

CONSOLIDATED PROPOSED REVIEW OF R.A.9136 (EPIRA)

As of 09 May 2018

R. A. 9136 (EPIRA) - Original	IRR
CHAPTER II ORGANIZATION AND OPERATION OF THE ELECTRIC POWER INDUSTRY	PART II - STRUCTURE AND OPERATION OF THE ELECTRIC POWER INDUSTRY
<p>SEC. 6. Generation Sector. Generation of electric power, a business affected with public interest, 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 (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.</p> <p>Any law to the contrary notwithstanding, power generation shall not 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 not be required to secure a national franchise.</p> <p>xxx</p>	<p>RULE 21. POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION (PSALM)</p> <p>Section 5. Powers</p> <p>xxx</p> <p>(q) To operate the generation assets, directly or through NPC, prior to Privatization of such assets. Towards this end, while PSALM operates the generation assets, it shall be considered a Generation Company</p> <p>xxx</p>
<p>NPC Comments:</p> <p>PSALM should not be considered as Generation Company due to the following:</p> <ul style="list-style-type: none"> • Principal purpose of creating PSALM Corp. under the Act is to manage the orderly sale, disposition and privatization of NPC generating assets. PSALM should not operate NPC generating assets and be a generation company despite their transfer of ownership to PSALM. • Operation and maintenance of the generation assets while they are not yet privatized should continue to be under NPC's responsibility notwithstanding that ownership has been transferred to PSALM. This is why only net profit was required to be remitted to PSALM under Section 55 of the Act. • NPC/PSALM O&M Agreement should allow full transfer of PS and MOOE to provide NPC the opportunity to immediately and timely address operations and maintenance concerns of NPC generating assets and disposable facilities, thus, ensuring DOE's mandate on energy security. 	

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<p>Sec. 34. Universal Charge</p> <p>xxx</p> <p>The PSALM Corp., as administrator of the fund, shall create a Special Trust Fund which shall be disbursed only for the purposes specified herein in an open and transparent manner. All amounts collected for the universal charge shall be distributed to the respective beneficiaries within a reasonable period to be provided by the ERC.</p>	<p>RULE 21. POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION (PSALM)</p> <p>xxx</p> <p>Section 4. Term of Existence.</p> <p>Unless otherwise provided by law, PSALM shall exist for a period of twenty- five (25) years from the effectivity of the Act, and all assets held by it, all moneys and properties belonging to it, and all its liabilities outstanding upon the expiration of its term of existence shall revert to and be assumed by the National Government. Upon expiration of the term of PSALM, the administration of the STF shall be transferred to the DOF or any of the DOF attached agencies as designated by the DOF Secretary.</p>
<p>NPC Comments:</p> <p>By 2026, the administration of the Universal Charge for Missionary Electrification (UCME) and Environmental Levy (UCEC) should be transferred from PSALM to NPC due to following reasons:</p> <ul style="list-style-type: none"> • PSALM’s life is 25 years from effectivity of EPIRA. • NPC-SPUG is the petitioner of the above mentioned UCME and UCEC • Remittance should be directly made to NPC-SPUG by electric cooperatives and NGCP. Existing remittance process is considered another bureaucratic layer. • Monitoring and auditing of the UCME utilization should now be done directly by ERC. • PSALM should only be the Administrator of the UCSC and UCSD in line with its mandate under the EPIRA Law as liquidator of NPC generating assets and all its liabilities 	

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<p>CHAPTER V PRIVATIZATION OF THE ASSETS OF THE NATIONAL POWER CORPORATION</p>	
<p>SEC. 47. NPC Privatization. – Except for the assets of SPUG, the generation assets, real estate, and other disposable assets as well as IPP contracts of NPC shall be privatized in accordance with this Act. . . ., except as provided for in Paragraph (f) herein:</p> <p>(f) The Agus and the Pulangui complexes in Mindanao shall be excluded from among the generation companies that will be initially privatized. Their ownership shall be transferred to the PSALM Corp. and both shall continue to be operated by the NPC. Said complexes may be privatized not earlier than ten (10) years from the effectivity of this Act, and except for Agus III, shall not be subject to Build-Operate-Transfer (B-O-T), Build-Rehabilitate-Operate- Transfer (B-R-O-T) and other variations thereof pursuant to Republic Act No. 6957, as amended by Republic Act No. 7718. The privatization of Agus and Pulangui complexes shall be left to the discretion of PSALM Corp. in consultation with Congress;</p> <p>(j) NPC may generate and sell only from the undisposed generating assets and IPP contracts of PSALM Corp. and shall not incur any new obligations to purchase power through bilateral contracts with generation companies or other suppliers.</p>	<p>RULE 23. PRIVATIZATION OF THE ASSETS OF NPC</p> <p>Section 3. Privatization Objectives.</p> <p>The Privatization of the NPC assets intends to achieve the following objectives:</p> <p>(a) To ensure and accelerate the total electrification of the country;</p> <p>(b) To ensure the quality, reliability, security and affordability of the supply of electric power;</p> <p>xxx</p> <p>Section 4. Privatization Guidelines.</p> <p>xxx</p> <p>(f) The Agus and the Pulangui complexes in Mindanao shall be excluded from among the Generation Companies that will be initially privatized. Their ownership shall be transferred to the PSALM and both shall continue to be operated by the NPC. Said complexes may be privatized not earlier than ten (10) years from the effectivity of the Act, and, except for Agus III, shall not be subject to BOT, Build- Rehabilitate-Operate-Transfer (BROT) and other variations thereof pursuant to Republic Act.</p>

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	<p>No. 6957 (BOT Law), as amended by Republic Act No. 7718. The Privatization of Agus and Pulangui complexes shall be left to the discretion of PSALM in consultation with Congress. PSALM, out of the earnings in the operation of Agus and Pulangui complexes, shall ensure the availability of adequate funds intended for the upkeep of facilities to include funds for repairs, maintenance and expansion of existing facilities;</p> <p>xxx</p> <p>(i) Not later than three (3) years from the effectivity of the Act, and in no case later than the initial implementation of Open Access, at least seventy percent (70%) of the total capacity of generation assets of NPC and of the total capacity of the power plants under contract with NPC located in Luzon and Visayas shall have been privatized: Provided, That any unsold capacity shall be privatized not later than eight (8) years from the effectivity of the Act;</p> <p>xxx</p> <p>(k) NPC may generate and sell electricity only from the undisposed generation assets and IPP contracts of PSALM and shall not incur any new obligations to purchase power through bilateral contracts with Generation Companies or other Suppliers; and x xx</p>

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	<p>Section 6. Privatization of Hydro Electric Generation Plants.</p> <p>xxx</p> <p>(d) The NPC and PSALM or NIA, as the case may be, shall continue to be responsible for the dam structure and all other appurtenant structures necessary for the safe and reliable operation of the hydropower plants. The NPC and PSALM or NIA, as the case may be, shall enter into an operations and maintenance agreement with the private operator of the power plant to cover the dam structure and all other appurtenant facilities.</p>
<p>NPC Comments:</p> <p>A. Section 47 (j) NPC Privatization</p> <ul style="list-style-type: none">• Section 47 (j) should be clarified to exempt generating assets and other assets of NPC-SPUG intended for its missionary electrification function from the provisions therein.• requirements in accordance with Section 70 until such time that areas become viable for private sector privatization.• Privatization of NPC-SPUG generating assets should only be made once private sector privatization of a particular missionary area has been determined viable.• Meantime, NPC-SPUG should be allowed to incur obligations to borrow loans and to enter into bilateral contracts with power suppliers for its missionary electrification function. This will ensure funding to timely implement its missionary electrification plans and to accelerate privatization of electricity supply in missionary areas. <p>B. Section 3 and Section 4 (f) of Rule 23 of IRR– Privatization of the Agus and Pulangi</p>	

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<ul style="list-style-type: none">• To ensure that price of electricity in Mindanao will stay at a reasonable level while private sector continue to invest in additional capacities to meet future demand, privatization of Agus and Pulangi should no longer be pursued.• Development of hydro resources should be retained by Government not only to ensure cheap and clean source of electricity but also to serve as buffer storage in case of supply shortage and/or as regulating reserve provider for grid stability. Moreover, the government should consider nuclear generation as means to reduce electricity prices.• Should privatization be pursued, the Agus-Pulangi complexes should first undergo rehabilitation for life extension and offered thereafter for O&M arrangement rather than sale. This will ensure least cost of electricity to consumers in Mindanao and may help stabilize clearing prices in the WESM.• To better operate, maintain and rehabilitate the remaining undisposed plants in a sustainable manner, therefore, management thereof should be given to one entity. Section 4(i) prescribes that all assets not sold after eight (8) years after the effectivity of EPIRA shall revert to NPC. <p>C. Section 6 (d) of Rule 23 of the IRR – Sustainability of the Dam Management of NPC</p> <ul style="list-style-type: none">• The provision should read “The NPC or NIA, as the case may be, shall continue to be responsible for the dam structure . . . Anyone of them shall enter into an operations and maintenance agreement with provision for payment of fees by existing private operator of the power plants to cover for expenses in managing and operating the dam structures and related appurtenances.”• Such payment of fees will ensure the integrity of the dam structures by making available necessary funds for inspection and timely corrective action of observed abnormalities.• As of today, NPC is dependent on PSALM budget and funding. This budget and funding requirement should be established in the IRR else, assumed continuously by government.	

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<p>CHAPTER VIII GENERAL PROVISION</p>	
<p>SEC. 70. Missionary Electrification. –</p> <p>Notwithstanding the divestment and/or privatization of NPC assets, IPP contracts and spun-off corporations, NPC shall remain as a National Government-owned and -controlled corporation to perform the missionary electrification function through the Small Power Utilities Group (SPUG) and shall be responsible for providing power generation and its associated power delivery systems in areas that are not connected to the transmission system. The missionary electrification function shall be funded from the revenues from sales in missionary areas and from the universal charge to be collected from all electricity end-users as determined by the ERC.</p>	<p>RULE 13. MISSIONARY ELECTRIFICATION</p> <p style="text-align: center;">xxx</p> <p>Section 4. Source of Funds.</p> <p>(a) The Missionary Electrification shall be funded from the revenues from sales in missionary areas and from its appropriate share in the Universal Charge.</p> <p>(b) SPUG may also draw on other funding sources including appropriations from Congress, the utilization of private capital, multilateral aids or grants, Official Development Assistance (ODA) Funds and others.</p> <p>(c) SPUG shall source all the cost differentials between the sales revenues and operating expense and capital expense for expansion, rehabilitation and facilities for new areas of development based on the approved MEDP from its share from the Universal Charge and/or other sources as it may obtain.</p> <p>(d) In accordance with DOE’s MEDP, the proposed five- (5) year annual budget for operating and capital expenditures of SPUG shall be submitted to ERC.</p>

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<p>NPC Comments:</p> <p>Section 4. Source of Funds by NPC as provided for in the IRR should be implemented:</p> <ul style="list-style-type: none">• Item (b) of the IRR provides that SPUG may also draw on other funding sources including appropriations from Congress, the utilization of private capital, multilateral aids or grants, Official Development Assistance (ODA) Funds and others.• Further Item (c) of the IRR prescribes that SPUG shall source all the cost differentials between the sales revenues and operating expense and capital expense for expansion, rehabilitation and facilities for new areas of development based on the approved MEDP from its share from the Universal Charge and/or other sources as it may obtain.• Presently, only OPEX is allowed recovery from UCME and NPC-SPUG is dependent on the subsidy being provided by NG for its missionary electrification function.• Further, NPC-SPUG should be allowed to directly contract with RE Developers in missionary areas to bring down the UCME.• To accelerate RE Development in missionary areas, NPC-SPUG should be exempted from the provisions of RA 7718/BOT Law and RA 9184.	

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<p>SEC. 71. Electric Power Crisis Provision –</p> <p>Upon the determination by the President of the Philippines of an imminent shortage of the supply of electricity, Congress may authorize, through a joint resolution, the establishment of additional generating capacity under such terms and conditions as it may approve.</p>	<p>RULE 24. ELECTRIC POWER CRISIS PROVISION</p> <p>Upon the determination by the President of the Philippines of an imminent shortage of the Supply of Electricity, Congress may authorize, through a joint resolution, the establishment of additional generation capacity under such terms and conditions as it may approve.</p>
<p>NPC Comment:</p> <ul style="list-style-type: none"> • Should be amended to read “Upon the determination by the Secretary of Energy of an imminent shortage of the supply of electricity the President of the Philippines, may authorize the establishment of security capacity under such terms and conditions as may be recommended by the Secretary of Energy.” • If feasible, IRR should be amended to allow DOE the flexibility to include in its Power Development Plan the provision of security capacity as part of its mandate of ensuring energy supply. This will provide DOE the option to timely respond to an electricity crisis and timely implement Section 71 of EPIRA. • DOE may tap the capability of NPC in building such security capacity and operating it. Accordingly, the option for the President to exercise Section 71 and thereafter for Congress may be dispensed with. • Since operation of such security capacity is expected to be costly, funds necessary to build it including its operation and maintenance should be provided by government and not pass on to consumers. 	

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<p>SEC. 72. Mandated Rate Reduction. –</p> <p>Upon the effectivity of this Act, residential end-users shall be granted a rate reduction from NPC rates of thirty centavos per kilowatt-hour (Po.30/kWh). Such reduction shall be reflected as a separate item in the consumer billing statement.</p>	<p>RULE 19. MANDATED RESIDENTIAL REBATE</p> <p>(a) The ERC shall monitor and ensure the implementation of its Resolution No. 2001-04 issued on 26 July 2001 and any amendments thereto. The ERC shall impose fines and penalties on parties who fail to comply with said Resolution.</p>

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	(b) The reduction shall be reflected as a separate item in the consumer billing statement.
<p>NPC Comment</p> <ul style="list-style-type: none"> • Electricity end-users in missionary area should be excluded from the granting MRR because they are already subsidized. • The rebate only translates to additional subsidy (UCME) to be charged to all electricity end users.. 	