

EXECUTIVE ORDER NO. 119

RESTRUCTURING PROGRAM FOR ELECTRIC COOPERATIVES

WHEREAS, the Congress of the Philippines enacted Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001" (EPIRA), for the purpose of restructuring the electric power industry, including the restructuring of electric cooperatives (ECs);

WHEREAS, Section 60 of EPIRA provides:

"Sec. 60. *Debts of Electric Cooperatives.* -- Upon the effectivity of this Act, all outstanding financial obligations of electric cooperatives to NEA and other government agencies incurred for the purpose of financing the rural electrification program shall be assumed by the PSALM Corporation in accordance with the program approved by the President of the Philippines within one (1) year from the effectivity of this Act which shall be implemented and completed within three (3) years from the effectivity of this Act. The ERC shall ensure a reduction in the rates of electric cooperatives commensurate with the resulting savings due to the removal of the amortization payments of their loans. Within five (5) years from the condonation of the debt, any electric cooperative which shall transfer ownership or control of its assets, franchise or operations shall repay PSALM Corp. the total debts including accrued interest thereon." (Underscoring supplied);

WHEREAS, Rule 31 of the Implementing Rules and Regulations of EPIRA, as approved by the Joint Congressional Power Commission (JCPC) and promulgated by the Department of Energy (DOE), reiterates that said outstanding financial obligations of ECs shall be assumed by the Power Sector Assets and Liabilities Management Corporation (PSALM) in accordance with the program approved by the President of the Philippines;

WHEREAS, Rule 31 of the Implementing Rules and Regulations of EPIRA likewise defines the outstanding financial obligations which shall be assumed by PSALM as those incurred by ECs 'for the purpose of financing the Rural Electrification Program';

WHEREAS, the assumption by PSALM of such outstanding financial obligations of ECs shall result in the reduction in the rates of ECs commensurate with the resulting savings due to the removal of the amortization payment on said loans;



WHEREAS, Section 58 of EPIRA mandates the National Electrification Administration (NEA) to strengthen the technical capability and financial viability of rural ECs as electric utilities, and to prepare said ECs to operate and compete in the deregulated electricity market, specifically in an environment of open access and retail wheeling;

WHEREAS, the assumption by PSALM of the outstanding financial obligations of ECs incurred for the purpose of financing the Rural Electrification Program entails substantial government support that must come hand in hand with meaningful and lasting reforms, both mandated and self-imposed, among the ECs, for the purpose of achieving reliable, secure and cheaper electricity for all consumers, particularly in the rural areas, in line with the declared policies in EPIRA;

WHEREAS, DOE, Department of Finance (DOF), NEA and PSALM, have recommended a program for the restructuring of ECs through the assumption by PSALM of the outstanding financial obligations of ECs incurred for the purpose of financing the Rural Electrification Program, with a view to reducing the spiraling cost of electricity (hereinafter referred to as the "Program");

NOW, THEREFORE, I, GLORIA MACAPAGAL-ARROYO, President of the Philippines, by virtue of the powers vested in me by law and upon the recommendation of DOE, DOF, NEA and PSALM, do hereby order:

SECTION 1. DECLARATION OF POLICY. The Program adheres to the following declared policies in EPIRA:

- a. To ensure and accelerate the total electrification of the country;
- b. To ensure the quality, reliability, security and affordability of the supply of electric power;
- c. To ensure transparent and reasonable prices of electricity in a regime of free and fair competition and full public accountability to achieve greater operational and economic efficiency and ensure the competitiveness of Philippine products in the global market;
- d. To encourage the efficient use of energy and other modalities of demand side management; and
- e. To protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power.

SECTION 2. COVERAGE. As specified under Section 60 of EPIRA, the Program for PSALM to assume the outstanding financial obligations incurred by ECs covers only those obligations incurred for the purpose of financing the Rural Electrification Program. The Implementing Rules and Regulations of EPIRA, as approved by JCPC and promulgated by DOE, defines "Financing for Rural Electrification" as referring to loans and grants extended to ECs, for the construction or acquisition, operation and maintenance of distribution,



generation, and subtransmission facilities for the purpose of supplying electric service, and those loans for the restoration, upgrading and expansion of such facilities, in areas which are considered rural at the time of the grant of such loans (hereinafter referred to as "Rural Electrification Loans").

Thus, the Program shall comprise the following:

- a. Financial, institutional, technical and managerial restructuring of ECs, pursuant to Section 58 of EPIRA;
- b. Assumption by PSALM of Rural Electrification Loans, pursuant to Section 60 of EPIRA;
- c. Amortization of payments to NEA and/or other government creditor agencies for Rural Electrification Loans assumed by PSALM, pursuant to Section 60 of EPIRA; and
- d. Reorganization of NEA to enable it to perform its additional mandates under Section 58 of EPIRA, and in accordance with Section 5(a)(5) of Presidential Decree No. 269, as amended by Presidential Decree No. 1645.

SECTION 3. NEA REORGANIZATION PLAN. In order to better achieve the objectives of EPIRA and to suit the organizational staffing pattern of NEA to its additional mandates therein, NEA shall submit, within thirty (30) calendar days from the effectivity of this Executive Order, a reorganization plan containing NEA's redefined institutional, technical and financial functions for the approval of DOE and the Department of Budget and Management (DBM).

Upon approval of NEA's reorganization plan, DBM shall release the necessary funds to implement the reorganization plan.

DOE shall monitor the implementation of NEA's reorganization plan and shall submit a report thereon to the Office of the President.

SECTION 4. EC RESTRUCTURING. Within thirty (30) calendar days from the effectivity of this Executive Order, NEA shall likewise submit to DOE a plan of action: (a) to implement and comply with Section 58 of EPIRA, specifically to prepare ECs to operate and compete under the deregulated electricity market, and to strengthen the technical and managerial capability and financial viability of rural ECs; and (b) to ensure full compliance with Section 5 of this Executive Order.

SECTION 5. ASSUMPTION OF RURAL ELECTRIFICATION LOANS. To ensure that the implementation of the Program is in accordance with law which requires that only Rural Electrification Loans shall be assumed by PSALM, and to further protect consumer welfare, the assumption of Rural Electrification Loans shall be effective upon compliance with the following terms and conditions:



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- a. Each Rural Electrification Loan must be (a) duly recorded in the books of NEA and/or the corresponding creditor government agencies; (b) validated by the Commission on Audit; and (c) confirmed by the concerned EC as due and outstanding.
- b. Each Rural Electrification Loan shall be audited for verification purposes by PSALM, in accordance with generally accepted accounting and auditing practices.
- c. ERC shall have approved the reduction in the EC's rates commensurate with the resulting savings due to the removal of the amortization payments on the Rural Electrification Loan/s. At all times, the assumption by PSALM of the Rural Electrification Loan/s shall take effect only upon such ERC approval, given that all other terms and conditions stated herein have been complied with.
- d. Each EC must be current and continue to be current in the payment of its obligations to the National Power Corporation (NPC) to be eligible for the assumption by PSALM of its Rural Electrification Loan/s.

In the event that an EC is not current in the payment of its obligations to NPC, such EC must first submit to NEA a duly executed agreement with NPC, containing a sustainable payment arrangement acceptable to NPC, before such EC may be eligible for the assumption by PSALM of its Rural Electrification Loan/s.

- e. Each EC shall at all times comply with all NEA policies governing the EC's relationship with NEA, pursuant to Presidential Decree No. 269, as amended by Presidential Decree No. 1645, and its implementing guidelines, rules and regulations.
- f. Each EC shall cooperate with NEA in order for NEA to effectively prepare them for operating and competing under the deregulated electricity market within five (5) years from the effectivity of EPIRA, specifically in an environment of open access and retail wheeling, as envisioned and mandated under Section 58 of EPIRA.
- g. Within thirty (30) calendar days from the effectivity of this Executive Order, the NEA Board shall issue guidelines for the submission by ECs of a Performance Improvement Program (PIP) and/or a Rehabilitation and Efficiency Plan (REP). Consistent with Section 10 of Presidential Decree No. 269, as amended by Presidential Decree No. 1645, said guidelines shall include



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preventive and/or disciplinary measures, as may be warranted, prior to the assumption by PSALM of the Rural Electrification Loan/s of the concerned EC.

The PIP and/or REP shall cover institutional, technical, financial and managerial reforms, including financial restructuring, needed to achieve prescribed levels of efficiency, including but not limited to, system losses, collections, electric and customer service, cost control, tariff rate competitiveness, and adequacy in capital and/or financing structure. The PIP and/or REP shall provide for specific yearly targets and shall cover at least the five-(5) year period prescribed under Section 60 of EPIRA.

- h. Within thirty (30) calendar days from the issuance of such PIP/REP guidelines, each EC shall submit its PIP and/or REP for NEA's approval. NEA shall approve or disapprove the PIP and/or REP of each electric cooperative within the period prescribed in its guidelines.

SECTION 6. REDUCTION IN EC RATES. Pursuant to Section 60 of EPIRA, the ERC shall ensure a reduction in the rates of ECs commensurate with the savings due to the removal of the amortization payments on their Rural Electrification Loan/s assumed by PSALM pursuant to this Executive Order. For this purpose, NEA shall assist ECs in their rate formulation and application to ERC.

SECTION 7. ASSUMPTION AND PAYMENT BY PSALM OF RURAL ELECTRIFICATION LOANS. Pursuant to Section 60 of EPIRA, PSALM shall assume all Rural Electrification Loans upon compliance by the concerned EC with Section 5 of this Executive Order, and thereupon, such EC shall cease to be a debtor of NEA or of other creditor government agencies.

Thereafter, PSALM and NEA or other creditor government agencies shall enter into contracts and/or agreements, necessary and proper, to undertake the payment of the assumed Rural Electrification Loans through an amortization schedule to be agreed upon between PSALM on the one hand, and NEA or other creditor government agencies, on the other. Where necessary, such contracts and/or agreements may include mutual stipulations on the modification and/or amendments of existing contracts of mortgage and other security between ECs and NEA or other creditor government agencies. *Provided, however,* That any such contracts of mortgage and other security with respect to the Rural Electrification Loans assumed by PSALM shall not be released by NEA and/or other creditor government agencies without the written consent of PSALM.



SECTION 8. REVOCATION. The assumption by PSALM of the Rural Electrification Loan/s of an EC shall be revoked for failure to continually comply with Section 5 of this Executive Order or if within five (5) years from the assumption by PSALM of the Rural Electrification Loan/s, an EC transfers ownership or control of its assets, franchise or operations, as provided under Section 60 of EPIRA.

Upon revocation, such EC must repay PSALM the total Rural Electrification Loan/s, including interest thereon, assumed by PSALM; *Provided, however,* That with the consent of NEA, an EC may enter into loan or financing agreements to allow flexibility in sourcing funds and improvement of management system for needed rehabilitation and modernization programs; *Provided, further,* That such loan or financing agreements shall not involve any permanent transfer or control of the assets, franchise and operations of such EC; *Provided, finally,* That DOE and NEA shall jointly issue the necessary guidelines to protect the member-consumers of ECs in situations involving such loan or financing agreements.

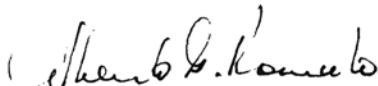
SECTION 9. SEPARABILITY CLAUSE. In the event that any of the provisions of this Executive Order is declared unconstitutional with finality by a court of competent jurisdiction, the validity of the other provisions shall not be affected by such declaration.

SECTION 10. EFFECTIVITY. This Executive Order shall take effect on the fifteenth (15th) day from the date of its publication in at least two (2) newspapers of general circulation.

DONE in the City of Manila, this 28th day of August, in the year of our Lord, Two Thousand and Two.



By the President:


ALBERTO G. ROMULO
Executive Secretary

