

PIIPA

PHILIPPINE INDEPENDENT POWER PRODUCERS ASSOCIATION, INC.

Ground Floor, Benpres Building, Exchange Road cor. Meralco Avenue
Ortigas Center, Pasig City
Telefax: 451-1907

PIPPA 2014-010

March 27, 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 27 February, 2014, requesting for comments for **House Bill No. 3847** ("*An Act to Protect the Rights and Promote the Welfare of Power Consumers, Amending for the Purpose Sections 6, 28, 31 and 71 of the Republic Act No. 9136, and for Other Purposes*"). We have attached, as Annex A of this letter, a detailed matrix of our comments on the said House Bill.

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

PIPPA COMMENTS TO HOUSE BILLS
March 26, 2014

Section/Provision	Comment
<p><u>HOUSE BILL NO. 3847</u><i>(“An Act to Protect the Rights and Promote the Welfare of Power Consumers, Amending for the Purpose Sections 6, 28, 31 and 71 of the Republic Act No. 9136, and for Other Purposes”)</i></p>	
<p>“Section 6.Generation Sector- Generation of electric power shall be competitive and open.</p> <p>Upon the effectivity of this Act, any new generation company shall, before it operates, secure from the Energy Regulatory Commission 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.</p> <p>“...Any law to the contrary notwithstanding, powergeneration SHALL BE considered a public utility WHOSE operation SHALL BE SUBJECT TO THE PROVISIONS OF THE PUBLIC SERVICE ACT (Commonwealth Act No. 146)”</p> <p>“... EVEN UNDER A REGIME OF RETAIL COMPETITION AND OPEN ACCESS, THE EXISTENCE OF WHICH SHALL BE DETERMINED BY THE DEPARTMENT OF ENERGY (DOE) AND THE ENERGY REGULATION COMMISSION (ERC) AND CONCURRED TO BY THE CONGRESSIONAL POWER COMMISSION. THE PRICES CHARGED BY A GENERATION COMPANY FOR THE SUPPLY OF ELECTRICITY SHALL REMAIN THE SUBJECT OF REGULATION UNDER SUCH</p>	<p>The PIPPA has always manifested that the generation sector is already subjected to special regulations under EPIRA, even without a franchise.</p> <p>In the current Section 6 of the EPIRA states that:</p> <p><i>“SEC. 6. Generation Sector. – Generation of electric power, a business affected with public interest, shall be competitive and open.</i></p> <p><i>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....”</i></p> <p>Section 6 clearly defines that the generation sector is not an ordinary business, as it is a business affected with public interest. Thus, it would have to secure from the Energy Regulatory Commission (ERC) a certificate of compliance (COC), as well as other requirements. In securing a COC, the generation company shall comply with ERC rules and regulation necessary for the</p>

Section/Provision	Comment
<p>TERMS AND CONDITIONS AS MAY BE PROMULGATED BY THE ERC..."</p> <p>"..."</p> <p>"...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, OPERATIONAL PLANS AND SUCH OTHER NECESSARY DOCUMENTS TO MAKE SUCH DETERMINATION IN AS FACTUAL AND PROPER A MANNER AS POSSIBLE..."</p>	<p>generation sector. Thus, the generation sector, although without a national franchise, may be considered as subject to special regulations.</p> <p>On the other hand, a public utility is defined as: <i>"a business or service engaged in regularly supplying the public with some commodity or service of public consequence such as electricity, gas, water, transportation, telephone or telegraph service"</i></p> <p>For electricity, transmission and distribution sectors are considered public utilities since they are natural monopolies. Distribution utilities deal with the public directly. Moreover, they have captive customers, which include the household sector. By captive, it means that the customers cannot choose any other distribution utility. Thus, the transmission and distribution utilities should have their rates reviewed and approved by the ERC. These rates also produce guaranteed profits.</p> <p>If power generation is regulated then it will have to choose one of multiple developers who want to build at least four years ahead of energy delivery. Developers and their lenders will want to know the regulated rate before they start construction of the plant.</p> <p>Even though the EPIRA acknowledges that the generation sector is affected with public interest, it is worth noting that the generation sector does not serve the public directly. Generators only deal with the transmission, distribution and supply sectors. They do not deal with the household level. Generators do not even have captive customers, since distribution utilities have the right to choose the generator they will have a contract with. Moreover, the profits of a generation company are not guaranteed. Investments in the generation sector depend on economic principle of price signals under a competitive</p>

Section/Provision	Comment
	<p>environment.</p> <p>Subjecting the generation sector to requirements of a public utility under the Public Service Act will make investment in the generation sector harder. It will be an additional barrier to the entry of new players, which will result to even more supply deficit and higher prices.</p> <p>Power generation was restructured to be a competitive sector in order to allow and facilitate inflow of much needed investments into the sector. This policy was a product of numerous congressional debates and studies, which spanned three congressional terms. As such, it should not be changed as a mere reaction to recent issues</p> <p>In determining existence of market power abuse, generators already submit pertinent data and documents in compliance with ERC requirements. Thus, the proposed amendment in this respect is not necessary.</p>
<p>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 TEN PERCENT (10%) of the voting share of stock.</p> <p>... IF THE UTILITY OR THE COMPANY HOLDING THE SHARES OR ITS CONTROLLING STOCKHOLDERS ARE ALREADY LISTED IN THE PHILIPPINE STOCK EXCHANGE (PSE) THEIR HOLDINGS SHOULD NOT EXCEED TWENTY FIVE PERCENT (25%) OF THE VOTING SHARES OF STOCK...”</p>	<p>The proposed changes will restrict flow of investments in a very capital intensive industry, and may ultimately turn out to be a barrier to entry of new players. This is contrary to the intent and policy behind EPIRA to enhance the inflow of private capital into the electric power industry.</p> <p>Moreover, with no one entity owning more than 10%, it is likely that no one shareholder will pay attention to the management of the utility or support it when needed.</p> <p>From the point of view of preventing abuse of market power, EPIRA already imposes very high ownership and market share restrictions. The existing</p>

Section/Provision	Comment
	<p>safeguards in the EPIRA are sufficient and sound policies.</p> <p>EPIRA was a product of numerous congressional debates and studies, which spanned three congressional terms. As such, its policies should not be changed overnight just because of recent issues.</p>
<p>SEC 29. Supply Sector- The supply sector is a business affected with public interest...AS SUCH THE OPERATIONS OF ALL SUPPLIERS OF ELECTRICITY INCLUDING THOSE SUPPLYING TO THE CONTESTABLE MARKET SHALL BE SUBJECT TO THE PUBLIC SERVICE LAW (Commonwealth Act No. 146)...</p>	<p>The original provision states that:</p> <p>“ SEC. 29. <i>Supply Sector.</i> – 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.”</p> <p>The supply sector is already subject to special regulations as it requires a license from the ERC. Like the generation sector, it follows special rules and regulations. The contestable customer has a choice from all licensed retail suppliers. The supply sector is unlike distribution and transmission sectors, which are subject to franchise because they cater to captive customers. The captive customers do not have a choice and are merely price-takers.</p> <p>Subjecting the supply sector to requirements of a public utility under the Public Service Act will further limit the retail suppliers which can cater to the needs of contestable customers.</p>
<p>SEC 30. Wholesale Electricity Spot Market. “... The DOE shall establish a wholesale electricity spot market composed of the wholesale electricity spot market participants...WHICH SHALL SERVE AS A CLEARING HOUSE AND...provide the mechanism identifying and setting the price of actual variations from the quantities transacted under contracts between sellers and purchasers of electricity.</p>	<p>Even without amending the provision, consumers are already represented in the PEM Board, the governing body of WESM. The PEM Board has four (4) independent directors and four (4) directors from Electric Cooperatives and Distribution Utilities. This is found in the WESM Rules Clause 1.4.2.4.</p> <p>Amending Section 30 of EPIRA is, therefore, not warranted for this objective.</p>

Section/Provision	Comment
<p>“...The wholesale electricity spot market shall be implemented by a market operator in accordance with the wholesale electricity spot market rules. The market operator shall be an autonomous group, to be constituted by DOE, ...with “...THE ACTIVE PARTICIPATION OF DULY RECOGNIZED CONSUMER GROUPS and ...REPRESENTATIVES FROM ELECTRIC POWER INDUSTRY PARTICIPANTS ...”</p> <p>“...AT ALL TIMES, DULY ACCREDITED REPRESENTATIVES OF CONSUMERS SPECIALLY THOSE CATEGORIZED AS RESIDENTIAL, MICRO AND SMALL ENTERPRISES SHOULD BE REPRESENTED IN THE BOARD OF THE MARKET OPERATOR...”</p> <p>“XXX in cases of national and international security emergencies or natural calamities OR IF WITHIN A THREE DAY TRADING PERIOD THERE IS AN EXTRAORDINARY SPIKE IN POWER RATES, the ERC is hereby empowered to suspend the operation of the wholesale electricity spot market or declare a temporary wholesale electricity spot market failure XXX</p>	<p>The proposed amendment to allow market suspension due to “extraordinary spike in power rates” also deserves a second hard look as it may create ambiguity. Under what circumstances will a rate spike be extraordinary?</p>
<p>SEC 31.Retail Competition and Open Access- “...Any law to the contrary notwithstanding... WITHIN A PERIOD OF SIX (6) MONTHS FROM THE EFFECTIVITY OF THIS ACT, THE ERC IS MANDATED TO EVALUATE THE PERFORMANCE OF THE WHOLESALE ELECTRICITY MARKET TAKING INTO CONSIDERATION THE EXPERIENCE OF ALL CONSUMERS SPECIALLY RESIDENTIAL, MICRO AND SMALL ENTERPRISES FROM THE TIME THE SAME WAS DECLARED OPEN AND IN PLACE TO DETERMINE ITS EFFECTIVENESS AS A VEHICLE FOR THE PROVISION OF SUSTAINABLE, ACCESSIBLE AND AFFORDABLE POWER ...”</p>	<p>It is unclear how the proposed amendment seeks to amend Section 31, on the implementation of the retail competition and open access.</p> <p>If the objective is only to mandate the evaluation of the performance of the market, such function is already embedded in the responsibilities of ERC as per Section 43 of the EPIRA, which reads: “SEC. 43. <i>Functions of the ERC.</i> –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.”</p>

Section/Provision	Comment
<p>SEC 70. "POWER SECURITY AND MISSIONARY FUNCTIONS – Notwithstanding the divestment and/or privatization of NPC assets, IPP contracts and spun-off corporations, NPC shall remain as a Government-owned and controlled corporation RESPONSIBLE IN PROVIDING THE NEEDED POWER SECURITY and perform other related missionary FUNCTIONS through AMONG OTHERS, the Small Power Utilities Group (SPUG) and shall be responsible for providing THE MEANS TO ENSURE power generation and its associated power delivery systems in TIMES OF EMERGENCY OR MARKET FAILURE and in areas that are not connected to the transmission system. The POWER SECURITY and missionary electrification function shall be funded from AN INCREASE IN THE CAPITALIZATION OF THE NPC, ANNUAL APPROPRIATIONS, SALE OF BONDS AND OTHER GOVERNMENT SECURITIES AND the revenues from sale in missionary areas and from the universal charge to be collected from all general electricity end-users as determined by the ERC.</p>	<p>It is worthy to be specific on the responsibility being imposed on NPC and to carefully study the potential effect of this responsibility on the universal charge, which will ultimately be a burden to consumers.</p>