



National Association of Electricity Consumers for Reforms
No. 10, Bayside Court Compound, 680 Quirino Avenue Tambo
Parañaque City 1700 Philippines
Phone No.: +63.2.8530731
TeleFax No.: +63.2.8530732
<http://www.nasecore.org>
eMail: nasecore2003@yahoo.com

February 15, 2010

HON. ANGELO T. REYES
Secretary, Department of Energy
Energy Center, Merritt Road
Fort Bonifacio, Taguig City

Dear Secretary Reyes,

Greetings!

We would like to commend you for the immediate and positive response of the DOE in ensuring that there will be no repetition of the "rotating brownouts" which occurred last January 25, 2010 reportedly caused by the breakdown of SUAL plant and non-operation of a number of Independent Power Producer (IPP) plants.

It is unfortunate, however, that under Section 45 (a) of the EPIRA, a company or related group can own, operate or control thirty percent (30%) of the installed generating capacity of a grid and/or twenty-five percent (25%) of the national installed generating capacity.

This provision on cross ownership allows the owners of distribution utilities (DU) like the Manila Electric Company (MERALCO) and Visayan Electric Corporation (VECO), the unfair advantage of acquiring their own generation plants and secure a Power Supply Agreement (PSA) with the DU they control for the guarantee of a market.

This advantage of investing in the generation sector and being guaranteed a market through a PSA is exclusive to those who have control of a distribution utility to the prejudice and disadvantage of others who have the competence and capital to go into the generation sector but have no control of any DU.

Thus, we find this cross-ownership provision of the EPIRA the biggest stumbling block to the entry of potential investors into the construction of new generation plants that will address and avert the possibility of a power crisis in the country.

Worse, this unfair advantage can be over stretched to its objectionable/harmful limit by a DU like MERALCO which controls 75% of the Luzon market which has a demand of about 6,800 MW.

FIRSTGEN, MERALCO's sister company which owns several generation plants can boast of a 2,880MW capacity but which may have already reached the limitation on cross-ownership.

But with the entry of two (2) big investors (First Metro Pacific Corp. and SMB), this objectionable over-stretching of the capacity limitation on the cross-ownership provision of the EPIRA can again be taken advantage by MERALCO, thus, making it impossible to establish a level playing field which is a mandate of the DOE.

However, with the powers vested upon the Department of Energy (DOE) by Section 37 of the Electric Power Industry Reform Act (EPIRA) and with your able stewardship, we are confident the DOE can overcome this MERALCO advantage and successfully restructure the power industry and be able to ensure the reliability, quality, and security of supply of electricity in Luzon, Visayas, and Mindanao .

First, we believe DOE has enough powers to cultivate and propel the interest of prospective investors in the construction of the much needed generation plants even if DOE should decide to encourage ABSOLUTE PROHIBITION ON CROSS-OWNERSHIP between and among companies engaged in the operation of a distribution utility (DU) like the MERALCO, VECO or DLPC and a generation plant.

We believe the DOE can do this via a no-nonsense exercise of its powers under Section 37 of the EPIRA.

For instance, in Section 37(par. d,l,p and q) of the EPIRA, the DOE has the power "(d) to ensure the reliability, quality and security of supply of electric power" and "(l) formulate and implement programs, including a system of providing incentives and penalties, for the judicious and efficient use of energy in all energy-consuming sectors of the economy".

In sum, to "(p) formulate such rules and regulations as may be necessary to implement the objectives of this Act; and, "exercise such other powers as may be necessary or incidental to attain the objectives of this Act".

Specifically, DOE can choose from any prospective new investor in generation plants (which it sees as having both the technical and financial capabilities) and direct any distribution utility (DU) under Section 37 to enter into a Power Supply Agreement with this investor.

Thus, DOE will be in control (not the other way around) and DOE will be able to effectively do its mandate which is to ensure the reliability, quality and security of supply of electric power nationwide.

Clearly, the Asian Development Bank/World Bank/USAID-introduced concept of privatization that will usher in retail competition is indubitably becoming a failure in the Philippines because of the cross-ownership provision of the EPIRA.

We hope the DOE, ADB, WB and USAID will collectively accept the very tall challenge of finding ways to help ensure the success of the ongoing restructuring of the power industry.

For its part, NASECORE offers its partnership in the effort to ensure the successful restructuring of the power industry where the CONSUMER is KING!

We look forward to hearing from you soonest on the exercise by DOE of its powers under Section 37 of the EPIRA.

Thank you so much.

Very truly yours,

PETE L. ILAGAN
President

Cc: **Hon. Juan Ponce Enrile**, Senate President
Hon. Prospero Nograles, Speaker- House of Representatives
Mr. Bert Hoffman, Country Director-World Bank
Mr. Neeraj Jain Country, Director- Asian Development Bank
Mr. Jon D. Lindborg, Mission Director-USAID
Mr. Francis C. Chua, Philippine Chamber of Commerce
Mr. Austen Chamberlain, American Chamber of Commerce
Mr. Hubert D' Aboville, European Chamber of Commerce