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Comments on the Draft Substitute House Bills No. 174, 2153, 3430, 3432, 3601, 4263, 6075, 6167, 7742, 7837, 8079, 8151, 8154, 9695, 9922, 28, 2054, 5003, and 6423 on Electric Power Industry Restructuring Act (EPIRA) Amendments

(Draft Substitute Bill version used during the May 21, 2024 House of Representatives (HOR) Committee on Energy-Technical Working Group (TWG) Meeting)

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We believe that amendments to the EPIRA law are necessary to further strengthen the electric power industry and to ensure that the regulatory agencies can effectively perform their functions given the changing regulatory landscape. Below are some specific comments and suggestions on the EPIRA draft substitute bill version[2] used during the May 21, 2024 meeting of the HOR Committee on Energy TWG:

1. We note that Section 2-Declaration of Policy in the EPIRA is not being amended. However, we believe that it is necessary for the law to articulate a declaration of policy on "smart and resilient power infrastructure". This is to compel transmission system operators, generating companies, and distribution utilities to use smart technologies in infrastructure buildup and rehabilitation and ensure that the grid, the connections to the grid, and the distribution networks are smart and resilient. We note that "clean energy transition" need no separate articulation of policy because this is already incorporated in the existing EPIRA, specifically in the policy "To assure socially and environmentally compatible energy sources and infrastructure".

2. We strongly disagree with the proposed amendment defining power generation as a public utility, specifically the proposed Section 4 amending Section 6 of the EPIRA, that is:

   "SEC. 6. Generation Sector. – x x x

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[2] The bill version in the matrix comparing the consolidated and substitute bill with the proposal of the Department of Energy, as distributed during the May 21, 2024, HOR-Committee on Energy TWG meeting. DISCLAIMER: The views expressed herein do not necessarily reflect those of the PIDS.

Any law to the contrary notwithstanding, power generation **SHALL 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 BE REQUIRED TO SECURE A LOCAL OR NATIONAL FRANCHISE**.

Upon implementation of retail competition and open access, the prices charged by a generation company for supply of **ELECTRICITY SHALL BE SUBJECT TO REGULATION BY THE ERC** except as otherwise provided in this Act. xxx"

Defining power generation as a public utility is a policy reversal that starkly conflicts with competition that the EPIRA introduced. It is a policy reversal that the country cannot afford to make given that the whole operation of a competitive wholesale electricity market and other related markets and the incentives structure of the generating companies rest on the EPIRA policy that made the generation sector competitive. There is no room for utility regulation in a competitive industry because the prices there are set by market forces, with the price formula approved by the regulator.

3. We agree with the intent of Section 8 proposing to amend Section 20 on National Transmission Company (TRANSCO)-related businesses, but we have a proposed alternative wording (capitalized and underlined):

"SEC. 20. TRANSCO-related Businesses. - TRANSCO **OR ITS CONCESSIONAIRE** may engage in any related business which maximizes **THE** utilization of [~~its assets~~] **THE TRANSCO'S 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.~~] **A MINIMUM OF FIFTY PERCENT (50%) OF THE NET INCOME DERIVED FROM SUCH UNDERTAKING SHALL BE USED TO REDUCE THE TRANSMISSION WHEELING RATES.**"

In contrast to the proposed wording of the Department of Energy (DOE), that is, "SUCCESSOR-IN-INTEREST", our proposed wording clarifies that the concessionaire's succession in interest is limited to the operation of the assets and not the ownership of the assets. The substitution of "its assets" with "THE TRANSCO's assets" also clarifies this.

We concur with the limitation "MINIMUM OF FIFTY PERCENT ". In contrast with the existing 50% ceiling on the income sharing, the proposed 50% floor on the income sharing will have a more significant impact on electricity price reduction.

4. We also have a proposed wording in Section 9 proposing to amend Section 21 on TRANSCO Privatization (capitalized and underlined):

"SEC. 21. TRANSCO Privatization.

xxx

TRANSCO AND ITS CONCESSIONAIRE SHALL COMPLY WITH THE APPROVED TDP

xxx

THEREAFTER, THE PROJECT SHALL BE TRANSFERRED TO THE TRANSCO OR ITS CONCESSIONAIRE, AS PART OF [~~ITS TRANSMISSION ASSETS~~] THE TRANSCO'S TRANSMISSION ASSETS."

This clarifies that the transmission assets, even though expanded and rehabilitated by the concessionaire, are not part of the concessionaire's assets; the ownership remains with the government through TRANSCO and the concessionaire is merely being given the right to operate, maintain, and profit from the assets.

5. We also note that in the sections pertaining to the transmission sector and TRANSCO or its concessionaire, there are no proposed amendments or new sections on targets, or at least the principles for setting targets, on smart and resilient grid and infrastructure connections to the grid. We also note that in the sections pertaining to the distribution sector and the players therein, there are also no proposed amendments or new sections on targets, or at least the principles for setting targets, on smart and resilient distribution networks. Including these in the proposed amendments will be consistent with innovation, energy efficiency, clean energy transition, and the current demands of modern living.

6. On Section 12 proposing to amend Section 26 regarding distribution-related businesses, we concur with the proposal, related to the use of income from distribution-related businesses to reduce the distribution wheeling rate, that the limitation be a 50% floor rather than a 50% ceiling. This will make a more significant impact on electricity price reduction.

7. On Section 14 proposing to amend Section 28 on de-monopolization and shareholding dispersal, we deem that de-monopolization is a wrong label for the policy.

   The constitutional mandate is "broadening ownership base" and not de-monopolization. The exact provision in the Constitution is:

   "ARTICLE XII - National Economy and Patrimony

   xxx

   Private enterprises, including corporations, cooperatives, and similar collective organizations, shall be encouraged to broaden the base of their ownership."

   Besides, de-monopolization of a distribution utility is technically not feasible because the characteristics of the distribution business in a franchise area makes monopoly operation a more efficient model (e.g., no duplication of distribution networks). Thus,

the we suggest that the phrase "broadening ownership base" be used instead. On the percentage of voting shares in broadening the ownership base, the Securities and Exchange Commission, in consultation with the DOE, may be the appropriate body that can give an informed policy recommendation.

8. On Section 19 proposing to amend Section 34 on universal charge, we recommend an alternative amendment because not all end-users are connected through the distribution utilities. There are end-users which are directly connected to the grid. In practice, TRANSCO, and subsequently its concessionaire, has been collecting the universal charge from these types of end-users.

   Thus, we recommend that the proposed amendment:

   > "SEC. 34. UNIVERSAL CHARGE. - **THE UNIVERSAL CHARGE SHALL BE NON-BYPASSABLE CHARGE TO BE DETERMINED BY THE ERC WHICH SHALL BE PASSED ON AND COLLECTED FROM ALL END-USERS ON A MONTHLY BASIS BY THE DISTRIBUTION UTILITIES**.
   >
   > xxx"

   be revised as (capitalized and underlined):

   > "SEC. 34. UNIVERSAL CHARGE. - **THE UNIVERSAL CHARGE SHALL BE <u>A</u> NON-BYPASSABLE CHARGE TO BE DETERMINED BY THE ERC WHICH SHALL BE PASSED ON <u>TO ALL END-USERS</u> AND COLLECTED <u>ON A MONTHLY BASIS BY THE DISTRIBUTION UTILITIES FROM ALL END-USERS CONNECTED TO THE GRID THROUGH THE DISTRIBUTION NETWORKS AND BY TRANSCO OR ITS CONCESSIONAIRE FROM ALL END-USERS DIRECTLY CONNECTED TO THE GRID</u>**.
   >
   > xxx"

   In view of this clarification, the provision "Any end-user [or self-generating entity] not connected to a distribution utility shall remit its corresponding universal charge directly to the Transco" can be deleted.

9. Still on Section 19 proposing to amend Section 34 on universal charge, we believe it is not advisable to push through with the following proposed amendment:

   > "The PSALM Corp., as administrator of the fund, **EXCEPT FOR MISSIONARY ELECTRIFICATION**, shall create a Special Trust Fund which shall be disbursed only for the purposes specified herein in an open and transparent manner.
   >
   > xxx"

   It is not advisable to propose EXCEPT FOR MISSIONARY ELECTRIFICATION because, in practice, the PSALM Corp. is the administrator for all the funds and maintains a Special Trust Fund for such. Although it is not the implementor of missionary electrification (universal charge item c), renewable energy sources vis-a-vis imported energy tax and

royalty equalization (universal charge item d), and watershed rehabilitation and management (universal charge item e), it is the administrator for all the funds and disburses the funds to the various account holders of the mentioned various programs related to the utilization of the universal charge.

10. On Section 22 proposing to amend Section 37 on the powers and functions of the DOE, we note that the DOE has its own charter, Republic Act 7638 or the Department of Energy Act of 1992, and the EPIRA merely amended in 2001 one section of that charter. We concur with the proposed further amendments of that section of the DOE charter to institutionalize certain DOE regulation and practices.

11. We especially note that the HOR-Committee on Energy TWG's proposed amendment in Section 22, amending Section 37 item (o) of the EPIRA, that is,

> "(o) Encourage **AND INCENTIVIZE** 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"

is particularly useful and, if enacted, will open up opportunities for wider partnerships and greater transparency in the energy sector projects.

Related to this, we call the attention of the HOR-Committee on Energy TWG to the DOE-proposed amendment to item (e)-i of the same section, that is,

> "(e) Following the restructuring of the electricity sector, the DOE shall, among others:
>
> i. Encourage **AND SUPERVISE** private sector investments in the electricity sector and promote development of indigenous and renewable energy sources"

We suggest that the DOE be asked to clarify the above-mentioned clause. The DOE function to supervise private sector investment must be elaborated for transparency purposes and to ensure that there is no unwarranted overregulation, especially of the competitive markets in the energy sector.

12. On Sections 23-27 amending Sections 38-43 pertaining to the Energy Regulatory Commission (ERC), we recommend that the very comprehensive proposals be contained in a separate charter or a stand-alone charter of the ERC, that is, separate from the EPIRA, and that general provisions on ERC regulation of the electric power industry be in the EPIRA instead, as the replacement section for the comprehensive proposals that may have to be moved to a new legislation on the ERC charter.

We believe that having a separate charter for the ERC will allow it to be more dynamic, flexible, effective, and efficient in responding to the changing needs of not only the electric power industry but also other components or subsectors of the energy sector.

These characteristics of an energy sector regulator will be necessary when the time comes that the DOE or Congress may have to assign tasks to ERC with respect to utility or generation regulation under new arrangements, such as a scenario where there are gas distribution utilities that will cater to not only electric power needs but also cooking needs by households, fuel inputs by transportation, and heating needs by manufacturing firms. We note though that the anticipated gas distribution system in the immediate future is through mobile units (i.e., trucking) and this may be one of the reasons why the currently proposed downstream natural gas industry bills contemplate licensing by DOE only and not utility regulation. But we should not discount the possibility that new and significant indigenous natural gas reserves could be developed and utilized in the future and then demand centers or franchise area/s would necessitate distribution utility infrastructure. This scenario could be more easily accommodated, in terms of dynamic regulation, if there is a separate ERC charter to begin with, and therefore amending such charter in the future to also cover gas distribution utility regulation would be easier. (We also would like to clarify at this point that it is the use of a natural gas distribution network in a franchise or service area that is usually the subject of utility regulation, and not the retail price of gas. In many countries, the retail price of gas is deregulated.) In this sense, a stand-alone ERC charter rather than an ERC section of the EPIRA legislation is more dynamic as it can easily accommodate future needs that are not part of the electric power industry.

Other possible future scenarios where Congress may have to amend the functions of the ERC are when these arise: (a) new arrangements that may relate to the energy resources in the Bangsamoro area and the optimal utilization of these not only in Bangsamoro but also in other parts of the country; (b) future clean energy transition technologies that have tariff-setting implications and that in turn have implications on cost-bearing by both consumers and producers and on protection/empowerment of consumers; and (c) when the time comes that the country is already tapping nuclear technology for energy use and there is a need to clearly delineate responsibilities between a nuclear energy regulator and the ERC.

Moreover, deregulation, light-handed regulation, or expansion of regulatory coverage in response to the dynamic environment can be more easily addressed by amending the ERC charter, rather than by revisiting the whole EPIRA every time there is a need to amend particular sections on the ERC.

We also believe that institutional capacity building in anticipation of future scenarios can also be more dynamic if the ERC is empowered as a regulator for the energy sector and not just for the electric power industry. Thus, the stand-alone ERC charter must contain provisions on how to beef up its technical capacity.

13. On Section 28 proposing to amend Section 45 regarding cross-ownership, we agree with revisiting the cross-ownership provisions in order to check if the limitations still serve their purpose of preventing market power abuse and also to include retail

electricity suppliers in the cross-ownership limitations. We defer to the DOE and PCC on the prescribed percentages for the needed cross ownership limitations. If, as the NPC says, stabilizing a grid sometimes requires a Regulating Plant Capacity that is beyond 15% of the grid demand, then the proposed 15% cross-ownership limit on ownership, operation, or control of the installed generating capacity of a grid is too low. We defer, however, to the technical advice of the NPC on this matter.