Republic of the Philippines

National Electrification Administration

16 February 2006

LEGAL ADVISORY NO. 11

TO	:	**ALL ELECTRIC COOPERATIVES** **ALL NEA OFFICES CONCERNED**
SUBJECT	:	**LEGAL IMPLICATIONS OF TRANSFER OF OWNERSHIP OR CONTROL OF ASSETS, FRANCHISE OR OPERATION**

Electric cooperatives whose outstanding loans were assumed by PSALM pursuant to Section 60 of Republic Act No. 9136 (otherwise known as the EPIRA) should not transfer ownership or control over their assets, franchise or operation within the five-year prohibitive period set forth in said provision reconciled from the time the EC concerned completed its amortization schedule for a period of ten (10) years pursuant to the terms of payment quoted herein below. Any such transfer would result in the revocation of the condonation so that the EC so transferring shall have to repay PSALM the total debts, including accrued interest thereon.

This is categorically and explicitly provided for in the following provisions:

1. Section 60 of the EPIRA

> "**Sec. 60.** ***Debts of Electric Cooperatives.*** – Upon the effectivity of this Act, all outstanding financial obligations of electric cooperatives to NEA 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 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 interests thereon."

2. Section 5 Rule 31 of the EPIRA IRR

> "**Section 5. Transfer of Ownership or Control of Assets, Franchise or Operation.** Within five (5) years from the completed Condonation of debt, any EC which shall transfer ownership or control of its assets, franchise or operations shall repay PSALM the total debts, including accrued interest thereon: *Provided, however,* That the ECs may enter into loan or financing agreements to allow flexibility in sourcing funds and improvement and management system for needed rehabilitation and modernization programs: *Provided, further,* That it does not involve permanent transfer or Control of the assets, franchise and operations: *Provided, finally,* That DOF and NEA shall jointly issue the necessary guidelines to protect the member-consumers of the ECs involved."

3. Paragraph "o" of Rule 4 of the EPIRA IRR

> "***Condonation***" refers to the setting aside or suspension from the ECs' books of accounts of all their financial obligations to NEA and other government agencies as a result of PSALM's assumption of the same, subject to their compliance with the Program approved by the President of the Philippines;"

4. Section 2, Article IV of the Memorandum of Agreement (Assumption of Loans) entered into by and between National Electrification Administration and Power Sector Assets and Liabilities Management

> "The repayment and/or amortization of the assumed loan of the ECs by PSALM Corp. shall be for the period of 10 years in accordance with the amortization schedule subject to adjustment as may be mutually agreed by the parties based on the results of the final audit of PSALM. *Provided That,* the repayment thereof shall be made upon compliance of the terms and condition provided under Section 5 of EO 119. (**Memorandum of Agreement signed by and between NEA and PSALM on October 3, 2003, notarized, in Quezon City, before Atty. Graciano G. Tomas with Doc. No. 255, Page No. 151, Book No. VI, Series of 2003**)

It is therefore clear that the five-year prohibitive period only begins upon the completion of the condonation. And such condonation can be considered completed only upon compliance with all the condonation conditions set forth in the EPIRA particularly including, among others, those terms and conditions in Sections 5 and 7 of Executive Order No. 119, as amended.

This Office holds the view that conversion of the EC into a stock corporation under the Corporation Code or into a stock cooperative under Cooperative Code would necessarily involve such prohibited transfer of ownership or control. In fact, there will be a total change in the ownership and the EC will now be governed by a different set of laws.

For your information and guidance.

ATTY. JOHN JOSEPH M. MAGTULOY, CPA
Deputy Administrator for Legal Services

Noted by:

EDITA S. BUENO
Administrator

2/20/06

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