

Republic of the Philippines
HOUSE OF REPRESENTATIVE
Quezon City

SIXTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 1794



INTRODUCED BY
1-CARE PARTY LIST REPRESENTATIVE MICHAEL ANGELO C. RIVERA

In response to state policy of total electrification, access to electricity service by 9 million consumer connections have been provided in the rural areas. The ultimate beneficiaries represent half of the Philippine population living in areas being served by the 119 electric cooperatives (ECs) nationwide.

Electric cooperatives are not mere cooperatives. They are large infrastructures operating electric utility in an environment where compliances to performance standards and regulations are demanded of the business. It is *indispensable to national interest* because it is the prime mover of the economy. ECs catalyzed the growth in communications technology, people empowerment, education, population control, health services and most importantly job generation.

Considered the most successful program and patterned after the US model, the ECs continue to be the most important vehicle for countryside development, making possible the positioning of the country among emerging hubs and global trends for business processing outsourced services, economic zones among others.

In the past 44 years since the start of the first EC, there were issues that cropped up along the way and were not properly addressed which lead to some ECs getting critically sick and would need an intensive care unit (ICU) in order to recover or to have some blood transfusion in order to live a renewed vibrant life.

It is the intent of this bill to bolster and buttress the service-oriented and non-profit orientation of the EC and to provide solutions to the past problems which most ECs encountered. Also, to be able to address the new realities that is now *fait accompli* in the power industry. Finally, in order to insulate it to the adverse provisions of EPIRA to its existence, this bill proposes to:

1. Prepare electric cooperatives in operating and competing under the deregulated electric market in an environment of open access and retail wheeling;
2. Strengthen the technical capability and financial viability of rural electric cooperatives;
3. Define and upgrade ECs regulatory polices with a view to enhancing its viability as electric utilities;
4. Ensure the long term business and economic viability of ECs,

- operations and strategic planning;
5. Insulate ECs from local politics as much as practicable; and
 6. Define the powers, functions and accountability of its officers;

The immediate passage of the bill is earnestly sought.



MICHAEL ANGELO C. RIVERA

Representative

1st Consumers Alliance for Rural Energy (1-CARE) Party List

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**AN ACT INSTITUTIONALIZING THE RURAL ELECTRIC COOPERATIVE,
DEFINING ITS SCOPE AND FUNCTIONS AND FOR OTHER PURPOSES**

Section 1. *Short title.* This Act shall be known as the "**Magna Carta for Rural Electric Cooperatives.**"

Section 2. *Declaration of Policy.* It is hereby declared the policy of the State that in recognition of the pivotal role of the electric cooperatives in spurring economic development and promoting sustainable economic objectives in the rural areas through its vigorous and rapid electrification of economically unviable areas of the country, it shall be strengthened and empowered to address the needs of changing times and tides and to insulate it from various external forces that may deter and hamper its operation to the detriment of its member-consumers.

Section 3. *Definitions.* As used in this Act:

(a) **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.

(b) **Cooperative** shall mean an electric distribution utility organized either as a non-stock non-profit cooperative registered with the NEA or as stock non-profit cooperative registered with the CDA or a stock and for profit corporation registered with SEC, duly authorized by an exclusive franchise to serve the electricity needs of consumers in the franchised area.

(c) **Franchise** shall mean the privilege extended by Congress to a distribution utility to operate an electric system for service to the public at retail within a described geographic area;

(d) **Member** shall mean each incorporator of a cooperative and each person admitted to and retaining membership therein and shall include a husband and wife admitted for joint membership;

(e) **Missionary electrification** shall refer to the provision of basic electricity service in unviable areas with the ultimate aim of bringing the operations in these areas to viability levels.

(f) **NEA** shall mean the National Electrification Administration

(g) **Person** means any natural person, firm, association, corporation, business trust, partnership, government agency, national or local government or agency thereof, or any body politic; and

(h) **Rural** area means any area of the country not included within the boundaries of any city and having a population in excess of one thousand inhabitants.

(i) **Ancillary Services** shall mean those services that are necessary for reliable operation and therefore provided by the transmission grid operator or distribution utility (DU) for maintaining the quality and quantity of power available in the grid and/or distribution system pursuant to standards set in the Grid and distribution code. Such services shall include those listed in clause 3.3.1.2 of the WESM Rules.

(j) **WESM** refers to Wholesale Electricity Spot Market

(k) **Distribution system** shall mean the system operated and maintained by a DU through which the energy or power supplied by a generation company and/or drawn from the transmission grid system is distributed and delivered to the different consumers connected to the system.

(l) **Members Contribution for CAPEX-** shall mean the amount collected by the ECs from the consumers through an electricity rate component analogous in principle to the depreciation and return on rate base (RORB) of investor-owned utility authorized by the ERC to fund capital projects and/or amortize the loans or borrowed capital secured by an EC in implementing its capital projects. In line with its purpose for sustaining the viability of electric cooperatives MCC has been renamed as Reinvestment Fund for Sustainable Capital (RFSC) Projects per ERC Resolution No. 14, series of 2011.

(m) **Universal charge-** shall mean rate component of DUs authorized by the ERC to be charged to consumers by virtue of which the amount collected is remitted to PSALM for the cost recovery associated with the stranded cost of NPC and other purposes pursuant to EPIRA.

Section 4. Incorporators. Five or more natural persons, or two or more cooperatives, may organize a cooperative in the manner hereinafter provided.

Section.5. Name. The name of a cooperative shall include the words "Electric" and "Cooperative," and the abbreviation "Inc.," and shall be distinct from the name of any other cooperative organized under the laws of the Republic of the Philippines, or authorized to do business. Only a cooperative doing business pursuant to this Act shall use both the words "Electric" and "Cooperative" in its name.

Section.6. Articles of Incorporation. Articles of incorporation of a cooperative shall state that they are executed pursuant to this Act and shall also state:

- (1) the name of the cooperative;
- (2) the address of its principal office;
- (3) the names and addresses of the incorporators; and

(4) the names and addresses of its directors; and may contain any provisions not inconsistent with this Act 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 state in the articles of incorporation of a cooperative the purpose for which it is organized or any of its corporate powers.

Section 7. Powers. A cooperative shall have power:

- (a) to sue and be sued in its corporate name;
- (b) to have existence of fifty (50) 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 energy, and to distribute, sell, supply, and dispose of electric energy to its members, to governmental agencies and political subdivisions, and to other persons not in excess of ten per centum of the number of its members, provided, however, that such other persons shall become members within one year after they commence taking electric service from the cooperative; Provided, further, that a cooperative may furnish electric cold storage or processing plant service to non-members without limitation.
- (e) to assist persons to whom electric energy is or will be supplied by the cooperative in wiring their premises and in acquiring and installing electrical and plumbing appliances, equipment, fixtures and apparatus by making loans therefor, 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 electric and plumbing appliances, equipment, fixtures, machinery and apparatus;
- (f) to supervise persons to whom electric energy is or will be supplied by the cooperative in wiring their properties or premises ;
- (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;

(l) To borrow money and otherwise contract indebtedness, and to issue notes, bonds, and other evidences of indebtedness, and to secure the 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, revenues or income *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 power generation plants, 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, upon obtaining from the national or local government the rights, permissions or consents therefor required by law, provided, however, that the approval or consent of the NEA shall not be necessary in obtaining of any such right, franchise, permission or consent or to the exercise thereof or of any right or privilege thereunder;

(k) to exercise the power of eminent domain in the manner provided by the laws of the Republic of the Philippines for the exercise of such power by other corporations constructing or operating electric transmission and distribution lines or systems;

(l) to become a member of other cooperatives or corporations or to own stock therein;

(m) to conduct its business and exercise its powers within its jurisdiction;

(n) to adopt, amend and repeal by-laws; and

(o) to promote economic development by providing energy or non-energy services in order to meet the changing needs of its members;

(p) 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; 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 including the fulfillment of the missionary electrification program of the government.

Section 8.By-laws.The board of directors shall adopt the first by-laws of a cooperative to be adopted following an incorporation, conversion, merger or consolidation. Thereafter the members shall adopt, amend or repeal the by-laws by the affirmative vote of a majority of those members voting thereon at a meeting of its members. The by-laws shall set forth the rights and duties of

members and directors and may contain other provisions for the regulation and management of the affairs of the cooperative not inconsistent with this Act. Existing by-laws of electric cooperatives shall remain in force and effect until it has been revised to conform with the provisions of this Act within one hundred and eighty (180) days from approval hereof.

Section 9. Members. Each incorporator of a cooperative shall be a member thereof, but no other person may become a member thereof unless such other person agrees to use electric energy or other services furnished by the cooperative when they are made available through its facilities. Any member of a cooperative who agrees to use electric energy shall cease to be a member if he does not use electric energy supplied by the cooperative within six months after it is made available to him or if electric energy is not made available to him by the cooperative within two years after he becomes a member, or such lesser period as the by-laws of the cooperative may provide. A husband and wife may hold a joint membership in a cooperative. Membership in a cooperative shall not be transferable, except as provided in the by-laws. The by-laws may prescribe additional qualifications and limitations in respect of 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, and those holding public office, 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 10. 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 of directors, by any three directors, or by not less than ten per centum of the members.

(c) Except as otherwise provided in this Act, written or printed notice stating the time and place of each meeting of the members and, in the case of a special meeting, 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 sent via mail 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 percentage or number of the members for a quorum, a quorum for the transaction of business at all meetings of the members of a cooperative having not more than one thousand members, shall be five per centum of all members, present in person, and of a cooperative having more than one thousand members, shall be one hundred (100) members, 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 on each matter submitted to a vote at a meeting of the members. Voting shall be in person. No proxy voting will shall be allowed.

Section 11. *Waiver of Notice.* Any person entitled to notice of a meeting may waive such notice in writing either before or after such meeting. If any such person shall attend such meeting, such 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 12. *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 cooperative which is a member thereof. Board of Directors shall be elected at large thru the annual general assembly. The by-laws shall prescribe the number of directors, , other than those prescribed in this Act, the manner of holding meetings of the board of directors 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. The cooperative may provide a fair remuneration for its officers and directors and for members of its executive committee.

(b) To ensure the long term business and economic viability of electric cooperatives, the operations and strategic planning of electric cooperatives shall as much as practicable be insulated from local politics. In line with good governance, the independence of the Board of Directors and Officers of electric cooperatives should be maintained and any member of the EC who seeks election as Board Member shall not seek any endorsement from politicians. Towards this end, no person shall be elected/appointed as an officer or be eligible to run as a Board member of an electric cooperative if:

1. He/she was a candidate in the local election or national elections immediately preceding the appointment or filing of candidacy for the Board, which disability shall subsist for a period of two years counted from the date of election;
2. He/she is a relative up to the fourth degree of affinity or consanguinity of an incumbent elected or appointed official of government; or
3. He /she is elected appointed to a public office.

(c) To ensure that management and operations of electric cooperatives are carried out with due regard to its economic viability, any candidate for Board of Director of the EC should possess the following qualifications:

- (1) Filipino citizen and bona-fide resident of the area which he seeks to represent;
- (2) A member of good standing of the EC which means current in the payment of his bills, never violated the rules of the EC such as theft of electricity and other offenses inimical to the EC;
- (3) Must not have any criminal or administrative record in any court or case involving moral turpitude;
- (4) Must not have any pending court case at the time of his filing of candidacy;
- (5) Must be a college graduate preferably in any engineering, law, business and management degrees from a reputable institution recognized by the Commission on Higher Education;

- (6) Must have at least five (5) years of management experience from a reputable organization or business;
- (7) Must be at least forty (40) years old but not more than seventy-five (75) years old at the time of his filing of candidacy;
- (8) Must not be engaged in business of supplying products or services normally availed or patronized by the EC.

(d) 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 or, 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/she is elected and until his/her successor is elected and qualifies.

(c) Instead of electing all the directors annually, the by-laws may provide that directors may serve two or three year terms.

(1) If the by-laws provide that directors may serve two year terms, half of them, or a number as near thereto as possible, shall be elected to serve until the next annual meeting of the members and the remaining directors shall be elected to serve until the second succeeding annual meeting. Thereafter, as directors' terms expire the members shall elect their successors to serve until the second succeeding annual meeting after their election.

(2) If the by-laws provide that directors may serve three year terms, one-third of them, or a number as near thereto as possible, shall be elected to serve until the third succeeding annual meeting, one-third shall be elected to serve until the second annual meeting and one-third shall serve until the next annual meeting. Thereafter as directors' terms expire, the members shall elect their successors to serve until the third succeeding annual meeting after their election.

(3) A change in by-laws decreasing or increasing the terms of directors may not decrease nor increase the term of a duly elected director already in office, but shall become effective for any new term served after the effective date of the by-law change.

(e) A majority of the board of directors shall constitute a quorum.

(f) If a husband and a wife hold a joint membership in a cooperative, either one, but not both, may be elected director.

(g) The board of directors may exercise all of the powers of a cooperative not conferred upon the members by this Act, or its articles of incorporation or by-laws.

Section 13. 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 and the election and functioning of district delegates. In such case the by-laws shall prescribe the boundaries of the districts, or the manner of establishing such boundaries, and the manner of changing such boundaries, and the manner in which such districts shall function. No member at any

district meeting and no district delegate at any meeting shall vote by proxy or by mail.

Section 14.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 of directors. When a person holding any such office ceases to be a director he shall cease to hold such office. The offices of secretary and of treasurer may be held by the same person. The board of directors may also elect or appoint such other officers, agents, 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 15.Liability of Directors in Certain Cases.

(a) Directors of a cooperative who vote for or concur in any of the following corporate actions shall be jointly and severally liable to the cooperative for the benefit of its creditors or members or the ultimate beneficiaries of its activities, to the extent of any injury suffered by such persons, respectively, as a result of such action, or, if there be no creditors or members or ultimate beneficiaries so injured, to the cooperative as a result of such action:

(1) the distribution of the cooperative's cash or property to members, directors or officers, other than a distribution permitted under subsection d (1) and (2); or

(2) the distribution of assets after dissolution of the cooperative in violation of Section 28 of this Act or without paying or adequately providing for all known liabilities of the cooperative.

(b) A director who is present at a meeting of the board, or any committee thereof, at which action specified in paragraph one or two of subdivision (a) of this section is taken shall be presumed to have concurred in the action unless the director's dissent thereto shall be entered in the minutes of the meeting, or unless the director shall submit his or her written dissent to the person acting as the secretary of the meeting before the adjournment thereof, or shall deliver or send by registered mail such dissent to the secretary of the cooperative promptly within three (3) days after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action. A director who is absent from a meeting of the board, or any committee thereof, at which such action is taken shall be presumed to have concurred in the action unless he shall deliver or send by registered mail his dissent thereto to the secretary of the cooperative or shall cause such dissent to be filed with the minutes of the proceedings of the board or committee within seven (7) days after learning of such action.

(c) Any director against whom a claim is successfully asserted under this section shall be entitled to contribution from the other directors who voted for or concurred in the action upon which the claim is asserted.

(d) Directors against whom a claim is successfully asserted under this section shall be entitled, to the extent of the amounts paid by them to the cooperative as a result of such claims:

(1) Upon reimbursement to the cooperative of any amount of an improper distribution of the cooperative's cash or property, to be subrogated to the rights of the cooperative against members,

directors or officers who received such distribution with knowledge of facts indicating that it was not authorized by this Act, in proportion to the amounts received by them respectively.

(2) Upon payment to the cooperative of the claim of the Solicitor General or of any creditor by reason of a violation of subdivision (a) of this section, to be subrogated to the rights of the cooperative against any person who received an improper distribution of assets.

(e) (1) A director or officer shall not be liable under this section if, in the circumstances, the director discharged his or her duty to the cooperative in good faith and with that degree of diligence, care and skill which ordinarily prudent persons would exercise under similar circumstances in like positions.

(2) In discharging their duties, directors and officers, when acting in good faith, may rely on information, opinions, reports or statements including financial statements and other financial data, in each case prepared or presented by:

(i) one or more officers or employees of the cooperative, whom the director believes to be reliable and competent in the matters presented,

(ii) counsel, public accountants or other persons as to matters which the directors or officers believe to be within such person's professional or expert competence, or

(iii) a committee of the board upon which they do not serve, duly designated in accordance with a provision of the certificate of incorporation or the by-laws, as to matters within its designated authority, which committee the directors or officers believe to merit confidence, so long as in so relying they shall be acting in good faith and with that degree of care specified in subdivision (a) of this section. Persons shall not be considered to be acting in good faith if they have knowledge concerning the matter in question that would cause such reliance to be unwarranted. Persons who so perform their duties shall have no liability by reason of being or having been directors or officers of the cooperative.

(f) This section shall not affect any liability otherwise imposed by applicable laws upon any director or officer.

Section 16. *Action Against Directors and Officers for Misconduct.*

(a) An action may be brought against one or more directors or officers of a cooperative to procure a judgment for the following relief:

(1) to compel the defendant to account for his or her official conduct in the following cases:

(i) the neglect of, or failure to perform, or other violation of his or her duties in the management and disposition of cooperative assets committed to his or her charge.

(ii) the acquisition by him or herself, transfer to others,

loss or waste of cooperative assets due to any neglect of, or failure to perform, or other violation of his or her duties.

(2) to set aside an unlawful conveyance, assignment or transfer of cooperative assets, where the transferee knew of its unlawfulness.

(3) to enjoin a proposed unlawful conveyance, assignment or transfer of cooperative assets, where there are reasonable grounds for belief that it will be made.

(b) An action may be brought for the relief provided in this subsection and subsection (a) of section 15 of this Act by the Solicitor General, by the cooperative or, in the right of the cooperative by any of the following:

(1) A director or officer of the cooperative.

(2) A receiver, trustee in bankruptcy, or judgment creditor thereof.

(3) By one or more of the members of the cooperative.

Section 17. Nonexclusivity of Statutory Provisions for Indemnification of Directors and Officers. The indemnification and advancement of expenses granted pursuant to, or provided by this Act shall not be deemed exclusive of any other rights to which a director or officer seeking indemnification or advancement of expenses may be entitled, whether contained in the certificate of incorporation or the by-laws or, when authorized by such certificate of incorporation or by-laws, (a) a resolution of members, (b) a resolution of directors, or (c) an agreement providing for such indemnification, provided that no indemnification may be made to or on behalf of any director or officer if a judgment or other final adjudication adverse to the director or officer establishes that his or her acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated, or that he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled. Nothing contained in this Act shall affect any rights to indemnification to which corporate personnel other than directors and officers may be entitled by contract or otherwise under law.

Section 18. Authorization for Indemnification of Directors and Officers.

(a) A cooperative may indemnify any person, made, or threatened to be made, a party to an action or proceeding other than one by or in the right of the cooperative to procure a judgment in its favor, whether civil or criminal, including an action by or in the right of any other corporation of any type or kind, domestic or foreign, or any partnership, joint venture, trust, employee benefit plan or other enterprise, which any director or officer of the cooperative served in any capacity at the request of the cooperative, by reason of the fact that he or she, his or her testator or intestate, was a director or officer of the corporation, or served such other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise in any capacity, against judgments, fines, amounts paid in settlement and reasonable expenses, including attorneys' fees actually and necessarily incurred as a result of such action or proceeding, or any appeal therein, if such director or officer acted, in good faith, for a purpose which he or she reasonably believed to be in,

or, in the case of service for any other corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise, not opposed to, the best interests of the cooperative and, in criminal actions or proceedings, in addition, had no reasonable cause to believe that his or her conduct was unlawful.

(b) The termination of any such civil or criminal action or proceeding by judgment, settlement, conviction or upon a plea of *nolo contendere*, or its equivalent, shall not in itself create a presumption that any such director or officer did not act, in good faith, for a purpose which he or she reasonably believed to be in, or, in the case of service for any other corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise, not opposed to, the best interests of the cooperative or that he or she had reasonable cause to believe that his or her conduct was unlawful.

(c) A cooperative may indemnify any person made, or threatened to be made, a party to an action by or in the right of the cooperative to procure a judgment in its favor by reason of the fact that he or she, his or her testator or intestate, is or was a director or officer of the cooperative or is or was serving at the request of the cooperative as a director or officer of any other corporation of any type or kind, domestic or foreign, of any partnership, joint venture, trust, employee benefit plan or other enterprise, against amounts paid in settlement and reasonable expenses, including attorneys' fees, actually and necessarily incurred by him or her in connection with the defense or settlement of such action, or in connection with an appeal therein, if such director or officer acted, in good faith, for a purpose which he or she reasonably believed to be in, or, in the case of service for any other corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise, not opposed to, the best interests of the cooperative, except that no indemnification under this subdivision shall be made in respect of (1) a threatened action, or a pending action which is settled or otherwise disposed of, or (2) any claim, issue or matter as to which such person shall have been adjudged to be liable to the cooperative unless and only to the extent that the court in which the action was brought, or, if no action was brought, any court of competent jurisdiction, determines upon application that, in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for such portion of the settlement amount and expenses as the court deems proper.

(d) For the purpose of this section, a cooperative shall be deemed to have requested a person to serve an employee benefit plan where the performance by such person of his or her duties to the cooperative also imposes duties on, or otherwise involves services by, such person to the plan or participants or beneficiaries of the plan; excise taxes assessed on a person with respect to an employee benefit plan pursuant to applicable law shall be considered fines; and action taken or omitted by a person with respect to an employee benefit plan in the performance of such person's duties for a purpose reasonably believed by such person to be in the interest of the participants and beneficiaries of the plan shall be deemed to be for a purpose which is not opposed to the best interests of the cooperative.

Section 19. *Payment of Indemnification Other Than by Court Award.*

(a) A person who has been successful, on the merits or otherwise, in the defense of a civil or criminal action or proceeding of the character described in Section 15 shall be entitled to indemnification as authorized in such section.

(b) Except as provided in subdivision (a) of this section, any indemnification under Section 15 or otherwise permitted by Section 14, unless ordered by a court under Section 17, shall be made by the cooperative only if authorized in the specific case:

(1) by the board acting by a quorum consisting of directors who are not parties to such action or proceeding upon a finding that the director or officer has met the standard of conduct set forth in Section 15 or established pursuant to Section 14, as the case may be, or,

(2) if a quorum under subsection b (1) of this section is not obtainable or, even if obtainable, a quorum of disinterested directors so directs:

(i) By the board upon the opinion in writing of independent legal counsel that indemnification is proper in the circumstances because the applicable standard of conduct set forth in such sections has been met by such director or officer, or

(ii) By the members upon a finding that the director or officer has met the applicable standard of conduct set forth in such sections.

(c) Expenses incurred in defending a civil or criminal action or proceeding may be paid by the cooperative in advance of the final disposition of such action or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount as, and to the extent, required by subdivision (a) of Section 18.

Section 20. *Indemnification of Directors and Officers by a Court.*

(a) Notwithstanding the failure of a cooperative to provide indemnification, and despite any contrary resolution of the board or of the members in the specific case under Section 16, indemnification shall be awarded by a court to the extent authorized under Section 15, and subdivision (a) of Section 18. Application therefor may be made, in every case, either:

(1) in the civil action or proceeding in which the expenses were incurred or other amounts were paid, or

(2) to the supreme court in a separate proceeding, in which case the application shall set forth the disposition of any previous application made to any court for the same or similar relief and also reasonable cause for the failure to make application for such relief in the action or proceeding in which the expenses were incurred or other amounts were paid.

(b) The application shall be made in such manner and form as may be required by the applicable rules of court or, in the absence thereof, by direction of a court to which it is made. Such application shall be upon notice to the corporation. The court may also direct that notice be given at the expense of the cooperative to the members and such other persons as it may designate in such manner as it may require.

(c) Where indemnification is sought by judicial action, the court may allow a person such reasonable expenses, including attorneys' fees, during the pendency of the litigation as are necessary in connection with his or her defense therein, if the court shall find that the defendant has by his or her

pleadings or during the course of the litigation raised genuine issues of fact or law.

Section 21. *Other Provisions Affecting Indemnification of Directors and Officers.*

(a) All expenses incurred in defending a civil or criminal action or proceeding which are advanced by the cooperative under subdivision (c) of Section 16 or allowed by a court under subdivision (c) of Section 17 shall be repaid in case the person receiving such advancement or allowance is ultimately found, under the procedure set forth in this Act, not to be entitled to indemnification or, where indemnification is granted, to the extent the expenses so advanced by the cooperative or allowed by the court exceed the indemnification to which he is entitled.

(b) No indemnification, advancement or allowance shall be made under this Act in any circumstance where it appears:

(1) that the indemnification would be inconsistent with a provision of the certificate of incorporation, a by-law, a resolution of the board or of the members, an agreement or other proper corporate action, in effect at the time of the accrual of the alleged cause of action asserted in the threatened or pending action or proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or

(2) if there has been a settlement approved by the court, that the indemnification would be inconsistent with any condition with respect to indemnification expressly imposed by the court in approving the settlement.

(c) If any express or other amounts are paid by way of indemnification, otherwise than by court order or action by the members, the cooperative shall prepare a statement specifying the persons paid, the amounts paid, and the nature and status at the time of such payment of the litigation or threatened litigation, and not later than the next annual meeting of members, unless such meeting is held within three months from the date of such payment, and, in any event, within fifteen months of the date of such payment, shall mail the statement to its members of record entitled at the time to vote for the election of directors.

(d) If any action with respect to indemnification of directors and officers is taken by way of amendment of the by-laws, resolution of directors, or by agreement, then the cooperative shall, not later than the next annual meeting of members, unless such meeting is held within three months from the date of such action, and, in any event, within fifteen months from the date of such action, mail to its members of record at the time entitled to vote for the election of directors a statement specifying the action taken.

Section 22. *Insurance for Indemnification of Directors and Officers.*

(a) Subject to subdivision (b) of this section, a cooperative shall have power to purchase and maintain insurance:

(1) to indemnify the cooperative for any obligation which it incurs as a result of the indemnification of directors and officers under the provisions of this article, and

(2) to indemnify directors and officers in instances in which they may be indemnified by the cooperative under the provisions of this Act, and

(3) to indemnify directors and officers in instances in which they may not otherwise be indemnified by the cooperative under the provisions of this Act provided the contract of insurance covering such directors and officers provides, in a manner acceptable to the Commissioner of the Insurance Commission for a retention amount and for co-insurance.

(1) if a judgment or other final adjudication adverse to the insured director or officer establishes that his or her acts which are made out of deliberate dishonesty were material to the cause of action so adjudicated, or that he or she personally gained in fact financial profit or other advantage to which he or she was not legally entitled to, or

(2) in relation to any risk the insurance of which is prohibited under the insurance code.

(c) Insurance under paragraphs one, two and three of subdivision (a) of this section may be included in a single contract or supplement thereto. Retrospective rated contracts are prohibited.

(d) The cooperative shall, within the time and to the persons provided in subdivision (c) of Section 18, mail a statement in respect to any insurance it has purchased or renewed under this section, specifying the insurance carrier, date of the contract, cost of the insurance, corporate positions insured, and a statement explaining all sums, not previously reported in a statement to members, paid under any indemnification insurance contract.

Section 23. Amendment of articles of incorporation. A cooperative may amend its articles of incorporation by complying with the following requirements: 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. If the proposed amendment, with any changes, is approved by the affirmative vote of not less than two-thirds of all members of the cooperative voting thereon at such meeting, the 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 and annex thereto an affidavit stating that the provisions of this section in respect of the amendment set forth in such articles were duly complied with.

Section 24. Change of location of principal office. A cooperative may, upon authorization of its board of directors or its 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 National Electrification Administration.

Section 25. 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;

(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 all members of each consolidating cooperative voting thereon at each such meeting, the said 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 provisions not inconsistent with this Act and 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 in respect of such articles were duly complied with by such cooperative.

Section 26. Merger. Any one or more cooperatives (each of which is hereinafter designated a "merging cooperative") may merge into another cooperative (hereinafter designated the "surviving cooperative"), 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;

(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 all members of 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 shall be 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 provisions not inconsistent with this Act and deemed necessary or advisable for the conduct of the business of the

surviving cooperative. The president or vice-president of each cooperative executing such articles of merger shall make and annex thereto an affidavit stating that the provisions of this section in respect of such articles were duly complied with by such cooperative.

Section 27. *Effect of Consolidation or Merger.*

(a) In the case of consolidation the existence of the consolidating cooperatives shall cease and the articles of consolidation shall be deemed to be articles of incorporation of the new cooperative; and in the case of a 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 the rights, privileges, immunities and franchises and all property, real and personal, including without limitation to applications for membership, all debts due on whatever account and all other causes of 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 the 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 may be prosecuted as if the consolidation or merger had not taken place, but the new or surviving cooperative may be substituted in its place; and

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

Section 28. *Creation of Subsidiaries.* Adjacent electric cooperatives may, for the purpose of advancing the interest of the rural energy sector including the construction or purchase of power generating plants or facilities necessary in power generation in order to provide reliable, cheap and accessible source of energy, create subsidiaries for this purpose. Such subsidiaries, however, shall be registered with the Securities and Exchange Commission. The Securities and Exchange Commission in coordination with NEA is hereby empowered to supervise and regulate the operation of the said subsidiaries subject to existing laws and regulations.

Section 29. *Dissolution.*

(a) A cooperative which has not commenced business may be dissolved by filing in with National Electrification Administration articles of dissolution which shall be executed and acknowledged on behalf of the cooperative by a majority of the incorporators and which shall state:

- (1) the name of the cooperative;
- (2) the address of its principal office;
- (3) that the cooperative has not commenced business;
- (4) that any sums received by the cooperative, less any part thereof disbursed for expenses of the cooperative, have been returned or

paid to those entitled thereto;

- (5) that no debt of the cooperative is unpaid; and
- (6) that a majority of the incorporators elect that the cooperative be dissolved.

(b) A cooperative which has commenced business may be dissolved in the following manner: The members at any meeting shall approve, by the affirmative vote of not less than two-thirds of the total members of the cooperative, a proposal that the cooperative be dissolved. Upon such approval, a certificate of election to dissolve (hereinafter designated the "certificate"), executed and acknowledged on behalf of the cooperative by its president or vice-president under its seal, attested by its secretary, and 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, shall, together with an affidavit made by its president or vice-president executing the certificate, stating that the statements in the certificate are true, be filed in the National Electrification Administration.

Upon the filing of the certificate and affidavit in the National Electrification Administration, 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 the articles of dissolution have been filed in the National Electrification Administration. The board of directors 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 region in which the principal office of the cooperative is located.

The board of directors 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, 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, shall distribute any remaining sums among its members and former members in proportion to the patronage of the respective members or former members during the seven years next preceding the date of the filing of the certificate in the National Electrification Administration, or if the cooperative has not been in existence for such period, then during the period of its existence prior to such filing. The board of directors 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 in the department of state;
- (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 adequate provision has been made therefor; and
- (6) that the preceding provisions of this subsection have been duly complied with. The president or vice-president executing the articles of dissolution shall make and annex thereto an affidavit stating that the statements made therein are true.

Section 30. Conversion of existing domestic corporations. Any corporation organized under existing laws supplying or authorized to supply electric energy may be converted into a cooperative by complying with the following requirements and shall thereupon become subject to this Act with the same effect as if originally organized under this Act:

(a) The proposition for the conversion of such corporation into a cooperative and proposed articles of conversion to give effect thereto shall be submitted to a meeting of the members or stockholders of such corporation, the notice of which shall have attached thereto a copy of the proposed articles of conversion;

(b) If the proposition for the conversion of such corporation into a cooperative and the proposed articles of conversion, with any amendments, are approved by the affirmative vote of not less than two-thirds of all members of such corporation or stock cooperative voting thereon at such meeting, or, if such corporation is a stock corporation, by the affirmative vote of the holders of not less than two-thirds of all shares of the capital stock of such corporation represented at such meeting and voting thereon, articles of conversion in the form approved shall be executed and acknowledged on behalf of such corporation by its president or vice-president and its seal shall be affixed thereto and attested by its secretary. The articles of conversion shall recite that they are executed pursuant to this Act and shall state:

- (1) the name of the corporation and the address of its principal office prior to its conversion into a cooperative;
- (2) the statute or statutes under which it was organized;
- (3) a statement that such corporation elects to become a cooperative, non-stock and non-profit subject to section 29 of this Act;
- (4) its name as a cooperative;
- (5) the address of the principal office of the cooperative;
- (6) the names and addresses of the directors of the cooperative; and
- (7) the manner in which members or stockholders of such corporation may or shall become members of the cooperative; and may contain any provisions not inconsistent with this chapter deemed necessary or advisable

for the conduct of the business of the cooperative. The president or vice-president executing such articles of conversion shall make and annex thereto an affidavit stating that the provisions of this section were duly complied with in respect of such articles. The articles of conversion shall be deemed to be the articles of incorporation of the cooperative.

Section 31. *Filing of articles.* Articles of incorporation, amendment, consolidation, merger, conversion, or dissolution, when executed and acknowledged and accompanied by such affidavits as may be required by applicable provisions of this Act, shall be filed in the National Electrification Administration. The NEA Administrator shall, upon the payment of the fees as in this section provided, index such articles. Upon the filing of such articles, the incorporation, amendment, consolidation, merger, conversion, or dissolution provided for therein shall be in effect. The provisions of this section shall also apply to certificates of election to dissolve and affidavits executed in connection therewith pursuant to subsection (b) of section thirty-five of this chapter.

Section 32. *Fees.* The National Electrification Administration shall charge and collect for:

- (a) Filing articles of incorporation, one-thousand five hundred pesos;
- (b) Filing articles of amendment, one thousand pesos;
- (c) Filing articles of consolidation or merger, one thousand pesos;
- (d) Filing articles of conversion, one thousand pesos;
- (e) Filing certificate of election to dissolve, five hundred pesos;
- (f) Filing articles of dissolution, five hundred pesos; and
- (g) Filing certificate of change of principal office, seven hundred fifty pesos;

Section 33. *Conversion of Stock and Non- Profit Cooperatives-*

Cooperatives which opt to convert to non-stock non-profit cooperatives shall follow the standard procedure for conversion per Sections 30, 31 and 32 of this Act.

Section 34. *Refunds to members.* Revenues of a cooperative for any fiscal year in excess of the amount thereof necessary:

- (a) to defray the expenses of the operation and maintenance of the facilities of the cooperative during such fiscal year;
- (b) to pay interest and principal obligations of the cooperative coming due in such fiscal year;
- (c) to finance, or to provide a reserve for the financing of, the construction or acquisition by the cooperative of additional facilities to the extent determined by the board of directors;
- (d) to provide a reasonable reserve for working capital as determined by

the board of directors;

(e) to provide a reserve for the payment of indebtedness of the cooperative in an amount not less than the total of the interest and principal payment in respect thereof required to be made during the next following fiscal year; and

(f) to provide a fund for education in cooperation and for the dissemination of information concerning the effective use of electric energy and other services made available by the cooperative, shall, unless otherwise determined by a vote of the members, be distributed by the cooperative to its members and to other persons to whom the cooperative supplies electric energy or other services, as patronage refunds prorated in accordance with the patronage of the cooperative by the respective members and such other persons, paid for during such fiscal year; provided, however, that such distribution shall not be made to any such other person until he has become a member of the cooperative. If such other person does not become a member of the cooperative within one year after the amount of his distributive share or accumulated distributive shares equals the membership fee required by the by-laws of the cooperative, or, if no membership fee is required, within two years after the declaration of any such patronage refund, he shall cease to be entitled to such share or shares, which shall, in such case, be paid into the fund provided for in this section. The cooperative shall make such additional provision, in the by-laws or otherwise, relative to the disposition of the revenues of the cooperative, as may be necessary and appropriate to establish and maintain the non-profit character of the cooperative. Nothing hereincontained shall be construed to prohibit the payment by a cooperative of all or any part of its indebtedness prior to the date when the same shall become due.

Section 35. Disposition of Property.

(a) The board of directors of a cooperative shall have full power and authority, without authorization by the members thereof, to authorize the execution and delivery of a mortgage or mortgages or a deed or deeds of trust of, or the pledging or encumbering of, any or all of the properties, assets, rights, privileges, licenses, franchises and permits of the cooperative, whether acquired or to be acquired, and wherever situated, as well as the revenues and income therefrom, all upon such terms and conditions as the board of directors shall determine. Any such mortgage or mortgages or deed or deeds of trust or other instruments shall be exempt from the mortgage recording taxes imposed by existing tax laws.

(b) A cooperative may not otherwise sell, mortgage, lease or otherwise dispose of or encumber all or a substantial portion of its property unless such sale, mortgage, lease or other disposition or encumbrance is authorized by the affirmative vote of not less than two-thirds of all members of the cooperative.

Section 36. Non-liability of Members for Debts of a 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 execution therefor.

Section 37. Recordation of Mortgages; Effect Thereof. In case of conflict between this Act and any other law, the provisions of this Act shall prevail. Any mortgage, deed of trust or other instrument executed by a cooperative doing business pursuant to this Act, which affects real and personal property and which is recorded in the real property records in any county in which such property is located or is to be located, shall have the

same force and effect as if the security interest created by such mortgage in the personal property thereby affected, had been perfected by filing in accordance with existing laws. All after-acquired property of such cooperative described or referred to as being mortgaged or pledged in any such mortgage, deed of trust or other instrument, shall become subject to the lien thereof immediately upon the acquisition of such property by such cooperative, whether or not such property was in existence at the time of the execution of such mortgage, deed of trust or other instrument. Recordation of any such mortgage, deed of trust or other instrument shall constitute notice and otherwise have the same effect with respect to such after-acquired property as it has under the laws relating to recordation, with respect to property owned by such cooperative at the time of the execution of such mortgage, deed of trust or other instrument and therein described or referred to as being mortgaged or pledged thereby. The security interest in personal property created by any such mortgage, deed of trust or other instrument shall, after recordation thereof, shall continue to be perfected and of record without the filing of any continuation.

Section 38. Construction Standards. Construction of electric lines by a cooperative shall, as a minimum requirement, comply with the standards of the national electric safety code in effect at the time of such construction. Imposition of taxes relative to the undertaking specified in this section shall be exempt from any form of tax, whether of national or local nature.

Section 39. Directors, Officers or Members as Notaries. No person who is authorized to take acknowledgments under existing laws shall be disqualified from taking acknowledgments of instruments executed in favor of a cooperative or to which it is a party, by reason of being an officer, director or member of such cooperative.

Section 40. 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 41. License Fee In Lieu of All Franchise, Excise, Income, and Sales Taxes. Each electric cooperative doing business pursuant to this Act shall pay annually, on or before the first day of April, to the Bureau of Internal Revenue, a fee of Ten Thousand Pesos (P10,000.00), but shall be exempt from all other franchise, excise, income, corporation and sales taxes whatsoever.

Section 42 .Assistance to Cooperatives; Exemption from Taxes, Imposts, Duties, Fees; Assistance from the National Power Corporation. The following benefits shall be enjoyed by the cooperative:

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 impostos on foreign goods acquired for its operations; Provided, that NEA 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.

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 valued 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 43. Exemption from Jurisdiction of the Cooperative Development Authority and from the Provisions of the Cooperative Code of the Philippines. Cooperatives doing business pursuant to this Act shall be, in all respects, subject to the jurisdiction of the NEA and shall exempt in all respects from the jurisdiction and control of the Cooperative Development Authority and the Securities and Exchange Commission and shall not be subject to the provisions of the Cooperative Code of the Philippines. Each cooperative, shall file with the NEA an annual report verified by the oath of the president, vice-president, treasurer, secretary, general manager, or receiver, if any. The report shall show in detail:

- (a) The number of its members;
- (b) The amount of its bonded indebtedness and other outstanding indebtedness;
- (c) Its receipts and expenditures during the preceding year;
- (d) The amount paid in reduction of its indebtedness and as interest upon its indebtedness;
- (e) The names of its officers and the aggregate amount paid as salaries

to them and the amount paid as wages to its employees;

- (f) The location of its plant or plants and system, with a full description of its property and franchises.

Section 44. Exemption of Securities. The provisions of Securities and Exchange Act shall not apply to any note, bond or other evidence of indebtedness issued by any cooperative doing business pursuant to this Act or any agency or instrumentality thereof, or to any mortgage, deed of trust or other instrument executed to secure the same. The provisions of said Securities and Exchange Act shall not apply to the issuance of membership certificates by any cooperative.

Section 45. Construction. This Act shall be construed liberally. The enumeration of any object, purpose, power, manner, method, or thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods or things.

Section 46. Transitory Provision. Within one hundred twenty (120) days of enactment of this Act, all electric cooperatives under the jurisdiction of the NEA shall review and revise its articles of incorporation and by-laws to harmonize with the provisions of this act subject to the approval of its member-consumers in a meeting called for the purpose.

Section 47. Repealing Clause. Provisions of Republic Act No. 10531 otherwise known as the National Electrification Administration Reform Act of 2013, Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act, Republic Act No. 9520 otherwise known as the Cooperative Code of the Philippines, Republic Act 7160, otherwise known as the Local Government Code of 1991 and other laws, rules, regulations and issuances in conflict with the provisions of this Act are hereby repealed or modified accordingly. The applicability of provisions of existing laws shall continue to have full force and effect except in so far as inconsistent with this Act.

Section 48. Separability. If any provision of this Act or the application of such provision to any person or circumstance is held invalid, the remainder of the Act and the application of such provisions to other persons or circumstances shall not be affected thereby.

Section 49. Effective Date. This Act shall take effect fifteen (15 days) after its publication in three (3) newspapers of national circulation.

Approved:


MICHAEL ANGELO C. RIVERA
Principal Author