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TWENTIETH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)

SENATE
S.B. No. 1082

Introduced by SEN. WIN GATCHALIAN

AN ACT
INSTITUTIONALIZING REFORMS IN THE COMPETITIVE SELECTION PROCESS OF POWER SUPPLY AGREEMENTS FOR THE CAPTIVE MARKET OF THE ELECTRIC POWER SECTOR

EXPLANATORY NOTE

Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001, declares it the policy of the State to ensure the quality, reliability, security, and affordability of supply of electric power, to ensure transparent and reasonable prices of electricity in the regime of free and fair competition and full public accountability, and to protect the public interest as it is effected by the rates and services of electric utilities and other providers of electric power.

The use of a competitive process to cultivate private sector participation in the generation sector has long been recognized[1] and, since June 30, 2023, mandated by the Department of Energy (DOE).[2]

Hence, there is a need to institutionalize the CSP in order to enhance regulatory certainty, competition, and transparency.

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[1] The first Competitive Selection Process (CSP) was mandated in National Power Corporation - Small Power Utilities Group (NPC-SPUG) areas in 2004 by DOE Circular DC2004-01-001 entitled "Prescribing the Rules and Procedures for Private Sector Participation in Existing NPC-SPUG Areas Pursuant to Rule 13 of the Implementing Rules and Regulations of the Electric Power Industry Reform Act of 2001." 26 January 2004.

[2] DOE Department Circular No. DC2023-06-0021 entitled Prescribing the Policy for the Mandatory Conduct of the Competitive Selection Process by the Distribution Utilities for the Procurement of Power Supply for their Captive Market.

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

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

WIN GATCHALIAN

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

CHAPTER I

GENERAL PROVISIONS

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

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

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

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

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

SEC. 3. *Scope and Application.* – This Act shall apply to all distribution utilities in the procurement of supply for their captive market including those in the off-grid areas, except in the case of new power providers, qualified third parties, and as otherwise provided in Section 25 this Act. It provides for the manner by which the procurement is to be undertaken, the required review procedure, and the timelines to be observed in such procedure.

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

(a) *Affiliate* refers to any natural or juridical person which, alone or together with other natural or juridical persons, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another natural or juridical person. Affiliates shall include a subsidiary company, a parent company and the subsidiaries, directly or indirectly, of a common parent;

(b) *Bid* refers to the offer of a price by a generation company or a supply aggregator during the competitive selection process to serve the power demand volume put forward for procurement by a distribution utility or a group of distribution utilities, on their own or through a demand aggregator. The price is the generation charge converted to per kilowatt hour inclusive of all costs passed on to the consumers as determined by the Energy Regulatory Commission (ERC);

(c) *Captive market* refers to the electricity end-users who do not have the choice of a supplier of electricity, as determined by the ERC in accordance with Republic Act No. 9136;

(d) *Competitive selection process (CSP)* refers to a procedure wherein a distribution utility or a group of distribution utilities, on their own or through a demand aggregator, undertake a transparent and competitive procurement of power supply agreements, in accordance with the provisions of this Act;

(e) *Demand aggregator* refers to a natural or juridical person registered and licensed with the ERC, offering services for the consolidation of the power demand volume of distribution utilities for the purpose of subjecting it to a CSP;

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

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

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

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

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

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

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

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

(n) *Off-grid* refers to areas that are not connected to the main high voltage backbone system;

(o) *Particular conditions* refers to additional terms in the power supply agreement not found in the general conditions introduced either by the DU, generation company, or supply aggregator;

(p) *Power Supply Agreement (PSA)* refers to a contract between a generation company or a supply aggregator and a DU whereby the latter purchases electricity from the former;

(q) *Power Supply Procurement Plan (PSPP)* refers to the assessment of a DU of a variety of its demand side and supply side resources, as part of its Distribution Development Plan resulting in a comprehensive power supply procurement schedule to meet customer electricity demand while ensuring an optimal supply mix for its captive market and taking into account existing government policies;

(r) *Reserve price* refers to the price set by ERC as a ceiling for each particular CSP;

(s) *Supply aggregator* refers to any natural or juridical person, registered and licensed with the ERC to sell power to DUs by combining generation capacities of generation companies and supply from the Wholesale Electricity Spot Market;

(t) *Third party auctioneer (TPA)* refers to a natural or juridical person mandated to coordinate and administer the conduct of all CSPs; and

(u) *Wholesale Electricity Spot Market (WESM)* refers to the electricity market created under Republic Act No. 9136.

CHAPTER II
POWERS AND FUNCTIONS OF GOVERNMENT AGENCIES

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

(a) Exercise its supervisory power over the CSP by ensuring that the general principles provided in this Act are complied with;

(b) Determine the components of the PSPP in accordance with Sections 4(q) and 15 of this Act, and in consultation with ERC, NEA, National Power Corporation (NPC), and the DUs; and

(c) Ensure that all submitted PSPPs are aligned and consistent with the annual Power Development Plan and the Philippine Energy Plan with the end in view of ensuring sufficient power supply while eliminating over procurement of power by DUs.

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

(a) Promulgate the CSP Regulations pursuant to Section 9 of this Act;

(b) Establish the reserve price for every CSP, in the exercise of its rate-setting power. In so doing, the ERC shall take into consideration, among others, a DU's demand profile, the available supply in the market, pricing benchmarks, and a reasonable rate of return;

(c) Verify whether each CSP has complied with all procedures and requirements as specified in Section 20 of this Act; and

(d) Regulate the TPA pursuant to Sections 9 and 17 of this Act, including the reasonable fee for its services.

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

(a) Assist and equip ECs in the formulation and creation of their PSPPs; and

(b) Facilitate the voluntary aggregation of ECs upon their request.

CHAPTER III

GENERAL PRINCIPLES OF A CSP

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

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

(i) Enjoining completion of each CSP within a reasonable period of time,

(ii) Making certain that every CSP is open to all technologies and resources subject to the load, operational, and system requirements of the concerned DU, including market considerations, and existing and future policies pursuant to applicable laws, rules, and regulations;

(iii) Having an undisclosed reserve price for each CSP, as determined by the ERC, above which no offer shall be accepted;

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

(i) Establishing a sole and centralized TPA tasked with conducting the various CSPs of all DUs,

(ii) Mandating a clear and transparent CSP procedure with uniform requirements; and

(iii) Requiring standardized forms, documents, and contracts for the CSP; and

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

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

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

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

(i) The entire CSP including rules and guidelines for the evaluation of bids and awarding of PSAs: *Provided,* That the complete procedure shall not exceed ninety (90) days from the issuance of the invitation to bid until to the awarding of the PSA to the winning bidder;

(ii) Qualification, procurement, and performance indices for the TPA including:

(1) Detailed scope of work,

(2) Bonds and guarantees,

(3) Cost recovery mechanism and reasonable fees for the services of TPA, except as otherwise provided in Section 17 of this Act,

(4) Monitoring and evaluation framework, and

(5) Prohibited acts and penalties,

(iii) Registration of all CSP participants with the TPA,

(iv) Registration and licensing of demand aggregators and supply aggregators,

(v) Determination of the reserve price of every CSP,

(vi) Preparation of the particular conditions of a PSA,

(vii) Negotiated PSAs in accordance with Sections 22, 23, and 25 of this Act, and

(viii) Grievance and dispute resolution mechanism;

(c) Standardized contents of an invitation to bid and all other documents and forms necessary in the conduct of the CSP;

(d) Standardized general conditions of a PSA in accordance with Section 19 of this Act;

(e) Fines and penalties for non-compliance with any of the CSP Regulations; and

(f) Other such rules, procedures, and requirements that will ensure the effective regulation of the CSP.

CHAPTER IV
CSP PARTICIPANTS

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

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

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

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

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

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

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

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

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

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

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

SEC. 15. *Power Supply Procurement Plan.* – Every DU shall prepare and submit its annual PSPP to the DOE as part of its annual Distribution Development Plan. In the preparation of the PSPP, the DU shall undertake a cost-benefit analysis of the power supply requirements for its captive market taking into consideration, among others, prevailing price in the market, energy demand forecasting, load, system, and operational requirements, other market considerations, and existing and future policies pursuant to applicable laws, rules, and regulations.

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

CHAPTER V
THIRD PARTY AUCTIONEER

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

(a) Be the sole body that coordinates and administers the conduct of all CSPs;

(b) Provide and manage a secure electronic network-based platform for the bidding component of the CSP, subject to CSP Regulations, and the implementing rules and regulations of this Act;

(c) Be liable for any negligence, abuse, delay, or preferential treatment in the conduct of the CSP including security breaches to the electronic platform;

(d) Be entitled to recover its costs and a reasonable fee for its services, except as otherwise provided in Section 17 of this Act; and

(e) Be regulated and its operation monitored and evaluated by the ERC.

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

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

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

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

CHAPTER VI

FEATURES OF A CSP

SEC. 19. *Standardized Contracts.* – All contracts, forms, and documents used for the CSP shall be standardized and unified. PSAs shall have general conditions and particular conditions. The general conditions shall include a maximum contract period to be determined and adjusted regularly by ERC, and a provision for replacement power, the cost of which shall be shouldered by the generation company or supply aggregator. The particular conditions shall be reviewed and approved by the ERC pursuant to Section 9(b)(vi) of this Act.

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

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

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

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

1. When there are no bids submitted for two consecutive rounds;
2. When there is only one bidder and its bid is above the reserve price for two consecutive rounds; or
3. When there is more than one bidder, and all bids are above the reserve price for two consecutive rounds.

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

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

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

CHAPTER VII
TRANSPARENCY

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

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

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

CHAPTER IV
PROHIBITED ACTS AND PENALTIES

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

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

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

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

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

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

1) Disclosure of the reserve price by any individual before the proclamation of the winning bidder;
2) Tampering with the CSP software;
3) Manipulation of any stage of the CSP procedure to unduly favor any participant;
4) Commission of cybercrime as defined by Republic Act No. 10175, otherwise known as the Cybercrime Prevention Act of 2012, including the manipulation or interference with the electronic network-based platform for bidding and the electronic portal of the ERC;
5) Negligence or abuse in the conduct of the CSP, including in the management and operation of the electronic network-based platform for the bidding component of the CSP;
6) Violation of Section 27 of this Act; and
7) Collusion among CSP participants.

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

CHAPTER V
FINAL PROVISIONS

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

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

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

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

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

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

Approved,