



**AN ACT
ORDAINING REFORMS IN THE ELECTRIC POWER INDUSTRY,
AMENDING FOR THE PURPOSE CERTAIN LAWS AND FOR OTHER
PURPOSES**

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

CHAPTER I

TITLE AND DECLARATION OF POLICY

SEC. 1. *Short Title.* – This Act shall be known as the “Electric Power Industry Reform Act of 2001”. It shall hereinafter be referred to as the Act.

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

- (a) To ensure and accelerate the total electrification of the country;
- (b) To ensure the quality, reliability, security and affordability of the supply of electric power;
- (c) To ensure transparent and reasonable prices of electricity in a regime of free and fair competition and full public accountability to achieve greater operational and economic efficiency and enhance the competitiveness of Philippine products in the global market;
- (d) To enhance the inflow of private capital and broaden the ownership base of the power generation, transmission and distribution sectors in order to minimize the financial risk exposure of the national government;
- (e) To ensure fair and non-discriminatory treatment of public and private sector entities in the process of restructuring the electric power industry;
- (f) To protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power;
- (g) To assure socially and environmentally compatible energy sources and infrastructure;
- (h) To promote the utilization of indigenous and new and renewable energy resources in power generation in order to reduce dependence on imported energy;
- (i) To provide for an orderly and transparent privatization of the assets and liabilities of the National Power Corporation (NPC).
- (j) To establish a strong and purely independent regulatory body and system to ensure consumer protection and enhance the competitive operation of the electricity market; and

1 (k) To encourage the efficient use of energy and other modalities of demand
2 side management.

3 SEC. 3. *Scope.* – This Act shall provide a framework for the restructuring of the
4 electric power industry, including the privatization of the assets of NPC, the transition to
5 the desired competitive structure, and the definition of the responsibilities of the various
6 government agencies and private entities.

7 SEC. 4. *Definition of Terms.* -

8 (a) “Aggregator” refers to a person or entity, engaged in consolidating electric
9 power demand of end-users in the contestable market, for the purpose of purchasing and
10 reselling electricity on a group basis;

11 (b) “Ancillary Services” refer to those services that are necessary to support
12 the transmission of capacity and energy from resources to loads while maintaining
13 reliable operation of the transmission system in accordance with good utility practice and
14 the Grid Code to be adopted in accordance with this Act;

15 (c) “Captive market” refers to electricity end-users who do not have the
16 choice of a supplier of electricity, as may be determined by the Energy Regulatory
17 Commission (ERC) in accordance with this Act;

18 (d) “Central Dispatch” refers to the process of scheduling and issuing direct
19 instructions by the grid operator to achieve the economic operation and maintenance of
20 quality, stability, reliability and security of the transmission system;

21 (e) “Co-generation Facility” refers to a facility which produces electrical
22 and/or mechanical energy and forms of useful thermal energy such as heat or steam
23 which are used for industrial commercial heating or cooling purposes through the
24 sequential use of energy;

25 (f) “Commission” refers to the decision-making body of the ERC composed
26 of a Chairman and four (4) members as provided under Section 38 hereof;

27 (g) “Concession Contract” refers to the award by the government to a
28 qualified private entity of the responsibility for financing, operating, expanding,
29 maintaining and managing specific Government-owned assets;

30 (h) “Contestable Market” refers to the electricity end-users who have a choice
31 of a supplier of electricity, as may be determined by the ERC in accordance with this Act;

32 (i) “Department of Energy” or “DOE” refers to the government agency
33 created pursuant to Republic Act No. 7638 whose expanded functions are provided
34 herein;

35 (j) “Department of Finance” or “DOF” refers to the government agency
36 created pursuant to Executive Order No. 127;

1 (k) "Distribution Code" refers to a compilation of rules and regulations
2 governing electric utilities in the operation and maintenance of their distribution systems
3 which includes, among others, the standards for service and performance, and defines and
4 establishes the relationship of the distribution systems with the facilities or installations
5 of the parties connected thereto;

6 (l) "Distribution of Electricity" refers to the conveyance of electric power by
7 a distribution utility through its distribution system pursuant to the provisions of this Act;

8 (m) "Distribution System" refers to the system of wires and associated
9 facilities belonging to a franchised distribution utility extending between the delivery
10 points on the transmission or subtransmission system or generator connection and the
11 point of connection to the premises of the end-user;

12 (n) "Distribution Retail Wheeling Charge" refers to the cost or charge
13 regulated by the ERC for the use of a distribution system and/or the availment of related
14 services;

15 (o) "Distribution Retail Supply Rate" refers to the total price paid by end-
16 users consisting of the charges for generation, transmission and related ancillary services,
17 distribution, supply and other related charges for electric service;

18 (p) "Distribution Utility" refers to any electric cooperative, private
19 corporation, government-owned utility or existing local government unit which has an
20 exclusive franchise to operate a distribution system in accordance with this Act;

21 (q) "Electric Cooperative" refers to a distribution utility organized pursuant to
22 Presidential Decree No. 269, as amended, or as otherwise provided in this Act;

23 (r) "Electric Power Industry Participant" refers to any person or entity
24 engaged in the generation, transmission, distribution or supply of electricity;

25 (s) "End-user" refers to any person or entity requiring the supply and delivery
26 of electricity for its own use;

27 (t) "Energy Regulatory Board" or "ERB" refers to the independent, quasi-
28 judicial regulatory body created under Executive Order No. 172, as amended;

29 (u) "Energy Regulatory Commission" or "ERC" refers to the regulatory
30 agency created herein;

31 (v) "Franchise Area" refers to a geographical area exclusively assigned or
32 granted to a distribution utility for distribution of electricity;

33 (w) "Generation Company" refers to any person or entity authorized by the
34 ERC to operate facilities used in the generation of electricity;

35 (x) "Generation of Electricity" refers to the production of electricity by a
36 generation company or a co-generation facility pursuant to the provisions of this Act;

1 (y) “Grid” refers to the high voltage backbone system of interconnected
2 transmission lines, substations and related facilities;

3 (z) “Grid Code” refers to the set of rules and regulations governing the safe
4 and reliable operation, maintenance and development of the high voltage backbone
5 transmission system and its related facilities;

6 (aa) “Implementing Rules and Regulations” or “IRR” refers to the
7 implementing rules and regulations consistent with this Act promulgated by the DOE in
8 consultation with the electric power industry participants and representatives of the
9 business sector and approved by the Joint Congressional Power Commission to
10 implement the provisions of this Act;

11 (bb) “Independent Power Producer” or “IPP” refers to an existing power
12 generating entity which is not owned by the government;

13 (cc) “Isolated Distribution System” refers to the low or high voltage backbone
14 system of wires and associated facilities not directly connected to the national
15 transmission system;

16 (dd) “Lifeline Rate” refers to the subsidized rate given to low-income captive
17 market end-users who cannot afford to pay at full cost;

18 (ee) “National Electrification Administration” or “NEA” refers to the
19 government agency created under Presidential Decree No. 269, as amended, and whose
20 additional mandate is further set forth herein;

21 (ff) “National Power Corporation” or “NPC” refers to the government
22 corporation created under Republic Act No. 6395, as amended;

23 (gg) “National Transmission Corporation” or “TRANSCO” refers to the
24 corporation organized to acquire all the transmission assets of the NPC pursuant to this
25 Act;

26 (hh) “Open Access” refers to the provision of allowing any qualified user the
27 use of transmission, and/or distribution system and associated facilities subject to the
28 payment of transmission and/or distribution retail wheeling rates duly approved by the
29 ERC;

30 (ii) “Philippine Energy Plan” or “PEP” refers to the overall energy program
31 formulated and updated yearly by the DOE for submission to Congress pursuant to
32 Republic Act No. 7638;

33 (jj) “Power Development Program” or “PDP” refers to the indicative plan for
34 managing electricity demand through energy-efficient programs and for the upgrading,
35 expansion, rehabilitation, repair and maintenance of power generation and transmission

1 facilities, formulated and updated yearly by the DOE in coordination with the generation,
2 transmission and electric utility companies;

3 (kk) “Power Sector Assets and Liabilities Management Corporation” or
4 “PSALM Corp.” refers to the corporation organized pursuant to Section 49 hereof;

5 (ll) “Privatization” refers to the sale, disposition, change and transfer of
6 ownership and control of assets and IPP contracts from the Government or a government
7 corporation to a private person or entity;

8 (mm) “Renewable Energy Resources” refers to energy resources that do not
9 have an upper limit on the total quantity to be used. Such resources are renewable on a
10 regular basis and the renewable rate is rapid enough to consider availability over an
11 indefinite time. These include, among others, biomass, solar, wind, hydro and ocean
12 energy;

13 (nn) “Restructuring” refers to the process of reorganizing the electric power
14 industry in order to introduce higher efficiency, greater innovation and end-user choice.
15 It shall be understood as covering a range of alternatives enhancing exposure of the
16 industry to competitive market forces;

17 (oo) “Small Power Utilities Group” or “SPUG” refers to the functional unit of
18 NPC created to pursue missionary electrification function;

19 (pp) “Stranded contract costs of NPC or distribution utility” refer to the excess
20 of the contracted cost of electricity under eligible contracts over the actual selling price of
21 such contracts in the market. Such contracts shall have been accredited by the DOE or
22 NPC and approved by the ERB as of the effectivity of this Act;

23 (qq) “Stranded Debts of NPC” refer to any unpaid financial obligations of NPC
24 which have not been liquidated by the proceeds from sales and privatization of NPC
25 assets;

26 (rr) “Subtransmission Assets” refer to the facilities related to the power
27 delivery service below the transmission voltages and defined as facilities based on the
28 functional assignment of assets including, but not limited to, step-down transformers
29 solely used by load customers, associated switchyard/substation, control and protective
30 equipment, reactive compensation equipment to improve customer power factor,
31 overhead lines, and the land where such facilities/equipment are located, where
32 applicable. These include NPC assets linking the transmission system and the
33 distribution system which are neither classified as generation nor transmission;

34 (ss) “Supplier” refers to any person or entity authorized by the ERC to sell,
35 broker, market or aggregate electricity to the end-users;

1 (tt) "Supply Charge" refers to the charge imposed by electricity suppliers for
2 the sale of electricity to end-users, excluding the charges for generation, transmission and
3 distribution wheeling;

4 (uu) "Supply of Electricity" means the sale of electricity by persons or entities
5 authorized pursuant to this Act;

6 (vv) "Transmission Charge" refers to the regulated cost or charges for the use
7 of a transmission system which may include the availment of ancillary services;

8 (ww) "Transmission Development Plan" or "TDP" refers to the program for
9 managing the transmission system through efficient planning for the expansion,
10 upgrading, rehabilitation, repair and maintenance, to be formulated by DOE and
11 implemented by the TRANSCO pursuant to this Act;

12 (xx) "Transmission of Electricity" refers to the conveyance of electricity
13 through the high voltage backbone system; and

14 (yy) "Universal Charge" refers to the charge, if any, imposed for the recovery
15 of the stranded cost and other purposes.

16 **CHAPTER II**

17 **ORGANIZATION AND OPERATION OF THE ELECTRIC POWER INDUSTRY**

18 **SEC. 5. *Organization.*** – The electric power industry shall be divided into four (4)
19 sectors, namely: generation; transmission; distribution and supply.

20 **SEC. 6. *Generation Sector.*** – Generation of electric power shall be competitive
21 and open.

22 Upon the effectivity of this Act, any new generation company shall, before it
23 operates, secure from the Energy Regulatory Commission a certificate of compliance
24 pursuant to the standards set forth in this Act, as well as health, safety and environmental
25 clearances from the appropriate government agencies under existing laws.

26 Any law to the contrary notwithstanding, power generation shall not be
27 considered a public utility operation. For this purpose, any person or entity engaged or
28 which shall engage in power generation and supply of electricity shall not be required to
29 secure a local or national franchise.

30 Upon implementation of retail competition and open access, the prices charged by
31 a generation company for supply of electricity shall not be subject to regulation by the
32 ERC except as otherwise provided in this Act.

33 Pursuant to the objective of lowering electricity rates to end-users, sales of
34 generated power by generation companies shall be value added tax zero-rated.

1 The ERC shall, in determining the existence of market power abuse or anti-
2 competitive behavior, require from generation companies the submission of their individual
3 pricing formulas as well as their financial statements.

4 SEC. 7. *Transmission Sector.* – The transmission of electric power shall be a
5 regulated common electricity carrier business, subject to the ratemaking powers of the
6 ERC.

7 The ERC shall set the standards of the voltage transmission that shall distinguish
8 the transmission from the subtransmission assets. Pending the issuance of such new
9 standards, the distinction between the transmission and subtransmission assets shall be as
10 follows: 230 kilovolts and above in the Luzon Grid, 69 kilovolts and above in the Visayas
11 and in the isolated distribution systems, and 138 kilovolts and above in the Mindanao
12 Grid: *Provided*, That for the Visayas and the isolated distribution system, should the 69
13 kilovolt line not form part of the main transmission grid and be directly connected to the
14 substation of the distribution utility, it shall form part of the subtransmission system.

15 SEC. 8. *Creation of the National Transmission Company.* – There is hereby
16 created a National Transmission Corporation, hereinafter referred to as TRANSCO,
17 which shall assume the electrical transmission function of the National Power
18 Corporation, and have the powers and functions hereinafter granted. The TRANSCO
19 shall assume the authority and responsibility of NPC for the planning, construction and
20 centralized operation and maintenance of its high voltage transmission facilities,
21 including grid interconnections and ancillary services.

22 Within six (6) months from the effectivity of this Act, the transmission and
23 subtransmission facilities of NPC and all other assets related to transmission operations,
24 including the nationwide franchise of NPC for the operation of the transmission system
25 and the grid, shall be transferred to the TRANSCO. The TRANSCO shall be wholly
26 owned by the Power Sector Assets and Liabilities Management Corporation (PSALM
27 Corp.).

28 The subtransmission functions and assets shall be segregated from the
29 transmission functions, assets and liabilities for transparency and disposal: *Provided*,
30 That the subtransmission assets shall be operated and maintained by TRANSCO until
31 their disposal to qualified distribution utilities which are in a position to take over the
32 responsibility for operating, maintaining, upgrading, and expanding said assets. All
33 transmission and subtransmission related liabilities of NPC shall be transferred to and
34 assumed by the PSALM Corp.

35 TRANSCO shall negotiate with and thereafter transfer such functions, assets, and
36 associated liabilities to the qualified distribution utility or utilities connected to such

1 subtransmission facilities not later than two (2) years from the effectivity of this Act or
2 the start of open access, whichever comes earlier: *Provided*, That in the case of electric
3 cooperatives, the TRANSCO shall grant concessional financing over a period of twenty
4 (20) years: *Provided, however*, That the installment payments to TRANSCO for the
5 acquisition of subtransmission facilities shall be given first priority by the electric
6 cooperatives out of the net income derived from such facilities. The TRANSCO shall
7 determine the disposal value of the subtransmission assets based on the revenue potential
8 of such assets.

9 In case of disagreement in valuation, procedures, ownership participation and
10 other issues, the ERC shall resolve such issues.

11 The take over by a distribution utility of any subtransmission asset shall not cause
12 a diminution of service and quality to the end-users. Where there are two or more
13 connected distribution utilities, the consortium or juridical entity shall be formed by and
14 composed of all of them which has been granted a franchise to operate the
15 subtransmission asset by the ERC.

16 The subscription rights of each distribution utility involved shall be proportionate
17 to their load requirements unless otherwise agreed by the parties.

18 Aside from the PSALM Corp., TRANSCO and connected distribution utilities, no
19 third party shall be allowed ownership or management participation, in whole or in part,
20 in such subtransmission entity.

21 The TRANSCO may exercise the power of eminent domain subject to the
22 requirements of the Constitution and existing laws. Except as provided herein, no person,
23 company or entity other than the TRANSCO shall own any transmission facilities.

24 Prior to the transfer of the transmission functions by NPC to TRANSCO, and
25 before promulgation of the Grid Code, ERC shall ensure that NPC shall provide to all
26 electric power industry participants open and non-discriminatory access to its
27 transmission system. Any violation thereof shall be subject to the fines and penalties
28 imposed herein.

29 *SEC. 9. Functions and Responsibilities.* - Upon the effectivity of this Act, the
30 TRANSCO shall have the following functions and responsibilities:

31 (a) Act as the system operator of the nationwide electrical transmission and
32 subtransmission system, to be transferred to it by NPC;

33 (b) Provide open, equal and non-discriminatory access to its transmission
34 system to all electricity users;

35 (c) Ensure and maintain the reliability, adequacy, security, stability and
36 integrity of the nationwide electrical grid in accordance with the performance standards

1 for the operation and maintenance of the grid, as set forth in a Grid Code to be adopted
2 and promulgated by the ERC within six (6) months from the effectivity of this Act;

3 (d) Improve and expand its transmission facilities, consistent with the Grid
4 Code and the Transmission Development Plan (TDP) to be promulgated pursuant to this
5 Act, to adequately serve generation companies, distribution utilities and suppliers
6 requiring transmission service and/or ancillary services through the transmission system:
7 *Provided*, That TRANSCO shall submit any plan for expansion or improvement of its
8 facilities for approval by the ERC;

9 (e) Subject to technical constraints, the grid operator of the TRANSCO shall
10 provide central dispatch of all generation facilities connected, directly or indirectly, to the
11 transmission system in accordance with the dispatch schedule submitted by the market
12 operator, taking into account outstanding bilateral contracts; and

13 (f) TRANSCO shall undertake the preparation of the TDP.

14 In the preparation of the TDP, TRANSCO shall consult the other sectors of the
15 power industry such as the generation companies, distribution utilities, and the electricity
16 end-users. The TDP shall be submitted to the DOE for integration with the Power
17 Development Program and the National Energy Plan, provided for in Republic Act No.
18 7638 otherwise known as "the Department of Energy Act of 1992".

19 A generation company may develop and own or operate dedicated point-to-point
20 limited transmission facilities that are consistent with the TDP: *Provided*, That such
21 facilities are required only for the purpose of connecting to the transmission system, and
22 are used solely by the generating facility, subject to prior authorization by the ERC:
23 *Provided, further*, That in the event that such assets are required for competitive
24 purposes, ownership of the same shall be transferred to the TRANSCO at a fair market
25 price: *Provided, finally*, That in case of disagreement on the fair market price, the ERC
26 shall determine the fair market value of the asset.

27 SEC. 10. *Corporate Powers of the TRANSCO.* – As a corporate entity,
28 TRANSCO shall have the following corporate powers:

29 (a) To have continuous succession under its corporate name until otherwise
30 provided by law;

31 (b) To adopt and use a corporate seal and to change, alter or modify the same,
32 if necessary;

33 (c) To sue and be sued;

34 (d) To enter into a contract and execute any instrument necessary or
35 convenient for the purpose for which it is created;

1 (e) To borrow funds from any source, whether private or public, foreign or
2 domestic, and issue bonds and other evidence of indebtedness: *Provided*, That in the case
3 of the bond issues, it shall be subject to the approval of the President of the Philippines
4 upon recommendation of the Secretary of Finance: *Provided, further*, That foreign loans
5 shall be obtained, for and in behalf of TRANSCO, in accordance with law and the rules
6 and regulations of the Bangko Sentral ng Pilipinas;

7 (f) To maintain a provident fund which consists of contributions made by
8 both the TRANSCO and its officials and employees and their earnings for the payment of
9 benefits to such officials and employees or their heirs under such terms and conditions as
10 it may prescribe;

11 (g) To do any act necessary or proper to carry out the purpose for which it is
12 created, or which, from time to time, may be declared by the TRANSCO Board as
13 necessary, useful, incidental or auxiliary to accomplish its purposes and objectives; and,

14 (h) Generally, to exercise all the powers of a corporation under the
15 corporation law insofar as they are not inconsistent with this Act.

16 SEC. 11. *TRANSCO Board of Directors.* – All the powers of the TRANSCO shall
17 be vested in and exercised by a Board of Directors. The Board shall be composed of a
18 Chairman and six (6) members. The Secretary of the Department of Finance (DOF)
19 shall be the ex-officio Chairman of the Board. The other members of the TRANSCO
20 Board shall include the Secretary of the Department of Energy (DOE), the Secretary of
21 the Department of Environment and Natural Resources (DENR), the President of
22 TRANSCO, one member each representing Luzon, Visayas and Mindanao.

23 The members of the Board shall be appointed by the President of the Philippines
24 and shall serve for a term of six (6) years, except that any person appointed to fill-in a
25 vacancy shall serve only the unexpired term of his/her predecessor in office. All
26 members of the Board shall be professionals of recognized competence and expertise in
27 the fields of engineering, finance, economics, law or business management. No member
28 of the Board or any of his relatives within the fourth civil degree of consanguinity or
29 affinity shall have any interest, either as investor, officer or director, in any generation
30 company or distribution utility or other entity engaged in transmitting, generating and
31 supplying electricity specified by ERC.

32 SEC. 12. *Powers and Duties of the Board.* – The following are the powers of the
33 Board:

34 (a) To provide strategic direction for TRANSCO, and formulate medium and
35 long-term strategies pursuant to the vision, mission, and objectives of TRANSCO;

1 (b) To develop and adopt policies and measures for the efficient and effective
2 management and operation of TRANSCO;

3 (c) To organize, re-organize, and determine the organizational structure and
4 staffing pattern of TRANSCO; abolish and create offices and positions; fix the number of
5 its officers and employees; transfer and re-align such officers and personnel; fix their
6 compensation, allowance, and benefits;

7 (d) To fix the compensation of the President of TRANSCO and to appoint and
8 fix the compensation of other corporate officers;

9 (e) For cause, to suspend or remove any corporate officer appointed by the
10 Board;

11 (f) To adopt and set guidelines for the employment of personnel on the basis
12 of merit, technical competence, and moral character; and

13 (g) Any provisions of the law to the contrary notwithstanding, to write-off bad
14 debts.

15 SEC. 13. *Board Meetings.* – The Board shall meet as often as may be necessary
16 upon the call of the Chairman of the Board or by a majority of the Board members.

17 SEC. 14. *Board Per Diems and Allowances.* – The members of the Board shall
18 receive per diem for each regular or special meeting of the Board actually attended by
19 them, and, upon approval of the Secretary of the Department of Finance, such other
20 allowances as the Board may prescribe.

21 SEC. 15. *Quorum.* – The presence of at least four (4) members of the Board shall
22 constitute a quorum, which shall be necessary for the transaction of any business. The
23 affirmative vote of a majority of the members present in a quorum shall be adequate for
24 the approval of any resolution, decision or order except when the Board shall agree that a
25 greater vote is required.

26 SEC. 16. *Powers of the President of TRANSCO.* – The President of TRANSCO
27 shall be appointed by the President of the Philippines. In the absence of the Chairman,
28 the President shall preside over Board meetings. The TRANSCO President shall be the
29 Chief Executive Officer of TRANSCO.

30 The President of TRANSCO shall have the following powers and duties:

31 (a) To execute and administer the policies and measures approved by the
32 Board, and take responsibility for the efficient discharge of management functions;

33 (b) To oversee the preparation of the budget of TRANSCO;

34 (c) To direct and supervise the operation and internal administration of
35 TRANSCO and, for this purpose, may delegate some or any of his administrative
36 responsibilities and duties to other officers of TRANSCO;

1 (d) Subject to the guidelines and policies set up by the Board, to appoint and
2 fix the number and compensation of subordinate officials and employees of TRANSCO;
3 and for cause, to remove, suspend, or otherwise discipline any subordinate employee of
4 TRANSCO;

5 (e) To submit an annual report to the Board on the activities and achievements
6 of TRANSCO at the close of each fiscal year and upon approval thereof, submit a copy to
7 the President of the Philippines and to such other agencies as may be required by law;

8 (f) To represent TRANSCO in all dealings and transactions with other
9 offices, agencies, and instrumentalities of the Government and with all persons and other
10 entities, private or public, domestic or foreign; and

11 (g) To exercise such other powers and duties as may be vested in him by the
12 Board from time to time.

13 SEC. 17. *Exemption from the Salary Standardization Law.* – The salaries and
14 benefits of employees in the TRANSCO shall be exempt from Republic Act No. 6758
15 and shall be fixed by the TRANSCO Board.

16 SEC. 18. *Profits.* – The net profit, if any, of TRANSCO shall be remitted to the
17 PSALM Corp. not later than thirty (30) days after the immediately preceding quarter.

18 SEC. 19. *Transmission Charges.* – The transmission charges of the TRANSCO
19 shall be filed with and approved by the ERC pursuant to paragraph (f) of Section 43
20 hereof.

21 SEC. 20. *TRANSCO Related Businesses.* – TRANSCO may engage in any related
22 business which maximizes utilization of its assets: *Provided,* That a portion of the net
23 income derived from such undertaking utilizing assets which form part of the rate base
24 shall be used to reduce transmission wheeling rates as determined by the ERC. Such
25 portion of net income used to reduce the transmission wheeling rates shall not exceed
26 fifty percent (50%) of the net income derived from such undertaking.

27 Separate accounts shall be maintained for each business undertaking to ensure
28 that the transmission business shall neither subsidize in any way such business
29 undertaking nor encumber its transmission assets in any way to support such business.

30 SEC. 21. *TRANSCO Operations & Maintenance (O&M) Concessionaire.* – The
31 TRANSCO shall award, in open competitive bidding, a concession contract to a qualified
32 party for the operation, maintenance, improvement and expansion of its transmission
33 assets and the operation of any related business for a period of twenty-five (25) years,
34 subject to review and renewal for a maximum period of another twenty-five (25) years.
35 The contract shall include, but not limited to, the provision for performance and financial

1 guarantees or any other covenants which may be required in order to fulfill the
2 obligations of the concession contract.

3 The TRANSCO O & M Concessionaire shall comply with the Grid Code and the
4 TDP as approved. Failure to comply with such obligations shall result in the imposition
5 of appropriate sanctions or penalties by the ERC: *Provided, however,* That in cases of
6 major or serious economic and/or technical reasons, TRANSCO O & M Concessionaire
7 may seek authority from the ERC to defer any expansion or improvement.

8 The concessionaire shall be financially and technically capable, with proven
9 domestic and/or international experience and expertise as a leading transmission system
10 operator under a competitive electric power industry structure. The experience of the
11 strategic partner must be with a transmission system of equal, if not greater, capacity and
12 coverage as the Philippines.

13 *SEC. 22. Distribution Sector.* – The distribution of electricity to end-users shall be
14 a regulated common carrier business requiring a franchise. Distribution of electric power
15 to all end-users may be undertaken by private distribution utilities, cooperatives, local
16 government units presently undertaking this function and other duly authorized entities,
17 subject to regulation by the ERC.

18 *SEC. 23. Functions of Distribution Utilities.* – A distribution utility shall have the
19 obligation to provide distribution services and connections to its system for any end-user
20 within its franchise area consistent with the distribution code. Any entity engaged therein
21 shall provide open and non-discriminatory access to its distribution system to all users.

22 Any distribution utility shall be entitled to impose and collect distribution retail
23 wheeling charges and connection fees from such end-users as approved by the ERC.

24 A distribution utility shall have the obligation to supply electricity in the least cost
25 manner to its captive market, subject to the collection of distribution retail supply rate
26 duly approved by the ERC.

27 To achieve economies of scale in utility operations, distribution utilities may,
28 after due notice and public hearing, pursue structural and operational reforms such as but
29 not limited to, joint actions between or among the distribution utilities, subject to the
30 guidelines issued by the ERC. Such joint actions shall result in improved efficiencies,
31 reliability of service, reduction of costs and compliance to the performance standards
32 prescribed in the IRR of this Act.

33 Distribution utilities shall submit to the ERC a statement of their compliance with
34 the technical specifications prescribed in the Distribution Code and the performance
35 standards prescribed in the IRR of this Act. Distribution utilities which do not comply
36 with any of the prescribed technical specifications and performance standards shall

1 submit to the ERC a plan to comply, within three (3) years, with said prescribed technical
2 specifications and performance standards. The ERC shall, within sixty (60) days upon
3 receipt of such plan, evaluate the same and notify the distribution utility concerned of its
4 action. Failure to submit a feasible and credible plan and/or failure to implement the
5 same shall serve as grounds for the imposition of appropriate sanctions, fines or penalties.

6 Distribution utilities shall prepare and submit to the DOE their annual distribution
7 development plans. In the case of electric cooperatives, such plans shall also be
8 submitted through the National Electrification Administration.

9 Distribution utilities shall provide universal service within their franchise,
10 including unviable areas, as part of their social obligations in a manner that shall sustain
11 the economic viability of the utility, subject to the approval by the ERC in the case of
12 private or government-owned utilities. Areas which a franchised distribution utility
13 cannot or does not find viable may be transferred to another distribution utility, if any is
14 available, who will provide the service, subject to approval by ERC. In cases where
15 franchise holders fail and/or refuse to service any area within their franchise territory and
16 allowed another utility to service the same, then the status quo shall be respected. To this
17 end, distribution utilities shall submit to the DOE their plans for serving such areas as
18 part of their distribution development plans. In cases of major or serious economic
19 and/or technical reasons, the distribution utility shall seek prior authority from the ERC to
20 defer such expansion or improvement.

21 Distribution utilities may exercise the power of eminent domain subject to the
22 requirements of the constitution and existing laws.

23 *SEC. 24. Distribution Retail Wheeling Charge.* – The retail wheeling rates of
24 distribution utilities shall be filed with and approved by the ERC pursuant to paragraph
25 (f) of Section 43 hereof.

26 *SEC. 25. Distribution Retail Supply Rate.* – The rates charged by distribution
27 utilities for the supply of electricity in their captive market shall be subject to regulation
28 by the ERC based on the principle of full recovery of prudent and reasonable economic
29 costs incurred, or such other principles that will promote efficiency as may be determined
30 by the ERC.

31 Every distribution utility shall identify and segregate in its bills to end-users the
32 components of the distribution retail supply rate, as defined in this Act.

33 *SEC. 26. Distribution Related Businesses.* – Distribution utilities may, directly or
34 indirectly, engage in any related business undertaking which maximizes the utilization of
35 their assets: *Provided*, That a portion of the net income derived from such undertaking
36 utilizing assets which form part of the rate base shall be used to reduce its distribution

1 retail wheeling charges as determined by the ERC: *Provided, further,* That such portion
2 of net income used to reduce their distribution retail wheeling charges shall not exceed
3 fifty percent (50%) of the net income derived from such undertaking: *Provided, finally,*
4 That separate accounts are maintained for each business undertaking to ensure that the
5 distribution business shall neither subsidize in any way such business undertaking nor
6 encumber its distribution assets in any way to support such business.

7 SEC. 27. *Franchising Power in the Electric Power Sector.* – The power to grant
8 franchises to persons engaged in the transmission and distribution of electricity shall be
9 vested exclusively in the Congress of the Philippines and all laws inconsistent with this
10 Act particularly, but not limited to, Section 43 of PD 269, otherwise known as the
11 “National Electrification Decree,” are hereby deemed repealed or modified accordingly:
12 *Provided,* That all existing franchises shall be allowed to their full term: *Provided,*
13 *further,* That in the case of electric cooperatives, renewals and cancellations shall remain
14 with the National Electricity Commission under the National Electrification
15 Administration for five (5) more years after the enactment of this Act.

16 SEC. 28. *De-monopolization and Shareholding Dispersal.* – In compliance with
17 the constitutional mandate for dispersal of ownership and de-monopolization of public
18 utilities, the holdings of persons, natural or juridical, including directors, officers,
19 stockholders and related interests, in a generation company, distribution utility and their
20 respective holding companies shall not exceed fifteen (15%) percent of the voting shares
21 of stock unless the utility or the company holding the shares or its controlling
22 stockholders are already listed in the Philippine Stock Exchange (PSE): *Provided,* That
23 controlling stockholders of small distribution utilities are required to list in the PSE
24 within five (5) years from the enactment of this Act if they already own the stocks. New
25 controlling stockholders shall undertake such listing within five (5) years from the time
26 they acquire ownership and control. A small distribution company is one whose peak
27 demand is One hundred megawatts (100MW) or less.

28 The ERC shall, within sixty (60) days from the effectivity of this Act, promulgate
29 the rules and regulations to implement and effect this provision.

30 SEC. 29. *Supply Sector.* – The supply of electricity to the contestable market
31 shall require a license from the ERC, except for distribution utilities and electric
32 cooperatives with respect to their existing franchise areas.

33 For this purpose, the ERC shall promulgate rules and regulations prescribing the
34 qualifications of electricity suppliers which shall include, among other requirements, a
35 demonstration of their technical capability, financial capability, and creditworthiness:
36 *Provided,* That the ERC shall have authority to require electricity suppliers to furnish a

1 bond or other evidence of the ability of a supplier to withstand market disturbances or
2 other events that may increase the cost of providing service.

3 Any law to the contrary notwithstanding, supply of electricity to the contestable
4 market shall not be considered a public utility operation. For this purpose, any person or
5 entity which shall engage in the supply of electricity to the contestable market shall not
6 be required to secure a local or national franchise.

7 The prices to be charged by suppliers for the supply of electricity to the
8 contestable market shall not be subject to regulation by the ERC.

9 Electricity suppliers shall be subject to the rules and regulations concerning abuse
10 of market power, cartelization, and other anti-competitive or discriminatory behavior to
11 be promulgated by the ERC.

12 In its billings to end-users, every supplier shall identify and segregate the
13 components of its supply charge, as defined herein.

14 SEC. 30. *Wholesale Electricity Spot Market.* – Within one (1) year from the
15 effectivity of this Act, the DOE shall establish a wholesale electricity spot market
16 composed of the wholesale electricity spot market participants. The market shall provide
17 the mechanism for identifying and setting the price of actual variations from the
18 quantities transacted under contracts between sellers and purchasers of electricity.

19 Jointly with the electric power industry participants, the DOE shall formulate the
20 detailed rules for the wholesale electricity spot market. Said rules shall provide the
21 mechanism for determining the price of electricity not covered by bilateral contracts
22 between sellers and purchasers of electricity users. The price determination methodology
23 contained in said rules shall be subject to the approval of ERC. Said rules shall also
24 reflect accepted economic principles and provide a level playing field to all electric
25 power industry participants. The rules shall provide, among others, procedures for:

- 26 (a) Establishing the merit order dispatch instructions for each time period;
- 27 (b) Determining the market-clearing price for each time period;
- 28 (c) Administering the market including criteria for admission to and
29 termination from the market which includes security or performance bond requirements,
30 voting rights of the participants, surveillance and assurance of compliance of the
31 participants with the rules and the formation of the wholesale electricity spot market
32 governing body;
- 33 (d) Prescribing guidelines for the market operation in system emergencies;
- 34 and
- 35 (e) Amending the rules.

1 The wholesale electricity spot market shall be implemented by a market operator
2 in accordance with the wholesale electricity spot market rules. The market operator shall
3 be an autonomous group, to be constituted by DOE, with equitable representation from
4 electric power industry participants, initially under the administrative supervision of the
5 TRANSCO. The market operator shall undertake the preparatory work and initial
6 operation of the wholesale electricity spot market. Not later than one (1) year after the
7 implementation of the wholesale electricity spot market, an independent entity shall be
8 formed and the functions, assets and liabilities of the market operator shall be transferred
9 to such entity with the joint endorsement of the DOE and the electric power industry
10 participants. Thereafter, the administrative supervision of the TRANSCO over such
11 entity shall cease.

12 Subject to the compliance with the membership criteria, all generating companies,
13 distribution utilities, suppliers, bulk consumers/end-users and other similar entities
14 authorized by the ERC shall be eligible to become members of the wholesale electricity
15 spot market.

16 The ERC may authorize other similar entities to become eligible as members of
17 the wholesale electricity spot market either directly or indirectly. All generating
18 companies, distribution utilities, suppliers, bulk consumers/end-users and other similar
19 entities authorized by the ERC, whether direct or indirect members of the wholesale
20 electricity spot market, shall be bound by the wholesale electricity spot market rules with
21 respect to transactions in that market.

22 NEA may, in exchange for adequate security and a guarantee fee, act as a guarantor
23 for purchases of electricity in the wholesale electricity spot market by any electric
24 cooperative or small distribution utility to support their credit standing consistent with the
25 provisions hereof. For this purpose, the authorized capital stock of NEA is hereby
26 increased to Ten billion pesos (P10,000,000,000.00).

27 All electric cooperatives which have outstanding uncollected billings to any local
28 government unit shall report such billings to NEA which shall, in turn, report the same to
29 the Department of Budget and Management (DBM) for collection pursuant to Executive
30 Order 190 issued on December 21, 1999.

31 The cost of administering and operating the wholesale electricity spot market
32 shall be recovered by the market operator through a charge applied to all market
33 members: *Provided*, That such charge shall be filed with and approved by the ERC.

34 In cases of national and international security emergencies or natural calamities,
35 the ERC is hereby empowered to suspend the operation of the wholesale electricity spot
36 market or declare a temporary wholesale electricity spot market failure.

1 SEC. 31. *Retail Competition and Open Access.* – Retail competition and open
2 access on distribution wires shall be implemented not later than three (3) years upon the
3 effectivity of this Act subject to compliance with the following conditions precedent:

- 4 (a) Establishment of the wholesale electricity spot market;
5 (b) Approval of unbundled transmission and distribution retail wheeling
6 charges;
7 (c) Initial implementation of the cross subsidy removal scheme; and
8 (d) Privatization of at least 70% of the total capacity of generating assets of
9 NPC and of the total capacity of the power plants under contract with NPC in Luzon and
10 Visayas.

11 Upon the initial implementation of open access, the ERC shall allow all electricity
12 end-users located in Luzon with a maximum demand of at least two megawatts (2MW) to
13 be the contestable market. For the Visayas and Mindanao areas, the initial threshold level
14 shall be one and a quarter megawatts (1.25MW). However, the ERC shall, on January 1,
15 2004, reduce the maximum demand for the contestable market in Luzon to one megawatt
16 (1MW) for at least two (2) years and Seven hundred fifty kilowatts (750kW) for the
17 Visayas and Mindanao areas. Thereafter, the ERC shall determine a threshold level when
18 open access shall apply to all distribution utilities.

19 In the case of electric cooperatives, retail competition and open access shall be
20 implemented not earlier than five (5) years upon the effectivity of this Act.

21 SEC. 32. *NPC Stranded Debt and Contract Cost Recovery.* – Stranded debt of
22 NPC shall refer to any unpaid financial obligations of NPC which have not been
23 liquidated by the proceeds from sales and privatization of NPC assets.

24 Stranded contract costs of NPC shall refer to the excess of the contracted cost of
25 electricity under eligible IPP contracts of NPC over the actual selling price of such
26 contracts in the market. Such contracts shall have been accredited by the DOE or NPC
27 and approved by the ERB as of the effectivity of this Act.

28 The national government shall, in exchange for the equivalent amount of the equity
29 of NPC, directly assume a portion of the financial obligations of NPC in an amount not to
30 exceed Two Hundred Billion Pesos (P200,000,000,000.00). For this purpose, the capital
31 stock of NPC shall be increased to Three hundred billion pesos (P300,000,000,000.00)
32 common shares which shall be divided into Three billion (3,000,000,000.00) shares with
33 a par value of One hundred pesos (P100.00) per share.

34 The ERC shall verify the reasonable amounts and determine the manner and
35 duration for the full recovery of stranded debt and stranded contract costs as defined
36 herein: *Provided*, That the duration for such recovery shall not be shorter than fifteen

1 (15) years nor longer than twenty-five (25) years. The ERC shall, at the end of the first
2 year of the implementation of stranded cost recovery and every year thereafter, conduct a
3 review to determine whether there is under-recovery or over-recovery and adjust (true-
4 up) the level of stranded cost recovery charge accordingly.

5 The NPC and PSALM shall have the duty to mitigate all potential stranded
6 contract costs of NPC.

7 SEC. 33. *Distribution Utilities Stranded Contract Costs Recovery.* – Stranded
8 contract costs of distribution utilities shall refer to the excess of the contracted cost of
9 electricity under eligible contracts of such utilities over the actual selling price of such
10 contracts in the market. Such contracts shall have been accredited by the DOE or NPC
11 and approved by the ERB as of the effectivity of this Act.

12 Within one (1) year from the start of open access, any distribution utility that
13 intends to seek recovery of stranded contract costs shall file notice of such intent with the
14 ERC together with an estimate of such obligations, including the present value thereof
15 and such other supporting data as may be required by the ERC. Any distribution utility
16 that does not file within the date specified shall not be eligible for such recovery.

17 Any distribution utility which opts to recover stranded cost shall have a duty to
18 mitigate its potential stranded contract costs by making reasonable best efforts to:

- 19 (a) reduce the costs of its existing contracts with IPPs; and
20 (b) submit to an annual earnings review by the ERC and use its earnings
21 above its authorized rate of return to reduce the book value of contracts until the end of
22 the stranded cost recovery period.

23 Other mitigating measures which are reasonably known and generally accepted
24 within the electric power industry shall be utilized. The ERC shall not require the
25 distribution utility to take a loss to reduce stranded contract costs or divest assets, unless
26 the divestiture is imposed as a penalty as provided herein.

27 The relevant distribution utility shall submit to the ERC quarterly reports showing
28 the amount of stranded costs recovered and the balance remaining to be recovered.

29 The ERC shall verify the reasonable amounts and determine the manner and
30 duration for the full recovery of stranded contract costs as defined herein: *Provided*, That
31 the duration for such recovery shall not be shorter than fifteen (15) years nor longer than
32 twenty-five (25) years.

33 The ERC shall, at the end of the first year of the implementation of stranded cost
34 recovery and every year thereafter, conduct a review to determine whether there is under-
35 recovery or over recovery and adjust (true-up) the level of stranded cost recovery charge
36 accordingly.

1 SEC. 34. *Universal Charge.* – Within one (1) year from the effectivity of this Act,
2 a universal charge to be determined, fixed and approved by the ERC, shall be imposed on
3 all electricity end-users for the following purposes:

4 (a) Payment for the stranded debts and stranded contract costs of NPC and
5 qualified distribution utilities resulting from the restructuring of the industry;

6 (b) Missionary electrification;

7 (c) The equalization of the taxes and royalties applied to indigenous or
8 renewable sources of energy vis-à-vis imported energy fuels;

9 (d) An environmental charge equivalent to one-fourth of one centavo per
10 kilowatt-hour (P0.0025/kWh), which shall accrue to an environmental fund to be used
11 solely for watershed rehabilitation and management. Said fund shall be managed by NPC
12 under existing arrangements; and

13 (e) A charge to account for all forms of cross-subsidies for a period not
14 exceeding three (3) years.

15 The universal charge shall be a non-bypassable charge which shall be passed on
16 and collected from all end-users on a monthly basis by the distribution utilities.
17 Collections by the distribution utilities and the TRANSCO in any given month shall be
18 remitted to the PSALM Corp. on or before the fifteenth (15th) of the succeeding month,
19 net of any amount due to the distribution utility. Any end-user or self-generating entity
20 not connected to a distribution utility shall remit its corresponding universal charge
21 directly to the TRANSCO.

22 The PSALM Corp., as administrator of the fund, shall create a Special Trust Fund
23 which shall be disbursed only for the purposes specified herein in an open and transparent
24 manner. All amounts collected for the universal charge shall be distributed to the
25 respective beneficiaries within a reasonable period to be provided by the ERC.

26 SEC. 35. *Royalties, Returns and Tax Rates for Indigenous Energy Resources.* –
27 The provision of Section 79 of Commonwealth Act No. 137 (C.A. No. 137) and any law
28 to the contrary notwithstanding, the royalties, returns and taxes collected for the
29 exploitation of all indigenous sources of energy, including but not limited to, natural gas
30 and geothermal steam, shall be adjusted so as to effect parity of tax treatment with the
31 existing rates for imported coal, crude oil, bunker fuel and other imported fuels.

32 To ensure that the adjustment of tax rates and royalties shall result in lower rates
33 for end-users, the Department of Finance shall, within sixty (60) days from the effectivity
34 of this Act, issue the rules and regulations thereof. Consistent with this objective, the
35 ERC shall forthwith revise the rates of power from all indigenous sources of energy.

1 the individual or joint development plans of the transmission, generation, and distribution
2 sectors of the power industry, which are submitted to the Department: *Provided*,
3 however, That the ERC shall have exclusive authority covering the Grid Code and the
4 pertinent rules and regulations it may issue;

5 (d) Ensure the reliability, quality and security of supply of electric power;

6 (e) Following the restructuring of the electricity sector, the DOE shall, among
7 others:

8 (i) Encourage private sector investments in the electricity sector and
9 promote development of indigenous and renewable energy sources;

10 (ii) Facilitate and encourage reforms in the structure and operations of
11 distribution utilities for greater efficiency and lower costs;

12 (iii) In consultation with other government agencies, promote a system of
13 incentives to encourage industry participants, including new generating
14 companies and end-users to provide adequate and reliable electric supply; and

15 (iv) Undertake, in coordination with the ERC, NPC, NEA and the
16 Philippine Information Agency (PIA), information campaign to educate the public
17 on the restructuring of the electricity sector and privatization of NPC assets;

18 (f) Jointly with the electric power industry participants, establish the wholesale
19 electricity spot market and formulate the detailed rules governing the operations thereof;

20 (g) Establish and administer programs for the exploration, transportation,
21 marketing, distribution, utilization, conservation, stockpiling, and storage of energy
22 resources of all forms, whether conventional or non-conventional;

23 (h) Exercise supervision and control over all government activities relative to
24 energy projects in order to attain the goals embodied in Section 2 of RA 7638;

25 (i) Develop policies and procedures and, as appropriate, promote a system of
26 energy development incentives to enable and encourage electric power industry
27 participants to provide adequate capacity to meet demand including, among others,
28 reserve requirements;

29 (j) Monitor private sector activities relative to energy projects in order to attain
30 the goals of the restructuring, privatization, and modernization of the power sector as
31 provided for under existing laws: *Provided*, That the Department shall endeavor to
32 provide for an environment conducive to free and active private sector participation and
33 investment in all energy activities;

34 (k) Assess the requirements of, determine priorities for, provide direction to, and
35 disseminate information resulting from energy research and development programs for

1 the optimal development of various forms of energy production and utilization
2 technologies;

3 (l) Formulate and implement programs, including a system of providing
4 incentives and penalties, for the judicious and efficient use of energy in all energy-
5 consuming sectors of the economy;

6 (m) Formulate and implement a program for the accelerated development of non-
7 conventional energy systems and the promotion and commercialization of its
8 applications;

9 (n) Devise ways and means of giving direct benefit to the province, city, or
10 municipality, especially the community and people affected, and equitable preferential
11 benefit to the region that hosts the energy resource and/or the energy-generating facility:
12 *Provided, however,* That the other provinces, cities, municipalities, or regions shall not be
13 deprived of their energy requirements;

14 (o) Encourage private enterprises engaged in energy projects, including
15 corporations, cooperatives, and similar collective organizations, to broaden the base of
16 their ownership and thereby encourage the widest public ownership of energy-oriented
17 corporations;

18 (p) Formulate such rules and regulations as may be necessary to implement
19 the objectives of this Act; and

20 (q) Exercise such other powers as may be necessary or incidental to attain the
21 objectives of this Act."

22 CHAPTER IV

23 REGULATION OF THE ELECTRIC POWER INDUSTRY

24 SEC. 38. *Creation of the Energy Regulatory Commission.* – There is hereby
25 created an independent, quasi-judicial regulatory body to be named the Energy
26 Regulatory Commission (ERC). For this purpose, the existing Energy Regulatory Board
27 (ERB) created under Executive Order No. 172, as amended, is hereby abolished.

28 The Commission shall be composed of a Chairman and four (4) members to be
29 appointed by the President of the Philippines. The Chairman and the members of the
30 Commission shall be natural-born citizens and residents of the Philippines, persons of
31 good moral character, at least thirty-five (35) years of age, and of recognized competence
32 in any of the following fields: energy, law, economics, finance, commerce, or
33 engineering, with at least three (3) years actual and distinguished experience in their
34 respective fields of expertise: *Provided,* That out of the four (4) members of the
35 Commission at least one (1) shall be a member of the Philippine Bar with at least ten (10)

1 years experience in the active practice of law, and one (1) shall be a certified public
2 accountant with at least ten (10) years experience in active practice.

3 Within three (3) months from the creation of ERC, the Chairman shall submit for
4 approval of the President of the Philippines the new organizational structure and plantilla
5 positions necessary to carry out the powers and functions of the ERC.

6 The Chairman of the Commission who shall be a member of the Philippine Bar
7 shall act as the Chief Executive Officer of the Commission.

8 All members of the Commission shall have a term of seven (7) years: *Provided,*
9 That for the first appointees, the Chairman shall hold office for seven (7) years, two (2)
10 members shall hold office for five (5) years and the other two (2) members shall hold
11 office for three (3) years: *Provided, further,* That appointment to any future vacancy
12 shall only be for the unexpired term of the predecessor: *Provided, finally,* That there
13 shall be no reappointment and in no case shall any member serve for more than seven (7)
14 years in the Commission.

15 The Chairman and Members of the Commission shall assume office at the
16 beginning of their terms: *Provided,* That, if upon the effectivity of this Act, the
17 Commission has not been constituted and the new staffing pattern and plantilla positions
18 have not been approved and filled-up, the current Board and existing personnel of ERB
19 shall continue to hold office.

20 The existing personnel of the ERB, if qualified, shall be given preference in the
21 filling up of plantilla positions created in the ERC, subject to existing civil service rules
22 and regulations.

23 Members of the Commission shall enjoy security of tenure and shall not be
24 suspended or removed from office except for just cause as specified by law.

25 The Chairman and members of the Commission or any of their relatives within
26 the fourth civil degree of consanguinity or affinity, legitimate or common law, shall be
27 prohibited from holding any interest whatsoever, either as investor, stockholder, officer
28 or director, in any company or entity engaged in the business of transmitting, generating,
29 supplying or distributing any form of energy and must, therefore, divest through sale or
30 legal disposition of any and all interests in the energy sector upon assumption of office.

31 The presence of at least three (3) members of the Commission shall constitute a
32 quorum and the majority vote of two (2) members in a meeting where a quorum is
33 present shall be necessary for the adoption of any rule, ruling, order, resolution, decision
34 or other act of the Commission in the exercise of its quasi-judicial functions: *Provided,*
35 That in fixing rates and tariffs of transmission, and distribution retail wheeling charges

1 and tariffs of franchise electric utilities and all electric power rates, an affirmative vote of
2 three (3) members shall be required.

3 SEC. 39. *Compensation and Other Emoluments for ERC Personnel.* – The
4 compensation and other emoluments for the Chairman and members of the Commission
5 and the ERC personnel shall be exempted from the coverage of Republic Act No. 6758,
6 otherwise known as the Salary Standardization Act. For this purpose, the schedule of
7 compensation of the ERC personnel, except for the initial salaries and compensation of
8 the Chairman and members of the Commission, shall be submitted for approval by the
9 President of the Philippines. The new schedule of compensation shall be implemented
10 within six (6) months from the effectivity of this Act and may be upgraded by the
11 President of the Philippines as the need arises: Provided, That in no case shall the rate be
12 upgraded more than once a year.

13 The Chairman and members of the Commission shall initially be entitled to the
14 same salaries, allowances and benefits as those of the Presiding Justice and Associate
15 Justices of the Court of Appeals, respectively. The Chairman and the members of the
16 Commission, upon completion of their term or upon becoming eligible for retirement
17 under existing laws shall be entitled to the same retirement benefits and privileges
18 provided for the Presiding Justice and Associate Justices of the Court of Appeals,
19 respectively.

20 SEC. 40. *Enhancement of Technical Competence.* - The ERC shall establish
21 rigorous training programs for its staff for the purpose of enhancing the technical
22 competence of the ERC in the following areas: evaluation of technical performance and
23 monitor compliance with service and performance standards, performance-based rate-
24 setting reform, environmental standards and such other areas as will enable the ERC to
25 adequately perform its duties and functions.

26 SEC. 41. *Promotion of Consumer Interests.* - The ERC shall handle consumer
27 complaints and ensure the adequate promotion of consumer interests.

28 SEC. 42. *Fiscal Autonomy of the ERC.* – The ERC shall enjoy fiscal autonomy,
29 subject to regular audits by the Commission on Audit. The amount of One hundred fifty
30 million pesos (PHP 150,000,000.00) is hereby allocated from the existing budget of the
31 ERB for the initial operation of the ERC. Any balance shall initially be sourced from the
32 Office of the President of the Philippines. Thereafter, the annual budget certified by the
33 ERC, through its chairman, as necessary to defray its expenses shall be provided for in
34 the regular or special appropriations and shall be released automatically and regularly.

35 SEC. 43. *Functions of the ERC.* – The ERC shall promote competition, encourage
36 market development, ensure customer choice and discourage/penalize abuse of market

1 power in the restructured electricity industry. Towards this end, it shall be responsible
2 for the following key functions in the restructured industry:

3 (a) Enforce the implementing rules and regulations of this Act;

4 (b) Within six (6) months from the effectivity of this Act, promulgate and
5 enforce, in accordance with law, a National Grid Code and a Distribution Code which
6 shall include, but not limited to, the following:

7 (i) Performance standards for TRANSCO O & M Concessionaire,
8 distribution utilities and suppliers: *Provided*, That in the establishment of the
9 performance standards, the nature and function of the entities shall be considered;
10 and

11 (c) (ii) In consultation with the DOE and DOF, financial capability standards
12 for the generating companies, the TRANSCO, distribution utilities and suppliers:
13 *Provided*, That in the formulation of the financial capability standards, the nature and
14 function of the entity shall be considered: *Provided, further*, That such standards are set
15 to ensure that the electric power industry participants meet the minimum financial
16 standards to protect the public interest. Determine, fix, and approve, after due notice and
17 public hearings the universal charge, to be imposed on all electricity end-users pursuant
18 to Sections 34 hereof;

19 (d) Enforce the rules and regulations governing the operations of the
20 electricity spot market and the activities of the spot market operator and other participants
21 in the spot market, for the purpose of ensuring a greater supply and rational pricing of
22 electricity;

23 (e) Determine the level of cross subsidies in the existing retail rate until the
24 same is removed pursuant to Section 73 hereof;

25 (f) Amend or revoke the authority to operate of any person or entity which
26 fails to comply with the provisions hereof, the IRR or any order or resolution of the ERC,
27 after due notice and hearing. In the event a divestment is required, the ERC shall allow
28 the affected party sufficient time to remedy the infraction or for an orderly disposal, but
29 shall in no case exceed twelve (12) months from the issuance of the order;

30 (g) In the public interest, establish and enforce a methodology for setting
31 transmission and distribution wheeling rates and retail rates for the captive market of a
32 distribution utility, taking into account all relevant considerations, including the
33 efficiency or inefficiency of the regulated entities. The rates must be such as to allow the
34 recovery of just and reasonable costs and a reasonable return on rate base (RORB) to
35 enable the entity to operate viably. The rate-setting methodology so adopted and applied
36 must ensure a reasonable price of electricity. The rates prescribed shall be non-

1 discriminatory. To achieve this objective and to ensure the complete removal of cross
2 subsidies, the cap on the recoverable rate of system losses prescribed in Section 10 of
3 Republic Act No. 7832, is hereby amended and shall be replaced by caps which shall be
4 determined by the ERC based on load density, sales mix, cost of service, delivery voltage
5 and other technical considerations it may promulgate. The ERC shall determine such
6 form of rate-setting methodology, which shall promote efficiency. In case the rate setting
7 methodology used is RORB, it shall be subject to the following guidelines:

8 (i) For purposes of determining the rate base, TRANSCO or any
9 distribution utility may be allowed to revalue its eligible assets not more than once
10 every three (3) years by an independent appraisal company: *Provided, however,*
11 *That ERC may give an exemption in case of unusual devaluation: Provided,*
12 *further,* That the ERC shall exert efforts to minimize price shocks in order to
13 protect the consumers;

14 (ii) Interest expenses are not allowable deductions from permissible
15 return on rate base;

16 (iii) In determining eligible cost of services that will be passed on to the
17 end-users, the ERC shall establish minimum efficiency performance standards for
18 TRANSCO and distribution utilities including systems losses, interruption
19 frequency rates, and collection efficiency;

20 (iv) Further, in determining rate base, TRANSCO or any distribution
21 utility shall not be allowed to include management inefficiencies like cost of
22 project delays not excused by *force majeure*, penalties and related interest during
23 construction applicable to these unexcused delays; and

24 (v) Any significant operating costs or project investments of
25 TRANSCO and distribution utilities which shall become part of the rate base shall
26 be subject to the verification of the ERC to ensure that the contracting and
27 procurement of the equipment, assets and services have been subjected to
28 transparent and accepted industry procurement and purchasing practices to protect
29 the public interest.

30 (h) Three (3) years after the imposition of the universal charge, ensure that the
31 charges of the TRANSCO or any distribution utility shall bear no cross subsidies between
32 grids, within grids, or between classes of customers, except as provided herein;

33 (i) Review and approve any changes on the terms and conditions of service of
34 the TRANSCO or any distribution utility;

1 (j) Allow TRANSCO to charge user fees for ancillary services to all electric
2 power industry participants or self-generating entities connected to the grid. Such fees
3 shall be fixed by the ERC after due notice and public hearing;

4 (k) Set a lifeline rate for the marginalized end-users;

5 (l) Monitor and take remedial measures to penalize abuse of market power,
6 cartelization, and anti-competitive or discriminatory behavior by any electric power
7 industry participant;

8 (m) Impose fines or penalties for any non-compliance with or breach of this
9 Act, the IRR of this Act and the rules and regulations which it promulgates or
10 administers;

11 (n) Take any other action delegated to it pursuant to this Act;

12 (o) Before the end of April of each year, submit to the Office of the President
13 of the Philippines and Congress, copy furnished the DOE, an annual report containing
14 such matters or cases which have been filed before or referred to it during the preceding
15 year, the actions and proceedings undertaken and its decision or resolution in each case.
16 The ERC shall make copies of such reports available to any interested party upon
17 payment of a charge which reflects the printing costs. The ERC shall publish all its
18 decisions involving rates and anti-competitive cases in at least one (1) newspaper of
19 general circulation, and/or post electronically and circulate to all interested electric power
20 industry participants copies of its resolutions to ensure fair and impartial treatment;

21 (p) Monitor the activities of the generation and supply of the electric power
22 industry with the end in view of promoting free market competition and ensuring that the
23 allocation or pass through of bulk purchase cost by distributors is transparent, non-
24 discriminatory and that any existing subsidies shall be divided pro-rata among all retail
25 suppliers;

26 (q) Act on applications for or modifications of certificates of public
27 convenience and/or necessity, licenses or permits of franchised electric utilities in
28 accordance with law and revoke, review and modify such certificates, licenses or permits
29 in appropriate cases, such as in cases of violations of the Grid Code, Distribution Code
30 and other rules and regulations issued by the ERC in accordance with law;

31 (r) Act on applications for cost recovery and return on demand side
32 management projects;

33 (s) In the exercise of its investigative and quasi-judicial powers, act on any
34 complaint by or against any participant or player in the energy sector for violations of any
35 laws, rules and regulations governing the same, including the rules on cross-ownership,
36 anti-competitive practices and other acts of abuse of market positions by any participant

1 or player in the energy sector, as may be provided by law, and require any person or
2 entity to submit any report or data relative to any investigation or hearing conducted in
3 accordance with this Act;

4 (t) Inspect, on its own or through duly authorized representatives, the
5 premises, books of accounts and records of any person or entity at any time, in the
6 exercise of its quasi-judicial power for purposes of determining the existence of any anti-
7 competitive behavior and/or market power abuse and any violation of rules and
8 regulations issued by the ERC;

9 (u) Perform such other regulatory functions as are appropriate in order to
10 ensure the successful restructuring and modernization of the electric power industry, such
11 as, but not limited to, the rules and guidelines under which generation companies,
12 distribution utilities which are not publicly listed shall offer and sell to the public a
13 portion not less than fifteen percent (15%) of their common shares of stocks: *Provided,*
14 *however,* That generation companies, distribution utilities or their respective holding
15 companies that are already listed in the PSE are deemed in compliance. For existing
16 companies, such public offering shall be implemented not later than five (5) years from
17 the effectivity of this Act. New companies shall implement their respective public
18 offerings not later than five (5) years from the issuance of their certificate of compliance.

19 (v) The ERC shall have the original and exclusive jurisdiction over all cases
20 contesting rates, fees, fines and penalties imposed by the ERC in the exercise of the
21 abovementioned powers, functions and responsibilities and over all cases involving
22 disputes between and among participants or players in the energy sector.

23 All notices of hearings to be conducted by the ERC for the purpose of fixing rates
24 or fees shall be published at least twice for two successive weeks in two (2) newspapers
25 of nationwide circulation.

26 SEC. 44. *Transfer of Powers and Functions.* – The powers and functions of the
27 Energy Regulatory Board not inconsistent with the provisions of this Act are hereby
28 transferred to the ERC. The foregoing transfer of powers and functions shall include all
29 applicable funds and appropriations, records, equipment, property and personnel as may
30 be necessary.

31 SEC. 45. *Cross Ownership, Market Power Abuse And Anti-Competitive*
32 *Behavior.* – No participant in the electricity industry may engage in any anti-competitive
33 behavior including, but not limited to, cross-subsidization, price or market manipulation,
34 or other unfair trade practices detrimental to the encouragement and protection of
35 contestable markets.

1 No generation company or distribution utility, or its respective subsidiary or
2 affiliate or stockholder or official of a generation company or distribution utility, or other
3 entity engaged in generating and supplying electricity specified by ERC shall be
4 allowed to hold any interest, direct or indirect, in TRANSCO or its concessionaire.
5 Likewise, the TRANSCO, or its concessionaire or any of its stockholders or officials or
6 any of their relatives within the fourth civil degree of consanguinity or affinity, shall not
7 hold any interest, whether direct or indirect, in any generation company or distribution
8 utility. Except for government-appointed representatives, no person who is an officer or
9 director of TRANSCO or its concessionaire shall be an officer or director of any
10 generation company, distribution utility or supplier.

11 To promote true market competition and prevent harmful monopoly and market
12 power abuse, the ERC shall enforce the following safeguards:

13 (a) Starting not later than five (5) years from the approval of this Act and until
14 such time that the ERC has reduced the threshold level to one hundred kilowatts
15 (100kW), no company or related group can own and operate or control and operate more
16 than forty percent (40%) of the installed generating capacity of a grid and/or thirty
17 percent (30%) of the national installed capacity; and

18 (b) Distribution utilities may enter into bilateral power supply contracts
19 subject to review by ERC.

20 For purposes of this Section, the grid basis shall consist of three (3) separate grids,
21 namely Luzon, Visayas and Mindanao. The ERC shall have the authority to modify or
22 amend this definition of a grid when two or more of the three separate grids become
23 sufficiently interconnected to constitute a single grid or as conditions may otherwise
24 permit.

25 Exceptions from these limitations shall be allowed for isolated grids that are not
26 connected to the high voltage transmission system. Except as otherwise provided for in
27 this Section, any restriction on ownership and/or control between or within sectors of the
28 electricity industry may be imposed by ERC only insofar as the enforcement of the
29 provisions of this Section is concerned.

30 The ERC shall, within one (1) year from the effectivity of this Act, promulgate
31 rules and regulations to promote competition, encourage market development and
32 customer choice and discourage/penalize abuse of market power, cartelization and any
33 anti-competitive or discriminatory behavior, in order to further the intent of this Act and
34 protect the public interest. Such rules and regulations shall define the following:

35 (a) the relevant markets for purposes of establishing abuse or misuse of
36 monopoly or market position;

1 (b) areas of isolated grids; and
2 (c) the periodic reportorial requirements of electric power industry
3 participants as may be necessary to enforce the provisions of this Section.

4 The ERC shall, *motu proprio*, monitor and penalize any market power abuse or
5 anti-competitive or discriminatory act or behavior by any participant in the electric power
6 industry. Upon finding that a market participant has engaged in such act or behavior, the
7 ERC shall stop and redress the same. Such remedies shall, without limitation, include the
8 imposition of price controls, issuance of injunctions, requirement of divestment or
9 disgorgement of excess profits and imposition of fines and penalties pursuant to this Act.

10 The ERC shall, within one (1) year from the effectivity of this Act, promulgate
11 rules and regulations providing for a complaint procedure that, without limitation,
12 provides the accused party with notice and an opportunity to be heard.

13 SEC. 46. *Fines and Penalties.* – The fines and penalties that shall be imposed by
14 the ERC for any violation of or non-compliance with this Act or the IRR shall range from
15 a minimum of Fifty thousand pesos (P50,000.00) to a maximum of Fifty million pesos
16 (P50,000,000.00).

17 Any person who is found guilty of any of the prohibited acts pursuant to Section
18 45 hereof shall suffer the penalty of *prision mayor* and a fine ranging from Ten thousand
19 pesos (P10,000.00) to Ten million pesos (P10,000,000.00), or both, at the discretion of
20 the court.

21 The members of the Board of Directors of the juridical companies participating in
22 or covered in the generation companies, the distribution utilities, the TRANSCO or its
23 concessionaire or supplier who violate the provisions of this Act may be fined by an
24 amount not exceeding double the amount of damages caused by the offender or by
25 imprisonment of one year or two years or both at the discretion of the court. This rule
26 shall apply to the members of the Board who knowingly or by neglect allows the
27 commission or omission under the law.

28 If the offender is a government official or employee, he shall, in addition, be
29 dismissed from the government service with prejudice to reinstatement and with
30 perpetual or temporary disqualification from holding any elective or appointive office.

31 If the offender is an alien he may, in addition to the penalties prescribed, be
32 deported without further proceedings after service of sentence.

33 Any case which involves question of fact shall be appealable to the Court of
34 Appeals and those which involve question of law shall be directly appealable to the
35 Supreme Court.

1 The administrative sanction that may be imposed by the ERC shall be without
2 prejudice to the filing of a criminal action, if warranted.

3 To ensure compliance with this Act, the penalty of *prision correccional* or a fine
4 ranging from Five thousand pesos (P5,000.00) to Five million pesos (P5,000,000.00), or
5 both, at the discretion of the court, shall be imposed on any person, including but not
6 limited to the president, member of the Board, Chief Executive Officer or Chief
7 Operating Officer of the corporation, partnership, or any other entity involved, found
8 guilty of violating or refusing to comply with any provision of this Act or its IRR, other
9 than those provided herein.

10 Any party to an administrative proceeding may, at any time, make an offer to the
11 ERC, conditionally or otherwise for a consented decree, voluntary compliance or
12 desistance and other settlement of the case. The offer and any or all of the ultimate facts
13 upon which the offer is based shall be considered for settlement purposes only and shall
14 not be used as evidence against any party for any other purpose and shall not constitute
15 an admission by the party making the offer of any violation of the laws, rules,
16 regulations, orders and resolutions of the ERC, nor as a waiver to file any warranted
17 criminal actions.

18 In addition, Congress, upon recommendation of the DOE and/or ERC, may
19 revoke such franchise or privilege granted to the person or entity who violated the
20 provisions of this Act.

21 CHAPTER V

22 PRIVATIZATION OF THE ASSETS OF THE NATIONAL POWER

23 CORPORATION

24 SEC. 47. *NPC Privatization.* – Except for the assets of SPUG, the generating
25 assets, real estate, and other disposable assets as well as generation contracts of NPC
26 shall be privatized in accordance with this Act. Within six (6) months from the
27 effectivity of this Act, the PSALM Corp. shall submit a plan for the endorsement by the
28 Joint Congressional Power Commission and the approval of the President of the
29 Philippines, on the total privatization of the generation assets, real estate, other disposable
30 assets as well as existing generation contracts of NPC and thereafter, implement the
31 same, in accordance with the following guidelines, except as provided for in paragraph
32 (e) herein:

33 (a) The privatization value to the national government of the NPC generation
34 assets, real estate, other disposable assets as well as IPP contracts shall be optimized;

35 (b) The participation by Filipino citizens and corporations in the purchase of
36 NPC assets shall be encouraged;

1 In the case of foreign buyers at least seventy-five percent (75%) of the funds used
2 to acquire NPC-generating assets and generating contracts shall be inwardly remitted and
3 registered with the Bangko Sentral ng Pilipinas.

4 (c) The NPC plants, its related assets and assigned liabilities, if any, shall be
5 grouped in a manner which shall promote the viability of the resulting generating
6 companies (gencos), ensure economic efficiency, encourage competition, foster
7 reasonable electricity rates and create market appeal to optimize returns to the
8 government from the sale and disposition of such assets in a manner consistent with the
9 objectives of this Act. In the grouping of the generating assets of NPC, the following
10 criteria shall be considered:

11 (1) A sufficient scale of operations and balance sheet strength to
12 promote the financial viability of the restructured units;

13 (2) Broad geographical groupings to ensure efficiency of operations
14 but without the formation of regional companies or consolidation of market
15 power;

16 (3) Portfolio of plants to achieve management and operational synergy
17 without dominating any part of the market or of the load curve; and

18 (4) Such other factors as may be deemed beneficial to the best interest
19 of the national government while ensuring attractiveness to potential investors.

20 (d) All generation assets and IPP contracts shall be sold in an open and
21 transparent manner through public bidding;

22 (e) The Agus and the Pulangui complexes in Mindanao shall be excluded
23 from among the generating companies that will be initially privatized. Their ownership
24 shall be transferred to the PSALM Corp. and both shall continue to be operated by NPC.
25 In case of privatization, said complexes may be privatized not earlier than ten (10) years
26 from the effectivity of this Act, and, until privatized, shall not be subject to Build-
27 Operate-Transfer (B-O-T), Build-Rehabilitate-Operate-Transfer (B-R-O-T) and other
28 variations pursuant to Republic Act No. 6957, as amended by Republic Act No. 7718.
29 The privatization of Agus and Pulangui complexes shall be left to the discretion of
30 PSALM Corp. in consultation with Congress;

31 (f) The steamfield assets and generating plants of each geothermal complex
32 shall not be sold separately. They shall be combined and each geothermal complex shall
33 be sold as one package through public bidding. The geothermal complexes covered by
34 this requirement include, but not limited to, Tiwi-Makban, Leyte A and B (Tongonan),
35 Palinpinon, and Mt. Apo;

1 (g) The ownership of the Caliraya-Botokan-Kalayaan (CBK) pump storage
2 complex shall be transferred to the PSALM Corporation and shall continue to be operated
3 by NPC;

4 (h) Not later than three (3) years from the effectivity of this Act, and in no
5 case later than the initial implementation of open access, at least seventy percent (70%)
6 of the total capacity of generating assets of NPC and of the total capacity of the power
7 plants under contract with NPC located in Luzon and Visayas shall have been privatized;
8 and

9 (i) NPC may generate and sell electricity only from the undisposed
10 generating assets and IPP contracts of PSALM Corp.: *Provided*, That any unsold
11 capacity shall be privatized not later than eight (8) years from the effectivity of this Act.

12 SEC. 48. *National Power Board of Directors.* – Upon the passage of this Act, the
13 provisions of R.A. 6395, otherwise known as the NPC Charter, referring to the
14 composition of the National Power Board of Directors, are hereby repealed and a new
15 Board shall be immediately organized. The new Board shall be composed of the
16 Secretary of Finance as Chairman, with the following as members: the Secretary of
17 Energy, the Secretary of Budget and Management, the Secretary of Agriculture, the
18 Director-General of the National Economic and Development Authority, the Secretary of
19 Environment and Natural Resources, the Secretary of Interior and Local Government, the
20 Secretary of the Department of Trade and Industry, and the President of the National
21 Power Corporation.

22 CHAPTER VI

23 POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT

24 SEC. 49. *Creation of Power Sector Assets and Liabilities Management*
25 *Corporation.* – There is hereby created a government owned and controlled corporation
26 to be known as the “Power Sector Assets and Liabilities Management Corporation”,
27 hereinafter referred to as the “PSALM Corp.”, which shall take ownership of all existing
28 NPC generation assets, liabilities, IPP contracts, real estate and all other disposable
29 assets. All outstanding obligations of the National Power Corporation arising from loans,
30 issuances of bonds, securities and other instruments of indebtedness shall be transferred
31 to and assumed by the PSALM Corp. within ninety (90) days from the approval of this
32 Act.

33 SEC. 50. *Purpose and Objective, Domicile and Term of Existence.* – The principal
34 purpose of the Corporation is to manage the orderly sale, disposition, and privatization of
35 NPC generation assets, real estate and other disposable assets, and IPP contracts with the

1 objective of liquidating all NPC financial obligations and stranded contract costs in an
2 optimal manner.

3 The Corporation shall have its principal office and place of business within Metro
4 Manila.

5 The Corporation shall exist for a period of twenty five (25) years from the
6 effectivity of this Act, unless otherwise provided by law, and all assets held by it, all
7 moneys and properties belonging to it, and all its liabilities outstanding upon the
8 expiration of its term of existence shall revert to and be assumed by the National
9 Government.

10 SEC. 51. *Powers.* – The Corporation shall, in the performance of its functions
11 and for the attainment of its objective, have the following powers:

12 (a) To formulate and implement a program for the sale and privatization of
13 the NPC assets and IPP contracts and the liquidation of NPC debts and stranded contract
14 costs, such liquidation to be completed within the Corporation’s term of existence;

15 (b) To take title to and possession of, administer and conserve the assets and
16 IPP contracts transferred to it; to sell or dispose of the same at such price and under such
17 terms and conditions as it may deem necessary or proper, subject to applicable laws, rules
18 and regulations;

19 (c) To calculate the amount of the stranded debts and stranded contract costs
20 of NPC which shall form the basis for ERC in the determination of the universal charge;

21 (d) To liquidate the NPC stranded contract costs utilizing proceeds from sales
22 and other property contributed to it, including the proceeds from the universal charge;

23 (e) To adopt rules and regulations as may be necessary or proper for the
24 orderly conduct of its business or operations;

25 (f) To sue and be sued in its name;

26 (g) To appoint or hire, transfer, remove and fix the compensation of its
27 personnel; *Provided, however,* That the Corporation shall hire its own personnel only if
28 absolutely necessary, and as far as practicable, shall avail itself of the services of
29 personnel detailed from other government agencies;

30 (h) To own, hold, acquire, or lease real and personal properties as may be
31 necessary or required in the discharge of its functions;

32 (i) To borrow money and incur such liabilities, including the issuance of
33 bonds, securities or other evidences of indebtedness utilizing its assets as collateral and/or
34 through the guarantees of the National Government: *Provided, however,* That all such
35 debts or borrowings shall have been paid off before the end of its corporate life;

36 (j) To restructure existing loans of NPC;

- 1 (k) To collect, administer, and apply NPC's portion of the universal charge;
2 (l) To relend to NPC successor gencos and TRANSCO such amounts on such
3 terms and conditions which shall optimize the value and sale prices of said assets.

4 SEC. 52. *Power Sector Assets and Liabilities Management Corporation,*
5 *Meetings, Quorum and Voting.* – The Corporation shall be administered, and its powers
6 and functions exercised, by a Board of Directors which shall be composed of the
7 Secretary of Finance as the Chairman, the Secretary of Budget and Management, the
8 Secretary of the Department of Energy, the Director-General of the National Economic
9 and Development Authority, the Secretary of the Department of Justice, the Secretary of
10 the Department of Trade and Industry and the Secretary of the Department of Agriculture
11 as ex-officio members thereof.

12 The Board of Directors shall meet regularly and as frequently as may be
13 necessary to enable it to discharge its functions and responsibilities. The presence at a
14 meeting of four (4) members shall constitute a quorum, and the decision of the majority
15 of three members present at a meeting where there is quorum shall be the decision of the
16 Board of Directors.

17 SEC. 53. *Powers of the President of PSALM Corp.* – The President of PSALM
18 Corp. shall be appointed by the President of the Philippines. In the absence of the
19 Chairman, the President shall preside over Board meetings. The PSALM Corp. President
20 shall be the Chief Executive Officer of PSALM Corp.

21 The President of PSALM Corp. shall have the following powers and duties:

22 (a) To execute and administer the policies and measures approved by the
23 Board, and take responsibility for the efficient discharge of management functions;

24 (b) To oversee the preparation of the budget of PSALM Corp.;

25 (c) To direct and supervise the operation and internal administration of
26 PSALM Corp. and, for this purpose, may delegate some or any of his administrative
27 responsibilities and duties to other officers of PSALM Corp;

28 (d) Subject to the guidelines and policies set up by the Board, to appoint and
29 fix the number and compensation of subordinate officials and employees of PSALM
30 Corp; and for cause, to remove, suspend, or otherwise discipline any subordinate
31 employee of PSALM Corp;

32 (e) To submit an annual report to the Board on the activities and achievements
33 of PSALM Corp. at the close of each fiscal year and upon approval thereof, submit a
34 copy to the President of the Philippines and to such other agencies as may be required by
35 law;

1 (f) To represent PSALM Corp. in all dealings and transactions with other
2 offices, agencies, and instrumentalities of the Government and with all persons and other
3 entities, private or public, domestic or foreign; and

4 (g) To exercise such other powers and duties as may be vested in him by the
5 Board from time to time.

6 SEC. 54. *Exemption from the Salary Standardization Law.* – The salaries and
7 benefits of employees in the PSALM Corp. shall be exempt from Republic Act No. 6758
8 and shall be fixed by the PSALM Corp. Board.

9 SEC. 55. *Property of the PSALM Corp.* – The following funds, assets,
10 contributions and other property shall constitute the property of the PSALM Corp.:

11 (a) The generation assets, real estate, IPP contracts, other disposable assets of
12 NPC, proceeds from the sale or disposition of such assets and the residual assets from B-
13 O-T, R-O-T, and other variations thereof;

14 (b) Transfers from the national government;

15 (c) Proceeds from loans incurred to restructure or refinance NPC's transferred
16 liabilities: *Provided, however,* That all borrowings shall be fully paid for by the end of
17 the life of the PSALM Corp.;

18 (d) Proceeds from the universal charge allocated for stranded contract costs
19 and the stranded debts of NPC;

20 (e) Net profit of NPC;

21 (f) Net profit of TRANSCO;

22 (g) Official assistance, grants, and donations from external sources; and

23 (h) Other sources of funds as may be determined by PSALM Corp. necessary
24 for the above-mentioned purposes.

25 SEC. 56. *Claims Against the PSALM Corp.* – The following shall constitute the
26 claims against the PSALM Corp.:

27 (a) NPC liabilities transferred to the PSALM Corp.;

28 (b) Transfers from the national government;

29 (c) New loans; and

30 (d) NPC stranded contract costs.

31 **CHAPTER VII**

32 **PROMOTION OF RURAL ELECTRIFICATION**

33 SEC. 57. *Conversion of Electric Cooperatives.* –Electric cooperatives are hereby
34 given the option to convert into either stock cooperative under the Cooperatives
35 Development Act or stock corporation under the Corporation Code. Nothing contained
36 in this Act shall deprive electric cooperatives of any privilege or right granted to them

1 under existing laws, particularly those under the provisions of Republic Acts No. 6938,
2 7160 and 8241.

3 SEC. 58. *Additional Mandate of the National Electrification Administration*
4 (NEA). –NEA shall develop and implement programs:

5 (a) To prepare electric cooperatives in operating and competing under the
6 deregulated electric market within five (5) years from the effectivity of this Act,
7 specifically in an environment of open access and retail wheeling;

8 (b) To strengthen the technical capability and financial viability of rural
9 electric cooperatives; and

10 (c) To review and upgrade regulatory policies with a view to enhancing the
11 viability of rural electric cooperatives as electric utilities.

12 NEA shall continue to be under the supervision of the DOE and shall exercise its
13 functions under Presidential Decree No. 269, as amended by Presidential Decree No.
14 1645 insofar as they are consistent with this Act.

15 SEC. 59. *Alternative Electric Service for Isolated Villages.* – The provision of
16 electric service in remote and unviable villages that the franchised utility is unable to
17 service for any reason shall be opened to other qualified third parties.

18 SEC. 60. *Debts of Electric Cooperatives.* – Upon the effectivity of this Act, all
19 outstanding financial obligations of electric cooperatives to NEA and other government
20 agencies incurred for the purpose of financing the rural electrification program shall be
21 assumed by the PSALM Corp. The ERC shall ensure a reduction in the rates of electric
22 cooperatives commensurate with the resulting savings due to the removal of the
23 amortization payments of their loans. Within five (5) years from the condonation of debt,
24 any electric cooperative which shall transfer ownership or control of its assets, franchise
25 or operations thereof shall repay PSALM Corp. the total debts including accrued interests
26 thereon.

27 CHAPTER VIII

28 GENERAL PROVISIONS

29 SEC. 61. *Reportorial Requirements.* –The DOE shall take the necessary
30 measures to ensure that the provisions of this Act are properly implemented, and shall
31 submit to the Power Commission a semi-annual report on the implementation of this Act,
32 which shall be on or before the last week of April and October of each year.

33 SEC. 62. *Joint Congressional Power Commission.* – Upon the effectivity of this
34 Act, a congressional commission, hereinafter referred to as the Power Commission, is
35 hereby constituted. The Power Commission shall be composed of fourteen (14) members
36 WITH the chairmen of the Committee on Energy of the Senate and the House of

1 Representatives and six (6) additional members from each House, to be designated by the
2 Senate President and the Speaker of the House of Representatives, respectively. The
3 minority shall be entitled to pro-rata representation but shall have at least one (1)
4 representative in the Power Commission.

5 The Commission shall, in aid of legislation, perform the following functions,
6 among others:

7 (a) Set the guidelines and overall framework to monitor and ensure the proper
8 implementation of this Act;

9 (b) Approve genco groupings, IPP groupings, and sequencing of sale of
10 gencos;

11 (c) Endorse the privatization plan prepared by PSALM for approval of the
12 President of the Philippines;

13 (d) To ensure transparency, require the submission of reports from
14 government agencies concerned on the conduct of public bidding procedures regarding
15 privatization of NPC generating and transmission assets before any final award is made;

16 (e) Review and evaluate the performance of the industry participants in
17 relation to the objectives and timelines set forth in this Act;

18 (f) Approve the budget for the programs of the Power Commission and all
19 disbursements therefrom, including compensation of all personnel;

20 (g) Submit periodic reports to the President of the Philippines and Congress;

21 (h) Determine inherent weaknesses in the law and recommend necessary
22 remedial legislation or executive measures; and

23 (i) Perform such other duties and functions as may be necessary to attain its
24 objectives.

25 In furtherance hereof, the Power Commission is hereby empowered to require the
26 DOE, ERC, NEA, TRANSCO, generation companies, distribution utilities, suppliers and
27 other electric power industry participants to submit reports and all pertinent data and
28 information relating to the performance of their respective functions in the industry. Any
29 person who willfully and deliberately refuses without just cause to extend the support and
30 assistance required by the Power Commission to effectively attain its objectives shall,
31 upon conviction, be punished by imprisonment of not less than one (1) year but not more
32 than six (6) years or a fine of not less than Fifty thousand pesos (P50,000.00) but not
33 more than Five hundred thousand pesos (P500,000.00) or both at the discretion of the
34 court.

35 The Power Commission shall adopt its internal rules of procedures; conduct
36 hearings and receive testimonies, reports and technical advice; invite or summon by

1 *subpoena ad testificandum* any public official, private citizen or any other person to
2 testify before it, or require any person by *subpoena duces tecum* to produce before it
3 such records, reports, documents or other materials as it may require; and generally
4 require all the powers necessary to attain the purposes for which it is created. The Power
5 Commission shall be assisted by a secretariat to be composed of personnel who may be
6 seconded from the Senate and the House of Representatives and may retain consultants.
7 The secretariat shall be headed by an executive director who has sufficient background
8 and competence on the policies and issues relating to electricity industry reforms as
9 provided in this Act. To carry out its powers and functions, the initial sum of twenty-five
10 million pesos (P25,000,000.00) shall be charged against the current appropriations of the
11 Senate. Thereafter, such amount necessary for its continued operation shall be included
12 in the annual General Appropriations Act.

13 The Power Commission shall exist for period of ten (10) years from the
14 effectivity of this Act and may be extended by a joint concurrent resolution.

15 SEC. 63. *Separation Benefits of Officials and Employees of Affected Agencies.* –
16 National government employees displaced or separated from the service as a result of the
17 restructuring of the electricity industry and privatization of NPC assets pursuant to this
18 Act, shall be entitled to a separation pay and other benefits in accordance with existing
19 laws, rules or regulations.

20 Displaced or separated personnel as a result of the privatization, if qualified, shall
21 be given preference in the hiring of the manpower requirements of the privatized
22 companies.

23 All employees of NPC affected by the passage of this Act shall be entitled to avail
24 of the privileges provided under the NPC separation plan existing as of January 1, 2001.

25 The salaries of employees of NPC shall continue to be exempt from the coverage
26 of Republic Act No. 6758, otherwise known as “The Salary Standardization Act”.

27 With respect to employees who are not retained by NPC, the government, through
28 the Department of Labor and Employment, shall endeavor to implement re-training, job
29 counseling, and job placement programs.

30 SEC. 64. *Environmental Protection.* – Participants in the generation, distribution
31 and transmission sub-sectors of the industry shall comply with all environmental laws,
32 rules, regulations and standards promulgated by the Department of Environment and
33 Natural Resources including, in appropriate cases, the establishment of an environmental
34 guarantee fund.

35 SEC. 65. *Benefits to Host Communities.* – The obligations of generating
36 companies and energy resource developers to communities hosting energy generating

1 facilities and/or energy resource developers as defined under Chapter II, Sections 289 to
2 294 of the Local Government Code and Section 5(i) of Republic Act No. 7638 and their
3 implementing rules and regulations and applicable orders and circulars consistent with
4 this Act shall continue: *Provided, further,* That the obligations mandated under Chapter
5 II, Section 291 of Republic Act No. 7160, shall apply to privately-owned corporations or
6 entities utilizing the national wealth of the locality.

7 To ensure the effective implementation of the reduction in cost of electricity in
8 the communities where the source of energy is located, the mechanics and procedures
9 prescribed in the Department of the Interior and Local Government (DILG)-DOE
10 Circulars No. 95-01 and 98-01 dated October 31, 1995 and September 30, 1998,
11 respectively and other issuances related thereto shall be pursued.

12 Towards this end, the fund generated from the eighty percent (80%) of the
13 national wealth tax shall, in no case, be used by any local government unit for any
14 purpose other than those for which it was intended.

15 In case of any violation or noncompliance by any local government official of any
16 provision thereof, the DILG shall, upon prior notice and hearing, order the project
17 operator, through the DOE, to withhold the remittance of the royalty payment to the host
18 community concerned pending completion of the investigation. The unremitted funds
19 shall be deposited in a government bank under a trust fund.

20 *SEC. 66. NPC Offer of Transition Supply Contracts.* – Within six (6) months
21 from the effectivity of this Act, NPC shall file with the ERC for its approval a transition
22 supply contract duly negotiated with the distribution utilities containing the terms and
23 conditions of supply and a corresponding schedule of rates, consistent with the provisions
24 hereof, including adjustments and/or indexation formulas which shall apply to the term of
25 such contracts. The term of the transition supply contracts shall not extend beyond one
26 year from the introduction of open access. Such contracts shall be based on the projected
27 demand of such utilities less any of their currently committed quantities under eligible
28 IPP contracts as defined in Section 33 hereof: *Provided,* That the total generation
29 capacity of such signed transition supply contracts shall not exceed the level of NPC
30 owned, controlled or committed capacity as of the effectivity of this Act. Such transition
31 supply contracts shall be assignable to the NPC successor generating companies.

32 Within six (6) months from the date of submission of the transition supply
33 contract by NPC, the ERC shall notify NPC of their approval of the rates contained
34 therein.

1 The ERC shall maintain a record of the contract terms and rates offered by NPC.
2 Likewise, the ERC shall update monthly, the rates using the appropriate adjustment
3 and/or indexation formula.

4 Notwithstanding the provisions of Section 25 hereof, the rates charged by a
5 distribution utility for the generation component of the supply of electricity in their
6 distribution retail supply rate shall, for the term of the transition supply contracts, not
7 exceed the transition supply contract rates, as updated monthly. The recovery of costs
8 incurred by a distribution utility for any generation component in excess of the transition
9 supply contract rates shall be disallowed by the ERC, except for eligible contracts as
10 defined under Section 33 hereof: *Provided*, That such limitation on the recovery of
11 generation component costs by a distribution utility shall apply only to the equivalent
12 quality and quantity of electricity still available to the distribution utility from NPC.

13 SEC. 67. *Power Supply Agreement.* – It shall be a condition of the privatization of
14 NPC that PSALM Corp. shall diligently seek reasonable mitigating steps to correct
15 onerous provisions on its generating contracts, guaranteed by government specially
16 independent power producers, where NPC is experiencing substantial losses as a result of
17 excessive price, chronic underutilization, inappropriate fee structure, or buy-out
18 provisions that exceed levels needed for fair return on investment.

19 The NPC shall sell electricity only from undisposed generation assets and IPP
20 contracts and shall not incur any new obligations to purchase power through bilateral
21 contracts with generation companies or other suppliers. NPC shall act as the administrator
22 of IPP contracts.

23 SEC. 68. *Renegotiation of Power Purchase and Energy Conversion Agreements*
24 *between Government Entities.* – Within three (3) months from the effectivity of this Act, all
25 power purchase and energy conversion agreements between the PNOC-Energy Development
26 Corporation (PNOC-EDC) and NPC, including but not limited to the Palimpinon, Tongonan
27 and Mt. Apo Geothermal complexes, shall be reviewed by the ERC and the terms thereof
28 amended to remove any hidden costs or extraordinary mark-ups in the cost of power or steam
29 above their true costs. All amended contracts shall be submitted to the Joint Congressional
30 Power Commission for approval. The ERC shall ensure that all savings realized from the
31 reduction of said mark-ups shall be passed on to all end-users.

32 SEC. 69. *Missionary Electrification.* – Notwithstanding the divestment and/or
33 privatization of NPC assets, IPP contracts and spun-off corporations, NPC shall remain as
34 a National Government-owned and -controlled corporation to perform the missionary
35 electrification function through the Small Power Utilities Group (SPUG) and shall be
36 responsible for providing power generation and its associated power delivery systems in

1 areas that are not connected to the transmission system. The missionary electrification
2 function shall be funded from the revenues from sales in missionary areas and from the
3 universal charge to be collected from all electricity end-users as determined by the ERC.

4 *SEC. 70. Mandated Rate Reduction.* – Upon the effectivity of this Act, residential
5 end-users shall be granted a rate reduction from NPC rates of thirty centavos per
6 kilowatt-hour (P0.30/kWh). Such reduction shall be reflected as a separate item in the
7 consumer billing statement.

8 *SEC. 71. Lifeline Rate.* – A socialized pricing mechanism called a lifeline rate for
9 the marginalized end-users shall be set by the ERC, which shall be exempted from the
10 cross subsidy phase-out under this Act for a period not exceeding ten (10) years, until or
11 unless expressly rescinded by law. The level of consumption and the rate shall be
12 determined by the ERC after due notice and hearing.

13 *SEC. 72. Cross Subsidies.* – Cross subsidies within a grid, between grids and/or
14 classes of customers shall be phased out in a period not exceeding three (3) years from
15 the establishment by the ERC of a universal charge which shall be collected from all
16 electricity end-users. Such level of cross subsidies shall be made transparent and
17 identified separately in the billing statements provided to end-users by the suppliers or by
18 the DOE as the case may be.

19 The ERC may extend the period for the removal of cross subsidies for a
20 maximum period of one (1) year upon finding that cessation of such mechanism would
21 have a material adverse effect upon the public interest, particularly the residential end-
22 user; or would have an immediate, irreparable, and adverse financial effect on
23 distribution utility.

24 **CHAPTER IX**

25 **FINAL PROVISIONS**

26 *SEC. 73. Statutory Construction.* – This Act shall, unless the context indicates
27 otherwise, be construed in favor of the establishment, promotion, preservation of
28 competition and people empowerment so that the widest participation of the people,
29 whether direct or indirect, is ensured.

30 *SEC. 74. Education and Protection of End Users.* – End users shall be educated
31 about the implementation of retail access and its impact on end-users and on the proper use
32 of electric power. Such education shall include, but not limited to, the existence of
33 competitive electricity suppliers, choice of competitive electricity services, regulated
34 transmission and distribution services, systems reliability, aggregation, market, itemized
35 billing, stranded cost, uniform disclosure requirements, low-income bill payment, energy
36 conservation and safety measures.

1 The DOE, in coordination with the NPC, NEA, ERC and the Office of the Press
2 Secretary-Philippine Information Agency (OPS-PIA), shall undertake an information
3 campaign to educate the public on the restructuring of the electric power industry and
4 privatization of NPC.

5 SEC. 75. *Implementing Rules and Regulations.* – The DOE shall, in consultation
6 with the electric power industry participants and end-users, promulgate the Implementing
7 Rules and Regulations (IRR) of this Act within six (6) months from the effectivity of this
8 Act, subject to the approval by the Power Commission.

9 SEC. 76. *Injunction and Restraining Order.* – The implementation of the
10 provisions of this Act shall not be restrained or enjoined except by an order issued by the
11 Supreme Court of the Philippines.

12 SEC. 77. *Separability Clause.* – If for any reason, any provision of this Act is
13 declared unconstitutional or invalid, the other parts or provisions hereof which are not
14 affected thereby shall continue to be in full force and effect.

15 SEC. 78. *Applicability and Repealing Clause.* – The applicability provisions of
16 Commonwealth Act No. 146, as amended, otherwise known as the “Public Services Act”;
17 Republic Act 6395, as amended, revising the charter of NPC; Presidential Decree 269, as
18 amended, referred to as the NEA decree; Republic Act 7638, otherwise known as the
19 “Department of Energy Act of 1992”; Executive Order 172, as amended, creating the
20 ERB; Republic Act 7832 otherwise known as the “Anti-Electricity and Electric
21 Transmission Lines/Materials Pilferage Act of 1994”, shall continue to have full force
22 and effect except in so far as inconsistent with this Act.

23 Presidential Decree No. 40 and all laws, decrees, rules and regulations, or portions
24 thereof, inconsistent with this Act are hereby repealed or modified accordingly.

25 SEC. 79. *Effectivity Clause.* – This Act shall take effect on the fifteenth day
26 following its publication in at least two (2) national papers of general circulation.

27 Approved,