

Proposals for EPIRA Amendments

Sector: Distribution
 Venue:

Organization/Company: PEPOA

Proponents/Summary of Proposed Amendments	Rationale/Discussion	Specific Provision/s Affected	Proposed Re-wording of Provision
<p>Remove the term <i>"related interests"</i> from Section 28 of the EPIRA Law relative to dispersal of ownership</p>	<p>The rationale for the proposed amendments has been succinctly discussed in <i>Llames, et al. vs. Department of Energy and Energy Regulatory Commission</i>, Civil Case No. Q-04-53333, where the Quezon City Regional Trial Court ("RTC-QC") ruled that the term <i>"related interests"</i> found in Section 28 of the EPIRA is not akin to the definition of the term <i>"related groups"</i> found in Section 45 of the same law as the former refers to de-monopolization and shareholding dispersal of officers, directors, and shareholders while the latter refers to cross ownership prohibition on companies and related groups. Section 45 expressly defined <i>"related groups"</i> as a person's business interests, including its subsidiaries, affiliates, directors or officers or any of the relatives by consanguinity of affinity within the fourth (4th) civil degree. The EPIRA, however, does not define what <i>"related interests"</i> are.</p> <p>RTC-QC ruled that in the absence of an express definition of what "related</p>	<p>SEC. 28. <i>De-Monopolization and Shareholding Dispersal.</i> – In compliance with the constitutional mandate for dispersal of ownership and demonopolization of public utilities, the holdings of persons, natural or juridical, including directors, officers, stockholders and related interests, in a distribution utility and their respective holding companies shall not exceed twenty-five (25%) percent of the voting shares of stock unless the utility or the company holding the shares or its controlling stockholders are already listed in the Philippine Stock Exchange (PSE): <i>Provided</i>, That controlling stockholders of small distribution utilities are hereby required to list in the PSE within five (5) years from the enactment of this Act if they already own the stocks. New controlling stockholders shall undertake such listing within five (5) years from the time they acquire ownership and control. A small distribution company is one whose peak demand is equal to or less than Ten megawatts (10MW).</p>	<p>SEC. 28. <i>De-Monopolization and Shareholding Dispersal.</i> – In compliance with the constitutional mandate for dispersal of ownership and demonopolization of public utilities, the holdings of persons, natural or juridical, including directors, officers, stockholders and related interests, in a distribution utility and their respective holding companies shall not exceed twenty-five (25%) percent of the voting shares of stock unless the utility or the company holding the shares or its controlling stockholders are already listed in the Philippine Stock Exchange (PSE): <i>Provided</i>, That controlling stockholders of small distribution utilities are hereby required to list in the PSE within five (5) years from the enactment of this Act if they already own the stocks. New controlling stockholders shall undertake such listing within five (5) years from the time they acquire ownership and control. A small distribution company is one whose peak demand is equal to or less than Ten megawatts (10MW).</p>

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	<p>interests" are, it should refer to things of the same class specifically mentioned in the provision in accordance with the doctrine of <i>ejusdem generis</i>. Since the term "related interests" precedes directors, officers, and stockholders, its interpretation should be limited to the same.</p>	<p>The ERC shall, within sixty (60) days from the effectivity of this Act, promulgate the rules and regulations to implement and effect this provision.</p> <p>This Section shall not apply to electric cooperatives.</p>	<p>The ERC shall, within sixty (60) days from the effectivity of this Act, promulgate the rules and regulations to implement and effect this provision.</p> <p>This Section shall not apply to electric cooperatives.</p>
<p>Enumerate the modes of compliance with the public offering requirement under Section 43(t) of the EPIRA Law.</p>	<p>The purpose of the proposed amendment is to enumerate the modes of public offering required under Section 43 of the EPIRA Law pursuant to and consistent with the valid and existing laws such as but not limited to the Securities Regulation Code and Omnibus Investment Code.</p> <p>Under the proposed Implementing Rules and Regulation of the EPIRA Law, public offering is limited to public listing with the PSE, which is contrary to the established definition of public offering under the SRC and different SEC Orders.</p> <p>The fact that public offering is limited by</p>	<p>"Sec. 43. Functions of the ERC. – The ERC shall promote competition, encourage market development, ensure customer choice and penalize abuse of market power in the restructured electric industry. In appropriate cases, the ERC is authorized to issue cease and desist order after due notice and hearing. Towards this end, it shall be responsible for the following key functions in the restructured industry:</p> <p>Xxx</p> <p>(t) Perform such other regulatory functions as are appropriate and necessary in order to ensure the</p>	<p>Sec. 43. Functions of the ERC. – The ERC shall promote competition, encourage market development, ensure customer choice and penalize abuse of market power in the restructured electric industry. In appropriate cases, the ERC is authorized to issue cease and desist order after due notice and hearing. Towards this end, it shall be responsible for the following key functions in the restructured industry:</p> <p>Xxx</p> <p>(t) Perform such other regulatory functions as are appropriate and necessary in order to ensure the</p>

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	<p>the EPIRA Law to PSE public listing will also create a burden to existing electric distribution corporation given the number of requirements and reportorial requirements that need to be complied with once you are listed with the PSE, <i>i.e.</i>, disclosure requirements, regular reportorial requirements, etc.</p> <p>In view thereof, since public offering in accordance with the provisions of the SRC and Omnibus Investment Code has always been regarded as a mode of public offering, then in order to harmonize the provisions of the said laws and other pertinent laws, with the requirements of the EPIRA law, then it becomes necessary to expressly include private offering as compliance with the provisions of Section 43 (t) of the EPIRA Law.</p>	<p>successful restructuring and modernization of the electric power industry, such as, but not limited to, the rules and guidelines under which generation companies, distribution utilities which are not publicly listed shall offer and sell to the public a portion not less than fifteen percent (15%) of their common shares of stock: <i>Provided, however,</i> That generation companies, distribution utilities or their respective holding companies that are already listed in the PSE are deemed in compliance. For existing companies, such public offering shall be implemented not later than five (5) years from the effectivity of this Act. New companies shall implement their respective public offerings not later than five (5) years from the issuance of their certificate of compliance."</p> <p>xxx."</p>	<p>successful restructuring and modernization of the electric power industry, such as, but not limited to, the rules and guidelines under which generation companies, distribution utilities which are not publicly listed shall offer and sell to the public a portion not less than fifteen percent (15%) of their common shares of stock <u>either through public listing with the PSE or through public offering under pertinent laws, including but not limited to the Securities Regulation Code and Omnibus Investments Code:</u> <i>Provided, however,</i> That generation companies, distribution utilities or their respective holding companies that are already listed in the PSE are deemed in compliance. For existing companies, such public offering shall be implemented not later than five (5) years from the effectivity of this Act. New companies shall implement their respective public offerings not later than five (5) years from the issuance of their certificate of compliance."</p>

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<p>Correct a typographical error in repealing clause (Sec. 80) of the EPIRA.</p>	<p>Section 80 of RA No. 9136 must have necessarily referred to Section 12 (c) and not Section 11 (c) of the PEZA Charter that was repealed because Section 11 (c) is non-existent. Since Section 12 (c) of the PEZA Charter cover the power of the PEZA Board on the regulation, establishment, operation and maintenance of electric power facilities, among others, which are clearly among the powers also given to the ERC, the conflict, arising from an obvious typographical error in Sec. 80 of the EPIRA, must thus be resolved in favor of ERC.</p> <p>This is to also meant to make Sec. 27 of the EPIRA effectively operational, which is quoted below for reference:</p> <p><i>"Sec. 27. Franchising Power in the Electric Power Sector.</i> - The power to grant franchises to persons engaged in the transmission and distribution of electricity shall be vested exclusively in the Congress</p>	<p>Sec. 80. Applicability and Repealing Clause. - The applicability provisions of Commonwealth Act No. 146, as amended, otherwise known as the "Public Service Act"; Republic Act 6395, as amended, revising the charter of NPC; Presidential Decree 269, as amended, referred to as the National Electrification Decree; Republic Act 7638, otherwise known as the "Department of Energy Act of 1992"; Executive Order 172, as amended, creating the ERB; Republic Act 7832 otherwise known as the "Anti-electricity and Electric Transmission Lines/Materials Pilferage Act of 1994", shall continue to have full force and effect except insofar as they are inconsistent with this Act.</p> <p>The provisions with respect to electric power of Section 11 (c) of Republic Act 7916, as amended, and Section 5 (f) of Republic Act 7227, are hereby repealed or modified accordingly.</p>	<p>xxx."</p> <p>Sec. 80. Applicability and Repealing Clause. - The applicability provisions of Commonwealth Act No. 146, as amended, otherwise known as the "Public Service Act"; Republic Act 6395, as amended, revising the charter of NPC; Presidential Decree 269, as amended, referred to as the National Electrification Decree; Republic Act 7638, otherwise known as the "Department of Energy Act of 1992"; Executive Order 172, as amended, creating the ERB; Republic Act 7832 otherwise known as the "Anti-electricity and Electric Transmission Lines/Materials Pilferage Act of 1994", shall continue to have full force and effect except insofar as they are inconsistent with this Act.</p> <p>The provisions with respect to electric power of Section 11 12 (c) of Republic Act 7916, as amended, and Section 5 (f) of Republic Act 7227, are hereby repealed or modified accordingly.</p>

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	<p>of the Philippines and all laws inconsistent with this Act particularly, but not limited to, Section 43 of PD 269, otherwise known as the "National Electrification Decree," are hereby deemed repealed or modified accordingly; <i>Provided</i>, That all existing franchises shall be allowed to their full term: <i>Provided further</i>, That in the case of electric cooperatives, renewals and cancellations shall remain with the National Electrification Commission under the National Electrification Administration for five (5) more years after the enactment of this Act."</p>	<p>Presidential Decree No. 40 and all laws, decrees, rules and regulations, or portions thereof, inconsistent with this Act are hereby repealed or modified accordingly.</p>	<p>Presidential Decree No. 40 and all laws, decrees, rules and regulations, or portions thereof, inconsistent with this Act are hereby repealed or modified accordingly.</p>