

Comments on the unnumbered draft Senate bill entitled "An Act Strengthening the Energy Regulatory Commission and Amending for the Purpose Sections 38, 39, 40, 41, 42, 43, 44, 45 and 46 of Republic Act No. 9136, Otherwise Known as the 'Electric Power Industry Reform Act of 2001'", version December 10, 2024

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December 16, 2024

General Comments

1. Having a distinct charter for the Energy Regulatory Commission (ERC), as implied by this ERC strengthening bill, will allow the regulator 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 regulation 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, cooling needs by households and firms, and heating needs by manufacturing firms. It is worth noting 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 the resulting 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 amending such charter in the future to also cover gas distribution utility regulation² would be easier. 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.
2. 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

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² It bears emphasizing 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.

implications and that in turn have implications on cost-bearing by both consumers and producers and on protection or 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.

3. 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.
4. 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, a stand-alone ERC charter that contains provisions on how to beef up its technical capacity would be more flexible.

Specific Comments:

5. The proposed limited fiscal autonomy of the ERC is a step in the right direction. Other countries authorize the regulator to recover costs from its regulated industries through service-specific fees, annual dues, and penalty-based fees, rather than from the taxpayer at large. One frequently cited model is the Federal Energy Regulatory Commission in the United States. While it is beneficial, there is also the risk that allowing the agency to utilize fifty percent of its collection from fees could have behavior-altering effects for ERC. Overregulation becomes a possibility. For instance, if you get a share on regulatory fees, then it is likely that you will impose higher fines. Another possibility is increased regulatory efforts of ERC. While this could improve efficiency on the one hand, this could also lead to unnecessary policing, on the other hand. Having this lever is not ideal for the whole sector because it might hamper the effectiveness of the ERC as a regulator. To balance these concerns, we suggest that the proposed fifty percent share be discussed with ERC and a percentage that aims to balance the cost-recovery objective with regulation incentives be determined.
6. It would benefit the energy sector if the proposed charter would authorize the ERC to have the flexibility to adjust the depth of regulation based on technological developments and regulation principles entrenched in the law. Authority to adjust the depth of regulation means authority to determine what can be deregulated, what can be subjected to light-handed regulation only, or what can have expanded regulatory coverage. Congress can define to what extent or under what terms this authority can be exercised by the ERC without needing to run to Congress every time an adjustment has to be made.
7. The proposed charter of the ERC will make the regulator authoritative on the following functions: rate setting functions, competition promotion functions (i.e., preventing anti-competitive practice through price caps and rules for market suspension, and penalizing anti-competitive

practice through investigations and fines and penalties). However, the ERC is currently weak in forward-looking performance indicator setting function, and yet this function is especially important in the clean energy transition. The bill may need to have provisions that can allow the ERC to strongly enforce the adoption of technologies for the clean energy transition, such as those necessary for a smart grid system, smart distribution systems, and digital transformation of electric cooperatives.

8. The ERC should also have more forward-looking functions, which may cover the following:
 - a) formulation and implementation of multi-year strategic plans, where the immediate objective in the first-period plan is to reduce the ERC's backlogs in regulatory decision-making and implement a program for staff capacity building
 - b) anticipating the tariff implications of clean energy transition technologies and assessing how to achieve balance between affordability and environmental sustainability, or between the concerns of the present consumers and the future generation
 - c) responsibility to keep historical data on broad categories of tariffs and general key performance indicators, ability to forecast such tariffs and indicators, and ability to do trends-spotting in the technology driven aspects of the energy sector
 - d) ability to expand beyond electric power regulation when clean energy transition technologies, i.e., for reducing energy consumption or making energy use more efficient, get adopted in the Philippines and applied on a wider scale and at the household level. An illustration of an existing technology for this is district cooling systems (in high-density cities) that exploit high-efficiency co-generation with renewable energy. These systems are usually regarded as natural monopolies (e.g., in Europe and Singapore) and therefore need regulation. The regulator also does a balancing act between restricting competition (e.g., not allowing building owners to disconnect from the cooling system for certain periods of time) and ensuring customer protection.
 - e) the ERC should be given the power to request data from all the players in the industry to be used in evidenced-based decision making. It would also be ideal to have a repository of these data so that other researchers can access them, too.