



Republic of the Philippines
National Electrification Administration

11 July 2008

LEGAL ADVISORY NO. 16

**TO : ALL ELECTRIC COOPERATIVES
ALL NEA OFFICES**

**SUBJECT : SALIENT PROVISIONS OF THE EPIRA AND ITS IRR
ON THE REDEFINED ROLE OF NEA WHICH ARE
USEFUL IN OUR EFFORTS TO UPGRADE EC,
COMPETITIVENESS, TECHNICAL CAPABILITY, AND
FINANCIAL VIABILITY.**

In line with our efforts to help Electric Cooperatives (ECs) in improving/upgrading their competitiveness, technical capability and financial viability, we call your attention to salient provisions of the Electric Power Industry Reform Act (EPIRA) and corresponding provisions of its Implementing Rules and Regulation (IRR) relating to the redefined role of NEA:

Section 58 of the EPIRA provides:

“Section 58. *Additional Mandate of the National Electrification Administration (NEA).* – NEA shall develop and implement programs:

- a) To prepare electric cooperatives in operating and competing under the deregulated electricity market within five (5) years from the effectivity of this Act, specifically in an environment of open access and retail wheeling;
- b) To strengthen the technical capability and financial viability of rural electric cooperatives; and
- c) To review and upgrade regulatory policies with a view to enhancing the viability of rural electric cooperatives as electric utilities.

NEA shall continue to be under the supervision of the DOE and shall exercise its functions under Presidential Decree No.269, as amended by Presidential Decree No. 1645 insofar as they are consistent with this Act.”

Section 3 of Rule 3 of the IRR provides:

“Section 3. Responsibilities of the NEA.

- a) NEA shall continue to be under the supervision of the DOE and shall exercise its functions under Presidential Decree No. 269, as amended by Presidential Decree No. 1645 insofar as they are consistent with the Act. To this end, NEA shall develop and implement programs:
 - i) To prepare Electric Cooperatives (ECs) in operating and competing under the deregulated electricity market within five (5) years from the effectivity of the Act, specifically in an environment of Open Access and retail wheeling and Retail Competition;
 - ii) To strengthen the technical capability and financial viability of ECs, through the following activities:
 - 1) NEA may offer services to the ECs other than those related to its lending functions, for a fee duly approved by the NEA Board of Administrators; and
 - 2) NEA may consider hiring qualified external industry management experts and shall provide their services to the ECs: *Provided*, That such services will not increase Retail Rates.
 - iii) To review and upgrade regulatory policies with a view to enhancing the viability of the ECs as electric utilities.
- b) NEA may, in exchange for adequate security and a guarantee fee, act as a guarantor for purchases of electricity in the WESM by any EC or small Distribution Utility to support their credit standing consistent with the provisions of the Act. For this purpose, the authorized capital stock of NEA is hereby increased to Fifteen Billion Pesos (P15,000,000,000.00).

On the basis of the aforesaid provisions of law and IRR, the following are clear;

1. All of NEA's mandates as provided for in Presidential Decree No. 269, as amended by Presidential Decree No. 1645 were retained in so far as they are consistent with EPIRA. This office has gone over all the provisions of EPIRA, and except for the EPIRA provision reverting NEA's franchising mandate (NEA's Power to grant, renew and cancel franchise) back to Congress, we have yet to find other NEA mandates inconsistent with the EPIRA. On the contrary, EPIRA greatly expanded the mandates of NEA.
2. EPIRA gave NEA the new mandate of developing and implementing programs to prepare the ECs in operating and competing in an environment of open access, retail wheeling and retail competition.

3. EPIRA also gave NEA the new mandate of developing and implementing programs to strengthen the technical capability and financial viability of ECs through NEA's offering of non-lending services to ECs for a fee duly approved by the NEA Board of Administrators; and through NEA's hiring of qualified external industry management experts for the ECs.
4. EPIRA likewise gave NEA the mandate of developing and implementing programs to review and upgrade regulatory policies with a view to enhancing the viability of the ECs as electric utilities. After a close look at the EPIRA provision containing this new NEA mandate, it becomes clear that all regulatory policies by any agency, including the Energy Regulatory Commission, are within the ambit of this new NEA mandate for as long as such review and upgrading of the regulatory policy is for the purpose of enhancing the viability of the ECs as electric utilities. Hence any existing or proposed regulatory policy by any government agency may be subjected to this new NEA mandate for the purpose of enhancing the viability of the ECs as electric utilities.
5. EPIRA also gave NEA the new mandate of acting as a guarantor of any EC or small distribution utility. In performing this new mandate, NEA, is authorized by law to impose a guarantee fee and to require adequate security. To ensure the availability of funds for the purpose, the EPIRA increased NEA's authorized capital stock to FIFTEEN BILLION PESOS.

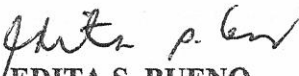
In the light of the foregoing, ECs are enjoined to:

1. Identify, discuss among themselves, preferably through their various regional/national associations, and present to NEA, services that they may need from NEA or from NEA-hired qualified external industry management experts for the purpose of upgrading/improving EC competitiveness, technical capability and financial viability.
2. Identify, discuss among themselves, and submit to NEA, existing and/or proposed regulatory policies affecting their viability as electric utilities.

For your guidance and appropriate action.

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NATIONAL ELECTRIFICATION
ADMINISTRATION

IN REPLYING, PLS. CITE: #OR012824



NEA-OR012824

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7/21/08