

Republic of the Philippines  
**HOUSE OF REPRESENTATIVES**  
Quezon City, Metro Manila

Fifteenth Congress  
Second Regular Session

**HOUSE BILL NO. 5244**

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**Introduced by: Hon. Erico B. Aumentado, Hon. Teddy Brawner Baguilat, Jr., Hon. Tomas V. Apacible, Hon. Mark Llandro Mendoza, Hon. Salvador Cabaluna III, Hon. Michael Angelo Rivera, Hon. Rodel Batocabe, Hon. Christopher Co, Hon. Alfredo Garbin, Jr., Hon. Homer Mercado, Hon. Sharon Garin, Hon. Eulogio Magsaysay, Hon. Arnel Ty, Hon. Raymond Democrito Mendoza**

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**EXPLANATORY NOTE**

This bill aims to strengthen the National Electrification Administration in order to allow the agency to carry its mandate of bringing the blessings of energization to all puroks and public schools in the rural areas through the electric cooperatives as NEA's implementing arm.

For, indeed, power has become indispensable in the economic development of the countryside especially in the light of the government's drive for poverty reduction.

The electric cooperatives – under the umbrella of the Philippine Rural Electrification Cooperatives Association Inc. (PHILRECA) – have extended electricity services even to missionary or not economically viable areas in the name of public service. To date, PHILRECA has serviced 9,000,000 households or 45,000,000 members when translated at five persons per household all over the country.

Among the salient amendatory features in this bill are the following, to wit:

1. Increase of NEA's capitalization from FIVE BILLION PESOS (P5,000,000,000) to FIFTEEN BILLION PESOS (P15,000,000,000).

3. Expanded enforcement of regulatory and supervisory function of NEA; and
4. Strict adherence to the rule on conflict of interest and the Anti Graft and Corrupt Practices Act to ensure transparency and accountability in NEA's transactions and conduct of its manpower as the mechanism to follow the righteous path of governance.

In light of the foregoing, it is most respectfully urged of the Honorable House of Representatives to approve of this Bill.

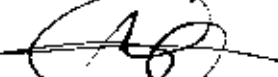
  
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*Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:*

**HOUSE BILL No. 5244**

**AN ACT**  
**PROVIDING FOR MEASURES TO STRENGTHEN THE NATIONAL ELECTRIFICATION ADMINISTRATION, AMENDING PD 269, PD 1645 AND OTHER RELATED LAWS, AND FOR OTHER PURPOSES.**

**CHAPTER I – POLICY AND DEFINITIONS**

Section 1. ***Title.*** - This act shall be known as the “Revised Charter of the National Electrification Administration of 2011”. It shall hereinafter be referred to as the Act.

Section 2. ***Declaration of Policy.*** – It is hereby declared the policy of the State to energize the rural areas to spur the economic development therein. Towards this end, the State shall empower and strengthen the National Electrification Administration to pursue this program and bring electricity – through the electric cooperatives as its implementing arm – to the countryside even in the missionary or economically unviable areas.

Section 3. ***Definitions.*** As used in this ACT, the following words or terms shall have the following meanings, unless a different meaning clearly appears from the context:

- a.) “NEA” shall mean the National Electrification Administration.
- b.) “ELECTRIFICATION BOARD” shall mean the Board of Administrators of NEA;
- c.) “ADMINISTRATOR” shall mean the Administrator of NEA, all as provided for in this ACT.
- d.) “ELECTRIC Cooperative” SHALL MEAN AN ELECTRIC DISTRIBUTION UTILITY ORGANIZED AND REGISTERED PURSUANT TO RA 6038, PD 269, AS AMENDED.

- e.) "Public service entities" shall mean (1) an ELECTRIC COOPERATIVE, (2) the NPC, and (3) local governments and privately-owned public service entities in operation which furnish and are empowered to furnish retail electric service.
- f.) "Person" shall mean any natural or juridical person, firm, association, cooperative, corporation, business trust, partnership, the National Government or any political sub-division, agency or instrumentally thereof.
- g.) "Service" shall mean electric service, either at wholesale or retail, including the furnishing of any auxiliary or related service.
- h.) "Dependable and adequate service" shall mean service that, consistent with normal standards and levels of service based upon good utility management and operating practices, is sufficient in quantity, having regard for the demands for service currently existing and reasonably anticipated within the foreseeable future, that is accessible on a constant and continuous basis except for outages occasioned by the need for normal repair, maintenance, construction or renovation work or by acts beyond the reasonable ability of the public service entity to prevent or control.
- i.) "Franchise Area" shall mean refers to a geographical area exclusively assigned or granted to a distribution utility for distribution of electricity.
- j.) "Area coverage" shall mean dependable and adequate service that, on the basis of reasonable and standard extension and service policies, rates, charges and other terms and conditions, will be or is being made available to all persons within the affected area as above defined who request such service and are able and willing to abide by and comply with all reasonable and standard terms and conditions, regardless of the relative location of such persons within the affected area or of their proximity to existing or proposed service facilities: Provided, That the financial feasibility of the public service entity's entire operation is not thereby impaired.
- k.) "Interest rate per centum per annum" shall mean an interest rate that is accrued solely upon the unpaid balance of any loan principal which has actually been advanced to a borrower and upon any interest payment which has become due or been deferred and has not been paid by the borrower; computed on an annual basis.

- l.) "Loan" shall mean a loan the total principal amount of which, as and when required for application to the purposes thereof, that is, at the time of the making thereof, assured from funds that are or will become available therefore.
- m.) "NEDA" shall mean National Economic and Development Authority or any successor instrumentality that may hereafter be established to perform the same or substantially similar function;
- n.) "NPC" shall mean National Power Corporation;
- o.) "NEDA-FS" shall mean National Economic and Development Authority-Foreign Source.
- p.) "Franchise" shall mean the privilege extended to a DISTRIBUTION UTILITY to operate an electric system for service to the public at retail within a described geographic area, whether such privilege had been granted by the Congress or NATIONAL ELECTRIFICATION COMMISSION.
- q.) "Board" shall mean the board of directors of an ELECTRIC cooperative.
- r.) "Houshold" shall mean a dwelling capable of receiving service safely, including apartments and other dwelling combinations.
- s.) "SMALL POWER UTILITIES GROUP" or "SPUG" refers to the functional unit of NPC created under Republic Act No. 9136; to pursue missionary electrification functions.
- t.) "MISSIONARY ELECTRIFICATION" refers to the provision of basic electricity service in unviable areas with the ultimate aim of bringing the operations in these areas to viability levels.
- u.) "GUARANTEE" a written pledge by NEA to take on the debt obligation of electric cooperatives if the latter defaults on the payment of obligations.

## **CHAPTER II – THE NATIONAL ELECTRIFICATION ADMINISTRATION**

**Section 4. *NEA Authorities, Powers and Directives.*** The NEA is hereby authorized, empowered and directed to promote, encourage and assist ELECTRIC COOPERATIVES to the

end of achieving the objective of making service available throughout the nation on an area coverage basis as rapidly as possible. THEREBY MAKING MISSIONARY ELECTRIFICATION ITS PRIMORDIAL CONCERN; and for such purpose it is hereby, without limiting the generality of the foregoing and in addition to other authorizations, powers and directives established by this ACT, specifically authorized, empowered and directed:

- a.) To have a continuous succession under its corporate name until otherwise provided by law;
- b.) To prescribe and thereafter to amend and repeal its by-laws not inconsistent with this ACT;
- c.) To adopt and use a seal and alter it at its pleasure;
- d.) To sue and to be sued in any court: Provided, That NEA shall, unless it consents otherwise, be immune to suits for acts *ex delicti*;
- e.) To make contract of every name and nature and to execute all instruments necessary or convenient for the carrying out of its business;
- f.) To make loans to ELECTRIC COOPERATIVES, for the construction or acquisition, operation and maintenance of generation, transmission and distribution facilities and all related properties, equipment, machinery, fixtures, and materials for the purpose of supplying area coverage service, and thereafter to make loans for the restoration, improvement or enlargement of such facilities;
- g.) To promote, encourage ELECTRIC COOPERATIVES and LOCAL GOVERNMENT UNITS in planning, developing, coordinating, establishing, operating, maintaining, repairing and renovating facilities and systems to supply area coverage service, and for such purpose to furnish technical, INSTITUTIONAL and professional assistance and guidance.
- h.) To approve or disapprove any loan from other lenders to public service entities which at the time are borrowers from NEA under sub-paragraph (f) of this section, and thereafter, pursuant to Section 11 (b) to disapprove advances of loans from other lenders;

- i.) TO GUARANTEE THE TRANSACTIONS FOR ELECTRIC COOPERATIVES CONSISTENT WITH THE PROVISIONS OF THIS ACT AND SUBJECT TO THE POLICY PROMULGATED BY THE ELECTRIFICATION BOARD;
- j.) To so cooperate, coordinate and exchange such information, studies and reports with, and to seek such cooperation and coordination from, other departments, agencies and instrumentalities of the National Government, as will most effectively conduce to the achievement of the purposes of this ACT;
- k.) To borrow funds from any source, private or government, foreign or domestic, and not inconsistently with section 8, to issue bonds or other evidences of indebtedness therefor and to secure the lenders thereof by pledging, sharing or subordinating one or more of the NEA's own loan securities;
- l.) To receive from ELECTRIC Cooperatives all articles of incorporation, amendments, consolidation, merger, conversion and dissolution, and all certificates of changes in the location of principal offices and of elections to dissolve, and, upon determining that such are in conformity with this ACT to certify the same, to file them in the records of the NEA, and to maintain a registry of such filings the provisions of Act No. 1459, as amended, to the contrary notwithstanding;
- m.) To acquire, by purchase or otherwise (including the right of eminent domain, which is hereby granted to the NEA, to be exercised in the manner provided by law for the institution and completion of expropriation proceedings by the National and local governments) real and physical properties, together with all appurtenant rights, easements, licenses and privileges, whether or not the same has already been devoted to the public use of generating, transmitting or distributing electric power and energy, upon NEA's determination that such acquisition is necessary to accomplish the purposes of this ACT and, if such properties has already been devoted to the public use described in the foregoing, that such use will be better served and accomplished by such acquisition; Provided, that the power herein granted shall be exercised by the NEA solely as agent for and on behalf of one or more public service entities which shall timely receive, own and utilize or replace such properties for the purpose of furnishing adequate and dependable service on an area coverage basis, which entity or entities shall then be or in connection with the acquisition shall become, borrowers from the NEA under sub-paragraph (f) of this section; and Provided

further, that the costs of such acquisition, including the cost of any eminent domain proceedings, shall be borne, either directly or by reimbursement to the NEA, whichever the NEA shall elect, by the public service entity or entities on whose behalf the acquisition is undertaken; and otherwise to acquire, improve, hold, transfer, sell, lease, rent, mortgage, encumber and otherwise dispose of property incident to, or necessary, convenient or proper to carry out, the purposes for which NEA was created;

- n.) At least annually, not later than June 30th, to report to the President on the status of electrification of the Philippines, including a comprehensive reporting of loans made, loan funds advanced, loans secured from other sources and the advances thereof, the names and locations of the borrowers, the number of services contemplated by such loans, the number actually receiving service as a result of such loans, the number of electrified and the remaining number of unelectrified households throughout the Nation, the amounts of usage by consumers, loan and other activities programmed for the ensuing year, and all such other information and data as will accurately reveal the progress being made toward the achievement of the purposes of this ACT; and to publish such report for dissemination to and use by other interested departments, agencies and instrumentalities of the National Government and by borrowers under this ACT;
- o.) To exercise such powers and do such things as may be necessary to carry out the business and purposes for which the NEA was established, or which from time to time may be declared by the ELECTRIFICATION BOARD to be necessary, useful, incidental or auxiliary to accomplish such purposes; and generally, to exercise all the powers of a corporation under the Corporation Code of the Philippines insofar as they are not inconsistent with the provisions of this ACT.
- p.) To invest and/or grant loans to ELECTRIC COOPERATIVES for ELECTRIFICATION PURPOSES AND for the development and utilization of renewable energy sources and other alternative sources of energy, power generation industries and/or companies, including but not limited to dendro-thermal and mini hydro power plants, solar and wind energy and associated facilities; provided, that such investment and loans shall be limited to specific percentage of total requirements as may be determined by the ELECTRIFICATION BOARD.

- q.) To organize wholly- or partly-owned companies and subsidiaries for the purpose of operating power generating and distribution systems and other related activities; and
- r.) To organize wholly- or partly-owned subsidiaries for the purpose of manufacturing materials and equipment for the power generating systems.

**Section 5. *Composition, Function and Term of the Electrification Board.***

- a.) For the purpose of administering the provisions of this ACT, there is hereby established a public corporation to be known as the National Electrification Administration. All of the powers of the corporation shall be vested in and exercised by an ELECTRIFICATION BOARD, which shall be composed of a Chairman and four (4) members, one of whom shall be the Administrator as ex-officio member.

The three other members shall be appointed by the President of the Philippines to serve for a fixed term of (7) years. Provided, that the terms of the first appointees shall be seven years for one member and three years for the two other members, respectively, and that the term of the ex-officio member shall be co-terminus with his term as the Administrator.

All vacancies, except through expiration of the terms, shall be filled for the unexpired term only. The Chairman and every member of the Electrification Board shall be entitled to a per diem approved by the GOVERNANCE COMMISSION FOR GOCCs (GCG) for each meeting actually attended by them.

- b.) MEMBERS - (a) the Secretary of the Department of Energy, shall be ex-officio, the Chairman of the Electrification Board. Whenever the Secretary of Energy is unable to attend a meeting of the Board, he shall designate an Undersecretary as alternate;
  - i. the Administrator of the National Electrification Administration, shall serve as ex-officio member of the Electrification Board;
  - ii. one (1) member who shall be a professional electrical engineer;
  - iii. one (1) member who shall be a lawyer; and

iv. one (1) member with a background in business, economics or finance.

- c.) Meetings, Quorum. The Electrification Board shall meet regularly at least twice a month and as often as the exigencies of the agency's affairs demand.

The presence of at least three members shall constitute a quorum which shall be necessary for the transaction of any business. The affirmative vote of a majority of the members present shall be necessary for the approval of any resolution, decision or order, except when a greater vote is required as sometimes hereinafter provided. In the absence of the Chairman or his designated alternate at a Board meeting duly called, the Administrator as ex-officio member shall preside.

- d.) Electrification Board Committees. THE ELECTRIFICATION BOARD SHALL HAVE THREE COMMITTEES NAMELY: 1) BOARD GOVERNANCE COMMITTEE 2) CREDIT AND RISK MANAGEMENT COMMITTEE; AND 3) AUDIT COMMITTEE. THE COMMITTEES SHALL BE COMPOSED OF THE MEMBERS OF THE BOARD. THE CHAIRMAN OF WHICH SHALL BE ELECTED FROM AMONG THEMSELVES. THE ELECTION BOARD SHALL HAVE THE FOLLOWING FUNCTIONS:

1. To implement the provisions and purposes of this ACT;
2. To formulate and adopt policies and plans, and to promulgate rules and regulations, for the management, operation and conduct of the business of the NEA THAT WILL STRENGTHEN THE INSTITUTIONAL AND TECHNICAL CAPABILITY AND FINANCIAL VIABILITIES OF ELECTRIC COOPERATIVES;
3. To adopt and, as may be necessary from time to time, to amend annual budgets for the NEA's borrowing and lending programs and for the agency's administration;
4. To establish policies and guidelines for employment, on the basis of merit, technical competence and moral character, and, upon the recommendation of the Administrator, to organize or reorganize NEA's staffing structure, to fix the salaries of personnel and to define their powers and duties;

5. To authorize the NEA Administrator to designate, subject to the confirmation of the ELECTRIFICATION BOARD, AN ACTING GENERAL MANAGER AND/OR PROJECT SUPERVISOR, AND AN INDEPENDENT DIRECTOR for an ELECTRIC Cooperative where vacancies in the said positions occur and/or when the interest of the Electric Cooperative and the program so requires, and to prescribe the functions of said Acting General Manager and/or Project Supervisor, AND INDEPENDENT DIRECTOR which powers shall not be nullified, altered or diminished by any policy or resolution of the Board of Directors of the Electric Cooperative concerned;
  6. On the recommendation of the Administrator, appoint, fix the remunerations and other emoluments, and remove personnel of the National Electrification Administration, subject to the pertinent civil service laws, rules and regulations; Provided, That the Electrification Board shall have exclusive and final authority to promote, transfer, assign or reassign personnel of the National Electrification Administration and these personnel actions are deemed made in the interest of the service and not disciplinary; Provided, further, That the Electrification Board may delegate such authority to the Administrator under such guidelines as it may determine.
- e.) Adopt an annual budget for and authorize such expenditures by the National Electrification Administration as are in the interest of effective administration and operations of the National Electrification Administration;
  - f.) Indemnify its members and other officials of the National Electrification Administration, including personnel of the departments performing supervision and examination functions against all costs and expenses reasonably incurred by such persons in connection with any civil or criminal action, suit or proceedings to which he may be, or is, made a party by reason of the performance of his functions or duties, unless he is finally adjudged in such action or proceeding to be liable for negligence or misconduct;

Section 6. *The NEA Administrator.* The management of NEA shall be vested in the Administrator who shall be THE CHIEF EXECUTIVE OFFICER. HE/SHE shall be a person of known integrity, competence and experience in technical and executive fields related to the purposes of this ACT;

The Administrator shall have the following powers and duties:

- a.) To execute and administer policies, plans and programs, the rules and regulations, approved or promulgated by the Board of Administrators;
- b.) To submit for the consideration of the Board of Administrators such policies, plans and programs as he deems necessary to carry out the provisions and purposes of this ACT; and
- c.) To direct and supervise the operation and internal administration of the NEA and, for this purpose, to delegate some of any of this powers and duties to subordinate officials of the NEA;

Section 7. **Capital Stock.** THE AUTHORIZED CAPITAL STOCK OF NEA SHALL BE INCREASED TO FIFTEEN BILLION PESOS (P15B) DIVIDED INTO ONE HUNDRED FIFTY MILLION SHARES WITH A PAR VALUE OF ONE HUNDRED (P100.00) PESOS EACH, WHICH SHARES ARE NOT TO BE TRANSFERRED, NEGOTIATED, PLEDGED, MORTGAGED, OR OTHERWISE GIVEN AS SECURITY FOR PAYMENT OF ANY OBLIGATION.

THE SUM SHALL BE WHOLLY SUBSCRIBED BY THE GOVERNMENT OF THE PHILIPPINES AND PAID FROM A PORTION OF THE PROCEEDS OF FEES DERIVED FROM PETROLEUM SERVICE CONTRACTS, INCLUDING BUT NOT LIMITED TO THAT OF MALAMPAYA NATURAL GAS PROJECT, AT A PERCENTAGE TO BE DETERMINED BY THE DEPARTMENT OF ENERGY, AND BY DIRECT APPROPRIATION OF THE CONGRESS OF THE PHILIPPINES FOR ANY BALANCE THEREON, IF NECESSARY.

Section 8. **TRANSFER OF SPUG FUNCTIONS.** THE NEA SHALL ASSUME THE FUNCTIONS OF THE SPUG ENUMERATED IN SECTION 70 OF EPIRA. THE MISSIONARY ELECTRIFICATION FUNCTION SHALL CONTINUE TO BE FUNDED FROM THE REVENUE SALES IN MISSIONARY AREAS AND FROM THE UNIVERSAL CHARGE TO BE COLLECTED FROM ALL ELECTRICITY END-USERS AS DETERMINED BY THE ERC. TO ENSURE THE FINANCIAL VIABILITY OF NEA, ERC SHALL DETERMINE AND RELEASE OF UNIVERSAL CHARGE TO NEA ON A QUARTERLY BASIS.

Section 9. **Loan and GUARANTEE Standards.** In making a loan AND/OR GUARANTEE authorized in Section 4, the ELECTRIFICATION BOARD is hereby authorized, empowered and directed:

- a.) Before making such loan or GUARANTEE, to determine and certify that (1) the project or projects being financed thereby are financially feasible for the purpose of, and will result in, area coverage in the area or areas to be affected thereby; EFFICIENT AND RELIABLE SERVICE, AND REASONABLE PRICE OF ELECTRICITY IN A DEREGULATED POWER ENVIRONMENT (2) funds are or will be available for such loans or GUARANTEE to the borrower on the schedule contemplated by the loan or GUARANTEE agreement; and (3) in the NEA's judgment the security for such loan is reasonably adequate and the principal of and interest upon such loan will be repaid on schedule and within the time agreed;
- b.) To require that such loan or GUARANTEE be self-liquidating within a term to be fixed by the NEA;
- c.) To impose upon the loan or GUARANTEE principal and interest charge or GUARANTEE FEE to be fixed by the NEA;
- d.) To fix the schedule for repayment of the principal of and the interest upon such loan in instalments recurring not more than every quarter, which instalments may be in unequal amounts and larger in the later years of the loan term than in the earlier years;
- e.) To require in the loan or GUARANTEE agreement that the borrower's rates, charges, rules and regulations, policies and all other terms and conditions affecting its extension and furnishing of service shall be such as to assure achievement of the loan or GUARANTEE purposes, and
- f.) Subject to the foregoing, to establish and require compliance with such procedures, rules and regulations as the ELECTRIFICATION BOARD may determine to be necessary or appropriate to assure that the purposes of such loan or GUARANTEE will be timely achieved and that the loan or GUARANTEE agreement and the provisions of this ACT will be complied with.

Section 10. *Contracting Indebtedness: Conditions, Privileges, Exemptions, Sinking Fund, Guarantees.* Whenever the ELECTRIFICATION BOARD determines that to accomplish the purposes of Chapter II of this ACT it is necessary to contract indebtedness, it shall by a resolution, adopted by the affirmative votes, of at least three members, so declare and authorize the NEA's execution or issuance of and establish the terms and conditions to be contained in,

such bonds, loan agreements or other evidences of indebtedness necessary therefor. Such resolution shall become valid and effective upon approval by the President of the Philippines upon recommendation of the Secretary of Finance.

- 1.) Such bonds or other evidences of indebtedness (a) shall be in registered form and transferable at the BANGKO SENTRAL NG PILIPINAS (BSP); (b) shall not be sold at less than par value; (c) shall be payable ten years or more from date of issue, as may be determined by the Secretary of Finance before their issuance, but shall be redeemable, upon the election of the ELECTRIFICATION BOARD, after five years from such date of issue; and (d) shall bear interest at an annual rate to be determined before their issuance by the Secretary of Finance in consultation with the Monetary Board of the BANGKO SENTRAL NG PILIPINAS (BSP) before date of the issuance and both the principal and interest shall be payable in legal tender of the Philippines;
- 2.) The bonds or other evidences of indebtedness shall be exempt from the payment of all taxes by the Republic of the Philippines, or by any authority, branch, division, political subdivision thereof, which facts shall be stated upon their face; and they shall be receivables as security in any transaction with the National Government or any of its branches, subdivisions, instrumentalities and its owned or controlled corporations in which a security is required.
- 3.) The sinking fund shall be established by the National Electrification Administration in such manner that the total annual contributions thereto, accrued at such rate of interest as may be determined by the Secretary of Finance in consultation with the Monetary Board, shall be sufficient to redeem at maturity the bonds issued under this subsection. The sinking fund shall be under the custody of the BANGKO SENTRAL NG PILIPINAS (BSP); which shall invest the same, subject to the approval of the ELECTRIFICATION BOARD and the Secretary of Finance in consultation with the Monetary Board; provided, that the proceeds thereof shall accrue to the NEA.
- 4.) The Republic of the Philippines hereby guarantees the payment by the NEA of both the principal and the interest of the bonds or other evidences of indebtedness, and shall pay such principal and interest in case the NEA fails to do so; and there are hereby appropriated out of the general funds in the National Treasury not otherwise appropriated the sums necessary to make the payments so guaranteed; Provided, that the sums so paid by the Republic of the Philippines shall be

refunded by the NEA; and Provided, further, that the NEA, to assure such refunding, shall establish such reserves or sinking funds and comply with such other restrictions and conditions as the Secretary of Finance may prescribe and establish for that purpose.

- 5.) With respect to foreign indebtedness to be incurred by the NEA, such may be contracted, in the form of loans, credits, convertible foreign currencies, or other forms of indebtedness, from foreign governments or any international financial institution or fund source, including foreign private lenders. The total outstanding amount of such indebtedness, exclusive of interest, shall not exceed eight hundred million United States dollars (U.S.\$ 800M) or the equivalent thereof in other currencies. The President of the Philippines, by himself or through his duly authorized representative, is hereby authorized to negotiate and to so contract with foreign governments or any international financial institution or fund source in the name and on behalf of the NEA; and is further authorized to guarantee, absolutely and unconditionally, as primary obligor and not merely as a surety, in the name and on behalf of the Republic of the Philippines, the repayment of any indebtedness thereby contracted and the payment thereon of any due interest charge, up to the limited amount authorized by the foregoing, which shall be over and above the amounts which the President is authorized to guarantee under R.A. 6142, and also to guarantee the performance of all or any of the obligations undertaken by the NEA in the territory of the Republic of the Philippines pursuant to loan agreements entered into pursuant to this sub-paragraph (5). Any indebtedness contracted under this sub-paragraph (5) and the payment of the principal thereof and of any interest or other charges thereon, as well as the importation of machinery, equipment, materials, supplies and service by the NEA, paid from the proceeds of any such contracted indebtedness, shall also be exempt from all direct and indirect taxes, fees, imposts, other charges and restrictions, including import restrictions, by the Republic of the Philippines, or by any authority, branch, division or political subdivision thereof.

**Section 11. *Authority to Extend Loans and Release or Subordinate Securities.***

Whenever in its judgments such is necessary or desirable to achieve the purposes of this ACT, and particularly if such is necessary to make or keep a project operationally viable, the ELECTRIFICATION BOARD is hereby authorized and empowered (a) by agreement with the borrower, to extend the time of payment of principal or interest, or both, beyond the loan agreement term of any loan made by the NEA under this ACT, or to defer, for not in excess of seven years, the time when the repayment schedule for principal or interest, or both, shall begin,

or to reschedule payments of principal or interest, or both, or when more of the foregoing is sufficient, to compromise any amount owing by a borrower to the NEA subject to provision of existing laws; and (b) upon the NEA's determination that such is necessary or desirable for the purpose of enabling a borrower to accomplish the purposes for which it has already received a NEA loan and that such will not result in any diminution of the security of, or of the ability of the borrower to repay, any outstanding indebtedness of the borrower below the level of such security and ability were additional borrowings from another lender not undertaken, to release any after-acquired property clause contained in any lien the NEA holds on a borrower's properties to, or to share any such lien on a co-equal basis in proportion to their respective loans with, or to subordinate any such lien in favor of, any other lender of funds to a public service entity or to the NEA for relending to public service entities for the purposes for which loans are authorized under this ACT.

Section 12. **Enforcement OF LOAN REMEDIES.** If any ELECTRIC COOPERATIVE which has borrowed funds from the NEA, or from any other lender with the NEA's required prior WRITTEN approval, shall default in its principal or interest payments, or shall fail, after notice from the NEA, to comply with any other term or condition of the loan agreement or of any LOAN POLICIES promulgated by the NEA, the ELECTRIFICATION BOARD is hereby authorized and empowered in its discretion to do any, or a combination of the following:

- a.) Refuse to make, or approve any new loan to the borrower or to release funds to implement loans that HAVE OTHERWISE BEEN approved;
- b.) WITHHOLD NEA ADVANCES, OR WITHHOLD APPROVAL OF ADVANCES OR FUND RELEASES ON BEHALF OF ANY OTHER LENDER WITH RESPECT TO WHICH THE NEA HAS SUCH POWER RELATIVE TO LOANS MADE;
- c.) Withhold any technical, INSTITUTIONAL or professional assistance otherwise being furnished or that might be furnished to the borrower;
- d.) Foreclose any mortgage or deed of trust or other security held by the NEA on the properties of such borrower, in connection with which the NEA, may, subject to any superior or co-equal rights in such lien held by any other lender; (1) bid for and purchase or otherwise acquire such properties; (2) pay the purchase price thereof and any costs and expenses incurred in connection therewith out of the revolving fund; (3) accept title to such properties under its name; and (4) even prior to the institution of foreclosure proceedings, operate or lease such properties

for such period, and in such manner as may be deemed necessary or advisable to protect the investment therein, including the improvement, maintenance and rehabilitation of systems to be foreclosed, but the NEA shall, within five years after acquiring such properties in foreclosure proceedings, sell the same for such consideration as it determines to be reasonable and upon such terms and conditions as it determines most conducive to the achievement of the purposes of this ACT; or

- e.) Take any other remedial measure for which the loan agreements may provide.

No cooperative shall borrow money from any source without the ELECTRIFICATION BOARD's prior approval; Provided, That the ELECTRIFICATION BOARD may, by appropriate rule or regulation, grant general permission to cooperatives to secure short-term loans not requiring the encumbering of their real properties or of a substantial portion of their other properties or assets.

**SECTION 13. *ENFORCEMENT OF REGULATORY AND SUPERVISORY FUNCTIONS.***

- a.) IN THE EXERCISE OF ITS POWER OF SUPERVISION AND CONTROL OVER ELECTRIC COOPERATIVES, THE NEA IS EMPOWERED TO ISSUE ORDERS, RULES AND REGULATIONS AND MOTU PROPIO OR UPON PETITION OF THIRD PARTIES, TO CONDUCT INVESTIGATIONS, REFERENDA AND OTHER SIMILAR ACTIONS IN ALL MATTERS AFFECTING SAID ELECTRIC COOPERATIVES;
- b.) THE NEA SHALL CONTINUE TO EXERCISE REGULATORY AND SUPERVISORY FUNCTIONS ON ALL ELECTRIC COOPERATIVES ORIGINALLY REGISTERED UNDER PD 269, NOTWITHSTANDING THEIR REGISTRATION WITH THE COOPERATIVE DEVELOPMENT AUTHORITY (CDA) OR SECURITIES AND EXCHANGE COMMISSION (SEC).
- c.) IN THE EXERCISE OF ITS REGULATORY AND SUPERVISORY FUNCTIONS, THE ELECTRIFICATION BOARD SHALL TAKE PREVENTIVE AND/OR DISCIPLINARY MEASURES INCLUDING BUT NOT LIMITED TO SUSPENSION AND/OR REMOVAL AND REPLACEMENT OF ANY OR ALL OF THE MEMBERS OF THE BOARD OF

DIRECTORS, OFFICERS OR EMPLOYEES OF THE ELECTRIC COOPERATIVE, AS THE ELECTRIFICATION BOARD MAY DEEM FIT AND NECESSARY AND TO TAKE ANY OTHER REMEDIAL MEASURES AS THE LAW OR THE LOAN AGREEMENT MAY PROVIDE.

Section 14. *Conflict of Interest.* ALL OFFICERS AND EMPLOYEES OF NEA SHALL BE BOUND BY RA 6713 OTHERWISE KNOWN AS THE CODE OF CONDUCT AND ETHICAL STANDARD FOR PUBLIC OFFICIALS AND EMPLOYEES AND RA 3019 OTHERWISE KNOWN AS THE ANTI GRAFT AND CORRUPT PRACTICES ACT.

Section 15. *Exemption From All Taxes, Duties, Fees, Imposts and Others Charges by Government and Governmental Instrumentalities.* The NEA shall devote all its returns from its capital investments as well as excess revenues from its operation to attain its objectives. To enable the NEA to pay its indebtedness and obligations and in furtherance and effective implementation of the policy enunciated in this ACT the NEA is hereby declared exempt.

### CHAPTER III – ELECTRIC COOPERATIVES

Section 16. *Purpose.* ELECTRIC Cooperatives organized and registered under PD 269 are non-stock, non-profit in nature which shall exist for the purpose of operating an electric distribution system within its franchise area.

Section 17. *Powers.* An ELECTRIC cooperative is hereby vested with all powers necessary or convenient for the accomplishment of its corporate purpose and no enumeration of particular powers hereby granted shall be construed to impair any general grant of power herein contained, nor to limit any such grant to a power or powers of the same class as those so enumerated. Such powers shall include but not be limited to, the power:

- a.) To sue and be sued in its corporate name;
- b.) To have existence for a period of fifty years from the date of registration and may be extended for periods not exceeding fifty (50) years in any single instance by an amendment of the articles of incorporation, in accordance with this ACT: Provided, That no extension can be made earlier than five (5) years prior to the original or subsequent expiry date/dates unless there are justifiable reasons for an earlier extension as may be determined by NEA;
- c.) To adopt a corporate seal and alter the same;

- d.) To generate, manufacture, purchase, acquire, accumulate and transmit electric power and energy, and to distribute, sell, supply and dispose of electric energy.
- e.) To assist persons to whom service is or will be supplied by the ELECTRIC cooperative in wiring their premises and in acquiring and installing electrically powered-appliances, equipment, fixtures and machinery for agricultural, commercial and industrial uses by the financing thereof or otherwise, and in connection therewith to wire, or cause to be wired, such premises, and to purchase, acquire, lease as lessor or lessee, sell, distribute, install and repair such electrically-powered appliances, equipment, fixtures and machinery;
- f.) To assist persons to whom service is or will be supplied by the ELECTRIC cooperative in constructing, equipping, maintaining and operating electric cold storage or processing plants, by the financing thereof or otherwise;
- g.) To construct, purchase, lease as lessee, or otherwise acquire, and to equip, maintain, and operate, and to sell, assign, convey, lease as lessor, mortgage, pledge, or otherwise dispose of or encumber, electric transmission and distribution lines or systems, electric generating plants, lands, buildings, structures, dams, plants, and equipment, and any other real or personal property, tangible or intangible, which shall be deemed necessary, convenient or appropriate to accomplish the purpose for which the cooperative is organized;
- h.) To purchase, lease as lessee, or otherwise acquire, and to use, and exercise and to sell, assign, convey, mortgage, pledge or otherwise dispose of or encumber franchises, rights, privileges, licenses and easements;
- i.) To borrow money and otherwise contract indebtedness, and to issue notes, bonds, and other evidence of indebtedness, and to secure payment thereof by mortgage, pledge, or deed of trust of, or any other encumbrance upon, any or all of its then owned or after-acquired real or personal property, assets, franchises, or revenues; Provided, that any borrowing from, or any encumbering of its properties as security in favor of, any lending sources other than the NEA shall require the prior approval of the NEA Administrator and his certification that such is in furtherance of the purposes and is consistent with the provisions of this ACT, and that such borrowing and/or encumbering will not diminish the security of, or of the ability of the cooperative to repay, any then-outstanding indebtedness of the cooperative

to the NEA or any other lending source below the level of such security and ability were such additional borrowing not being undertaken;

- j.) To construct, maintain and operate electric transmission and distribution lines along, upon, under and across publicly owned lands and public thoroughfares, including, without limitation, all roads, highways, streets, alleys, bridges and causeways; Provided, that such shall not prevent or unduly impair the primary public uses to which such lands and thoroughfares are otherwise devoted;
- k.) To exercise the power of eminent domain in the manner provided by law for the exercise of such power by other corporations constructing or operating electric generating plants and electric transmission and distribution lines or systems;
- l.) To become a member of other cooperatives or Corporations or to own stock therein, provided such ELECTRIC cooperatives or corporations are engaged in a business or activities of the cooperative, its members, its directors, or its employees;
- m.) To conduct its business and exercise its powers within or without the province or provinces in which it supplies service;
- n.) To adopt, amend and repeal by-laws;
- o.) To fix, maintain, implement and collect rates, fees, rents, tolls, and other charges and terms and conditions for service; Provided, that by appropriate rules and regulations the NEA shall require that such shall be in furtherance of the purposes and in conformity with the provisions of this ACT;
- p.) IN OFF GRID SYSTEM, TO OPERATE POWER PLANTS WITHIN THEIR RESPECTIVE FRANCHISE AREA; and
- q.) To do and perform any other acts and things, and to have and exercise any other powers which may be necessary, convenient or appropriate to accomplish the purpose for which the cooperative is organized.

Section 18. **Name.** The name of a cooperative shall include the words "Electric" and "Cooperative", and the abbreviation "Inc.". The name of a cooperative organized under this ACT shall be distinct from the name of any other cooperative already organized or converted under

this ACT. The foregoing requirement shall not apply to any cooperative which becomes subject to this ACT by complying with the provisions of Section 31.

Section 19. ***Incorporators.*** Five or more persons, including cooperatives, may organize a cooperative in the manner hereinafter provided.

Section 20. ***Articles of Incorporation.*** The articles of incorporation of a cooperative shall recite that they are executed pursuant to this Act and shall state: (a) the name of the cooperative; (b) the address of its principal office; (c) the names and addresses of the incorporators; and (d) the names and addresses of its original directors, who shall constitute the board until the first election of the board by the members; and may contain any other provisions not inconsistent with this Act that are deemed necessary or advisable for the conduct of its business. Such articles shall be signed by each incorporator and acknowledged by at least two of the incorporators (or on their behalf, if they are cooperatives). It shall not be necessary to recite in the articles of incorporation the purpose for which the cooperative is organized or any of its corporate powers.

Section 21. ***By-Laws.*** Unless reserved to the members in the articles of incorporation, the power to adopt and thereafter to amend or repeal by-laws shall vest in and be exercised by the board, the affirmative votes of a clear majority of all directors in office, after due notice to all directors, being requisite for such purpose. The by-laws shall set forth the basic rights and duties of members and directors and may contain any other provision for the regulation and management of the affairs of the cooperative not inconsistent with its articles of incorporation or this ACT.

Section 22. ***Members.*** Each incorporator of a cooperative shall be a member thereof, but any other person may become a member thereof unless such other person agrees to use services furnished by the cooperative when made available by it. Membership in a cooperative shall not be transferable, except as provided in the by-laws. The by-laws may prescribe additional qualifications and limitations with respect to membership.

The provision of any law or regulation to the contrary notwithstanding, an officer or employee of the government shall be eligible for membership in any cooperative if he meets the qualifications therefore and he shall not be precluded from being elected to or holding any position therein, or from receiving such compensation or fee in relation thereto as may be authorized by the by-laws; Provided, that elective officers of the government, except Punong Barangays and Barangay Kagawad, shall be ineligible to become officers and/or directors of any cooperative. For this purpose, individual permission need not be obtained from the proper head of office; Provided, however, that this authority shall not be construed as a permit to the

government officer or employee concerned to devote official time to the affairs of the cooperative.

Section 23. *Meetings of Members.*

- a.) An annual meeting of the members of a cooperative shall be held at such time and place as shall be provided in the by-laws;
- b.) Special meetings of the members may be called by the President, by the board, by any three directors or, unless a smaller number or percentage be prescribed in the by-laws, by not less than 100 members or five per centum of all members, whichever shall be the lesser.
- c.) Except as otherwise provided in this Act and unless otherwise provided for in the by-laws, written or printed notice stating the time and place of each meeting of the members and, in the case of special meetings, the purpose or purposes for which the meeting is called, shall be given to each member, either personally or by mail, not less than ten days nor more than twenty-five days before the date of the meeting. If mailed, such notice shall be deemed to be given when deposited in the Philippine mail with postage prepared, addressed to the member at his address as it appears on the records of the cooperative.
- d.) Unless the by-laws prescribe the presence of a greater or lesser percentage or number of the members for such purpose, a quorum for the transaction of business at all meetings of the members of a cooperative having not more than 1,000 members shall be five per centum of all members, present in person, and of a cooperative having more than 1,000 members shall be five per centum of all members or 100, whichever is lesser, present in person. If less than a quorum is present at any meeting, a majority of those present in person may adjourn the meeting from time to time without further notice.
- e.) Each member shall be entitled to one vote of each matter submitted to a vote at a meeting of the members. Voting shall be non-cumulative and in person, but, if the by-laws so provide, may also be by mail or by proxy.

Section 24. *Waiver of Notice.* Any person entitled to notice of a meeting may waive notice in writing either before or after such meeting; however, his attendance shall constitute a waiver of notice of such meeting, unless such person participates therein solely to object to the transaction of any business because the meeting has not been legally called or convened.

Section 25. *Board of Directors.*

- a.) The business of a cooperative shall be managed by a board of not less than five directors, each of whom shall be a member of the cooperative or of another which is a member thereof. The by-laws shall prescribe the number of directors, their qualifications other than those prescribed in this Act, the manner of holding meetings of the board and of electing successors to directors who shall resign, die or otherwise be incapable of acting. The by-laws may also provide for the removal of directors from office and for the election of their successors. Directors shall not receive any salaries for their services as such and, except in emergencies, shall not receive any salaries for their services to the cooperative in any other capacity without the approval of the members. The by-laws may, however, prescribe a fixed fee for attendance at each meeting of the board and may provide for reimbursement of actual expenses of such attendance and of any other actual expenses incurred in the due performance of a director's duties.
- b.) The directors of a cooperative named in any articles of incorporation, consolidation, merger or conversion shall hold office until the next annual meeting of the members and until their successors are elected and qualify. At each annual meeting of, in case of failure to hold the annual meeting as specified in the by-laws, at a special meeting called for that purpose, the members shall elect directors to hold office until the next annual meeting of the members, except as otherwise provided in this ACT. Each director shall hold office for the term for which he is elected and until his successor is elected and qualifies.
- c.) Instead of electing all the directors annually, the by-laws may provide that each year half of them or one-third of them, or a number as near thereto as possible, shall be elected on a staggered term basis to serve five-year terms.
- d.) A majority of the board of directors in office shall constitute a quorum.
- e.) The board shall exercise all of the powers of a cooperative not conferred upon or reserved to the members by this Act or by its articles of incorporation or by-laws.

Section 26. *Districts.* The by-laws may provide for the division of the territory served or to be served by a cooperative into two or more districts for any purpose, including, without limitation, the nomination and election of directors. The by-laws shall prescribe the boundaries

of the districts, or the manner of establishing such boundaries, the manner of changing such boundaries, and the manner in which such districts shall function.

Section 27. *Officers.* The officers of a cooperative shall consist of a president, vice-president, secretary and treasurer, who shall be elected annually by and from the board. When a person holding any such office ceases to be a director, he shall ipso facto cease to hold such office. The offices of secretary and of treasurer may be held by the same person. The board may also elect or appoint such other officers, agent, or employees as it deems necessary or advisable and shall prescribe their powers and duties. Any officer may be removed from office and his successor elected in the manner prescribed in the by-laws.

Section 28. *Amendment of Articles of Incorporation.* A cooperative may amend its articles of incorporation by complying with the following requirements; Provided, however, that a change of location of principal office may be effected in the manner set forth in Section 28. The proposed amendment shall be presented to a meeting of the members, the notice of which shall set forth or have attached thereto the proposed amendment or an accurate summary thereof. If the proposed amendment, with any changes, is approved by the affirmative vote of not less than two-thirds of the total votes cast thereon at such meeting, articles of amendment shall be executed and acknowledged on behalf of the cooperative by its president or vice-president and its seal shall be affixed thereto and attested by its secretary. The articles of amendment shall recite that they are executed pursuant to this Act and shall state: (1) the name of the cooperative; (2) the address of its principal office; and (3) the amendment to its articles of incorporation.

The president or vice-president executing such articles of amendment shall make the annex thereto an affidavit stating that the provisions of this section with respect to the amendment set forth in such articles were duly complied with.

Section 29. *Change of Location of Principal Office.* A cooperative may, upon authorization of its board or members, change the location of its principal office by filing a certificate reciting such change of principal office, executed and acknowledged by its president or vice-president under its seal attested by its secretary, in the place provided for in Section 34.

Section 30. *Consolidation.* Any two or more cooperatives (each of which is hereinafter designated a "consolidating cooperative") may consolidate into a new cooperative (hereinafter designated the "new cooperative"), by complying with the following requirements:

- a.) The proposition for the consolidation of the consolidating cooperatives into the new cooperative and proposed articles of consolidation to give effect thereto shall

be submitted to a meeting of the members of each consolidating cooperative, the notice of which shall have attached thereto a copy of the proposed articles of consolidation or an accurate summary thereof.

- b.) If the proposed consolidation and the proposed articles of consolidation, with any amendments, are approved by the affirmative vote of not less than two-thirds of the total votes cast thereon by each consolidating cooperative voting thereon at each such meeting, articles of consolidation in the form approved shall be executed and acknowledged on behalf of each consolidating cooperative by its president or vice-president and its seal shall be affixed thereto and attested by its secretary. The articles of consolidation shall recite that they are executed pursuant to this Act and shall state: (1) the name of each consolidating cooperative and the address of its principal office; (2) the name of the new cooperative and the address of its principal office; (3) a statement that each consolidating cooperative agrees to the consolidation; (4) the names and addresses of the directors of the new cooperative; and (5) the terms and conditions of the consolidation and the mode of carrying the same into effect, including the manner in which members of the consolidating cooperatives may or shall become members of the new cooperative; and may contain any other provisions not inconsistent with this Act that are deemed necessary or advisable for the conduct of the business of the new cooperative. The president or vice-president of each consolidating cooperative executing such articles of consolidation shall make and annex thereto an affidavit stating that the provisions of this section with respect to such articles were duly complied with by such cooperative.

Section 31. **Merger.** Any one or more cooperatives (each of which is hereinafter designated a "merging cooperative") may merge with one or more other cooperatives by complying with the following requirements:

- a.) The proposition for the merger of the merging cooperatives into the surviving cooperative and proposed articles of merger to give effect thereto shall be submitted to a meeting of the members of each merging cooperative and of the surviving cooperative, the notice of which shall have attached thereto a copy of the proposed articles of merger or an accurate summary thereof.
- b.) If the proposed merger and the proposed articles of merger, with any amendments, are approved by the affirmative vote of not less than two-thirds of the total votes cast thereon by each cooperative voting thereon at each such meeting, articles of

merger in the form approved shall be executed and acknowledged on behalf of each such cooperative by its president or vice-president and its seal affixed thereto and attested by its secretary. The articles of merger shall recite that they are executed pursuant to this Act and shall state: (1) the name of each merging cooperative and the address of its principal office; (2) the name of the surviving cooperative and the address of its principal office; (3) a statement that each merging cooperative and the surviving cooperative agree to the merger (4) the names and addresses of the directors of the surviving cooperative, and (5) the terms and conditions of the merger and the mode of carrying the same into effect, including the manner in which members of the merging cooperatives may or shall become members of the surviving cooperative and may contain any other provisions not inconsistent with this Act that are deemed necessary or advisable for the conduct of the business of the surviving cooperative. The president or vice-president or each cooperative executing such articles of merger shall make an annex thereto an affidavit stating that the provisions of this section with respect to such articles were duly complied with by such cooperative.

**Section 32. *Effect of Consolidation or Merger.***

- a.) In the case of consolidation, the existence of the consolidating cooperative shall cease and the articles of consolidation shall be deemed to be the articles of incorporation of the new cooperative; and in the case of merger, the separate existence of the merging cooperatives shall cease and the articles of incorporation of the surviving cooperative shall be deemed to be amended to the extent, if any, that changes therein are provided for in the articles of merger;
- b.) All rights, privileges, immunities and franchises and all property, real and personal, including without limitation applications for membership, all debts due on whatever account and all other choses in action of each of the consolidating or merging cooperatives shall be deemed to be transferred to and vested in the new or surviving cooperative without further act or deed;
- c.) The new or surviving cooperative shall be responsible and liable for all liabilities and obligations of each of the consolidating or merging cooperatives, and any claim existing or action or proceeding pending by or against any of the consolidating or merging cooperatives, be prosecuted as if the consolidation or merger had not taken place, but the new or surviving cooperatives shall be substituted in its place; and

- d.) Neither the rights of creditors nor any liens upon the property of any such cooperatives shall be impaired by such consolidation or merger.

Section 33. ***Dissolution.*** A cooperative may be dissolved in the following manner: The proposition to dissolve shall be submitted to the members of the cooperative at any annual or special meetings, the notice of which shall set forth such proposition. The members at any such meeting shall approve, by the affirmative vote of not less than a majority of all members of the cooperative, the proposition that the cooperative be dissolved (hereinafter designated the "certificate") shall be executed and acknowledged on behalf of the cooperative by its president or vice-president under its seal, attested by its secretary, stating: (1) the name of the cooperative; (2) the address of its principal office; and (3) that the members of the cooperative have duly voted that the cooperative be dissolved. Also, an affidavit, made by its president or vice-president executing the certificate, shall state that the statements in the certificate are true. Upon the filing of the certificate and affidavit as provided for in Section 34, the cooperative shall cease to carry on its business except to the extent necessary for the winding up thereof, but its corporate existence shall continue until articles of dissolution shall have been filed. The board shall immediately cause notice of the dissolution proceedings to be mailed to each known creditor of and claimant against the cooperative and to be published once a week for two successive weeks in a newspaper of general circulation in the territory in which the principal office of the cooperative is located. The board shall wind up and settle the affairs of the cooperative, collect sums owing to it, liquidate its property and assets, pay and discharge its debts, obligations and liabilities, other than those patrons arising by reason of their patronage, and do all other things required to wind up its business; and, after paying or discharging or adequately providing for the payment or discharge of all its debts, obligations and liabilities, other than those to patrons arising by reason of their patronage, shall distribute any remaining sums and/or unliquidated assets, first, to patrons for the pro rata return of all amounts standing to their credit by reason of their patronage; second, to members for the pro rata repayment of membership fees; and third, to patrons for the amounts of any outstanding contributions in aid of construction they have made. Any sums and/or unliquidated assets then remaining shall be distributed in such manner as provided in the cooperative's articles of incorporation or by-laws, which may provide for distribution of such sums or assets on a patronage basis to persons who were members in one or more prior years or for transfer thereof to a new cooperative to succeed the one being dissolved. The board shall thereupon authorize the execution of articles of dissolution, which shall be executed and acknowledged on behalf of the cooperative by its president or vice-president, and its seal shall be affixed thereto and attested by its secretary.

The articles of dissolution shall recite that they are executed pursuant to this Act and shall state: (1) the name of the cooperative; (2) the address of its principal office; (3) the date on which

the certificate of election to dissolve was filed; (4) that there are no actions or suits pending against the cooperative; (5) that all debts, obligations and liabilities of the cooperative have been paid and discharged or that provision to the extent possible has been made therefor; and (6) that the provisions of this section have been duly complied with. The president or vice-president executing the articles of dissolution shall make the annex thereto an affidavit stating that the statement made therein are true.

**Section 34. *Filing of Articles and Certificates.*** Articles of incorporations, amendment, consolidation, merger, conversion, or dissolution and certificates of changes in the location of principal offices and of elections to dissolve, when executed and acknowledged and accompanied by such affidavits as may be required by applicable provisions of this ACT, shall be presented to the Administrator for filing in the records of his office. If he shall find that such conform to the requirements of this Act, he shall so certify and shall file such in the records of his office. Upon such certification and filing, the incorporation, amendment, consolidation, merger, conversion, dissolution or certificate provided for therein shall be in effect.

**Section 35. *Non-profit, Non-discriminatory, Area Coverage Operation and Service.*** A cooperative shall be operated on a non-profit basis for the mutual benefit of its members and patrons; shall, as to rates and services make or grant no unreasonable preference or advantage to any member or patron nor subject any member or patron to any unreasonable prejudice or disadvantage; shall not establish or maintain any unreasonable difference as to rates or services either as between localities or as between classes of service; shall not give, pay or receive any rebate or bonus, directly or indirectly, or mislead its members in any manner as to rates charged for its services; and shall furnish service on an area coverage basis; Provided, that for any extension of service which if treated on the basis of standard terms and conditions is so costly as to jeopardize the financial feasibility of the cooperative's entire operation, the cooperative may require such contribution in aid of construction, such facilities extension deposit, such guarantee of minimum usage for a minimum term or such other reasonable commitment on the part of the person to be served as may be necessary and appropriate to remove such jeopardy, but no different in standard rates for use of service shall be imposed for such purpose.

The by-laws of a cooperative or its contracts with members and patrons shall contain such reasonable terms and conditions respecting membership, the furnishing of service and the disposition of revenues and receipts as may be necessary and appropriate to establish and maintain its non-profit, cooperative character and to ensure compliance with this section. No bona fide applicant for membership on non-member patronage who is able and willing to satisfy and abide by all such terms and conditions shall be denied arbitrarily, capriciously or without good cause.

**Section 36. *Disposition of Property.***

- a.) The board of a cooperative shall have full power and authority to authorize the execution and delivery of a mortgage or a deed of trust, or the pledging or encumbering otherwise, of any or all of the property, assets, rights, privileges, licenses, franchises and permits of the cooperative, whether acquired or to be acquired, and whenever situated, as well as the revenues therefrom, all upon such terms and conditions as the board shall determine, to secure any borrowing by or indebtedness of the cooperative;
- b.) A cooperative may not otherwise sell, lease or, except by consolidation or merger, otherwise dispose of the property (other than merchandise and property which shall represent not in excess of ten per centum of the value of the cooperative's total assets, or which in the judgment of the board are not necessary or useful in operating the cooperative) unless such sale, lease or, except in the case of consolidation or merger, other disposition is (1) authorized by the affirmative vote of not less than a majority of all members of the cooperative and (2) consented by the NEA and any other lending source which then holds a lien on any of the cooperative's properties.

**Section 37. *Non-Liability of Members for Debts of Cooperative.*** No member shall be liable or responsible for any debts of the cooperative and the property of the members shall not be subject to execute therefor.

**Section 38. *Limitation of Actions.*** No action or suit may be brought against a cooperative, or against any agent, servant or employee thereof, by reason of the maintenance of electric transmission or distribution lines, or any related equipment, facilities or machinery, or any real property after the expiration of a period of five (5) years of continuous maintenance of such lines or related equipment facilities or machinery.

**Section 39. *Assistance to Cooperatives; Exemption from Taxes, Imposts, Duties, Fees; Assistance from the National Power Corporation.*** Pursuant to the national policy declared in Section 2, it is hereby declared that the following assistance to cooperative is necessary and appropriate:

- a.) Provided that it operates in conformity with the purposes and provision of this ACT, and provided further, that it actually provides electricity services to unviable areas as determined and certified by NEA, an electric cooperative shall be

permanently exempt from paying (1) income taxes, and all National Government, local government and municipal taxes and fees, including any franchise filing, recordation, license or permit fees or taxes and any fees, charges, or costs involved in any court or administrative proceeding in which it may be a party, and (2) duties or imposts on foreign goods acquired for its operations; Provided, that the ELECTRIFICATION BOARD shall after consultation with the Bureau of Internal Revenue, promulgate rules and regulations for the proper implementation of the tax exemption provided for in this ACT.

- b.) TO AVAIL OF PREFERENTIAL RIGHTS GRANTED TO COOPERATIVES UNDER REPUBLIC ACT NO. 7160, OTHERWISE KNOWN AS THE LOCAL GOVERNMENT CODE, AND OTHER LAWS;
- c.) ELECTRIC COOPERATIVES SHALL BE ENTITLED TO CONGRESSIONAL ALLOCATIONS, GRANTS, SUBSIDIES AND OTHER FINANCIAL ASSISTANCE FOR RURAL ELECTRIFICATION PURPOSES.
- d.) ALL SUBSIDIES, GRANTS, AND OTHER ASSISTANCE SHALL FORM PART OF THE DONATED CAPITAL AND FUNDS OF THE ELECTRIC COOPERATIVES, AND AS SUCH, IT SHALL NOT BE SOLD, TRADED NOR BE DIVIDED INTO SHARE HOLDINGS AT ANY TIME; THESE DONATED CAPITAL/FUND SHALL BE VALUATED FOR THE SOLE PURPOSE OF DETERMINING THE EQUITY, PARTICIPATION OF THE MEMBERS; PROVIDED THAT IN CASE OF DISSOLUTION OF THE ELECTRIC COOPERATIVE, SAID DONATED CAPITAL SHALL BE SUBJECT TO ESCHEAT.

Section 40. *Additional Regulation of Cooperatives by the NEA.* In addition to the other ways in which cooperatives are subject to regulation by the NEA as provided in this Act, the NEA, on its own motion or upon complaint but only after affording opportunity for hearing to all interested parties, is empowered to and shall (1) require a cooperative to extend or improve service upon the NEA's determination that such should be done in furtherance of the purposes of this Act and that such may reasonably be done without undue impairment of the feasibility of the cooperative's operation and financial condition; and (2) require a cooperative to cease and correct any practice or act which the NEA determines to be in violation of the provisions of Section 35, and in connection with such authority it may require a cooperative to file with the NEA, and to make accessible to any person upon request therefor, copies of all rates, charges, contract forms, fee or deposit schedules, by-laws, and service rules and regulations.

Section 41. *Parties and Intervenors in NEA's Proceedings.* Public service entities or any other interested person may invoke the NEA's exercise of its powers and authorities provided for in Section 43, 44, 45, 46 and 47 by filing verified applications or complaints with the NEA, and the NEA, on its own motion solely, may institute proceedings in connection with all matters coming under its jurisdiction as provided for in said sections. In any proceeding conducted by the NEA, including proceedings to establish NEA rules and regulations, all persons having substantial interest therein shall, upon petition therefor, be permitted by the NEA to intervene as full parties, and the NEA, in its discretion, may permit persons having an insubstantial interest therein to intervene as a full party or on such limited basis as the NEA may prescribe.

Section 42. *NEA Rules and Regulations.* The NEA shall establish appropriate rules and regulations to carry out the provisions of this Chapter IV, including rules for the conduct of NEA investigations, proceedings and hearing; and shall timely publish the same when adopted or amended to the end that all persons affected thereby shall be given reasonable notice thereof.

Section 43. *Notice.*

- a) With respect to any NEA proceeding, investigation or hearing (including such as are for the purpose of establishing NEA rules and regulations) which may substantially affect the rights or interests of any person or persons (including the general public or the National Government or any department, agency, instrumentality of political subdivision thereof, if such be the case) , the NEA shall cause timely notice in writing to be furnished to, or served upon, or appropriately published to such person or persons to the end of affording them reasonable opportunity, as a party or otherwise, directly to participate, or otherwise to have their positions, views and interests adequately presented to or represented, in such proceedings, investigation or hearing.
- b) Upon the completion of any such proceeding, investigation or hearing, the NEA shall cause timely notice of any order issuing thereupon to be furnished to, or served upon, or appropriately published to any person or persons (including the general public or the National Government or any department, agency, instrumentality or political subdivision thereof, if such be the case) who will be directly affected thereby. Such notice shall be supplementary to, not in conflict with or in lieu of, the notices and services otherwise provided for in this Chapter.

Section 44. *Hearings Conducted by the Electrification Board or any Member Thereof.* NEA hearings pursuant to this Chapter may be conducted by the Electrification Board en banc or

by any one or more members thereof, as the Board of Administrators may decide; Provided, that the Administrator shall preside when the Electrification Board is on banc; Provided, further, that all hearings shall be of record; and Provided finally, that findings, determinations, orders and rulings based upon such hearings shall require the affirmative majority of all the members of the Electrification Board upon the certification, to become a part of such findings, determinations and orders, on the part of any member of the Board who was absent from the hearings that he has read the record of the same.

Section 45. *Compensation.* The members of the Electrification Board and other hearing officers as the Electrification Board may designate shall be entitled to per diem for each hearing actually conducted or attended by them in such amount as may be fixed by the President of the Philippines.

Section 46. *Hearing Rules; Contempt.* All hearings and investigations conducted by the NEA shall be governed by rules adopted by the NEA, and in the conduct thereof the NEA shall not be bound by the technical rules of legal evidence; Provided, That the NEA or such member of the Electrification Board when conducting a hearing, may summarily punish for contempt by a fine not exceeding FIFTY THOUSAND pesos (P50,000.00) or by imprisonment not exceeding ten (10) days, or both, any person guilty of misconduct in the presence of the hearing or so near the same as to interrupt the hearing, proceeding, session or investigation including cases in which a person present at a hearing, proceeding, session or investigation refuses to be sworn as a witness or to answer as such when lawfully required to do so. To enforce the provisions of this section, the NEA, or such member thereof, may, if necessary, request the assistance of the municipal police for the execution of any order made for said purpose.

Section 47. *Subpoenas; Contempt.*

- a.) The NEA may issue subpoenas and subpoenas duces tecum, for witness in any matter of inquiry pending before it, and require the production of all books, papers, tariffs, contracts, agreements, and all other documents which it may deem necessary in any proceeding. Such process shall be issued under the seal of the NEA, signed by one of the members of the NEA Electrification Board, and may be served by any person of full age, or by registered mail. In case of disobedience to such subpoena, the NEA may invoke the aid of the Supreme Court, or of any Regional Trial Court of the Philippines in requiring the attendance and testimony of witnesses and the production of books, papers and documents under the provision of this Chapter, and the Supreme Court, or any Regional Trial Court of the Philippines within the jurisdiction of which such inquiry is carried on, may, in

case of contumacy or refusal to obey a subpoena, issue to any public service entity subject to the provisions of this Act, or to any person, an order requiring such public service entity or person to appear before the NEA and produce books and papers if so ordered and give evidence touching the matter in question; and any failure to obey such order of the Court may be punished by such court as contempt thereof.

- b.) Any person who shall neglect or refuse to answer any lawful inquiry or produce before the NEA books, papers, tariffs, contracts, agreements, and documents, or other things called for by the NEA if his power to do so, in obedience to the subpoena or lawful inquiry of the NEA, upon conviction thereof by a court of competent jurisdiction, shall be punished by a fine not exceeding ten thousand pesos (P10,000.00) or by imprisonment not exceeding one year, or both in the discretion of the court;
- c.) Any NEA Board Member shall have the power to administer oaths in all matters under the jurisdiction of the NEA;
- d.) Any person who shall testify falsely or make any false affidavit or oath before the NEA or before any of its members shall be guilty of perjury, and, upon conviction thereof in a court of competent jurisdiction, shall be punished as provided by law;
- e.) Witnesses appearing before the NEA in obedience to subpoena or subpoena *duces tecum* shall be entitled to receive the same fees and mileage allowance as witnesses attending Courts of First Instance in civil cases;
- f.) Any person who shall obstruct the NEA or any member of the NEA Board while engaged in the discharge of official duties, or who shall conduct himself in a rude, disrespectful or disorderly manner during any NEA Board meeting, upon conviction thereof by a court of competent jurisdiction, shall be punished for each offense by a fine not exceeding ten thousand pesos (P10,000.00), or by imprisonment not exceeding six months, or both, in the discretion of the court.

Section 48. *Testifying.* No person shall be excused from testifying or from producing any book, document, or paper in any investigation or inquiry by or upon the hearing before the NEA when ordered to do so by the NEA, except when the testimony or evidence required of him may tend to incriminate him. Without the consent of the interested party, no member or employee of

the NEA shall be compelled or permitted to give testimony in any civil suit to which the NEA is not a party, with regard to secrets obtained by him in the discharge of his official duty.

Section 49. *Depositions.* The NEA may, in any investigation, proceeding or hearing, by its order in writing, cause the deposition of witnesses residing within or without the Philippines to be taken in the manner prescribed by the Rules of Court. Where witnesses reside in places distant from Manila and it would be inconvenient and expensive for them to appear personally before the NEA, the NEA may, by proper order, commission any clerk of the Regional Trial Court, judge of the municipal trial court, municipal circuit trial court or city court of the Philippines to take the deposition of witnesses in any case pending before the NEA. It shall be the duty of the official so commissioned to designate promptly a date or dates for the taking of such deposition, giving timely notice to the parties, and on said date to proceed to take the deposition, reducing it to writing. After the depositions have been taken, the official so commissioned shall certify to the depositions taken and forward them as soon as possible to the NEA. It shall be the duty of the respective parties to furnish stenographers for taking and transcribing the testimony taken. In case there are no stenographers available, the testimony shall be taken in long hand by such person as the clerk of court of the Regional Trial Court, the municipal trial court, municipal circuit trial court or city court judge may designate. The NEA may also commission a notary public to take the depositions in the same manner herein provided.

The Board may also, by proper order, authorize any of the attorneys of the legal division or division chiefs of the NEA to hear and investigate any case filed with the NEA or any matter within the jurisdiction of the NEA and in connection therewith to receive such evidence as maybe material thereto. At the conclusion of the hearing or investigation, the attorney or division chief so authorized shall submit the evidence received by him for the Electrification Board to enable the latter to render its decision.

Section 50. *Fines and Penalties.* - The fines and penalties that shall be imposed by NEA or the Electrification Board for any violation of or non-compliance with this Act or its IRR shall range from a minimum of Fifty thousand pesos (P50,000.00) to a maximum of Five million pesos (P5,000,000.00).

Section 51. *Punishable Offenses.* - The following acts shall be prohibited:

- a.) Non-compliance with the orders, rules, regulations, memorandum, guidelines and other issuances of NEA;

- b.) Falsification or tampering of public documents and official records to avail of the fiscal and non-fiscal incentives provided under this Act; and
- c.) Non-compliance with established guidelines that NEA will adopt in the implementation of this Act.

Section 52. **Penalty Clause.** Any person who wilfully commits any of the prohibited acts enumerated under this Act, shall be imposed with the penalties provided herein. Any person, who wilfully aids or abets the commission of a crime prohibited herein or who causes the commission of any such act by another shall be liable in the same manner as the principal.

Section 53. **Service.** Every order made by the NEA shall be served upon the person or public service entity affected thereby within ten (10) days from the time said order is filed, by personal delivery or by ordinary mail, upon the counsel of record or, in case there be no counsel of record, upon the party interested; and in case a certified copy is sent by registered mail, the registry mail receipt shall be prima facie evidence of the receipt of such order by the public service entity in due course of mail.

Section 54. **Reconsideration.** Any interested party may request the reconsideration of any order, ruling, or decision of the NEA by means of a petition filed not later than fifteen (15) days after the date of the notice of the order, ruling, or decision in question. The grounds on which the request for reconsideration is based shall be clearly and specifically stated in the petition. Copies of said petition shall be served on all parties interested in the matter. It shall be the duty of the NEA to decide the same within thirty (30) days, either denying the petition or revoking or modifying the order, ruling, or decision under consideration. If no petition for reconsideration is filed, no review by the Supreme Court as hereinafter provided shall be allowed.

Section 55. **Court Review.** — NOTWITHSTANDING ANY LAW TO THE CONTRARY, THE SUPREME COURT IS HEREBY GIVEN EXCLUSIVE JURISDICTION TO REVIEW ANY ORDER, RULING, OR DECISION OF THE NEA AND TO MODIFY OR SET ASIDE SUCH ORDER, RULING, OR DECISION WHEN IT CLEARLY APPEARS THAT THERE WAS NO EVIDENCE BEFORE THE NEA TO SUPPORT REASONABLY SUCH ORDER, RULING, OR DECISION, OR THAT THE SAME IS CONTRARY TO LAW, OR THAT IT WAS WITHOUT THE JURISDICTION OF THE NEA. THE EVIDENCE PRESENTED TO THE NEA, TOGETHER WITH THE RECORD OF THE PROCEEDINGS BEFORE THE NEA, SHALL BE CERTIFIED BY THE NEA TO THE SUPREME COURT. ANY ORDER, RULING, OR DECISION OF THE NEA MAY LIKEWISE BE REVIEWED BY THE SUPREME COURT UPON A WRIT OF CERTIORARI IN PROPER CASES. THE

PROCEDURE FOR REVIEW, EXCEPT AS HEREIN PROVIDED, SHALL BE PRESCRIBED BY RULES OF THE SUPREME COURT. ANY ORDER, OR DECISION OF THE NEA MAY BE REVIEWED UPON THE APPLICATION OF ANY PERSON OR PUBLIC SERVICE ENTITY AGRIEVED THEREBY AND WHO WAS A PARTY IN THE SUBJECT PROCEEDING, BY CERTIORARI IN APPROPRIATE CASES OR BY A PETITION FOR REVIEW, WHICH SHALL BE FILED WITHIN THIRTY (30) DAYS FROM THE NOTIFICATION OF THE NEA ORDER, DECISION, OR RULING ON RECONSIDERATION. SAID PETITION SHALL BE PLACED ON FILE IN THE OFFICE OF THE CLERK OF THE SUPREME COURT WHO SHALL FURNISH COPIES THEREOF TO NEA AND OTHER INTERESTED PARTIES.

Section 56. *NEA Counsel.* The chief of the legal division or any other attorney of the NEA shall represent the same in all judicial proceedings. It shall be the duty of the Solicitor General to represent the NEA in any judicial proceeding if, for special reasons, the administrators shall request his intervention.

#### CHAPTER IV - TRANSITORY PROVISIONS

Section 57. *Existing NEA Continued.*

- a.) The existing Board of Administrators of the NEA and the Administrator thereof shall be the ELECTRIFICATION BOARD and Administrator provided for under this ACT, and their respective terms shall be and continue as already established.
- b.) Any preference to the NEA in any existing law or in any executive order or proclamation of the President shall, with respect to any duty or function assumed by the NEA pursuant to said ACT, be deemed hereafter to have reference to the NEA established under this ACT;
- c.) The properties, assets, rights, chooses in action, obligations, liabilities, records and contracts of the NEA are hereby transferred to and are vested in, and assumed by the NEA established under this ACT;
- d.) ALL EXISTING PERSONNEL OF NEA SHALL CONTINUE TO BE EMPLOYEES THEREOF, WITHOUT DEMOTION OR DIMINUTION ON RANK;

## CHAPTER V - GENERAL PROVISIONS

Section 58. *Implementing Rules and Regulations.* The Secretary of the Department of Energy, in coordination with the National Electrification Administration shall come up with an Implementing Rules and Regulations (IRR) of this Act within ninety (90) days from its enactment. The IRR shall be reviewed every five (5) years to suit it to the needs of time.

Section 59. *Separability Clause.* If any part or section of this Act is declared unconstitutional, such declaration shall not affect in any manner other parts or sections of this Act.

Section 60. *Repealing Clause.* – All laws, decrees, proclamations, issuances, or ordinances that are contrary to or inconsistent with the provisions of this Act are hereby amended, repealed or modified accordingly.

Section 61. *Effect on Other Acts.* All acts or parts of Acts inconsistent herewith are repealed or modified accordingly.

Section 62. *Effectivity Clause.* This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

*Approved.*