

## ■ POLITICAL ECONOMY PROGRAM

# EPIRA BEFORE AND AFTER

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## INTRODUCTION

The paper investigates the history of power generation, distribution, and supply of electricity. In the historical approach to the problem of electricity, it adopts a narrative that includes people, and not just abstract ideas and policy statements. While important from an institutional point of view, offices, republic acts, and executive orders, do not explain much the political dynamics involved.

But as Barbara Tuchman advises, the historical narrative is an attempt to put faces of persons, circumstances, places and actual events and how they actually happened, what she would describe as “corroborative details.” An aim of this paper is to reenact the actual debate and hearings in Congress in the formulation Republic Act No. 1186 or the Electric Power Industry Reform Act (EPIRA), asking who were its champions and what was its rationale.? In the process of examining the proceedings, we could detect some “cracks in the parchment curtain” as William Henry Scott would put it, revealing the interaction of vested interests and the public behind the piece of legislation now under our review.

“Before the EPIRA” refers to the debates around the passage of the EPIRA. The energy crisis going on post-EDSA I Revolution took the extraordinary powers of the presidency to solve it. The legislative hearings uncovered the opposing sectors of society—particularly

the business sector on the one hand represented by Raul Concepcion, which supported whatever may be needed in order to solve the brownouts, and the non-government organizations (NGOs) and progressive blocs which thought of the grant of emergency powers as conditions for the eventual declaration of Martial Law. Among those who spoke against the grant of emergency power were the religious sector, the influential The Association of Major Religious Superiors in the Philippines (AMRSP) led by Sr. Pia Lansang, progressive NGOs, and communities where the coal-generating proposed plants would be established such as those in Calaca, Batangas, and Masinloc, Zambales.

Through compromise, emergency powers were delimited in scope. The business community did not see any problem removing the term “emergency powers” as a condition for the passage of the law, since it needed just the assurance of the 500-megawatt power source to ensure manufacturing and commercial operations. It insisted however on the need for the reorganization of the National Power Corporation (NPC), the agency for the creation of power industry players known as Independent Power Producers (IPP). The negotiated contracts with these private power producers were supposedly transparent with the Congress having an Oversight Committee looking into the bid process.

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This band aid solution resulted in high costs of electricity leading to the next period in our narrative, the EPIRA story.

“After the EPIRA” refers to the abolition of the IPPs and reforms that divided the electric industry into the four different aspects: generation, transmission, distribution, and retail. The different aspects had the different activities given the price which were unbundled. For purposes of transparency, the different aspects are reflected in the bill paid for by the consumer.

The creation of the EPIRA also meant the dismantling of the NPC. Given its huge assets and liabilities, the process involved complex questions on who would assume the debts and losses. Another question revolves around who the beneficiaries would be for its privatization.

To translate the changes in the system from the public utility or government control to privatization, the narrative will make use of the proceedings of the Congress and the Senate. In effect, we will provide face to the institutional development of the electric industry at its beginning and detect why the EPIRA developed as it was and failed in delivering its main goal of lowering electricity costs.

## ELECTRICITY COMES TO THE PHILIPPINES: COLONIAL PUSH AND ILUSTRADO DREAMS

Towards the beginning of 1895, the Spanish colonial government held the *Exposicion de Filipinas* in what is now Roxas Boulevard. The Governor General, the VIPs of Manila, and the people in attendance witnessed the switching on of the electric power that was to light the city streets of Intramuros and its suburbs of Ermita and Malate. It was meant to show that the Philippine colony was in step with the latest scientific and technological developments of that Century of Progress.

The ambience of the 19<sup>th</sup> century embraced progress. The rich classes were at home with the culture of high tech. Manila was already interconnected with Europe through a marine cable that allowed transmission of messages via telegraph. Travel was by modern ships powered by steam (*de vapor*). It was coincidentally a period of Revolution as these developments made possible for the rich natives of the colony to study in European universities and be exposed to its liberal spirit. The telegraph was crucial not

only to business in making quick transfer of payments by banks such as Hong Kong Shanghai Bank Company (HSBC), but more so to *ilustrados* or the educated class staying in Europe to study. Longer stays meant one needed a safe way to remit or receive money through the banks. They could receive their allowance from their parents through telegraphic bank transfers.

Electricity was made available in 1895 by the Sociedad Mercantil, later acquired by Tabacalera. It was just a year before the eruption of the Revolution of 1896. It had been observed by scholars and literati alike (among them, Nick Joaquin, Culture and Society) that progress and revolution coincide with one another. Technological progress enhances imagination which reshapes and transforms the status quo.

The unconventionality of electricity immediately became popular from its inception, as industry leaders thought of its many uses in manufacturing, industry, and transportation. The electricity at the Manila Exposition was not well-described whether it was DC or AC current. It would take a few years later that the issue was resolved in favor of the AC system.

The Philippines could have initially favored a DC system since its major use, upon its acquisition from Tabacalera by the Manila Electric and Light Rail Company, (MERALCO) was for the operation of the *tranvia* or light railway in the city and suburbs.

The choice of system had some technical considerations. The DC system was limited in expanse and required bigger wires to make it safe and efficient. The drop in voltage from the generating source required the invention of transformers, with the source generating higher voltage to compensate for the drop in voltage upon transmission to areas farther from the source. Having resolved this, it was also discovered that the drop in voltage would depend on whether the load is in series or parallel. These were later resolved by engineers in Germany and England. The matter of base load and peak load were solved with the earliest generators being run through hydro—the Niagara Falls being the first in the United States followed by similar energy sources elsewhere.

Following these examples in the US, the Commonwealth government of the Philippines formed the NPC aiming to build hydroelectric plants. But beyond exploring and planning for these projects, it did not accomplish much as

the Second World War overtook their plans. After the war, using some rehabilitation money and having the demand for power from the industrial and manufacturing sector, some hydroelectric dams were built, among them the Ambuklao Hydro in Benguet and the Agus dam in Iligan, Lanao del Norte.

Hence, from the beginning of its discovery and the inventions to its commercialization, the issues that had to be resolved, were in the areas of generation, transmission, distribution, and supply.

## THE EPIRA DEBATES

The public hearing on the EPIRA beginning May 16, 2000 was a virtual academic round table discussion on electric power. The participants were experts, including Federico Puno, a representative of the NPC; MERALCO vice president, Rodolfo S. Quetua; and the electric cooperatives. The senators in attendance included Juan Ponce Enrile, Francisco Tatad, Sergio “Serge” Osmena, Teofisto T. Guingona Jr., Aquilino Pimentel Jr., and Raul Roco. The Chairman of the Committee on Energy and sponsor of the EPIRA was John Henry “Sonny” Osmena, who together with Ramon Magsaysay Jr. had electrical engineering backgrounds.

John Osmena’s sponsorship speech was a virtual state of the electric power conditions of the country and the problem facing the NPC. With more than USD 200 billion debt both from foreign and local creditors, Congress wanted the agency dismantled and privatized. How it came to this, and how to lessen the burden on the end users or consumers was the mission of the Senate in its proposed reform act under discussion.

Drama was added to the exercise when after reading his sponsorship speech, the floor darkened due to a brownout. It underlined the fact that after almost a decade after the passage of the Energy Act of 1994, under the then-president Fidel Ramos, the problem of electric power brownouts and high electricity costs remained. Indeed, there was a sense of immediacy.

Malacañang, under the then-president Joseph Estrada had a feel of it. The certification as to how to communicate this to the Senate without creating undue influence on the perception of the public was found wanting. Two bills were certified urgent, with one calling the grant of emergency powers to the president to solve

the problem of electric power. The other, not wanting to fan the embers of people power, stated that the issues at hand could be handled in the usual ways.

In the session on May 16, 2000, Sonny Osmena adverted to the fact that the EPIRA was the last of the bills being taken up in the Senate, the first two being the creation of a Department of Energy and the bill on TransCo., the grid transmission company. On the deck were the bills creating the Energy Regulatory Board (ERB), and the bill on the restructuring or privatization of the NPC.

## KEY DISCUSSIONS

### NPC's Financial Liabilities

Senator Guingona asked NPC president Puno for a detailed account of the agency’s total liabilities, stranded costs, and the contracts associated with them. Before Puno could answer, Senator Pimentel sought clarification on the term “stranded costs,” which he deemed unfamiliar to ordinary Filipinos. Puno explained that stranded costs referred to unrecovered liabilities, such as the gap between proceeds from selling NPC’s assets and its outstanding debts. He also described unrecovered contract costs with IPPs, where contracted power prices exceeded market prices.

### Subsidies and Politics

Subsidies, particularly in Mindanao, sparked significant debate. Despite Mindanao’s access to cheap hydroelectric power from the Agus and Pulangi plants, it received a subsidy of 27 centavos per kilowatt-hour. Senators questioned why subsidies were necessary, with Chairman Osmena attributing it to political considerations.

### Stranded Costs and Transparency

The hearing revealed that stranded costs included outdated and inefficient projects, such as dendrothermal plants initiated during Imelda Marcos’s tenure. Overpriced “take-or-pay” contracts signed in the final days of Corazon Aquino’s administration and replicated during Ramos’s presidency further contributed to high electricity rates. These arrangements obligated consumers to cover costs even for unused power capacity.

## Unbundling of Costs

Puno explained the unbundling of generation, transmission, and distribution costs to enhance transparency. For example, Luzon's unbundled rate comprised generation charges, transmission fees, ancillary services, and a system benefit charge, which included stranded costs. He also highlighted subsidies for smaller grids in Visayas and Mindanao.

## Security and Privatization

Concerns about security were raised in the context of privatization. Notably, the National Grid Corporation of the Philippines (NGCP), responsible for the transmission grid, had 40 percent ownership by Chinese entities. Despite restructuring, the NPC retained control of major hydroelectric and geothermal plants, such as Agus, Pulangi, Palimpinon, and Tongonan, and continued to support electric cooperatives.

## Consumer Burden and Reform Challenges

The hearings emphasized that consumers bore the brunt of stranded liabilities and high electricity costs. Enrile suggested issuing consumers equity shares in the privatized entities, akin to the model used by PLDT, allowing them to benefit from their financial contributions. However, this proposal was not pursued further.

## Presentation of the Bill

After the energy hearings, the Senate Committee on Energy was ready to present the bill entitled "An Act to Modernize and Reform the Electric Power Industry." The Committee Chairman, John Henry Osmeña, served as the bill's primary sponsor. His sponsorship speech provided a comprehensive overview of the ongoing energy crisis and the objectives of the proposed reform.

Osmeña explained the existing structure of the power industry. Nationwide electricity generation remained under the exclusive jurisdiction of the government through the NPC until 1992. Meanwhile, transmission was an NPC monopoly. Distribution "involved multiple entities, with Meralco as the largest, supplying 60 percent of the country's electricity and 74 percent of the power generated in Luzon." Moreover, "there were smaller private distribution companies and 127 rural electric cooperatives (RECs) created during the Marcos regime."

He emphasized that modernizing and restructuring the power industry required creating opportunities for private enterprises to participate in electricity generation. The entry of IPPs in 1992 marked a significant shift, with IPPs using private capital to build power plants under various Build-Operate-Transfer (BOT) schemes. However, the existing setup still depended heavily on NPC, which contracted most of the electricity generated by IPPs and resold it to distribution networks.

## The Vision for Deregulation and Restructuring

Osmeña outlined the framework for a restructured and privatized power industry:

1. Generation Companies (GENCOs):
  - The bill proposed the creation of a free market for power generation. GENCOs would become merchant plants, taking market risks without guaranteed purchase agreements from NPC.
  - NPC's GENCOs would be broken up, although the details were left to transitory provisions for further debate.
  - Full deregulation would require the release of IPPs from their contracts, costing the government an estimated USD 250 billion.
2. Transmission (TRANSCO):
  - Transmission would remain under a government-controlled monopoly, with TRANSCO established as a separate corporation.
  - The government would own 60 percent of TRANSCO, while a strategic investor could acquire up to 40 percent to fund the USD 10 billion needed for system expansion over the next eight years.
3. Distribution and Open Access:
  - The bill introduced open access, allowing customers with a load of 100 kilowatts or greater to purchase electricity directly from GENCOs.
  - This feature would be phased in gradually, starting with 15 percent of a utility's load in the first year and increasing over time.

- Cross-subsidies, which distorted electricity rates, would be removed and replaced with a levy mechanism to support low-income consumers and inter-grid equalization.

#### 4. Unbundling of Costs:

- Electricity bills would be itemized to reflect charges for generation, transmission, distribution, subsidies, and other levies. This transparency aimed to foster competition and consumer choice.

### Addressing Stranded Assets and Liabilities

Osmeña acknowledged the financial challenges posed by NPC's liabilities and stranded costs:

- NPC's debts exceeded the book value of its assets, leaving significant stranded liabilities.
- IPP contracts accounted for a Php 430 billion liability, exacerbating the financial burden.
- The proposed framework aimed to equitably address these issues while minimizing the impact on consumers.

### The Consumer's Benefit

Osmeña addressed expectations regarding consumer benefits with lower electricity costs resulting from free-market competition. However, he noted the need for careful management of stranded liabilities and debt. Urging the Senate to approve the bill, he emphasized its potential to modernize and restructure the electric power industry, foster competition, and pave the way for a sustainable and efficient energy sector.

## CONCLUSION

The EPIRA represents a pivotal moment in the history of the Philippine energy sector, marking a transition from a state-controlled, monopolistic framework to a restructured and privatized industry aimed at fostering competition, transparency, and efficiency. The bill's presentation and subsequent debates in the Senate reflected the complexities of balancing consumer protection, government liabilities, and private sector involvement in the energy industry.

The EPIRA sought to address longstanding issues of inefficiency, high electricity costs, and the financial burdens of stranded assets. It introduced transformative changes, including the creation of a competitive market for power generation, the establishment of open access for electricity consumers, the unbundling of costs for greater transparency, and the removal of cross-subsidies to create equitable pricing structures. While promising long-term benefits, such as reduced electricity costs and enhanced service delivery, its architects were forthright about the immediate challenges, particularly the need to manage NPC's debts and liabilities and the substantial costs associated with IPP contracts.

As the hearings revealed, the success of the EPIRA hinged on its ability in balancing economic realities with social imperatives. Policymakers acknowledged the importance of subsidies for vulnerable sectors while advocating for a free-market environment that would drive innovation and efficiency. Furthermore, the discussions underscored the critical need for strategic investments in infrastructure, such as grid interconnection and transmission expansion, to realize the vision of a unified national power grid.

Ultimately, the EPIRA was not just a legislative framework for restructuring the energy sector; it was a bold attempt to reconcile the conflicting demands of political, economic, and social forces. Its passage symbolized a commitment to reform, even as it recognized that the road to a fully competitive and efficient energy market would be fraught with challenges. The act laid the groundwork for a new era in Philippine energy policy, where the interplay of government oversight, private enterprise, and consumer rights continue to shape the nation's power landscape.

## REFERENCE

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