



PHILIPPINE INDEPENDENT POWER PRODUCERS ASSOCIATION, INC.

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PIPPA 2014-007

March 07, 2014

HON. REYNALDO V. UMALI

Chairperson, Committee on Energy
House of Representatives
CTSS I, Committee Affairs Department
3rd Flr. RVM Building
House of Representatives
Constitution Hills, Quezon City

Dear Congressman Umali:

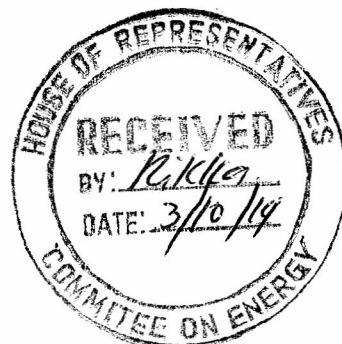
This is in response to your letter dated 13 February, 2014, requesting for comments for various House Bills. We have attached, as Annex A of this letter, a detailed matrix of our comments on the following House Bills:

1. **HOUSE BILL NO. 3743** (*"An Act Prescribing Urgent Related Measures Necessary and Proper to Effectively Address the Impeding Electric Power Crisis and for Other Purposes"*);
2. **HOUSE BILL NO. 3751** (*"An Act Prescribing Urgent Related Measures Necessary and Proper to Effectively Address the Impeding Electric Power Crisis and for Other Purposes"*).

We would like to thank you for the opportunity to state our position, and we hope that the same receives your favorable attention.

Very truly yours,

LUIS MIGUEL O. ABOITIZ
President



cc: Hon. Carlos Jericho L. Petilla
Secretary, Department of Energy

Section/Provision	PIPPA Comments
<p>maintenance of power plants, projects, and facilities, subject to the following requirements:</p> <p>(a)...</p> <p>(b)...</p> <p>(c)...</p> <p>(d)...</p> <p>Provided, that the President shall not grant sovereign guarantee for the payment of obligations incurred by the independent power producers (IPPs); provided further, that the President shall not enter into negotiated contracts which will bring the total production capacity in excess of the power requirement of the country as projected by the Department of Energy (DOE); provided finally, that no take-or-pay contracts or similar onerous provisions shall be entered into in the exercise of the powers provided in this Act.</p>	<p>Construction of government-owned power plant is not consistent with EPIRA. Moreover, how will the government fund such capital-intensive construction, without sovereign guarantees? If additional power plant it is contemplated to be privately-owned, then it can be built even without this provision.</p> <p>As discussed above, there are power plant projects in the pipeline. The generation sector however needs the support of the government through a stable regulatory environment and through streamlining of processes, especially in permitting requirements.</p> <p>The NPC still has the authority and responsibility to repair its power plants. Thus, the President does not need additional powers so that the government can do such. What NPC needs are additional funds to repair, rehabilitate, improve and maintain its assets.</p>
<p>Section 4. Power to Compel IPPs to Supply Power: Return on Rate Base – Further pursuant to the above declared policy, the President is hereby authorized whenever it is necessary for the national welfare and in the public interest, to compel IPPs to supply power to distribution utilities and/or power distribution cooperatives and to fix the rate of return of the IPPs to a reasonable percentage of their rate base, as may be determined by the President in consultation with IPPs and other stakeholders; Provided that said rate of return on rate base shall not exceed twelve percent (12%) per annum.</p> <p>Any increase in power rates shall take effect only upon approval of the Energy Regulatory Commission (ERC) and only after proper notice, hearing and due proceeding.</p>	<p>The proposed provision also takes off from RA 7648, which allowed entry of IPPs to supply to the then NAPOCOR. Under Section 4 of RA 7648, the President is authorized “to fix the rate of return on rate base of the National Power Corporation (NAPOCOR) to not more than twelve percentum (12%) of the rate base.”</p> <p>However, under the present electric power industry structure, the electric power industry is no longer monopolized by NPC. Power generation is now a competitive sector. A system operator now determines dispatch of generated power. Existing market rules also compel generation companies to offer their full capacity. Rates that may be passed on to captive customers are approved by the Energy Regulatory Commission. As such, compelling the supply of electricity at a fixed return on rate base may no longer be appropriate.</p>

Section/Provision	PIPPA Comments
<p>Section 5. Other Powers – The President is authorized to suspend, whenever necessary to lower the cost of electricity, the imposition and collection of value added tax (VAT) on electric power.</p>	<p>The proposed provision begs the question, when is it “necessary” to lower the cost of electricity? If there is an impending power crisis, why still leave discretion to stop the collection of VAT on electric power?</p> <p>As taxes imposed on the electric power industry is a component of the charges borne by consumers, a review of such taxes, including VAT, is appropriate even without a power crisis.</p>
<p>Section 7. Incentives- To further encourage the development and utilization of renewable energy resources such as but not limited to solar, wind, hydro, geothermal and biomass, the President is authorized to grant incentives to power generators producing electricity through renewable energy system in addition to those provided under existing laws, rules and regulations.</p>	<p>Incentives for Renewable Energy development is already extensively discussed in the Renewable Energy Law (“RE Law”).</p> <p>What additional incentives could be granted? Would this not create an uneven playing field to the prejudice of those who already commenced development projects?</p> <p>If the intention is to further encourage the development of renewable energy, then it is fitting to mandate or facilitate the issuance of necessary rules and regulations to fully implement the RE Law.</p>
<p><u>HOUSE BILL NO. 3751</u> (“An Act Prescribing Urgent Related Measures Necessary and Proper to Effectively Address the Impeding Electric Power Crisis and for Other Purposes”)</p>	
	<p>The Explanatory Note of HB 3751 expresses that it takes off from RA 7648. However, as discussed above, RA 7648 may no longer be an appropriate model since the electric power industry is restructured by EPIRA.</p>
<p>Section 3. Negotiated Contracts- Pursuant to the above declared policy and in the public interest and whenever it is advantageous to the Government and the public, the President may enter into negotiated contracts for the construction, repair, rehabilitation, improvement and/or</p>	<p>This provision is similar to that of HB 3743. However, it includes the construction of a new power plant, without distinction on whether these plants would be for ancillary power or otherwise.</p>

Section/Provision	PIPPA Comments
	<p>level playing field be assured for industry players in the generation sector?</p> <p>Construction of power plants is capital intensive. While HB 3743 identifies the use of Malampaya Fund, it must be noted that expenses do not stop once construction is completed. Operation and maintenance of the plant is similarly capital extensive.</p> <p>While the bill mentions earnings derived from operation, it is not clear how the proposed power plant will earn. If it is through ancillary services, then it should be contracted by NGCP through an ancillary service procurement agreement. There is also a requirement that it should offer its capacity in the WESM. Currently, there is no guaranteed return on merchant power plants. The government may not be willing to absorb losses for the operation of the power plants built under HB 3743. Operation of power plants does not necessarily guarantee profits as assumed in HB 3743.</p>
<p>Section 4. Negotiated Contracts- Pursuant to all the above declared policy and in the public interest and whenever it is advantageous to the Government, the President may enter into negotiated contracts for the repair, rehabilitation, improvement or maintenance of existing government-owned or controlled power plants, projects, and facilities, subject to the following requirements:</p> <p>(a)...</p> <p>(b)...</p> <p>(c)...</p> <p>...</p> <p>Section 8. Exemption – All actions as may be invoked by the President under this Act shall be exempt from the provisions of Republic Act 9184.</p>	<p>The National Power Corporation still has the authority and responsibility to repair its power plants. Thus, the President does not need additional powers to do such. What NPC needs are additional funds to repair, rehabilitate, improve and maintain its assets.</p> <p>If the intention is to relieve NPC and PSALM from the provisions of the Government Procurement Reform Act, such may be achieved without granting the President the power to enter into negotiated contracts as an exercise of emergency power.</p>

Section/Provision	PIPPA Comments
<p>Section 3. Ancillary Generators – The President is authorized to enter into a negotiated contract for the immediate construction of new government-owned and controlled power plants, under the National Transmission Corporation (TRANSCO), which shall serve as standby and ancillary generators/power plants for Luzon, Visayas and Mindanao. For this purpose, the President is hereby authorized to utilize all available government resources including the Malampaya Fund referred to in Presidential Decree No. 910.</p> <p>All earnings derived from the operation of such standby and ancillary generators/power plants shall be retained by the National Transmission Corporation for its use in the operation and maintenance of the same.</p>	<p>In enacting EPIRA, Congress deliberately intended to separate power generation and transmission, particularly to usher a competitive power generation sector and to separate the transmission sector because it is a natural monopoly. This well-considered policy must not be reversed without adequate study on its impact on the entire industry.</p> <p>Under Section 4 of EPIRA, Transco <i>“refers to the corporation organized pursuant to this Act to acquire all the transmission assets of the NPC.”</i> Moreover under Section 8, it <i>“shall assume the electrical transmission function of the National Power Corporation (NPC), and have the powers and functions hereinafter granted. The TRANSCO shall assume the authority and responsibility of NPC for the planning, construction and centralized operation and maintenance of its high voltage transmission facilities, including grid interconnections and ancillary services”</i>.</p> <p>As such, with Transco’s function limited to transmission services only, how would government-owned plants under Transco be classified under the present industry structure?</p> <p>Further under Section 45 of EPIRA, the cross ownership in transmission and generation is prohibited as follows: <i>“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.”</i></p> <p>There is a prohibition on cross ownership of transmission and generation to avoid bias in the dispatch of self-owned generating facilities. This rationale for the prohibition cannot be readily denied.</p> <p>With the proposed government ownership of plants under Transco, would a</p>

Annex A- PIPPA COMMENTS TO HOUSE BILLS
March 07, 2014

Section/Provision	PIPPA Comments
<p><u>HOUSE BILL NO. 3743</u><i>(“An Act Prescribing Urgent Related Measures Necessary and Proper to Effectively Address the Impeding Electric Power Crisis and for Other Purposes”)</i></p>	
<p>Section 2. Declaration of Policy – It is hereby declared the policy of the State to adopt adequate and cost effective measures to address the impending electric power crisis that threatens to disrupt the country’s economic and social life that could assume the nature of a catastrophic calamity.</p>	<p>HB 3743 is apparently patterned after RA 7648, or the Electric Power Crisis Act of 1993. The exception is that, under HB 3743, the electric power crisis is referred to as an impending threat and its effects are assumed. Still, while Congress may prepare for and/or prevent an emergency or crisis, the present structure and circumstances of the power industry deserve consideration.</p> <p>First, unlike during the time of the enactment of RA 7648, generation and transmission sectors are no longer monopolized by the National Power Corporation (“NPC”).</p> <p>Second, there remains a keen interest among industry participants to put up more generation capacity. From DOE data as of January 2014, committed power projects for the Luzon Grid will provide an additional capacity of about 1,467.4 MW; for the Visayas grid, about 429.6 MW; and for the Mindanao grid, about 920 MW. There are also indicative projects.</p> <p>The “adequate and cost effective measure” may be to support efforts of the generation sector and streamline existing requirements and processes for the construction of new power plants.</p> <p>The construction of new government-owned plants and/or grant of exceptional negotiated contracts appear too drastic and may later turn out to be a burden to consumers.</p>

Section/Provision	PIPPA Comments
	<p>Also, the profits of generation companies are not guaranteed. If generators do not have bilateral contracts, then they are exposed to the volatilities of the spot market in the same way with distribution utilities. Thus, the proposal of capping the return on rate base is unfair since, for generators, there is no guarantee offered by the government.</p>