PIPPA
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May 27, 2014

Hon. JUAN EDGARDO "SONNY" ANGARA
Chairman, Committee on Ways & Means
Senate of the Philippines
GSIS Building, Financial Center
Pasay City

Re : Comments to Senate Bills on the Rationalization of Fiscal Incentives

Dear Senator Angara:

This is in response to your letter dated 23 May 2014, requesting our comments on the following Senate Bills:

1. SBN 35 (The Investment and Incentives Code of the Philippines) by Sen. Cynthia Villar
2. SBN 987 (An Act Harmonizing the Grant and Administration of Fiscal and Non-Fiscal Incentives and For Other Purposes) by Sen. Ralph Recto
3. SBN 2048 (An Act Rationalizing the Grant and Administration of Fiscal Incentives for the Promotion of Investments and Growth, and For other Purposes) by Sen. Loren Legarda

We fully support your efforts to rationalize existing investment and incentives laws. We hope that the needs of the power generation sector will be considered, vested rights to existing incentives will be respected, a level playing field will be assured to industry players, and unnecessary confusion and bureaucracy will be eradicated.

A. Fiscal incentives are crucial to ensure that the country's power generation capacity will be developed at a pace conducive to economic development and that power prices will be reasonable.

Power plants are capital intensive to build, maintain and operate. Yet, return on investments is uncertain unless the full capacity of the plant is contracted for a fixed period of time. As such, to attract necessary investments into the sector, government assistance, through grant of incentives, is indispensable.

Without fiscal incentives, the generation cost of electricity will increase by at least 0.27 centavos per kilowatt hour. This will directly impact residential consumers and also increase costs and dampen competitiveness of industries, such as manufacturing and information technology.

The intentions of our lawmakers are noble in rationalizing the investments and incentives laws. However, upon closer scrutiny of the provisions of the pending bills, it is apparent that the bills have limited fiscal incentives for domestic enterprises. Under SBN 35, income tax holiday (ITH) is for four (4) years. SBN 987 does not provide for ITH, but proposes a fifteen percent (15%) preferential tax rate on taxable income. On the other hand, SBN 2048 does not grant any incentive to domestic enterprises. Validity of registration will only be up to twenty (20) years under SBN 35 and SBN 987. On the other hand, enjoyment incentives will be limited to twenty five (25) years under SBN 2048.

Under SBN 35 and SBN 2048, both ITH (6 years for SBN 35 and 5 years from SBN 2048) and 15% preferential tax rate on taxable income are granted to strategic projects or enterprises. Still, we find the definition of strategic projects in SBN 35 to be too restrictive. SBN 35 limits strategic projects to one that "will locate in the country as a result of stiff competition with other countries." We recommend that strategic projects be qualified based on its capacity to significantly contribute to economic development in terms of amount of capital investment, use of high level of technology and creation of value added.

B. A new law affecting fiscal and non-fiscal incentives should apply prospectively.

We agree with SBN 35 and SBN 987 in so far as recognizing vested rights, continuing the legal effect of existing incentives and allowing investors an option to be governed by the new investment scheme.

In SBN 2048, existing incentives will only be enjoyed for a period not more than four (4) years from effectivity of the law. Limiting the effect of existing incentives to only four (4) years will unjustly prejudice investors that responded to the calls of government to build much needed power infrastructures. It may also be noted that the power generation sector have foreign investors whose investment rights are safeguarded by appropriate international covenants.

C. A simple and stable fiscal incentives law will usher an investment-conducive business environment.

SBN 35 and SBN 987 both propose to establish a system for refund of Value-added Tax and customs duties on imported capital equipment and raw materials. In relation to this, SBN 2048 seeks to create a Tax Expenditure Fund, from which granted incentives may be drawn.

The system of tax refund, particularly for VAT, has evolved to be complicated and riddled with technicalities. This only created uncertainty among investors – not to mention, discouragement when tax refund due would be denied on mere technicality.

If a new incentives law would follow the same path, such might only add to the problem of low foreign direct investments and slow growth in the power generation and infrastructure sectors.

We recommend that in rationalizing fiscal incentives, focus must be on streamlining documentary requirements and approval procedures for registration and in availing of fiscal and non-fiscal incentives.

Instead of setting up a complicated refund system or a tax expenditure fund, income, VAT or duty-free incentives may be granted automatically under strict and clear guidelines.

The above only expresses general views on pertinent portions of the subject bills. We are open to discuss and provide details as you may require.

Thank you for this opportunity to express our position and we hope that the same receives your favourable attention.

Very truly yours,

LUIS MIGUEL O. ABOITIZ
President