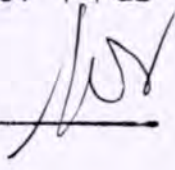




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SEVENTEENTH CONGRESS OF THE ]  
REPUBLIC OF THE PHILIPPINES ]  
FIRST REGULAR SESSION ]

SENATE

Senate Bill No. 1308

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Introduced by Sen. Win Gatchalian

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AN ACT  
INSTITUTIONALIZING REFORMS  
IN THE PROCUREMENT BY DISTRIBUTION UTILITIES  
OF SUPPLY FOR THE CAPTIVE MARKET

EXPLANATORY NOTE

Republic Act No. 9136 or the Electric Power Industry Reform Act of 2001 declares it the policy of the State to ensure the quality, reliability, security, and affordability of the supply of electric power, to ensure transparent and reasonable prices of electricity in the regime of free and fair competition and full public accountability, and to protect the public interest as it is effected by the rates and services of electric utilities and other providers of electric power.

The use of a competitive process to cultivate private sector participation in the generation sector has long been recognized by the Department of Energy (DOE). In 2004, the first Competitive Selection Process (CSP) was mandated in National Power Corporation – Small Power Utilities Group (NPC-SPUG) areas.<sup>1</sup> In 2015, the scope of the CSP was extended to all distribution utilities in procuring their respective power supply agreements.<sup>2</sup> The DOE and the Energy Regulatory

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<sup>1</sup> DOE Circular DC2004-01-001 entitled "Prescribing the Rules and Procedures for Private Sector Participation in Existing NPC-SPUG Areas Pursuant to Rule 13 of the Implementing Rules and Regulations of the Electric Power Industry Reform Act of 2001." 26 January 2004.

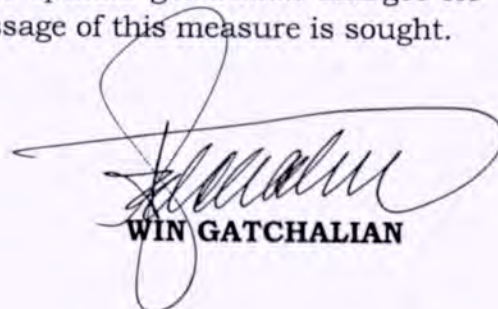
<sup>2</sup> DOE Circular DC2015-06-008 entitled "Mandating All Distribution Utilities to Undergo Competitive Selection Process (CSP) in Securing Power Supply Agreements (PSA). 11 June 2015.

Commission (ERC) then released a Joint Resolution<sup>3</sup> entrusting to the latter the responsibility of issuing the appropriate regulations to implement the CSP and pending the issuance of such regulations, ERC has allowed distribution utilities to conduct CSPs on their own, subject to the review of the regulatory body.<sup>4</sup>

Towards this end, this bill seeks to institutionalize the CSP in order to enhance *first*, competition and *second*, transparency.

For competition, a centralized CSP, to be conducted by a Third Party Auctioneer, shall be required for all the uncontracted demand of the captive market. Also, the CSP can only be undertaken if it is in accordance with the approved Power Supply Procurement Management Plan of each distribution utility. While for transparency, power supply agreements, contracts, and forms shall be standardized for ease of review and comprehension. Furthermore, these, as well as other information related to the CSP, shall be available to the public through an online electronic portal.

All the foregoing are towards the enhancement of the security of supply and ultimately the attainment of optimal generation charges for the consumer. Thus, the immediate passage of this measure is sought.



**WIN GATCHALIAN**

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<sup>3</sup> DOE ERC Joint Resolution No. 1 entitled "A Resolution Enjoining All Distribution Utilities to Conduct Competitive Selection Process (CSP) in the Procurement of Supply for their Captive Market". 20 October 2015.

<sup>4</sup> ERC Resolution No. 13 entitled "A Resolution Directing All Distribution Utilities (DUs) to Conduct a Competitive Selection Process (CSP) in the Procurement of their Supply to Captive Market." 4 November 2015.





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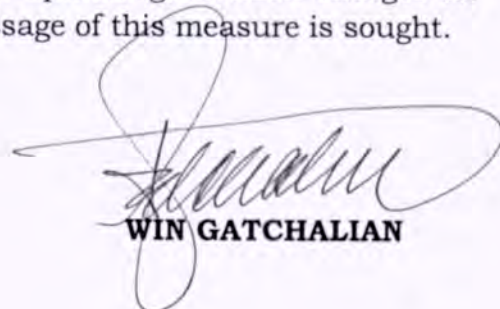
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SEVENTEENTH CONGRESS OF THE ]  
REPUBLIC OF THE PHILIPPINES ]  
*First Regular Session* ]

SENATE

S.B. No. 1308

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Introduced by SEN. WIN GATCHALIAN

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AN ACT  
INSTITUTIONALIZING REFORMS  
IN THE PROCUREMENT BY DISTRIBUTION UTILITIES  
OF SUPPLY FOR THE CAPTIVE MARKET

*Be it enacted by the Senate and the House of Representatives of the  
Philippines in Congress assembled:*

CHAPTER I  
GENERAL PROVISIONS

1  
2  
3  
4 SECTION 1. Title. – This Act shall be known as the “Energy  
5 Procurement Act of 2016”.

6  
7 SECTION 2. Declaration of Policy. – It is hereby declared the policy  
8 of the State to ensure the quality, reliability, security, and affordability of

1 supply of electric power. To protect public interest, as it is affected by the rates  
2 and services of electrical utilities and other providers of electric power, the  
3 State recognizes that a Competitive Selection Process in the procurement of  
4 Power Supply Agreements by distribution utilities engenders transparency,  
5 enhances security of supply, and ensures stability of electricity prices to  
6 captive electricity end-users in the long term.

7

8         **SECTION 3. Scope and Application.** - This Act shall apply to any  
9 distribution utility that owns, operates, or controls one or more distribution  
10 systems in the main grid and off-grid in the procurement of supply for their  
11 captive market, the manner in which the procurement is to be undertaken, the  
12 review process to be required, and the timelines to be observed in such  
13 processes.

14

15         **SECTION 4. Definition of Terms.** - For purposes of this Act, the  
16 following shall be defined as:

- 17         a) Aggregated Demand - refers to the distribution utilities' consolidated  
18 level of hourly, daily, monthly, or annual electric power demand;
- 19         b) Captive Market - refers to the electricity end-users who do not have the  
20 choice of a supplier of electricity, as may be determined by the ERC, in  
21 accordance with EPIRA;
- 22         c) Competitive Selection Process (CSP) - refers to a process wherein a  
23 generation company is selected through transparent and competitive  
24 bidding undertaken by a distribution utility to secure supply of power at  
25 the least cost;
- 26         d) Competitive Bidding - refers to a method of procurement which is open  
27 to participation by generation companies and distribution utilities and  
28 which consists of the following process: advertisement or publication,



- 1 pre-qualification conference, eligibility screening, determination of price  
2 for the procurement through competition of participating bidders,  
3 evaluation, post-qualification, and award of contract;
- 4 e) Demand Aggregation – refers to the process where distribution utilities  
5 group together to combine their demand or energy requirements in order  
6 to subject it to a CSP;
- 7 f) Distribution Utility – refers to any electric cooperative, private  
8 corporation, government-owned utility, existing local government unit  
9 which has an exclusive franchise to operate a distribution system in  
10 accordance with EPIRA, multi-purpose cooperatives duly authorized by  
11 appropriate government agencies to operate electric power system, or any  
12 other duly authorized entity engaged in the distribution of electricity to  
13 captive customers;
- 14 g) Energy Regulatory Commission – refers to the regulatory body created  
15 pursuant to EPIRA;
- 16 h) EPIRA – refers to Republic Act No. 9136, otherwise known as the Electric  
17 Power Industry Reform Act of 1991;
- 18 i) Electric Cooperative – refers to a distribution utility organized pursuant  
19 to Presidential Decree No. 269, as amended, or as otherwise provided in  
20 EPIRA;
- 21 j) Generation Company – refers to any person or entity authorized to  
22 operate facilities used in the generation of electricity;
- 23 k) Grid – refers to the high voltage backbone system of interconnected  
24 transmission lines, substations and related facilities;
- 25 l) Power Supply Agreement (PSA) – refers to a contract between a  
26 generation company and a distribution utility whereby the latter  
27 purchases power from the former;
- 28 m) Power Supply Procurement Management Plan (PSPMP) – refers to a  
29 distribution utility’s assessment of a variety of its demand side and  
30 supply side resources to cost-effectively meet customer electricity service  
31 needs; and





- 1           vii) An unbundled tariff structure including but not limited to capacity  
2           fees, variable and fixed operating and maintenance fee, fuel fee,  
3           and others, including the derivation of each component, base fee  
4           adjustment formula, if any,  
5           viii) The form and method of payment,  
6           ix) Bonds and guarantees,  
7           x) Penalties for delay, non-performance of contract, and breach of  
8           confidentiality, and  
9           xi) For greenfield power generation projects, the grid impact study  
10          and/or similar requirements prescribed by DOE;  
11          d) Standardized PSA and any other necessary contracts for the CSP;  
12          e) Qualification criteria to determine the winning bidder;  
13          f) Procedure for the Swiss Challenge Procurement;  
14          g) Timelines to be observed;  
15          h) Instances, requirements, and procedures for demand aggregation;  
16          i) Procedure and requirements for expedited CSP for emergency  
17          procurements by distribution utilities; and  
18          j) Other such procedures that will ensure an open, transparent, and  
19          competitive bidding.

20           The CSP framework shall be regularly reviewed by the DOE to reflect  
21           existing policies and to facilitate a more streamlined and transparent CSP for  
22           distribution utilities.

23           The ERC shall have the power to review whether the parties have  
24           complied with the requirements of CSP established under this Act, its IRR, and  
25           the CSP framework, as provided for under Section 14 of this Act.

26  
27           **SECTION 6. Swiss Challenge Procurement.** – Upon two (2) failed  
28           CSPs, a generation company may submit an unsolicited proposal to a  
29           distribution utility which shall then invite competitive counterproposals in

1 such manner as may be provided in the IRR and CSP framework. Thereafter,  
2 the original bidder shall be given the opportunity to match the best bid which  
3 comes out of the counterproposals.

4 A CSP is considered failed when, during its conduct, any of the following  
5 circumstances exists:

- 6 a) Only one generation company submitted an offer; or
- 7 b) Generation companies failed to meet the requirements to participate as a  
8 bidder, as determined by the Third Party Auctioneer.

9 Upon failure of each CSP, the Third Party Auctioneer shall submit a report  
10 to the DOE and the ERC, the contents of which shall be provided in the IRR.

11

12 **SECTION 7. Power Supply Procurement Management Plan.** – Every  
13 distribution utility shall develop its Power Supply Procurement Management  
14 Plan (PSPMP) and undertake a cost-benefit analysis of the power supply  
15 requirements for the captive market taking into consideration, among others,  
16 prevailing price in the market, energy demand forecasting, load matrix, and  
17 existing DOE policies.

18 The PSPMP shall be updated annually and approved by the Board of  
19 Directors of the distribution utility and submitted to the ERC and DOE on or  
20 before the 31<sup>st</sup> of March every year. In the case of electric cooperatives, the  
21 report shall also be submitted to the NEA. In all cases, ERC, DOE, and NEA  
22 shall act on the submission within sixty (60) days from receipt of the PSPMP.  
23 For purposes of transparency, the approved PSPMPs shall be posted by the  
24 DOE in the electronic portal as provided for under Section 12 of this Act.

25 The contents of the PSPMP shall include but shall not be limited to the  
26 following information:



- 1 a) Planning and acquisition period (short-term, medium-term, and long-
- 2 term);
- 3 b) Demand forecast, forecasted load profile, and load duration curve, if
- 4 applicable;
- 5 c) Additional resource requirements, if applicable;
- 6 d) Resource acquisition plan, if applicable;
- 7 e) Demand side management programs, if applicable;
- 8 f) Mandated renewable energy quota pursuant to the incentive mechanisms
- 9 under the Renewable Energy Act, if applicable; and
- 10 g) Any additional information that DOE may require.

11 No CSP shall be undertaken unless it is in accordance with the approved  
12 PSPMP of a distribution utility. In cases of aggregated demand, concerned  
13 distribution utilities shall prepare documentation to demonstrate that the  
14 demand subjected to CSP is consistent with their respective approved  
15 individual PSPMPs.

16

17 **SECTION 8. Third Party Auctioneer.** – The Third Party Auctioneer  
18 shall undertake the CSP in accordance with this Act, its IRR, and the CSP  
19 framework and shall ensure that parties abide by the standards set forth in the  
20 same. Within sixty (60) days after the close of a competitive bidding, the Third  
21 Party Auctioneer shall prepare a CSP Monitoring Report and submit it to the  
22 ERC as part of its CSP review process. The DOE and ERC shall provide the  
23 contents and coverage of the said report in the IRR.

24 The Third Party Auctioneer shall be the Market Operator: *Provided*, That  
25 after five (5) years from the effectivity of this Act, the DOE shall review the  
26 performance of the Market Operator according to a Performance Monitoring  
27 and Evaluation Plan (PMEP) incorporated in the CSP framework.

1           Should the DOE find that the Market Operator did not substantially meet  
2 the performance targets in the PMEPP, it may procure a new Third Party  
3 Auctioneer in compliance with all laws and IRRs related to government  
4 procurement. In this case, the DOE may determine the terms of reference of  
5 the new Third Party Auctioneer: *Provided*, That it shall be a team of private  
6 individuals or a private corporation duly recognized in the Philippines, with no  
7 direct or indirect interest in any generation company and/or distribution  
8 utility, having vast experience in competitive bidding, comprehensive  
9 knowledge of the electric power industry, and a demonstrated ability to manage  
10 and conduct the CSP while complying with the terms of reference and other  
11 additional qualifications provided for in the CSP framework: *Provided, further*,  
12 That the performance of the new Third Party Auctioneer, and any other Third  
13 Party Auctioneer thereafter, shall be reviewed by the DOE after every five (5)  
14 years according to the PMEPP.

15

16           **SECTION 9. Observers.** – The Third Party Auctioneer shall, in all  
17 stages of the CSP, ensure that there shall be present at least one (1) observer  
18 from the DOE, ERC, the Philippine Competitive Commission (PCC), or the  
19 Commission on Audit (COA), or in the case of electric cooperatives, a member  
20 of the NEA, in its proceedings: *Provided*, That the said person/s do not have  
21 any direct or indirect interest in the PSAs subject to CSP.

22           The observers shall keep all information acquired by virtue of the  
23 proceedings confidential while the competitive bidding is still on going. Any  
24 observer who commits a breach of confidentiality shall be subject to the  
25 administrative disciplinary action under this Act, without prejudice to any civil  
26 or criminal action. Upon finality of the competitive bidding, the observer/s  
27 shall, jointly or separately, file a report indicating their observations on the  
28 procurement activities and submit it to DOE and ERC.

29



1           **SECTION 10. Standardization of Contracts, Processes, and**  
2 **Forms.** – All PSAs, contracts, forms and documents used during the CSP shall  
3 be standardized and unified. For this purpose, the DOE, with the assistance of  
4 ERC, shall develop generic forms, standard bidding documents, PSAs, and  
5 other contracts which, upon issuance, shall be mandatory among generation  
6 companies and distribution utilities.

7  
8           **SECTION 11. Access To Information.** – In all stages of CSP, the  
9 generation companies and distribution utilities shall ensure equal access to  
10 information: *Provided*, That prior to their official release, no aspect of the  
11 documents used in any CSP shall be divulged or released to any prospective  
12 generation company, distribution utility, or any other person or entity having  
13 direct or indirect interest in the PSAs subject of CSP.

14  
15           **SECTION 12. Electronic Portal.** – To further ensure transparency  
16 and efficiency in all transactions, information and communications technology  
17 shall be utilized in the conduct of CSP. The DOE shall develop a portal which  
18 shall serve as the primary source of information on CSP, including the PSPMP:  
19 *Provided*, That the DOE shall ensure the integrity, security, and confidentiality  
20 of all documents submitted through the portal.

21  
22           **SECTION 13. Jurisdiction.** – The ERC shall have primary and  
23 exclusive jurisdiction over all contests and cases involving and relating to the  
24 conduct of the CSP.

25  
26           **SECTION 14. ERC Review of PSAs.** – For PSAs executed pursuant to  
27 this Act and its IRR, the ERC review shall be limited to a determination of

1 whether or not there has been strict compliance with all the requirements  
2 established: *Provided*, That the ERC may issue additional regulations to apply  
3 to:

- 4 a) The review of PSAs procured through a Swiss Challenge;
- 5 b) Cases where the parties to the PSA under review are related parties; or
- 6 c) Other analogous cases.

7 In the three (3) abovementioned cases, the review will call for a cost-  
8 based evaluation of the agreed pricing structure or winning bid as reflected in  
9 the PSA or benchmarking of generation prices.

10 The ERC shall issue the final decision on its review of all PSAs submitted  
11 to it pursuant to this Act within thirty (30) days from filing thereof.

12

13

14

15

### CHAPTER III PROHIBITED ACTS AND PENALTIES

16 **SECTION 15. Administrative Offenses.** – The following acts, when  
17 committed by a government official and/or employee, shall be considered  
18 administrative offenses:

- 19 a) Breach of confidentiality as provided under Section 9 of this Act;
- 20 b) Willful acts which delay the operationalization of the CSP; and
- 21 c) Failure to comply with the mandated timelines prescribed to perform  
22 specific acts defined under this Act.

23

24 **SECTION 16. Penalties.** – Any person found guilty of the Act stated in  
25 Sec. 15 (a), on the first offense shall be suspended from service for six (6)  
26 months and one (1) day to one (1) year without pay, and on the second offense



1 shall be dismissed from service and shall be perpetually disqualified from re-  
2 employment in any government agency or instrumentality.

3 Any person found guilty of the Act stated in Sec. 15 (b), on the first  
4 offense shall be suspended from service for six (6) months and one (1) day to  
5 one (1) year without pay, and on the second offense shall be dismissed from  
6 service and shall be perpetually disqualified from re-employment in any  
7 government agency or instrumentality.

8 Any person found guilty of the Act stated in Sec. 15 (c), on the first  
9 offense shall be reprimanded, on the second offense shall be suspended from  
10 service for one (1) to thirty (30) days, and on the third offense shall be  
11 dismissed from service and shall be perpetually disqualified from re-  
12 employment in any government agency or instrumentality.

13

14

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16

#### CHAPTER IV FINAL PROVISIONS

17 SECTION 17. *Transitory Provision.* – Pending the creation and  
18 effectivity of the IRR and the CSP framework, the existing ERC Resolution  
19 requiring a CSP shall continue to apply: *Provided*, That the ERC shall observe  
20 the thirty (30) day period of approval of PSAs as provided for under this Act.

21

22 SECTION 18. *Implementing Rules and Regulations.* – Within  
23 sixty (60) days from the effectivity of this Act, the DOE, in coordination with the  
24 ERC, NEA, and the PCC, shall promulgate the necessary rules and regulations  
25 to implement the provisions of this Act. Furthermore, the DOE shall  
26 promulgate the CSP framework within sixty (60) days from the promulgation of  
27 the IRR.

1

2           **SECTION 19. Separability Clause.** – If, for any reason, any provision  
3 of this Act is declared to be unconstitutional or invalid, the other sections or  
4 provisions hereof which are not affected thereby shall continue to be in full  
5 force or effect.

6

7           **SECTION 20. Repealing Clause.** – All laws, decrees, orders, rules  
8 and regulations or parts thereof which are inconsistent with or contrary to the  
9 provisions of this Act are hereby repealed, amended or modified accordingly.

10

11           **SECTION 21. Effectivity.** – This Act shall take effect fifteen (15) days  
12 after its publication in at least two (2) national newspapers of general  
13 circulation.

*Approved,*