

**NINETEENTH CONGRESS OF THE
REPUBLIC OF THE PHILIPPINES**
Third Regular Session

SENATE
S.B. No. 2946

25 JAN 23 P12:35

RECEIVED

Introduced by Senator WIN GATCHALIAN

**AN ACT PROHIBITING CROSS OWNERSHIP BETWEEN GENERATION
COMPANIES AND DISTRIBUTION UTILITIES, AMENDING FOR THE
PURPOSE SECTION 45 OF REPUBLIC ACT NO. 9136, OTHERWISE KNOWN
AS THE "ELECTRIC POWER INDUSTRY REFORM ACT OF 2001"**

EXPLANATORY NOTE

Republic Act No. (RA) 9136, otherwise known as the Electric Power Industry Reform Act of 2001, provides that it is the declared policy of the State to ensure affordability of electric of the supply of electric power and to ensure transparent and reasonable prices of electricity in a regime of free and fair competition.¹ However, almost 20 years since RA 9136 was passed, the cost of electricity in the country remains high. As of 2020, the Philippines has the second highest residential rate among Association of Southeast Asian Nations (ASEAN) at Php 9.23 per kilowatt-hour (kWh), which is 54.44% higher than the ASEAN average at Php 5.98 per kWh.² According to a study, these high prices are attributed, among other factors, to the "country's uncompetitive market structures".³

At present, there is no prohibition of cross-ownership between generation companies (GenCos) and Distribution Utilities (DUs). As a result, there are allegations that terms of references (TORs), in the mandated competitive selection process (CSP) for DUS in

¹ Doing Business. Available a <https://www.doingbusiness.org/en/doingbusiness> (2021). Accessed on 2 June 2022.

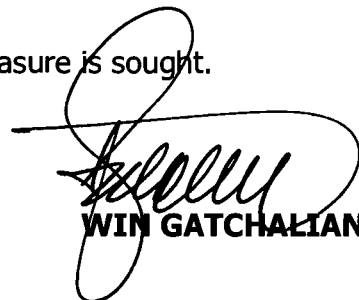
² Bloomberg New Energy Finance (BNEF)(2021).

³ Renewables may cut Philippines' electricity rates 30%. Asian Power. Available at <https://asian-power.com/power-utility/news/renewables-may-cut-philippines-electricity-rates-30>. Accessed on 19 May 2021.

procuring their power supply, are being crafted in a manner more favorable to some technologies and/or GenCos.

As such, this bill seeks to level the playing field across all GenCos and to create a more competitive environment for the energy industry with ultimate goal of lowering the cost of electricity for the benefit of consumers. Specifically, this bill prohibits any GenCo or its respective subsidiary or affiliate or its stockholder or official or any of their relatives within the fourth civil degree of consanguinity or affinity from holding interest from any DU and vice versa. Moreover, the measure prohibits any officer or director of a GenCo or its respective subsidiary or affiliate from being an officer or director of a DU or its subsidiary or affiliate and vice versa.

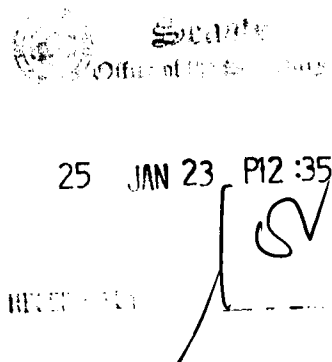
Given the foregoing, the immediate passage of this measure is sought.



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

1 **SECTION 1.** *Prohibition on Cross Ownership between Generation Companies and*
2 *Distribution Utilities.* – Section 45 of Republic Act No. 9136, otherwise known as the
3 Electric Power Industry Reform Act of 2001, is hereby amended to read as follows:

4 "SEC. 45. *Cross Ownership, Market Power Abuse and Anti-Competitive Behavior.*
5 – No participant in the electricity industry or any other person may engage in
6 any anti-competitive behavior including, but not limited to, cross-subsidization,
7 price or market manipulation, or other unfair trade practices detrimental to the
8 encouragement and protection of contestable markets.

9 **NO GENERATION COMPANY OR ITS RESPECTIVE SUBSIDIARY OR**
10 **AFFILIATE OR STOCKHOLDER OR OFFICIAL OF A GENERATION**
11 **COMPANY OR ANY OF THEIR RELATIVES WITHIN THE FOURTH CIVIL**
12 **DEGREE OF CONSANGUINITY OR AFFINITY, SHALL BE ALLOWED TO**
13 **HOLD ANY INTEREST, DIRECTLY OR INDIRECTLY, IN ANY**
14 **DISTRIBUTION UTILITY. LIKEWISE, NO DISTRIBUTION UTILITY OR**

1 **ITS RESPECTIVE SUBSIDIARY OR AFFILIATE OR STOCKHOLDER, OR**
2 **OFFICIAL OF A DISTRIBUTION UTILITY OR ANY OF THEIR RELATIVES**
3 **WITHIN THE FOURTH CIVIL DEGREE OF CONSANGUINITY OR**
4 **AFFINITY, SHALL BE ALLOWED TO HOLD ANY INTEREST, DIRECTLY OR**
5 **INDIRECTLY, IN ANY GENERATION COMPANY. NO PERSON WHO IS**
6 **AN OFFICER OR DIRECTOR OF THE GENERATION COMPANY OR ITS**
7 **RESPECTIVE SUBSIDIARY OR AFFILIATE SHALL BE AN OFFICER OR**
8 **DIRECTOR OF ANY DISTRIBUTION UTILITY OR ITS RESPECTIVE**
9 **SUBSIDIARY OR AFFILIATE, AND VICE VERSA.**

10 X X X."

11 **SECTION 2. *Transitory Provision.*** – Any generation company, or its respective
12 subsidiary or affiliate or stockholder or official of a generation company or any of their
13 relatives within the fourth civil degree of consanguinity or affinity holding an interest
14 in any distribution utility, and vice versa, at the time of the passage of this Act, shall
15 be required to divest from the same within three (3) years from the effectivity of this
16 Act's implementing rules and regulations.

17
18 **SECTION 3. *Implementing Rules and Regulations.*** – The Energy Regulatory
19 Commission shall, in consultation with the Department of Energy, other relevant
20 government agencies, the electric power industry participants, consumers, and other
21 public and private stakeholders, promulgate the Implementing Rules and Regulations
22 of the Act within ninety (90) calendar days from its effectivity.

23
24 **SECTION 4. Separability Clause.** – Any portion or provision of this Act, which may be
25 declared unconstitutional or invalid shall not have the effect of nullifying other portions
26 or provisions hereof.

27
28 **SECTION 5. *Repealing Clause.*** – All laws, decrees, orders, rules, and regulations or
29 parts thereof inconsistent with any of the provisions of this Act are hereby repealed,
30 amended, or modified accordingly.

1 **SECTION 6. *Effectivity Clause.*** – This Act shall take effect fifteen (15) days
2 after its publication in Official Gazette or in one (1) newspaper of general circulation.

Approved,