

## **AMENDED POLICY ON COLLATERAL SHARING**

### **OBJECTIVES:**

To define the manner by which lien on the properties of the Electric Cooperatives mortgaged to NEA may be shared with other banks and financial institutions.

### **POLICY BACKGROUND:**

The Electric Cooperatives are in constant need of long-term funds for rehabilitation and upgrading investment projects in order to meet the service standards of a utility enterprise. While in the past, the Electric Cooperatives are allowed to borrow funds from sources other than NEA subject to the NEA Board of Administrator's approval, these borrowings are mostly for short-term requirements. Section 9 of PD 269 provides that the NEA Board of Administrators is authorized, among others, whenever in its judgment, such is necessary or desirable to achieve the purpose of the decree, to release any after acquired property clause contained in any lien the NEA holds, or to share any such lien on co-equal basis or to subordinate any lien in favor of any other lender of funds to public service entity particularly the Electric Cooperatives.

### **POLICY STATEMENT:**

Upon the request of the Electric Cooperatives borrowing from sources other than NEA, the Board of Administrators may share the lien on co-equal basis in proportion to the respective claim for loan principal, accrued but unpaid interest, collection cost and prepayment premium on such properties of the Electric Cooperatives mortgaged to NEA subject to the following conditions and requirements:

1. The purpose of the EC's borrowing is for revenue enhancement, performance improvement projects, rehabilitation and upgrading projects or for rural electrification investment projects within the approved medium term plan of the Electric Cooperative.
2. Appraisal of the assets of the EC has been conducted in the last three years in accordance with Loan Policy 24 – Appraisal of Mortgaged Properties.
3. The total outstanding loans of the EC including the outstanding balance of loans assumed by PSALM (except Mini-Hydro and Dendro Thermal loans) must not exceed 70% of the revalued net utility plant in service. If the total outstanding loans exceed this

limit, the NEA Board of Administrators and PSALM may allow sharing of collateral on a case to case basis.

4. The requirements of the provision of Section 9 of P.D. 269 have been fully met in the sense that the proposed loan from the Non-NEA Lenders is, in the judgment of the NEA board of Administrators, (i) necessary or desirable to achieve the total electrification of the Philippines on an area coverage service basis, (ii) necessary to make or keep the EC's project operationally viable, (iii) necessary or desirable to enable the EC to accomplish the purposes for which it has already received a NEA loan, and (iv) the Non-NEA loan will not result in any diminution of the security of the ability of the EC to repay any of its outstanding indebtedness below the level of such security and ability were additional borrowings from a Non-NEA Lender not undertaken.
5. In case the loan to be secured by the EC's or by investors in EC's under Investment Management Contract would require guarantee, the Guarantor of the said loan shall be included as party to the Mortgage Sharing Indenture. The rights and obligations of the Guarantor who may be subrogated to the rights of the Non-NEA Lender upon guarantee call shall be specified on the MSI.
6. The EC shall at all times be compliant with the Energy Regulatory Commission rules on the collection and remittance of universal charges.

*Approved by the Board  
Resolution No. 47  
Date: June 14, 2006*

## **IMPLEMENTING GUIDELINES ON THE POLICY ON COLLATERAL SHARING**

Pursuant to the National Electrification Administration (NEA) Board of Administrators' Resolution No. 47 dated 14 June 2006 approving the policy by which lien on the properties of the Electric Cooperatives (ECs) mortgage to NEA may be shared with other banks and other financial institutions (the "Non-NEA Lenders"), the following implementing guidelines are hereby issued:

### **RATIONALE:**

Electrification is a very expensive undertaking. The ECs are in constant need of long term funds to finance electrification projects specially rehabilitation and upgrading of its distribution system. In the past, the NEA financed almost 90% of the ECs funding requirements. Consequently, all properties of the ECs are mortgaged to NEA.

With the passage of Electric Power Industry Reform Act (EPIRA) of 2001, the NEA was given additional mandate to develop and implement programs to prepare the ECs in operating and competing under the deregulated electricity market within five (5) years from the effectivity of the said Act and to strengthen the technical capacity and financial viability of ECs. However, the NEA has limited financial resources to support this mandate. The ECs must resort to borrowing from sources outside of NEA. These resources require collateral. Thus, EC properties mortgaged to NEA will have to be shared with Non-NEA Lenders.

### **SCOPE:**

These implementing guidelines shall govern the process to be followed when ECs apply for approval to borrow funds from Non-NEA Lenders which require the sharing of EC's properties mortgaged to NEA. The term "Non NEA Lenders" shall be deemed to include an investor and/or lender to such investor under the Investment Management Contract compliant with DOE Circular No. DC 2004-06-007; and provided that such loan proceeds are used exclusively for EC projects that reduce system losses and improve overall performance and efficiency.

## **GENERAL REQUIREMENTS:**

Upon the request of the ECs borrowing from sources other than NEA, the NEA may share the lien on pari-passu and co-equal basis in proportion to the respective claim for loan principal, accrued but unpaid interest, collection cost, repayment premium and penalties, if any, on such properties of the ECs mortgaged to NEA subject to the following conditions and requirements:

1. The purpose of the EC's borrowing is for revenue enhancement, performance improvement projects, rehabilitation and upgrading projects or for rural electrification investment projects within the approved medium term plan of the Electric Cooperative.
2. Appraisal of the assets of the EC has been conducted in the last three years in accordance with Loan Policy 24 – Appraisal of Mortgaged Properties.
3. The total outstanding loans of the EC including the outstanding balance of loans assumed by PSALM (except Mini-Hydro and Dendro Thermal loans) must not exceed 70% of the revalued net utility plant in service. If the total outstanding loans exceed this limit, the NEA Board of Administrators and PSALM may allow sharing of collateral on a case to case basis.
4. The requirements of the provision of Section 9 of P.D. 269 have been fully met in the sense that the proposed loan from the Non-NEA Lenders is, in the judgment of the NEA Board of Administrators, (i) necessary or desirable to achieve the total electrification of the Philippines on an area coverage service basis, (ii) necessary to make or keep the EC's project operationally viable, (iii) necessary or desirable to enable the EC to accomplish the purposes for which it has already received a NEA loan, and (iv) the Non-NEA loan will not result in any diminution of the security of the ability of the EC to repay any of its outstanding indebtedness below the level of such security and ability were additional borrowings from a Non-NEA Lender not undertaken.
5. In case the loan to be secured by the EC's or by investors in EC's under Investment Management Contract would require guarantee, the Guarantor of the said loan shall be included as party to the Mortgage Sharing Indenture. The rights and obligations of the

Guarantor who may be subrogated to the rights of the Non-NEA Lender upon guarantee call shall be specified on the MSI.

6. The EC shall at all times be compliant with the Energy Regulatory Commission rules on the collection and remittance of universal charges.

### **DOCUMENTARY REQUIREMENTS:**

An EC borrowing funds from the Non-NEA Lender for which sharing of EC properties mortgaged to NEA is required, shall submit an application for clearance/approval to Accounts Management & Guarantee Department (AMGD) together with the following documents:

1. EC Board Resolution requesting NEA to share mortgaged properties and collateral to their loan application with the Non-NEA Lenders;
2. Duly certified audited financial statements of the EC for the last two (2) years;
3. Appraisal report prepared by a recognized and independent consultant/appraisal company accredited by NEA conducted in the last three years;
4. Details of loan application with the Non-NEA Lender including economic, technical and financial studies.

### **DEFAULT OF EC:**

In case NEA takes action as a result of default on loans of an EC that has availed itself of collateral sharing, NEA agrees to include the approved secured non-NEA lender in their action to settle such shared loan.

### **NEA's EVALUATION AND APPROVAL:**

AMGD shall conduct evaluation of the request immediately after the above requirements have been submitted. Coordination with other NEA departments shall be made by AMGD, and the recommendations on the EC's request shall be submitted by AMGD to the NEA Deputy Administrator for Corporate Resources and Financial Services within 30 calendar days from AMGD's receipt of the aforementioned documentary requirements.

The Deputy Administrator for Corporate Resources and Financial Services shall act on the aforesaid recommendations decide on whether to deny or endorse the same, and in case he or she decides to endorse said recommendations, he or she shall endorse the same to the NEA Board of Administrators, through the NEA Administrator, for approval, all within 10 calendar days from receipt thereof.

**MORTGAGE SHARING INDENTURE (MSI):**

Upon approval of the EC's aforesaid request by the NEA Board of Administrators, the EC shall execute a Mortgage Sharing Indenture (MSI) in favor of NEA and the Non-NEA lender. Upon execution of an MSI by all parties, NEA shall effect the cancellation and/or amendment of applicable existing mortgages, the cost of which shall be chargeable to the concerned EC.

**NON-NEA LENDER RIGHTS:**

Every Non-NEA Lender approved for collateral sharing pursuant to these Implementing Guidelines shall be allowed to implement additional requirements for loans in accordance with its rules, policies and regulations. However, the collateral sharing agreement does not give the Non-NEA lender the authorization to further use as collateral for any loan the EC properties subject of the collateral sharing agreement.

*Approved by the Board  
Resolution No. 47  
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