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01 December 2022

**HON. RAPAHEL PM LOTILLA**  
Secretary  
Department of Energy  
Energy Center, Rizal Drive  
Bonifacio Global City  
Taguig City



Subject: **QUERY ON THE EFFECTIVITY OF THE AMENDMENT TO SECTION 4 (e), RULE III OF THE IMPLEMENTING RULES AND REGULATIONS OF R.A. 9136 (EPIRA)**

**Dear Secretary Lotilla,**

May we respectfully inquire if the amendment to Section 4(e), Rule III of the Implementing Rules and Regulations of R.A. 9136 (EPIRA), as adopted by the Joint Congressional Power Committee (now known as the Joint Congressional Energy Committee) on 21 June 2007, was published and, if so, when. The amendment is to the following effect:

**“This Section 4 (e) shall not apply to those applications or petitions already filed as of 26 December 2001 in compliance Section 36 of the Act.**

**“This Section 4 (e) shall not apply to Generation Rate Adjustment Mechanism (GRAM), Incremental Currency Exchange Recovery Adjustment (ICERA), Transmission Rate Adjustment Mechanism, Transmission True-up Mechanism, System Loss Rate Adjustment Mechanism, Lifeline Rate Recovery Mechanism, Cross-Subsidy Mechanism, Local Franchise Tax Recovery Mechanism, Business Tax Recovery Mechanism, Automatic Generation Rate Adjustment Mechanism, VAT Recovery Mechanism, Incremental Generation Cost Adjustment Mechanism, and Recovery of Deferred Accounting Adjustment for Fuel Cost and Power Producers by NPC and NPC-SPUG, provided that, such adjustments shall be subject to subsequent verification by the ERC to avoid over/under recovery of charges.**

*“The fear of the Lord is the beginning of wisdom and knowledge of the Holy One is understanding.” (Proverbs 9:10)*

The reason for the inquiry is that we cannot find the above amendment in the official copy of the IRR of the EPIRA in the Department of Energy website, nor in other related agencies such as the Energy Regulatory Commission or the National Electrification Administration.

To our surprise, we obtained a Certification from the Senate Legislative Records and Archives Service on November 29, 2022 (the same day of the hearing of the Commission on Appointments on your *ad interim* appointment where you and I were present), to the effect that:

"The Senate Archives which is repository of official documents of the Senate does **not** have a copy of the requested resolution 'Copy of the Resolution of the Joint Congressional Energy Committee, 21 June 2007 (or thereabouts) Adopting an Amendment to Sec. 4 (E) Rule 3 of the Implementing Rules and Regulations of Republic Act 9136 (EPIRA).

"The Senate Archives has a copy **only** of the Transcript of Committee Meeting (TCM) pertaining to the discussion on the proposed Section 4 (E) Rule 3 of the Implementing Rules and Regulations of Republic Act 9136 (EPIRA) as attached."

What is clear is that the amendment was adopted by the Joint Congressional Energy Committee on 21 June 2007 but we do not have proof whether such amendment was published.

As the department with the power and authority to issue the implementing rules of the EPIRA (with the approval of the Joint Congressional Energy Committee), your Office is the best place to clarify this matter.

It might not be amiss to note that the amendment was adopted during your watch as DOE Secretary under President Gloria Macapagal Arroyo in 2007.

If it turns out that the amendment was **never published** and therefore **never took effect**, then this has serious repercussions, foremost of which is the invalidity of all regulations and issuances of the Energy Regulatory Commission regarding all automatic adjustment mechanisms in favor of power generators and distribution utilities that enabled them to sidestep the notice and hearing requirements of the EPIRA, giving rise to runaway energy prices that have driven our people to desperate straits. This is also in contravention of the Supreme Court En Banc's landmark decision in *NASECORE vs. ERC* (G.R. No. 163935, February 2, 2006) pronouncing such publication not only a statutory but a constitutional requirement.

*"The fear of the Lord is the beginning of wisdom and knowledge of the Holy One is understanding". (Proverbs 9:10)*

In other words, we would like to be reassured as consumers that both the DOE and the ERC have not been issuing regulations for the past 15 years that are void *ab initio*.

We would appreciate your categorical answer to our question regarding the fact of publication of the aforementioned amendment to Section 4(e), Rule 3 of the Implementing Rules and Regulations of R.A. 9136 (EPIRA), preferably within five (5) days from receipt hereof.

Thank you.

Very truly yours,



**PETE L. ILAGAN**  
President

Copy furnished:

His Excellency, President Ferdinand R. Marcos, Jr.  
Hon. Juan Miguel F. Zubiri, Senate President  
Hon. Ferdinand Martin G. Romualdez, Speaker of the House  
Hon. Raffy T. Tulfo, Chairman-Senate Committee on Energy  
Hon. Lord Allan Jay Velasco, Chairman- House Committee on Energy