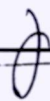


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SENATE

S.B. No. 362

RECEIVED BY 

Introduced by SEN. WIN GATCHALIAN

AN ACT
INSTITUTIONALIZING REFORMS IN THE PROCUREMENT OF SUPPLY
BY DISTRIBUTION UTILITIES FOR THE CAPTIVE MARKET BY MANDATING
A COMPETITIVE SELECTION PROCESS FOR POWER SUPPLY AGREEMENTS

EXPLANATORY NOTE

Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001, declares it the policy of the State to ensure the quality, reliability, security, and affordability of 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.¹ In 2015, the scope of the CSP was extended to all distribution utilities in procuring their respective power supply agreements (PSAs).² From 2015 until 2018, the DOE, Energy Regulatory Commission (ERC), and National Electrification Administration have released various policy issuances mandating a CSP. However, these issuances have led to confusion

¹ 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.

² DOE Circular DC20 15-06-008 entitled "Mandating All Distribution Utilities to Undergo Competitive Selection Process (CSP) Securing Power Supply Agreements (PSA)." 11 June 2015.

in the industry specifically on what CSP procedure should be followed and what the exemptions to the CSP are, if any. This confusion has led to a number of court cases, and a recent Supreme Court decision which requires CSP on all PSA applications submitted on or before 30 June 2015.³ Hence, there is a need to institutionalize the CSP in order to enhance regulatory certainty, competition, and transparency.

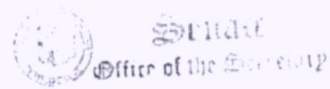
This proposed measure mandates a centralized CSP conducted by a Third Party Auctioneer for all the uncontracted demand of the captive market. The CSP shall be conducted using an electronic network-based platform, and can only be undertaken if it is in accordance with the approved Power Supply Procurement Plan of each distribution utility. PSAs shall also be standardized for the protection of consumers. For example, all PSAs shall now include a provision for replacement power. Lastly, ERC shall no longer review and approve each PSA provided it went through the CSP and follows the standardized PSA format.

Given the foregoing, the immediate passage of this measure is sought.



WIN GATCHALIAN

³ G.R. No. 227670. 03 May 2019.



'19 JUL 11 P1:22

SENATE
S.B. No. 362

RECEIVED BY: _____

Introduced by Senator WIN GATCHALIAN

AN ACT
INSTITUTIONALIZING REFORMS IN THE PROCUREMENT OF SUPPLY
BY DISTRIBUTION UTILITIES FOR THE CAPTIVE MARKET BY MANDATING
A COMPETITIVE SELECTION PROCESS FOR POWER SUPPLY AGREEMENTS

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

CHAPTER I

GENERAL PROVISIONS

1 SECTION 1. *Short Title.* – This Act shall be known as the "Competitive
2 Selection Process for Power Supply Agreements Act".

3 SEC. 2. *Declaration of Policy.* – It is hereby declared the policy of the State to:

4 (a) Ensure the quality, reliability, security, and affordability of electric power
5 supply;

6 (b) Make certain that procurement of power supply agreements by distribution
7 utilities engenders transparency, enhances certainty of supply, and
8 guarantees stability of electricity prices to captive consumers; and

9 (c) Protect public interest by ensuring least cost rates and quality of service to
10 captive customers while the country has not yet transitioned to full retail
11 competition.

12 SEC. 3. *Scope and Application.* – This Act shall apply to all distribution utilities
13 in the procurement of supply for their captive market including those in the off-grid

1 areas, except in the case of new power providers, qualified third parties, and as
2 otherwise provided in Section 25 of this Act. It provides for the manner by which
3 the procurement is to be undertaken, the required review procedure, and the
4 timelines to be observed in such procedure.

5 SEC. 4. *Definition of Terms.* – For purposes of this Act, the following terms
6 shall be defined as stated below: *Provided,* That other terms used in this Act but not
7 defined herein shall be understood to mean the way they are defined in Republic Act
8 No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001, and
9 its implementing rules and regulations:

- 10 (a) *Affiliate* refers to any natural or juridical person which, alone or together with
11 other natural or juridical persons, directly or indirectly, through one or more
12 intermediaries, controls, is controlled by, or is under common control with
13 another natural or juridical person. Affiliates shall include a subsidiary
14 company, a parent company and the subsidiaries, directly or indirectly, of a
15 common parent;
- 16 (b) *Bid* refers to the offer of a price by a generation company or a supply
17 aggregator during the competitive selection process to serve the power
18 demand volume put forward for procurement by a distribution utility or a
19 group of distribution utilities, on their own or through a demand aggregator.
20 The price is the generation charge converted to per kilowatt hour inclusive of
21 all costs passed on to the consumers as determined by the Energy Regulatory
22 Commission (ERC);
- 23 (c) *Captive market* refers to the electricity end-users who do not have the choice
24 of a supplier of electricity, as determined by the ERC in accordance with
25 Republic Act No. 9136;
- 26 (d) *Competitive selection process (CSP)* refers to a procedure wherein a
27 distribution utility or a group of distribution utilities, on their own or through a
28 demand aggregator, undertake a transparent and competitive procurement of
29 power supply agreements, in accordance with the provisions of this Act;
- 30 (e) *Demand aggregator* refers to a natural or juridical person registered and
31 licensed with the ERC, offering services for the consolidation of the power

1 demand volume of distribution utilities for the purpose of subjecting it to a
2 CSP;

3 (f) *Distribution utility (DU)* refers to any electric cooperative, private corporation,
4 government-owned utility, or existing local government unit which has an
5 exclusive franchise to operate a distribution system in accordance with its
6 franchise and Republic Act No. 9136, including those whose franchise area
7 covers economic zones;

8 (g) *Electric cooperative (EC)* refers to a DU organized pursuant to Presidential
9 Decree No. 269, otherwise known as the National Electrification
10 Administration Decree as amended;

11 (h) *Electronic network-based platform* refers to a computer network system as
12 well as the instruments and apparatuses allowing the execution of related
13 methods of operation and a plurality of user client devices capable of
14 connecting to the communication network;

15 (i) *Force majeure or fortuitous event* refers to an extraordinary event which is
16 not foreseen, or which, though foreseen, is inevitable. Such event may be
17 produced by two general causes: (1) by nature, such as a typhoon, storm,
18 tropical depression, flood, drought, volcanic eruption, earthquake, tidal wave,
19 or landslide, and (2) by the act of man, such as an act of war, sabotage,
20 blockade, revolution, riot, insurrection, civil commotion, or any violent or
21 threatening action;

22 (j) *General conditions* refers to provisions which are generally applicable to all
23 power supply agreements as determined by ERC;

24 (k) *Generation company* refers to any person or entity authorized to operate
25 facilities used in the generation of electricity;

26 (l) *Invitation to bid* refers to a letter of invitation, whose contents are determined
27 by the ERC, for generation companies and supply aggregators to submit a bid
28 for a power demand volume put forward for procurement by a DU or a group
29 of DUs, on their own or through a demand aggregator;

30 (m) *Market operator* refers to the independent market operator of the
31 Wholesale Electricity Spot Market pursuant to Republic Act No. 9136;

- 1 (n) *Off-grid* refers to areas that are not connected to the main high voltage
2 backbone system;
- 3 (o) *Particular conditions* refers to additional terms in the power supply agreement
4 not found in the general conditions introduced either by the DU, generation
5 company, or supply aggregator;
- 6 (p) *Power Supply Agreement (PSA)* refers to a contract between a generation
7 company or a supply aggregator and a DU whereby the latter purchases
8 electricity from the former;
- 9 (q) *Power Supply Procurement Plan (PSPP)* refers to the assessment of a DU of a
10 variety of its demand side and supply side resources, as part of its
11 Distribution Development Plan resulting in a comprehensive power supply
12 procurement schedule to meet customer electricity demand while ensuring an
13 optimal supply mix for its captive market and taking into account existing
14 government policies;
- 15 (r) *Reserve price* refers to the price set by ERC as a ceiling for each particular
16 CSP;
- 17 (s) *Supply aggregator* refers to any natural or juridical person, registered and
18 licensed with the ERC to sell power to DUs by combining generation capacities
19 of generation companies and supply from the Wholesale Electricity Spot
20 Market;
- 21 (t) *Third party auctioneer (TPA)* refers to a natural or juridical person mandated
22 to coordinate and administer the conduct of all CSPs; and
- 23 (u) *Wholesale Electricity Spot Market (WESM)* refers to the electricity market
24 created under Republic Act No. 9136.

25 26 **CHAPTER II**

27 28 **POWERS AND FUNCTIONS OF GOVERNMENT AGENCIES**

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30 SEC. 5. *The Department of Energy.* – In addition to its powers and functions
31 under Republic Act No. 7638, otherwise known as the Department of Energy Act of
32 1992, as amended, the DOE shall:

- 1 (a) Exercise its supervisory power over the CSP by ensuring that the general
2 principles provided in this Act are complied with;
- 3 (b) Determine the components of the PSPP in accordance with Sections 4(q) and
4 15 of this Act, and in consultation with ERC, NEA, National Power
5 Corporation (NPC), and the DUs; and
- 6 (c) Ensure that all submitted PSPPs are aligned and consistent with the annual
7 Power Development Plan and the Philippine Energy Plan with the end in view
8 of ensuring sufficient power supply while eliminating over procurement of
9 power by DUs.

10 SEC. 6. *The Energy Regulatory Commission.* – In addition to its powers and
11 functions in Republic Act No. 9136, the ERC shall:

- 12 (a) Promulgate the CSP Regulations pursuant to Section 9 of this Act;
- 13 (b) Establish the reserve price for every CSP, in the exercise of its rate-setting
14 power. In so doing, the ERC shall take into consideration, among others, a
15 DU's demand profile, the available supply in the market, pricing benchmarks,
16 and a reasonable rate of return;
- 17 (c) Verify whether each CSP has complied with all procedures and requirements
18 as specified in Section 20 of this Act; and
- 19 (d) Regulate the TPA pursuant to Sections 9 and 17 of this Act, including the
20 reasonable fee for its services.

21 SEC. 7. *National Electrification Administration.* – In addition to its powers and
22 functions under Presidential Decree No. 269, Creating the National Electrification
23 Administration, as amended, and Republic Act No. 9136, the NEA shall:

- 24 (a) Assist and equip ECs in the formulation and creation of their PSPPs; and
25 (b) Facilitate the voluntary aggregation of ECs upon their request.

26 **CHAPTER III**

27 **GENERAL PRINCIPLES OF A CSP**

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1 SEC. 8. *General Principles.* – DUs shall procure their power requirements
2 through a CSP and the WESM, except as otherwise provided in Sections 22, 23, and
3 25 of this Act. All CSPs shall be governed by the following principles:

4 (a) Ensure sufficient and reliable power capacity is built in a timely manner, and
5 acquired at the least possible cost by:

- 6 (i) Enjoining completion of each CSP within a reasonable period of time;
7 (ii) Making certain that every CSP is open to all technologies and resources
8 subject to the load, operational, and system requirements of the
9 concerned DU, including market considerations, and existing and future
10 policies pursuant to applicable laws, rules, and regulations;
11 (iii) Having an undisclosed reserve price for each CSP, as determined by
12 the ERC, above which no offer shall be accepted;

13 (b) Eliminate barriers to entry and maintain regulatory stability by:

- 14 (i) Establishing a sole and centralized TPA tasked with conducting the
15 various CSPs of all DUs;
16 (ii) Mandating a clear and transparent CSP procedure with uniform
17 requirements; and
18 (iii) Requiring standardized forms, documents, and contracts for the CSP;
19 and

20 (c) Implement an effective monitoring and evaluation system to detect
21 anticompetitive bidding behavior among CSP participants, which includes
22 consumer consultation and representation in the CSP.

23 SEC. 9. *CSP Regulations.* – The CSP Regulations shall be promulgated by the
24 ERC in consultation with all private and public stakeholders within thirty (30) days
25 from the formulation of this Act’s implementing rules and regulations. The CSP
26 Regulations shall include, among others:

27 (a) Duties, responsibilities, guarantees, and liabilities of all CSP participants in
28 accordance with Chapter IV of this Act;

29 (b) Rules, procedures, requirements, and timelines of the following:

- 30 (i) The entire CSP including rules and guidelines for the evaluation of bids
31 and awarding of PSAs: *Provided*, That the complete procedure shall not

- 1 exceed ninety (90) days from the issuance of the invitation to bid until
2 to the awarding of the PSA to the winning bidder;
- 3 (ii) Qualification, procurement, and performance indices for the TPA
4 including:
- 5 (1) Detailed scope of work,
6 (2) Bonds and guarantees,
7 (3) Cost recovery mechanism and reasonable fees for the services of TPA,
8 except as otherwise provided in Section 17 of this Act,
9 (4) Monitoring and evaluation framework, and
10 (5) Prohibited acts and penalties
- 11 (iii) Registration of all CSP participants with the TPA,
12 (iv) Registration and licensing of demand aggregators and supply
13 aggregators,
14 (v) Determination of the reserve price of every CSP,
15 (vi) Preparation of the particular conditions of a PSA,
16 (vii) Negotiated PSAs in accordance with Sections 22, 23, and 25 of this
17 Act, and
18 (viii) Grievance and dispute resolution mechanism;
- 19 (c) Standardized contents of an invitation to bid and all other documents and
20 forms necessary in the conduct of the CSP;
- 21 (d) Standardized general conditions of a PSA in accordance with Section 19 of
22 this Act;
- 23 (e) Fines and penalties for non-compliance with any of the CSP Regulations; and
24 (f) Other such rules, procedures, and requirements that will ensure the effective
25 regulation of the CSP.

26 **CHAPTER IV**

27 **CSP PARTICIPANTS**

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30 SEC. 10. *Participants.* – The participants to the CSP are DUs, demand
31 aggregators, generation companies, and supply aggregators, which shall all be duly-
32 registered with the TPA. All CSP participants shall undergo training in accessing the
33 CSP electronic network-based platform utilized by the TPA

1 SEC. 11. *Mandatory Registration.* – Upon the promulgation of the CSP
2 Regulations, CSP participants shall register in accordance with Section 9(b) (iii) of
3 this Act: *Provided*, that such registration shall bind the CSP participant to specific
4 duties, responsibilities, guarantees, and liabilities pursuant to Section 9(a) of this
5 Act. The ERC shall exercise ownership over the said registry which the TPA shall
6 develop, update, and maintain. The TPA shall turn over such registry to the ERC
7 upon the end of its contract or at any time the ERC deems it necessary.

8 SEC. 12 . *Distribution Utilities.* – Each DU shall:

9 (a) Prepare its annual PSPP pursuant to Section 15 of this Act;

10 (b) Based on this PSPP, the DU shall:

11 (i) Determine the power demand volume it shall put forward for
12 procurement through a CSP, and

13 (ii) Formulate the schedule for its CSP in accordance with the power
14 demand volume determined;

15 (c) Be prohibited from passing on the reasonable fee for the services of the TPA
16 to its captive customers; and

17 (d) Be liable for all provisions in the PSA together with all the other signatories
18 such as generation companies and supply aggregators.

19 SEC. 13. *Demand aggregator.* – Demand aggregators shall serve as mere
20 representatives of DUs in the CSP and shall not have the legal personality to enter
21 into any PSA on behalf of the aggregated DUs. Generation companies and the
22 transmission concessionaire, as well as any of their affiliates, shall be prohibited
23 from acting as a demand aggregator.

24 SEC. 14. *Supply aggregator.* – Supply aggregators shall demonstrate sufficient
25 financial and technical capabilities to ensure timely delivery of power demand
26 volume put forward for procurement by DUs. The transmission concessionaire and
27 its affiliates shall be prohibited from acting as a supply aggregator.

28 SEC. 15. *Power Supply Procurement Plan.* – Every DU shall prepare and
29 submit its annual PSPP to the DOE as part of its annual Distribution Development
30 Plan. In the preparation of the PSPP, the DU shall undertake a cost-benefit analysis

1 of the power supply requirements for its captive market taking into consideration,
2 among others, prevailing price in the market, energy demand forecasting, load,
3 system, and operational requirements, other market considerations, and existing and
4 future policies pursuant to applicable laws, rules, and regulations.

5 The PSPP shall be updated annually and approved by the Board of Directors
6 of the DU and submitted to DOE on or before the 15th of March of each year. In the
7 case of ECs, the submission shall include the NEA. In the case of off-grid areas, the
8 submission shall include the NPC. DOE, with NEA in the case of ECs and NPC in the
9 case of off-grid areas, shall endorse the submitted PSPP within thirty (30) days from
10 receipt to the ERC and the TPA. The endorsed PSPPs shall be posted by the ERC in
11 the electronic portal as provided under Section 27 of this Act.

12 **CHAPTER V**

13 **THIRD PARTY AUCTIONEER**

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16 SEC. 16. *Powers and Functions of the Third Party Auctioneer.* – The TPA shall:

- 17 (a) Be the sole body that coordinates and administers the conduct of all CSPs;
- 18 (b) Provide and manage a secure electronic network-based platform for the
19 bidding component of the CSP, subject to CSP Regulations, and the
20 implementing rules and regulations of this Act;
- 21 (c) Be liable for any negligence, abuse, delay, or preferential treatment in the
22 conduct of the CSP including security breaches to the electronic platform;
- 23 (d) Be entitled to recover its costs and a reasonable fee for its services, except as
24 otherwise provided in Section 17 of this Act; and
- 25 (e) Be regulated and its operation monitored and evaluated by the ERC.

26 SEC. 17. *Qualification and Operations of the Third Party Auctioneer.* –The
27 market operator shall initially serve as the TPA for two (2) years from the
28 commencement of its operations which shall be no later than one (1) year from the
29 effectivity of this Act. The market operator shall not be entitled to a reasonable fee
30 for its services but shall endeavor to use all of its existing systems and electronic
31 platforms available to mitigate the costs of the conduct of the CSP. It shall submit

1 an implementation plan to DOE and ERC within two (2) months from the effectivity
2 of this Act.

3 At the end of two (2) years, the ERC shall contract and appoint, after
4 competitive bidding, a new TPA whose contract term shall be determined by ERC:
5 *Provided*, That the market operator shall not be precluded from joining the
6 competitive bidding. The new TPA shall have vast experience in competitive
7 bidding, sufficient knowledge of the electric power industry, and a demonstrated
8 ability to manage and conduct the CSP.

9 The ERC shall review, at least once a year, the performance of the TPA
10 according to a monitoring and evaluation framework incorporated in the CSP
11 Regulations in accordance with Section 9(a)(ii)(4) of this Act: *Provided*, That ERC
12 can at any time, *motu proprio* or upon complaint, determine negligence, abuse,
13 delay, preferential treatment, or non-performance by the TPA and impose penalties
14 upon any finding of such.

15 SEC. 18. *Disqualification as Third Party Auctioneer.* – All generation
16 companies, transmission utilities, DUs, retail electricity suppliers, demand
17 aggregators, supply aggregators, corporations involved in upstream exploration,
18 development, and production as well as downstream operations, and all their
19 affiliates, and all the members of the board of directors, officers, and employees,
20 including their relatives up to the fourth degree of consanguinity or affinity are
21 prohibited from acting as, being affiliated with, or having any stake in the TPA.

22 **CHAPTER VI**

23 **FEATURES OF A CSP**

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26 SEC. 19. *Standardized Contracts.* – All contracts, forms, and documents used
27 for the CSP shall be standardized and unified. PSAs shall have general conditions
28 and particular conditions. The general conditions shall include a maximum contract
29 period to be determined and adjusted regularly by ERC, and a provision for
30 replacement power, the cost of which shall be shouldered by the generation

1 company or supply aggregator. The particular conditions shall be reviewed and
2 approved by the ERC pursuant to Section 9(b)(vi) of this Act.

3 SEC. 20. *Results and Approval.* – The TPA shall submit a report to ERC after
4 the determination of the winning bidder within a period of time determined by ERC.
5 The ERC shall, within fifteen (15) days from its receipt of the report, issue a
6 resolution indicating whether or not the conduct of the CSP is compliant with this
7 Act, its implementing rules and regulations, and the CSP Regulations. It shall
8 likewise indicate whether the winning bid is below the reserve price. All PSAs
9 awarded through a CSP and given a resolution of compliance shall be submitted to
10 the ERC and shall no longer be subjected to its review and approval.

11 SEC. 21. *Non-Compliance with CSP Procedures and Regulations.* – Upon ERC’s
12 finding of non-compliance by any CSP participant or the TPA with this Act, its
13 implementing rules and regulations, and the CSP Regulations, it shall order the TPA
14 to re-administer the entire CSP subject to fines and penalties as determined by the
15 ERC.

16 SEC. 22. *Force Majeure or Fortuitous Event.* – A DU may enter into an interim
17 negotiated contract with a generation company or supply aggregator on the basis
18 solely of force majeure or fortuitous event: *Provided,* That the interim negotiated
19 contract shall be effective immediately but shall be subject to a full review by the
20 ERC in the exercise of its rate-making power, the results of which must be concluded
21 and released within thirty (30) days from the parties’ submission of all documents;
22 *Provided further,* That the interim negotiated contract shall have a maximum period
23 of one (1) year and the price shall not be higher than the reserve price for similarly
24 situated power demand volume put forward for procurement.

25 SEC. 23. *Failed Bidding.* – On the day of actual bidding, failed bidding happens
26 under the following circumstances:

- 27 1. When there are no bids submitted for two consecutive rounds;
28 2. When there is only one bidder and its bid is above the reserve price for two
29 consecutive rounds; or

1 3. When there is more than one bidder and all bids are above the reserve price
2 for two consecutive rounds.

3 Upon a failed bidding, the DU can enter into a negotiated contract with a
4 generation company or supply aggregator: *Provided*, That the contract shall be
5 subject to a full review of ERC in the exercise of its rate-making power, the results of
6 which must be released within ninety (90) days from the parties' submission of all
7 documents.

8 SEC. 24. *Negligence and Abuse.* – Any allegation of negligence or abuse on
9 the part of the TPA at any stage of the CSP shall be filed with the ERC: *Provided*,
10 That this is without prejudice to any civil or criminal case against the TPA.

11 SEC. 25. *Off-Grid Areas.* – The DOE shall provide a different CSP procedure in
12 consultation with NPC and NEA for those off-grid areas with small demand, security
13 problems, and any other similar criteria. No CSP shall be required for the supply of
14 the NPC to the DUs in off-grid areas.

15 **CHAPTER VII**

16 **TRANSPARENCY**

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19 SEC. 26. *Observers.* – The TPA shall, in all stages of the CSP, ensure that
20 DOE, ERC, NEA, NPC, and other interested parties as determined by DOE are
21 informed and that their representatives are allowed to observe.

22 SEC. 27. *Electronic Portal.* – The ERC shall develop or procure an electronic
23 portal which shall serve as the primary source of information on the CSP: *Provided*,
24 That the ERC shall ensure the integrity, security, and confidentiality of all documents
25 submitted through the electronic portal.

26 In all stages of the CSP, the TPA shall ensure that information from
27 generation companies, supply aggregators, DUs, and demand aggregators shall be
28 posted on the electronic portal to ensure equal access of information for all the CSP
29 participants: *Provided*, That no proprietary information shall be posted on the
30 electronic portal.

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CHAPTER IV

PROHIBITED ACTS AND PENALTIES

SEC. 28. *Confidentiality.* – Prior to their official release, no aspect of the documents used in any CSP shall be divulged or released to any prospective generation company, supply aggregator, DU, demand aggregator, or any other person or entity having direct or indirect interest in the PSAs subject of CSP.

SEC. 29. *Administrative Offenses.* – The following acts, when committed by a government official or employee, shall be considered administrative offenses:

- a) Breach of confidentiality as provided under Sections 27 and 28 of this Act;
- b) Wilful acts which delay the operationalization of the CSP; and
- c) Failure to comply with the mandated timelines prescribed under Sections 9, 15, 17, 20, 22, 23, and 34 of this Act.

SEC. 30. *Administrative Penalties.* – Any government official or employee found guilty of the act stated in Sections 29 (a) and (b), on the first offense shall be suspended from service for six (6) months and one (1) day to one (1) year without pay, and on the second offense shall be dismissed from service that shall carry with it perpetual disqualification from holding public office.

Any government official or employee found guilty of the act stated in Sec. 29 (c), on the first offense shall be reprimanded, on the second offense shall be suspended from service for one (1) to thirty (30) days, and on the third offense shall be dismissed from service that shall carry with it perpetual disqualification from holding public office.

SEC. 31. *Criminal Offenses.* – The performance of the following acts by any person shall be considered a criminal offense:

- 1) Disclosure of the reserve price by any individual before the proclamation of the winning bidder;
- 2) Tampering with the CSP software;
- 3) Manipulation of any stage of the CSP procedure to unduly favor any participant;

- 1 4) Commission of cybercrime as defined by Republic Act No. 10175, otherwise
2 known as the Cybercrime Prevention Act of 2012, including the manipulation
3 or interference with the electronic network-based platform for bidding and
4 the electronic portal of the ERC;
- 5 5) Negligence or abuse in the conduct of the CSP, including in the management
6 and operation of the electronic network-based platform for the bidding
7 component of the CSP;
- 8 6) Violation of Section 27 of this Act; and
- 9 7) Collusion among CSP participants.

10 SEC. 32. *Criminal Liability.* – Any person found guilty of the acts stated in
11 Section 24 shall receive a punishment of *prision mayor* and a fine ranging from Five
12 hundred thousand Philippine pesos (P500,000.00) to Fifty million Philippines pesos
13 (P50,000,000.00)

14 CHAPTER V

15 FINAL PROVISIONS

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18 SEC. 33. *Prospective Application of CSP.* – The coverage of the CSP as
19 specified in this Act shall have prospective application. PSAs filed before the ERC
20 prior to the operationalization of this Act, shall be exempt from its coverage.

21 SEC. 34. *Implementing Rules and Regulations.* – The DOE, in consultation
22 with ERC, NEA, NPC, and public and private stakeholders shall formulate the
23 implementing rules and regulations of this Act within thirty (30) from its effectivity.

24 SEC. 35. *Transitory Provision.* – Pending the formulation and effectivity of the
25 implementing rules and regulations and CSP Regulations, the existing ERC
26 Resolutions on CSP shall continue to apply.

27 SEC. 36. *Separability Clause.* – If any portion or provision of this Act is
28 declared unconstitutional, the remainder of this Act or any provisions not affected
29 thereby shall remain in force and effect.

1 SEC. 37. *Repealing Clause.* – Any law, presidential decree or issuance,
2 executive order, letter of instruction, rule or regulation inconsistent with the
3 provisions of this Act is hereby repealed or modified accordingly.

4 SEC. 38. *Effectivity.* – This Act shall take effect fifteen (15) days following its
5 complete publication in the Official Gazette or a newspaper of general circulation.

6 *Approved,*