voltage conditions in the system and the completion

of three distribution line projects (Annual Report, 2001). This year, Meralco has committed several other ECPs for the improvement of its system (2002 Electric Capital Projects, 2003).

The impact of these ECPs was immense. The Forced Interruption Frequency dropped from 30.45 to 23.37 or a 23.2% improvement. IFR is the average number of times each customer connected to the Meralco distribution system experiences power interruption within a stipulated time period. Correspondingly, Forced Cumulative Interruption Time improved from 61.94 to 37.84 hours or a 38.9% improvement. CIT should have been much lower according to Meralco if not for the two system wide blackouts caused by the breakdown of the NP-owned power generation and transmission facilities which amounted to 16.71 hours of the total CIT. CIT is the cumulative length of power interruption, in hours, that a customer connected to the Meralco distribution system experiences on the average, within a stipulated time period (Annual Report, 2001).

Among the ECPs completed was the new Paco Substation. The substation was equipped with an on-load tap changer (OLTC) that automatically regulates the voltage served within the area. Major customers such as PLDT, De la Salle, Red Apple Corporation and Food Mine Corporation were assured of more reliable electric service and a better voltage regulation. The new Bagbaguin Substation in Valenzuela City was also equipped with an OLTC. This substation provided for an additional spare capacity of electricity for the increasing demand in the area, enhanced switching flexibility, improved voltage regulation and reduced distribution losses. The substation served several factories and firms located in the City besides the local residents. The Bacoor

substation was created in order to meet the electricity demands of the newly constructed residential subdivisions in the area in addition to the local people and some factories operating in the Cavite. Improvements in the New Zapote Delivery Point Substation made sure that electricity transmitted from NPC Power Plants would be relayed well into the other substations. The development of Parang Substation improved the reliability and quality of service to customers in San Mateo, Montalban and Marikina City. The substation served as back-up power source in case of emergency situations and for meeting future load demand in the area. The Mandaluyong Substation was renovated by replacing old circuits with new ones improving the flexibility and reliability of the system in the Ortigas Center Complex. The transformers in the Balintawak Substation were also replaced with new ones intended for additional loads in the future. Similar developments in the North Port Substation, Light Industry and Industrial Park, Kamuning Substation and Carmelray Substation in Sta. Rosa, Laguna improved service reliability in these areas. Funding for these projects came from the P600M loans obtained by Meralco to upgrade its facilities (Annual Report, 2001).

Information campaigns were launched by Meralco to ensure that the company remains responsive to the needs of its customers. Safety and efficient energy use and FAQs were included in the monthly bills delivered to the customers to ensure that information would be disseminated to all. The Village Forum Program started with its launching in a subdivision in Antipolo City. The program was an alternative way for residential customers to be informed and be heard with regards to their concerns and queries. Resource persons from Meralco discussed several topics such as electricity

distribution, power interruptions, safety tips during calamities, call centers, and tips on efficient electricity use (Meralco's Operations Report, 2001).

In addition to these programs, Meralco made strategic alliances with consumer goods and service companies to promote energy efficiency and customer convenience. Meralco allied with Procter and Gamble's Downy regarding its Use Electricity Wisely Campaign. The commercial entailed using downy to save electricity because using the product would no longer need ironing. Also in the advertisement were Meralco's Call Center numbers and its interactive voice response system that gave energy efficiency tips. These tips were illustrated in brochures distributed among the populace. On the other hand, Meralco's venture with AIG Credit card promoted a favorable payment habit for customers. Call Centers of Meralco received calls from customers to address several concerns. Customer Assistance Representatives could be reached for filing complaints, applications and billing statement inquiries (Meralco's Operations Report, 2001).

Meralco has been undergoing a six-year transformation project (MTP) which concluded in June 2001. This project transformed Meralco into world-class company after undergoing a reengineering process. MTP included organizational restructuring, policy review, cultural change management, implementation of information systems and business process reengineering. The project was directed at improving customer service, distribution management, materials management, finance and human resources (Annual Report, 2001).

MTP has resulted to an optimized process, improved quality of service, alternative and convenient ways of transacting with customers, advancing the quality of internal services, availability of information, streamlined organization through

decentralization of operations and empowered employees exposed to new skills and tasks that require decision-making (Annual Report, 2001).

Besides its commitment to deliver electricity to its consumers, Meralco also fulfilled its social responsibilities in the areas of social investment, community sponsorships, environment stewardship and workplace stewardship. Meralco has conducted numerous outreach programs, livelihood training programs, book donation drives, teacher education projects and awarding of scholarships to outstanding students (Annual, 2001).

Annually, Meralco has been continuing its mandate to serve the public. It has continuously upgraded and improved its facilities and system. These things proved that Meralco has been doing its part to provide quality, secure and reliable electricity to its consumers. The next chapter would indicate the perception of the consumers themselves. They would validate whether Meralco has indeed provided quality, secure and reliable electricity to its consumers.

Chapter 5

Perception of Respondents (Survey)

In the previous chapter, this paper has tackled the side of Meralco. This would only be one side of the story. It would be much better if the findings would be verified on who else but the company's consumers. This chapter would see whether Meralco has indeed provided quality, reliable, secure and affordable electricity rates to its consumers.

This survey was carried out in such a way as to accommodate and take into consideration all possible Meralco consumers by using a tambiyolo. Before arriving at the paper's target population, all cities and municipalities within the jurisdiction of Meralco were put inside a tambiyolo. After picking a city, the name of the barangay came next and later the street. After a tedious process of selecting a location, Milagros Street of Barangay 340 Zone 34 within the City of Manila was chosen to be the target area. Milagros street constituted four blocks. Out of the 162 survey forms distributed within the area, 142 came back or 87.8% thereby validating any findings that would arise in the survey. It was made sure that the respondent who answered the survey questions was the one or a contributor in paying for the electricity.

Informed consent was obtained from all of the respondents. All of them wholeheartedly responded to the survey. Though they have consented to the survey, most of them made their names anonymous. A permission letter was also sent to the local barangay office before the survey was conducted to ensure that everything would be official and that any untoward conflicts would be prevented.

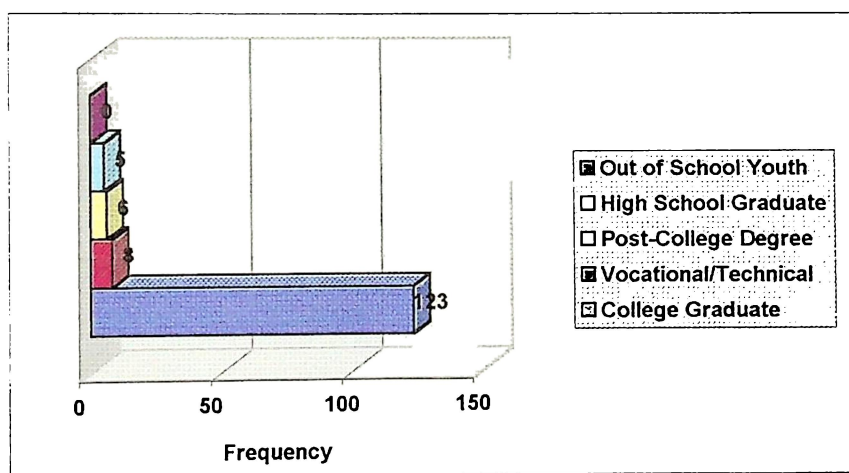
Table 5.1

Educational Attainment of Respondents

Educational Attainment	Frequency	Percentage (%)
College Graduate	123	86.6%
Vocational/Technical	8	5.6%
Post-College Degree	6	4.2%
High School Graduate	5	3.5%
Out of School Youth	0	0.0%
Total	142	100.0%

Figure 5.1

Bar Graph Showing the Educational Attainment of the Respondents



In table 5.1, most of the respondents were College graduates totaling to 123 respondents or 86.6% followed by respondents who took up vocational or technical courses with 8 or 5.6%, Post-graduate degree holders with 6 or 4.2% and High School graduates with 5 respondents or 3.5%. There were no out of school youth from any of the respondents. Educational Attainment of respondents would later have a big role on their understanding, perception and assessment of the issue.

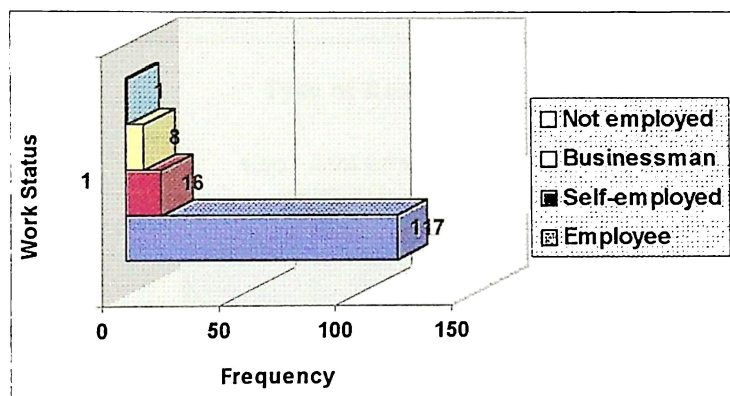
Table 5.2

Work Status of the Respondents

Work Status	Frequency	Percentage (%)
Employee	117	82.4%
Self-employed	16	11.3%
Businessman	8	5.6%
Not employed	1	0.7%
Total	142	100.0%

Figure 5.2

Bar Graph Showing the Work Status of the Respondents



One hundred seventeen or 82.4% of the respondents were employees in various companies and government agencies. Sixteen or 11.3% were self-employed and 8 or 5.6% were businessman most of them own stores. Only 1 respondent was not employed. When asked, he was laid off from work as a result of the company's cut in human resources. But he is now looking for a new job and is presently doing extra jobs to support his family's needs.

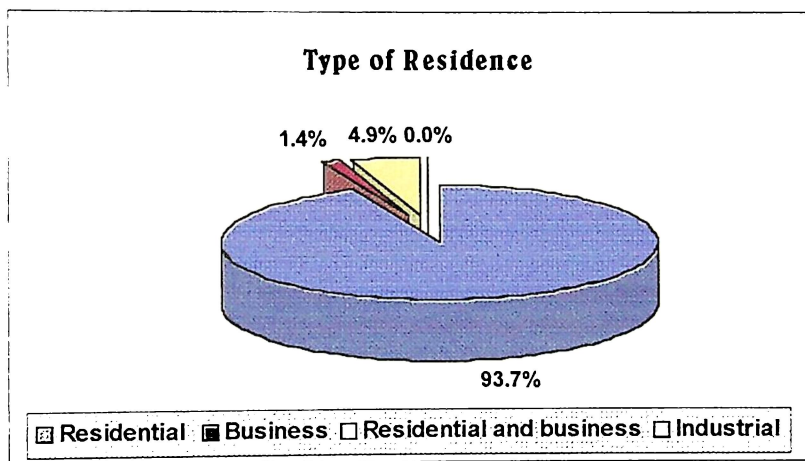
Table 5.3

Type of Residence of Respondents

Type	Frequency	Percentage (%)
Residential	133	93.7%
Residential and Business	7	4.9%
Business	2	1.4%
Industrial	0	0.0%
Total	142	100%

Figure 5.3

Pie Graph Showing the Type of Residence of the Respondents



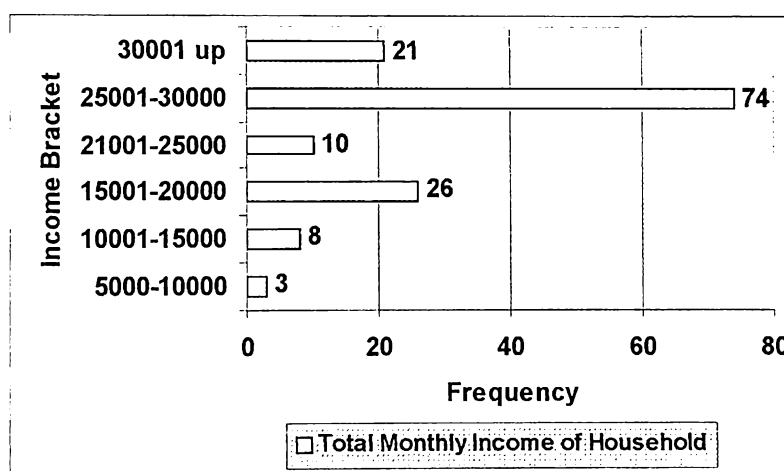
For the type of residence, a total of 133 or 93.7% of the respondents live in residential houses, 7 or 4.9% converted their residence into a business establishments such as sari-sari stores and 2 or 1.4% were purely business establishments, one is a water refilling station and the other is a bakery. There were no factories or industrial firms in the area. Interestingly, almost all of the respondents were just renting. So, paying high electricity rates would be an added burden to their budget.

Table 5.4

Total Monthly Income of the Respondents' Household

Income Bracket	Frequency	Percentage (%)
5,000 - 10,000	3	2.1%
10,001 - 15,000	8	5.6%
15,001 - 20,000	26	18.3%
21,001 - 25,000	10	7.0%
25,001 - 30,000	74	52.1%
30,001 up	21	14.8%
Total	142	100%

Figure 5.4

Bar Graph Showing Total Household Income

Most of the respondents' monthly income ranged from P25,001 to P30,000. They constituted 74 of the total population or 52.1% followed by 26 or 18.3% from 15,001-20,000 bracket, 21 or 14.8% from the 30,001up bracket, 10 or 7.0% from the 21,001-25,000 bracket, 8 or 5.6% from the 10,001-15,000 bracket and finally 3 or 2.1% from the 5,000-10,000 bracket. This further shows that most of the respondents' monthly incomes are not enough in meeting their needs.

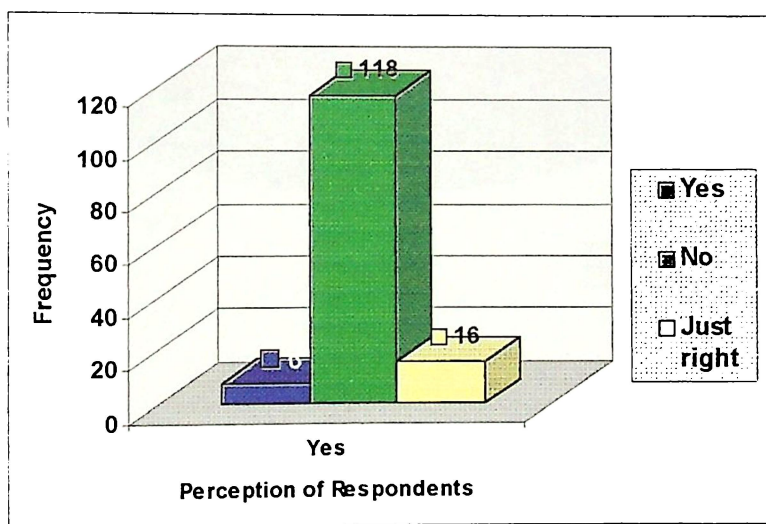
Table 5.5

Sufficiency of Income in Paying for Electricity and other Expenses

	Frequency	Percentage (%)
Yes	8	5.6%
No	118	83.1%
Just Right	16	11.3%
Total	142	100%

Figure 5.5

Bar Graph Showing the Perception of Respondents with Regards to the Sufficiency of their Income in Paying for Electricity and other Expenses



With regards to whether their monthly income was enough or not, 118 or 83.1% of the respondents responded in the negative. Eight respondents or 5.6% answered in the affirmative while 16 or 11.3% said their income just fits their expenses. This particular question indicated that their monthly income was not sufficient to meet their needs. An overwhelming percentage of the responses clearly illustrated the fact that electricity was too expensive to be shouldered by their income.

Table 5.6

Awareness of the Respondents on the Electric Power Industry Reform Act of 2001

	Frequency	Percentage (%)
Yes	142	100.0%
No	0	0.0%
Total	142	100.0%

Figure 5.6

Pie Graph Showing the Awareness of the Respondents on EPIRA

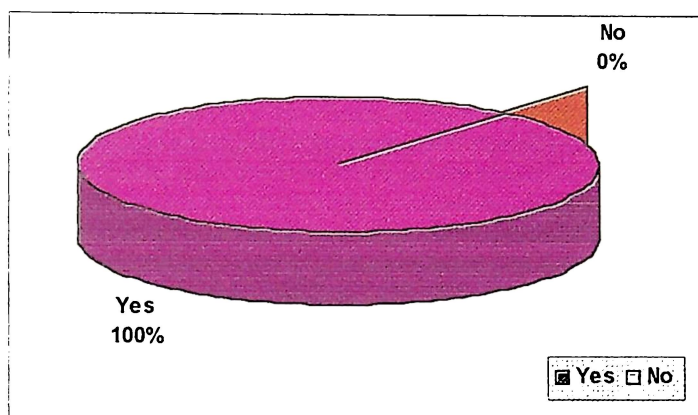


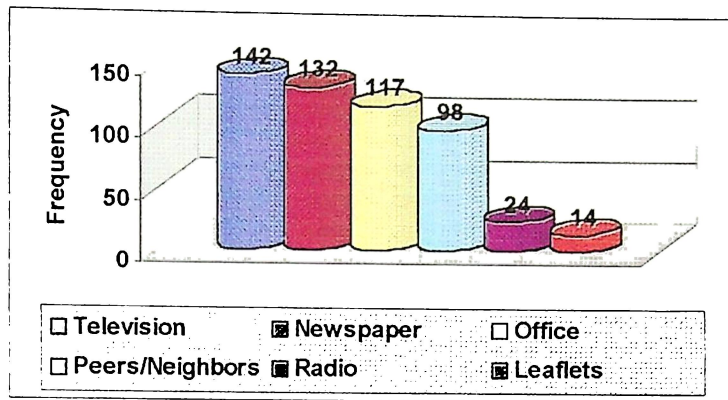
Table 5.7

Source of Awareness of the Respondents on EPIRA

	Frequency	Percentage (%)
Television	142	100.0%
Newspaper	132	93.0%
Office	117	82.3%
Peers/Neighbors	98	69.0%
Radio	24	16.9%
Leaflets	14	9.9%
Total	527	

Figure 5.7

Cylinder Graph Showing the Source of Awareness of the Respondents



An overwhelming 100% of the respondents were aware of the existence of EPIRA (see table 5.6). They were acquainted with the law in various occasions. In table 5.7, the respondents learned of the law mainly on their television sets when they watched news and current affairs programs. Other sources of their awareness ranged from newspapers, in the office, peers/neighbors, radio and leaflets or pamphlets distributed to inform the citizens (see table 5.7). The government did its part to increase the level of awareness of the people. It did several things for the law to reach the consciousness of the people. The media has contributed a lot to this endeavor. Through its delivery of news especially during its enactment, the people became part of its system and were constantly updated. This awareness of the people would prove to be important in their responses to the latter questions of this survey which would be useful in the researcher's analysis of the research problems of this paper.

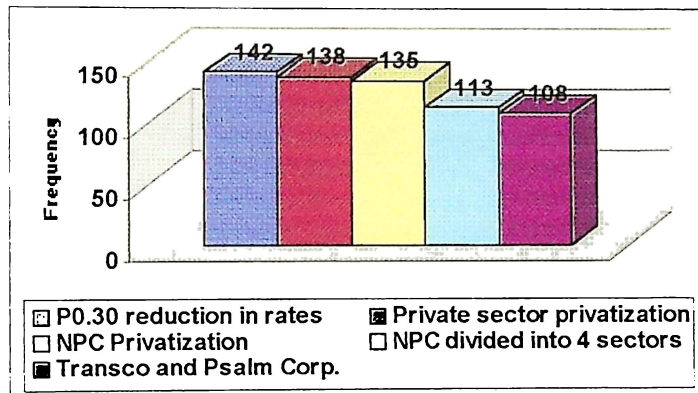
Table 5.8

Contents of EPIRA that the Respondents know

	Frequency	Percentage (%)
P0.30 reduction in rates	142	100.0%
Private sector privatization	138	97.2%
NPC Privatization	135	95.1%
NPC divided into 4 sectors	113	79.6%
Transco and Psalm Corp.	108	76.1%
Total	636	

Figure 5.8

Bar Graph Showing the Contents of EPIRA that the Respondents know



With regards to the contents of the law, the respondents knew a lot. All of the respondents knew about the 30-centavo reduction in the rates of electricity, 138 knew about the private sector participation in the industry, 135 were aware that the Napocor would be privatized, 113 knew about the division of Napocor into four sectors and 108 were aware of the creation of Transco and Psalm Corp. The positive responses on the contents of the law were a consequence of the respondents' interest on it because they would be the ones affected by the restructuring of the electricity industry. To be involved in this process would be important to them. They should know everything that would change their everyday lives.

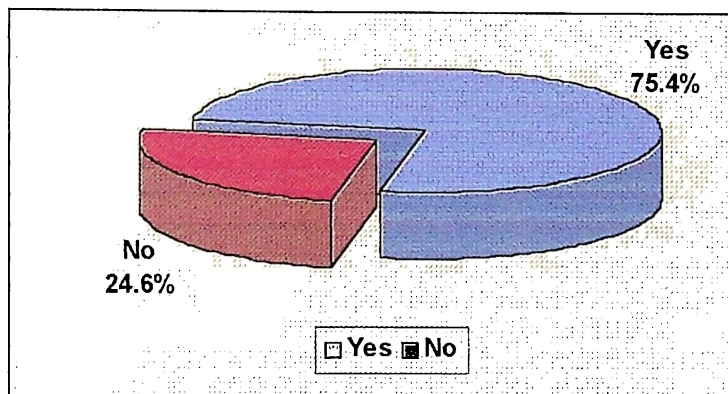
Table 5.9

Perception of the Respondents in the Privatization of Napocor

	Frequency	Percentage (%)
Yes	107	75.4%
No	35	24.6%
Total	142	100.0%

Figure 5.9

Pie Graph Showing the Perception of Respondents in the Privatization of Napocor



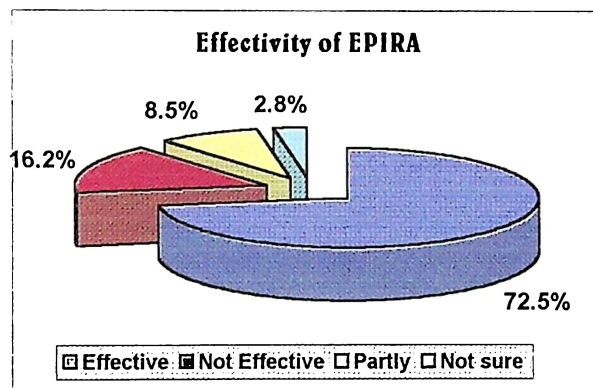
Seventy-five percent of the respondents were in favor of Napocor privatization while the remaining twenty five percent were not in favor. Those favored the privatization said that they were fed up with the corruption and other anomalies that were rampant in the department. Privatizing it would make it competent and efficient in the delivery of services. Those who opposed privatization said that Napocor should be left in the control of the government. It was established to make sure that the government would deliver electricity as a public good. It is the responsibility of the government to do such things. It should not be left in the hands of the private sector because it would become profit-oriented which would lead to price increases.

Table 5.10

Effectiveness of EPIRA in Solving the Problems of the Electricity Industry

	Frequency	Percentage (%)
Effective	103	72.5%
Not Effective	23	16.2%
Partly	12	8.5%
Not sure	4	2.8%
Total	142	100.0%

Figure 5.10

Pie Graph Showing the Perception of the Respondents**on the Effectiveness of EPIRA**

In table 5.10, it illustrated that 103 of the respondents believed that EPIRA would be effective in solving the problems of the electricity industry. The table also showed that 23 or 16.2% believed otherwise, 12 or 8.5% said that EPIRA would partly be effective and 4 or 2.8% were not sure whether it would be effective or not. The effectiveness of the law would lean on its proper implementation. This would spell out the difference between its effective and non-effectiveness. Proper implementation was the main reason why some respondents believed that it would not be effective.

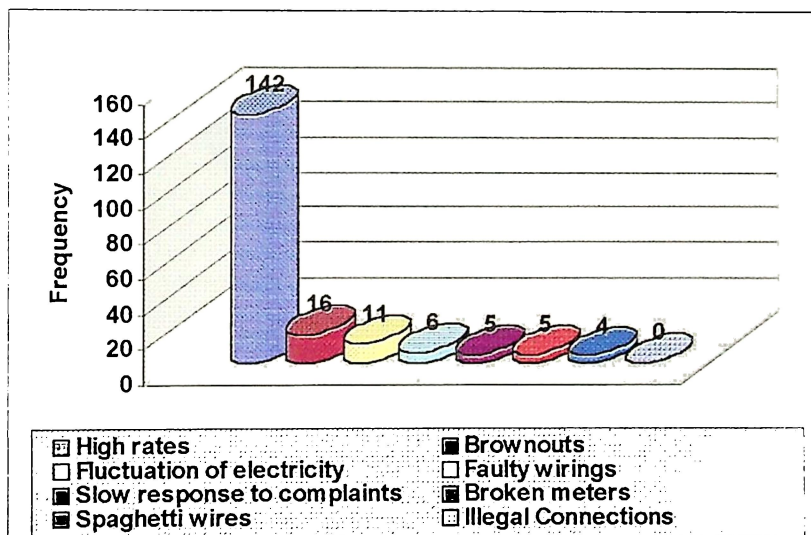
Table 5.11

Common Problems in the Distribution of Electricity

Problems	Frequency	Percentage (%)
High rates	142	100.0%
Brownouts	16	145.5%
Fluctuation of electricity	11	7.7%
Faulty wirings	6	4.2%
Slow response to complaints	5	3.5%
Broken meters	5	3.5%
Spaghetti wires	4	2.8%
Illegal Connections	0	0.0%
Total	189	

Figure 5.11

Cylinder Graph Showing the Common Problems in the Distribution of Electricity



The common problem encountered by the respondents was basically the very high rates imposed by Meralco. All of the respondents agreed to this. The other problem though minimal included brownouts, fluctuation of electricity, faulty wirings, slow response to complaints, broken meters, spaghetti wires and illegal connections. They were very much satisfied with the services of Meralco except the costly rates.

Table 5.12

Reliability and Security of Supply of Electricity

	Frequency	Percentage (%)
Yes	107	75.4%
No	23	16.2%
Partly	12	8.5%
Total	142	100.0%

Figure 5.12

Doughnut Graph Showing the Perception of Respondents on the Reliability and Security of the Supply of Electricity

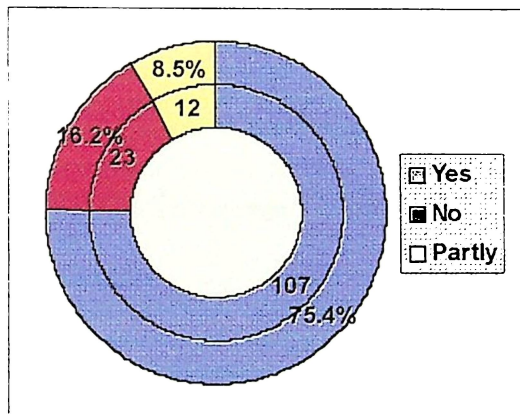


Table 5.13

Quality Service of Meralco

	Frequency	Percentage (%)
Yes	108	76.1%
No	21	14.8%
Partly	13	9.2%
Total	142	100.0%

Figure 5.13
Doughnut Graph Showing the Perception of Respondents
on the Quality of Service Offered by Meralco

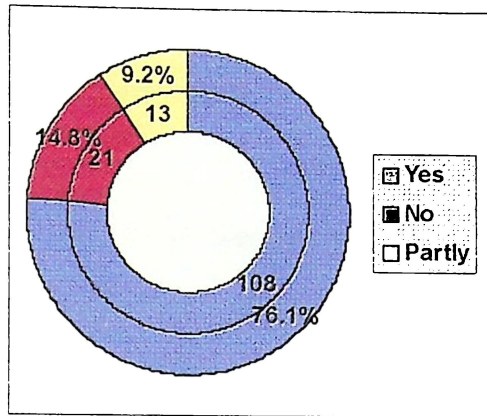


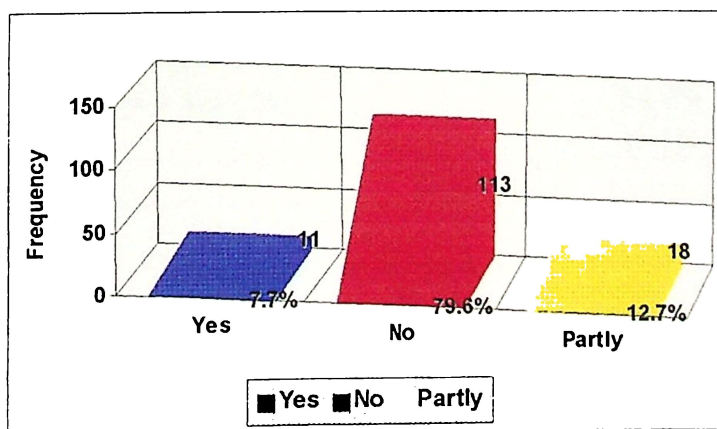
Table 5.14

Affordability of Electricity

	Frequency	Percentage (%)
Yes	11	7.7%
No	113	79.6%
Partly	18	12.7%
Total	142	100.0%

Figure 5.14

Triangular Graph Showing the Affordability of Electricity



Seventy-five percent or 107 respondents agreed that Meralco has provided reliable and secure supply of electricity. Those who opposed constituted 16.2% or 23 respondents while 8.5% or 12 respondents were in the middle. With regards to the quality of service that they received, 76% or 108 respondents said agreed while 14.8% or 21 respondents said otherwise. Nine percent or 13 respondents replied partially on the other hand.

Although Meralco received the approval of the majority of the respondents in terms of good service and performance of its role as a public electric utility, it also received the majority of the respondents in terms of affordability of its electricity rates. Respondents who said that the rates were not affordable had a share 79.6% from the total number of respondents or 113 respondents. Only 7.7% or 11 respondents said that the rates were affordable while 12.7% or 18 respondents said that the rates were partly affordable.

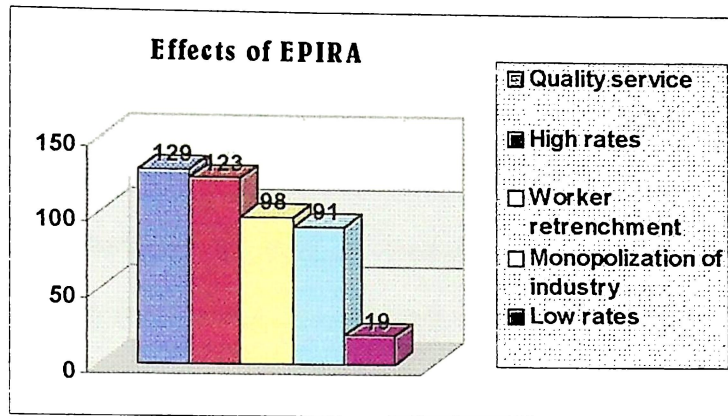
Table 5.15

Effects of EPIRA to the Consumers and the Industry

	Frequency	Percentage (%)
Quality service	129	90.8%
High rates	123	86.6%
Worker retrenchment	98	69.0%
Monopolization of industry	91	64.0%
Low rates	19	13.3%
Total	460	

Figure 5.15

Bar Graph Showing the Effects of EPIRA to the Consumers and the Industry



On the effects of EPIRA to the consumers and the industry, 129 respondents said that it would result to quality service, 123 respondents said that it would bring about high rates, 98 respondents believed that it would result to retrenchment of workers, 92 respondents said that it would result to the monopolization of the industry and 19 believed that the rates would go down.

There were mixed feelings with regards to the effects of the law. The consumers indeed were still not sure whether it would lead to a positive or negative effect. They believed that time was not sufficient to ponder the effects of the law.

Chapter 6

Integration and Analysis

Napocor was burdened with huge debts for several years now. Napocor finds it hard to continue operation since it has not been earning profit for the past years. It is a perfect example of a bankrupt corporation. Assuming it was in the hands of the private sector, it would have shut down. But this of course would not likely take place.

Napocor acknowledged the fact that it was not in a position to meet the growing electricity demand of the country. As we can see, as a country develops, it would normally lead to development and would lead to an increase in the demand for electricity due to the infusion of investments from foreign and local sources. Projections showed that demand would increase and with Napocor's state, it is not likely to respond to the call. There were no additional power plants built for the past few years. Neither would Napocor attempt to build one right now. It cannot anymore take financial obligations mainly because of its debt payments every year which eat up a lion's share of its resources. Besides the corporation's sales revenues, the main source of its resources is the government. Being a public corporation, it is the duty of the government to maintain its operations. The government shoulders part of its debt amortizations amounting to P50B which would increase or decrease depending on the strength of the peso.

It is important to take into consideration the fact that the government is experiencing a budget deficit. Fifty Billion pesos hurt our national treasury. We could not afford this money to just fly away into the hands of lending institutions. We need every single peso we could get to finance the day to day operations of the government. There is

no other way to come out of this quandary but to restructure the industry leading to the privatization of Napocor. The private sector would surely respond to the growing demands of the country. The private sector has the capacity to build new plants, infuse large capital into the industry and manage the industry efficiently. Let us accept the fact that the private sector is a good manager. The researcher is not saying that the government is not a good manager. All the researcher is saying is that it would be better to leave it into the hands of the private sector for better management and responsive to the needs of the people. The only problem with this is that private companies tend to seek profit. But considering the risks that they have taken, they should be rewarded with returns of their investments, in other words profit. We could not take this away from them. This is the price of their labor. But how about super profits? This is where the government should enter. It should regulate the price imposed by these companies to ensure that no manipulation would take place and that the rates would be affordable.

Resources and money obtained from the sale of Napocor would then be used to finance government projects and pay for its debts which would be assumed by the government. If we would imagine these things, it would be better to privatize it in the long run. Under public control both in the short and long run, the government would continue be in the losing end. Year by year debts swell and its payment would be a big burden for the government. Whereas in private hands, it would surely have a negative impact in the short run but in the long run, it would benefit not just the people but also the government. The government benefits in terms of additional funds and relief from debt payment. Although the issue of debt payment seems to be not in favor of the people since

the remaining stranded cost would still be shouldered by the government and by the people through taxes. It would be better this way than the other scenario.

Meralco, as Napocor's biggest customer, has a huge role in the distribution sector. It supplies the electricity needs of Metro Manila and other nearby provinces. It is a fact that the services of Meralco before were terrible. But since 1995, the year when it revolutionized its services through various developments and improvements in its operations, it has come out from the criticisms of the public. Since then, Meralco has continued upgrading its resources and facilities. It has spent billions of pesos worth of capital expenditures to realize its vision of efficient service. It continues to boost up its research and development to further improve its system. Meralco has indeed improved in terms of service.

Validating these facts with its consumers, it shows that they do agree that Meralco has provided quality, reliable and secure electricity. Seventy-five percent of the respondents surveyed agreed that Meralco has provided reliable and secure electricity while seventy-six percent said that Meralco has quality services. These findings jibe with the contentions of Meralco. Meralco being a private company indicates that privatization does result in good terms.

However, with regards to its affordability, almost 80% said that the rates were not affordable. The rates continue to increase as of the moment. A resounding disapproval from the respondents and other groups can be heard everywhere. Expensive rates are consequences of good and efficient services. A company would surely want to offer the best services to its patrons but it could only do this if it has the capital. Company owners

risk borrowing capital from lending institutions. They secure more loans to improve their capabilities. But this is premised on the fact that there should be returns from their investments. This is the only consolation that owners have. We could not in any way achieve both quality and affordability. One factor should be sacrificed. In the case of public corporations, quality is sacrificed. In the case of private corporations, affordability is sacrificed. We as consumers do want the best services. If we want the best services, we should sacrifice affordability. Imagine this scenario, what would you choose, an electric distributor run by government offering affordable rates but inefficient services or the other way around in the case of the private sector. Government has a long history of corruption and inefficiency. These affect the services of the government. In private, we could be assured that these things do not exist. Though there are some instances in the past, it is a small percentage and quite controllable.

The PPA or Purchased Power Adjustment seems to be the very reason why electricity rates go up. If we would scrap this item on our bills, our electricity would be more affordable. But because of the take-or-pay policy in the IPP contracts, we undergo the hardship of paying expensive electricity. The PPA cost should be scrapped because consumers do not utilize it nor is it even produced by the Independent Power Producers. PPA is charged even if there is no production of energy power. This particular problem should be the one that must be dealt with.

In connection with this, majority of the respondents agree that the Power Reform Act would be effective in saving the ailing industry. Majority also favors the privatization of Napocor. The respondents are consistent with their stand. They prefer a privately owned corporation rather than a publicly owned one.

The Power Reform Act on the other hand has a mixture of good and appalling provisions. Cross subsidies were removed in some places resulting to an increase in the rates. These subsidies originated from the government as assistance to electric cooperatives. Its removal would be tantamount to expensive rates and helpless consumers. The assumption of part of NPC's stranded costs is futile for the government. It would still be the one shouldering the debt amortizations while the private investor would be enjoying the profits since it would shoulder only a small part of NPC's debts. Even though the government will not earn from the sale, it would still be better because the almost P200B from the sale of NPC's assets would be a big slash on NPC's debts which would translate into a smaller debt that is manageable.

The prohibition on cross-ownership is very important because it would prevent any untoward monopolization of the industry, manipulation and anti-competitive behavior of the players in the industry. The law also provided safeguards to further prevent such things from happening.

The privatization of Napocor is a much needed action because the status of Napocor has affected the financial capability of the government so much. It would be a sacrifice for the government to sell Napocor but doing it would be much better. Resources obtained and saved from the selling of Napocor would now be used for more useful things.

The Electric Power Industry Reform Act of 2001 has been effective in delivering electricity to its consumers for the years that it has been implemented. The restructuring of the industry is already on the way. Since 2001, the provisions of the law have been

slowly achieved. True to its commitment, the government is sincere to save our sick industry. It will do everything to ensure the future of the country's next generation.

The implementation of EPIRA has worked its way in the operations of Meralco. Before, Meralco purchased its electricity from NPC plants. With the law's enactment, it can purchase electricity from other sources, from other plants owned by the private sector that sell it at cheaper rates and probably with no PPA costs. Meralco has already carried this out through its purchase of electricity from other power plants other than those owned by Napocor. Cost of production would surely drop because of this and would later translate to a more affordable price.

As Metro Manila's distributor, Meralco has undergone numerous improvements, upgradings, development of its facilities and human resource trainings. It has invested large amount of funds for these purposes in order to serve its customers better. Due to this progress, Meralco has provided its consumers with quality, reliable, secure and affordable electricity. This has been validated by the responses of respondents wherein 75% agree to this fact, notwithstanding the price of course.

With regards to the political aspect of this research, the government has been doing everything to ensure that the people would benefit in its endeavor. The Republic Act 9136 provided the framework for the restructuring of the Power sector. Restructuring entailed several steps that must be accomplished including the privatization of the National Power Corporation and the entry of the private sector in the industry. The law has sparked several protests from various groups. Demonstrations and rallies were rampant during the deliberations of the Power Bill.

The implementation of the Power Reform Act would be tantamount to the adherence of the government towards the liberalization policy of the World Bank. The World Bank is the force behind the restructuring of the power sector. To adhere or not is the President's choice. She would decide whether to follow the trend or not. Her decision to prioritize the passage of the bill meant that she accepted the fact that the power sector needs restructuring in order to meet the growing demands of the people. She knows for a fact that the government is experiencing a budget deficit and that Napocor is faced with large debts. Combining the two would do no help to her administration. Privatization would provide the answer to this dilemma. The private sector would provide the electricity industry with efficient services which the government could not provide due to insufficient resources. Private investors would help save the ailing industry through the infusion of investment capital for the improvement of the industry. A stable electricity industry would reflect a stable economy which would be good for our country. Foreign capital would come in to provide development for our country. These would open doors for employment and technology transfer. The country's economy would improve and would ensure continued growth. Finally, these prospects would gain the government the approval and trust of the people which the present administration lacks.

President Arroyo sees this fact and is continuing to adhere towards liberalization. She is just thinking of the future of the country and of the coming generations. The Power Reform Act is an assurance and a step towards the realization of this goal.

Chapter 7

Conclusion

In conclusion, the Electric Power Industry Reform Act of 2001 has been effective in delivering electricity to its consumers. The restructuring of the industry provided changes that would benefit the industry, the country and the consumers. The law has assisted Meralco in providing quality, reliable, and secure electricity to Meralco consumers. This has been validated by the improvements in the services of the company and from the reaction of the consumers.

However, it has not provided affordable rates as shown in some instances where Meralco increased its rates. The most recent of which is the billing period from March to April. The implementation of EPIRA has both short term and long term effects. The short term effects included the 30-centavo reduction in the rates and the assumption by the government of Napocor's net stranded cost and other debts. The long term effects would be a better electricity industry, possibly low rates due to competition and efficient and quality services.

The Power Reform Act has effects on the government of President Arroyo. Though the implementation yielded several protests and controversies, the Power Reform Act indeed helped the electricity industry and the government as well. The burden of running the industry would be passed on to the private sector. The government can now concentrate on more important matters since one problem has been solved. The Power Reform Act would do good for the government. When the electricity industry becomes stable, foreign capital investment would flood the economy. There would be employment

opportunities and the economy of the country would grow. This would spell contentment and satisfaction from the people.

However, the Power Reform Act has not yet been fully implemented. Let us keep an eye for other developments in the future.

Recommendations

The restructuring of the industry is taking place and the government should continue with it. More privately owned generating companies should be let in so that competition would ensue. The contracts of previous IPP's should be renegotiated in favor of both parties so that the take-or-pay policy be scrapped which is the source of increasing electricity rates.

With regards to the law itself, more safeguards should be included to make sure that no anomalies and abuses take place. Cross subsidies should be reinstated to help electric cooperatives deal with the cost of servicing electricity to its customers. More powers should be given to the Energy Regulatory Commission regarding its role in the industry. Rates in all generation, transmission, distribution and supply sectors should be regulated to avoid sudden increases in the price.

The government should also divide Meralco into two different companies that will serve the northern and southern part of Metro Manila. The electricity distributors should be patterned with the water utilities operating in Metro Manila so that there would be a concentration on its area of responsibilities. More so, to stimulate competition so that each concessionaire would be forced to improve on its services.

Since the Power Reform Act has yet to be implemented completely, the researcher suggests that another study should be carried out in the future maybe after five years to assess whether the law has fully accomplished its objectives. Two years is not enough to assess the impact of the law since it is an industry that we are talking about. I encourage future studies on this topic.

Appendix A

R.A. 9136

Republic of the Philippines

Congress of the Philippines

Metro Manila

Eleventh Congress

Third Regular Session

Begun and held in Metro Manila, on Monday the twenty-fourth of July, two thousand.

REPUBLIC ACT NO. 9136

**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 the 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 Reforms 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 establish a strong and purely independent regulatory body and system to ensure consumer protection and enhance the competitive operation of the electricity market; and
- j. 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 systems 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 an/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. "*Consumer 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 subtransmission system or generator connection and the point of connection to the premises of the end-user;
- p. "*Distribution Wheeling Charge*" 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;

- 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;
- 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 industry and commercial end-users as well as to other subsidizing 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 organized pursuant to this Act to acquire all the transmission assets of the NPC;
- 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*" refers 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 alternative 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 create 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 such facilities/ equipment are located. These include NPC assets linking the transmission systems 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 availing 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 purposed 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 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 regulated common electricity carries business, subject to the rate making powers to 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 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 interconnection 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 subtransmission facilities not later than two (2) years from the effectivity of this Act or the start of open access, whichever come 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 operations 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 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: *Provide, 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 the 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 corrupt 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 patterns 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 functions:

- 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 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 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 TDP as approved. The sale agreement/concession contract shall include, but not limited to, the provision for performance and financial guarantee 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, cooperative, 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.

Any 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 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 provide universal service within their annual distributions developments 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 utility 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 approval by ERC. In cases where franchise holders fail and/or refuse 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 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 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 (25%) percent of the voting shares 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, producers 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 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, shall be bound by the wholesale electricity spot market rules with the 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 (P 15,000,000,000.00)

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 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 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.

Upon the initial implementation of open access, the ERC shall allow all electricity end-users with a monthly average peak demand of at least one megawatt (1MW) for the preceding twelve (12) months to be the contestable market. Two (2) years thereafter, the threshold level for the contestable market shall be reduced to seven hundred fifty kilowatts (750kW). At this level, aggregators shall be allowed to supply electricity to end-users whose aggregate demand within a contiguous area is at least seven hundred fifty kilowatts (750kW). Subsequently and every year thereafter, the ERC shall evaluate the performance of the market. On the basis of such evaluation, it shall gradually reduce threshold level until it reaches the household demand level. In the case of electric cooperatives, retail competition and open access shall be implemented not earlier than five (5) years 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 (P 200,000,000,000,00)

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, conducts a review to determine whether there is under-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 use 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-avis imported energy fuels;
- d. An environmental charge equivalent to one-fourth of one centavo per kilowatt-hour (P 0.0025/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 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 this 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 RA 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: *Provide, 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 RA 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 energy-oriented corporations;
- 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 Republic of the Philippines the new organization 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 of 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.

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 interest 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 rules, 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 ERDC 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 Commission shall, upon completion of their term or upon becoming eligible for retirement under existing laws, be entitled to the same retirement benefits and the 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, 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 (P 150,000,000.00) is hereby allocated from the existing budget of the ERB for 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 restricted 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 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, 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 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 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 or 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 rate base, 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 use 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 this Act, to penalize abuse of market power, cartelization, and anti-competitive 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 case 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-rate 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 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 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, 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 purpose 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 (P 50,000.00) to a maximum of Fifty million pesos (P 50,000,000.00).

Any person who is found guilty of any of the prohibited acts pursuant to Section 45 hereof shall suffer the penalty of prison mayor and fine ranging from Ten thousand pesos (P 10,000.00) to Ten million pesos (P 10,000,000.00), 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 prison correctional or a fine ranging from Five thousand pesos (P 5,000.00) to Five million pesos (P 5,000,000.00), 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, 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 of 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 in NPC-generation assets and IPP contracts shall be inwardly remitted and registered with the Bangko Sentral ng Pilipinas.

- a. The NPC plants and/or 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.
- b. 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.
- c. 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;
- d. 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), Built-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;
- e. 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 included, but are not limited to, Tiwi-Makban, Leyte A and B (Tongonan), Palinpinon, and Mt. Apo;
- f. The ownership of the Caliraya-Botokan-Kalayaan (CBK) pump storage complex shall be transferred to the PSALM Corporation;
- g. 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

- h. 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. 6395, as amended, and Section 13 of RA 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 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 National Power Corporation 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 Corporation 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 NPC IPP 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 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 NPC;
- l. To collect, administer, and apply NPC's portion of the universal charge; and
- m. To restructure 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 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 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 PSALM Corp. President shall be the Chief Executive Officer of 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 PSALM Corp.;
- c. To direct and supervise the operation and internal administration of PSALM Corp. and, for this purpose, may delegate some or any of his administrative responsibilities and duties to other officers of 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 PSALM Corp.; and for cause, to remove, suspend, or otherwise discipline any subordinate employee of PSALM Corp.;
- e. To submit an annual report to the Board on the activities and achievements of 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 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 electric 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 Corp. 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 thereof 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 semi-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 (P 50,000.00) but not more than Five hundred thousand pesos (P 500,000.00) 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 (P 25,000,000.00) 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 of ten (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 privilege 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 increase 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 the 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 distribution retail supply 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 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 Palimpinon, 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 (P 0.30/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 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 organization and end-users, promulgate the Implementing Rules and Regulations (IRR) of the 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 the 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 Service Act"; Republic Act 6395, as amended, revising the charter of NPC; Presidential Decree 269, as amended, referred to as the *National Electrification Decree*; Republic Act 7638, otherwise known as the "*Department of Energy Act of 1992*"; Executive Order 172, as amended, creating the ERB; Republic Act 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 the Act.

The provision with respect to electric power of Section 11(c) of Republic Act 7916, as amended, and Section 5(f) of Republic Act 7227, are hereby repealed or modified accordingly.

Presidential Decree No. 40 and all laws, decrees, rules and regulations, or portion 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 newspapers of general circulation.

Approved, June 8, 2001

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

Appendix B

Omnibus Power Bill: A primer

Monday May 28, 2001, Philippines / Business section

EDITOR'S Note: *The Omnibus Power Bill has been one of the most debated proposals to ever reach Congress. Yet, for all the discussions spent on it, the bill has remained a very complicated issue. In the interest of informing the public, the Department of Energy has come up with this primer to answer basic questions regarding the Omnibus Power Bill.*

Q: How can the New Power Bill prevent any potential power crisis?

A: Under the 10-Year Power Development Plan, there is a need for an additional 5,000 megawatts for the period 2000-2010 on top of the new generation projects that the National Power Corp. and the Manila Electric Co. have committed to undertake. Without this new capacity, we may expect a supply shortfall in Luzon by the year 2007 and in the Visayas and Mindanao as early as 2004 and 2006, respectively.

The passage of the New Power Bill would open the door for private investors to finance these capital requirements, which neither Napocor nor the government can undertake due to financial difficulties.

Q: What is the difference between the old version of the power bill and the New Power Bill?

A: The New Power Bill indicates that the administration of President Macapagal-Arroyo has been responsive to the clamor of many sectors by pushing for improvements in the pro-consumers provisions in the new version of the bill.

The New Power Bill has sufficient safeguards to ensure transparency and competition to protect the interests of the consumers. Likewise, safeguards against monopoly and market domination were strengthened. It provides more room for competition and less chances for sweetheart deals which are gravely disadvantageous to consumers. Even electric cooperatives can hope for better benefits under the New Power Bill where provisions for better opportunity for them to adjust and prepare for the market structure are included.

Such a move would also allow the national government to channel funds intended for the power sector to other basic priorities. The average investment requirement projected for additional generation and transmission facilities is P38 billion annually over the 10-year period. The government can use this amount to build 116,923 classrooms, irrigate 76,000 to 126,667 hectares of farmlands, build 38,000 to 76,000 low cost houses, and construct 4,750 to 6,333 kilometers of road.

Q: What credit facilities will become available to the national government for programmed projects when the New Power Bill is passed?

A: The national government will have access to an estimated \$950 million worth of funds once the New Power Bill is approved. Of this figure, \$200 million will be earmarked for the government's budgetary purposes while another \$200 million will be allocated for Napocor. There is an additional \$550-million loan in the pipeline for Napocor's Leyte-Mindanao interconnection project.

In 1999, the Asian Development Bank and the Japan Export and Import Bank withheld the release of the second and third tranches of the Power Sector Restructuring Program loans after government failed to comply with the loan condition that the power bill be passed by June 1999.

Q: How will the New Power Bill help strengthen investor confidence in the Philippines?

A: The passage of the bill is a positive signal to investors of the government's economic reforms. Failure to pass the bill in the 11th Congress would be tantamount to "no passage at all." Other developing countries, which are competing for limited funds available in the international capital markets, may attract the investments which otherwise would go to the Philippines.

The New Power Bill: Benefits and features

The New Power Bill seeks to institute reforms that will ensure that our country will have reliable and competitively priced electricity. The two major concepts of the New Power Bill, the restructuring of the power sector and the privatization of the National Power Corp., have been the subject of extensive studies in both the executive and legislative branches of government. The strategy is to put an end to monopolies, encourage the entry of more industry players and generate competition that will benefit consumers in terms of better rates and services.

Recognizing the urgency to pass the New Power Bill, President Macapagal-Arroyo has directed the executive branch to go on a wide range of consultations with the different stakeholders, especially the civil society. There is a continuing series of consultations and roadshows on the New Power Bill and this primer aims to identify the concerns that were raised in the consultations.

Q: How will the New Power Bill benefit consumers, industry participants and the government?

A: The New Power Bill will bring benefits to consumers in terms of giving them the power of choice so they can choose which electricity provider will give them lower rates and better service. There will be diversification of ownership for the industry players where greater opportunity for technological innovation and maximum public participation can be enjoyed, to enhance security and reliability of electricity supply. For the government, it will mean a leaner budget and more streamlined operations. The budget for the electricity industry can be used by the government for other vital services such as health, education, agriculture, housing and public works. For the industry players, the New Power Bill will give them the opportunity to enhance security and reliability of electricity supply.

Q: Will power rates go down if the New Power Bill is passed?

A: It is expected that, among other things, competition between existing and new entrants will drive down the price of electricity. With private sector management of the privatized generating companies, efficiencies are expected to be brought about by a better capital structure and business management. Power rates are also expected to go down because the New Power Bill also provides for a 30-centavo-per-kilowatt-hour mandated rate reduction for residential consumers. Experience in other countries that have gone through power industry restructuring and privatization shows that electricity rates have generally gone down by 30 percent in real terms. Examples of these countries include Australia, 36 percent; New Zealand, 14 percent; Argentina, 44 percent; and, the United Kingdom, 25 percent.

Q: How will the New Power Bill help our industries become globally competitive?

A: The provisions in the New Power Bill promote competition in the electricity industry. With greater efficiency and removal of cross subsidies, power rates particularly in the industrial/commercial sector, are expected to go down. This will make the Philippines globally competitive and generate more job opportunities.

Q: What other benefits are expected when the New Power Bill is passed?

A: A Consumer Impact Assessment conducted by Navigant Consulting Inc. of the United States, in association with Ian Pope & Associates of the United Kingdom and the UP Economics Foundation, showed that the power reforms will bring down power rates and improve service delivery to consumers. This will allow the market to price electricity efficiently and the production sector to enjoy efficient prices, which in turn will be reflected in the pricing of consumer goods. For the consumers, this will mean lower prices for the said goods. In the long run, households will find an indirect gain through better allocation of their household budgets. This indirect effect of the production sector on consumers is estimated to reach P27.6 billion.

Q: Will the New Power Bill help improve the fiscal position of the government?

A: If the government continues to borrow on behalf of Napocor or guarantee Napocor's borrowings to finance its operations, total government borrowings are expected to amount to P160 billion over the next five years. But, with the privatization of Napocor, borrowings and guarantees would likely be reduced to P17 billion since the government will be relieved of the responsibility of borrowing on behalf of Napocor or guaranteeing Napocor's borrowings.

http://www.inq7.net/bus/2001/may/28/bus_4-1.htm

Appendix C

INFORMED CONSENT FORM

I am Ronald John B. Decano, a fourth year BA Political Science student of the University of the Philippines Manila. I am currently working on my thesis entitled, “Effects of the Electric Power Industry Reform Act of 2001 (R.A. 9136) on Meralco Consumers.

The electricity industry of the country has been on the rocks for some years now. The industry has been battered by several problems among which were the incapacity of Napocor to meet the country’s electricity demand and the expensive electric rates. As a solution to this problem, the government has been pushing through certain reforms in the industry. The Electric Power Industry Reform Act of 2001 provides the framework for such reforms. The law would lay the foundation for the restructuring of the power sector.

Since the restructuring has an effect to the people through our consumption of electricity, the researcher seeks to discern the effects of the law on Meralco consumers. Thus, I am asking for you consent to be involved as a participant in the data gathering process of this research.

The objective of this paper is to assess the effectiveness of the Electric Power Industry Reform Act of 2001 in providing quality, reliable, secure and affordable electricity to Metro Manila consumers. Specifically, it aims

1. To know the historical background of the electric industry in the Philippines and its importance in the country.
2. To study the provisions and content of EPIRA and its implementation and accomplishments.
3. To validate with MERALCO consumers the effectiveness or non-effectiveness of the Power Act.
4. To determine the short term and long-term effects of the Power Act.
5. To analyze the effectiveness of the Power Act in terms of quality, reliable, secure and affordable electricity based on the data gathered.
6. To give recommendations and alternative models on how to further improve the electric industry in the Philippines.

If you would consent, then you would be asked certain questions about the implementation of the Electric Power Industry Reform Act of 2001.

Your involvement in this research is voluntary. Be assured that whenever you wished to terminate your involvement in this endeavor, you may do so without any attached conditions. Your identity may be revealed or concealed in the final research work depending upon your discretion. Also, benefits to be gained from your involvement are limited. However, your contribution, regardless of its extent would be acknowledged by including your name in the acknowledgement list of the final paper. The results of this survey would make its way for the completion of my research paper and eventually, my thesis, which is a requirement for the completion of this course.

Thank You.

I have read the statement above
And I agreed to give my consent.

I agree/do not agree to reveal my identity.

Appendix D

Interview Questions

1. What is your perception on the Electric Power Industry Reform Act of 2001?
2. What do you think are the good and bad points of the law?
3. Do you think it will solve the country's electricity problems?
4. What do you think are the effects of the law in the electricity industry? Country?
Consumers?
5. What are your personal or organizational views on the following?
 - a. controversies on the passage of the Act
 - b. privatization of Napocor
 - c. implementation if the Act
6. What is your position on the Act vis-à-vis the electric industry?
7. How do you see the Act in the future?
8. Any Comments/Reactions/Suggestions.

Appendix E

Questionnaire

Good day! I am Ronald John B. Decano, a senior Political Science student of the University of the Philippines Manila. I am currently doing my thesis entitled, "Effects of the Electric Power Industry Reform Act of 2001 to Meralco consumers." In light of this, I would like to hear your perception and views by answering the questions below.

Your response will be deeply appreciated. Thank you.

Name: _____

Sex: _____

Address: _____

1. Educational Attainment

- | | |
|---|--|
| <input type="checkbox"/> College graduate | <input type="checkbox"/> Post-College Degree |
| <input type="checkbox"/> High School graduate | <input type="checkbox"/> Out of School Youth |
| <input type="checkbox"/> Vocational/Technical | <input type="checkbox"/> Others _____ |

2. Employment Status

- | | | |
|--|---------------------------------------|---------------------------------|
| <input type="checkbox"/> Employee | <input type="checkbox"/> Businessman | <input type="checkbox"/> Others |
| <input type="checkbox"/> Self-employed | <input type="checkbox"/> Not employed | _____ |

3. Type of residence

- | | |
|---|---------------------------------------|
| <input type="checkbox"/> Residential | <input type="checkbox"/> Industrial |
| <input type="checkbox"/> Residential and business | <input type="checkbox"/> Others _____ |
| <input type="checkbox"/> Business | |

4. What is total monthly income of the family

- | | | |
|---|--|--|
| <input type="checkbox"/> P 5,000 – 10,000 | <input type="checkbox"/> 15,001 – 20,000 | <input type="checkbox"/> 25,001 – 30,000 |
| <input type="checkbox"/> 10,001 – 15,000 | <input type="checkbox"/> 20,001 – 25,000 | <input type="checkbox"/> 30,001 up |

5. Is your family income enough in paying for electricity and other expenses?

- | | | |
|------------------------------|-----------------------------|-------------------------------------|
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Just right |
|------------------------------|-----------------------------|-------------------------------------|

6. Are you aware of the Electric Power Industry Reform Act of 2001?

- | | |
|------------------------------|-----------------------------|
| <input type="checkbox"/> Yes | <input type="checkbox"/> No |
|------------------------------|-----------------------------|

If Yes, proceed to the next question. Otherwise, Please read first the primer provided then proceed with the next number.

7. How did you become aware of EPIRA?

- | | | |
|-------------------------------------|--------------------------------|---------------------------------|
| <input type="checkbox"/> Television | <input type="checkbox"/> Peers | <input type="checkbox"/> Others |
| <input type="checkbox"/> Newspaper | <input type="checkbox"/> Radio | _____ |
| <input type="checkbox"/> Office | | |

8. What else do you know of EPIRA?

- P0.30 reduction in the rates
- Private sector participation
- NPC privatization
- NPC divided into 4 sectors
- Transco and Psalm Corp
- Others _____

9. What is your perception on the privatization of Napocor?

- Yes/Agree
- No/Disagree

10. Do you think EPIRA will be effective in solving the problems of the electric industry?

- Effective
- Not effective
- Partly
- Not sure

11. What are the common electric problems in your area?

- High rates
- Fluctuation of electric current
- Brownouts
- Slow response to complaints
- Illegal connections
- Others _____

12. Does Meralco provide you with a reliable and secure supply of electricity?

- Yes
- No
- Partly

13. Does Meralco provide you with quality service?

- Yes
- No
- Partly

14. Is the current electricity rate affordable?

- Yes
- No
- Partly

15. What do you think are the effects of EPIRA to the consumers and to the industry?

- Quality service
- High rates
- Low rates
- Retrenchment of workers
- Monopolization of the industry
- Others _____

16. Comments/Suggestions.

Appendix F

List of Power Firms interested in NPC Privatization

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. AB Capital and Investment Corporation 2. ABB Energy Ventures/Occidental Energy Ventures 3. ABB Power Inc. 4. ABB Suva International Inc. 5. AES Transpower Private Ltd. 6. AES/Interpacific 7. Asia New Zealand International Ltd. 8. Asia Power Development Ltd. 9. Asian Vision/Citadel Corp. 10. Austrian Energy & Environment SGP/Waagner-Biro 11. Banpu Public Company Ltd. 12. Beacon/China 13. Bechtel Overseas Corp. 14. Bharat Heavy Electricals Ltd. 15. BI Water International Ltd. 16. Burmeister & Wain Scandinavian Contractor 17. Calenergy International 18. California Energy International 19. China Light & Power International 20. Coastal Power Production Company 21. Combined Energies Company 22. Commex/Korea Power Corp. 23. Consolidated Electrical Power Corp. 24. Contact Energy Ltd. – Te Mata Hiko 25. CSWI (CSWInternational Inc.) 26. Design Power/Asia Power 27. Deutsche Babcock 28. Deutsche Morgan Grenfell 29. Easco/Stork DKETel 30. East Asia Power 31. Ebasco Citti/Green Palti 32. EDF – Electricite de France 33. Electrowatt Engineering Services ltd. 34. Enron Power Philippines Corp. 35. Entergy Power Asia 36. EPDC – Electric Power Development Corp. 37. Euro Kapital Group | <ol style="list-style-type: none"> 38. Falcon Seaboard Power Corp. 39. Far East Levingston Shipbuilding Corp. 40. Fels Energy Inc. 41. Furukawa Electric Co., Ltd. 42. General Electrical Technical Services 43. Georgia Power 44. Government Du Quebec Ministere de L'Industrie, Du Commerce, De la Science et de la Technologie 45. Grupo Babcock Espana 46. Hanil Dev. Co. Ltd. 47. Hanjin Engineering & Construction Ltd. 48. HEDCOR – Hydroelectric Development Corp. 49. Hong Kong Electric Company Ltd. 50. Hopewell 51. Hyundai Corp. 52. IMPSA Asia Ltd. 53. Integral Energy 54. Itochu Corporation 55. JPEC – Japhil Engineering Co. Inc. 56. Kanematsu Corp. 57. Korean Electric Power Co. – Hong Kong 58. Korean Telecom Phils. 59. Kvaerner Roving Ltd. 60. Marubeni Corp. 61. Matec 62. Mercury Energy 63. Midlands Power 64. Mission Energy Co./BVI Phils. 65. Mitsubishi Corp. 66. Mitsui 67. Monark Equipment Corp. 68. National Grid Company Plc. 69. National Power Plc. 70. New Saga Power Corp. 71. Nichimen Corp. 72. Niigata |
|---|--|

- | | |
|----------------------------------|---|
| 73. Nissho Iwai Corp. | 93. Rolls/Royce |
| 74. Nordic Power | 94. Sabah Shipyard Phils. Inc. |
| 75. NS Power Services Ltd. | 95. Salcon Power Corp. |
| 76. Ogden Projects Asia Pacific | 96. Sangyong Corp. Korea |
| 77. Ontario Hydro Intl. Inc. | 97. Shenzhen Nanshan Power Co.
Ltd/Malachite Ind'l Trade |
| 78. Oxbow Power | 98. Stork Ketels/UNA |
| 79. Pacific Corp. | 99. Sumimoto Corp. |
| 80. Pacific Power Services | 100. Swed Power/Sydcraft Int'l. |
| 81. Pacificorp Australia | 101. Tomen Corp. |
| 82. Philippine Geothermal Inc. | 102. Tractebel SA |
| 83. PLN Jawa Bali'I | 103. Trans Power New Zealand |
| 84. Power Asia | 104. Transcanada Pipelines Tower |
| 85. Power Direct | 105. Trinity Int'l Partners |
| 86. Power New Zealand | 106. Tuntex Corp. |
| 87. Power Technologies Inc. | 107. Unocal Corp. |
| 88. Powercor Australia | 108. Weluns – Utility Network Services |
| 89. Powergen Plc. | 109. Westcoast Energy |
| 90. President Energy Dev't Ltd. | 110. Zurn/Nepco |
| 91. PT Aneka Tabang | |
| 92. Raytheon Engrs. Constructors | |

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