

# PHILIPPINE POWER INDUSTRY RESTRUCTURING AND PRIVATIZATION<sup>1</sup>

<b>GENERAL INFORMATION</b>	
Sectors of Power Industry being privatized	generation, transmission, distribution
Name of the project(s)	Restructuring and privatization of the power industry in the Philippines is being undertaken under the Power Sector Restructuring Program of the Asian Development Bank (ADB). The PSRP is embodied in the Electric Power Industry Reform Act (EPIRA) that was enacted in 2001.
Type of privatization	<p><b>There are five types of privatization of the power industry:</b></p> <ol style="list-style-type: none"> <li><b>1. through Build-Operate-Transfer (BOT) contracts</b> – the private sector, through the independent power producers (IPPs), performs the generation function traditionally done solely by the government. The IPPs generate electricity for the government under a power purchase agreement with the government-owned National Power Corporation (NPC).</li> <li><b>2. divestiture (full privatization) through asset sale</b> - Under EPIRA, NPC shall be privatized by selling its generation assets to the private sector. Government shares in the biggest distribution utility in the Philippines are being considered to be sold to the private sector.</li> <li><b>3. Management contract</b> - The IPPs shall be assigned to administrators (private entities) but still under the jurisdiction of the government-owned Power Sector Assets and Liabilities Management Corp.; Electric cooperatives can also enter into management contracts with the private sector.</li> <li><b>4. Corporatization of electric cooperatives</b> – electric cooperatives have the option to be converted into stock corporation.</li> <li><b>5. Concession agreement</b> – 25-year concession agreement for the operation of the National Transmission Corporation (TRANSCO).</li> </ol>
<b>PROGRESS IN PRIVATIZATION</b>	
When did it start?	Privatization in the power generation sector began in 1987 when Executive Order 215 was issued which allowed the entry of independent power producers in the generation activity in the country. The first IPP contract was signed in 1988, under a BOT scheme. The government pursued the

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	<p>privatization track in mid-1990's, preparing for full privatization of the power industry. In 1996, an Omnibus Power Industry Bill seeking privatization of the National Power Corporation and restructuring of the power industry was filed at the Philippine Congress. It was refiled in 1998, under the 11<sup>th</sup> Congress, and became one of the priority measures during that period. It was only in June 2001 when the law restructuring and privatizing the power industry – the Electric Power Industry Reform Act (EPIRA) – was finally enacted. EPIRA mandates the privatization of NPC and TRANSCO as well as of electric cooperatives. The first NPC generation asset of the government to be privatized was the 3.5 megawatt Talomo hydroelectric plant.</p>
<p>What stage is the process now?</p>	<p>Upon effectivity of EPIRA in 2001, the first thing that was done was the restructuring of the power industry. NPC's generation and transmission functions were unbundled. A National Transmission Corporation (TRANSCO) was created to own and operate the transmission assets and perform the transmission functions previously under NPC. Meanwhile, the continuation of missionary electrification program is undertaken by NPC through the Small Power Utilities Group (SPUG) that was also created under EPIRA. The Power Sector Assets and Liabilities Management (PSALM) Corp. was also created to liquidate the assets and liabilities of NPC. The generation assets, IPP contracts, debts and other liabilities have already been transferred to PSALM. P200 billion of NPC's P600 billion debts as of end 2004 was already transferred to the national government in December that same year.</p> <p>Based on EPIRA's targets, about seventy percent of NPC's assets and IPP contracts should have been privatized by 2004. However, as of end 2006, only about ten percent of the government-owned (NPC) generation assets have been privatized so far. Meanwhile privatization of TRANSCO through concession agreement has already failed four times since 2003. The government will attempt to bid again the concession agreement for the operation of TRANSCO by last quarter of 2007. Some electric cooperatives, on the other hand, have already been corporatized, some were privatized. The privatization is through management contract.</p> <p>The unbundling was not only structural and functional. In 2003, electricity rates were unbundled to reflect the different charges from the generation up to the delivery of electricity and also reflect other charges such as the universal charge which include collection for missionary electrification,</p>

	<p>environmental fund, removal of cross subsidies, and for stranded debts and contract costs of NPC as well as for stranded contract costs of private distribution utilities. Universal charges for missionary electrification and environmental fund have been collected so far.</p> <p>The wholesale electricity spot market (WESM) was already established and in its trial operation in Luzon.</p>
<p><b>GOVERNMENT AND LAWS</b></p>	
<p>How is the government implementing or playing a role?</p>	<p>Government now acts as regulator through the Energy Regulatory Commission. It also provides electricity to unviable areas through the small power utilities group, liquidates the assets and liabilities of NPC through PSALM, monitors and plans for the energy needs of the country through the Department of Energy, and oversees the implementation of EPIRA through the Joint Congressional Power Commission.</p> <p>Even under the period when privatization has already begun under EPIRA, the government continues to borrow/ contract loans to service the debts and obligations of NPC and PSALM, and still provides sovereign guarantees to power sector infrastructure projects such as in the transmission sector.</p>
<p>Has there been changes or attempt to change national laws; what and how?</p>	<p>The following order and laws have been passed to provide institutional and legal framework for the entry of private sector in the power industry and for the full restructuring and privatization of the power industry:</p> <p><b>Executive Order 215</b>, issued in 1987, allowed the entry of private sector – the IPPs – to participate in the power generation activities in the country. The entry of IPPs is facilitated and made attractive through the <b>Build-Operate-Transfer Law or Republic Act 6957</b> passed in 1990 which is an “An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector.” Its avowed objectives were to minimize the burden of infrastructure projects on the national government budget, minimize external borrowing for infrastructure projects, and use the efficiency of the private sector in delivering a public good. In 1993, the <b>Electric Power Crisis Act</b> was passed to give the President of the country emergency powers to address quicker the power crisis in the country. A year later, on May 5, 1994 <b>RA 7718 or the Amended BOT Law</b> was enacted to further encourage entry of private sector in infrastructure projects. With the emergency powers and amended BOT law, the government</p>

	<p>entered into fasttrack power projects with the IPPs.</p> <p>To further enable full restructuring and privatization of the power industry in the country, <b>EPIRA or RA 9136</b> was passed in 2001. A year later (after the passage of this law)until recently, there had been proposed bills and resolutions in the Congress seeking the <b>amendment or repeal of EPIRA</b>. There was also a bill filed to amend the BOT law. The past Congress failed to pass any of these bills or resolutions thus these are expected to be re-filed in the new Congress.</p>
<b>IFIs</b>	
<p>Which IFIs are involved and how?</p>	<p><b>ADB</b> provided the US\$ 300M - Power Sector Restructuring Program (PSRP) Loan in 1998 for the restructuring of the Philippine power industry and the privatization of NPC. It also provided technical assistance amounting to \$5,110,000- since 1998 to support power sector restructuring and privatization of the National Power Corporation (NPC). Aside from this, it also approved loans related to power sector restructuring and privatization: \$40 M for Electricity Market and Transmission Development, approved in 2004, \$450 M Power Sector Development Program loan, released in December 2006, \$60 M Power Transmission Development due for approval in 2009. Even at the start of privatization in the generation sector, ADB was there. It provided \$10 million loan for the Hopewell project in Navotas in 1991, and \$40 million loan and \$10 million equity for the Hopewell project in Pagbilao in 1993. ADB also provides guarantees for NPC bonds.</p> <p>Release of \$300 M rehabilitation loan from <b>IMF</b> and Power sector loans from <b>WB</b> are hinged on the passage of power sector restructuring and privatization law. The IMF also required the privatization of NPC for its standby credit facility for the Philippines in 1997-1998.</p>
<p>Financing and loans involved; how much and when on track?</p>	<p><b>ADB loans:</b>  US\$300 million for PSRP (Dec. 1998)  US\$40 million for electricity market and transmission development (2004)  US\$450 million for Power Sector Development Program (Dec. 2006)</p> <p><b>ADB technical assistance:</b>  US\$1.2 million - institutional strengthening of energy regulatory commission and NPC privatization (2004)  US\$800,000 - Promoting good governance in the restructured</p>

	<p>power sector (2003)  US\$800,000 - transition to competitive electricity market (2002)  US\$990,000 - competition policy for the electricity sector (2001)  US\$720,000 - Consumer Impact Assessment  US\$600,000 - study on electricity pricing and regulatory practice in a competitive environment</p> <p><b>JBIC financing:</b>  US\$300 million for PSRP (1998)  US\$100 million - Leyte Mindanao Interconnection Project</p>
<p>Conditionalities? When and how?</p>	<p>The policy matrix in the PSRP contains sixty actions, twenty-seven of which are core conditions for tranche releases of loan. The first tranche amounting to US\$100 million was released on 24 December 1998, following compliance by the government on 13 conditions including the effectivity of the PSRP loan. ADB had been closely monitoring the implementation of the PSRP since then.</p> <p>The second tranche worth \$100 million was released on 18 December 2001, after the government had fully complied with six of the eight conditions. A major condition for the release was the passage of the Electric Power Industry Reform Act (EPIRA) in June 2001 which provides “an enabling legal and regulatory environment to support competitive markets in electricity.”</p> <p>The last tranche of \$100 million was disbursed to the Philippine government through the DoF on 29 November 2002 when five of the six conditions for release were fully complied with. A major condition was the promulgation of Implementing Rules and Regulations which happened in February 2002. The remaining condition was the establishment of wholesale electricity spot market (WESM) which happened in 2006, one year behind ADB’s expected schedule. Due to delays in government’s compliance to the loan conditionalities, the closing date for PSRP was on 31 December 2002 instead of 30 September 2000.</p> <p>The passage of power sector restructuring and privatization law (EPIRA) was one condition by the IMF and WB for the release of their loans for the Philippine gov’t and the power sector.</p>
<p><b>CORPORATIONS</b></p>	
<p>What companies are involved?</p>	<p>The following companies are involved in the restructuring</p>

and privatization of the power industry:

**1. government-owned:** NPC, TRANSCO, PSALM Corp.

**2. both government and private:** Manila Electric Company

**3. private – IPPs:** Sithe, San Roque Power Corp., California Energy, Mirant Corporation, ORMAT Inc., Tomen, Hopewell Holdings, Ltd., Enron Power Corporation, Mitsui, **BWSC**, **ABB**, Marubeni/ Kawasaki, Chiang Jang Energy, Edison Global/Ogden, Far East Levington, East Asia Power Corporation, Sabah Shipyard SDN, KEPCO, Covanta Energy, First Gas Power Corporation, Hydro Electric Development Corporation, First Generation Holdings, People’s Energy Services, Inc., Sorsogon II Electric Cooperative, Inc., Sta. Clara International Corp.

**4. quasi-private,public:** Electric Cooperatives

## IMPACTS

What have been the impacts on, labor, consumers, environment and others?

**LABOR: Restructuring and privatization of the power industry have resulted in job loss to NPC employees as well as some industrial and commercial workers and “no wage increase” for many.**

- **More than 2,000** NPC employees have already lost job due to restructuring of the power industry and privatization of some NPC generation assets. The number of workers who have lost jobs will possibly increase as workers of electric cooperatives that will be privatized are also threatened of losing their jobs.

- There are already a number of workers of some industries/commercial have also lost jobs due to the closure of their establishments, one major reason for this is the high electricity rates causing their production uncompetitive compared to other countries.

- Industrial workers (i.e. factories) don’t get the wage hike due them because employers spend more for operation and maintenance costs as a result of high industrial electricity rates in the country which is the second highest in Asia and the third highest in the world.

## CONSUMERS

- Households/families suffer more because of high electricity rates. They try to make both ends meet as electricity rates continue to soar while there has been no real increase in their

income. Twenty percent ( 20%) of an average household income is spent for electricity alone. Some families have already lost access to electricity as their supply of electricity was cut due to their failure to pay their high electric bill.

**ENVIRONMENT**

One hydropower project by an IPP resulted in reduction of water flow from the river, causing breeding of malaria-carrying mosquitoes and dying of some fishes; another hydropower project, again by an IPP, has resulted in social dislocation of residents where the plant was built.

**NATIONAL GOV'T**

- increased gov't debts, lesser allocation for social services due to automatic appropriations law that mandates gov't to prioritize debt servicing:

\*P200 billion NPC debts already assumed by NG in 2004; Remaining debts amounting to P400 billion are being proposed by some executive officials to be absorbed by the NG.

\* more borrowings thru loans and bond floats to service NPC maturing debts and obligations to IPPs. (i.e. US\$450 M loan from ADB in December 2006)

- servicing NPC debts and obligations contributed to NG fiscal crisis in 2004

**OTHERS**

Women suffer more as a result of privatization and restructuring of power industry. Mothers, having the society-assigned role/responsibility of ensuring the well-being of her family, are the ones who usually adjust to meet their household budget. Women adjust by doing household chores manually, instead of using electric appliance, in order to reduce power consumption. An example of this is using charcoal-powered flat iron that is heavier than the electric flat iron, more time-consuming using this, and usually scalds the skin using it. In some cases women are compelled to be more frugal such as eating less or eating what's left of the food served after their husbands and children have already eaten in order to lessen budget for food and have additional budget to cover for high electricity bill.

**CAMPAIGNS (Campaigning Efforts)**

What groups

The Freedom from Debt Coalition has been one of the very few groups in the country that have sustained campaign on the privatization of the power industry, with particular focus

	<p>on EPIRA, IPP contracts, and rates. Other groups that have also conducted actions on the power bill, power rates, and privatization of NPC are Sanlakas, Akbayan, Partido ng Manggagawa, APL, Napocor Employees Consolidated Union, AER, NASECORE, ALNI and POWER.</p>
<p>Past efforts</p>	<p>FDC had the following major efforts in the past:</p> <ul style="list-style-type: none"> <li>- <b>1997-2001 - Opposing/stopping the passage of EPIRA</b> - Intensive lobbying, mobilization, public information, networking and alliance-building activities with the legislators and some groups.</li> <li>- <b>2001-2002 - Review of IPP contracts</b> – a Citizens IPP Review Commission was created, through intensive research, media,</li> <li>- <b>since 2002 - stopping unjust power rates increases</b> – by generating public protest, engagements with the ERC and the Congress, conducting judicial battle</li> </ul>
<p>Current efforts</p>	<p>Ongoing efforts of FDC are on the following:</p> <ul style="list-style-type: none"> <li>- <b>cancellation of onerous IPP contracts</b> – exploring possibility of lodging a legal case at the Supreme Court for the nullification of one onerous IPP contract, re-opening discussions at the Congress on the IPP contracts, generating public pressure for Executive action to act on the IPP contract.</li> <li>- <b>stopping the privatization of TRANSCO</b> – through legislative action, by preventing the passage of TRANSCO franchise bill and overhaul of EPIRA, and executive action not to pursue the privatization of TRANSCO.</li> <li>- <b>stopping unjust power rates increase/ call for reduction of power rates</b> – continuous engagements at the ERC, launching a consumers’ campaign movement for the reduction of power rates</li> <li>- coming up with an <b>alternative agenda on the power industry and calling for repeal and replacement of EPIRA</b> with an alternative pro-people power reform law.</li> </ul>

Results of efforts

The following were gains achieved from the campaigns conducted on the power industry:

- delayed passage of EPIRA by almost 4 years (1997-2001). EPIRA integrated some of FDC positions such as review of IPP contracts.
- IPP contracts were reviewed and renegotiated (2002-2003); gov't admitted some were onerous.
- reduction in electricity rates:
  - 2002- (nationwide) reduction of amount of purchased power adjustment (PPA) cost charged to the consumers
  - 2006 – (Iloilo City) overcharging/unauthorized charges by priv. distribution utility was disallowed by ERC. The Commission ordered the distribution utility to reduce rates by P2/kwh.
- stopped power rates increase:
  - 12-centavo per kwh provisional rate increase of Meralco (2004)
  - about 50-centavo per kwh provisional rate increase of NPC (2004)
  - lower increase was granted by ERC – P1.03/kwh instead of P1.98/kwh that NPC originally petitioned for (2004)
- gov't disclosure of IPP contracts, as well as its review and renegotiation results (2002-2003, 2006)
- Phil. Congress investigated 4 of the most onerous IPP contracts.
- The Supreme Court's decision favoring FDC's petition seeking the nullification of ERC's order granting Meralco's petition for provisional rates increase in 2004 has led to ERC's observance of the EPIRA, including its IRR's provision in granting rates increase/adjustment applications. Since then, the ERC became more cautious of observing due process – notice of hearing and application, conducting public consultation/hearings. Distribution utilities could no longer automatically recover some of its costs from the consumers. These have to go through hearings/consultations. This led the DoE, with the help of ERC, to propose amendments to the implementing rules and regulations of EPIRA to make cost recoveries by utilities automatic. The proposal was approved by the JCPC within 3 months.