

Proposed Amendments to the Implementing Rules and Regulations (IRR) of Republic Act No. 9136, Otherwise known as the “Electric Power Industry Reform Act of 2001 (EPIRA)”

Proposed by: Power Sector Assets and Liabilities Management Corporation

| EPIRA -IRR Provision | EPIRA Provision | Proposed Amendments on EPIRA-IRR | Rationale/Comments |
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| <p>PART II - Structure and Operation of the Electric Power Industry</p> <p>RULE 5. GENERATION SECTOR</p> <p>Section 4. Obligations of a Generation Company.</p> <p>xxx xxx xxx</p> <p>(e) Upon introduction of Open Access and Retail Competition or establishment of WESM, whichever comes first, the rates of a Generation Company shall not be subject to regulation by the ERC except as otherwise provided by the Act.</p> <p>xxx xxx xxx</p> | <p>CHAPTER II - Organization and Operation of the Electric Power Industry</p> <p>Section 6. Generation Sector. Generation of electric power, a business affected with public interest, shall be competitive and open.</p> <p>xxx xxx xxx</p> <p>Upon implementation of retail competition and open access, the prices charged by a generation company for the supply of electricity shall not be subject to regulation by the ERC except as otherwise provided in this Act.</p> | <p>PART II - Structure and Operation of the Electric Power Industry</p> <p>RULE 5. GENERATION SECTOR</p> <p>Section 4. Obligations of a Generation Company.</p> <p>xxx xxx xxx</p> <p>(e) Upon introduction of Open Access and Retail Competition or establishment of WESM, whichever comes first, the rates of a Generation Company shall not be subject to regulation by the ERC except as otherwise provided by the Act. <u>This provision shall also apply to the undisposed NPC generating assets owned by PSALM and IPP</u></p> | <p>Classification and regulation of PSALM as a generation company</p> <p>The justification for the inclusion of the provision is to allow PSALM to impose rates without regulation to level the playing field for PSALM where it exists in competition with other generators.</p> |

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| | xxx xxx xxx | <u>contracts that have yet to be privatized.</u> xxx xxx xxx | |
| <p>PART IV - Privatization of National Power Corporation</p> <p>RULE 22. National Transmission Corporation (TRANSCO)</p> <p>Section 4. TRANSCO Board of Directors. All the powers of the TRANSCO shall be vested in and exercised by a Board of Directors. The Board shall be composed of a Chairman and six (6) members. The Secretary of the DOF shall be the ex-officio Chairman of the Board. The other members of the TRANSCO Board shall include the Secretary of the DOE, the Secretary of DENR, the President of TRANSCO, and three (3)</p> | <p>CHAPTER II - Organization and Operation of the Electric Power Industry</p> <p>Section 11. TRANSCO Board of Directors. All the powers of the TransCo shall be vested in and exercised by a Board of Directors. The Board shall be composed of a Chairman and six (6) members. The Secretary of the Department of Finance (DOF) shall be the <i>ex-officio</i> Chairman of the Board. The other members of the TRANSCO Board shall include the Secretary of the Department of Energy (DOE), the Secretary of</p> | <p>PART IV - Privatization of National Power Corporation</p> <p>RULE 22. National Transmission Corporation (TRANSCO)</p> <p>Section 4. TRANSCO Board of Directors. All the powers of the TRANSCO shall be vested in and exercised by a Board of Directors. The Board shall be composed of a Chairman and six (6) members. The Secretary of the DOF shall be the ex-officio Chairman of the Board. The other members of the TRANSCO Board shall include the Secretary of the DOE, the Secretary of DENR, the President of TRANSCO, <u>the President and</u></p> | <p>Need for PSALM representation in the TransCo Board</p> <p>As owner of TRANSCO, PSALM is entitled to a seat in the TRANSCO Board as explicitly stated in the IRR.</p> <p>Currently, PSALM PCEO does not have a seat in the TRANSCO Board.</p> |

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| <p>members to be appointed by the President of the Philippines, each representing Luzon, Visayas and Mindanao, one of whom shall be the President of PSALM.</p> <p>xxx xxx xxx</p> | <p>the Department of Environment and Natural Resources (DENR), the President of TRANSCO, and three (3) members to be appointed by the President each representing Luzon, Visayas and Mindanao.</p> <p>xxx xxx xxx</p> | <p><u>CEO of PSALM which will represent Luzon, and two (2) members to be appointed by the President of the Philippines,</u> each representing Visayas and Mindanao.</p> <p>xxx xxx xxx</p> | |
| <p>PART III - Electricity Rate and Charges</p> <p>RULE 18. The Universal Charge</p> <p>Section 2. Scope of Application.</p> <p>xxx xxx xxx</p> <p>(iii) Missionary Electrification;</p> | <p>CHAPTER II - Organization and Operation of the Electric Power Industry</p> <p>Section 34. Universal Charge. Within one (1) year from the effectivity of this Act, a universal charge to be determined, fixed and approved by the ERC, shall be imposed on all electricity end-users for the following purposes:</p> <p>a) Paymentfor the</p> | <p>PART III - Electricity Rate and Charges</p> <p>RULE 18. The Universal Charge</p> <p>Section 2. Scope of Application.</p> <p>xxx xxx xxx</p> <p>(iii) Missionary Electrification <u>which includes cash incentive for renewable energy developers pursuant to Section 15 (h) of the RA 9513, also known as RE Act of 2008;</u></p> | <p>Exemption of self-generating facilities in the UC</p> <p>This provision intends to harmonize EPIRA and Section 15 (h) of RA 9513 or the RE Act of 2008.</p> |

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| | stranded debts x x x b) Missionary electrification; xxx xxx xxx | xxx xxx xxx_ | |
| <p>PART III - Electricity Rate and Charges</p> <p>Rule 18. The Universal Charge</p> <p>Section 4. Procedures for Petitions Against the Universal Charge.</p> <p>xxx xxx xxx</p> <p>(b) Petitions for availment under the Universal Charge for the succeeding years shall be submitted to the ERC on or before March 15 of every year.</p> | <p>CHAPTER II - Organization and Operation of the Electric Power Industry</p> <p>Section 34. Universal Charge.</p> <p>xxx xxx xxx</p> | <p>PART III - Electricity Rate and Charges</p> <p>Rule 18. The Universal Charge</p> <p>Section 4. Procedures for Petitions Against the Universal Charge.</p> <p>xxx xxx xxx</p> <p>(b) Petitions for availment under the Universal Charge for the succeeding years shall be submitted to the ERC on or before <u>July 31</u> of every year.</p> | <p>Deadline in the date of UC filing</p> <p>This is to coincide with the release of the Audited Financial Statements. In the past years, PSALM has continuously asked for extension of submission from ERC.</p> |

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| <p>PART III - Electricity Rate and Charges</p> <p>RULE 18. The Universal Charge</p> <p>Section 6. Administration of the Universal Charge.</p> <p>xxx xxx xxx</p> <p>(c) The PSALM shall transfer funds from the STF and shall distribute to the beneficiaries on or before the twentieth (20th) day of each month.</p> | <p>CHAPTER II - Organization and Operation of the Electric Power Industry</p> <p>Section 34. Universal Charge</p> <p>xxx xxx 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>PART III - Electricity Rate and Charges</p> <p>RULE 18. The Universal Charge</p> <p>Section 6. Administration of the Universal Charge.</p> <p>xxx xxx xxx</p> <p>(c) The PSALM shall transfer funds from the STF and shall distribute to the beneficiaries on or before the <u>25th of each month, except for the cash incentive which shall be disbursed to the RE Developers within a reasonable period to be provided by the ERC in a separate Guidelines for the purpose.</u></p> | <p>Amend to a reasonable and feasible date the disbursement of UC funds to the beneficiaries</p> <p>To amend to a reasonable and feasible date the disbursement of UC funds per EPIRA, and cash incentive for RE Developers per RE Act. The proposed disbursement date is 25th day of the month. This will allow PSALM sufficient time to validate/verify UC remittances from the CEs, prepare monthly remittance report, update fund balance, transfer fund from MTF to respective STF, and release the fund to beneficiaries.</p> |

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| <p>PART III - Electricity Rate and Charges</p> <p>RULE 18. The Universal Charge</p> <p>Section 7. Deferment. All Self-Generation Facilities whether new, existing or under construction shall not be covered by the imposition of Universal Charge for a period of four (4) years from its imposition: Provided, That, such Self-Generation Facilities shall register with the ERC and PSALM.</p> | <p>CHAPTER II - Organization and Operation of the Electric Power Industry</p> <p>Section 34. Universal Charge</p> <p>xxx xxx xxx</p> | <p>PART III - Electricity Rate and Charges</p> <p>RULE 18. The Universal Charge</p> <p>Section 7. Exclusion <u>All Self-Generation Facilities whether new, existing or under construction shall not be covered by the imposition of Universal Charge. xxx</u></p> | <p>It may be noted that the EPIRA used the term self-generating entity (SGE) while its IRR, specifically Rule 4 thereof, utilized the term self-generation facility (SGF) to refer to “a power Generation Facility owned and constructed by an End-user for such End-user’s own consumption or internal use excluding Generation Facilities for use by household, clinics, hospitals and other medical facilities.”</p> <p>Given that the EPIRA made reference to SGE while the EPIRA IRR utilized SGF, it should be clarified whether SGE and SGF are one and the same, as contemplated</p> |

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| | | | <p>in Section 34 of the EPIRA.</p> <p>Self-Generation Entities owning self-generation facilities can be:</p> <ul style="list-style-type: none"> a) Large industries that are directly-connected to the grid which sells their excess capacity through the grid to another entity during capacity shortfall in the system; b) SGEs that are connected to the DU and are required to sell its excess power through the grid during capacity shortfall in the system; and c) An entity with self-generation facility |

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| | | | <p>located in an isolated/remote area/s that has no access to the distribution or transmission system but is capable of generating power for its own consumption and selling electricity to consumers in said area.</p> <p>Foregoing considered, UC should not be imposed on SGEs that sell excess power to the grid since the output sold to end-users is already subject to imposition of UC.</p> <p>Further, during PSALM’s consultations with various self-generation entities (SGEs)/self-generation facilities (SGFs), these</p> |

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| | | | <p>groups expressly opposed the imposition of UC due to potential adverse impact on the operating costs, competitiveness and viability of energy-intensive industries like the semi-conductor industry, paper mill, cement and sintering plants, which have purposely put up SGFs to preserve the quality of their products.</p> <p>Further, PSALM has observed that majority of the SGEs/SGFs have no metering facilities that would measure the energy generation and consumption that would be subject to UC. This brings us to the issue on who will shoulder the cost of putting</p> |

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| | | | <p>up the metering facility, which is estimated to cost PhP _____, apart from meter-reading that will be conducted by NGCP or the DU. A cost-benefit analysis will have to be conducted to determine if it is worth pursuing the imposition of UC for an SGE/SGF whose generation is minimal compared to the sum of the cost of the metering facility and conducting the meter-reading.</p> <p>The above issues have to be addressed if the government is bent on pursuing the imposition of UC, which has been deferred twice covering a period of 4 years each, the</p> |

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| | | | first one of which was incorporated in the EPIRA IRR while the succeeding deferment order emanated from the Department of Energy. |
| <p>PART IV - Privatization of National Power Corporation</p> <p>RULE 21. Power Sector Assets and Liabilities Management Corporation (PSALM)</p> <p>Section 2. Purpose and Objective. The principal purpose of the PSALM is to manage the orderly sale, disposition, and Privatization of NPC generation assets, real estate and other disposable assets, and IPP contracts with the objective of managing and liquidating all NPC financial obligations and stranded</p> | <p>CHAPTER VI - Power Sector Assets and Liabilities Management</p> <p>Section 50. Purpose and Objective, Domicile and Term of Existence. The principal purpose of the PSALM Corp. is to manage the orderly sale, disposition, and privatization of NPC generation assets, real estate and other disposable assets, and IPP contracts with the objective of liquidating all NPC financial obligations and stranded contract costs in an optimal manner.</p> | <p>PART IV - Privatization of National Power Corporation</p> <p>RULE 21. Power Sector Assets and Liabilities Management Corporation (PSALM)</p> <p>Section 2. Purpose and Objective. The principal purpose of the PSALM is to manage the orderly sale, disposition, and Privatization of NPC generation assets, transmission facilities, real estate and other disposable assets, and IPP contracts with the objective of managing and liquidating all NPC financial</p> | <p>Clarity of financial obligations definition</p> <p>The proposed revision intends to clearly define NPC’s financial obligations.</p> |

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| contract costs in an optimal manner. | xxx xxx xxx | obligations and stranded contract costs in an optimal manner. | |
| <p>PART II - Structure and Operation of the Electric Power Industry</p> <p>RULE 13. Missionary Electrification</p> <p>Section 1. Guiding Principle.</p> <p>(a) Pursuant to Section 70 of the Act, the SPUG shall be responsible for providing power generation and its associated power delivery systems in areas that are not connected to the transmission system.</p> <p>(b) The Missionary Electrification function of SPUG shall be funded from the revenues from sales in the missionary areas and from the</p> | <p>CHAPTER VIII - General Provisions</p> <p>Section 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</p> | <p>PART II - Structure and Operation of the Electric Power Industry</p> <p>RULE 13. Missionary Electrification</p> <p>Section 1. Guiding Principle.</p> <p>(a) Pursuant to Section 70 of the Act, the SPUG shall be responsible for providing power generation and its associated power delivery systems in areas that are not connected to the transmission system.</p> <p>(b) The Missionary Electrification function of SPUG shall be funded from the revenues from sales in</p> | <p>Beneficiary to the UC fund for Missionary Electrification.</p> <p>Clarification on the coverage of Section 70 of the EPIRA regarding the beneficiaries of the UC-ME fund should be made. This is to ascertain whether the NPC-SPUG is the exclusive beneficiary of the UC-ME fund or beneficiaries can be any entity that performs missionary electrification function in the missionary areas not connected to the transmission system within the franchised distribution utilities, as</p> |

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| <p>Universal Charge to be collected from all electricity End-users as determined by the ERC. xxx xxx xxx</p> | <p>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>the missionary areas and from the Universal Charge to be collected from all electricity End-users as determined by the ERC.</p> | <p>determined by the DOE.</p> <p>To further clarify, the provision should be specific as to who are required to file a petition before the ERC to avail of the UC-ME.</p> <p>To date, only NPC-SPUG files a petition and avails from the UC- ME fund.</p> <p>Clarification on the following may be made:</p> <p>a) Whether NPC-SPUG is the exclusive beneficiary of the UC-ME fund, or beneficiaries include missionary areas not connected to the transmission system within the franchised distribution utilities; and</p> |

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| | | | <p>b) The personality of the petitioner who shall file/avail from the UC-ME fund.</p> <p>PSALM agrees that the MEDP prepared by DOE as part of its policy formulation function, should serve as the basis of ERC’s determination of UC-ME.</p> <p>However, clarification must be made whether DOE is contemplating that big ticket projects in missionary areas that require NEDA’s approval, should be funded by the UC-ME. If yes, the proposed amendment should be introduced with caution as it may substantially</p> |

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| | | | <p>increase the subsidy (UC-ME) that will be borne by the end-users nationwide.</p> <p>It should also be clarified whether in addition to the policy formulation and oversight function of DOE, it will include in the proposed amendment to Sec. 37 of the program implementation, which is part of NPC-SPUG and DUs’ operations.</p> |
| <p>PART IV - Privatization of National Power Corporation</p> <p>RULE 21. Power Sector Assets and Liabilities Management Corporation (PSALM)</p> <p>Section 2. Purpose and Objective.</p> <p>The principal purpose of the</p> | <p>CHAPTER VI- Power Sector Assets and Liabilities Management</p> <p>Sec. 50. Purpose and Objective, Domicile and Term of Existence.</p> <p>The principal purpose of the PSALM Corp. is to manage the orderly sale, disposition, and privatization of NPC generation</p> | <p>PART IV - Privatization of National Power Corporation</p> <p>RULE 21. Power Sector Assets and Liabilities Management Corporation (PSALM)</p> <p>(NEW PROVISION)</p> <p><u>Section 13. Dividend Declaration pursuant to</u></p> | <p>Exemption from Dividend Payment</p> <p>The OGCC, in its Opinion No. 206, Series of 2017, confirmed PSALM’s position that privatization proceeds are indeed earmarked for purposes specifically and exclusively of liquidating all NPC financial obligations</p> |

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| <p>PSALM is to manage the orderly sale, disposition, and privatization of NPC generation assets, real estate and other disposable assets, and IPP contracts with the objective of managing and liquidating all NPC financial obligations and stranded contract costs in an optimal manner.</p> <p>xxx xxx xxx</p> <p>Section 12. Claims against PSALM.</p> <p>The following shall constitute the claims against PSALM:</p> <p>(a) NPC liabilities transferred to PSALM;</p> <p>(b) Transfers from the national government;</p> <p>(c) New loans such as but not</p> | <p>assets, real estate and other disposable assets, and IPP contracts with the objective of liquidating all NPC financial obligations and stranded contract costs in an optimal manner.</p> <p>xxx xxx xxx</p> <p>Section 56. Claims Against the PSALM.</p> <p>The following shall constitute the claims against the PSALM Corp.:</p> <p>(a) NPC liabilities transferred to the PSALM Corp.;</p> <p>(b) Transfers from the national government;</p> <p>(c) New loans; and</p> <p>(d) NPC stranded contract costs.</p> | <p><u>Republic Act No. 7656</u></p> <p><u>PSALM Corp. shall be exempt from Republic Act No. 7656 on the declaration and remittance of dividends to the national government, consistent with Sections 34 and 50 of the EPIRA wherein the UC-SCC and UC-SD funds shall only be used for their intended purposes and that earnings from sale/disposal/ privatization of generation assets, IPP contracts, dividends/net profit of Transco remitted to PSALM are earmarked specifically and exclusively for the optimal liquidation of NPC financial obligations and stranded contract costs, and may only be disbursed for the claims/liabilities enumerated in Section 56 of the EPIRA.</u></p> | <p>and stranded contract costs, and may only be disbursed for the liabilities enumerated in Section 56 of the EPIRA.</p> <p>Furthermore, under Section 50 of the EPIRA, PSALM is mandated to manage all the assets and properties of NPC for the purpose of liquidating all NPC financial obligations and stranded contract costs in an optimal manner. Consequently, if the Dividend Law is strictly applied, considering that PSALM can be obliged to pay 50% of its net earnings, then the optimization in liquidating all NPC financial obligations and stranded contract costs</p> |

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| <p>limited to those in the form of bonds, convertible instruments, warrants, leases, and similar structures;</p> <p>(d) Obligations under IPP contracts transferred by NPC to PSALM;</p> <p>(e) Loans of ECs that are to be assumed by PSALM under Section 60 of the Act; and</p> <p>(f) Expenses for rehabilitation and maintenance of Agus and Pulangi Complexes.</p> <p>xxx xxx xxx</p> <p>Rule 18. The Universal Charge</p> <p>Section 6. Administration of the Universal Charge</p> <p>(a) Pursuant to the last</p> | <p>xxx xxx xxx</p> <p>Section 34. Universal Charge.</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.</p> | | <p>may not only be difficult, but would even be impossible to achieve during the remaining corporate life of PSALM.</p> <p>As regards UC-SCC, OGCC also confirms PSALM’s position that such UC-SCC, which forms part of PSALM’s revenues, is also earmarked for the payment of NPC-SCC, as stated in Section 34 of EPIRA. In fact, ERC in its Resolution No. 2, s. of 2011, recognized that Section 34 of the EPIRA mandates PSALM to create a Special Trust Fund, which shall be disbursed only for the purposes specified. UC-SCC is reserved to primarily shoulder the excess of the</p> |

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| <p>paragraph of Section 34 of the Act xxx xxx xxx. Funds shall be disbursed in an open and transparent manner and shall only be used for the intended purposes specified in Section 3 of this Rule.</p> | <p>xxx xxx xxx</p> | | <p>contracted cost of electricity under its eligible contracts with IPPs over the actual selling price of the contracted energy output of such contracts in the market. Thus, technically, UC-SCC is not a revenue of PSALM since PSALM is only considered as “administrator of the fund” mandated to disburse only for the purposes stated in Section 34 of the EPIRA within a reasonable period. Hence, UC-SCC shall also be excluded from PSALM’s computation of “net earnings” as defined in the Dividend Law.</p> <p>The OGCC confirms PSALM’s position that</p> |

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| | | | <p>income from sale/disposal of assets, IPPA, Dividends form TransCo Concession and UC-SCC, including UC-SD, should not form part in the computation of “net earnings” as defined in the Dividend Law and the payment of PhP29.872 billion to the national government as dividends can impair PSALM’s viability and its purpose of liquidating NPC debts in an optimal manner during its corporate life may be defeated, and would even be impossible to achieve.</p> <p>However, this does not exempt PSALM from complying with the requirements of the Dividend Law. Other revenues or income of</p> |

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| | | | PSALM, not earmarked for specific purpose or allotment, should still be computed for purposes of determining its “net earnings” and remittance of dividends to the national government. |