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The Department of Energy
Republic of the Philippines

Raul B. Aguilos, CESO III
Undersecretary

Re : Focus Group Discussions on Republic Act 9136
Or Electric Power Industry Reform Act of 2001 (EPIRA)

REPEAL EPIRA ! JUNK PRIVATIZATION !
PUT THE POWER INDUSTRY UNDER PUBLIC CONTROL !

Dear Sir,

In the interest of public discussions of issues and in exercise of critical engagement of civil society organizations with Government, the Freedom from Debt Coalition (FDC) presents this position paper to your Focus Group Discussion on Republic Act 9136 or Electric Power Industry Reform Act of 2001 (EPIRA) .

Since the bill that became EPIRA was deliberated on the Congress floor, FDC has strongly opposed it. FDC has warned Congress and our people again and again, year after year, that privatization cannot deliver the promises of EPIRA. On the contrary, EPIRA would drive the power industry down to perennial crisis. Now, thirteen (13) years after its enactment, EPIRA is one big broken promise.

EPIRA's Declaration of Policy from Policy A to K (Section 2) is in shambles. Instead of " transparent and reasonable prices of electricity in a regime of free and fair competition and full public accountability " (Section 2-C) we have the highest residential electricity rate in Asia and the fifth highest in the world and the second highest industrial electricity rate in Asia. At the rate power hikes occur in our country, we might end up having the most expensive electricity in the world.

After 13 years of EPIRA, what we've got is a monopsony, at best a cartel, of power generation companies and monopolies in power distribution, not " a regime of free and fair competition ", and a captive regulatory agency , not "full public accountability ". Privatization was argued as the only option to pay NAPOCOR debts. Thanks to selling most of our public assets in the power industry, PSALM, the agency charged with selling NAPOCOR assets, can only say that by 2026, NAPOCOR' debts would be reduced to $ 3.78 billion from the current $ 15.8 billion. Thus, our people have to continue paying universal charge to cover stranded debt and stranded contract costs way past 2026.

What happened is a mere transfer of control of the power industry from government monopoly of the past to a monopoly or a monopsony of few large corporations. With monopoly or monopsony or a cartel , predatory pricing is given free rein and the whole of production is at the mercy of superprofit generation. The so-called anti-monopoly cap of 30 percent of the installed generating capacity of a grid and/or 25 percent of the national installed capacity is too high a ceiling to prevent a group from controlling the market, undermining competition, committing market abuse and capturing regulatory practices. Singly, each of the big 3 generation companies - First Gen of Lopez, Aboitiz Power of Aboitiz and San Miguel Power of San Miguel Corporation own or control less than the percentage cap on a single and national grid, but together they are a monopsony - which can swing both WESM settlement price and contracted supply market price to superprofit proportions they crave for. In economics, three companies or sometimes , four, dominating the market in effect make up a monopoly. MERALCO share of 70 percent of the Luzon distribution market makes it one of the biggest monopolies in the country. **Here lies the biggest failure of EPIRA and the albatross to the power industry which cannot deliver to the country a secure, affordable, clean and sustainable energy.**

Allow us then to point out what is wrong with EPIRA , with privatization, and with private monopoly domination of the power industry in light of the current issues that have been brought out by the sharp MERALCO rate hike.

1. **On Power Supply .** Ultimately, DOE Secretary Petilla admitted to the January 23, 2014 I Senate Energy Committee hearing that there was no overall supply shortage during the period of the Malampaya maintenance shutdown. But during this period when MERALCO was petitioning for the big-time rate hike on grounds of a power supply problem caused by the Malampaya shutdown and the outages of a number of power plants, the National Grid Corporation's (NGCP) System Operations Department (SOD) which monitors the power supply in the country could not be of help in determining a power supply problem that could warrant a price increase that big. Neither could the Philippine Electricity Market Corporation's (PEMC) Market Surveillance Committee , especially when many bids reached the maximum price of P 62/kwh. The power

industry's central regulator, the Energy Regulatory Commission (ERC) did not bother to know.

Even if ERC and DOE bothered to know, they had to rely on NGCP's SOD which is under a private corporation – the NGCP. In other words, the Government's regulatory agencies have to rely on a private entity to know the state of power supply in the country. This is a huge drawback in directing the economy and a big threat to national security, especially if we consider that a co-manager and owner of 40 percent of NGCP is a foreign government - China through *its* State Grid Corporation. This is the problem with EPIRA's privatization of the operations and management of the transmission sector of the power industry.

2. **On Power Industry Planning and the Role of the State in Power Generation** This issue has been raised in connection with the power supply situation during the period being analyzed and the power supply outlook for the next two to three years . The picture that emerged is disturbing. While Section 37 of EPIRA empowers the National Government through the DOE to " formulate policies for the planning and implementation of a comprehensive program for the efficient supply and economical use of energy consistent with the approved national economic plan", the stronger logic of privatization of EPIRA caused the government to relinquish its active intervention , as shown by the DOE's claim that its hands are tied because EPIRA completely deregulated the power generation sector. **What if there are no private takers to build power plants despite the almost risk-free guarantees of various cost, fuel and exchange rate recovery packages offered by the Government to investors? Should Government not enter the picture. It should. Not only to plan and build more power plants but own, control and operate them as in the case of Agus and Pulangi hydropower plants. Under EPIRA, State planning in effect has been abdicated to the private sector.**

3. **Wholesale Electricity Spot Market (WESM)** WESM is a necessary component of EPIRA ostensibly to create a market mechanism that will encourage competition and bring prices down. But WESM, as shown repeatedly often if not most of the time, sell electricity at higher prices. Again, WESM in the Philippines works in a context of market concentration by few big industry players which make it an arena for gaming. Regulation, including market surveillance, has been very weak. In addition, WESM rules allow players to settle their bids through bilateral contracts which give them good prices while taking advantage of WESM to jack up their prices and win favors for their allies. During the period at issue – the October 26 to November 25, 2013 Herfindahl-Hirschman Index of WESM' s monthly monitoring show a concentrated market based on spot transaction registered a market concentration where the bidders were those with bigger market power. This included Meralco which bid its contracted supply of 100 MW from Aboitiz' Therma Mobile at the maximum price of P62 kwh. **EPIRA'S WESM is a contrived market. It must be abolished.**

4. **ENERGY REGULATORY COMMISSION (ERC) as the central regulatory body.** We shall dispense with a long list of grievances concerning ERC's failure to uphold public interest and consumer welfare. We just cite the most recent MERALCO's power rate hike of P4.15/kwh . ERC failed to look into why there was no power replacement in MERALCO's power supply agreement with power producers, why its supply problems with forced outages should be charged to consumers and not to its insurance claims, why it bid 100 MW of its contracted supply with Therma Mobile at WESM when it was complaining of a supply shortfall due to the Malampaya and other power plant shutdown, and why it failed to counter-act the run-away price at WESM. Of course, issues of lack of technical capacity has bugged the leadership of ERC for years but this is just on top on its demonstrated lack of concern for public interest which it is mandated to uphold at all times? **That of ERC is a classic case of regulatory failure and regulatory capture as it works in the context of a big 3 monopsony and Meralco that are lodged at the summit of national economic and political power.**

5. **MERALCO - an unending monopoly.** We see no end at the light of the tunnel for free and fair competition to happen in the distribution sector in Luzon at the very least with the continuous and ever-increasing monopoly of MERALCO in Luzon's distribution market, controlling 70 percent of it. In addition, MERALCO also acts as a power supply seller like what it did during the Malampaya shutdown. It bid the 100 MW it contracted from Therma Mobile in WESM at a high price , enjoying the advantage of a power generation firm – an example of how EPIRA's weak prohibition against cross-ownership is skirted around.

   It is high time that MERALCO's franchise be revoked considering failure to provide its consumers with affordable electricity, not to speak of a number of its decisions which harm public interest. MERALCO's new rate hike is only the latest in a long series of acts of CORPORATE GREED that has characterized its long monopolistic hold over the electric distribution industry in our country.

   We recount a few examples: (1) MERALCO's violation of Contract to Sell Electricity (CSE) to NAPOCOR which cheated NAPOCOR and therefore the government of P27 billion; others claimed the amount could be P44 billion; (2) MERALCO skirted around and in effect defied the Supreme Court decision that corporate income tax cannot be charged by utilities to the consumers by tacking it on the weighted average cost of capital under the PBR scheme; (3) MERALCO attempted to increase its bill deposits despite a P26 billion accumulated bill deposit account it already has; (4) MERALCO sought from ERC a P24 billion grant for under-recoveries or compensation for delays in the implementation of rate adjustments; and (5) MERALCO shortchanged the consumers who were entitled to a refund under the Supreme Court 2004 decision of a P30 billion refund by offsetting the refund against current and future consumption which in effect eliminated the refund because all costs and expenses necessary for providing electricity had been and continue to be charged to consumers

6. **SHIFT TO SUSTAINABLE ENERGY** – The sustained shift to sustainable energy should begin now, not tomorrow, not later. We have seen and suffered the ravages of climate change. To continue the reliance on fossil-based fuels is to risk our survival as a people. Given the vast renewable energy potential of the Philippines – geothermal, hydro, wind, biomass, ocean current and solar power and the laws already enacted to promote sustainable energy, there should be no turning back. While private participation should be encouraged, FDC prefers public financing and various forms of State and public ownership of renewable energy projects not only to encourage community-based initiatives but more importantly, to gve people the chance to lay their claims to their own resources that we consider part of the commons. FDC rejects the concept of a " Green Economy " peddled by International Financing Institutions (IFIs) like the World Bank (WB) and the Asian Development Bank (ADB) and the US and Northern governments which makes of nature a commodity and a source of superprofit extraction through loan financing. It is also FDC's position that Fit-All rate is a form of incentive to encourage investments in renewable energy, it should not be applied equally to among different income statutes of electricity consumers. FDC stands for socialized FIT or SO FIT.

7. **Pressures on Rural Electric Cooperatives to privatize** Rural electric cooperatives have contributed significantly to national electrification. They are also a form of public or consumer empowerment in building the power industry. While indeed many of these cooperatives have gone under due to huge losses and debts, a considerable number have shown to be success stories. Even in the case of the Albay Electric Cooperative where the union and many consumers came up with a viable alternative to corporatization and ultimately privatization with the help of UP experts and favorable assent by DBP, the whole might of the national and provincial government and San Miguel Power was made to bear on ALECO to defeat the alternative. FDC opposes the privatization, direct or through corporatization, of electric cooperatives. We believe that the State should promote them and provide supervision and assistance to develop them as democratic and efficient ones.

   There are other issues related to privatization and EPIRA like a number of ERC's policy decision to adopt the performance based rate-making (PBR) which allowed private power firms to increase their profits beyond the rate of return base (RORB) , the indexation pricing of natural gas and coal to global prices of oil and coal, and so on and so forth. These are issues that can be resolved or corrected within the purview of EPIRA.

In sum, FDC has been calling all these years for (1) breaking the private monopolistic/monopsonistic hold of a few big private corporations on the power generation, transmission and distribution industry brought about by EPIRA , (2) bringing back State planning in building and developing the power industry, (3) restoring the role of the State as a major player in both generation and distribution sectors and renationalizing the management and operation of the transmission sector, (4)

promotion of democratic and efficient electric cooperatives as a social partner of the State in developing the power industry, and (5) ensuring a steady and sure transition to sustainable energy.

While some of these issues may be addressed by certain amendments, so long as the power industry is privatized and under the sway of private monopsony and monopoly which is what EPIRA in substance did, these amendments will be rendered inutile and meaningless. FDC believes that nothing less than the **REPEAL OF EPIRA** and the institution of public control over the power industry is the rightful path to a secure, safe, efficient and affordable energy to our people.

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Freedom from Debt Coalition (FDC)