

3 January 2005

LEGAL ADVISORY NO. 05

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

SUBJECT : ADMINISTRATIVE ORDER NO. 112; Section 57 of the EPIRA

In connection with the provisions of the EPIRA LAW giving electric cooperatives the option to convert into a stock cooperative under the Cooperatives Development Act or a stock corporation under the Corporation Code, we are furnishing you the following information and legal clarifications:

1. No less than the President of the Philippines, President Gloria Macapagal Arroyo, by way of Administrative Order No. 112 hereto attached for ready reference, directed the National Electrification Administration to take full and sole authority and responsibility in the conversion of electric cooperatives into stock cooperatives.

This Administrative Order renders moot and academic any and all actions, issuances and implementing rules and regulations, or parts thereof, issued by the Cooperative Development Authority which are inconsistent with said presidential order.

2. The aforementioned option granted in Section 57 of Republic Act No. 9136 should not be interpreted as limiting the choice of electric cooperatives (ECs) to only two conversion choices, namely:

- a) stock cooperative under the Cooperative Development Act; or
- b) stock corporation under the Corporation Code.

Section 57 should be read and understood in its entirety:

“Electric cooperatives are hereby given the option to convert into either stock cooperative under the Cooperative Development Act or stock corporation under the Corporation Code. Nothing contained in this Act shall deprive electric cooperatives of any privilege or right granted them under Presidential Decree no. 269, as amended, and other existing laws.”

The law merely gave the ECs the option. The ECs may or may not exercise such option. The law clearly does not force or order the ECs to exercise the option. Hence, if an EC chooses not to avail of the option, that means, it opts to remain with NEA under P.D. No. 269, as amended.

The foregoing intent of the law becomes even clearer in the light of par. “c” subparagraph “ii” of Section 7 of Rule 7 of the IRR of RA 9136 quoted in toto:

“(c) Pursuant to Section 57 of the Act, ECs are given the option to convert into Stock Cooperatives under the CDA or Stock Corporations under the Corporation Code. Nothing contained in the Act shall deprive ECs of any privilege or right granted to them under Section 39 of Presidential Decree No. 269, as amended, and other existing laws. The conversion and registration of ECs shall be implemented in the following manner:

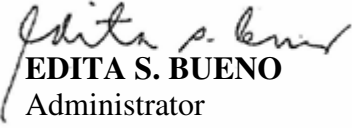
- (i) ECs shall, upon approval of a simple majority of the required number of turnout of votes as provided in the Guidelines in the Conduct of Referendum (Guidelines), in a referendum conducted for such purpose, be converted into a Stock Cooperative or Stock Corporation and thereafter shall be governed by the Cooperative Code of the Philippines or the Corporation Code, as the case may be. The NEA, within six (6) months from the effectivity of these Rules, shall promulgate the guidelines in the accordance with Section 5 of Presidential Decree No. 1645.
- (ii) ECs converted into Stock Corporation shall be registered with the SEC in accordance with the Corporation Code, while those converted into Stock Cooperatives, shall be registered with the CDA: Provided, however, That the ECs which opt to remain as non-Stock Cooperatives shall continue to be registered with the NEA and shall be governed by the provisions of Presidential Decree No. 269, as amended. (underscoring supplied.)
- (iii) An EC heretofore converted, regardless of the corporate form, or its successor entity, shall retain its franchise rights: *Provided, further, That its operations shall be regulated by the ERC and other Government instrumentalities insofar as practicable and consistent with the Act.”*

The aforecited IRR of RA 9136 was approved by the Joint Congressional Power Commission on 27 February 2002 and therefore became part of the laws of the land.

For your information and guidance.


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Noted by:


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