

# TALKING POINTS FOR THE ENERGY SUMMIT

*Senator Juan Ponce Enrile*

*January 31, 2008 (Thursday)*

*10:40am-11:00am*

*SMX Convention Center*

*Mall of Asia, Pasay City*

## Opening Remarks

It is a privilege and honor to join you this morning in this Energy Summit. This gathering comes at a critical point in our life as a nation as we continue to face the challenge of increasing oil prices. It is a fact that the Philippines remains dependent on imported sources of energy. We started to explore alternative sources of energy only recently and these alternative sources will, realistically speaking, take time to develop. Meanwhile, our government will have to contend with the effects of this irreversible trend on our domestic economic activities, particularly in the power and transportation sectors. This Energy Summit, therefore, is indeed a welcome venue for the various stakeholders and industry players to come together and consolidate our efforts towards finding short-term and long-term solutions to our worsening problems in the energy sector.

### I. Background of My Advocacy for the Protection of Electricity Consumers

- My interest in the electric power industry started with the problem of the high cost of electricity in the Philippines which at the time was cited as one of the highest in Asia, second only to Japan.

- I had many consultations with the government agencies and power industry stakeholders on the problems in the electric power industry, especially the burgeoning debts of the NPC which was taking a serious toll on the Government and the imposition of the PURCHASED POWER ADJUSTMENT or PPA on the consumers.
  
- The PPA which resulted from contracts inordinately entered into by the Government in response to the power crisis in the early 90s needed to be seriously examined in terms of the unfair burden it imposed on the consumers. I was of the position that the public needed to be informed of why they are being made to pay very high electricity rates especially in the midst of the public outcry against questionable and onerous contracts with Independent Power Producers.

## **II. The EPIRA**

- During the 11<sup>th</sup> Congress, the proposed Electric Power Industry Reform bill was being deliberated in the Senate.
  
- I took it upon myself as a matter of duty to study and understand the elaborate and technical structure and aspects of the industry- from generation, transmission, and distribution to the end-users of electricity. I had to know the various factors which contributed to the high cost of electricity. These included inefficiencies in the system, high systems losses, contracted debts, miscalculations in the demand for future capacities,

high fuel costs, regulatory inadequacies, lapses and outright neglect- all resulting in such a heavy burden on the consumers.

- Obviously, the role of the Ministry of Energy envisioned under the Marcos era which was to set the guiding policies and directions for developing reliable sources of energy, and that of the National Power Corporation had changed. The focus of these agencies was distracted by later policies and decisions of the administration of President Aquino. Noteworthy is the decision to scrap the Bataan Nuclear Power Plant on the basis of allegations of anomalies and fears on its safety, though many experts argue that the scare was baseless. The plant and the nuclear power development program was scrapped without a clear plan on how to provide for the power needs of the future. In the end, the Filipino people were left to bear the financial burden of paying for the loan contracted to build the plant over the next decades without ever benefiting from the mothballed project.
- With full conviction that the EPIRA's promised benefit of ensuring the quality and reliability of the supply of electricity that would translate to lower consumption costs could not be achieved, I cast the lone negative vote for the bill in 2001 when it was passed into law. It was not that I did not believe in the ideas of restructuring the industry, encouraging competition, privatization, and effective regulation. My NO vote was borne of the belief that the EPIRA lacked the needed safeguards against market power abuse and the lack of effective measures to

transparently review the power contracts which spawned the burdensome PPA.

### III. Revisiting the EPIRA

- During my absence in the Senate in the 12<sup>th</sup> Congress, I continued my advocacy for genuine reforms in the power industry. Meanwhile, as I had predicted, the cost of electricity continued to soar. The unbundling of charges led to even more confusion and questions from consumers as they saw in their bills the components of the charges being imposed on them. They were further confused and outraged over the lack of transparency in arriving at adjustments in the generation charges through mechanisms such as the GRAM, the collection of so-called under-recoveries, the inordinate grant of provisional authorities to increase rates without public hearings and their lack of confidence in the competence and trustworthiness of regulatory officials.
- While the consumers scored a couple of victories in their court battles for refund as well as the requirement for public hearing in cases involving rate increases, they still felt largely helpless against the onslaught of rising power costs.
- It was against this backdrop that I made a bid to return to the Senate in 2004 with my main campaign theme of pursuing my advocacy for reform not only to achieve lower power rates but also to ease the tax burden on the public and to prevent monopolies and cartels from injuring consumers through unfair

trade practices and combinations in restraint of trade.

- I must confess to you that my campaign tag line “PROBLEMA MO SAGOT KO” had at times caused me problems because people would ask me how come they are still paying high electricity costs despite my election to the Senate. I would get criticisms from some people even from the media, including some ribbing from my own friends and supporters who thought I had forgotten my campaign promise. It is quite difficult to explain to the public that my promise was PROBLEMA MO SAGOT KO—SA SENADO and that I have to address their concerns through legislation—a process which grinds ever so slowly. In jest, I would tell them I wish I was a dictator who can govern by decree and then maybe I can finish the problem in no time.
- Truth to tell, the very first bills I filed upon my return to the Senate during the Thirteenth Congress was the revision of the EPIRA, along with the Anti-Trust bill, the bill to increase the personal tax exemptions for individual income earners and, after the passage of the RVAT, the proposed measure to exempt electricity from the VAT.
- During the 13<sup>th</sup> Congress, Sen. Santiago who chairs the Energy Committee until now, kindly allowed me to head a sub-committee to conduct hearings on the EPIRA amendments. I conducted no less than seven public hearings apart from technical working groups and consultations to address all issues raised by all sectors especially the consumers. Sadly, the House of Representatives did not act on the

counterpart measure and so we have to do this exercise once again in the 14<sup>th</sup> Congress.

### **III. Main Focus of Amendments to the EPIRA LAW**

Let me briefly update you, ladies and gentlemen, on the status of our present efforts to revise the EPIRA. It seems that the main thrust of the President's endorsement for the early passage of the bill is to accelerate open access by relaxing the requirements under the present law. It is my humble opinion, however, that we should introduce safeguards and other reforms in order to achieve real competition in the market upon open access.

In this regard, this representation is now preparing the Committee's final position on the following major issues:

#### **1. Acceleration of Open Access-**

a.) Lowering the requirement for privatization of 70% of the generation assets of NPC in Luzon and the Visayas to 50%. I am suggesting that a mechanism be included to ensure and mandate continued privatization even after the 50% has been achieved.

b.) Lowering the requirement for transfer of the management and control of at least 70% of the total energy output of power plants under contract with NPC to the IPP Administrators to 50%. I would like to note that 7 years after the passage of the EPIRA, I am informed that

there is hardly any progress on this requirement. This needs to be explained.

- c.) The proposal to immediately implement open access for economic zones in order to clear and affirm PEZA's authority to declare open access within its territorial jurisdiction without being subjected to the preconditions for open access in the EPIRA. As it is currently worded, the EPIRA does not preclude PEZA from exercising rate-fixing powers over economic zones.

## 2. NPC Stranded Debt and Contract Cost Recovery

After the lapse of seven years since the December 31, 2000 deadline for eligible contracts for recovery of stranded costs, and by the time open access is in place, these costs or liabilities would have substantially been minimized to the extent that the improvement in NPC's finances and the National Government's absorption of NPC's liabilities may already be sufficient to cover residual liabilities.

With respect to NPC's stranded costs, I note that in 2006, partly due to improvements in the exchange rate, NPC earned profits of close to P90 Billion on sales of P170 Billion. This improved NPC's equity to a positive of P55 Billion. Even assuming that the Government's absorption of P200 Billion in NPC liabilities is

already a part of that, the further strengthening of the Peso against the U.S. Dollar should further reduce its liabilities in Peso terms.

Hence, we are studying if it is still necessary to recover these stranded costs through a universal charge. Aside from the difficulty of administering the recovery of stranded costs because the market price is constantly changing, allowing recoveries tend to distort market behavior by participants with access to recoveries through the universal charge.

### **3. Cross-Ownership and Market Power Abuse**

The EPIRA already imposes limitations on cross-ownership. To address the concerns between distribution and generation affiliates dealing with each other, related party transactions must be subjected to closer scrutiny. We are now studying the possibility of prohibiting stranded contract cost recovery for distribution utilities for related party contracts while retaining the safeguards currently in the EPIRA.

On the issue of relative size affecting competition, we are thinking of maintaining the 50% limit on bilateral power contracts between commonly owned generation and distribution entities while adding a secondary restriction that bilateral contracts between affiliates must not exceed 20% of the grid for any one distribution utility. This will allow

greater competition in each grid while at the same time allowing sufficient size for efficient plants to be built within the current 50% limit.

#### **4. The Power of the ERC to grant Provisional Authority to increase charges**

In previous years, this power of the ERC has resulted in depriving consumers of the right to be heard in applications for increase in power rates. The consumers are left with no choice but to pay and fight their way hopefully to get a refund if the increase is subsequently declared unjustified. This is a due process issue. I have therefore proposed a ban on granting provisional authority for increases relating to basic rate components such as transmission wheeling charges for TRANSCO and distribution related charges for distribution utilities.

#### **5. The Magna Carta for Residential Electricity Consumers**

We have decided to put into the law the Magna Carta for Residential Electricity Consumers already adopted by the Energy Regulatory Commission which spells out the basic rights of residential electricity end-users, as well as their obligations to the distribution utilities. These rights include:

- To have quality, reliable, affordable, safe and regular supply of electric power;

- To be accorded courteous, prompt, and non-discriminatory service by the electric service provider;
- To be given a transparent, non-discriminatory and reasonable price of electricity;
- To be an informed electric consumer and given adequate access to information on matters affecting the electric service of the consumer concerned;
- To be accorded prompt and speedy resolution of complaints by both the distribution utility and/or the ERC;
- To know and choose the electric service retailer upon the implementation of retail competition; and,
- To organize themselves as a consumer organization in the franchise area where they belong and where they are served by the distribution utility or as a network of organizations.

## **CONCLUSION**

What I have outlined are just some of the focal points of the reforms we are seeking for the ultimate benefit of our electricity consumers. I am certain that at the very least, this summit brings us together under a common goal—and that is-

**to ensure that there will be real reforms that will bring about the cheapest possible electricity rates in the country which will benefit not only our consumers, but the whole nation as well. This can only be achieved by giving our consumers a real right of choice and access to affordable power. The mechanisms for this, while seemingly in place, leave much to be desired in terms of fair, proper and timely implementation. Our nation is quickly being overtaken in our effort to be competitive in the global market, and high power costs are a huge part of the problem. Our local business and industry sectors, and especially our powerless citizens, can no longer wait.**

**Let us, therefore, avoid giving our people false hopes. Let us give them realistic and well thought-out solutions and let us do it right this time. Thank you for this opportunity to share my thoughts with you. Good day to all.**