DEPARTMENT OF ENERGY

COMPENDIUM OF ENERGY LAWS CIRCULARS AND OTHER ISSUANCES

VOLUME 1

THE DEPARTMENT OF ENERGY AND ATTACHED AGENCIES

FOREWORD

by the Secretary

"Ignorantia juris non excusat"

The Philippine energy sector has undergone significant structural transformations over the years.

Vital up to date developments including policies and programs to guide the government, stakeholders and consumers alike in making informed energy choices is now collaboratively synergized.

The Deparment of Energy (DOE) is proud to present the updated Second Edition of the Compendium of Energy Laws to the public, a comprehensive reference on the various Republic Acts, Protocols and Directives to guide the DOE, its attached agencies especially the upstream and downstream industry about the dynamics of the participation and responsibilities of each energy player.

I commend the invaluable efforts of the DOE-Legal Services and their partners in gathering all these in one compilation.

This publication is tangible proof of the continuing productive growth of meeting the needs of those serviced and those supplying power.

Patriotically, let us explore more ways to raise the quality of life of our Kababayans.

Para sa Lupang Hinirang.

Maraming salamat po.

ALFONSO G. CUSI

PREFACE

by the Supervising Assistant Secretary for Legal Services

The compendium of energy laws, rules, regulations and other issuances is a helpful tool to guide all industry players, relevant government entities, practitioners and the general public. While the Department of Energy (DOE) continues to craft relevant rules and regulations in the exercise of its policy making power, the compendium's density shows the sheer volume of laws, rules and regulations that are existing currently being implemented.

But what seems to be the missing link to fully achieve the common objectives of these issuances? It is the conscious and concerted effort of all stakeholders to at all times act in accord with their respective mandates.

The policy making body, the regulator and all relevant government entities must work in unison and ensure that their duties are faithfully performed. Industry players must fully comply with their corporate, environmental and social obligations without sacrificing compliance with regulatory standards.

At the end of the day, regardless of our affiliation, we are all consumers. Filling the missing link will work to our advantage because if we fail individually, we fail as a whole. A miss is as good as a mile.

This publication is a product of the resourcefulness and hardwork of the DOE Legal Services, and the hope is that this project will serve its avowed purpose of providing everyone the necessary information as to the legal aspect of energy development in the Philippines.

CARON AICITEL E. LASCANO

TABLE OF CONTENTS

CHAPTER IV. PHILIPPINE NATIONAL OIL COMPANY

For further information, please contact:

DEPARTMENT OF ENERGY

LEGAL SERVICES

Energy Center, Rizal Drive cor. 34th St.
Bonifacio Global City

www.doe.gov.ph

ATTY. ARTHUS T. TENAZAS
Director
Tel. No. 840 2273

ATTY. ISIDRO V. ALMENTEROS
Chief, General Legal Services Division
Tel. No. 840 2142

ATTY. GABRIEL B. CORPUZ
Chief, Downstream Conventional Energy Legal Services Division
Tel. No. 840 2242

ATTY. BEN JULIUS G. GAGNI
Chief, Upstream Conventional Energy Legal Services Division
Tel. No. 840 2132

ATTY. MYRA FIERA F. ROA
Chief, Power Legal Services Division
Tel. No. 541 5517

ATTY. DON G. VILLANUEVA
Chief, Renewable Energy Legal Services Division
Tel. No. 892 4619

Chapter 1
Department of Energy

REPUBLIC ACT 6173
(As Amended by Presidential Decrees Numbered 56, 102, 389-A, 429-A, 456 and 1128)

AN ACT DECLARING A NATIONAL POLICY ON THE PETROLEUM INDUSTRY, REGULATING THE ACTIVITES AND RELATIONS OF PERSONS AND ENTITIES ENGAGED THEREIN, ESTABLISHING AN OIL INDUSTRY COMMISSION TO EFFECTUATE THE SAME, AND DEFINING ITS FUNCTIONS, POWERS AND OBJECTIVES, AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. *Title*. – This Act shall be known as the *Oil Industry Commission Act.*

SEC. 2. *Definition of Terms*. –

(a) "Commission" shall mean the Oil Industry Commission.

(b) "Petroleum" shall be construed to mean a complex mixture of 84 to 87 per cent carbon, 13 to 11 per cent hydrogen, and 1 to 4 per cent impurities such as nitrogen, sulfur, and helium. It shall include products commercially known as natural gas, gasoline and kerosene in liquid form and a wide range of lubricating oils, asphalt and pitch in solid state.

(c) "Petroleum products" shall mean products formed in the course of refining crude petroleum through distillation, cracking, solvent refining and chemical treatment, coming out as primary stocks from the refinery like: LPG, naphtha, gasolines, solvents, kerosenes, aviation turbine fuels, automatic/industrial diesel oils, industrial/residual fuel oils, waxes and petrolatums, asphalts, bitumins, coke and refinery sludges, or such refinery petroleum fractions which have not undergone any process or treatment as to produce separate chemically defined compounds in a pure or commercially pure state; and to which various substances may have been added to render them suitable for particular uses, provided that the resultant product contains not less than 50% by weight of such petroleum products. (As amended by P.D. 1128, April 25, 1977)

SEC. 3. *Declaration of Policy and Purposes.* – Petroleum and its products being vital to national security, and their continued supply at reasonable prices being essential to the general welfare, it is hereby declared to be the policy of the State that the act and business of importing , exporting, re-exporting, shipping, transporting, processing, refining, storing, distributing, marketing, and selling crude oil, gasoline, kerosene, gas and other refined petroleum products as well as operations and activities of natural and juridical persons, firms and entities engaged in the petroleum industry shall be carried out in a manner

consistent with the public interest, so as to attain the following objectives and purposes:

(a) To assure that the country shall have a proper adequate and continuous supply of crude oil and refined petroleum products under the most economic and competitive terms possible considering all available sources of supply;

(b) To assure that the petroleum industry, as a business vital to the national interest, operates under conditions of orderly and economic competition;

(c) To assure the public of reasonable prices for petroleum products considering the international price levels of crude oil and petroleum products and after allowing for proper and reasonable cost of importing, shipping, transporting, processing, refining, storing, distributing, marketing, and selling crude oil and petroleum products in the Philippines, and for a fair and reasonable return; and to prevent collusive practices in the industry, particularly as to prices;

(d) To protect petroleum dealers and distributors from unfair and onerous trade conditions;

(e) To minimize the cost of, and the outflow of foreign exchange involved in the operations of the industry;

(f) To induce and effect the increasing participation of Filipino capital, labor and management in the industry and to prevent discrimination against any person by reason of race, color, creed or political belief; and

(g) To regulate investments of oil companies, in order to prevent monopoly, combinations in restraint of trade, unfair competition and economic domination.

However, this Act shall not apply to oil exploration or to industries not connected with petroleum importation, refining or distribution. (As amended by P.D. 1128).

SEC. 4. *Oil Industry Commission.* – To implement the national policy and attain the objectives and purposes of this Act, an independent Commission is hereby created, which shall be known as the Oil Industry Commission, and shall be organized within sixty days after the approval of this Act. The Commission shall be composed of a Chairman and four Associate Commissioners. The Chairman and the Associate Commissioners shall be natural-born citizens and residents of the Philippines. In addition, the Chairman shall possess all the qualifications of a Justice of the Supreme Court and the Associate Commissioners shall be at least thirty-five years old, of good moral character and of recognized competence in the field of economics, finance, banking, commerce, industry, agriculture, engineering, management, law or labor. They shall be appointed by the President of the Philippines, with the consent of the Commission on Appointments. No person who has worked within three years immediately prior to his appointment or is working in any firm engaged in the petroleum industry or any other entity whose main business is directly related to any such firm shall be appointed to the Commission.

The term of office of the Chairman and the Associate commissioners shall be four years, but the first Chairman appointed shall hold office for four years and of the first four commissioners two shall hold office for a term of two years, and two for a term of three years. No person may be appointed to serve more than two successive terms.

The Chairman and Associate Commissioners shall, upon assumption of office and within the month of January of every other year thereafter, as well as upon the expiration of their respective terms of office, or upon their resignation or separation from office, prepare and file with the offices of the President, the President of the Senate and the Speaker of the House of Representatives a true, accurate, complete, detailed and sworn statement of assets and liabilities, including a statement of

amounts and sources of income, amounts of personal and family expenses, and amounts of income taxes paid for the next preceding calendar year: *Provided*, That the first statement may be filed within the month of January next following if the Chairman or Associate Commissioner concerned assumes office less than two months before the end of the calendar year.

Three members of the Commission shall constitute quorum and the vote of three members shall be necessary for the adoption of any rule, ruling, order, resolution, decision or other act of the Commission. The commission shall hold office in the city of Manila or at such other place as the President of the Philippines may designate.

SEC. 5. *Compensation of Commissioners.* – The Chairman of the Oil Industry Commission shall receive a compensation of Fifty thousand pesos and a monthly commutable allowance of six hundred pesos. The Chairman and Associate Commissioners shall devote their full time to the Commission and shall not accept other employment.

SEC. 6. *Staff* – The commission shall appoint and maintain an adequate staff, which shall include a Secretary-Executive Director who shall be a member of the Philippine Bar with at least five years experience in the active practice of law in the Philippines or in the discharge of an office requiring as an indispensable requisite admission to the practice of law in the Philippines. He shall be the recorder and official reporter of the Commission, and of reports, documents and papers filed in connection with any case or proceedings before the Commission. He shall likewise be responsible for the effective implementation of the policies, rules and directives promulgated by the Commission, shall coordinate and supervise the activities of the different operating units and shall perform such functions as may be assigned to him by the Chairman and/or by the Commission.

The members of the technical staff, except for those performing purely clerical functions, shall possess at least a bachelor's degree in the line of specialization required by their respective positions: *Provided,* That except to positions which are policy-determining, highly technical or primarily confidential, all positions in the Commission are subject to the provisions of the *Civil Service Law* and Rules, but are exempt from the regulations of the Wage and Position Classification Office. (As amended by P.D.1128)

SEC. 7. *Functions of the Commission*. – The Commission shall have supervision and jurisdiction over all persons, corporations, firms or entities engaged in the business of importing, exporting, re-exporting, shipping, transporting, processing or refining of indigenous and imported crude oil or other petroleum products, storing, marketing, distributing, or selling, both at wholesale and retail, gasoline, gas, oil, kerosene, and other crude or refined petroleum products, and shall regulate and supervise the operations and activities of said persons and entities including the following:

(a) To set conditions which would accomplish the purposes of this Act, under which persons, natural or juridical, can engage or continue engaging in the business of importing, exporting, re-exporting, shipping, transporting, processing, refining, storing, distributing, marketing or selling crude oil, gasoline, kerosene, gas, and other refined petroleum products or by-products;

(b) To study the importation of crude oil into the Philippines and to determine its most economical sources, transportation routes, and freight rates;

(c) To look into all available sources of supply of crude oil, draw up plans to cope with such contingencies as may arise should prevailing sources of supply become closed or inaccessible, and enter into such preliminary negotiations or arrangements with possible alternative

sources as may be necessary to assure a stable, adequate and continuous supply of crude oil and refined petroleum products under the most economic and competitive terms possible;

(d) To encourage and assist in the organization of associations of Filipino oil and petroleum dealers and distributors throughout the Philippines, public utility operators, oil and petroleum consumers, and other similar groups, through the formation of cooperatives or through other group action;

(e) To recommend to the President that the State, thru such agency or agencies as the President may designate, acquire equity in any refinery now existing or that may be organized hereafter: *Provided, however,* That equity so acquired shall be made available to the public, giving priority to dealers of petroleum products and gasoline owners or operators; and

(f) To do and perform any and all such acts as may be necessary and proper to carry out the purpose of this Act.

The jurisdiction of, and all functions exercised by, the Bureau of Mines over petroleum refineries are hereby transferred to the Commission. (As amended by P.D. 1128)

SEC. 8. *Powers of the Commission Upon Notice and Hearing.* – The Commission shall have power, upon proper notice and hearing, in accordance with the provisions of this Act:

(a) To determine whether current market prices of petroleum products are reasonable and to set the prices of the same, providing for a fair and reasonable return. No changes in prices may thereafter be made by the Commission without prior public notice and hearing at which any consumer of petroleum products and other parties who may be affected may appear and participate. In setting prices or making changes, thereof, the Commission shall be guided by the following considerations:

(1) Whether claimed increases or decreases in costs, sales or profits are real or simulated;

(2) Whether expenses and costs which are claimed to have been incurred, or are being incurred, or are to be incurred are reasonable, and whether any increases therein may be offset by increased efficiency and reduction of excessive or unnecessary expenses;

(3) The impact of the proposed prices or change therein on the economy and on the consuming public, particularly low income groups and industries essential to the national welfare or security; and

(4) The cost and profit levels of the industry.

(b) To regulate the capacities of existing refineries or additional capacities of existing refineries so as to accomplish the purposes and objectives of this Act;

(c) To license refineries that may be organized after the passage of this Act, under such terms and conditions as are consistent with the national interest;

(d) To regulate the operations and trade practices of the industry in order to encourage orderly competition, prevent monopolies and collusive practices within the industry, giving due regard to the ecological and environmental needs of the country;

(e) To review the cost at which crude oil had been imported into the Philippines within the preceding year, whether by private entities or by the Government, whenever the Commission had received a formal complaint or has reason to believe that prices or shipping costs at which crude oil has been or being imported into the Philippines are unreasonable or out

of line with trends in the international market, taking consideration among other factors, the quality and security of supply, availability and location of crude oil, and freight rates prevailing at the time; and, if found to unreasonable or out of line, to require the importer or importers concerned to reimburse the excess of the foreign exchange involved to the Central Bank and to fix the maximum import cost, requiring that, before future importations be made at a cost in excess thereof, the approval of the Commission in the exercise of this power shall be binding on the Central Bank, the Bureau of Customs and all other executive agencies of the government;

(f) To require that preference be given to Philippine vessels and bottoms for the purpose of transporting crude oil to and from the Philippines where said vessels can undertake said function on substantially the same basis as foreign-owned vessels;

(g) To take adequate steps to prevent monopolies and combinations in restraint of trade within the petroleum industry, or involving enterprises engaged in the petroleum industry;

(h) To recommend to the President that the State, through such agency as the President may designate, take over the operation of any refinery or other firm, corporation or entity engaged in the petroleum industry whenever the public welfare or national interest so requires or (1) such refinery, firm, corporation or entity ceases or threatens to cease or substantially reduces or threatens to reduce substantially its operations; and (2) its cessation or threatened cessation or reduction or threatened reduction of operations threatens the continued supply of petroleum products at reasonable prices to the general public or to industries dependent on petroleum products for sources of energy, or otherwise creates a clear and present danger to the national welfare or national security: *Provided, however,* That the operation by the State shall continue only for such period of time as the threat or danger persists: *Provided, further,* That just compensation shall be paid for the use of the property: *And, provided, finally,* That any unrecovered investment made by the State during the take-over shall be reimbursed by the refinery, firm, corporation or entity;

(i) Whenever the Commission has determined that there is a shortage of any petroleum product affecting public interests, it may, in order to relieve the shortage, authorize or approve the importation by an agency or instrumentality of the government or a government owned or controlled corporation of crude oil or petroleum product from any available source, and take such other steps as it may consider necessary, including the temporary adjustment of the levels of prices of petroleum products and the adoption of a mechanism which will require the payment of the Special Fund created under the next succeeding paragraph by persons or entities engaged in the petroleum industry of such amounts, as may be determined by the Commission, which will enable the importer to recover its cost of importation. (As amended by Presidential Decree No. 429-A, April 6, 1974)

(j) Whenever an authorized increase in the prices of petroleum products would result in an extra ordinary gain from existing inventories, the Commission is hereby empowered to take measures, including the payment by the persons or companies benefited, to a Special Fund which is hereby created, of such amounts as the Commission may determine in an appropriate order, as would assure that said extra ordinary gain shall redound to the public interest.

Until otherwise provided the Special Fund herein created shall be utilized for projects relating to the consumption or use of crude oil, gas and other petroleum products; for the development of other sources of energy; for exploration and researches on conservation, anti-pollution and other similar studies to subsidize importation of crude oil and refined petroleum products by government agencies, or government-owned or controlled corporations, to assure adequate and continuous supply of petroleum products at reasonable prices; and such other special economic and social projects as may be determined by the President of the Philippines. The special Fund shall be administered as the President may direct. (As amended by Presidential Decree No. 389-A, Feb. 14,1974 and further amended by Presidential Decree No. 456, May 14, 1974)

SEC. 9. *Powers of the Commission Without Hearing.* – The Commission shall have the power to do the following without hearing :

(a) Require importers of crude oil and petroleum products to file with the Commission data on the import and shipping costs as well as other material information relative thereto;

(b) Require all persons, corporations and other entities engaged in the petroleum industry and their associations or institutes, to furnish it with such relevant information as it may need to discharge its duties under this Act, and to exercise its functions and powers under Section seven, eight and ten of this Act;

(c) Require all dealership agreements to be filed and registered with the Commission as public documents;

(d) Issue subpoena and subpoena duces tecum in any inquiry, study, hearing, investigation, or proceedings which it may decide to undertake in the exercise of its functions, powers and duties under this Act;

(e) Promulgate rules and regulations relevant to procedures governing hearings before Commission and enforce compliance with any rule, regulations, order, or other requirement of this Act or of the Commission: *Provided,* That said rules and regulations shall take effect fifteen days after publication in the *Official Gazette;* and

(f) Perform such other acts as may be necessary or conducive to the exercise of its functions and powers and the discharge of its duties under this Act. (As amended by P.D. 1128)

SEC. 10. *Other Duties of the Commission.*– The Commission shall undertake a continuing study of the petroleum industry in its domestic and international aspects, gather and collate information and statistics bearing on the industry, submit an annual report to the members of Congress and to the President of the Philippines on its activities and the results of its studies, including therein such matters as it may deem appropriate subjects of legislation or executive action. The Commission shall likewise keep itself regularly and thoroughly informed of conditions in the industry in order to enable it to perform its functions, exercise its powers and discharge its duties effectively.

The annual report of the Commission shall include, among others, the following data on a company by company basis:

(a) Volume, weight, type, import price, and supplier of crude oil and petroleum products imported;

(b) Tonnage, type, nationality and ownership of vessels used in importing crude oil and petroleum products, as well as shipping costs;

(c) Audited financial statements of petroleum refineries and marketing companies;

(d) Data on exported products, price of same, country of destination, and vessel used;

(e) Listed wholesale price of gasoline on a monthly basis;

(f) Posted and market prices of crude oil at sources of importation and other known sources of crude oil supply; and

(g) Cost of refining petroleum products.

SEC. 11. *Commission Procedures*. – All inquiries, studies, hearings, investigations and proceedings conducted by the Commission shall be governed by rules adopted by the Commission, and in the conduct thereof the Commission shall not be bound by the technical rules of evidence; *Provided,* That the Commission may summarily punish for contempt by a fine not exceeding five hundred pesos or by imprisonment not exceeding thirty days or both, any person guilty of such misconduct in the presence of the Commission or so near thereto as to seriously interrupt any hearing or session or any proceedings before it, including cases in which a person willfully fails or refuses, without just cause, to comply with a summons, subpoena, subpoena duces tecum, decision or order, rules and regulations legally issued or promulgated by the Commission or being present at a hearing, session or investigation refuses to be sworn as a witness or to answer questions when lawfully required to do so, or to furnish information required by the Commission under this Act. The sheriff and other police agencies of the place where the hearing or investigation is conducted shall, upon the request of the Commission, assist it to enforce the provision of this Section. (As amended by P.D. 1128).

SEC. 12. *Review of Commission's Order; Commission Authority to Grant Provisional Relief.* – A party adversely affected by a decision or any order of the Commission, may, within seven (7) days from receipt of said decision or order, appeal in writing, stating clearly and distinctly the grounds relied upon, to the Office of the President, which shall have exclusive authority and jurisdiction to review, reverse, modify or amend the same. The decision or order of the Commission in such cases, shall be final , unless reversed, altered or modified, either on appeal or on review *motu proprio* within the period herein below stated.

The Office of the President shall likewise have the power to review, *motu proprio*, any decision or order of the Oil Industry Commission fixing the prices of petroleum products. For this purpose, certified copies of such decisions or orders of the Commission shall be forwarded to the Office of the President immediately upon promulgation thereof.

The decision of the Office of the President, on appeal or after review *motu proprio*, shall be final. Unless the Office of the President directs otherwise, appeal or *motu proprio* review shall not stay execution or implementation of the decisions or orders of the Oil Industry Commission, which shall be executory upon the expiration of seven (7) days after their promulgation.

The Commission may, upon the filing of an application, petition or complaint or at any stage thereafter, and without prior hearing, on the basis of supporting papers duly verified or authenticated, grant provisional relief on motion of a party in the case or on its own initiative, without prejudice to a final decision after hearing, should the Commission find that the pleadings, together with such affidavits, documents and other evidence which may be submitted in support of the motion, substantially support the provisional order. (As further amended by P.D. 1128)

SEC. 13. *Petroleum Dealer's or Distributors' Association*.– For the purpose of this Act, a petroleum dealers' or distributors' association is an organization or association of petroleum dealers or distributors dealing in petroleum products duly registered with the Securities and Exchange Commission.

SEC. 14. *Requirements to Petroleum Dealers' and Distributors' Association*. – Every petroleum dealers' or distributors' association duly registered with the Securities and Exchange Commission, shall keep books and records containing a list of its members in alphabetical order and the minutes if its meetings, a list of its officers and in general shall comply with all the rules and regulations of the Securities and Exchange Commission.

SEC. 15. *Appropriations.* – For the proper implementation of this Act, the sum of one million five hundred thousand pesos is hereby appropriated out of any funds in the National Treasury not otherwise appropriated for the operating expenses of the Commission for the fiscal years nineteen hundred and seventy-two. Any unobligated balance of this initial appropriation may, however, still be used by the Commission in subsequent fiscal years.

Beginning with fiscal year nineteen hundred and seventy-three, the operational expenses of the Commission shall be drawn from fees and charges collected under the authority of Section 15, hereafter to be cited as Section 16 of this Act and from application, licensing, registration and other fees or charges and administrative fines and surcharges which the Commission is hereby authorized to impose or collect.

All applications, licensing, registration and other fees or charges hereby authorized to be imposed or collected shall be payable on or before the dates prescribed by the Commission. If the said fees or charges are not paid within the prescribed time, the amount thereof shall be increased by twenty-five per centum to become part of the fee or charge.

In the exercise of its functions and enforcement and implementation of this law, its decisions, orders, and regulations, the Commission may require that amounts unrefunded to purchasers by dealers found guilty of overpricing in the sales of petroleum products, be deposited with its cashier as a trust fund of the Commission, said amounts to be disposed of as financial assistance to the Barangay of the locality where the overpricing was committed or to other Barangays in coordination with the Department of Local Governments and Community Development. The funds and monies that may come to the possession of the Commission from administrative fines for violations of its decisions, order, rules and regulations and from surcharges on delinquent payment of prescribed fees, as well as from payment of application, registration and license fees shall be disbursed by the Commission for the health , welfare and other similar benefits of its employees, *Provided,* That the additional amounts so distributed do not exceed fifty per centum (50%) of the annual basic salary of each employee; and *Provided, further;* That such disbursements shall be subject to existing rules and regulations. (As further amended by P.D. 1128)

SEC.16. *Additional Fee on Importations and Turn-Over of Collections.* – Effective July one, nineteen hundred and seventy-one , there shall be levied, assessed and collected , an additional fee of one tenth of one percent of the CIF value of crude oil and petroleum products imported into the Philippines. The fee imposed herein shall be collected at the same time, in the same manner and subject to the same penalties as the duties and taxes regularly imposed on such products. This fee shall not be a basis for any increase in the price of any petroleum product as of the approval of this Act.

The Commissioner of Customs shall turn over the collections to the Treasurer of the Philippines monthly within the first ten days of the succeeding month. (As amended by Presidential Decree No. 102 , January 19,1973 and further amended by Presidential Decree No. 389 -A , February 14,1974.)

SEC. 17. *Payment to Special Fund.*- The Commission is hereby empowered to require through an appropriate order, payment by persons or companies engaged in the business of importing, manufacturing and /or marketing petroleum products, to the Special

Fund created under Section 8 (j) of this Act, or amounts not exceeding fifteen centavos (P 0.15) per liter or refined petroleum products. In the exercise of this power, the Commission shall take into account the requirements of Special Fund in relation to the purposes for which it was created, the effect of the payment on prices of petroleum products and corollarily, its cost impact on the economy and/or the consuming public and the cost and profit levels of the industry. (As amended by Presidential Decree No. 456, May 14, 1974)

SEC. 18 *Penalties.* – (a) Any person who gives false or misleading data or information or willfully or through gross negligence, conceals or falsifies a material fact, in any investigation, inquiry, study or other proceedings held pursuant to this Act, shall be punished with imprisonment of not less than two or more than six months, and with a fine of not less than five hundred nor more than one thousand pesos: *Provided, however,* That if the false or misleading data or information shall have been given under oath, the maximum penalty for giving false testimony or perjury shall be imposed;

(b) Any person who violates any provision of this Act or any order, decision, ruling, or regulation of the Commission shall, upon conviction, be sentenced for a period of not less than six months and not more than five years and a fine of not less than five thousand pesos and not more than twenty-five thousand pesos. If the offender be a corporation, partnership or juridical person, the penalty shall be imposed on the officer or officers responsible for permitting or causing a violation by the corporation, partnership or juridical person of the provisions of this Act;

(c) If the offender be a government official or employee, the maximum penalty prescribed in paragraph (b) shall be imposed and the offender shall suffer the additional penalty of perpetual disqualification from public office without prejudice to any administrative action against him;

(d) If the offender be a member of the Oil Industry Commission, and the commission of the offense is attended by clear abuse of discretion on his part, or by any corrupt practice defined in Republic Act Numbered Three thousand nineteen, otherwise known as the *Anti-Graft and Corrupt Practices Act,* or other similar irregularity, the penalty imposed shall be a fine of fifty thousand pesos and imprisonment of not less than ten years. A like penalty shall be imposed upon any private person, whether in the government service or not, who induces, aids or abets the offender in the Commission of the offense;

(e) It shall be an offense, penalized as provided in paragraph (c) or (d) above, whichever may be applicable, for any person serving in the Oil Industry Commission either as a Commissioner or as a staff member to directly or indirectly be employed by , or to receive any compensation from, or to have any direct or indirect financial interest in, any firm engaged in importing. refining or marketing crude oil or any petroleum product;

(f) Any alien violating this Act shall, in addition to the penalty herein provided, be deported after service of sentence and shall not be permitted reentry into the Philippines.

SEC. 19. *Separability of Any Provision*. – If any provision of this Act shall be held invalid, the remainder of this Act shall not be affected thereby.

SEC. 20. *Repealing Clause.* – The provisions of Republic Act Numbered Sixty-one hundred and twenty-four, otherwise known as the *Price Control Law*, referring to petroleum products and all Acts or parts of Acts inconsistent with this Act are hereby repealed but the repeal shall not affect judicial actions, prosecutions

or proceedings begun while the same were in force.

SEC. 21. *Effective Date.* – This Act shall take effect upon its approval.

Approved, April 30,1971.

PRESIDENTIAL DECREE NO. 910

CREATING AN ENERGY DEVELOPMENT BOARD, DEFINING ITS POWERS AND FUNCTIONS, PROVIDING FUNDS, THEREFOR, AND FOR OTHER PURPOSES

WHEREAS, there is need to intensify, strengthen, and consolidate government efforts relating to the exploration, exploitation and development of indigenous energy resources vital to economic growth;

WHEREAS, it is imperative that government accelerate the pace of, and focus special attention on, energy exploration, exploitation and development in the light of encouraging results in recent oil exploration and of world-wide developments affecting our continued industrial progress and well-being; and

WHEREAS, it is essential in the interest of efficiency, economy, and effectiveness to integrate and coordinate through a single governmental entity the functions of various agencies pertaining to the exploration and development of indigenous extracted resources.

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order and decree the following to be part of the law of the land:

SECTION 1. *Declaration of Policy.* – It is declared policy of the State to achieve self-reliance in the country's energy requirements primarily through the intensified and coordinated exploration, exploitation and development of indigenous energy resources in order to accelerate overall economic growth.

SEC. 2. *Creation of the Energy Development Board.* – To implement the aforesaid policy, there is hereby created an Energy Development Board, hereinafter referred to as the Board, which shall be composed of the Secretary of Finance, Secretary of Industry, Secretary of Justice, Secretary of National Defense, Secretary of Economic Planning, Secretary of Natural Resources, and the Chairman of the Philippine National Oil Company. The President of the Philippines shall designate the Chairman of the Board from among its members.

The officials next in rank to the members of the Board, as designated by them, shall serve as alternate members. They shall attend the meetings of the Board whenever their principals are absent or their positions are vacant.

SEC. 3. *Powers and Functions of the Board.* – The Board shall have the following powers and functions:

(a) Formulate policies and implement and coordinate all activities of the government relative to the exploration, exploitation and development, and extraction of energy resources including fossil fuels such as petroleum, coal, natural gas and gas liquids; geothermal resources; nuclear fuel resources; and other less conventional existing and potential forms of indigenous energy resources;

(b) Establish and administer a comprehensive and integrated program for the exploration, exploitation, development, and extraction of fossil and nuclear fuels, geothermal resources, and other less conventional forms of indigenous extracted energy resources;

(c) Undertake by itself or through other arrangements, such as service contracts, the active exploration, exploitation, development, and extraction of energy resources in selected areas and/or in government reservations;

(d) Regulate all activities relative to the exploration, exploitation, development, and extraction of fossil and nuclear fuels and geothermal resources and, where necessary, prescribe and collect fees in the exercise of such power;

(e) Assess, review and provide direction to energy research and development programs including identification of sources of energy and determination of their commercial feasibility for development;

(f) Exercise the powers and functions of the abolished Petroleum Board transferred to the Board under Section 5 of this Decree;

(g) Coordinate, review and approve plans and programs of the Power Development Council which is hereby attached to the Board;

(h) Promulgate such rules and regulations as may be necessary to implement the objectives and provisions of this Decree; and

(i) Exercise all powers necessary or incidental to attain the objectives of this Decree.

SEC. 4. *Officials and Employees of the Board.* – The Board shall be assisted by an Executive Director appointed by the Board. Any provision of law to the contrary notwithstanding the Board shall appoint the officers and employees of the Board, fix their compensation, allowances and benefits, their working hours and such other conditions of employment as it may deem proper, grant them leaves of absence under such regulations as it may promulgate, discipline and/or remove for cause, and establish and maintain a recruitment and merit system.

SEC. 5. *Abolition of the Petroleum Board.* – The Petroleum Board is hereby abolished and its powers and functions are transferred to the Board together with applicable funds and appropriations, records, equipment, property, and such personnel as may be necessary.

SEC. 6. *Transfer of the Functions of the Bureau of Mines and/or the Department of Natural Resources.* – The powers and functions of the Bureau of Mines and/or the Department of Natural Resources relative to the exploration, development, and administration of coal bearing lands as provided for in Presidential Decree No. 463 and Act No. 2719, as amended, are transferred to the Board. The powers and functions of the Bureau of Mines and/or the Department of Natural Resources under Republic Act No. 5092 and other laws relating to the promotion and regulation of the exploration, exploitation and development of geothermal energy, natural gas and methane gas are likewise transferred to the Board. Such transfer shall include applicable records, equipment, property, funds and appropriations, and such personnel as may be necessary.

SEC. 7. *Philippine National Petroleum Center.* – The Philippine National Petroleum Center shall be under the supervision and control of the Board.

SEC. 8. *Appropriations.* – The sum of Five Million Pesos out of any available funds from the National Treasury is hereby appropriated and authorized to be released for the organization of the Board and its initial operations. Henceforth, funds sufficient to fully carry out the functions and objectives of the Board shall be appropriated every fiscal year in the *General Appropriations Act*.

All fees, revenues and receipts of the Board from any and all sources including receipts from service contracts and agreements such as application and processing fees, signature bonus, discovery bonus, production bonus; all money collected from concessionaires, representing unspent work obligations, fines and penalties under the *Petroleum Act of 1949*; as well as the government share representing royalties, rentals, production share on service contracts and similar payments on the exploration, development and exploitation of energy resources, shall form part of a Special Fund to be used to finance energy resource development and exploitation programs and projects of the government and for such other purposes as may be hereafter directed by the President.

SEC. 9. *Reports.* – The Board shall, within three months after the end of every fiscal year, submit its annual report to the President. The annual report shall include an energy development plan insofar as the exploration, exploitation, development, and extraction of indigenous extracted energy resources are concerned. It shall likewise submit such periodic or other reports as may be required of it from time to time.

SEC. 10. *Separability Clause.* – Should any provision of this Decree be held unconstitutional, no other provision hereof shall be affected thereby.

SEC. 11. *Repealing Clause.* – All laws, decrees, executive orders, administrative orders, rules or regulations inconsistent herewith are hereby repealed, amended or modified accordingly.

SEC. 12. *Effectivity.* – This Decree shall take effect immediately.

Done in the City of Manila, this 22nd day of March, in the year of Our Lord, nineteen hundred and seventy-six.

Case Related:

Republic of the Philippines
SUPREME COURT
Manila

EN BANC

G.R. No. 208566 November 19, 2013

GRECO ANTONIOUS BEDA B. BELGICA JOSE M. VILLEGAS JR. JOSE L. GONZALEZ REUBEN M. ABANTE and QUINTIN PAREDES SAN DIEGO, Petitioners,
vs.
HONORABLE EXECUTIVE SECRETARY PAQUITO N. OCHOA JR. SECRETARY OF BUDGET AND MANAGEMENT FLORENCIO B. ABAD, NATIONAL TREASURER ROSALIA V. DE LEON SENATE OF THE PHILIPPINES represented by FRANKLIN M. DRILON m his capacity as SENATE PRESIDENT and HOUSE OF REPRESENTATIVES represented by FELICIANO S. BELMONTE, JR. in his capacity as SPEAKER OF THE HOUSE, Respondents.

x - x

G.R. No. 208493

SOCIAL JUSTICE SOCIETY (SJS) PRESIDENT SAMSON S. ALCANTARA, Petitioner,
vs.
HONORABLE FRANKLIN M. DRILON in his capacity as SENATE PRESIDENT and HONORABLE FELICIANO S. BELMONTE, JR., in his capacity as SPEAKER OF THE HOUSE OF REPRESENTATIVES, Respondents.

x - x

G.R. No. 209251

PEDRITO M. NEPOMUCENO, Former Mayor-Boac, Marinduque Former Provincial Board Member -Province of Marinduque,
Petitioner,
vs.
PRESIDENT BENIGNO SIMEON C. AQUINO III* and SECRETARY FLORENCIO BUTCH ABAD, DEPARTMENT OF BUDGET AND MANAGEMENT, Respondents.

D E C I S I O N

PERLAS-BERNABE, *J.:*

"Experience is the oracle of truth."[1]

-James Madison

Before the Court are consolidated petitions[2] taken under Rule 65 of the Rules of Court, all of which assail the constitutionality of the Pork Barrel System. Due to the complexity of the subject matter, the Court shall heretofore discuss the system's conceptual underpinnings before detailing the particulars of the constitutional challenge.

The Facts

I. Pork Barrel: General Concept.

"Pork Barrel" is political parlance of American - English origin.[3] Historically, its usage may be traced to the degrading ritual of rolling out a barrel stuffed with pork to a multitude of black slaves who would cast their famished bodies into the porcine feast to assuage their hunger with morsels coming from the generosity of their well-fed master.[4] This practice was later compared to the actions of American legislators in trying to direct federal budgets in favor of their districts.[5] While the advent of refrigeration has made the actual pork barrel obsolete, it persists in reference to political bills that "bring home the bacon" to a legislator's district and constituents.[6] In a more technical sense, "Pork Barrel" refers to an appropriation of government spending meant for localized projects and secured solely or primarily to bring money to a representative's district.[7] Some scholars on the subject further use it to refer to legislative control of local appropriations.[8]

In the Philippines, "Pork Barrel" has been commonly referred to as lump-sum, discretionary funds of Members of the Legislature,[9] although, as will be later discussed, its usage would evolve in reference to certain funds of the Executive.

---

* Dropped as a party per Memorandum dated October 17, 2013 filed by counsel for petitioners Atty. Alfredo B. Molo III, et al. Rollo (G.R. No. 208566), p. 388.

** No part.

1 The Federalist Papers, Federalist No. 20.

2 Rollo (G.R. No. 208566), pp. 3-51; rollo (G.R. No. 208493), pp. 3-11; and rollo (G.R. No. 209251), pp. 2-8.

3 "'Pork barrel spending,' a term that traces its origins back to the era of slavery before the U.S. Civil War, when slave owners occasionally would present a barrel of salt pork as a gift to their slaves. In the modern usage, the term refers to congressmen scrambling to set aside money for pet projects in their districts." (Drudge, Michael W. "'Pork Barrel' Spending Emerging as Presidential Campaign Issue," August 1, 2008 http://iipdigital.usembassy.gov/st/english/article/2008/08/20080801181504lcnirellep 0.1261713.html#axzz2iQrI8mHM> [visited October 17, 2013].)

4 Bernas, Joaquin G., S.J., The 1987 Constitution of the Republic of the Philippines: A Commentary, 2003 Edition, p. 786, citing Bernas, "From Pork Barrel to Bronze Caskets," Today, January 30, 1994.

5 Heaser, Jason, "Pulled Pork: The Three Part Attack on Non-Statutory Earmarks," Journal of Legislation, 35 J. Legis. 32 (2009). <http://heinonline.org/HOL/LandingPage?collection=&handle=hein.journals/jleg35&div=6&id=&page=> (visited October 17, 2013).

6 Nograles, Prospero C. and Lagman, Edcel C., House of Representatives of the Philippines, "Understanding the 'Pork Barrel,'" p. 2. <http://www.congress.gov.ph/download/14th/pork_barrel.pdf> (visited October 17, 2013).

7 Chua, Yvonne T. and Cruz, Booma, B., "Pork is a Political, Not A Developmental, Tool." <http://pcij.org/stories/2004/pork.html> [visited October 22, 2013].) See also rollo (G.R. No. 208566), pp. 328-329.

8 Morton, Jean, "What is a Pork Barrel?" Global Granary, Lifestyle Magazine and Common Place Book Online: Something for Everyone, August 19, 2013. <http://www.globalgranary.org/2013/08/19/what-is-a-pork-barrel/#.UnrnhFNavcw > (visited October 17, 2013).

9 Jison, John Raymond, "What does the 'pork barrel' scam suggest about the Philippine government?" International Association for Political Science Students, September 10, 2013. <http://www.iapss.org/ index.php/articles/item/93-what-does-the-pork-barrel-scam-suggest-about-the-philippine-government> (visited October 17, 2013). See also Llanes, Jonathan, "Pork barrel – Knowing the issue," Sunstar Baguio, October 23, 2013. <http://www.sunstar.com.ph/ baguio/opinion/2013/09/05/llanes-pork-barrel-knowing-issue-301598> (visited October 17, 2013).

II. History of Congressional Pork Barrel in the Philippines.

A. Pre-Martial Law Era (1922-1972).

Act 3044,[10] or the Public Works Act of 1922, is considered[11] as the earliest form of "Congressional Pork Barrel" in the Philippines since the utilization of the funds appropriated therein were subjected to post-enactment legislator approval. Particularly, in the area of fund release, Section 3[12] provides that the sums appropriated for certain public works projects[13] "shall be distributed x x x subject to the approval of a joint committee elected by the Senate and the House of Representatives. "The committee from each House may also authorize one of its members to approve the distribution made by the Secretary of Commerce and Communications."[14] Also, in the area of fund realignment, the same section provides that the said secretary, "with the approval of said joint committee, or of the authorized members thereof, may, for the purposes of said distribution, transfer unexpended portions of any item of appropriation under this Act to any other item hereunder."

In 1950, it has been documented[15] that post-enactment legislator participation broadened from the areas of fund release and realignment to the area of project identification. During that year, the mechanics of the public works act was modified to the extent that the discretion of choosing projects was transferred from the Secretary of Commerce and Communications to legislators. "For the first time, the law carried a list of projects selected by Members of Congress, they 'being the representatives of the people, either on their own account or by consultation with local officials or civil leaders.'"[16] During this period, the pork barrel process commenced with local government councils, civil groups, and individuals appealing to Congressmen or Senators for projects. Petitions that were accommodated formed part of a legislator's allocation, and the amount each legislator would eventually get is determined in a caucus convened by the majority. The amount was then integrated into the administration bill prepared by the Department of Public Works and Communications. Thereafter, the Senate and the House of Representatives added their own provisions to the bill until it was signed into law by the President – the Public Works Act.[17] In the 1960's, however, pork barrel legislation reportedly ceased in view

10 Entitled "AN ACT MAKING APPROPRIATIONS FOR PUBLIC WORKS," approved on March 10, 1922.

11 "Act 3044, the first pork barrel appropriation, essentially divided public works projects into two types. The first type—national and other buildings, roads and bridges in provinces, and lighthouses, buoys and beacons, and necessary mechanical equipment of lighthouses—fell directly under the jurisdiction of the director of public works, for which his office received appropriations. The second group—police barracks, normal school and other public buildings, and certain types of roads and bridges, artesian wells, wharves, piers and other shore protection works, and cable, telegraph, and telephone lines—is the forerunner of the infamous pork barrel. Although the projects falling under the second type were to be distributed at the discretion of the secretary of commerce and communications, he needed prior approval from a joint committee elected by the Senate and House of Representatives. The nod of either the joint committee or a committee member it had authorized was also required before the commerce and communications secretary could transfer unspent portions of one item to another item." (Emphases supplied) (Chua, Yvonne T. and Cruz, Booma, B., "Pork by any name," VERA Files, August 23, 2013. <http://verafiles.org/pork-by-any-name/> [visited October 14, 2013]).

12 Sec. 3. The sums appropriated in paragraphs (c), (g), (l), and (s) of this Act shall be available for immediate expenditure by the Director of Public Works, but those appropriated in the other paragraphs shall be distributed in the discretion of the Secretary of Commerce and Communications, subject to the approval of a joint committee elected by the Senate and the House of Representatives. The committee from each House may authorize one of its members to approve the distribution made by the Secretary of Commerce and Communications, who with the approval of said joint committee, or of the authorized members thereof may, for the purposes of said distribution, transfer unexpended portions of any item of appropriation. (Emphases supplied)

13 Those Section 1 (c), (g), (l), and (s) of Act 3044 "shall be available for immediate expenditure by the Director of Public Works."

14 Section 3, Act 3044.

15 Chua, Yvonne T. and Cruz, Booma, B., "Pork by any name," VERA Files, August 23, 2013. <http://verafiles.org/pork-by-any-name/> (visited October 14, 2013).

16 Id.

17 Id.

of the stalemate between the House of Representatives and the Senate.[18]

B. Martial Law Era (1972-1986).

While the previous" Congressional Pork Barrel" was apparently discontinued in 1972 after Martial Law was declared, an era when "one man controlled the legislature,"[19] the reprieve was only temporary. By 1982, the Batasang Pambansa had already introduced a new item in the General Appropriations Act (GAA) called the" Support for Local Development Projects" (SLDP) under the article on "National Aid to Local Government Units". Based on reports,[20] it was under the SLDP that the practice of giving lump-sum allocations to individual legislators began, with each assemblyman receiving ₱500,000.00. Thereafter, assemblymen would communicate their project preferences to the Ministry of Budget and Management for approval. Then, the said ministry would release the allocation papers to the Ministry of Local Governments, which would, in turn, issue the checks to the city or municipal treasurers in the assemblyman's locality. It has been further reported that "Congressional Pork Barrel" projects under the SLDP also began to cover not only public works projects, or so- called "hard projects", but also "soft projects",[21] or non-public works projects such as those which would fall under the categories of, among others, education, health and livelihood.[22]

C. Post-Martial Law Era:

Corazon Cojuangco Aquino Administration (1986-1992).

After the EDSA People Power Revolution in 1986 and the restoration of Philippine democracy, "Congressional Pork Barrel" was revived in the form of the "Mindanao Development Fund" and the "Visayas Development Fund" which were created with lump-sum appropriations of ₱480 Million and ₱240 Million, respectively, for the funding of development projects in the Mindanao and Visayas areas in 1989. It has been documented[23] that the clamor raised by the Senators and the Luzon legislators for a similar funding, prompted the creation of the "Countrywide Development Fund" (CDF) which was integrated into the 1990 GAA[24] with an initial funding of ₱2.3 Billion to cover "small local infrastructure and other priority community projects."

Under the GAAs for the years 1991 and 1992,[25] CDF funds were, with the approval of the President, to be released directly to the implementing agencies but "subject to the submission of the required list of projects and activities."Although the GAAs from 1990 to 1992 were silent as to the amounts of allocations of the individual legislators, as well as their participation in the identification

18 Id.

19 Nograles, Prospero C. and Lagman, Edcel C., House of Representatives of the Philippines, "Understanding the 'Pork Barrel,'" <http://www.congress.gov.ph/download/ 14th/pork_ barrel.pdf > (visited October 17, 2013).

20 Chua, Yvonne T. and Cruz, Booma, B., "Pork by any name," VERA Files, August 23, 2013. <http://verafiles.org/pork-by-any-name/> (visited October 14, 2013).

21 Id.

22 Priority Development Assistance Fund (PDAF) and Various Infrastructures including Local Projects (VILP), Special Audits Office Report No. 2012-03, August 14, 2013 (CoA Report), p. 2.

23 Ilagan, Karol, "Data A Day; CIA, CDF, PDAF? Pork is pork is pork," Moneypolitics, A Date Journalism Project for the Philippine Center for Investigative Journalism, August 1, 2013 <http://moneypolitics.pcij.org/data-a-day/cia-cdf-pdaf-pork-is-pork-is-pork/> (visited October 14, 2013).

24 Republic Act No. (RA) 6831.

25 Special Provision 1, Article XLIV, RA 7078 (1991 CDF Article), and Special Provision 1, Article XLII (1992), RA 7180 (1992 CDF Article) are similarly worded as follows: Special Provision 1.
Use and Release of Funds. The amount herein appropriated shall be used for infrastructure and other priority projects and activities upon approval by the President of the Philippines and shall be released directly to the appropriate implementing agency [(x x x for 1991)], subject to the submission of the required list of projects and activities. (Emphases supplied)

of projects, it has been reported[26] that by 1992, Representatives were receiving ₱12.5 Million each in CDF funds, while Senators were receiving ₱18 Million each, without any limitation or qualification, and that they could identify any kind of project, from hard or infrastructure projects such as roads, bridges, and buildings to "soft projects" such as textbooks, medicines, and scholarships.[27]

D. Fidel Valdez Ramos (Ramos) Administration (1992-1998).

The following year, or in 1993,[28] the GAA explicitly stated that the release of CDF funds was to be made upon the submission of the list of projects and activities identified by, among others, individual legislators. For the first time, the 1993 CDF Article included an allocation for the Vice-President.[29] As such, Representatives were allocated ₱12.5 Million each in CDF funds, Senators, ₱18 Million each, and the Vice-President, ₱20 Million.

In 1994,[30] 1995,[31] and 1996,[32] the GAAs contained the same provisions on project identification and fund release as found in the 1993 CDF Article. In addition, however, the Department of Budget and Management (DBM) was directed to submit reports to the Senate Committee on Finance and the House Committee on Appropriations on the releases made from the funds.[33]

26 Chua, Yvonne T. and Cruz, Booma, B., "Pork by any name," VERA Files, August 23, 2013. <http://verafiles.org/pork-by-any-name/> (visited October 14, 2013).

27 Id.

28 Special Provision 1, Article XXXVIII, RA 7645 (1993 CDF Article) provides:

Special Provision

1. Use and Release of Funds.

The amount herein appropriated shall be used for infrastructure and other priority projects and activities as proposed and identified by officials concerned according to the following allocations: Representatives, ₱12,500,000 each; Senators ₱18,000,000 each; Vice-President, ₱20,000,000. The fund shall be automatically released quarterly by way of Advice of Allotment and Notice of Cash Allocation directly to the assigned implementing agency not later than five (5) days after the beginning of each quarter upon submission of the list of projects and activities by the officials concerned. (Emphases supplied)

29 See Special Provision 1, 1993 CDF Article; id.

30 Special Provision 1, Article XLI, RA 7663 (1994 CDF Article) provides:

Special Provisions

1. Use and Release of Funds.

The amount herein appropriated shall be used for infrastructure, purchase of ambulances and computers and other priority projects and activities, and credit facilities to qualified beneficiaries as proposed and identified by officials concerned according to the following allocations: Representatives, ₱12,500,000 each; Senators ₱18,000,000 each; Vice-President, ₱20,000,000; PROVIDED, That, the said credit facilities shall be constituted as a revolving fund to be administered by a government financial institution (GFI) as a trust fund for lending operations. Prior years releases to local government units and national government agencies for this purpose shall be turned over to the government financial institution which shall be the sole administrator of credit facilities released from this fund.

The fund shall be automatically released quarterly by way of Advice of Allotments and Notice of Cash Allocation directly to the assigned implementing agency not later than five (5) days after the beginning of each quarter upon submission of the list of projects and activities by the officials concerned. (Emphases supplied)

31 Special Provision 1, Article XLII, RA 7845 (1995 CDF Article) provides:

Special Provisions

1. Use and Release of Funds.

The amount herein appropriated shall be used for infrastructure, purchase of equipment and other priority projects and activities as proposed and identified by officials concerned according to the following allocations: Representatives, ₱12,500,000 each; Senators ₱18,000,000 each; Vice-President, ₱20,000,000.

The fund shall be automatically released semi-annually by way of Advice of Allotment and Notice of Cash Allocation directly to the designated implementing agency not later than five (5) days after the beginning of each semester upon submission of the list of projects and activities by the officials concerned. (Emphases supplied)

32 Special Provision 1, Article XLII, RA 8174 (1996 CDF Article) provides:

Special Provisions

1. Use and Release of Fund.

The amount herein appropriated shall be used for infrastructure, purchase of equipment and other priority projects and activities, including current operating expenditures, except creation of new plantilla positions, as proposed and identified by officials concerned according to the following allocations: Representatives, Twelve Million Five Hundred Thousand Pesos (₱12,500,000) each; Senators, Eighteen Million Pesos (₱18,000,000) each; Vice-President, Twenty Million Pesos (₱20,000,000).

The Fund shall be released semi-annually by way of Special Allotment Release Order and Notice of Cash Allocation directly to the designated implementing agency not later than thirty (30) days after the beginning of each semester upon submission of the list of projects and activities by the officials concerned. (Emphases supplied)

33 Special Provision 2 of the 1994 CDF Article, Special Provision 2 of the 1995 CDF Article and Special Provision 2 of the 1996 CDF Article are similarly worded as follows:

2. Submission of [Quarterly (1994)/Semi-Annual (1995 and 1996)]

Reports. The Department of Budget and Management shall submit within thirty (30) days after the end of each [quarter (1994)/semester (1995 and 1996)] a report to the House Committee on Appropriations and the Senate Committee on Finance on the releases made from this Fund. The report shall include the listing of the projects, locations, implementing agencies [stated (order of committees interchanged in 1994 and 1996)] and the endorsing officials. (Emphases supplied)

Under the 1997[34] CDF Article, Members of Congress and the Vice-President, in consultation with the implementing agency concerned, were directed to submit to the DBM the list of 50% of projects to be funded from their respective CDF allocations which shall be duly endorsed by (a) the Senate President and the Chairman of the Committee on Finance, in the case of the Senate, and (b) the Speaker of the House of Representatives and the Chairman of the Committee on Appropriations, in the case of the House of Representatives; while the list for the remaining 50% was to be submitted within six (6) months thereafter. The same article also stated that the project list, which would be published by the DBM,[35] "shall be the basis for the release of funds" and that "no funds appropriated herein shall be disbursed for projects not included in the list herein required."

The following year, or in 1998,[36] the foregoing provisions regarding the required lists and endorsements were reproduced, except that the publication of the project list was no longer required as the list itself sufficed for the release of CDF Funds.

The CDF was not, however, the lone form of "Congressional Pork Barrel" at that time. Other forms of "Congressional Pork Barrel" were reportedly fashioned and inserted into the GAA (called "Congressional Insertions" or "CIs") in order to perpetuate the ad ministration's political agenda.[37] It has been articulated that since CIs "formed part and parcel of the budgets of executive departments, they were not easily identifiable and were thus harder to monitor." Nonetheless, the lawmakers themselves as well as the finance and budget officials of the implementing agencies, as well as the DBM, purportedly knew about the insertions.[38] Examples of these CIs are the Department of Education (DepEd) School Building Fund, the Congressional Initiative Allocations, the Public Works Fund, the El Niño Fund, and the Poverty Alleviation Fund.[39] The allocations for the School Building Fund, particularly, —shall be made upon prior consultation with the representative of the legislative district concerned."[40] Similarly, the legislators had the power to direct how, where and when these appropriations were to be spent.[41]

E. Joseph Ejercito Estrada (Estrada) Administration (1998-2001).

In 1999,[42] the CDF was removed in

34 Special Provision 2, Article XLII, RA 8250 (1997 CDF Article) provides:
Special Provisions
x x x x
2. Publication of Countrywide Development Fund Projects. Within thirty (30) days after the signing of this Act into law, the Members of Congress and the Vice-President shall, in consultation with the implementing agency concerned, submit to the Department of Budget and Management the list of fifty percent (50%) of projects to be funded from the allocation from the Countrywide Development Fund which shall be duly endorsed by the Senate President and the Chairman of the Committee on Finance in the case of the Senate and the Speaker of the House of Representatives and the Chairman of the Committee on Appropriations in the case of the House of Representatives, and the remaining fifty percent (50%) within six (6) months thereafter. The list shall identify the specific projects, location, implementing agencies, and target beneficiaries and shall be the basis for the release of funds. The said list shall be published in a newspaper of general circulation by the Department of Budget and Management. No funds appropriated herein shall be disbursed for projects not included in the list herein required. (Emphases supplied)

35 See Special Provision 2, 1997 CDF Article; id.

36 Special Provision 2, Article XLII, RA 8522 (1998 CDF Article) provides:
Special Provisions
x x x x
2. Publication of Countrywide Development Fund Projects. x x x PROVIDED, That said publication is not a requirement for the release of funds. x x x x (Emphases supplied)

37 Chua, Yvonne T. and Cruz, Booma, B., "Pork by any name," VERA Files, August 23, 2013. <http://verafiles.org/pork-by-any-name/> (visited October 14, 2013).

38 Id.

49 Rollo (G.R. No. 208566), pp. 335-336, citing Parreño, Earl, "Perils of Pork," Philippine Center for Investigative Journalism, June 3-4, 1998. Available at <http://pcij.org/stories/1998/pork.html>

40 Id.

41 Id.

42 RA 8745 entitled "AN ACT APPROPRIATING FUNDS FOR THE OPERATION OF THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES FROM JANUARY ONE TO DECEMBER THIRTY ONE, NINETEEN HUNDRED NINETY NINE, AND FOR OTHER PURPOSES."

the GAA and replaced by three (3) separate forms of CIs, namely, the "Food Security Program Fund,"[43] the "Lingap Para Sa Mahihirap Program Fund,"[44] and the "Rural/Urban Development Infrastructure Program Fund,"[45] all of which contained a special provision requiring "prior consultation" with the Member s of Congress for the release of the funds.

It was in the year 2000[46] that the "Priority Development Assistance Fund" (PDAF) appeared in the GAA. The requirement of "prior consultation with the respective Representative of the District" before PDAF funds were directly released to the implementing agency concerned was explicitly stated in the 2000 PDAF Article. Moreover, realignment of funds to any expense category was expressly allowed, with the sole condition that no amount shall be used to fund personal services and other personnel benefits.[47] The succeeding PDAF provisions remained the same in view of the re-enactment[48] of the 2000 GAA for the year 2001.

F. Gloria Macapagal-Arroyo (Arroyo) Administration (2001-2010).

The 2002[49] PDAF Article was brief and straightforward as it merely contained a single special provision ordering the release of the funds directly to the implementing agency or local government unit concerned, without further qualifications. The following year, 2003,[50] the same single provision was present, with simply an expansion of purpose and express authority to realign. Nevertheless, the provisions in the 2003 budgets of the Department of Public Works and

43 Special Provision 1, Article XLII, Food Security Program Fund, RA 8745 provides:
Special Provision
1. Use and Release of Fund. The amount herein authorized shall be used to support the Food Security Program of the government, which shall include farm-to-market roads, post harvest facilities and other agricultural related infrastructures. Releases from this fund shall be made directly to the implementing agency subject to prior consultation with the Members of Congress concerned. (Emphases supplied)

44 Special Provision 1, Article XLIX, Lingap Para sa MahihirapProgram Fund, RA 8745 provides:
Special Provision
1. Use and Release of Fund. The amount herein appropriated for the Lingap Para sa Mahihirap Program Fund shall be used exclusively to satisfy the minimum basic needs of poor communities and disadvantaged sectors: PROVIDED, That such amount shall be released directly to the implementing agency upon prior consultation with the Members of Congress concerned. (Emphases supplied)

45 Special Provision 1, Article L, Rural/Urban Development Infrastructure Program Fund, RA 8745 provides:
Special Provision
1. Use and Release of Fund. The amount herein authorized shall be used to fund infrastructure requirements of the rural/urban areas which shall be released directly to the implementing agency upon prior consultation with the respective Members of Congress. (Emphases supplied)

46 Special Provision 1, Article XLIX, RA 8760 (2000 PDAF Article) provides:
Special Provision
1. Use and release of the Fund. The amount herein appropriated shall be used to fund priority programs and projects as indicated under Purpose 1: PROVIDED, That such amount shall be released directly to the implementing agency concerned upon prior consultation with the respective Representative of the District: PROVIDED,
FURTHER, That the herein allocation may be realigned as necessary to any expense category: PROVIDED, FINALLY, That no amount shall be used to fund personal services and other personal benefits. (Emphases supplied)

47 See Special Provision 1, 2000 PDAF Article; id.

48 Section 25 (7), Article VI, of the 1987 Philippine Constitution (1987 Constitution) provides that
"if, by the end of any fiscal year, the Congress shall have failed to pass the general appropriations bill for the ensuing fiscal year, the general appropriations law for the preceding fiscal year shall be deemed reenacted and shall remain in force and effect until the general appropriations bill is passed by the Congress." (Emphasis supplied)

49 Special Provision 1, Article L, RA 9162 (2002 PDAF Article) provides:
1. Use and Release of the Fund. The amount herein appropriated shall be used to fund priority programs and projects or to fund counterpart for foreign-assisted programs and projects:
PROVIDED, That such amount shall be released directly to the implementing agency or Local Government Unit concerned. (Emphases supplied)

50 Special Provision 1, Article XLVII, RA 9206, 2003 GAA (2003 PDAF Article) provides:
Special Provision
1. Use and Release of the Fund. The amount herein appropriated shall be used to fund priority programs and projects or to fund the required counterpart for foreign-assisted programs and projects: PROVIDED, That such amount shall be released directly to the implementing agency or Local Government Unit concerned: PROVIDED, FURTHER, That the allocations authorized herein may be realigned to any expense class, if deemed necessary: PROVIDED, FURTHERMORE, That a maximum of ten percent (10%) of the authorized allocations by district may be used for the procurement of rice and other basic commodities which shall be purchased from the National Food Authority.

Highways[51] (DPWH) and the DepEd[52] required prior consultation with Members of Congress on the aspects of implementation delegation and project list submission, respectively. In 2004, the 2003 GAA was re-enacted.[53]

In 2005,[54] the PDAF Article provided that the PDAF shall be used "to fund priority programs and projects under the ten point agenda of the national government and shall be released directly to the implementing agencies." It also introduced the program menu concept,[55] which is essentially a list of general programs and implementing agencies from which a particular PDAF project may be subsequently chosen by the identifying authority. The 2005 GAA was re-enacted[56] in 2006 and hence, operated on the same bases. In similar regard, the program menu concept was consistently integrated into the 2007,[57] 2008,[58] 2009,[59] and 2010[60] GAAs.

Textually, the PDAF Articles from 2002 to 2010 were silent with respect to the specific amounts allocated for the individual legislators, as well as their participation in the proposal and identification of PDAF projects to be funded. In contrast to the PDAF Articles, however, the provisions under the DepEd School Building Program and the DPWH budget, similar to its predecessors, explicitly required prior consultation with the

51 Special Provision 1, Article XVIII, RA 9206 provides:
Special Provision No. 1 – Restriction on the Delegation of Project Implementation The implementation of the projects funded herein shall not be delegated to other agencies, except those projects to be implemented by the Engineering Brigades of the AFP and inter-department projects undertaken by other offices and agencies including local government units with demonstrated capability to actually implement the projects by themselves upon consultation with the Members of Congress concerned. In all cases the DPWH shall exercise technical supervision over projects. (Emphasis supplied)

52 Special Provision 3, Article XLII, RA 9206 provides:
Special Provision No. 3 – Submission of the List of School Buildings Within 30 days after the signing of this Act into law, (DepEd) after consultation with the representative of the legislative district concerned, shall submit to DBM the list of 50% of school buildings to be constructed every municipality x x x. The list as submitted shall be the basis for the release of funds. (Emphasis supplied)

53 Rollo (G.R. No. 208566), p. 557.

54 Special Provision 1, Article L, RA 9336 (2005 PDAF Article) provides:
Special Provision(s)
1. Use and Release of the Fund. The amount appropriated herein shall be used to fund priority programs and projects under the ten point agenda of the national government and shall be released directly to the implementing agencies as indicated hereunder, to wit:

PARTICULARS	PROGRAM/PROJECT	IMPLEMENTING AGENCY
A. Education	Purchase of IT Equipment Scholarship	DepEd/TESDA/ CHED/SUCs/LGUs TESDA/CHED/ SUCs/LGUs
B. Health	Assistance to Indigent Patients Confined at the Hospitals Under DOH Including Specialty Hospitals Assistance to Indigent Patients at the Hospitals Devolved to LGUs and RHUs Insurance Premium	DOH/ Specialty Hospitals LGUs Philhealth
C. Livelihood/ CIDSS	Small & Medium Enterprise/Livelihood Comprehensive Integrated Delivery of Social Services	DTI/TLRC/ DA/CDA DSWD
D. Rural Electrification	Barangay/Rural Electrification	DOE/NEA
E. Water Supply	Construction of Water System Installation of Pipes/ Pumps/Tanks	DPWH LGUs
F. Financial Assistance	Specific Programs and Projects to Address the Pro-Poor Programs of Government	LGUs
G. Public Work	Construction/Repair/ Rehabilitation of the ff: Roads and Bridges/Flood Control/School buildings Hospitals Health Facilities/ Public Markets/Multi-Purpose Buildings/Multi-Purpose Pavements	DPWH
H. Irrigation	Construction/Repair/ Rehabilitation of Irrigation Facilities	DA-NIA

(Emphasis supplied)

55 Id.
56 Rollo (G.R. No. 208566), p. 558.
57 See Special Provision 1, Article XLVII, RA 9401.
58 See Special Provision 1, Article XLVI, RA 9498.
59 See Special Provision 1, Article XLIX, RA 9524.
60 See Special Provision 1, Article XLVII, RA 9970.

concerned Member of Congress[61] anent certain aspects of project implementation.

Significantly, it was during this era that provisions which allowed formal participation of non-governmental organizations (NGO) in the implementation of government projects were introduced. In the Supplemental Budget for 2006, with respect to the appropriation for school buildings, NGOs were, by law, encouraged to participate. For such purpose, the law stated that "the amount of at least ₱250 Million of the ₱500 Million allotted for the construction and completion of school buildings shall be made available to NGOs including the Federation of Filipino-Chinese Chambers of Commerce and Industry, Inc. for its "Operation Barrio School" program, with capability and proven track records in the construction of public school buildings x x x."[62] The same allocation was made available to NGOs in the 2007 and 2009 GAAs under the DepEd Budget.[63] Also, it was in 2007 that the Government Procurement Policy Board[64] (GPPB) issued Resolution No. 12-2007 dated June 29, 2007 (GPPB Resolution 12-2007), amending the implementing rules and regulations[65] of RA 9184,[66] the Government Procurement Reform Act, to include, as a form of negotiated procurement,[67] the procedure whereby the Procuring Entity[68] (the implementing agency) may enter into a memorandum of agreement with an NGO, provided that "an appropriation law or

61 For instance, Special Provisions 2 and 3, Article XLIII, RA 9336 providing for the 2005 DepEd School Building Program, and Special Provisions 1 and 16, Article XVIII, RA 9401 providing for the 2007 DPWH Regular Budget respectively state: 2005 DepEd School Building Program Special Provision No. 2 – Allocation of School Buildings: The amount allotted under Purpose 1 shall be apportioned as follows: (1) fifty percent (50%) to be allocated pro-rata according to each legislative districts student population x x x; (2) forty percent (40%) to be allocated only among those legislative districts with classroom shortages x x x; (3) ten percent (10%) to be allocated in accordance x x x.

Special Provision No. 3 – Submission of the List of School Buildings: Within 30 days after the signing of this Act into law, the DepEd after consultation with the representative of the legislative districts concerned, shall submit to DBM the list of fifty percent (50%) of school buildings to be constructed in every municipality x x x. The list as submitted shall be the basis for the release of funds x x x. (Emphases supplied)

2007 DPWH Regular Budget

Special Provision No. 1 – Restriction on Delegation of Project Implementation: The implementation of the project funded herein shall not be delegated to other agencies, except those projects to be implemented by the AFP Corps of Engineers, and inter-department projects to be undertaken by other offices and agencies, including local government units (LGUs) with demonstrated capability to actually implement the project by themselves upon consultation with the representative of the legislative district concerned x x x.

Special Provision No. 16 – Realignment of Funds: The Secretary of Public Works and Highways is authorized to realign funds released from appropriations x x x from one project/scope of work to another: PROVIDED, that x x x (iii) the request is with the concurrence of the legislator concerned

x x x. (Emphasis supplied)

62 Rollo (G.R. No. 208566) , p. 559, citing Section 2.A of RA 9358, otherwise known as the "Supplemental Budget for 2006."

63 Id. at 559-560.

64 "As a primary aspect of the Philippine Government's public procurement reform agenda, the Government Procurement Policy Board (GPPB) was established by virtue of Republic Act No. 9184 (R.A. 9184) as an independent inter-agency body that is impartial, transparent and effective, with private sector representation. As established in Section 63 of R.A. 9184, the GPPB shall have the following duties and responsibilities: 1. To protect national interest in all matters affecting public procurement, having due regard to the country's regional and international obligations; 2. To formulate and amend public procurement policies, rules and regulations, and amend, whenever necessary, the implementing rules and regulations Part A (IRR-A); 3. To prepare a generic procurement manual and standard bidding forms for procurement; 4. To ensure the proper implementation by the procuring entities of the Act, its IRR-A and all other relevant rules and regulations pertaining to public procurement; 5. To establish a sustainable training program to develop the capacity of Government procurement officers and employees, and to ensure the conduct of regular procurement training programs by the procuring entities; and 6. To conduct an annual review of the effectiveness of the Act and recommend any amendments thereto, as may be necessary.

x x x x" <http://www.gppb.gov.ph/about_us/gppb.html> (visited October 23, 2013).

65 Entitled "AMENDMENT OF SECTION 53 OF THE IMPLEMENTING RULES AND REGULATIONS PART A OF REPUBLIC ACT 9184 AND PRESCRIBING GUIDELINES ON PARTICIPATION OF NON-GOVERNMENTAL ORGANIZATIONS IN PUBLIC PROCUREMENT," approved June 29, 2007.

66 Entitled "AN ACT PROVIDING FOR THE MODERNIZATION, STANDARDIZATION AND REGULATION OF THE PROCUREMENT ACTIVITIES OF THE GOVERNMENT AND FOR OTHER PURPOSES."

67 Sec. 48. Alternative Methods. - Subject to the prior approval of the Head of the Procuring Entity or his duly authorized representative, and whenever justified by the conditions provided in this Act, the Procuring Entity may, in order to promote economy and efficiency, resort to any of the following alternative methods of Procurement:

x x x x

(e) Negotiated Procurement - a method of Procurement that may be resorted under the extraordinary circumstances provided for in Section 53 of this Act and other instances that shall be specified in the IRR, whereby the Procuring Entity directly negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant.

x x x x

68 As defined in Section 5(o) of RA 9184, the term "Procuring Entity" refers to any branch, department, office, agency, or instrumentality of the government, including state universities and colleges, government-owned and/or - controlled

ordinance earmarks an amount to be specifically contracted out to NGOs."[69]

G. Present Administration (2010-Present).

Differing from previous PDAF Articles but similar to the CDF Articles, the 2011[70] PDAF Article included an express statement on lump-sum amounts allocated for individual legislators and the Vice-President: Representatives were given ₱70 Million each, broken down into ₱40 Million for "hard projects" and ₱30 Million for "soft projects"; while ₱200 Million was given to each Senator as well as the Vice-President, with a ₱100 Million allocation each for "hard" and "soft projects." Likewise, a provision on realignment of funds was included, but with the qualification that it may be allowed only once. The same provision also allowed the Secretaries of Education, Health, Social Welfare and Development, Interior and Local Government, Environment and Natural Resources, Energy, and Public Works and Highways to realign PDAF Funds, with the further conditions that: (a) realignment is within the same implementing unit and same project category as the original project, for infrastructure projects; (b) allotment released has not yet been obligated for the original scope of work, and (c) the request for realignment is with the concurrence of the legislator concerned.[71]

In the 2012[72] and 2013[73] PDAF Articles, it is stated that the "identification of projects and/or designation of beneficiaries shall conform to the priority list, standard or design prepared by each implementing agency (priority list requirement) x x x." However, as practiced, it would still be the individual legislator who would choose and identify the project from the said priority list.[74]

Provisions on legislator allocations[75]

69 Rollo (G.R. No. 208566), p. 564, citing GPPB Resolution 12-2007.

70 Special Provision 2, Article XLIV, RA 10147 (2011 PDAF Article) provides:

2. Allocation of Funds. The total projects to be identified by legislators and the Vice-President shall not exceed the following amounts:
   a. Total of Seventy Million Pesos (₱70,000,000) broken down into Forty Million Pesos (₱40,000,000) for Infrastructure Projects and Thirty Million Pesos (₱30,000,000) for soft projects of Congressional Districts or Party List Representatives;
   b. Total of Two Hundred Million Pesos (₱200,000,000) broken down into One Hundred Million Pesos (₱100,000,000) for Infrastructure Projects and One Hundred Million Pesos (₱100,000,000) for soft projects of Senators and the Vice President.

71 See Special Provision 4, 2011 PDAF Article.

72 Special Provision 2, Article XLIV, RA 10155 (2012 PDAF Article) provides: 2. Project Identification. Identification of projects and/or designation of beneficiaries shall conform to the priority list, standard or design prepared by each implementing agency. Furthermore, preference shall be given to projects located in the 4th to 6th class municipalities or indigents identified under the National Household Targeting System for Poverty Reduction by the DSWD.
For this purpose, the implementing agency shall submit to Congress said priority list, standard or design within ninety (90) days from effectivity of this Act. (Emphasis supplied)

73 RA 10352, passed and approved by Congress on December 19, 2012 and signed into law by the President on December 19, 2012. Special Provision 2, Article XLIV, RA 10352 (2013 PDAF Article) provides:

2. Project Identification. Identification of projects and/or designation of beneficiaries shall conform to the priority list, standard or design prepared by each implementing agency: PROVIDED, That preference shall be given to projects located in the 4th to 6th class municipalities or indigents identified under the NHTS-PR by the DSWD. For this purpose, the implementing agency shall submit to Congress said priority list, standard or design within ninety (90) days from effectivity of this Act. (Emphasis supplied)

74 The permissive treatment of the priority list requirement in practice was revealed during the Oral Arguments (TSN, October 10, 2013, p. 143):
Justice Leonen: x x x In Section 2 meaning, Special Provision 2, it mentions priority list of implementing agencies. Have the implementing agencies indeed presented priority list to the Members of Congress before disbursement?
Solicitor General Jardeleza: My understanding is, is not really, Your Honor. Justice Leonen: So, in other words, the PDAF was expended without the priority list requirements of the implementing agencies?
Solicitor General Jardeleza: That is so much in the CoA Report, Your Honor.

75 See Special Provision 3 of the 2012 PDAF Article and Special Provision 3 of the 2013 PDAF Article.

as well as fund realignment[76] were included in the 2012 and 2013 PDAF Articles; but the allocation for the Vice-President, which was pegged at ₱200 Million in the 2011 GAA, had been deleted. In addition, the 2013 PDAF Article now allowed LGUs to be identified as implementing agencies if they have the technical capability to implement the projects.[77] Legislators were also allowed to identify programs/projects, except for assistance to indigent patients and scholarships, outside of his legislative district provided that he secures the written concurrence of the legislator of the intended outside-district, endorsed by the Speaker of the House.[78] Finally, any realignment of PDAF funds, modification and revision of project identification, as well as requests for release of funds, were all required to be favorably endorsed by the House Committee on Appropriations and the Senate Committee on Finance, as the case may be.[79]

III. History of Presidential Pork Barrel in the Philippines.

While the term "Pork Barrel" has been typically associated with lump-sum, discretionary funds of Members of Congress, the present cases and the recent controversies on the matter have, however, shown that the term's usage has expanded to include certain funds of the President such as the Malampaya Funds and the Presidential Social Fund.

On the one hand, the Malampaya Funds was created as a special fund under Section 8[80] of Presidential Decree No.

76 Special Provision 6 of the 2012 PDAF Article provides:

6. Realignment of Funds. Realignment under this Fund may only be allowed once. The Secretaries of Agriculture, Education, Energy, Environment and Natural Resources, Health, Interior and Local Government, Public Works and Highways, and Social Welfare and Development are also authorized to approve realignment from one project/scope to another within the allotment received from this Fund, subject to the following: (i) for infrastructure projects, realignment is within the same implementing unit and same project category as the original project; (ii) allotment released has not yet been obligated for the original project/scope of work; and (iii) request is with the concurrence of the legislator concerned. The DBM must be informed in writing of any realignment approved within five (5) calendar days from its approval.

Special Provision 4 of the 2013 PDAF Article provides:

4. Realignment of Funds. Realignment under this Fund may only be allowed once. The Secretaries of Agriculture, Education, Energy, Interior and Local Government, Labor and Employment, Public Works and Highways, Social Welfare and Development and Trade and Industry are also authorized to approve realignment from one project/scope to another within the allotment received from this Fund, subject to the following: (i) for infrastructure projects, realignment is within the same implementing unit and same project category as the original project; (ii) allotment released has not yet been obligated for the original project/scope of work; and (iii) request is with the concurrence of the legislator concerned. The DBM must be informed in writing of any realignment approved within five (5) calendar days from approval thereof: PROVIDED, That any realignment under this Fund shall be limited within the same classification of soft or hard programs/projects listed under Special Provision 1 hereof: PROVIDED, FURTHER, That in case of realignments, modifications and revisions of projects to be implemented by LGUs, the LGU concerned shall certify that the cash has not yet been disbursed and the funds have been deposited back to the BTr.

Any realignment, modification and revision of the project identification shall be submitted to the House Committee on Appropriations and the Senate Committee on Finance, for favorable endorsement to the DBM or the implementing agency, as the case may be. (Emphases supplied)

77 Special Provision 1 of the 2013 PDAF Article provides:

Special Provision(s) 1. Use of Fund. The amount appropriated herein shall be used to fund the following priority programs and projects to be implemented by the corresponding agencies:

x x x x

PROVIDED, That this Fund shall not be used for the payment of Personal Services expenditures: PROVIDED, FURTHER, That all procurement shall comply with the provisions of R.A. No. 9184 and its Revised Implementing Rules and Regulations: PROVIDED, FINALLY, That for infrastructure projects, LGUs may only be identified as implementing agencies if they have the technical capability to implement the same. (Emphasis supplied)

78 Special Provision 2 of the 2013 PDAF Article provides:

2. Project Identification. x x x.

x x x x

All programs/projects, except for assistance to indigent patients and scholarships, identified by a member of the House of Representatives outside of his/her legislative district shall have the written concurrence of the member of the House of Representatives of the recipient or beneficiary legislative district, endorsed by the Speaker of the House of Representatives.

79 See Special Provision 4 of the 2013 PDAF Article; supra note 76.

80 Sec. 8.

Appropriations. The sum of Five Million Pesos out of any available funds from the National Treasury is hereby appropriated and authorized to be released for the organization of the Board and its initial operations. Henceforth, funds sufficient to fully carry out the functions and objectives of the Board shall be appropriated every fiscal year in the General Appropriations Act.

All fees, revenues and receipts of the Board from any and all sources including receipts from service contracts and agreements such as application and processing fees, signature bonus, discovery bonus, production bonus; all money collected from concessionaires, representing unspent work obligations, fines and penalties under the Petroleum Act of 1949; as well as the government share representing royalties, rentals, production share on service contracts and similar payments on the exploration, development and exploitation of energy resources, shall form part of a Special Fund to be used to finance energy resource development and exploitation programs and projects of the government and for such other purposes as may be hereafter directed by the President. (Emphasis supplied)

(PD) 910,[81] issued by then President Ferdinand E. Marcos (Marcos) on March 22, 1976. In enacting the said law, Marcos recognized the need to set up a special fund to help intensify, strengthen, and consolidate government efforts relating to the exploration, exploitation, and development of indigenous energy resources vital to economic growth.[82] Due to the energy-related activities of the government in the Malampaya natural gas field in Palawan, or the "Malampaya Deep Water Gas-to-Power Project",[83] the special fund created under PD 910 has been currently labeled as Malampaya Funds.

On the other hand the Presidential Social Fund was created under Section 12, Title IV[84] of PD 1869,[85] or the Charter of the Philippine Amusement and Gaming Corporation (PAGCOR). PD 1869 was similarly issued by Marcos on July 11, 1983. More than two (2) years after, he amended PD 1869 and accordingly issued PD 1993 on October 31, 1985,[86] amending Section 12[87] of the former law. As it stands, the Presidential Social Fund has been described as a special funding facility managed and administered by the Presidential Management Staff through which the President provides direct assistance to priority programs and projects not funded under the regular budget. It is sourced from the share of the government in the aggregate gross earnings of PAGCOR.[88]

IV. Controversies in the Philippines.

Over the decades, "pork" funds in the Philippines have increased tremendously,[89] owing in no small part

81 Entitled "CREATING AN ENERGY DEVELOPMENT BOARD, DEFINING ITS POWERS AND FUNCTIONS, PROVIDING FUNDS, THEREFOR, AND FOR OTHER PURPOSES."

82 See First Whereas Clause of PD 910.

83 See <http://malampaya.com/> (visited October 17, 2013).

84 Sec. 12. Special Condition of Franchise. — After deducting five (5%) percent as Franchise Tax, the Fifty (50%) percent share of the Government in the aggregate gross earnings of the Corporation from this Franchise shall be immediately set aside and allocated to fund the following infrastructure and socio-civil projects within the Metropolitan Manila Area:

(a) Flood Control
(b) Sewerage and Sewage
(c) Nutritional Control
(d) Population Control
(e) Tulungan ng Bayan Centers
(f) Beautification
(g) Kilusang Kabuhayan at Kaunlaran (KKK) projects; provided, that should the aggregate gross earning be less than ₱150,000,000.00, the amount to be allocated to fund the above-mentioned project shall be equivalent to sixty (60%) percent of the aggregate gross earning.

In addition to the priority infrastructure and socio-civic projects with the Metropolitan Manila specifically enumerated above, the share of the Government in the aggregate gross earnings derived by the Corporate from this Franchise may also be appropriated and allocated to fund and finance infrastructure and/or socio-civic projects throughout the Philippines as may be directed and authorized by the Office of the President of the Philippines.

85 Entitled "CONSOLIDATING AND AMENDING PRESIDENTIAL DECREE NOS. 1067-A, 1067-B, 1067-C, 1399 AND 1632, RELATIVE TO THE FRANCHISE AND POWERS OF THE PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR)."

86 Entitled "AMENDING SECTION TWELVE OF PRESIDENTIAL DECREE NO. 1869-CONSOLIDATING AND AMENDING PRESIDENTIAL DECREE NOS. 1067-A, 1067-B, 1067-C, 1399 AND 1632, RELATIVE TO THE FRANCHISE AND POWERS OF THE PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR)." While the parties have confined their discussion to Section 12 of PD 1869, the Court takes judicial notice of its amendment and perforce deems it apt to resolve the constitutionality of the amendatory provision.

87 Section 12 of PD 1869, as amended by PD 1993, now reads:

Sec. 12. Special Condition of Franchise. — After deducting five (5%) percent as Franchise Tax, the Fifty (50%) percent share of the government in the aggregate gross earnings of the Corporation from this Franchise, or 60% if the aggregate gross earnings be less than ₱150,000,000.00 shall immediately be set aside and shall accrue to the General Fund to finance the priority infrastructure development projects and to finance the restoration of damaged or destroyed facilities due to calamities, as may be directed and authorized by the Office of the President of the Philippines.

88 Rollo (G.R. No. 208566), p. 301.

89 CDF/PDAF ALLOCATION FROM 1990 -2013.

1990..... ₱2,300,000,000.00
1991..... P 2,300,000,000.00
1992..... P 2,480,000,000.00
1993..... P 2,952,000,000.00
1994..... P 2,977,000,000.00
1995..... P 3,002,000,000.00
1996..... P 3,014,500,000.00
1997..... P 2,583,450,000.00
1998..... P 2,324,250,000.00
1999..... P 1,517,800,000.00 (Food Security Program Fund)
..... P 2,500,000,000.00 (Lingap Para Sa Mahihirap Program Fund)
.....P 5,458,277,000.00 (Rural/Urban Development Infrastructure Program Fund)
2000..... P 3,330,000,000.00
2001..... 2000 GAA re-enacted
2002..... P 5,677,500,000.00
2003..... P 8,327,000,000.00
2004..... 2003 GAA re-enacted
2005..... P 6,100,000,000.00
2006..... 2005 GAA re-enacted
2007..... P 11,445,645,000.00
2008..... P 7,892,500,000.00
2009..... P 9,665,027,000.00
2010..... P 10,861,211,000.00
2011..... P 24,620,000,000.00
2012..... P 24,890,000,000.00
2013..... P 24,790,000,000.00

to previous Presidents who reportedly used the "Pork Barrel" in order to gain congressional support.[90] It was in 1996 when the first controversy surrounding the "Pork Barrel" erupted. Former Marikina City Representative Romeo Candazo (Candazo), then an anonymous source, "blew the lid on the huge sums of government money that regularly went into the pockets of legislators in the form of kickbacks."[91] He said that "the kickbacks were 'SOP' (standard operating procedure) among legislators and ranged from a low 19 percent to a high 52 percent of the cost of each project, which could be anything from dredging, rip rapping, sphalting, concreting, and construction of school buildings."[92] "Other sources of kickbacks that Candazo identified were public funds intended for medicines and textbooks. A few days later, the tale of the money trail became the banner story of the Philippine Daily Inquirer issue of August 13, 1996, accompanied by an illustration of a roasted pig."[93] "The publication of the stories, including those about congressional initiative allocations of certain lawmakers, including ₱3.6 Billion for a Congressman, sparked public outrage."[94]

Thereafter, or in 2004, several concerned citizens sought the nullification of the PDAF as enacted in the 2004 GAA for being unconstitutional. Unfortunately, for lack of "any pertinent evidentiary support that illegal misuse of PDAF in the form of kickbacks has become a common exercise of unscrupulous Members of Congress," the petition was dismissed.[95]

Recently, or in July of the present year, the National Bureau of Investigation (NBI) began its probe into allegations that "the government has been defrauded of some ₱10 Billion over the past 10 years by a syndicate using funds from the pork barrel of lawmakers and various government agencies for scores of ghost projects."[96] The investigation was spawned by sworn affidavits of six (6) whistle-blowers who declared that JLN Corporation – "JLN" standing for Janet Lim Napoles (Napoles) – had swindled billions of pesos from the public coffers for "ghost projects" using no fewer than 20 dummy NGOs for an entire decade. While the NGOs were supposedly the ultimate recipients of PDAF funds, the whistle-blowers declared that the money was diverted into Napoles' private accounts.[97] Thus, after its investigation on the Napoles controversy, criminal complaints were filed before the Office of the Ombudsman, charging five (5) lawmakers for Plunder, and three (3) other lawmakers for Malversation, Direct Bribery, and Violation of the Anti-Graft and Corrupt Practices Act. Also recommended to be charged in the complaints are some of the lawmakers' chiefs -of-staff or representatives, the heads and other officials of three (3) implementing agencies, and the several

90 "Pork as a tool for political patronage, however, can extend as far as the executive branch. It is no accident, for instance, that the release of the allocations often coincides with the passage of a Palace-sponsored bill.
That pork funds have grown by leaps and bounds in the last decade can be traced to presidents in need of Congress support. The rise in pork was particularly notable during the Ramos administration, when the president and House Speaker Jose de Venecia, Jr. used generous fund releases to convince congressmen to support Malacañang-initiated legislation. The Ramos era, in fact, became known as the 'golden age of pork.'
Through the years, though, congressmen have also taken care to look after their very own. More often than not, pork-barrel funds are funneled to projects in towns and cities where the lawmakers' own relatives have been elected to public office; thus, pork is a tool for building family power as well. COA has come across many instances where pork-funded projects ended up directly benefiting no less than the lawmaker or his or her relatives."(CHUA, YVONNE T. and CRUZ, BOOMA, "Pork is a Political, Not A Developmental, Tool." <http://pcij.org/stories/2004/pork.html> [visited October 22, 2013].)

91 With reports from Inquirer Research and Salaverria, Leila, "Candazo, first whistle-blower on pork barrel scam, dies; 61," Philippine Daily Inquirer, August 20, 2013, <http://newsinfo.inquirer.net/469439/candazo-first-whistle-blower-on-pork-barrel-scam-dies-61> (visited October 21, 2013.)

92 Id.

93 Id.

94 Id.

95 Lawyers Against Monopoly and Poverty (LAMP) v. Secretary of Budget and Management, G.R. No. 164987, April 24, 2012, 670 SCRA 373, 387.

96 Carvajal, Nancy, " NBI probes ₱10-B scam," Philippine Daily Inquirer, July 12, 2013 <http://newsinfo.inquirer.net/443297/nbi-probes-p10-b-scam> (visited October 21, 2013).

97 Id.

presidents of the NGOs set up by Napoles.[98]

On August 16, 2013, the Commission on Audit (CoA) released the results of a three-year audit investigation[99] covering the use of legislators' PDAF from 2007 to 2009, or during the last three (3) years of the Arroyo administration. The purpose of the audit was to determine the propriety of releases of funds under PDAF and the Various Infrastructures including Local Projects (VILP)[100] by the DBM, the application of these funds and the implementation of projects by the appropriate implementing agencies and several government-owned-and-controlled corporations (GOCCs).[101] The total releases covered by the audit amounted to ₱8.374 Billion in PDAF and ₱32.664 Billion in VILP, representing 58% and 32%, respectively, of the total PDAF and VILP releases that were found to have been made nationwide during the audit period.[102] Accordingly, the Co A's findings contained in its Report No. 2012-03 (CoA Report), entitled "Priority Development Assistance Fund (PDAF) and Various Infrastructures including Local Projects (VILP)," were made public, the highlights of which are as follows:[103]

- Amounts released for projects identified by a considerable number of legislators significantly exceeded their respective allocations.
- Amounts were released for projects outside of legislative districts of sponsoring members of the Lower House.
- Total VILP releases for the period exceeded the total amount appropriated under the 2007 to 2009 GAAs.
- Infrastructure projects were constructed on privatelots without these having been turned over to the government.
- Significant amounts were released to implementing agencies without the latter's endorsement and without considering their mandated functions, administrative and technical capabilities to implement projects.
- Implementation of most livelihood projects was not undertaken by the implementing agencies themselves but by NGOs endorsed by the proponent legislators to which the Funds were transferred.
- The funds were transferred to the NGOs in spite of the absence of any appropriation law or ordinance.
- Selection of the NGOs were not compliant with law and regulations.
- Eighty-Two (82) NGOs entrusted with implementation of seven hundred seventy two (772) projects amount to ₱6.156 Billion were either found questionable, or submitted questionable/spurious documents, or failed to liquidate in whole or in part their utilization of the Funds.
- Procurement by the NGOs, as well as some implementing agencies, of goods and services reportedly used

98 See NBI Executive Summary. <http://www.gov.ph/2013/09/16/executive-summary-by-the-nbi-on-the- pdaf-complaints-filed-against-janet-lim-napoles-et-al/> (visited October 22, 2013).
99 Pursuant to Office Order No. 2010-309 dated May 13, 2010.
100 During the Oral Arguments, the CoA Chairperson referred to the VILP as "the source of the so called HARD project, hard portion x x x "under the title the Budget of the DPWH." TSN, October 8, 2013, p. 69.
101 These implementing agencies included the Department of Agriculture, DPWH and the Department of Social Welfare and Development (DSWD). The GOCCs included Technology and Livelihood Resource Center (TLRC)/Technology Resource Center (TRC), National Livelihood Development Corporation (NLDC), National Agribusiness Corporation (NABCOR), and the Zamboanga del Norte Agricultural College (ZNAC) Rubber Estate Corporation (ZREC). CoA Chairperson's Memorandum. Rollo (G.R. No. 208566), p. 546. See also CoA Report, p. 14.
102 Id.
103 Id. at 546-547.

in the projects were not compliant with law.

As for the "Presidential Pork Barrel", whistle-blowers alleged that" at least ₱900 Million from royalties in the operation of the Malampaya gas project off Palawan province intended for agrarian reform beneficiaries has gone into a dummy NGO."[104] According to incumbent CoA Chairperson Maria Gracia Pulido Tan (CoA Chairperson), the CoA is, as of this writing, in the process of preparing "one consolidated report" on the Malampaya Funds.[105]

V. The Procedural Antecedents.

Spurred in large part by the findings contained in the CoA Report and the Napoles controversy, several petitions were lodged before the Court similarly seeking that the "Pork Barrel System" be declared unconstitutional. To recount, the relevant procedural antecedents in these cases are as follows:

On August 28, 2013, petitioner Samson S. Alcantara (Alcantara), President of the Social Justice Society, filed a Petition for Prohibition of even date under Rule 65 of the Rules of Court (Alcantara Petition), seeking that the "Pork Barrel System" be declared unconstitutional, and a writ of prohibition be issued permanently restraining respondents Franklin M. Drilon and Feliciano S. Belmonte, Jr., in their respective capacities as the incumbent Senate President and Speaker of the House of Representatives, from further taking any steps to enact legislation appropriating funds for the "Pork Barrel System," in whatever form and by whatever name it may be called, and from approving further releases pursuant thereto.[106] The Alcantara Petition was docketed as G.R. No. 208493.

On September 3, 2013, petitioners Greco Antonious Beda B. Belgica, Jose L. Gonzalez, Reuben M. Abante, Quintin Paredes San Diego (Belgica, et al.), and Jose M. Villegas, Jr. (Villegas) filed an Urgent Petition For Certiorari and Prohibition With Prayer For The Immediate Issuance of Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction dated August 27, 2013 under Rule 65 of the Rules of Court (Belgica Petition), seeking that the annual "Pork Barrel System," presently embodied in the provisions of the GAA of 2013 which provided for the 2013 PDAF, and the Executive's lump-sum, discretionary funds, such as the Malampaya Funds and the Presidential Social Fund,[107] be declared unconstitutional and null and void for being acts constituting grave abuse of discretion. Also, they pray that the Court issue a TRO against respondents Paquito N. Ochoa, Jr., Florencio B. Abad (Secretary Abad) and Rosalia V. De Leon, in their respective capacities as the incumbent Executive Secretary, Secretary of the Department of Budget and Management (DBM), and National Treasurer, or their agents, for them to immediately cease any expenditure under the aforesaid funds. Further, they pray that the Court order the foregoing respondents to release to the CoA and to the public: (a) "the

104 Carvajal, Nancy, —Malampaya fund lost ₱900M in JLN racket , Philippine Daily Inquirer, July 16, 2013 <http://newsinfo.inquirer.net/445585/malampaya-fund-lost-p900m-in-jln-racket> (visited October 21, 2013.)

105 TSN, October 8, 2013, p. 119.

106 Rollo (G.R. No. 208493), pp. 9 and 341.

107 The Court observes that petitioners have not presented sufficient averments on the remittances from the Philippine Charity Sweepstakes Office nor have defined the scope of "the Executive's Lump Sum Discretionary Funds" (See rollo [G.R. No. 208566], pp. 47-49) which appears to be too broad and all-encompassing. Also, while Villegas filed a Supplemental Petition dated October 1, 2013 (Supplemental Petition, see rollo [G.R. No. 208566], pp. 213-220, and pp. 462-464) particularly presenting their arguments on the Disbursement Acceleration Program, the same is the main subject of G.R. Nos. 209135, 209136, 209155, 209164, 209260, 209287, 209442, 209517, and 209569 and thus, must be properly resolved therein. Hence, for these reasons, insofar as the Presidential Pork Barrel is concerned, the Court is constrained not to delve on any issue related to the above-mentioned funds and consequently confine its discussion only with respect to the issues pertaining to the Malampaya Funds and the Presidential Social Fund.

complete schedule/list of legislators who have availed of their PDAF and VILP from the years 2003 to 2013, specifying the use of the funds, the project or activity and the recipient entities or individuals, and all pertinent data thereto"; and (b) "the use of the Executive's lump-sum, discretionary funds, including the proceeds from the x x x Malampaya Funds and remittances from the PAGCOR x x x from 2003 to 2013, specifying the x x x project or activity and the recipient entities or individuals, and all pertinent data thereto."[108] Also, they pray for the "inclusion in budgetary deliberations with the Congress of all presently off-budget, lump-sum, discretionary funds including, but not limited to, proceeds from the Malampaya Funds and remittances from the PAGCOR."[109] The Belgica Petition was docketed as G.R. No. 208566.[110]

Lastly, on September 5, 2013, petitioner Pedrito M. Nepomuceno (Nepomuceno), filed a Petition dated August 23, 2012 (Nepomuceno Petition), seeking that the PDAF be declared unconstitutional, and a cease and desist order be issued restraining President Benigno Simeon S. Aquino III (President Aquino) and Secretary Abad from releasing such funds to Members of Congress and, instead, allow their release to fund priority projects identified and approved by the Local Development Councils in consultation with the executive departments, such as the DPWH, the Department of Tourism, the Department of Health, the Department of Transportation, and Communication and the National Economic Development Authority.[111] The Nepomuceno Petition was docketed as UDK-14951.[112]

On September 10, 2013, the Court issued a Resolution of even date (a) consolidating all cases; (b) requiring public respondents to comment on the consolidated petitions; (c) issuing a TRO (September 10, 2013 TRO) enjoining the DBM, National Treasurer, the Executive Secretary, or any of the persons acting under their authority from releasing (1) the remaining PDAF allocated to Members of Congress under the GAA of 2013, and (2) Malampaya Funds under the phrase "for such other purposes as may be hereafter directed by the President" pursuant to Section 8 of PD 910 but not for the purpose of "financing energy resource development and exploitation programs and projects of the government under the same provision; and (d) setting the consolidated cases for Oral Arguments on October 8, 2013.

On September 23, 2013, the Office of the Solicitor General (OSG) filed a Consolidated Comment (Comment) of even date before the Court, seeking the lifting, or in the alternative, the partial lifting with respect to educational and medical assistance purposes, of the Court's September 10, 2013 TRO, and that the consolidated petitions be dismissed for lack of merit.[113]

On September 24, 2013, the Court issued a Resolution of even date directing petitioners to reply to the Comment.

Petitioners, with the exception of Nepomuceno, filed their respective replies to the Comment: (a) on September 30, 2013, Villegas filed a separate Reply dated September 27, 2013 (Villegas Reply); (b) on October 1, 2013, Belgica, et al. filed a Reply dated September 30, 2013 (Belgica Reply); and (c) on October 2, 2013, Alcantara filed a Reply dated October 1, 2013.

108 Rollo (G.R. No. 208566), pp. 48-49.
109 Id. at 48.
110 To note, Villegas' Supplemental Petition was filed on October 2, 2013.
111 Rollo, (G.R. No. 208566), p. 342; and rollo (G.R. No. 209251), pp. 6-7.
112 Re-docketed as G.R. No. 209251 upon Nepomuceno's payment of docket fees on October 16, 2013 as reflected on the Official Receipt No. 0079340. Rollo (G.R. No. 209251) p. 409.
113 Rollo (G.R. No. 208566) p. 97.

On October 1, 2013, the Court issued an Advisory providing for the guidelines to be observed by the parties for the Oral Arguments scheduled on October 8, 2013. In view of the technicality of the issues material to the present cases, incumbent Solicitor General Francis H. Jardeleza (Solicitor General) was directed to bring with him during the Oral Arguments representative/s from the DBM and Congress who would be able to competently and completely answer questions related to, among others, the budgeting process and its implementation. Further, the CoA Chairperson was appointed as amicus curiae and thereby requested to appear before the Court during the Oral Arguments.

On October 8 and 10, 2013, the Oral Arguments were conducted. Thereafter, the Court directed the parties to submit their respective memoranda within a period of seven (7) days, or until October 17, 2013, which the parties subsequently did.

The Issues Before the Court

Based on the pleadings, and as refined during the Oral Arguments, the following are the main issues for the Court's resolution:

I. Procedural Issues.

Whether or not (a) the issues raised in the consolidated petitions involve an actual and justiciable controversy; (b) the issues raised in the consolidated petitions are matters of policy not subject to judicial review; (c) petitioners have legal standing to sue; and (d) the Court's Decision dated August 19, 1994 in G.R. Nos. 113105, 113174, 113766, and 113888, entitled "Philippine Constitution Association v. Enriquez"[114] (Philconsa) and Decision dated April 24, 2012 in G.R. No. 164987, entitled "Lawyers Against Monopoly and Poverty v. Secretary of Budget and Management"[115] (LAMP) bar the re-litigatio n of the issue of constitutionality of the "Pork Barrel System" under the principles of res judicata and stare decisis.

II. Substantive Issues on the "Congressional Pork Barrel."

Whether or not the 2013 PDAF Article and all other Congressional Pork Barrel Laws similar thereto are unconstitutional considering that they violate the principles of/constitutional provisions on (a) separation of powers; (b) non-delegability of legislative power; (c) checks and balances; (d) accountability; (e) political dynasties; and (f) local autonomy.

III. Substantive Issues on the "Presidential Pork Barrel."

Whether or not the phrases (a) "and for such other purposes as may be hereafter directed by the President" under Section 8 of PD 910,[116] relating to the Malampaya Funds, and (b) "to finance the priority infrastructure development projects and to finance the restoration of damaged or destroyed facilities due to calamities, as may be directed and authorized by the Office of the President of the Philippines" under Section 12 of PD 1869, as amended by PD 1993, relating to the Presidential Social Fund, are unconstitutional insofar as they constitute undue delegations of legislative power.

These main issues shall be resolved in the order that they have been stated. In addition, the Court shall also tackle certain ancillary issues as prompted by the present cases.

114 G.R. Nos. 113105, 113174, 113766 & 113888, August 19, 1994, 235 SCRA 506.

115 Supra note 95.

116 Entitled "CREATING AN ENERGY DEVELOPMENT BOARD, DEFINING ITS POWERS AND FUNCTIONS, PROVIDING FUNDS, THEREFOR, AND FOR OTHER PURPOSES."

THE COURT'S RULING

The petitions are partly granted.

I. Procedural Issues.

The prevailing rule in constitutional litigation is that no question involving the constitutionality or validity of a law or governmental act may be heard and decided by the Court unless there is compliance with the legal requisites for judicial inquiry,[117] namely: (a) there must be an actual case or controversy calling for the exercise of judicial power; (b) the person challenging the act must have the standing to question the validity of the subject act or issuance; (c) the question of constitutionality must be raised at the earliest opportunity ; and (d) the issue of constitutionality must be the very lis mota of the case.[118] Of these requisites, case law states that the first two are the most important[119] and, therefore, shall be discussed forthwith.

A. Existence of an Actual Case or Controversy.

By constitutional fiat, judicial power operates only when there is an actual case or controversy.[120] This is embodied in Section 1, Article VIII of the 1987 Constitution which pertinently states that "judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable x x x." Jurisprudence provides that an actual case or controversy is one which "involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute.[121] In other words, "there must be a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence."[122] Related to the requirement of an actual case or controversy is the requirement of "ripeness," meaning that the questions raised for constitutional scrutiny are already ripe for adjudication. "A question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it. It is a prerequisite that something had then been accomplished or performed by either branch before a court may come into the picture, and the petitioner must allege the existence of an immediate or threatened injury to itself as a result of the challenged action."[123] "Withal, courts will decline to pass upon constitutional issues through advisory opinions, bereft as they are of authority to resolve hypothetical or moot questions."[124]

Based on these principles, the Court finds that there exists an actual and justiciable controversy in these cases.

The requirement of contrariety of legal rights is clearly satisfied by the antagonistic positions of the parties on the constitutionality of the "Pork Barrel System." Also, the questions in these consolidated cases are ripe for adjudication since the challenged funds and the provisions allowing for their utilization – such as the 2013 GAA for the PDAF, PD 910 for the Malampaya Funds and PD 1869, as amended by PD 1993, for the Presidential Social Fund – are currently existing and operational; hence, there exists an immediate or threatened injury to petitioners as a result of the unconstitutional use of these public funds.

117 Joya v. Presidential Commission on Good Government, G.R. No. 96541, August 24, 1993, 225 SCRA 568, 575.

118 Biraogo v. Philippine Truth Commission of 2010, G.R. No. 192935, December 7, 2010, 637 SCRA 78, 148.

119 Joya v. Presidential Commission on Good Government, supra note 117, at 575.

120 Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council, G.R. Nos. 178552, 178554, 178581, 178890, 179157, and 179461, October 5, 2010, 632 SCRA 146, 175.

121 Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP), G.R. Nos. 183591, 183752, 183893, 183951, and 183962, October 14, 2008, 568 SCRA 402, 450.

122 Id. at 450-451.

123 Francisco, Jr. v. Toll Regulatory Board, G.R. No. 166910, 169917, 173630, and 183599, October 19, 2010, 633 SCRA 470, 493, citing Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP), G.R. Nos. 183591, 183752, 183893, 183951, and 183962, October 14, 2008, 568 SCRA 402, 405.

124 Id. at 492, citing Muskrat v. U.S., 219 U.S. 346 (1913).

As for the PDAF, the Court must dispel the notion that the issues related thereto had been rendered moot and academic by the reforms undertaken by respondents. A case becomes moot when there is no more actual controversy between the parties or no useful purpose can be served in passing upon the merits.[125] Differing from this description, the Court observes that respondents' proposed line-item budgeting scheme would not terminate the controversy nor diminish the useful purpose for its resolution since said reform is geared towards the 2014 budget, and not the 2013 PDAF Article which, being a distinct subject matter, remains legally effective and existing. Neither will the President's declaration that he had already "abolished the PDAF" render the issues on PDAF moot precisely because the Executive branch of government has no constitutional authority to nullify or annul its legal existence. By constitutional design, the annulment or nullification of a law may be done either by Congress, through the passage of a repealing law, or by the Court, through a declaration of unconstitutionality. Instructive on this point is the following exchange between Associate Justice Antonio T. Carpio (Justice Carpio) and the Solicitor General during the Oral Arguments:[126]

Justice Carpio: The President has taken an oath to faithfully execute the law,[127] correct?
Solicitor General Jardeleza: Yes, Your Honor.
Justice Carpio: And so the President cannot refuse to implement the General Appropriations Act, correct?

Solicitor General Jardeleza: Well, that is our answer, Your Honor. In the case, for example of the PDAF, the President has a duty to execute the laws but in the face of the outrage over PDAF, the President was saying, "I am not sure that I will continue the release of the soft projects," and that started, Your Honor. Now, whether or not that … (interrupted)

Justice Carpio: Yeah. I will grant the President if there are anomalies in the project, he has the power to stop the releases in the meantime, to investigate, and that is Section 38 of Chapter 5 of Book 6 of the Revised Administrative Code[128] x x x. So at most the President can suspend, now if the President believes that the PDAF is unconstitutional, can he just refuse to implement it?

Solicitor General Jardeleza: No, Your Honor, as we were trying to say in the specific case of the PDAF because of the CoA Report, because of the reported irregularities and this Court can take judicial notice, even outside, outside of the COA Report, you have the report of the whistle-blowers, the President was just exercising precisely the duty ….

x x x x

Justice Carpio: Yes, and that is correct. You've seen the CoA Report, there are anomalies, you stop and investigate, and prosecute, he has done that. But, does that mean that PDAF has been repealed?

Solicitor General Jardeleza: No, Your Honor .

x x x x

Justice Carpio: So that PDAF can be legally abolished only in two (2) cases. Congress passes a law to repeal it, or this Court declares it unconstitutional, correct?

Solictor General Jardeleza: Yes, Your Honor.

125 Baldo, Jr. v. Commision on Elections, G.R. No. 176135, June 16, 2009, 589 SCRA 306, 310.
126 TSN, October 10, 2013, pp. 79-81.
127 Section 17, Article VII of the 1987 Constitution reads: Sec. 17. The President shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed.

128 Sec. 38. Suspension of Expenditure of Appropriations. – Except as otherwise provided in the General Appropriations Act and whenever in his judgment the public interest so requires, the President, upon notice to the head of office concerned, is authorized to suspend or otherwise stop further expenditure of funds allotted for any agency, or any other expenditure authorized in the General Appropriations Act, except for personal services appropriations used for permanent officials and employees.

Justice Carpio: The President has no power to legally abolish PDAF. (Emphases supplied)

Even on the assumption of mootness, jurisprudence, nevertheless, dictates that "the moot and academic' principle is not a magical formula that can automatically dissuade the Court in resolving a case." The Court will decide cases, otherwise moot, if: first, there is a grave violation of the Constitution; second, the exceptional character of the situation and the paramount public interest is involved; third, when the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and fourth, the case is capable of repetition yet evading review.[129]

The applicability of the first exception is clear from the fundamental posture of petitioners – they essentially allege grave violations of the Constitution with respect to, inter alia, the principles of separation of powers, non-delegability of legislative power, checks and balances, accountability and local autonomy.

The applicability of the second exception is also apparent from the nature of the interests involved – the constitutionality of the very system within which significant amounts of public funds have been and continue to be utilized and expended undoubtedly presents a situation of exceptional character as well as a matter of paramount public interest. The present petitions, in fact, have been lodged at a time when the system's flaws have never before been magnified. To the Court's mind, the coalescence of the CoA Report, the accounts of numerous whistle-blowers, and the government's own recognition that reforms are needed "to address the reported abuses of the PDAF"[130] demonstrates a prima facie pattern of abuse which only underscores the importance of the matter. It is also by this finding that the Court finds petitioners' claims as not merely theorized, speculative or hypothetical. Of note is the weight accorded by the Court to the findings made by the CoA which is the constitutionally-mandated audit arm of the government. In Delos Santos v. CoA,[131] a recent case wherein the Court upheld the CoA's disallowance of irregularly disbursed PDAF funds, it was emphasized that:

The COA is endowed with enough latitude to determine, prevent, and disallow irregular, unnecessary, excessive, extravagant or unconscionable expenditures of government funds. It is tasked to be vigilant and conscientious in safeguarding the proper use of the government's, and ultimately the people's, property. The exercise of its general audit power is among the constitutional mechanisms that gives life to the check and balance system inherent in our form of government.

It is the general policy of the Court to sustain the decisions of administrative authorities, especially one which is constitutionally-created, such as the CoA, not only on the basis of the doctrine of separation of powers but also for their presumed expertise in the laws they are entrusted to enforce. Findings of administrative agencies are accorded not only respect but also finality when the decision and order are not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion. It is only when the CoA has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, that this Court entertains a petition questioning its rulings. x x x. (Emphases supplied)

Thus, if only for the purpose of validating the existence of an actual and justiciable controversy in these cases, the Court deems the findings under the CoA Report to be sufficient.

129 Mattel, Inc. v. Francisco, G.R. No. 166886, July 30, 2008, 560 SCRA 504, 514, citing Constantino v. Sandiganbayan (First Division), G.R. Nos. 140656 and 154482, September 13, 2007, 533 SCRA 205, 219-220.

130 Rollo (G.R. No. 208566), p. 292.

131 G.R. No. 198457, August 13, 2013.

The Court also finds the third exception to be applicable largely due to the practical need for a definitive ruling on the system's constitutionality. As disclosed during the Oral Arguments, the CoA Chairperson estimates that thousands of notices of disallowances will be issued by her office in connection with the findings made in the CoA Report. In this relation, Associate Justice Marvic Mario Victor F. Leonen (Justice Leonen) pointed out that all of these would eventually find their way to the courts.[132] Accordingly, there is a compelling need to formulate controlling principles relative to the issues raised herein in order to guide the bench, the bar, and the public, not just for the expeditious resolution of the anticipated disallowance cases, but more importantly, so that the government may be guided on how public funds should be utilized in accordance with constitutional principles.

Finally, the application of the fourth exception is called for by the recognition that the preparation and passage of the national budget is, by constitutional imprimatur, an affair of annual occurrence.[133] The relevance of the issues before the Court does not cease with the passage of a "PDAF -free budget for 2014."[134] The evolution of the "Pork Barrel System," by its multifarious iterations throughout the course of history, lends a semblance of truth to petitioners' claim that "the same dog will just resurface wearing a different collar."[135] In Sanlakas v. Executive Secretary,[136] the government had already backtracked on a previous course of action yet the Court used the "capable of repetition but evading review" exception in order "to prevent similar questions from re-emerging."[137] The situation similarly holds true to these cases. Indeed, the myriad of issues underlying the manner in which certain public funds are spent, if not resolved at this most opportune time, are capable of repetition and hence, must not evade judicial review.

B. Matters of Policy: the Political Question Doctrine.

The "limitation on the power of judicial review to actual cases and controversies carries the assurance that "the courts will not intrude into areas committed to the other branches of government."[138] Essentially, the foregoing limitation is a restatement of the political question doctrine which, under the classic formulation of Baker v. Carr,[139] applies when there is found, among others, "a textually demonstrable constitutional commitment of the issue to a coordinate political department," "a lack of judicially discoverable and manageable standards for resolving it" or "the impossibility of deciding without an initial policy determination of a kind clearly for non- judicial discretion." Cast against this light, respondents submit that the "the political branches are in the best position not only to perform budget-related reforms but also to do them in response to the specific demands of their constituents" and, as such, "urge the Court not to impose a solution at this stage."[140]

The Court must deny respondents' submission.

Suffice it to state that the issues raised before the Court do not present political but legal questions which are within its province to resolve. A political question refers to "those questions which, under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the Legislature or executive branch of

132 TSN, October 10, 2013, p. 134.
133 Section 22, Article VII of the 1987 Constitution provides:
Sec. 22. The President shall submit to the Congress within thirty days from the opening of every regular session, as the basis of the general appropriations bill, a budget of expenditures and sources of financing, including receipts from existing and proposed revenue measures.
134 Rollo (G.R. No. 208566), p. 294.
135 Id. at 5.
136 G.R. No. 159085, February 3, 2004, 421 SCRA 656.
137 Id. at 665.
138 See Francisco, Jr. v. Toll Regulatory Board, supra note 123, at 492.
139 369 US 186 82, S. Ct. 691, L. Ed. 2d. 663 [1962].
140 Rollo (G.R. No. 208566), pp. 295-296.

the Government. It is concerned with issues dependent upon the wisdom, not legality, of a particular measure."[141] The intrinsic constitutionality of the "Pork Barrel System" is not an issue dependent upon the wisdom of the political branches of government but rather a legal one which the Constitution itself has commanded the Court to act upon. Scrutinizing the contours of the system along constitutional lines is a task that the political branches of government are incapable of rendering precisely because it is an exercise of judicial power. More importantly, the present Constitution has not only vested the Judiciary the right to exercise judicial power but essentially makes it a duty to proceed therewith. Section 1, Article VIII of the 1987 Constitution cannot be any clearer: "The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law. It includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government." In Estrada v. Desierto,[142] the expanded concept of judicial power under the 1987 Constitution and its effect on the political question doctrine was explained as follows:[143]

To a great degree, the 1987 Constitution has narrowed the reach of the political question doctrine when it expanded the power of judicial review of this court not only to settle actual controversies involving rights which are legally demandable and enforceable but also to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of government. Heretofore, the judiciary has focused on the "thou shalt not's" of the Constitution directed against the exercise of its jurisdiction. With the new provision, however, courts are given a greater prerogative to determine what it can do to prevent grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of government. Clearly, the new provision did not just grant the Court power of doing nothing. x x x (Emphases supplied)

It must also be borne in mind that — when the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; does not in reality nullify or invalidate an act of the legislature or the executive, but only asserts the solemn and sacred obligation assigned to it by the Constitution."[144] To a great extent, the Court is laudably cognizant of the reforms undertaken by its co-equal branches of government. But it is by constitutional force that the Court must faithfully perform its duty. Ultimately, it is the Court's avowed intention that a resolution of these cases would not arrest or in any manner impede the endeavors of the two other branches but, in fact, help ensure that the pillars of change are erected on firm constitutional grounds. After all, it is in the best interest of the people that each great branch of government, within its own sphere, contributes its share towards achieving a holistic and genuine solution to the problems of society. For all these reasons, the Court cannot heed respondents' plea for judicial restraint.

C. Locus Standi.

"The gist of the question of standing is whether a party alleges such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions. Unless a person is injuriously affected in any of his constitutional rights by the operation of statute or ordinance, he has no standing."[145]

141 Tañada v. Cuenco, 100 Phil. 1101 (1957) unreported case.
142 406 Phil. 1 (2001).
143 Id. at 42-43.
144 Angara v. Electoral Commission, 63 Phil. 139, 158 (1936).
145 La Bugal- B'laan Tribal Association, Inc. v. Sec. Ramos, 465 Phil. 860, 890 (2004).

Petitioners have come before the Court in their respective capacities as citizen-taxpayers and accordingly, assert that they "dutifully contribute to the coffers of the National Treasury."[146] Clearly, as taxpayers, they possess the requisite standing to question the validity of the existing "Pork Barrel System" under which the taxes they pay have been and continue to be utilized. It is undeniable that petitioners, as taxpayers, are bound to suffer from the unconstitutional usage of public funds, if the Court so rules. Invariably, taxpayers have been allowed to sue where there is a claim that public funds are illegally disbursed or that public money is being deflected to any improper purpose, or that public funds are wasted through the enforcement of an invalid or unconstitutional law,[147] as in these cases.

Moreover, as citizens, petitioners have equally fulfilled the standing requirement given that the issues they have raised may be classified as matters "of transcendental importance, of overreaching significance to society, or of paramount public interest."[148] The CoA Chairperson's statement during the Oral Arguments that the present controversy involves "not merely a systems failure" but a "complete breakdown of controls"[149] amplifies, in addition to the matters above-discussed, the seriousness of the issues involved herein. Indeed, of greater import than the damage caused by the illegal expenditure of public funds is the mortal wound inflicted upon the fundamental law by the enforcement of an invalid statute.[150] All told, petitioners have sufficient locus standi to file the instant cases.

D. Res Judicata and Stare Decisis.

Res judicata (which means a "matter adjudged") and stare decisis non quieta et movere (or simply, stare decisis which means "follow past precedents and do not disturb what has been settled") are general procedural law principles which both deal with the effects of previous but factually similar dispositions to subsequent cases. For the cases at bar, the Court examines the applicability of these principles in relation to its prior rulings in Philconsa and LAMP.

The focal point of res judicata is the judgment. The principle states that a judgment on the merits in a previous case rendered by a court of competent jurisdiction would bind a subsequent case if, between the first and second actions, there exists an identity of parties, of subject matter, and of causes of action.[151] This required identity is not, however, attendant hereto since Philconsa and LAMP, respectively involved constitutional challenges against the 1994 CDF Article and 2004 PDAF Article, whereas the cases at bar call for a broader constitutional scrutiny of the entire "Pork Barrel System." Also, the ruling in LAMP is essentially a dismissal based on a procedural technicality – and, thus, hardly a judgment on the merits – in that petitioners therein failed to present any "convincing proof x x x showing that, indeed, there were direct releases of funds to the Members of Congress, who actually spend them according to their sole discretion" or "pertinent evidentiary support to demonstrate the illegal misuse of PDAF in the form of kickbacks and has become a common exercise of unscrupulous Members of Congress." As such, the Court up held, in view of the presumption of constitutionality accorded to every law, the 2004 PDAF Article, and saw "no need to review or reverse the standing pronouncements in the said case." Hence, for the foregoing reasons, the res judicata principle, insofar as the Philconsa and LAMP cases are concerned, cannot apply.

On the other hand, the focal point of stare decisis is the doctrine created. The principle,

146 Rollo (G.R. No. 208566), p. 349.
147 Public Interest Center, Inc. v. Honorable Vicente Q. Roxas, in his capacity as Presiding Judge, RTC of Quezon City, Branch 227, G.R. No. 125509, January 31, 2007, 513 SCRA 457, 470.
148 Social Justice Society (SJS) v. Dangerous Drugs Board, G.R. No. 157870, November 3, 2008, 570 SCRA 410, 421.
149 TSN, October 8, 2013, pp. 184-185.
150 People v. Vera, 65 Phil. 56, 89 (1937).
151 See Lanuza v. CA, G.R. No. 131394, March 28, 2005, 454 SCRA 54, 61-62.

entrenched under Article 8[152] of the Civil Code, evokes the general rule that, for the sake of certainty, a conclusion reached in one case should be doctrinally applied to those that follow if the facts are substantially the same, even though the parties may be different. It proceeds from the first principle of justice that, absent any powerful countervailing considerations, like cases ought to be decided alike. Thus, where the same questions relating to the same event have been put forward by the parties similarly situated as in a previous case litigated and decided by a competent court, the rule of stare decisis is a bar to any attempt to re-litigate the same issue.[153]

Philconsa was the first case where a constitutional challenge against a Pork Barrel provision, i.e., the 1994 CDF Article, was resolved by the Court. To properly understand its context, petitioners' posturing was that "the power given to the Members of Congress to propose and identify projects and activities to be funded by the CDF is an encroachment by the legislature on executive power, since said power in an appropriation act is in implementation of the law" and that "the proposal and identification of the projects do not involve the making of laws or the repeal and amendment thereof, the only function given to the Congress by the Constitution."[154] In deference to the foregoing submissions, the Court reached the following main conclusions: one, under the Constitution, the power of appropriation, or the "power of the purse," belongs to Congress; two, the power of appropriation carries with it the power to specify the project or activity to be funded under the appropriation law and it can be detailed and as broad as Congress wants it to be; and, three, the proposals and identifications made by Members of Congress are merely recommendatory. At once, it is apparent that the Philconsa resolution was a limited response to a separation of powers problem, specifically on the propriety of conferring post-enactment identification authority to Members of Congress. On the contrary, the present cases call for a more holistic examination of (a) the inter-relation between the CDF and PDAF Articles with each other, formative as they are of the entire "Pork Barrel System" as well as (b) the intra-relation of post-enactment measures contained within a particular CDF or PDAF Article, including not only those related to the area of project identification but also to the areas of fund release and realignment. The complexity of the issues and the broader legal analyses herein warranted may be, therefore, considered as a powerful countervailing reason against a wholesale application of the stare decisis principle.

In addition, the Court observes that the Philconsa ruling was actually riddled with inherent constitutional inconsistencies which similarly countervail against a full resort to stare decisis. As may be deduced from the main conclusions of the case, Philconsa's fundamental premise in allowing Members of Congress to propose and identify of projects would be that the said identification authority is but an aspect of the power of appropriation which has been constitutionally lodged in Congress. From this premise, the contradictions may be easily seen. If the authority to identify projects is an aspect of appropriation and the power of appropriation is a form of legislative power thereby lodged in Congress, then it follows that: (a) it is Congress which should exercise such authority, and not its individual Members; (b) such authority must be exercised within the prescribed procedure of law passage and, hence, should not be exercised after the GAA has already been passed; and (c) such authority, as embodied in the GAA, has the force of law and, hence, cannot be merely recommendatory. Justice Vitug's Concurring Opinion in the same case sums up the Philconsa quandary in this wise: "Neither

152 ART. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.

153 Chinese Young Men's Christian Association o f the Philippine Islands v. Remington Steel Corporation, G.R. No. 159422, March 28, 2008, 550 SCRA 180, 197-198.

154 Philconsa v. Enriquez, supra note 114, at 522.

would it be objectionable for Congress, by law, to appropriate funds for such specific projects as it may be minded; to give that authority, however, to the individual members of Congress in whatever guise, I am afraid, would be constitutionally impermissible." As the Court now largely benefits from hindsight and current findings on the matter, among others, the CoA Report, the Court must partially abandon its previous ruling in Philconsa insofar as it validated the post-enactment identification authority of Members of Congress on the guise that the same was merely recommendatory. This postulate raises serious constitutional inconsistencies which cannot be simply excused on the ground that such mechanism is "imaginative as it is innovative." Moreover, it must be pointed out that the recent case of Abakada Guro Party List v. Purisima[155] (Abakada) has effectively overturned Philconsa's allowance of post-enactment legislator participation in view of the separation of powers principle. These constitutional inconsistencies and the Abakada rule will be discussed in greater detail in the ensuing section of this Decision.
As for LAMP, suffice it to restate that the said case was dismissed on a procedural technicality and, hence, has not set any controlling doctrine susceptible of current application to the substantive issues in these cases. In fine, stare decisis would not apply.

II. Substantive Issues.

A. Definition of Terms.

Before the Court proceeds to resolve the substantive issues of these cases, it must first define the terms "Pork Barrel System," "Congressional Pork Barrel," and "Presidential Pork Barrel" as they are essential to the ensuing discourse.

Petitioners define the term "Pork Barrel System" as the "collusion between the Legislative and Executive branches of government to accumulate lump-sum public funds in their offices with unchecked discretionary powers to determine its distribution as political largesse."[156] They assert that the following elements make up the Pork Barrel System: (a) lump-sum funds are allocated through the appropriations process to an individual officer; (b) the officer is given sole and broad discretion in determining how the funds will be used or expended; (c) the guidelines on how to spend or use the funds in the appropriation are either vague, overbroad or inexistent; and (d) projects funded are intended to benefit a definite constituency in a particular part of the country and to help the political careers of the disbursing official by yielding rich patronage benefits.[157] They further state that the Pork Barrel System is comprised of two (2) kinds of discretionary public funds: first, the Congressional (or Legislative) Pork Barrel, currently known as the PDAF;[158] and, second, the Presidential (or Executive) Pork Barrel, specifically, the Malampaya Funds under PD 910 and the Presidential Social Fund under PD 1869, as amended by PD 1993.[159]

Considering petitioners' submission and in reference to its local concept and legal history, the Court defines the Pork Barrel System as the collective body of rules and practices that govern the manner by which lump-sum, discretionary funds, primarily intended for local projects, are utilized through the respective participations of the Legislative and Executive branches of government,

155 G.R. No. 166715, August 14, 2008, 562 SCRA 251.

156 Rollo (G.R. No. 208566), p. 325.
157 Id.
158 Id. at 329.
159 Id. at 339.

including its members. The Pork Barrel System involves two (2) kinds of lump-sum discretionary funds:

First, there is the Congressional Pork Barrel which is herein defined as a kind of lump-sum, discretionary fund wherein legislators, either individually or collectively organized into committees, are able to effectively control certain aspects of the fund's utilization through various post-enactment measures and/or practices. In particular, petitioners consider the PDAF, as it appears under the 2013 GAA, as Congressional Pork Barrel since it is, inter alia, a post-enactment measure that allows individual legislators to wield a collective power;[160] and

Second, there is the Presidential Pork Barrel which is herein defined as a kind of lump-sum, discretionary fund which allows the President to determine the manner of its utilization. For reasons earlier stated,[161] the Court shall delimit the use of such term to refer only to the Malampaya Funds and the Presidential Social Fund.

With these definitions in mind, the Court shall now proceed to discuss the substantive issues of these cases.

B. Substantive Issues on the Congressional Pork Barrel.

1. Separation of Powers.

a. Statement of Principle.

The principle of separation of powers refers to the constitutional demarcation of the three fundamental powers of government. In the celebrated words of Justice Laurel in Angara v. Electoral Commission,[162] it means that the "Constitution has blocked out with deft strokes and in bold lines, allotment of power to the executive, the legislative and the judicial departments of the government."[163] To the legislative branch of government, through Congress,[164] belongs the power to make laws; to the executive branch of government, through the President,[165] belongs the power to enforce laws; and to the judicial branch of government, through the Court,[166] belongs the power to interpret laws. Because the three great powers have been, by constitutional design, ordained in this respect, "each department of the government has exclusive cognizance of matters within its jurisdiction, and is supreme within its own sphere."[167] Thus, "the legislature has no authority to execute or construe the law, the executive has no authority to make or construe the law, and the judiciary has no power to make or execute the law."[168] The principle of separation of powers and its concepts of autonomy and independence stem from

160 Id. at 338.
161 See note 107.

162 Angara v. Electoral Commission, supra note 144, at 139.
163 Id. at 157.
164 Section 1, Article VI, 1987 Constitution.
165 Section 1, Article VII, 1987 Constitution.
166 Section 1, Article VIII, 1987 Constitution.
167 Angara v. Electoral Commission, supra note 144, at 156.
168 Government of the Philippine Islands v. Springer, 277 U.S. 189, 203 (1928).

the notion that the powers of government must be divided to avoid concentration of these powers in any one branch; the division, it is hoped, would avoid any single branch from lording its power over the other branches or the citizenry.[169] To achieve this purpose, the divided power must be wielded by co-equal branches of government that are equally capable of independent action in exercising their respective mandates. Lack of independence would result in the inability of one branch of government to check the arbitrary or self-interest assertions of another or others.[170]

Broadly speaking, there is a violation of the separation of powers principle when one branch of government unduly encroaches on the domain of another. US Supreme Court decisions instruct that the principle of separation of powers may be violated in two (2) ways: firstly, "one branch may interfere impermissibly with the other's performance of its constitutionally assigned function";[171] and "alternatively, the doctrine may be violated when one branch assumes a function that more properly is entrusted to another."[172] In other words, there is a violation of the principle when there is impermissible (a) interference with and/or (b) assumption of another department's functions.

The enforcement of the national budget, as primarily contained in the GAA, is indisputably a function both constitutionally assigned and properly entrusted to the Executive branch of government. In Guingona, Jr. v. Hon. Carague[173] (Guingona, Jr.), the Court explained that the phase of budget execution "covers the various operational aspects of budgeting" and accordingly includes "the evaluation of work and financial plans for individual activities," the "regulation and release of funds" as well as all "other related activities" that comprise the budget execution cycle.[174] This is rooted in the principle that the allocation of power in the three principal branches of government is a grant of all powers inherent in them.[175] Thus, unless

169 Re: COA Opinion on the Computation of the Appraised Value of the Properties Purchased by the Retired Chief/Associate Justices of the Supreme Court, A.M. No. 11-7-10-SC, July 31, 2012, 678 SCRA 1, 9-10, citing Carl Baar, Separate But Subservient: Court Budgeting In The American States 149-52 (1975), cited in Jeffrey Jackson, Judicial Independence, Adequate Court Funding, and Inherent Judicial Powers, 52 Md. L. Rev. 217 (1993).

170 Id. at 10, citing Jeffrey Jackson, Judicial Independence, Adequate Court Funding, and Inherent Judicial Powers, 52 Md. L. Rev. 217 (1993).

171 See Nixon v. Administrator of General Services, 433 U.S. 425, 441-446 and 451-452 (1977) and United States v. Nixon, 418 U.S. 683 (1974), cited in Justice Powell's concurring opinion in Immigration and Naturalization Service v. Chadha, 462 U.S. 919 (1983).

172 See Youngstown Sheet & Tube Co. v. Sawyer 343 U.S. 579, 587 (1952), Springer v. Philippine Islands, 277 U.S. 189, 203 (1928) cited in Justice Powell's concurring opinion in Immigration and Naturalization Service v. Chadha, 462 U.S. 919 (1983).

173 273 Phil. 443 (1991).

174 Id. at 461. "3. Budget Execution. Tasked on the Executive, the third phase of the budget process covers the various operational aspects of budgeting. The establishment of obligation authority ceilings, the evaluation of work and financial plans for individual activities, the continuing review of government fiscal position, the regulation of funds releases, the implementation of cash payment schedules, and other related activities comprise this phase of the budget cycle."

175 Biraogo v. Philippine Truth Commission of 2010, supra note 118, at 158.

the Constitution provides otherwise, the Executive department should exclusively exercise all roles and prerogatives which go into the implementation of the national budget as provided under the GAA as well as any other appropriation law.

In view of the foregoing, the Legislative branch of government, much more any of its members, should not cross over the field of implementing the national budget since, as earlier stated, the same is properly the domain of the Executive. Again, in Guingona, Jr., the Court stated that "Congress enters the picture when it deliberates or acts on the budget proposals of the President. Thereafter, Congress, "in the exercise of its own judgment and wisdom, formulates an appropriation act precisely following the process established by the Constitution, which specifies that no money may be paid from the Treasury except in accordance with an appropriation made by law." Upon approval and passage of the GAA, Congress' law -making role necessarily comes to an end and from there the Executive's role of implementing the national budget begins. So as not to blur the constitutional boundaries between them, Congress must "not concern it self with details for implementation by the Executive."[176]

The foregoing cardinal postulates were definitively enunciated in Abakada where the Court held that "from the moment the law becomes effective, any provision of law that empowers Congress or any of its members to play any role in the implementation or enforcement of the law violates the principle of separation of powers and is thus unconstitutional."[177] It must be clarified, however, that since the restriction only pertains to "any role in the implementation or enforcement of the law," Congress may still exercise its oversight function which is a mechanism of checks and balances that the Constitution itself allows. But it must be made clear that Congress' role must be confined to mere oversight. Any post-enactment-measure allowing legislator participation beyond oversight is bereft of any constitutional basis and hence, tantamount to impermissible interference and/or assumption of executive functions. As the Court ruled in Abakada:[178]

Any post-enactment congressional measure x x x should be limited to scrutiny and investigation. In particular, congressional oversight must be confined

176 Guingona, Jr. v. Carague, supra note 173, at 460-461.
177 Abakada Guro Party List v. Purisima, supra note 155, at 294-296.
178 Id. at 287.

to the following:

> (1) scrutiny based primarily on Congress' power of appropriation and the budget hearings conducted in connection with it, its power to ask heads of departments to appear before and be heard by either of its Houses on any matter pertaining to their departments and its power of confirmation; and
>
> (2) investigation and monitoring of the implementation of laws pursuant to the power of Congress to conduct inquiries in aid of legislation.

Any action or step beyond that will undermine the separation of powers guaranteed by the Constitution. (Emphases supplied)

b. Application.

In these cases, petitioners submit that the Congressional Pork Barrel – among others, the 2013 PDAF Article – "wrecks the assignment of responsibilities between the political branches" as it is designed to allow individual legislators to interfere "way past the time it should have ceased" or, particularly, "after the GAA is passed."[179]

They state that the findings and recommendations in the CoA Report provide "an illustration of how absolute and definitive the power of legislators wield over project implementation in complete violation of the constitutional principle of separation of powers."[180] Further, they point out that the Court in the Philconsa case only allowed the CDF to exist on the condition that individual legislators limited their role to recommending projects and not if they actually dictate their implementation.[181]

For their part, respondents counter that the separations of powers principle has not been violated since the President maintains "ultimate authority to control the execution of the GAA and that he "retains the final discretion to reject" the legislators' proposals.[182] They maintain that the Court, in Philconsa, "upheld the constitutionality of the power of members of Congress to propose and identify projects so long as such proposal and identification are recommendatory."[183] As such, they claim that "everything in the Special Provisions [of the 2013 PDAF Article follows the Philconsa framework, and hence, remains constitutional."[184]

179 Rollo (G.R. No. 208566), p. 179.

180 Id. at 29.
181 Id. at 24.
182 Id. at 86.
183 Id. at 308.
184 Id.

The Court rules in favor of petitioners.

As may be observed from its legal history, the defining feature of all forms of Congressional Pork Barrel would be the authority of legislators to participate in the post-enactment phases of project implementation. At its core, legislators – may it be through project lists,[185] prior consultations[186] or program menus[187] – have been consistently accorded post-enactment authority to identify the projects they desire to be funded through various Congressional Pork Barrel allocations. Under the 2013 PDAF Article, the statutory authority of legislators to identify projects post-GAA may be construed from the import of Special Provisions 1 to 3 as well as the second paragraph of Special Provision 4. To elucidate, Special Provision 1 embodies the program menu feature which, as evinced from past PDAF Articles, allows individual legislators to identify PDAF projects for as long as the identified project falls under a general program listed in the said menu. Relatedly, Special Provision 2 provides that the implementing agencies shall, within 90 days from the GAA is passed, submit to Congress a more detailed priority list, standard or design prepared and submitted by implementing agencies from which the legislator may make his choice. The same provision further authorizes legislators to identify PDAF projects outside his district for as long as the representative of the district concerned concurs in writing. Meanwhile, Special Provision 3 clarifies that PDAF projects refer to "projects to be identified by legislators"[188] and thereunder provides the allocation limit for the total amount of projects identified by each legislator. Finally, paragraph 2 of Special Provision 4 requires that any modification and revision of the project identification "shall be submitted to the House Committee on Appropriations and the Senate Committee on Finance for favorable endorsement to the DBM or the implementing agency, as the case may be." From the foregoing special provisions, it cannot be seriously doubted that legislators have been accorded post-enactment authority to identify PDAF projects.

Aside from the area of project identification, legislators have also been accorded post-enactment authority in the areas of fund release and realignment. Under the 2013 PDAF Article, the statutory authority of legislators to participate in the area of fund release through congressional committees is contained in Special Provision 5 which explicitly states that "all request for release of funds shall be supported by the documents prescribed under Special Provision No. 1 and favorably endorsed by House Committee on Appropriations and the Senate Committee on Finance, as the case may be"; while their statutory authority to participate in the area of fund realignment is contained in: first , paragraph 2, Special Provision 4[189] which

185 See CDF Articles for the years 1991, 1992, 1993, 1994, 1995, 1996, 1997, and 1998.

186 See PDAF Article for the year 2000 which was re-enacted in 2001. See also the following 1999 CIAs: "Food Security Program Fund," the " Lingap Para Sa Mahihirap Program Fund," and the "Rural/Urban Development Infrastructure Program Fund." See further the 1997 DepEd School Building Fund.

187 See PDAF Article for the years 2005, 2006, 2007, 2008, 2009, 2010, 2011, and 2013.

188 Also, in Section 2.1 of DBM Circular No. 547 dated January 18, 2013 (DBM Circular 547-13), or the "Guidelines on the Release of Funds Chargeable Against the Priority Development Assistance Fund for FY 2013," it is explicitly stated that the "PDAF shall be used to fund priority programs and projects identified by the Legislators from the Project Menu." (Emphasis supplied)

189 To note, Special Provision 4 cannot – as respondents submit – refer to realignment of projects since the same provision subjects the realignment to the condition that the "allotment released has not yet been obligated for the original project/ scope of work". The foregoing proviso should be read as a textual reference to the savings requirement stated under Section 25(5), Article VI of the 1987 Constitution which pertinently provides that "x x x the President, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, and the heads of Constitutional Commissions may, by law, be authorized to augment any item in the general appropriations law for their respective offices from savings in other items of their respective appropriations. In addition, Sections 4.2.3, 4.2.4 and 4.3.3 of DBM Circular 547-13, the implementing rules of the 2013 PDAF Article, respectively require that: (a) "the allotment is still valid or has not yet lapsed"; (b) "requests for realignment of unobligated allotment as of December 31, 2012 treated as continuing appropriations in FY 2013 shall be submitted to the DBM not later than June 30, 2013"; and (c) requests for realignment shall be supported with, among others, a "certification of availability of funds." As the letter of the law and the guidelines related thereto evoke the legal concept of savings, Special Provision 4 must be construed to be a provision on realignment of PDAF funds, which would necessarily but only incidentally include the projects for which the funds have been allotted to. To construe it otherwise would effectively allow PDAF funds to be realigned outside the ambit of the foregoing provision, thereby sanctioning a constitutional aberration.

explicitly states, among others, that "any realignment of funds shall be submitted to the House Committee on Appropriations and the Senate Committee on Finance for favorable endorsement to the DBM or the implementing agency, as the case may be; and, second , paragraph 1, also of Special Provision 4 which authorizes the "Secretaries of Agriculture, Education, Energy, Interior and Local Government, Labor and Employment, Public Works and Highways, Social Welfare and Development and Trade and Industry[190] x x x to approve realignment from one project/ scope to another within the allotment received from this Fund, subject to among others (iii) the request is with the concurrence of the legislator concerned."

Clearly, these post-enactment measures which govern the areas of project identification, fund release and fund realignment are not related to functions of congressional oversight and, hence, allow legislators to intervene and/or assume duties that properly belong to the sphere of budget execution. Indeed, by virtue of the foregoing, legislators have been, in one form or another, authorized to participate in – as Guingona, Jr. puts it – "the various operational aspects of budgeting," including "the evaluation of work and financial plans for individual activities" and the "regulation and release of funds" in violation of the separation of powers principle. The fundamental rule, as categorically articulated in Abakada, cannot be overstated – from the moment the law becomes effective, any provision of law that empowers Congress or any of its members to play any role in the implementation or enforcement of the law violates the principle of separation of powers and is thus unconstitutional.[191] That the said authority is treated as merely recommendatory in nature does not alter its unconstitutional tenor since the prohibition, to repeat, covers any role in the implementation or enforcement of the law. Towards this end, the Court must therefore abandon its ruling in Philconsa which sanctioned the conduct of legislator identification on the guise that the same is merely recommendatory and, as such, respondents' reliance on the same falters altogether.

190 Aside from the sharing of the executive's realignment authority with legislators in violation of the separation of powers principle, it must be pointed out that Special Provision 4, insofar as it confers fund realignment authority to department secretaries, is already unconstitutional by itself. As recently held in Nazareth v. Villar (Nazareth), G.R. No. 188635, January 29, 2013, 689 SCRA 385, 403-404, Section 25(5), Article VI of the 1987 Constitution, limiting the authority to augment, is "strictly but reasonably construed as exclusive" in favor of the high officials named therein. As such, the authority to realign funds allocated to the implementing agencies is exclusively vested in the President, viz.:

> It bears emphasizing that the exception in favor of the high officials named in Section 25(5), Article VI of the Constitution limiting the authority to transfer savings only to augment another item in the GAA is strictly but reasonably construed as exclusive. As the Court has expounded in Lokin, Jr. v. Commission on Elections:
>
> When the statute itself enumerates the exceptions to the application of the general rule, the exceptions are strictly but reasonably construed. The exceptions extend only as far as their language fairly warrants, and all doubts should be resolved in favor of the general provision rather than the exceptions. Where the general rule is established by a statute with exceptions, none but the enacting authority can curtail the former. Not even the courts may add to the latter by implication, and it is a rule that an express exception excludes all others, although it is always proper in determining the applicability of the rule to inquire whether, in a particular case, it accords with reason and justice.
>
> The appropriate and natural office of the exception is to exempt something from the scope of the general words of a statute, which is otherwise within the scope and meaning of such general words. Consequently, the existence of an exception in a statute clarifies the intent that the statute shall apply to all cases not excepted. Exceptions are subject to the rule of strict construction; hence, any doubt will be resolved in favor of the general provision and against the exception. Indeed, the liberal construction of a statute will seem to require in many circumstances that the exception, by which the operation of the statute is limited or abridged, should receive a restricted construction. (Emphases and underscoring supplied)
>
> The cogence of the Nazareth dictum is not enfeebled by an invocation of the doctrine of qualified political agency (otherwise known as the "alter ego doctrine") for the bare reason that the same is not applicable when the Constitution itself requires the President himself to act on a particular matter, such as that instructed under Section 25(5), Article VI of the Constitution. As held in the landmark case of Villena v. Secretary of Interior (67 Phil. 451 [1987]), constitutional imprimatur is precisely one of the exceptions to the application of the alter ego doctrine, viz.:
>
> After serious reflection, we have decided to sustain the contention of the government in this case on the board proposition, albeit not suggested, that under the presidential type of government which we have adopted and considering the departmental organization established and continued in force by paragraph 1, section 12, Article VII, of our Constitution, all executive and administrative organizations are adjuncts of the Executive Department, the heads of the various executive departments are assistants and agents of the Chief Executive, and except in cases where the Chief Executive is required by the Constitution or the law to act in person or the exigencies of the situation demand that he act personally, the multifarious executive and administrative functions of the Chief Executive are performed by and through the executive departments, and the acts of the secretaries of such departments, performed and promulgated in the regular course of business, are, unless disapproved or reprobated by the Chief Executive, presumptively the acts of the Chief Executive. (Emphases and underscoring supplied; citations omitted)

191 Abakada Guro Party List v. Purisima, supra note 155, at 294-296.

Besides, it must be pointed out that respondents have nonetheless failed to substantiate their position that the identification authority of legislators is only of recommendatory import. Quite the contrary, respondents – through the statements of the Solicitor General during the Oral Arguments – have admitted that the identification of the legislator constitutes a mandatory requirement before his PDAF can be tapped as a funding source, thereby highlighting the indispensability of the said act to the entire budget execution process:[192]

Justice Bernabe: Now, without the individual legislator's identification of the project, can the PDAF of the legislator be utilized?

Solicitor General Jardeleza: No, Your Honor.

Justice Bernabe: It cannot?

Solicitor General Jardeleza: It cannot… (interrupted)

Justice Bernabe: So meaning you should have the identification of the project by the individual legislator?

Solicitor General Jardeleza: Yes, Your Honor.

x x x x

Justice Bernabe: In short, the act of identification is mandatory?

Solictor General Jardeleza: Yes, Your Honor. In the sense that if it is not done and then there is no identification.
x x x x

Justice Bernabe: Now, would you know of specific instances when a project was implemented without the identification by the individual legislator?

Solicitor General Jardeleza: I do not know, Your Honor; I do not think so but I have no specific examples. I would doubt very much, Your Honor, because to implement, there is a need for a SARO and the NCA. And the SARO and the NCA are triggered by an identification from the legislator.

x x x x

Solictor General Jardeleza: What we mean by mandatory, Your Honor, is we were replying to a question, "How can a legislator make sure that he is able to get PDAF Funds?" It is mandatory in the sense that he must identify, in that sense, Your Honor. Otherwise, if he does not identify, he cannot avail of the PDAF Funds and his district would not be able to have PDAF Funds, only in that sense, Your Honor. (Emphases supplied)

Thus, for all the foregoing reasons, the Court hereby declares the 2013 PDAF Article as well as all other provisions of law which similarly allow legislators to wield any form of post-enactment authority in the implementation or enforcement of the budget, unrelated to congressional oversight, as violative of the separation of powers principle and thus unconstitutional. Corollary thereto, informal practices, through which legislators have effectively intruded into the proper phases of budget execution, must be deemed as acts of grave abuse of discretion amounting to lack or excess of jurisdiction and, hence, accorded the same unconstitutional treatment. That such informal practices do exist and have, in fact, been constantly observed throughout the years has not been substantially disputed here. As pointed out by Chief Justice Maria Lourdes P.A. Sereno (Chief Justice Sereno) during the Oral Arguments of these cases:[193]
Chief Justice Sereno:

Now, from the responses of the representative of both, the DBM and two (2) Houses of Congress, if we enforces the initial thought

192 TSN, October 10, 2013, pp. 16, 17, 18, and 23.

193 TSN, October 10, 2013, pp. 72-73.

that I have, after I had seen the extent of this research made by my staff, that neither the Executive nor Congress frontally faced the question of constitutional compatibility of how they were engineering the budget process. In fact, the words you have been using, as the three lawyers of the DBM, and both Houses of Congress has also been using is surprise; surprised that all of these things are now surfacing. In fact, I thought that what the 2013 PDAF provisions did was to codify in one section all the past practice that had been done since 1991. In a certain sense, we should be thankful that they are all now in the PDAF Special Provisions. x x x (Emphasis and underscoring supplied)

Ultimately, legislators cannot exercise powers which they do not have, whether through formal measures written into the law or informal practices institutionalized in government agencies, else the Executive department be deprived of what the Constitution has vested as its own.

2. Non-delegability of Legislative Power.

    a. Statement of Principle.

        As an adjunct to the separation of powers principle,[194] legislative power shall be exclusively exercised by the body to which the Constitution has conferred the same. In particular, Section 1, Article VI of the 1987 Constitution states that such power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives, except to the extent reserved to the people by the provision on initiative and referendum.[195] Based on this provision, it is clear that only Congress, acting as a bicameral body, and the people, through the process of initiative and referendum, may constitutionally wield legislative power and no other. This premise embodies the principle of non-delegability of legislative power, and the only recognized exceptions thereto would be: (a) delegated legislative power to local governments which, by immemorial practice, are allowed to legislate on purely local matters;[196] and (b) constitutionally-grafted exceptions such as the authority of the President to, by law, exercise powers necessary and proper to carry out a declared national

194 Aside from its conceptual origins related to the separation of powers principle, Corwin, in his commentary on Constitution of the United States made the following observations:
At least three distinct ideas have contributed to the development of the principle that legislative power cannot be delegated. One is the doctrine of separation of powers: Why go to the trouble of separating the three powers of government if they can straightway remerge on their own motion? The second is the concept of due process of law, which precludes the transfer of regulatory functions to private persons. Lastly, there is the maxim of agency "Delegata potestas non potest delegari," which John Locke borrowed and formulated as a dogma of political science . . . Chief Justice Taft offered the following explanation of the origin and limitations of this idea as a postulate of constitutional law: "The well-known maxim 'delegata potestas non potest delefari,' applicable to the law of agency in the general common law, is well understood and has had wider application in the construction of our Federal and State Constitutions than it has in private law . . . The Federal and State Constitutions than it has in private law . . . The Federal Constitution and State Constitutions of this country divide the governmental power into three branches . . . In carrying out that constitutional division . . . it is a breach of the National fundamental law if Congress gives up its legislative power and transfers it to the President, or to the Judicial branch, or if by law it attempts to invest itself or its members with either executive power of judicial power. This is not to say that the three branches are not co-ordinate parts of one government and that each in the field of its duties may not invoke government and that each in the field of its duties may not invoke the action of the two other branches in so far as the action invoked shall not be an assumption of the constitutional field of action of another branch. In determining what it may do in seeking assistance from another branch, the extent and character of that assistance must be fixed according to common sense and the inherent necessities of the governmental coordination. (Emphases supplied)

195 Section 1, Article VI, 1987 Constitution.

196 See Rubi v. Provincial Board of Mindoro, 39 Phil. 660, 702 (1919)

policy in times of war or other national emergency,[197] or fix within specified limits, and subject to such limitations and restrictions as Congress may impose, tariff rates, import and export quotas, tonnage and wharfage dues, and other duties or imposts within the framework of the national development program of the Government.[198]

Notably, the principle of non-delegability should not be confused as a restriction to delegate rule-making authority to implementing agencies for the limited purpose of either filling up the details of the law for its enforcement (supplementary rule-making) or ascertaining facts to bring the law into actual operation (contingent rule-making).[199] The conceptual treatment and limitations of delegated rule-making were explained in the case of People v. Maceren[200] as follows:

The grant of the rule-making power to administrative agencies is a relaxation of the principle of separation of powers and is an exception to the nondelegation of legislative powers. Administrative regulations or "subordinate legislation" calculated to promote the public interest are necessary because of "the growing complexity of modern life, the multiplication of the subjects of governmental regulations, and the increased difficulty of administering the law."

x x x x

Nevertheless, it must be emphasized that the rule-making power must be confined to details for regulating the mode or proceeding to carry into effect the law as it has been enacted. The power cannot be extended to amending or expanding the statutory requirements or to embrace matters not covered by the statute. Rules that subvert the statute cannot be sanctioned. (Emphases supplied)

b. Application.

In the cases at bar, the Court observes that the 2013 PDAF Article, insofar as it confers post-enactment identification authority to individual legislators, violates the principle of non-delegability since said legislators are effectively allowed to individually exercise the power of appropriation, which – as settled in Philconsa – is lodged in Congress.[201] That the power to appropriate must be exercised only through legislation is clear from Section 29(1),

197 See Section 23(2), Article VI of the 1987 Constitution.
198 See Section 28(2), Article VI of the 1987 Constitution.
199 Abakada Guro Party List v. Purisima, supra note 155, at 288.
200 169 Phil. 437, 447-448 (1977).
201 Philippine Constitution Association v. Enriquez, supra note 114, at 522.

Article VI of the 1987 Constitution which states that: "No money shall be paid out of the Treasury except in pursuance of an appropriation made by law." To understand what constitutes an act of appropriation, the Court, in Bengzon v. Secretary of Justice and Insular Auditor[202] (Bengzon), held that the power of appropriation involves (a) the setting apart by law of a certain sum from the public revenue for (b) a specified purpose. Essentially, under the 2013 PDAF Article, individual legislators are given a personal lump-sum fund from which they are able to dictate (a) how much from such fund would go to (b) a specific project or beneficiary that they themselves also determine. As these two (2) acts comprise the exercise of the power of appropriation as described in Bengzon, and given that the 2013 PDAF Article authorizes individual legislators to perform the same, undoubtedly, said legislators have been conferred the power to legislate which the Constitution does not, however, allow. Thus, keeping with the principle of non-delegability of legislative power, the Court hereby declares the 2013 PDAF Article, as well as all other forms of Congressional Pork Barrel which contain the similar legislative identification feature as herein discussed, as unconstitutional.

3. Checks and Balances.

   a. Statement of Principle; Item-Veto Power.

      The fact that the three great powers of government are intended to be kept separate and distinct does not mean that they are absolutely unrestrained and independent of each other. The Constitution has also provided for an elaborate system of checks and balances to secure coordination in the workings of the various departments of the government.[203]

      A prime example of a constitutional check and balance would be the President's power to veto an item written into an appropriation, revenue or tariff bill submitted to him by Congress for approval through a process known as "bill presentment." The President's item-veto power is found in Section 27(2), Article VI of the 1987 Constitution which reads as follows:

      Sec. 27. x x x.

      x x x x

      (2) The President shall have the power to veto any

202 Bengzon v. Secretary of Justice and Insular Auditor, 62 Phil. 912, 916 (1936).

203 Angara v. Electoral Commission, supra note 144, at 156.

particular item or items in an appropriation, revenue, or tariff bill, but the veto shall not affect the item or items to which he does not object.

The presentment of appropriation, revenue or tariff bills to the President, wherein he may exercise his power of item-veto, forms part of the "single, finely wrought and exhaustively considered, procedures" for law-passage as specified under the Constitution.[204] As stated in Abakada, the final step in the law-making process is the "submission of the bill to the President for approval. Once approved, it takes effect as law after the required publication."[205]

Elaborating on the President's item-veto power and its relevance as a check on the legislature, the Court, in Bengzon, explained that:[206]

The former Organic Act and the present Constitution of the Philippines make the Chief Executive an integral part of the law-making power. His disapproval of a bill, commonly known as a veto, is essentially a legislative act. The questions presented to the mind of the Chief Executive are precisely the same as those the legislature must determine in passing a bill, except that his will be a broader point of view.

The Constitution is a limitation upon the power of the legislative department of the government, but in this respect it is a grant of power to the executive department. The Legislature has the affirmative power to enact laws; the Chief Executive has the negative power by the constitutional exercise of which he may defeat the will of the Legislature. It follows that the Chief Executive must find his authority in the Constitution. But in exercising that authority he may not be confined to rules of strict construction or hampered by the unwise interference of the judiciary. The courts will indulge every intendment in favor of the constitutionality of a veto in the same manner as they will presume the constitutionality of an act as originally passed by the Legislature. (Emphases supplied)

The justification for the President's item-veto power rests on a variety of policy goals such as to prevent log-rolling legislation,[207] impose fiscal restrictions on the legislature, as well as to

204 Abakada Guro Party List v. Purisima, supra note 155, at 287.
205 Id. at 292.
206 Bengzon v. Secretary of Justice and Insular Auditor, supra note 202, at 916-917.

207 "Log-rolling legislation refers to the process in which several provisions supported by an individual legislator or minority of legislators are combined into a single piece of legislation supported by a majority of legislators on a quid pro quo basis: no one provision may command majority support, but the total package will." See Rollo (G.R. No. 208566), p. 420, citing Briffault, Richard, —The Item Veto in State Courts, 66 Temp. L. Rev. 1171, 1177 (1993).

fortify the executive branch's role in the budgetary process.[208] In Immigration and Naturalization Service v. Chadha, the US Supreme Court characterized the President's item-power as "a salutary check upon the legislative body, calculated to guard the community against the effects of factions, precipitancy, or of any impulse unfriendly to the public good, which may happen to influence a majority of that body"; phrased differently, it is meant to "increase the chances in favor of the community against the passing of bad laws, through haste, inadvertence, or design."[209]

For the President to exercise his item-veto power, it necessarily follows that there exists a proper "item" which may be the object of the veto. An item, as defined in the field of appropriations, pertains to "the particulars, the details, the distinct and severable parts of the appropriation or of the bill." In the case of Bengzon v. Secretary of Justice of the Philippine Islands,[210] the US Supreme Court characterized an item of appropriation as follows:

An item of an appropriation bill obviously means an item which, in itself, is a specific appropriation of money, not some general provision of law which happens to be put into an appropriation bill. (Emphases supplied)

On this premise, it may be concluded that an appropriation bill, to ensure that the President may be able to exercise his power of item veto, must contain "specific appropriations of money" and not only "general provisions" which provide for parameters of appropriation.

Further, it is significant to point out that an item of appropriation must be an item characterized by singular correspondence – meaning an allocation of a specified singular amount for a specified singular purpose, otherwise known as a "line-item."[211] This treatment not only allows the item to be consistent with its definition as a "specific appropriation of money" but also ensures that the President may discernibly veto the same. Based on the foregoing formulation, the existing Calamity Fund, Contingent Fund and the Intelligence Fund, being appropriations which state a specified amount for a

208 Passarello, Nicholas, "The Item Veto and the Threat of Appropriations Bundling in Alaska," 30 Alaska Law Review 128 (2013), citing Black's Law Dictionary 1700 (9th ed. 2009). <http://scholarship.law.duke.edu/alr/vol30/iss1/5> (visited October 23, 2013).

209 Immigration and Naturalization Service v. Chadha, 462 U.S. 919 (1983).

210 299 U.S. 410 (1937).

211 To note, in Gonzales v. Macaraig, Jr. (G.R. No. 87636, November 19, 1990, 191 SCRA 452, 465), citing Commonwealth v. Dodson (11 S.E., 2d 120, 176 Va. 281), the Court defined an item of appropriation as "an indivisible sum of money dedicated to a stated purpose." In this relation, Justice Carpio astutely explained that an "item" is indivisible because the amount cannot be divided for any purpose other than the specific purpose stated in the item.

specific purpose, would then be considered as "line- item" appropriations which are rightfully subject to item veto. Likewise, it must be observed that an appropriation may be validly apportioned into component percentages or values; however, it is crucial that each percentage or value must be allocated for its own corresponding purpose for such component to be considered as a proper line-item. Moreover, as Justice Carpio correctly pointed out, a valid appropriation may even have several related purposes that are by accounting and budgeting practice considered as one purpose, e.g., MOOE (maintenance and other operating expenses), in which case the related purposes shall be deemed sufficiently specific for the exercise of the President's item veto power. Finally, special purpose funds and discretionary funds would equally square with the constitutional mechanism of item-veto for as long as they follow the rule on singular correspondence as herein discussed. Anent special purpose funds, it must be added that Section 25(4), Article VI of the 1987 Constitution requires that the "special appropriations bill shall specify the purpose for which it is intended, and shall be supported by funds actually available as certified by the National Treasurer, or t o be raised by a corresponding revenue proposal therein." Meanwhile, with respect to discretionary funds, Section 2 5(6), Article VI of the 1987 Constitution requires that said funds "shall be disbursed only for public purposes to be supported by appropriate vouchers and subject to such guidelines as may be prescribed by law."

In contrast, what beckons constitutional infirmity are appropriations which merely provide for a singular lump-sum amount to be tapped as a source of funding for multiple purposes. Since such appropriation type necessitates the further determination of both the actual amount to be expended and the actual purpose of the appropriation which must still be chosen from the multiple purposes stated in the law, it cannot be said that the appropriation law already indicates a "specific appropriation of money and hence, without a proper line-item which the President may veto. As a practical result, the President would then be faced with the predicament of either vetoing the entire appropriation if he finds some of its purposes wasteful or undesirable, or approving the entire appropriation so as not to hinder some of its legitimate purposes. Finally, it may not be amiss to state that such arrangement also raises non-delegability

issues considering that the implementing authority would still have to determine, again, both the actual amount to be expended and the actual purpose of the appropriation. Since the foregoing determinations constitute the integral aspects of the power to appropriate, the implementing authority would, in effect, be exercising legislative prerogatives in violation of the principle of non-delegability.

b. Application.

In these cases, petitioners claim that "in the current x x x system where the PDAF is a lump-sum appropriation, the legislator's identification of the projects after the passage of the GAA denies the President the chance to veto that item later on."[212] Accordingly, they submit that the "item veto power of the President mandates that appropriations bills adopt line-item budgeting" and that "Congress cannot choose a mode of budgeting which effectively renders the constitutionally-given power of the President useless."[213]

On the other hand, respondents maintain that the text of the Constitution envisions a process which is intended to meet the demands of a modernizing economy and, as such, lump-sum appropriations are essential to financially address situations which are barely foreseen when a GAA is enacted. They argue that the decision of the Congress to create some lump-sum appropriations is constitutionally allowed and textually-grounded.[214]

The Court agrees with petitioners.

Under the 2013 PDAF Article, the amount of ₱24.79 Billion only appears as a collective allocation limit since the said amount would be further divided among individual legislators who would then receive personal lump-sum allocations and could, after the GAA is passed, effectively appropriate PDAF funds based on their own discretion. As these intermediate appropriations are made by legislators only after the GAA is passed and hence, outside of the law, it necessarily means that the actual items of PDAF appropriation would not have been written into the General Appropriations Bill and thus effectuated without veto consideration. This kind of lump-sum/post-enactment legislative identification budgeting system fosters the creation of a budget within a budget" which subverts the prescribed procedure of presentment and consequently impairs the President's power of item veto. As petitioners aptly point out, the above-described system forces the President to decide between (a) accepting the entire ₱24.79 Billion PDAF allocation without knowing the specific projects of the legislators, which may or may not be consistent

212 Rollo (G.R. No. 208566), p. 421.
213 Id.
214 Id. at 316.

with his national agenda and (b) rejecting the whole PDAF to the detriment of all other legislators with legitimate projects.[215]

Moreover, even without its post-enactment legislative identification feature, the 2013 PDAF Article would remain constitutionally flawed since it would then operate as a prohibited form of lump-sum appropriation above-characterized. In particular, the lump-sum amount of ₱24.79 Billion would be treated as a mere funding source allotted for multiple purposes of spending, i.e., scholarships, medical missions, assistance to indigents, preservation of historical materials, construction of roads, flood control, etc. This setup connotes that the appropriation law leaves the actual amounts and purposes of the appropriation for further determination and, therefore, does not readily indicate a discernible item which may be subject to the President's power of item veto.

In fact, on the accountability side, the same lump-sum budgeting scheme has, as the CoA Chairperson relays, "limited state auditors from obtaining relevant data and information that would aid in more stringently auditing the utilization of said Funds."[216] Accordingly, she recommends the adoption of a "line by line budget or amount per proposed program, activity or project, and per implementing agency."[217]

Hence, in view of the reasons above-stated, the Court finds the 2013 PDAF Article, as well as all Congressional Pork Barrel Laws of similar operation, to be unconstitutional. That such budgeting system provides for a greater degree of flexibility to account for future contingencies cannot be an excuse to defeat what the Constitution requires. Clearly, the first and essential truth of the matter is that unconstitutional means do not justify even commendable ends.[218]

c. Accountability.

Petitioners further relate that the system under which various forms of Congressional Pork Barrel operate defies public accountability as it renders Congress incapable of checking itself or its Members. In particular, they point out that the Congressional Pork Barrel "gives each legislator a direct, financial interest in the smooth, speedy passing of the yearly budget" which turns them "from fiscalizers" into "financially-interested partners."[219] They also claim that the system has an effect on re- election as "the PDAF excels in self-perpetuation of elective officials." Finally, they add that the "PDAF impairs the power of impeachment"

215 Id. at 421.
216 Id. at 566.
217 Id. at 567.

218 "It cannot be denied that most government actions are inspired with noble intentions, all geared towards the betterment of the nation and its people. But then again, it is important to remember this ethical principle: 'The end does not justify the means.' No matter how noble and worthy of admiration the purpose of an act, but if the means to be employed in accomplishing it is simply irreconcilable with constitutional parameters, then it cannot still be allowed. The Court cannot just turn a blind eye and simply let it pass. It will continue to uphold the Constitution and its enshrined principles. 'The Constitution must ever remain supreme. All must bow to the mandate of this law. Expediency must not be allowed to sap its strength nor greed for power debase its rectitude.'" (Biraogo v. Philippine Truth Commission of 2010, supra note 118, 177; citations omitted)
219 Rollo (G.R. No. 208566), p. 406.

> as such "funds are indeed quite useful, 'to well, accelerate the decisions of senators.'"[220]

The Court agrees in part.

The aphorism forged under Section 1, Article XI of the 1987 Constitution, which states that "public office is a public trust," is an overarching reminder that every instrumentality of government should exercise their official functions only in accordance with the principles of the Constitution which embodies the parameters of the people's trust. The notion of a public trust connotes accountability,[221] hence, the various mechanisms in the Constitution which are designed to exact accountability from public officers.

Among others, an accountability mechanism with which the proper expenditure of public funds may be checked is the power of congressional oversight. As mentioned in Abakada,[222] congressional oversight may be performed either through: (a) scrutiny based primarily on Congress' power of appropriation and the budget hearings conducted in connection with it, its power to ask heads of departments to appear before and be heard by either of its Houses on any matter pertaining to their departments and its power of confirmation;[223] or (b) investigation and monitoring of the implementation of laws pursuant to the power of Congress to conduct inquiries in aid of legislation.[224]

The Court agrees with petitioners that certain features embedded in some forms of Congressional Pork Barrel, among others the 2013 PDAF Article, has an effect on congressional oversight. The fact that individual legislators are given post-enactment roles in the implementation of the budget makes it difficult for them to become disinterested "observers" when scrutinizing, investigating or monitoring the implementation of the appropriation law. To a certain extent, the conduct of oversight would be tainted as said legislators, who are vested with post-enactment authority, would, in effect, be checking on activities in which they themselves participate. Also, it must be pointed out that this very same concept of post-enactment authorization runs afoul of Section 14, Article VI of the 1987 Constitution which provides that:

> Sec. 14. No Senator or Member of the House of Representatives may personally appear as counsel before any court of justice or before the Electoral Tribunals, or quasi-judicial and other administrative bodies. Neither shall he, directly or indirectly, be interested financially in any contract with, or in any franchise or special privilege granted by the Government, or any subdivision, agency, or instrumentality thereof, including any government-owned or controlled corporation, or its subsidiary, during his term of office. He shall not intervene in any matter before any office of the Government for his pecuniary benefit or where he may be called upon to act on account of his office. (Emphasis supplied)

220 Id. at 407.
221 Bernas, Joaquin G., S.J., The 1987 Constitution of the Republic of the Philippines: A Commentary, 2003 Edition, p. 1108.
222 Abakada Guro Party List v. Purisima, supra note 155.
223 See Section 22, Article VI, 1987 Constitution.
224 See Section 21, Article VI, 1987 Constitution.

Clearly, allowing legislators to intervene in the various phases of project implementation – a matter before another office of government – renders them susceptible to taking undue advantage of their own office.

The Court, however, cannot completely agree that the same post-enactment authority and/or the individual legislator's control of his PDAF per se would allow him to perpetuate himself in office. Indeed, while the Congressional Pork Barrel and a legislator's use thereof may be linked to this area of interest, the use of his PDAF for re-election purposes is a matter which must be analyzed based on particular facts and on a case-to-case basis.

Finally, while the Court accounts for the possibility that the close operational proximity between legislators and the Executive department, through the former's post-enactment participation, may affect the process of impeachment, this matter largely borders on the domain of politics and does not strictly concern the Pork Barrel System's intrinsic constitutionality. As such, it is an improper subject of judicial assessment.

In sum, insofar as its post-enactment features dilute congressional oversight and violate Section 14, Article VI of the 1987 Constitution, thus impairing public accountability, the 2013 PDAF Article and other forms of Congressional Pork Barrel of similar nature are deemed as unconstitutional.

4. Political Dynasties.

   One of the petitioners submits that the Pork Barrel System enables politicians who are members of political dynasties to accumulate funds to perpetuate themselves in power, in contravention of Section 26, Article II of the 1987 Constitution[225] which states that:

   Sec. 26. The State shall guarantee equal access to opportunities for public service, and prohibit political dynasties as may be defined by law. (Emphasis and underscoring supplied)

   At the outset, suffice it to state that the foregoing provision is considered as not self-executing due to the qualifying phrase "as may be defined by law." In this respect, said provision does not, by and of itself, provide a judicially enforceable constitutional right but merely specifies guideline for legislative or executive action.[226] Therefore, since there appears to be no standing law which crystallizes the policy on political dynasties for enforcement, the Court must defer from ruling on this issue.

   In any event, the Court finds the above-stated argument on this score to be largely speculative since it has not been properly demonstrated how the Pork Barrel System would be able to propagate political dynasties.

5. Local Autonomy.

225 Rollo (G.R. No. 208493), p. 9.
226 See Pamatong v. Commission on Elections, G.R. No. 161872, April 13, 2004, 427 SCRA 96, 100-101.

The State's policy on local autonomy is principally stated in Section 25, Article II and Sections 2 and 3, Article X of the 1987 Constitution which read as follows:

ARTICLE II

Sec. 25. The State shall ensure the autonomy of local governments.

ARTICLE X

Sec. 2. The territorial and political subdivisions shall enjoy local autonomy.

Sec. 3. The Congress shall enact a local government code which shall provide for a more responsive and accountable local government structure instituted through a system of decentralization with effective mechanisms of recall, initiative, and referendum, allocate among the different local government units their powers, responsibilities, and resources, and provide for the qualifications, election, appointment and removal, term, salaries, powers and functions and duties of local officials, and all other matters relating to the organization and operation of the local units.

Pursuant thereto, Congress enacted RA 7160,[227] otherwise known as the "Local Government Code of 1991" (LGC), wherein the policy on local autonomy had been more specifically explicated as follows:

Sec. 2. Declaration of Policy. – (a) It is hereby declared the policy of the State that the territorial and political subdivisions of the State shall enjoy genuine and meaningful local autonomy to enable them to attain their fullest development as self-reliant communities and make them more effective partners in the attainment of national goals. Toward this end, the State shall provide for a more responsive and accountable local government structure instituted through a system of decentralization whereby local government units shall be given more powers, authority, responsibilities, and resources. The process of decentralization shall proceed from the National Government to the local government units.

x x x x

(c) It is likewise the policy of the State to require all national agencies and offices to conduct periodic consultations with appropriate local government units, nongovernmental and people's organizations, and other concerned sectors of the community before any project or program is implemented in their respective jurisdictions. (Emphases and underscoring supplied)

The above-quoted provisions of the Constitution and the LGC reveal the policy of the State to empower local government units (LGUs) to develop and ultimately, become self-sustaining and effective contributors to the national economy. As explained

227 Entitled "AN ACT PROVIDING FOR A LOCAL GOVERNMENT CODE OF 1991."

by the Court in Philippine Gamefowl Commission v. Intermediate Appellate Court:[228]

This is as good an occasion as any to stress the commitment of the Constitution to the policy of local autonomy which is intended to provide the needed impetus and encouragement to the development of our local political subdivisions as "self - reliant communities." In the words of Jefferson, "Municipal corporations are the small republics from which the great one derives its strength." The vitalization of local governments will enable their inhabitants to fully exploit their resources and more important, imbue them with a deepened sense of involvement in public affairs as members of the body politic. This objective could be blunted by undue interference by the national government in purely local affairs which are best resolved by the officials and inhabitants of such political units. The decision we reach today conforms not only to the letter of the pertinent laws but also to the spirit of the Constitution.[229] (Emphases and underscoring supplied)

In the cases at bar, petitioners contend that the Congressional Pork Barrel goes against the constitutional principles on local autonomy since it allows district representatives, who are national officers, to substitute their judgments in utilizing public funds for local development.[230] The Court agrees with petitioners.

Philconsa described the 1994 CDF as an attempt "to make equal the unequal" and that "it is also a recognition that individual members of Congress, far more than the President and their congressional colleagues, are likely to be knowledgeable about the needs of their respective constituents and the priority to be given each project."[231] Drawing strength from this pronouncement, previous legislators justified its existence by stating that "the relatively small projects implemented under the Congressional Pork Barrel complement and link the national development goals to the countryside and grassroots as well as to depressed areas which are overlooked by central agencies which are preoccupied with mega-projects.[232] Similarly, in his August 23, 2013 speech on the "abolition" of PDAF and budgetary reforms, President Aquino mentioned that the Congressional Pork Barrel was originally established for a worthy goal, which is to enable the representatives to identify projects for communities that the LGU concerned cannot afford.[233]

Notwithstanding these declarations, the Court, however, finds an inherent defect in the

228 230 Phil. 379, 387-388 (1986).
229 Id.

230 Rollo (G.R. No. 208566), pp. 95-96.
231 Philconsa v. Enriquez, supra note 114, at 523.
232 Nograles, Prospero C. and Lagman, Edcel C., House of Representatives of the Philippines, "Understanding the 'Pork Barrel,'" <http://www.congress.gov.ph/download/ 14th/pork_barrel.pdf > (visited October 17, 2013).
233 <http://www.gov.ph/2013/08/23/english-statement-of-president-aquino-on-the-abolition-of-pdaf-august-23-2013/> (visited October 22, 2013).

system which actually belies the avowed intention of "making equal the unequal." In particular, the Court observes that the gauge of PDAF and CDF allocation/ division is based solely on the fact of office, without taking into account the specific interests and peculiarities of the district the legislator represents. In this regard, the allocation/division limits are clearly not based on genuine parameters of equality, wherein economic or geographic indicators have been taken into consideration. As a result, a district representative of a highly-urbanized metropolis gets the same amount of funding as a district representative of a far-flung rural province which would be relatively "underdeveloped" compared to the former. To add, what rouses graver scrutiny is that even Senators and Party-List Representatives – and in some years, even the Vice-President – who do not represent any locality, receive funding from the Congressional Pork Barrel as well. These certainly are anathema to the Congressional Pork Barrel's original intent which is "to make equal the unequal." Ultimately, the PDAF and CDF had become personal funds under the effective control of each legislator and given unto them on the sole account of their office.

The Court also observes that this concept of legislator control underlying the CDF and PDAF conflicts with the functions of the various Local Development Councils (LDCs) which are already legally mandated to "assist the corresponding sanggunian in setting the direction of economic and social development, and coordinating development efforts within its territorial jurisdiction."[234] Considering that LDCs are instrumentalities whose functions are essentially geared towards managing local affairs,[235] their programs, policies and resolutions should not be overridden nor duplicated by individual legislators, who are national officers that have no law-making authority except only when acting as a body. The undermining effect on local autonomy caused by the post-enactment authority conferred to the latter was succinctly put by petitioners in the following wise:[236]

> With PDAF, a Congressman can simply bypass the local development council and initiate projects on his own, and even take sole credit for its execution. Indeed, this type of personality-driven project identification has not only contributed little to the overall development of the district, but has even contributed to "further weakening infrastructure planning and coordination efforts of the government.
>
> Thus, insofar as individual legislators are authorized to intervene in purely local matters and thereby subvert genuine

234 Section 106 of the LGC provides:
Sec. 106. Local Development Councils. – (a) Each local government unit shall have a comprehensive multi-sectoral development plan to be initiated by its development council and approved by its sanggunian. For this purpose, the development council at the provincial, city, municipal, or barangal level, shall assist the corresponding sanggunian in setting the direction of economic and social development, and coordinating development efforts within its territorial jurisdiction.

235 See Section 109 of the LGC.

236 Rollo (G.R. No. 208566), p. 423.

local autonomy, the 2013 PDAF Article as well as all other similar forms of Congressional Pork Barrel is deemed unconstitutional.

With this final issue on the Congressional Pork Barrel resolved, the Court now turns to the substantive issues involving the Presidential Pork Barrel.

C. Substantive Issues on the Presidential Pork Barrel.

1. Validity of Appropriation.

Petitioners preliminarily assail Section 8 of PD 910 and Section 12 of PD1869 (now, amended by PD 1993), which respectively provide for the Malampaya Funds and the Presidential Social Fund, as invalid appropriations laws since they do not have the "primary and specific" purpose of authorizing the release of public funds from the National Treasury. Petitioners submit that Section 8 of PD 910 is not an appropriation law since the "primary and specific purpose of PD 910 is the creation of an Energy Development Board and Section 8 thereof only created a Special Fund incidental thereto.[237] In similar regard, petitioners argue that Section 12 of PD 1869 is neither a valid appropriations law since the allocation of the Presidential Social Fund is merely incidental to the "primary and specific" purpose of PD 1869 which is the amendment of the Franchise and Powers of PAGCOR.[238]

In view of the foregoing, petitioners suppose that such funds are being used without any valid law allowing for their proper appropriation in violation of Section 29(1), Article VI of the 1987 Constitution which states that: "No money shall be paid out of the Treasury except in pursuance of an appropriation made by law."[239]

The Court disagrees.

"An appropriation made by law under the contemplation of Section 29(1), Article VI of the 1987 Constitution exists when a provision of law (a) sets apart a determinate or determinable[240] amount of money and (b) allocates the same for a particular public purpose. These two minimum designations of amount and purpose stem from the very definition of the word "appropriation," which means "to allot, assign, set apart or apply to a particular use or purpose," and hence, if written into the law, demonstrate that the legislative intent to appropriate exists. As the Constitution "does not provide or prescribe any particular form of words or religious recitals in which an authorization or appropriation by

237 Id. at 427.
238 Id. at 439-440.
239 Id. at 434 and 441.
240 See Guingona, Jr. v. Carague, supra note 173, where the Court upheld the constitutionality of certain automatic appropriation laws for debt servicing although said laws did not readily indicate the exact amounts to be paid considering that "the amounts nevertheless are made certain by the legislative parameters provided in the decrees"; hence, "the Executive is not of unlimited discretion as to the amounts to be disbursed for debt servicing." To note, such laws vary in great degree with the way the 2013 PDAF Article works considering that: (a) individual legislators and not the executive make the determinations; (b) the choice of both the amount and the project are to be subsequently made after the law is passed and upon the sole discretion of the legislator, unlike in Guingona, Jr. where the amount to be appropriated is dictated by the contingency external to the discretion of the disbursing authority; and (c) in Guingona, Jr. there is no effective control of the funds since as long as the contingency arises money shall be automatically appropriated therefor, hence what is left is merely law execution and not legislative discretion.

Congress shall be made, except that it be 'made by law,'" an appropriation law may – according to Philconsa – be "detailed and as broad as Congress wants it to be" for as long as the intent to appropriate may be gleaned from the same. As held in the case of Guingona, Jr.:[241]

There is no provision in our Constitution that provides or prescribes any particular form of words or religious recitals in which an authorization or appropriation by Congress shall be made, except that it be "made by law," such as precisely the authorization or appropriation under the questioned presidential decrees. In other words, in terms of time horizons, an appropriation may be made impliedly (as by past but subsisting legislations) as well as expressly for the current fiscal year (as by enactment of laws by the present Congress), just as said appropriation may be made in general as well as in specific terms. The Congressional authorization may be embodied in annual laws, such as a general appropriations act or in special provisions of laws of general or special application which appropriate public funds for specific public purposes, such as the questioned decrees. An appropriation measure is sufficient if the legislative intention clearly and certainly appears from the language employed (In re Continuing Appropriations, 32 P. 272), whether in the past or in the present. (Emphases and underscoring supplied)

Likewise, as ruled by the US Supreme Court in State of Nevada v. La Grave:[242]

To constitute an appropriation there must be money placed in a fund applicable to the designated purpose. The word appropriate means to allot, assign, set apart or apply to a particular use or purpose. An appropriation in the sense of the constitution means the setting apart a portion of the public funds for a public purpose. No particular form of words is necessary for the purpose, if the intention to appropriate is plainly manifested. (Emphases supplied)

Thus, based on the foregoing, the Court cannot sustain the argument that the appropriation must be the "primary and specific" purpose of the law in order for a valid appropriation law to exist. To reiterate, if a legal provision designates a determinate or determinable amount of money and allocates the same for a particular public purpose, then the legislative intent to appropriate becomes apparent and, hence, already sufficient to satisfy the requirement of an "appropriation made by law" under contemplation of the Constitution.

Section 8 of PD 910 pertinently provides:

Section 8. Appropriations. x x x

All fees, revenues and receipts of the Board from any and all sources including receipts from service contracts and agreements such as application and processing fees, signature bonus, discovery bonus, production bonus; all money collected from concessionaires, representing unspent work obligations, fines and penalties under the Petroleum Act of 1949; as well as the government share representing royalties, rentals, production share

241 Id. at 462.
242 23 Nev. 25 (1895).

on service contracts and similar payments on the exploration, development and exploitation of energy resources, shall form part of a Special Fund to be used to finance energy resource development and exploitation programs and projects of the government and for such other purposes as may be hereafter directed by the President. (Emphases supplied)

Whereas Section 12 of PD 1869, as amended by PD 1993, reads:

Sec. 12. Special Condition of Franchise. — After deducting five (5%) percent as Franchise Tax, the Fifty (50%) percent share of the Government in the aggregate gross earnings of the Corporation from this Franchise, or 60% if the aggregate gross earnings be less than ₱150,000,000.00 shall be set aside and shall accrue to the General Fund to finance the priority infrastructure development projects and to finance the restoration of damaged or destroyed facilities due to calamities, as may be directed and authorized by the Office of the President of the Philippines. (Emphases supplied)

Analyzing the legal text vis-à-vis the above-mentioned principles, it may then be concluded that (a) Section 8 of PD 910, which creates a Special Fund comprised of "all fees, revenues, and receipts of the Energy Development Board from any and all sources" (a determinable amount) "to be used to finance energy resource development and exploitation programs and projects of the government and for such other purposes as may be hereafter directed by the President" (a specified public purpose), and (b) Section 12 of PD 1869, as amended by PD 1993, which similarly sets aside, "after deducting five (5%) percent as Franchise Tax, the Fifty (50%) percent share of the Government in the aggregate gross earnings of PAGCOR, or 60%, if the aggregate gross earnings be less than ₱150,000,000.00" (also a determinable amount) "to finance the priority infrastructure development projects and x x x the restoration of damaged or destroyed facilities due to calamities, as may be directed and authorized by the Office of the President of the Philippines" (also a specified public purpose), are legal appropriations under Section 29(1), Article VI of the 1987 Constitution.

In this relation, it is apropos to note that the 2013 PDAF Article cannot be properly deemed as a legal appropriation under the said constitutional provision precisely because, as earlier stated, it contains post-enactment measures which effectively create a system of intermediate appropriations. These intermediate appropriations are the actual appropriations meant for enforcement and since they are made by individual legislators after the GAA is passed, they occur outside the law. As such, the Court observes that the real appropriation made under the 2013 PDAF Article is not the ₱24.79 Billion allocated for the entire PDAF, but rather the post-enactment determinations made by the individual legislators which are, to repeat, occurrences outside of the law. Irrefragably, the 2013 PDAF Article does not constitute an "appropriation made by law" since it, in its truest sense, only authorizes individual legislators to appropriate in violation of the non-delegability principle as afore-discussed.

2. Undue Delegation.

On a related matter, petitioners contend that Section 8 of PD 910 constitutes an undue delegation of legislative power since the phrase "and for such other purposes as may be hereafter directed by the President" gives the President "unbridled discretion to determine for what purpose the funds will be used."[243] Respondents, on the other hand, urged the Court to apply the principle of ejusdem generis to the same section and thus, construe the phrase "and for such other purposes as may be hereafter directed by the President" to refer only to other purposes related "to energy resource development and exploitation programs and projects of the government."[244]

The Court agrees with petitioners' submissions.

While the designation of a determinate or determinable amount for a particular public purpose is sufficient for a legal appropriation to exist, the appropriation law must contain adequate legislative guidelines if the same law delegates rule-making authority to the Executive[245] either for the purpose of (a) filling up the details of the law for its enforcement, known as supplementary rule-making, or (b) ascertaining facts to bring the law into actual operation, referred to as contingent rule-making.[246] There are two (2) fundamental tests to ensure that the legislative guidelines for delegated rule-making are indeed adequate. The first test is called the "completeness test." Case law states that a law is complete when it sets forth therein the policy to be executed, carried out, or implemented by the delegate. On the other hand, the second test is called the "sufficient standard test." Jurisprudence holds that a law lays down a sufficient standard when it provides adequate guidelines or limitations in the law to map out the boundaries of the delegate's authority and prevent the delegation from running riot.[247] To be sufficient, the standard must specify the limits of the delegate's authority, announce the legislative policy, and identify the conditions under which it is to be implemented.[248]

In view of the foregoing, the Court agrees with petitioners that the phrase "and for such other purposes as may be hereafter directed by the President" under Section 8 of PD 910 constitutes an undue delegation of legislative power insofar as it does not lay down a sufficient standard to adequately determine the limits of the President's authority with

243 Rollo (G.R. No. 208566), p. 438.
244 Id. at 300.
245 The project identifications made by the Executive should always be in the nature of law enforcement and, hence, for the sole purpose of enforcing an existing appropriation law. In relation thereto, it may exercise its rule-making authority to greater particularize the guidelines for such identifications which, in all cases, should not go beyond what the delegating law provides. Also, in all cases, the Executive's identification or rule-making authority, insofar as the field of appropriations is concerned, may only arise if there is a valid appropriation law under the parameters as above-discussed.
246 Abakada Guro Party List v. Purisima, supra note 155.
247 See Bernas, Joaquin G., S.J., The 1987 Constitution of the Republic of the Philippines: A Commentary, 2009 Edition, pp. 686-687, citing Pelaez v. Auditor General, 15 SCRA 569, 576-577 (1965).
248 Id. at 277.

respect to the purpose for which the Malampaya Funds may be used. As it reads, the said phrase gives the President wide latitude to use the Malampaya Funds for any other purpose he may direct and, in effect, allows him to unilaterally appropriate public funds beyond the purview of the law. That the subject phrase may be confined only to "energy resource development and exploitation programs and projects of the government" under the principle of ejusdem generis, meaning that the general word or phrase is to be construed to include – or be restricted to – things akin to, resembling, or of the same kind or class as those specifically mentioned,[249] is belied by three (3) reasons: first, the phrase "energy resource development and exploitation programs and projects of the government" states a singular and general class and hence, cannot be treated as a statutory reference of specific things from which the general phrase "for such other purposes" may be limited; second, the said phrase also exhausts the class it represents, namely energy development programs of the government;[250] and, third, the Executive department has, in fact, used the Malampaya Funds for non-energy related purposes under the subject phrase, thereby contradicting respondents' own position that it is limited only to "energy resource development and exploitation programs and projects of the government."[251] Thus, while Section 8 of PD 910 may have passed the completeness test since the policy of energy development is clearly deducible from its text, the phrase "and for such other purposes as may be hereafter directed by the President" under the same provision of law should nonetheless be stricken down as unconstitutional as it lies independently unfettered by any sufficient standard of the delegating law. This notwithstanding, it must be underscored that the rest of Section 8, insofar as it allows for the use of the Malampaya Funds "to finance energy resource development and exploitation programs and projects of the government," remains legally effective and subsisting. Truth be told, the declared unconstitutionality of the aforementioned phrase is but an assurance that the Malampaya Funds would be used – as it should be used – only in accordance with the avowed purpose and intention of PD 910.

As for the Presidential Social Fund, the Court takes judicial notice of the fact that Section 12 of PD 1869 has already been amended by PD 1993 which thus

249 § 438 Ejusdem Generis ("of the same kind"); specific words; 82 C.J.S. Statutes § 438.

250 Rollo (G.R. No. 208566), p. 437, citing § 438 Ejusdem Generis ("of the same kind"); specific words; 82 C.J.S. Statutes § 438.

251 Based on a July 5, 2011 posting in the government's website <http://www.gov.ph/2011/07/05/budget-secretary-abad-clarifies-nature-of-malampaya-fund/>; attached as Annex "A" to the Petitioners' Memorandum), the Malampaya Funds were also used for non-energy related projects, to wit:
The rest of the 98.73 percent or ₱19.39 billion was released for non-energy related projects: 1) in 2006, ₱1 billion for the Armed Forces Modernization Fund; 2) in 2008, ₱4 billion for the Department of Agriculture; 3) in 2009, a total of ₱14.39 billion to various agencies, including: ₱7.07 billion for the Department of Public Works and Highways; ₱2.14 billion for the Philippine National Police; ₱1.82 billion for [the Department of Agriculture]; ₱1.4 billion for the National Housing Authority; and ₱900 million for the Department of Agrarian Reform.

moots the parties' submissions on the same.[252] Nevertheless, since the amendatory provision may be readily examined under the current parameters of discussion, the Court proceeds to resolve its constitutionality.

Primarily, Section 12 of PD 1869, as amended by PD 1993, indicates that the Presidential Social Fund may be used "to first, finance the priority infrastructure development projects and second, to finance the restoration of damaged or destroyed facilities due to calamities, as may be directed and authorized by the Office of the President of the Philippines." The Court finds that while the second indicated purpose adequately curtails the authority of the President to spend the Presidential Social Fund only for restoration purposes which arise from calamities, the first indicated purpose, however, gives him carte blanche authority to use the same fund for any infrastructure project he may so determine as a "priority". Verily, the law does not supply a definition of "priority in frastructure development projects" and hence, leaves the President without any guideline to construe the same. To note, the delimitation of a project as one of "infrastructure" is too broad of a classification since the said term could pertain to any kind of facility. This may be deduced from its lexicographic definition as follows: "the underlying framework of a system, especially public services and facilities (such as highways, schools, bridges, sewers, and water-systems) needed to support commerce as well as economic and residential development."[253] In fine, the phrase "to finance the priority infrastructure development projects" must be stricken down as unconstitutional since – similar to the above-assailed provision under Section 8 of PD 910 – it lies independently unfettered by any sufficient standard of the delegating law. As they are severable, all other provisions of Section 12 of PD 1869, as amended by PD 1993, remains legally effective and subsisting.

D. Ancillary Prayers. 1.

252 For academic purposes, the Court expresses its disagreement with petitioners' argument that the previous version of Section 12 of PD 1869 constitutes an undue delegation of legislative power since it allows the President to broadly determine the purpose of the Presidential Social Fund's use and perforce must be declared unconstitutional. Quite the contrary, the 1st paragraph of the said provision clearly indicates that the Presidential Social Fund shall be used to finance specified types of priority infrastructure and socio-civic projects, namely, Flood Control, Sewerage and Sewage, Nutritional Control, Population Control, Tulungan ng Bayan Centers, Beautification and Kilusang Kabuhayan at Kaunlaran (KKK) projects located within the Metropolitan Manila area. However, with regard to the stated geographical-operational limitation, the 2nd paragraph of the same provision nevertheless allows the Presidential Social Fund to finance "priority infrastructure and socio-civic projects throughout the Philippines as may be directed and authorized by the Office of the President of the Philippines." It must, however, be qualified that the 2nd paragraph should not be construed to mean that the Office of the President may direct and authorize the use of the Presidential Social Fund to any kind of infrastructure and socio-civic project throughout the Philippines. Pursuant to the maxim of noscitur a sociis , (meaning, that a word or phrase's "correct construction may be made clear and specific by considering the company of words in which it is founded or with which it is associated"; see Chavez v. Judicial and Bar Council, G.R. No. 202242, July 17, 2012, 676 SCRA 579, 598-599) the 2nd paragraph should be construed only as an expansion of the geographical-operational limitation stated in the 1st paragraph of the same provision and not a grant of carte blanche authority to the President to veer away from the project types specified thereunder. In other words, what the 2nd paragraph merely allows is the use of the Presidential Social Fund for Flood Control, Sewerage and Sewage, Nutritional Control, Population Control, Tulungan ng Bayan Centers, Beautification and Kilusang Kabuhayan at Kaunlaran (KKK) projects even though the same would be located outside the Metropolitan Manila area. To deem it otherwise would be tantamount to unduly expanding the rule-making authority of the President in violation of the sufficient standard test and, ultimately, the principle of non-delegability of legislative power.

253 Black's Law Dictionary (7th Ed., 1999), p. 784.

Petitioners' Prayer to be Furnished Lists and Detailed Reports.

Aside from seeking the Court to declare the Pork Barrel System unconstitutional – as the Court did so in the context of its pronouncements made in this Decision – petitioners equally pray that the Executive Secretary and/or the DBM be ordered to release to the CoA and to the public: (a) "the complete schedule/list of legislators who have availed of their PDAF and VILP from the years 2003 to 2013, specifying the use of the funds, the project or activity and the recipient entities or individuals, and all pertinent data thereto" (PDAF Use Schedule/List);[254] and (b) "the use of the Executive's lump-sum, discretionary funds, including the proceeds from the x x x Malampaya Funds and remittances from the PAGCOR x x x from 2003 to 2013, specifying the x x x project or activity and the recipient entities or individuals, and all pertinent data thereto"[255] (Presidential Pork Use Report). Petitioners' prayer is grounded on Section 28, Article II and Section 7, Article III of the 1987 Constitution which read as follows:

ARTICLE II

Sec. 28. Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest.

ARTICLE III Sec. 7.

The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.

The Court denies petitioners' submission.

Case law instructs that the proper remedy to invoke the right to information is to file a petition for mandamus. As explained in the case of Legaspi v. Civil Service Commission:[256]

While the manner of examining public records may be subject to reasonable regulation by the government agency in custody thereof, the duty to disclose the information of public concern, and to afford access to public records cannot be discretionary on the part of said agencies. Certainly, its performance cannot be made contingent upon the discretion of such agencies. Otherwise, the enjoyment of the constitutional right may be rendered nugatory by any whimsical exercise of agency discretion. The constitutional duty, not being discretionary, its performance may be compelled by a writ of mandamus in a proper case.

But what is a proper case for Mandamus to issue? In the case before Us, the public right to be enforced and the concomitant duty of the State are unequivocably set forth in the Constitution.

The decisive question on the propriety of the issuance of the writ

254 Rollo (G.R. No. 208566), pp. 48-49.
255 Id.
256 234 Phil. 521, 533-534 (1987).

of mandamus in this case is, whether the information sought by the petitioner is within the ambit of the constitutional guarantee. (Emphases supplied)

Corollarily, in the case of Valmonte v. Belmonte Jr.[257] (Valmonte), it has been clarified that the right to information does not include the right to compel the preparation of "lists, abstracts, summaries and the like." In the same case, it was stressed that it is essential that the "applicant has a well -defined, clear and certain legal right to the thing demanded and that it is the imperative duty of defendant to perform the act required." Hence, without the foregoing substantiations, the Court cannot grant a particular request for information. The pertinent portions of Valmonte are hereunder quoted:[258]

Although citizens are afforded the right to information and, pursuant thereto, are entitled to "access to official records," the Constitution does not accord them a right to compel custodians of official records to prepare lists, abstracts, summaries and the like in their desire to acquire information on matters of public concern.

It must be stressed that it is essential for a writ of mandamus to issue that the applicant has a well-defined, clear and certain legal right to the thing demanded and that it is the imperative duty of defendant to perform the act required. The corresponding duty of the respondent to perform the required act must be clear and specific Lemi v. Valencia, G.R. No. L-20768, November 29,1968,126 SCRA 203; Ocampo v. Subido, G.R. No. L-28344, August 27, 1976, 72 SCRA 443.

The request of the petitioners fails to meet this standard, there being no duty on the part of respondent to prepare the list requested. (Emphases supplied)

In these cases, aside from the fact that none of the petitions are in the nature of mandamus actions, the Court finds that petitioners have failed to establish a "a well-defined, clear and certain legal right" to be furnished by the Executive Secretary and/or the DBM of their requested PDAF Use Schedule/List and Presidential Pork Use Report. Neither did petitioners assert any law or administrative issuance which would form the bases of the latter's duty to furnish them with the documents requested. While petitioners pray that said information be equally released to the CoA, it must be pointed out that the CoA has not been impleaded as a party to these cases nor has it filed any petition before the Court to be allowed access to or to compel the release of any official document relevant to the conduct of its audit investigations. While the Court recognizes that the information requested is a matter of significant public concern, however, if only to ensure that the parameters of disclosure are properly foisted and so as not to unduly hamper the equally important interests of the government, it is constrained to deny petitioners' prayer on this score, without prejudice to a proper mandamus case which they, or even the CoA, may choose to pursue through a separate petition.

257 252 Phil. 264 (1989).
258 Id. at 279

It bears clarification that the Court's denial herein should only cover petitioners' plea to be furnished with such schedule/list and report and not in any way deny them, or the general public, access to official documents which are already existing and of public record. Subject to reasonable regulation and absent any valid statutory prohibition, access to these documents should not be proscribed. Thus, in Valmonte, while the Court denied the application for mandamus towards the preparation of the list requested by petitioners therein, it nonetheless allowed access to the documents sought for by the latter, subject, however, to the custodian's reasonable regulations,viz.:[259]

In fine, petitioners are entitled to access to the documents evidencing loans granted by the GSIS, subject to reasonable regulations that the latter may promulgate relating to the manner and hours of examination, to the end that damage to or loss of the records may be avoided, that undue interference with the duties of the custodian of the records may be prevented and that the right of other persons entitled to inspect the records may be insured Legaspi v. Civil Service Commission, supra at p. 538, quoting Subido v. Ozaeta, 80 Phil. 383, 387. The petition, as to the second and third alternative acts sought to be done by petitioners, is meritorious.

However, the same cannot be said with regard to the first act sought by petitioners, i.e., "to furnish petitioners the list of the names of the Batasang Pambansa members belonging to the UNIDO and PDP-Laban who were able to secure clean loans immediately before the February 7 election thru the intercession/marginal note of the then First Lady Imelda Marcos."

The Court, therefore, applies the same treatment here.

2. Petitioners' Prayer to Include Matters in Congressional Deliberations.

   Petitioners further seek that the Court "order the inclusion in budgetary deliberations with the Congress of all presently, off-budget, lump sum, discretionary funds including but not limited to, proceeds from the x x x Malampaya Fund, remittances from the PAGCOR and the PCSO or the Executive's Social Funds."[260]

   Suffice it to state that the above-stated relief sought by petitioners covers a matter which is generally left to the prerogative of the political branches of government. Hence, lest the Court itself overreach, it must equally deny their prayer on this score.

3. Respondents' Prayer to Lift TRO; Consequential Effects of Decision.

   The final issue to be resolved stems from the interpretation accorded by the DBM to the concept of released funds. In response to the Court's September 10, 2013 TRO that enjoined the release of the remaining PDAF allocated for the year 2013, the DBM

259 Id. at 278.

260 Rollo (G.R. No. 208566), p. 463.

issued Circular Letter No. 2013-8 dated September 27, 2013 (DBM Circular 2013-8) which pertinently reads as follows:

3.0 Nonetheless, PDAF projects funded under the FY 2013 GAA, where a Special Allotment Release Order (SARO) has been issued by the DBM and such SARO has been obligated by the implementing agencies prior to the issuance of the TRO, may continually be implemented and disbursements thereto effected by the agencies concerned.

Based on the text of the foregoing, the DBM authorized the continued implementation and disbursement of PDAF funds as long as they are: first, covered by a SARO; and, second, that said SARO had been obligated by the implementing agency concerned prior to the issuance of the Court's September 10, 2013 TRO.

Petitioners take issue with the foregoing circular, arguing that "the issuance of the SARO does not yet involve the release of funds under the PDAF, as release is only triggered by the issuance of a Notice of Cash Allocation [(NCA)]."[261] As such, PDAF disbursements, even if covered by an obligated SARO, should remain enjoined.

For their part, respondents espouse that the subject TRO only covers "unreleased and unobligated allotments." They explain that once a SARO has been issued and obligated by the implementing agency concerned, the PDAF funds covered by the same are already "beyond the reach of the TRO because they cannot be considered as 'remaining PDAF.'" They conclude that this is a reasonable interpretation of the TRO by the DBM.[262]

The Court agrees with petitioners in part.

At the outset, it must be observed that the issue of whether or not the Court's September 10, 2013 TRO should be lifted is a matter rendered moot by the present Decision. The unconstitutionality of the 2013 PDAF Article as declared herein has the consequential effect of converting the temporary injunction into a permanent one. Hence, from the promulgation of this Decision, the release of the remaining PDAF funds for 2013, among others, is now permanently enjoined.

The propriety of the DBM's interpretation of the concept of "release" must, nevertheless, be resolved as it has a practical impact on the execution of the current Decision. In particular, the Court must resolve the issue of whether or not PDAF funds covered by obligated SAROs, at the time this Decision is promulgated, may still be disbursed following the DBM's interpretation in DBM Circular 2013-8.

On this score, the Court agrees with petitioners' posturing for

261 Id. at 459-462.

262 Id. at 304-305.

the fundamental reason that funds covered by an obligated SARO are yet to be "released" under legal contemplation. A SARO, as defined by the DBM itself in its website, is "aspecific authority issued to identified agencies to incur obligations not exceeding a given amount during a specified period for the purpose indicated. It shall cover expenditures the release of which is subject to compliance with specific laws or regulations, or is subject to separate approval or clearance by competent authority."[263]

Based on this definition, it may be gleaned that a SARO only evinces the existence of an obligation and not the directive to pay. Practically speaking, the SARO does not have the direct and immediate effect of placing public funds beyond the control of the disbursing authority. In fact, a SARO may even be withdrawn under certain circumstances which will prevent the actual release of funds. On the other hand, the actual release of funds is brought about by the issuance of the NCA,[264] which is subsequent to the issuance of a SARO. As may be determined from the statements of the DBM representative during the Oral Arguments:[265]

Justice Bernabe: Is the notice of allocation issued simultaneously with the SARO?

x x x x

Atty. Ruiz: It comes after. The SARO, Your Honor, is only the go signal for the agencies to obligate or to enter into commitments. The NCA, Your Honor, is already the go signal to the treasury for us to be able to pay or to liquidate the amounts obligated in the SARO; so it comes after. x x x The NCA, Your Honor, is the go signal for the MDS for the authorized government-disbursing banks to, therefore, pay the payees depending on the projects or projects covered by the SARO and the NCA.

Justice Bernabe: Are there instances that SAROs are cancelled or revoked?

Atty. Ruiz: Your Honor, I would like to instead submit that there are instances that the SAROs issued are withdrawn by the DBM.

Justice Bernabe: They are withdrawn?

Atty. Ruiz: Yes, Your Honor

x x x.

(Emphases and underscoring supplied)

Thus, unless an NCA has been issued, public funds should not be treated as funds which have been "released." In this respect, therefore, the disbursement of 2013 PDAF funds which are only

263 <http://www.dbm.gov.ph/wp-content/uploads/BESE/BESE2013/Glossary.pdf> (visited November 4, 2013).

264 Notice of Cash Allocation (NCA). Cash authority issued by the DBM to central, regional and provincial offices and operating units through the authorized government servicing banks of the MDS,* to cover the cash requirements of the agencies.

*MDS stands for Modified Disbursement Scheme. It is a procedure whereby disbursements by NG agencies chargeable against the account of the Treasurer of the Philippines are effected through GSBs.**

** GSB stands for Government Servicing Banks. (Id.)

265 TSN, October 10, 2013, pp. 35-36.

covered by obligated SAROs, and without any corresponding NCAs issued, must, at the time of this Decision's promulgation, be enjoined and consequently reverted to the unappropriated surplus of the general fund. Verily, in view of the declared unconstitutionality of the 2013 PDAF Article, the funds appropriated pursuant thereto cannot be disbursed even though already obligated, else the Court sanctions the dealing of funds coming from an unconstitutional source.

This same pronouncement must be equally applied to (a) the Malampaya Funds which have been obligated but not released – meaning, those merely covered by a SARO – under the phrase "and for such other purposes as may be hereafter directed by the President" pursuant to Section 8 of PD 910; and (b) funds sourced from the Presidential Social Fund under the phrase "to finance the priority infrastructure development projects" pursuant to Section 12 of PD 1869, as amended by PD 1993, which were altogether declared by the Court as unconstitutional. However, these funds should not be reverted to the general fund as afore-stated but instead, respectively remain under the Malampaya Funds and the Presidential Social Fund to be utilized for their corresponding special purposes not otherwise declared as unconstitutional.

E. Consequential Effects of Decision.

As a final point, it must be stressed that the Court's pronouncement anent the unconstitutionality of (a) the 2013 PDAF Article and its Special Provisions, (b) all other Congressional Pork Barrel provisions similar thereto, and (c) the phrases (1) "and for such other purposes as may be hereafter directed by the President" under Section 8 of PD 910, and (2) "to finance the priority infrastructure development projects" under Section 12 of PD 1869, as amended by PD 1993, must only be treated as prospective in effect in view of the operative fact doctrine.

To explain, the operative fact doctrine exhorts the recognition that until the judiciary, in an appropriate case, declares the invalidity of a certain legislative or executive act, such act is presumed constitutional and thus, entitled to obedience and respect and should be properly enforced and complied with. As explained in the recent case of Commissioner of Internal Revenue v. San Roque Power Corporation,[266] the doctrine merely "reflects awareness that precisely because the judiciary is the governmental organ which has the final say on whether or not a legislative or executive measure is valid, a period of time may have elapsed before it can exercise the power of judicial review that may lead to a declaration of nullity. It would be to deprive the law of its quality of fairness and justice then, if there be no recognition of what had transpired prior to such adjudication."[267] "In the language of an American Supreme Court decision: 'The actual existence of a statute, prior to such a determination of unconstitutionality, is an operative

266 Commissioner of Internal Revenue v. San Roque Power Corporation, G.R. No. 187485, October 8, 2013, citing Serrano de Agbayani v. Philippine National Bank, 148 Phil. 443, 447-448 (1971).

267 Id.

fact and may have consequences which cannot justly be ignored.'"[268]

For these reasons, this Decision should be heretofore applied prospectively.

Conclusion

The Court renders this Decision to rectify an error which has persisted in the chronicles of our history. In the final analysis, the Court must strike down the Pork Barrel System as unconstitutional in view of the inherent defects in the rules within which it operates. To recount, insofar as it has allowed legislators to wield, in varying gradations, non-oversight, post-enactment authority in vital areas of budget execution, the system has violated the principle of separation of powers; insofar as it has conferred unto legislators the power of appropriation by giving them personal, discretionary funds from which they are able to fund specific projects which they themselves determine, it has similarly violated the principle of non-delegability of legislative power ; insofar as it has created a system of budgeting wherein items are not textualized into the appropriations bill, it has flouted the prescribed procedure of presentment and, in the process, denied the President the power to veto items ; insofar as it has diluted the effectiveness of congressional oversight by giving legislators a stake in the affairs of budget execution, an aspect of governance which they may be called to monitor and scrutinize, the system has equally impaired public accountability ; insofar as it has authorized legislators, who are national officers, to intervene in affairs of purely local nature, despite the existence of capable local institutions, it has likewise subverted genuine local autonomy ; and again, insofar as it has conferred to the President the power to appropriate funds intended by law for energy-related purposes only to other purposes he may deem fit as well as other public funds under the broad classification of "priority infrastructure development projects," it has once more transgressed the principle of non-delegability.

For as long as this nation adheres to the rule of law, any of the multifarious unconstitutional methods and mechanisms the Court has herein pointed out should never again be adopted in any system of governance, by any name or form, by any semblance or similarity, by any influence or effect. Disconcerting as it is to think that a system so constitutionally unsound has monumentally endured, the Court urges the people and its co-stewards in government to look forward with the optimism of change and the awareness of the past. At a time of great civic unrest and vociferous public debate, the Court fervently hopes that its Decision today, while it may not purge all the wrongs of society nor bring back what has been lost, guides this nation to the path forged by the Constitution so that no one may heretofore detract from its cause nor stray from its course. After all, this is the Court's bounden duty and no other's.

WHEREFORE, the petitions are PARTLY GRANTED. In view of the constitutional violations discussed in this Decision, the Court hereby declares as UNCONSTITUTIONAL: (a) the entire 2013 PDAF Article; (b) all legal provisions of past and present Congressional Pork Barrel Laws, such as the previous PDAF and CDF Articles and the various Congressional Insertions, which authorize/d legislators – whether individually or collectively organized into committees – to intervene, assume or participate in any of the various post-enactment stages of the budget execution, such as but not limited to the areas of project identification, modification and revision of project identification, fund release and/or fund realignment, unrelated to the power of congressional oversight; (c) all legal provisions of past and present Congressional Pork Barrel Laws, such as the previous PDAF and CDF Articles and the various Congressional Insertions, which confer/red personal, lump-

268 Id.

sum allocations to legislators from which they are able to fund specific projects which they themselves determine; (d) all informal practices of similar import and effect, which the Court similarly deems to be acts of grave abuse of discretion amounting to lack or excess of jurisdiction; and (e) the phrases (1) "and for such other purposes as may be hereafter directed by the President" under Section 8 of Presidential Decree No. 910 and (2) "to finance the priority infrastructure development projects" under Section 12 of Presidential Decree No. 1869, as amended by Presidential Decree No. 1993, for both failing the sufficient standard test in violation of the principle of non-delegability of legislative power.

Accordingly, the Court's temporary injunction dated September 10, 2013 is hereby declared to be PERMANENT. Thus, the disbursement/ release of the remaining PDAF funds allocated for the year 2013, as well as for all previous years, and the funds sourced from (1) the Malampaya Funds under the phrase "and for such other purposes as may be hereafter directed by the President" pursuant to Section 8 of Presidential Decree No. 910, and (2) the Presidential Social Fund under the phrase "to finance the priority infrastructure development projects" pursuant to Section 12 of Presidential Decree No. 1869, as amended by Presidential Decree No. 1993, which are, at the time this Decision is promulgated, not covered by Notice of Cash Allocations (NCAs) but only by Special Allotment Release Orders (SAROs), whether obligated or not, are hereby ENJOINED. The remaining PDAF funds covered by this permanent injunction shall not be disbursed/released but instead reverted to the unappropriated surplus of the general fund, while the funds under the Malampaya Funds and the Presidential Social Fund shall remain therein to be utilized for their respective special purposes not otherwise declared as unconstitutional.

On the other hand, due to improper recourse and lack of proper substantiation, the Court hereby DENIES petitioners' prayer seeking that the Executive Secretary and/or the Department of Budget and Management be ordered to provide the public and the Commission on Audit complete lists/ schedules or detailed reports related to the availments and utilization of the funds subject of these cases. Petitioners' access to official documents already available and of public record which are related to these funds must, however, not be prohibited but merely subjected to the custodian's reasonable regulations or any valid statutory prohibition on the same. This denial is without prejudice to a proper mandamus case which they or the Commission on Audit may choose to pursue through a separate petition.

The Court also DENIES petitioners prayer to order the inclusion of the funds subject of these cases in the budgetary deliberations of Congress as the same is a matter left to the prerogative of the political branches of government.

Finally, the Court hereby DIRECTS all prosecutorial organs of the government to, within the bounds of reasonable dispatch, investigate and accordingly prosecute all government officials and/or private individuals for possible criminal offenses related to the irregular, improper and/or unlawful disbursement/utilization of all funds under the Pork Barrel System.

This Decision is immediately executory but prospective in effect.

SO ORDERED.

ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:

See Concurring Opinion
MARIA LOURDES P. A. SERENO
Chief Justice

See Concurring Opinion
ANTONIO T. CARPIO
Associate Justice

NO PART
PRESBITERO J. VELASCO, JR.
Associate Justice

I concur and also join the concurring opinion of Justice Carpio.

I join the Opinion of Justice Carpio, subject to my Concurring & Dissenting

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

Opinion.
ARTURO D. BRION
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

I join the concurring opinion of J. A.T. Carpio of the ponencia

ROBERTO A. ABAD
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

BIENVENIDO L. REYES
Associate Justice

See Concurring Opinion
MARVIC MARIO VICTOR F. LEONEN
Associate Justice

C E R T I F I C A T I O N

I certify that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court.

MARIA LOURDES P. A. SERENO
Chief Justice

PRESIDENTIAL DECREE NO. 1206

CREATING THE DEPARTMENT OF ENERGY

WHEREAS, the world-wide energy situation indicates that an adequate supply of energy resources for the country's needs has become of long-term and vital national concern considering that the adequacy of energy resources is indispensable to accelerated economic growth;

WHEREAS, the Philippines has embarked on a multi-dimensional response to the energy crisis, designated to achieve the national objective of self-reliance and independence on the sourcing of energy through intensive exploration and development of indigenous energy resources, and through the judicious conservation and efficient utilization of energy;

WHEREAS, there is critical need to further rationalize the country's total energy resource development program in order to accelerate its self-reliance and conservation program relative to energy resource on an integrated and comprehensive basis; and

WHEREAS, meeting the country's energy requirements has become an integral and regular function of the government, vast enough such that no less than an agency with the departmental status is required which shall serve as the government's primary instrumentality in the formulation and implementation of its energy resource development program on a unified and coordinated approach.

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order and decree the following to be part of the law of the land:

SECTION 1. *Declaration of Policy.* – It is declared policy of the state to ensure a continuous and adequate supply of energy with the end in view of ultimately achieving self-reliance in the country's energy requirements, through intensive exploration and development of indigenous energy resources, and through the judicious conservation and efficient utilization of energy consistent with the country's accelerated economic growth and taking into consideration the significant and continuing participation of the private sector in the various areas of energy resource development.

SEC. 2. *Creation of a Department of Energy.* – Pursuant to the abovementioned policy, there is hereby created a Department of Energy, hereinafter referred to as the Department, which shall, among others formulate and implement the government's policies, plans and programs on energy resources development.

SEC. 3. *Authority and Responsibility.* – The authority and responsibility for the exercise of the powers and the discharge of the functions of the Department shall be vested in a Secretary of Energy, hereinafter referred to as the Secretary. The Secretary shall be assisted by one Undersecretary.

SEC. 4. *Powers and Functions.* – The Department shall have the following functions:

(a) Formulate policies, consistent with Section 1 above and pertinent national guidelines, and coordinate all activities of the government relative to the exploration, exploitation, development, extraction, importation, exportation, transport, marketing, distribution, and storage of energy resources from fossil fuels such as petroleum, coal, natural gas

and gas liquids; nuclear fuel resources; geothermal resources; and non-conventional existing and potential forms of energy resources;

(b) Establish and administer a comprehensive and integrated program for the exploration, exploitation, development, extraction, importation, exportation, transport, marketing, distribution, and storage of fossil, nuclear, geothermal and non-conventional forms of energy resources;

(c) Encourage, guide and where necessary, regulate such business activity relative to the exploration, exploitation, development, extraction, importation, exportation, transport, marketing, distribution and storage of fossil, nuclear, geothermal, and non-conventional forms of energy resources and prescribe and collect fees in the exercise of such power;

(d) Assess, review and provide direction to, in coordination with concerned government agencies, energy research and development programs including identification of sources of energy and determination of their commercial feasibility for development;

(e) Exercise the powers and functions of the abolished Energy Development Board and Power Development Council under Section 11 (a) and (b) of this Decree;

(f) Formulate such rules and regulations as may be necessary to implement the objectives and provisions of this Decree; and

(g) Exercise all powers necessary or incidental to attain the objectives of this Decree.

SEC. 5. *Department Proper.* – The Department shall have an Administrative Service, a Financial and Management Service, and a Planning Service.

The Administrative Service shall be responsible for providing the Department with services relating to personnel, legal assistance, information, records, supplies, equipment, collection and disbursements, security and custodial work.

The Financial and Management Service shall be responsible for providing the Department with staff advice and assistance on budgetary, financial, and management improvement matters.

The Planning Service shall be responsible for providing the Department with services relating to planning, programming and project development, including for the formulation of short and long term energy including power development policies and or international developments. It shall also review and evaluate energy development and utilization of non-conventional forms of energy resources.

SEC. 6. *Bureau of Energy Development.* – There is created in the Department a Bureau of Energy Development, hereinafter referred to in this Section as the Bureau, which shall have the following powers and functions, among others:

(a) Administer a national program for the encouragement, guidance, and whenever necessary, regulation of such business activity relative to the exploration, exploitation, development, and extraction of fossil fuels such as petroleum, coal, natural gas and gas liquids; nuclear fuel resources; geothermal energy resources; and non-conventional forms of energy resources:

(b) Undertake by itself or cause the undertaking by other institutions, government or private, of intensive research and development to achieve the country's self-reliance and conservation program relative to energy resources:

(c) Exercise such powers and functions of the Energy Development Board as shall

hereafter be transferred to it; and

(d) Promulgate such rules and regulations as may be necessary, subject to the approval of the Secretary, for the efficient, effective and economical exercise of its power and functions.

The decisions, orders, resolutions or actions of the Bureau may be appealed to the Secretary whose decisions are final and executory unless appealed to the President.

SEC. 7. *Bureau of Energy Utilization.* – There is created in the Department a Bureau of Energy Utilization, hereafter referred to in this Section as the Bureau, which shall have the following powers and functions, among others:

(a) Administer a national program for the encouragement, guidance and, where necessary, regulation of such business activities as importing, exporting, storing, shipping, transporting, refining, processing, marketing, and distributing of energy resources. Energy resources mean any substance or phenomena which by itself or in a combination with others, or after processing or refining or the application to it of technology, emanates, generates or causes the emanation or generation of energy, such as but not limited to petroleum or petroleum product, coal, marsh gas, methane gas, geothermal and hydroelectric sources of energy, uranium and other similar radioactive minerals, solar energy, tidal power, as well as non-conventional existing and potential sources.

(b) Exercise such powers and functions of the abolished Oil Industry Commission under Republic Act No. 6173, as amended, which are hereafter transferred to it under Section 12 of this Decree.

(c) Promulgate, subject to the approval of the Secretary, such rules and regulations as may be necessary for the efficient, effective and economical exercise of its powers and discharge of its functions.

The decisions, orders, resolutions or actions of the Bureau may be appealed to the Secretary whose decisions are final and executory unless appealed to the President.

SEC. 8. *Transferred Agency.* – The Philippine Atomic Energy Commission is transferred from the supervision and control of the Office of the President and placed under the supervision and control of the Department.

SEC. 9. *Board of Energy.* – There is hereby created a Board of Energy, hereafter referred to in this Section as the Board, which shall be under the supervision and control of the Office of the President, and shall be composed of a Chairman and two (2) members to be appointed by the President. It shall be assisted by such technical and supportive staffs as it may appoint for the effective, efficient and economical discharge of its powers and functions.

The Chairman and members of the Board shall be natural born citizens and residents of the Philippines, of good moral character and at least thirty-five (35) years old. The Chairman shall be a lawyer with substantial experience in the practice of law. The members shall be of recognized competence in the field of economics, finance, banking, commerce, industry, agriculture, engineering, management, law or labor.

No person who has worked within three (3) years immediately prior to his appointment or is working in any private firm engaged in the petroleum or electric industry or any other entity whose main business is directly related to or connected with any such firm shall be appointed to the Board.

The term of office of the Chairman and members shall be four (4) years, but the first Chairman appointed shall hold office for four (4) years and of the first two (2) members, one (1) shall hold office for a term of three (3) years, and the other for a term of two (2) years. Unless the President decides

otherwise, no person shall be appointed to serve more than two (2) successive terms in the Board.

The Chairman of the Board shall receive a compensation of fifty-four thousand pesos annually, while the members shall each receive an annual compensation of forty-eight thousand pesos, together with such allowances as are presently enjoyed by the Chairman and members of the abolished Oil Industry Commission.

The Board shall, after due notice and hearing, exercise the following powers and functions, among others:

(a) Regulate and fix the rate schedule or prices of piped gas to be charged by duly franchised gas companies which distribute gas by means of underground pipe system;

(b) Regulate and fix the power rates to be charged by electric companies except (1) electric cooperatives which shall continue to be governed by Presidential Decree No. 269, as amended, and (2) the National Power Corporation which shall continue to be governed by Republic Act No. 6395, as amended;

(c) Perform such other powers and functions as may be necessary, including the licensing of refineries and regulation of their capacities; reviewing the importation costs of crude oil and providing appropriate remedies for unreasonable or out of line prices and shipping costs thereof; and taking adequate measures to insure that extraordinary gains arising from an increase in the prices of petroleum products redound to the public interest, including payment by persons or entities engaged in the petroleum business to the special Fund created under Section 8 (j) of Republic Act No. 6173, as amended: *Provided*, That the purposes of such Special Fund are hereby broadened to include its utilization for all energy projects; and

(d) Issue Certificates of Public Convenience for the operation of electric power utilities and services, except electric cooperatives which shall continue to be governed by Presidential Decree No. 269, as amended, including the establishment and regulation of areas of operation of particular operators of public power utilities and services, the fixing of standards and specifications in all cases related to the issued Certificates of Public Convenience, and the promulgation of rules requiring the operators concerned to install such devices and adopt such procedures as would promote or insure the highest degree of safety and convenience to persons and property.

The provisions of Sections 11 and 12, Republic Act No. 6173, as amended by Presidential Decree No. 1128, shall govern proceedings before the Board, the mode of review of its decisions or orders, including its authority to grant provisional relief.

SEC. 10. *Attached Agencies.* – The following government corporations are attached to the Department for purposes of policy coordination and integration with sectoral programs: Philippine National Oil Company, National Power Corporation and National Electrification Administration. Such attachment shall be in accordance with the applicable provisions of Article III, Chapter IV, Part II and of Article III, Chapter I, Part XI of the integrated Reorganization Plan.

The ownership by the National Development Company of shares in the Manila Gas Corporation is hereby transferred to the Philippine National Oil Company, subject to the payment to National Development Company of the corresponding book value of its shareholdings in the said corporation as of date of transfer to the Philippine National Oil Company.

Unless the President directs otherwise the Secretary of the Department shall be *ex-*

officio Chairman of the governing boards of the Philippine National Oil Company, National Power Corporation, and National Electrification Administration. The Secretary of Public Works, Transportation and Communications shall be the *ex-officio* member of the governing boards of the National Electrification Administration and the National Power Corporation in lieu of one appointive position in the membership of said governing boards.

SEC. 11. *Abolished Agencies.* –

(a) The Energy Development Board is abolished and its powers and functions are transferred to the Department except those that are specifically transferred to the Bureau of Energy Development under Section 12 of this Decree.

(b) The Power Development Council is abolished and its powers and functions are transferred to the Department.

(c) The Philippine National Petroleum Center is abolished and its functions are transferred to the appropriate units of the Department.

(d) The Oil Industry Commission is abolished and its powers and functions are transferred to the Board of Energy and the Department or the Bureau of Energy Utilization, as provided for in Section 12 of this Decree.

(e) The Board of Power and Waterworks is abolished and its powers and functions relative to power utilities are transferred to the Board of Energy, while its powers and functions relative to waterworks are transferred to the National Water Resources Council.

All the foregoing transfers of powers and functions shall include applicable funds and appropriations, records, equipment, property, and such personnel as may be necessary: *Provided*, That with particular reference to Paragraph e of this Section, only such amount of the funds of the Specialized Regulatory Boards which pertain to the operation of the Board of Power and Waterworks, as well as only the personnel of the common Technical Staff of the Specialized Regulatory Boards completely or primarily involved in power and waterworks shall be involved in such transfers: *Provided, further*, That the applicable funds and appropriations of the Oil Industry Commission shall all be transferred to the Board of Energy.

Likewise, the foregoing transfers of powers and functions of the abolished agencies shall to be the extent that they are not modified by any specific provision of this Decree.

SEC. 12. *Transferred Powers and Functions.* – The following powers and functions are transferred as hereafter indicated to the extent that they are not modified by any specific provision of this Decree:

(a) With reference to Section 11 (a) above, the powers and functions transferred to the Bureau of Energy Development are:

    (i) The following powers and functions of the abolished Energy Development Board under *Presidential Decree No. 87*: *Provided*, That service contracts authorized under the said Decree, including the transfer or assignment of interest in said service contracts, shall require the approval of the Secretary:

        (1) Define and give public notice when applicable of the areas available for service contract;

        (2) Enter into contracts herein authorized with such terms and conditions as may be appropriate under the circumstances: *Provided, however*, That no depletion allowance shall be granted: *Provided, further*, That except as provided in Section 26 and 27 in favor of Presidential Decree No. 87, no contract in

favor of one contractor and its affiliates shall cover less than fifty thousand hectares nor more than seven hundred and fifty thousand hectares for on-shore areas, or less than eighty thousand nor more than one million five hundred thousand hectares for off-shore areas: And, *Provided, finally*, That in no case shall the annual net revenue or share of the government, including all taxes paid by or on behalf of the contractor, be less than sixty percent of the difference between the gross income and the sum of operating expenses and Filipino participation incentive;

(3) Provide for the manner and form of the income tax payment, the reimbursement of operating expenses and the payment of service fee in the service contract;

(4) Make specific proposals to the President for the grant of subsidy to contractors and petroleum companies at least sixty percent of the capital of which is owned by Philippine citizens, to be derived from the revenue or share that will accrue to the government in pursuance of Presidential Decree No. 87;

(5) Undertake intensive studies and researches on oil field practices, procedures, and policies; and

(6) Promulgate such rules and regulations as may be necessary and assess charges for services rendered, to implement the intent and provisions of Presidential Decree No. 87.

(ii) The following powers and functions of the abolished Energy Development Board under Presidential Decree No. 910: *Provided*, That service contracts authorized under the said Decree, including the transfer or assignment of interest in said service contracts, shall require the approval of the Secretary;

(1) Undertake by itself or through other arrangements, such as service contracts, the active exploration, exploitation, development, and extraction of energy resources in selected areas and/or government reservations;

(2) Regulate all activities relative to the exploration, exploitation, development, and extraction of fossil and nuclear fuels and geothermal resources and, where necessary, prescribe and collect fees in the exercise of such power;

(3) Exercise the other appropriate powers and functions of the Petroleum Board under Presidential Decree No. 87 which were transferred to the Energy Development Board by Presidential Decree No. 910; and

(4) Exercise the powers and functions of the Bureau of Mines and/or the Department of Natural Resources relative to the exploration, development, and administration of coal bearing lands as provided for in Presidential Decree No. 463 and Act No. 2719, including the powers and functions of the Bureau of Mines and/or the Department of Natural Resources under Republic Act No. 5092 and other laws relating to the promotion and regulation of the exploration, exploitation

and development of geothermal energy, natural gas and methane gas.

(iii) The powers and functions of the abolished Energy Development Board under Section 18 of Presidential Decree No. 972, entitled "An Act to Promote an Accelerated Exploration, Development, Exploitation, Production and Utilization of Coal", relative to the implementation of the provisions of the said Decree and the promulgation of rules and regulations to implement the same: *Provided*, That coal operating contracts, including the transfer or assignment of interest in said contracts, shall require the approval of the Secretary.

(iv) The following powers and functions of the abolished Energy Development Board under Section 3 of Presidential Decree No. 1068:

(1) Formulate and direct the implementation of a comprehensive national energy program, subject to periodic review and revisions on non-conventional energy research, development and utilization;

(2) Integrate, coordinate, direct and control all research, development and utilization efforts, programs and projects in non-conventional energy resources of all government agencies and instrumentalities including government-owned and controlled corporations;

(3) Review and approve all on-going or planned research, development and utilization projects on non-conventional energy resources whether basic or applied in nature, supported or planned to be supported by government funds or funds obtainable elsewhere through government intercession or assistance;

(4) Formulate criteria for determining priority for proposed research, development and utilization projects on non-conventional energy resources and accordingly identify and select execution, financing and funding schemes;

(5) Designate project implementors, coordinate and monitor the progress of all projects and activities, on-going or planned projects, in the implementation of the comprehensive national energy program;

(6) Provide necessary and appropriate supportive efforts to the non-conventional energy research, development and utilization program such as the launching of vigorous information and promotion drive, assistance and entry of suitable foreign expertise in order to accelerate the pace of local research, development and utilization and the training of qualified Filipino personnel in the various aspects of non-conventional energy, proliferation of those applications in which technologies have proven viable, such as bio-gas generation, windmills for water, pumping and power generation, from agricultural and industrial wastes, establishment of demonstration systems like solar water heaters, solar air-conditioning and energy plantations;

(7) Develop and implement specific programs requiring

the participation not only of government agencies and instrumentalities but also of the private sector;

(8) Grant incentives provided for in Presidential Decree No. 1068 and recommend the grant of such other incentives as shall be necessary and appropriate to enterprises, industries and individuals who shall conduct their own or participate in research and development or apply currently available non-conventional energy technology to their industrial process or homes; and

(9) Promulgate such rules and regulations as may be necessary to implement the objectives and provisions of Presidential Decree No. 1068.

(b) With reference to Section 11 (d) above, the powers and functions of the abolished Oil Industry Commission under Republic Act No. 6173, as amended, shall be transferred as follows:

(i) The following powers and functions are transferred to the Department:

(1) Assure that the country shall have a proper, adequate and continuous supply of crude oil and refined petroleum products under the most economic and competitive terms possible considering all available sources of supply;

(2) Study the importation of crude oil into the Philippines and determine its most economical sources, transportation routes, and freight rates;

(3) Look into all available sources of supply of crude oil, draw up plans to cope with such contingencies as may arise should prevailing sources of supply become closed or inaccessible, and enter into such preliminary negotiations or arrangements with possible alternative sources as may be necessary to assure a stable, adequate and continuous supply of crude oil and refined petroleum products under the most economic and competitive terms possible;

(4) Recommend to the President that the State, thru such agency or agencies as the President may designate, acquire equity in any refinery now existing or that may be organized hereafter: *Provided, however*, That equity so acquired shall eventually be made available to the public under such terms and conditions as shall be consistent with government policy then in effect, giving priority to dealers of petroleum products and gasoline station owners or operators; and

(5) Recommend to the President that the State, thru such agency as the President may designate, take over the operation of any refinery or other firm, corporation or entity engaged in the petroleum industry whenever the public welfare or national interest so requires or (a) such refinery, firm, corporation or entity ceases or threatens to cease or substantially reduce its operations, and (b) its cessation or threatened cessation or reduction or threatened reduction of operations threatens the continued supply of petroleum products at reasonable prices to the

general public or to industries dependent on petroleum products for sources of energy or otherwise creates a clear and present danger to the national welfare or national security: *Provided, however*, That the operation by the State shall continue only for such period of time as the threat or danger persists: *Provided, further*, That just compensation shall be paid for the use of the property: And, *Provided, finally*, That any unrecovered investment made by the State during the takeover shall reimbursed by the refinery, firm, corporation or entity.

(ii) The following powers and functions are transferred to the Bureau of Energy Utilization:

(1) Assure that the petroleum industry, as a business vital to the national interest, operates under conditions of orderly and economic competition;

(2) Protect gasoline dealers and distributors from unfair and onerous trade conditions;

(3) Minimize the cost of, and the outflow of foreign exchange involved in, the operations of the industry;

(4) Induce and effect the increasing participation of Filipino capital, labor and management in the industry and prevent discrimination against any person by reason of race, color, creed or political belief;

(5) Regulate investments of oil companies in order to prevent monopoly, combinations in restraint of trade, unfair competition and economic domination;

(6) Encourage and assist in the organization of associations of Filipino oil and gasoline dealers and distributors throughout the Philippines, public utility operators, gasoline and oil consumers and other similar groups, through the formation of cooperatives or through other group action;

(7) Regulate the operations and trade practices of the industry in order to encourage orderly competition, prevent monopolies and collusive practices within the industry, giving due regard to the ecological and environmental needs of the country;

(8) Require that preference be given to Philippine vessels and bottoms for the purpose of transporting crude oil to and from the Philippines where said vessels can undertake said function on substantially the same basis as foreign-owned vessels;

(9) Take adequate steps to prevent monopolies and combinations in restraint of trade within the petroleum industry, or involving enterprises engaged in the petroleum industry;

(10) Authorize or approve the importation by any agency or instrumentality of the government or a government-owned or

-controlled corporation of crude oil or petroleum product from any available source, over and above the normal importations of such entities, whenever it has determined that there is a shortage of any petroleum product affecting public interest, and take such other steps as it may deem necessary, including the temporary adjustment of the levels of prices of petroleum products and the adoption of a mechanism which will require the payment to the Special Fund created under Section 8 (j) of Republic Act No. 6173, as amended, by persons or entities engaged in the petroleum industry, in such amounts as it may determine, which will enable the importer to recover its cost of importation; and

(11) Require all dealership agreements to be filed and registered with the Bureau as public documents.

(iii) The following powers and functions are transferred to the Board of Energy:

(1) Assure the public of reasonable prices for petroleum products considering the international price levels of crude oil and petroleum products and after allowing for proper and reasonable cost of importing, shipping, transporting, processing, refining, storing, distributing, marketing and selling crude oil and petroleum products in the Philippines, and for a fair and reasonable return; and prevent collusive practices in the industry, particularly as to prices;

(2) Determine whether current prices of petroleum products are reasonable and set the prices of the same, providing for a fair and reasonable return. No changes in prices may thereafter be made by the Board, without prior public notice and hearing at which any consumer of petroleum products and other parties who may be affected may appear and participate. In setting prices or making changes thereof, the Board shall be guided by the following considerations:

(a) Whether claimed increases or decreases in costs, sales or profits are real or simulated;

(b) Whether expenses and costs which are claimed to have been incurred, or are being incurred, or are to be incurred are reasonable, and whether any increase therein may be offset by increased efficiency and reduction of excessive or unnecessary expenses;

(c) The impact of the proposed prices or change therein on the economy and on the consuming public particularly low income groups and industries essential to the national welfare or security; and

(d) The cost and profit levels of the industry.

(3) Regulate the capacities of new refineries or additional capacities of existing refineries

so as to accomplish the purposes and objectives of Republic Act No. 6173, as amended;

(4) License refineries that may be organized after the enactment of this Decree, under such terms and conditions as are consistent with the national interest;

(5) Review the cost at which crude oil had been imported into the Philippines with the preceding year whether by private entities or by the government, whenever the Board has received a formal complaint or has reason to believe that prices of shipping costs at which crude oil has been or is being imported into the Philippines are unreasonable or out of line with trends in the international market, taking into consideration among other factors, the equity and security of supply, availability and location of crude oil, and freight rates prevailing at the time; and, if found to be unreasonable or out of line, require the importer or importers concerned to reimburse the excess of the foreign exchange involved to the Central Bank of the Philippines and fix maximum import cost, requiring that, before future importation be made at a cost in excess thereof, the approval of the Board be first secured. Any order of the Board in the exercise of this power shall be binding on the Central Bank of the Philippines, the Bureau of Customs and all other executive agencies of the government;

(6) Take appropriate measures whenever an authorized increase in the prices of petroleum products would result in an extraordinary gain from existing inventories, including the payment by persons or companies benefited to the Special Fund created under Section 8 (j) of Republic Act No. 6173, as amended, of such amounts as the Board may determine in an appropriate order, as would assure that said extraordinary gain will redound to the public interest; and

(7) Require through an appropriate order, payment by persons or companies engaged in the business of importing, manufacturing and/or marketing petroleum products, to the Special Fund created under Section 8 (j) of Republic Act 6173, as amended, of amounts not exceeding fifteen centavos per liter of refined petroleum products. In the exercise of this power, the Board shall take into account the requirement of the Special Fund in relation to the purposes for which it was created, the effect of the payment on prices of petroleum products and, corrolarily, its cost impact on the economy and/or the consuming public and the cost and profit levels of the industry.

(iv) Except as otherwise specifically provided, the following powers and functions of the abolished Oil Industry Commission under Republic Act No. 6173, as amended, are transferred either to the Bureau of Energy Utilization or the Board of Energy, or both, to the extent applicable and appropriate in the light of the foregoing transfers of powers and functions:

(1) Set conditions which would

accomplish the purposes of Republic Act No. 6173, as amended, under which persons, natural or juridical, can engage or continue engaging in the business of importing, exporting, re-exporting, shipping, transporting, processing, refining, storing, distributing, marketing or selling crude oil, gasoline, kerosene, gas, and other refined petroleum products or by-products;

(2) Require importers of crude oil and petroleum products to file data on their import and shipping costs as well as other material information relative thereto;

(3) Require all persons, corporations and other entities engaged in the petroleum industry and their associations or institutes; to furnish it with such relevant information as it may need in the discharge of its duties;

(4) Require all leadership agreements to be filed and registered as public documents;

(5) Issue subpoena and subpoena *duces tecum* in any inquiry, study, hearing, investigation, or proceedings which it may decide to undertake in the exercise of its powers and functions;

(6) Promulgate rules and regulations relevant to procedures governing hearings before it and enforce compliance with any rule, regulations, order, or other requirement: *Provided*, That said rules and regulations shall take effect fifteen days after publication in the *Official Gazette*;

(7) Perform such other acts as may be necessary or conducive to the exercise of its powers and functions; and

(8) Undertake a continuing study of the petroleum industry in its domestic and international aspects, gather and collate information and statistics bearing on the industry, submit an annual report to the President of the Philippines on its activities and the results of its studies, including therein such matters as it may deem appropriate subjects of legislation or executive action, and keep itself regularly and thoroughly informed of conditions in the industry in order to enable it to perform its functions, exercise its powers and discharge its duties effectively.

The annual report shall include, among others, the following data on a company-by-company basis:

(a) Volume, weight, type, import price, and supplier of crude oil and petroleum products imported;

(b) Tonnage, type, nationality and ownership of vessels used in importing crude oil and petroleum products, as well as shipping costs;

(c) Audited financial statements of petroleum refineries and marketing companies;

(d) Data on exported products, price of same, country of destination, and vessel used;

(e) Listed wholesale price of gasoline on a monthly basis;

(f) Posted and market prices of crude oil at sources of importation and other known sources of crude oil supply; and

(g) Cost of refining petroleum products.

(iv) the provisions of Section 16 of Republic Act No. 6173, as amended, shall continue to be effective.

(c) the powers and functions of the Philippine National Oil Company relating to the regulation of other oil companies, including the importation of refined petroleum products, are hereby transferred to the Department or its bureaus as appropriate.

SEC. 13. *Concurrent Authority Over the Regulation of the Mining of Radioactive Minerals.* – The powers and functions of the Bureau of Mines relative to the mining location, registration, exploration, development and exploitation of radioactive minerals containing uranium, thorium and other radioactive elements under Presidential Decree No. 1101, shall be subject to the concurrent clearance of the Bureau of Energy Development which may prescribe such additional terms and conditions as are necessary insofar as these pertain to energy development.

SEC. 14. *Representation in the National Water Resources Council.* – The Department shall be represented in the National Water Resources Council by the Secretary of Energy or his designated representative as an additional member thereof.

SEC. 15. *Representation in the NEDA.* – The Secretary of Energy shall be an additional member of the NEDA Board.

SEC. 16. *Representation in the National Science Development Board.* – The Secretary of Energy and the Secretary of Industry shall be additional members of the National Science Development Board.

SEC. 17. *Representation in the National Electrification Administration.* – The Secretary of Energy shall be an additional member of the Board of the National Electrification Administration.

SEC. 18. *Representation in the Maritime Industry Authority.* – The Secretary of Energy shall be an additional member of the Board of the Maritime Industry Authority.

SEC. 19. *Benefits of Personnel Who May Be Laid Off.* – Personnel of agencies abolished or otherwise affected by this reorganization who are laid off as a result of the implementation of this Decree shall be entitled to benefits and privileges provided for under Sections 5 and 6 of Republic Act No. 5435, as amended.

SEC. 20. *Appropriation.* – To carry out the purposes of this Decree, there is hereby appropriated out of any funds in the National Treasury not otherwise appropriated, the sum of ten million pesos (P 10,000,000.00) for the operation of the Department and its bureaus, including such amount thereof as may be needed to augment the appropriations of the Board of Energy, for the remaining period of FY 1977 in addition to whatever applicable appropriation that may be transferred to it from among the government agencies reorganized under this Decree. Thereafter, the appropriation for the Department, its bureaus and the Board of Energy shall be included in the annual *General Appropriations Act*.

SEC. 21. *Applicability Clause.* – The applicable provisions of Republic Act No. 6173, as amended, otherwise known as the "Oil Industry Commission Act"; Presidential Decree No. 269, otherwise known as the "National Electrification Administration Decree"; Presidential Decree No. 87,

also known as the "Oil Exploration and Development Act of 1972"; Presidential Decree No. 910, creating the Energy Development Board; Presidential Decree No. 948, strengthening and reconstituting the Power Development Council; Presidential Decree No. 972, otherwise known as the "Coal Development Act of 1976"; Presidential Decree No. 1068, directing the acceleration of research, development and utilization of non-conventional energy resources; Presidential Decree No. 1101, declaring areas containing radioactive minerals open to mining location and disposition and such other laws and decrees governing the administration and development of energy resources shall continue to have full force and effect, except insofar as inconsistent with this Decree.

SEC. 22. *Separability Clause.* – Should any provision of this Decree be held unconstitutional, no other provisions hereof shall be affected thereby.

SEC. 23. *Repealing Clause.* – All laws, decrees, executive orders, administrative orders, rules and regulations inconsistent herewith are hereby repealed, amended or modified accordingly.

SEC. 24. *Effectivity.* – This Decree shall take effect immediately.

Done in the City of Manila, this 6th day of October, in the year of Our Lord, nineteen hundred and seventy-seven.

PRESIDENTIAL DECREE NO. 1573

AMENDING PRESIDENTIAL DECREE NO. 1206

WHEREAS, Presidential Decree No. 1206 vested the Department of Energy and its Bureaus with regulatory powers over business activities dealing in the exploration, utilization development and distribution of energy resources;

WHEREAS, it is necessary to provide the Department of Energy and its Bureaus with sufficient means and remedies through which they can effectively exercise and enforce their regulatory powers; and

WHEREAS, in view of the foregoing considerations, it has become necessary to amend Presidential Decree No. 1206.

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order and decree as follows:

SECTION 1. Section 6 of Presidential Decree No. 1206 is hereby amended to read as follows:

> "SEC. 6. *Bureau of Energy Development.* – There is created in the Department a Bureau of Energy Development, hereinafter referred in this Section as the Bureau, which shall have the following powers and functions, among others:
>
> "(a) Administer a national program for the encouragement, guidance and whenever necessary, regulation of business activities relative to the exploration, exploitation, development and extraction of fossil fuels such as petroleum, coal, natural gas and gas liquids, nuclear fuel resources; geothermal energy resources; and non-conventional forms of energy resources;

"(b) Undertake by itself or cause the undertaking by other institutions, government or private, of intensive research and development to achieve the country's self-reliance and conservation program relative to energy resources:

"(c) Exercise such powers and functions of the Energy Development Board as shall hereafter be transferred to it;

"(d) Issue subpoena and summon witnesses to appear in any proceeding before the Bureau;

"(e) In addition to fines and/or penalties arising from contractual violations, to impose and collect, after due notice and hearing, a fine not exceeding One Thousand Pesos for every violation or non-compliance with any provision of Presidential Decree No. 87, Presidential Decree No. 972, as amended, Presidential Decree No. 1068 or any other laws being implemented by the Bureau, the rules and regulations promulgated thereunder, its orders, decisions and rulings, or of any permit or license issued by it.

"The fine so imposed shall be paid to the Bureau, and failure to pay the fine within the time specified in the order or decision of the Bureau or failure to cease and discontinue the violation or non-compliance shall be deemed good and sufficient reason for the suspension, closure or stoppage of operations of the establishment of the person guilty of the violation or non-compliance. In case the violation or default is committed by a corporation or association, the manager or the person who has charge of the management of the corporation or association and the officers or directors thereof who have ordered or authorized the violation or default shall be solidarily liable for the payment of the fine.

"The Bureau shall have the power and authority to issue corresponding writs of execution directing the City Sheriff or Provincial Sheriff or other peace officers whom it may appoint to enforce the fine or the order of closure, suspension or stoppage of operations. Payment may also be enforced by appropriate action brought in a court of competent jurisdiction. The remedy provided herein shall not be a bar to or affect any other remedy under existing laws, but shall be cumulative and additional to such remedies.

"(f) After due notice and hearing in an order to be promulgated by the Director of Energy Development, forfeit in favor of the Bureau, surety performance, and guaranty bonds issued in favor of said Bureau;

"(g) Promulgate such rules and regulations as may be necessary, subject to the approval of the Secretary, for the efficient and effective exercise of its powers and functions.

"The decisions, orders, resolutions or actions of the Bureau may be appealed to the Secretary whose decisions are final and executory unless execution thereof is enjoined by the President."

SEC. 2. Section 7 of the same Decree is hereby amended to read as follows:

"SEC. 7. *Bureau of Energy Utilization.* – There is created in the Department a Bureau of Energy Utilization, hereinafter referred to in this Section as the Bureau, which shall have the following powers and functions, among others:

"(a) Administer a national program for the encouragement, guidance and, where necessary, regulation of such business activities as importing, exporting, storing, shipping, transporting, refining, processing, marketing, and distributing of energy resources. Energy resources mean any substance by itself or in combination with others, or after processing or refining or the application to it of technology, emanates, generates or causes the emanation or generation of energy, such as but not limited to petroleum products, coal, marsh gas, methane gas, geothermal and hydroelectric sources of energy, uranium and other similar radioactive minerals, solar energy, tidal power as well as non-conventional existing and potential sources;

"(b) Exercise such powers and functions of the Oil Industry Commission under Republic Act No. 6173, as amended, which are hereafter transferred to it under Section 12 of this Decree;

"(c) Set conditions which would accomplish the purposes of this Decree and Republic Act No. 6173, as amended, under which persons, natural or juridical, can engage or continue engaging in the business of importing, processing, exporting, re-exporting, shipping, transporting, refining, storing, distributing, marketing, or selling crude oil, gasoline, kerosene, gas and other refined petroleum products or by-products;

"(d) Impose and collect application, registration and license fees or charges. If said fees or charges are not paid within the time prescribed by the Bureau, the amount thereof shall be increased by twenty-five per centum, the increment to become part of the fee or charge;

"(e) After due notice and hearing, impose and collect a fine not exceeding One Thousand Pesos, for every violation or non-compliance with any term or condition of any certificate, license, or permit issued by the Bureau or of any of its orders, decisions, rules or regulations.

"The fine so imposed shall be paid to the Bureau, and failure to pay the fine within the time specified in the order or decision of the Bureau or failure to cease and discontinue the violation or non-compliance shall be deemed good and sufficient reason for the suspension, closure or stoppage of operations of the establishment of the person guilty of the violation or non-compliance. In case the violation or default is committed by a corporation or association, the manager or the person who has charge of the management of the corporation or association and the officers or directors thereof who have ordered or authorized the violation or default shall be solidarily liable for the payment of the fine.

"The Bureau shall have the power and authority to issue corresponding writs of execution directing the City Sheriff or provincial Sheriff or other peace officers whom it may appoint to enforce the fine or the order of closure, suspension or stoppage of operations. Payment may also be enforced by appropriate action brought in a court of competent jurisdiction. The remedy provided herein shall not be a bar to or affect any other remedy under existing laws, but shall be cumulative and additional to such remedies;

"(f) Formulate, develop, and periodically review and revise as necessary, a comprehensive national energy conservation program;

"(g) Conduct energy audit of energy-consuming establishments to evaluate and help improve energy utilization efficiency;

"(h) Develop and adopt energy utilization standards;

"(i) Require energy-intensive projects and establishments to submit an energy impact assessment to cover: energy utilization efficiency of proposed project; project operation timetable; projected production and energy consumption; effect of project on the energy network system of affected area; comparison of different fuel and site alternatives to assure most economical energy cost with due consideration to overall project economics; and

"(j) Promulgate, subject to the approval of the Secretary, such rules and regulations as may be necessary for the efficient and effective exercise of its powers and discharge of its functions.

"The decisions, orders, resolutions or actions of the Bureau may be appealed to the Secretary whose decisions are final and executory unless execution thereof is enjoined by the President.

SEC. 3. Section 9 of the same Decree is hereby amended to read as follows:

"SEC. 9. *Board of Energy.* – There is hereby created a Board of Energy, hereafter referred to in this Section as the Board, which shall be under the supervision and control of the Office of the President, and shall be composed of a Chairman and two (2) members to be appointed by the President. It shall be assisted by such technical and supportive staffs as it may appoint for the effective and efficient discharge of its powers and functions.

"The Chairman and members of the Board shall be natural-born citizens and residents of the Philippines, of good moral character and at least thirty-five years old. The Chairman shall be a lawyer with substantial experience in the practice of law. The members shall be of recognized competence in the field of economics, finance, banking, commerce industry, agriculture, engineering, management, law or labor.

"No person who has worked within three (3) years immediately prior to his appointment or is working in any privately-owned firm engaged in the petroleum or electric industry or any other entity whose main business is directly related to or connected with any such firm shall be appointed to the Board. This disqualification shall not apply to persons employed by or in the employ of government-owned or controlled corporations engaged in the petroleum or electric industry.

"The term of office of the Chairman and members shall be four (4) years, but the first Chairman appointed shall hold office for four (4) years, and of the first two (2) members appointed, one (1) shall hold office for a term of three (3) years, and the other for a term of two (2) years.

"The Chairman of the Board shall receive a compensation of fifty-four thousand pesos annually, while the members shall each receive an annual compensation of forty-eight thousand pesos, together with such allowances as are presently enjoyed

by the Chairman and members of the abolished Oil Industry Commission.

"The Board shall, after due notice and hearing where necessary, exercise the following powers and functions, among others:

"(a) Regulate and fix the prices of petroleum products, and exercise such other powers and functions of the Oil Industry Commission under Republic Act No. 6173, as amended, which are hereafter transferred to it under Section 12 of this Decree.

"(b) Regulate and fix the rate schedule or prices of piped gas to be charged by duly franchised gas companies which distribute gas by means of underground pipe system;

"(c) Regulate and fix the power rates to be charged by electric companies except (1) electric cooperative which shall continue to be governed by Presidential Decree No. 269, as amended, and (2) the National Power Corporation which shall continue to be governed by Republic Act No. 6395, as amended;

"(d) Perform such other powers and functions as may be necessary, including the licensing of refineries and regulation of their capacities; reviewing the importation costs of crude oil and providing appropriate remedies for unreasonable or out of line prices and shipping costs thereof; and taking adequate measures to insure that extraordinary gains arising from an increase in the prices of petroleum products redound to the public interest, including payment by persons or entities engaged in the petroleum business to the Special Fund created under Section 8 (j) of Republic Act No. 6173, as amended: *Provided*, That the purposes of such Special Fund are hereby broadened to include its utilization for all energy projects; and

"(e) Issue Certificates of Public Convenience for the operation of electric power utilities and services, except electric cooperatives which shall continue to be governed by Presidential Decree No. 269, as amended, including the establishment and regulation of areas of operation of particular operators of public power utilities and services, and fixing of standards and specifications in all cases related to the issued Certificates of Public Convenience, and the promulgation of rules and requiring the operators concerned to install such devices and adopt such procedures as would promote or insure the highest degree of safety and convenience to persons and property.

"The provisions of Section 11 and 12, Republic Act No. 6173, as amended by Presidential Decree No. 1128, shall govern proceedings before the Board, the mode of review of its decisions or orders, including its authority to grant provisional relief."

SEC. 4. Section 12 (B) (iv) and Section 12 (C) of the same Decree are hereby amended to read as follows:

"(iv) Except as otherwise specifically provided, the following powers and functions of the abolished Oil Industry Commission under Republic Act No. 6173, as amended, are transferred either to the Bureau of Energy Utilization or the Board of Energy, or both, to the extent applicable and appropriate in the light of the foregoing transfers of powers and functions:

"(1) Require importers of crude oil and petroleum products to file data on their import and shipping costs

as well as other material information relative thereto;

"(2) Require all persons, corporations and other entities engaged in the petroleum industry and their associations or institutes, to furnish it with such relevant information as it may need in the discharge of its duties;

"(3) Issue subpoena and subpoena *duces tecum* in any inquiry, study, hearing, investigation, or proceedings which it may decide to undertake in the exercise of its powers and functions;

"(4) Promulgate rules and regulations relevant to procedures governing hearings before it and enforce compliance with any rule, regulation, order, or other requirement: *Provided*, That said rules and regulations shall take effect fifteen days after publication in the *Official Gazette*;

"(5) Perform such other acts as may be necessary or conducive to the exercise of its powers and functions; and

"(6) Undertake a continuing study of the petroleum industry in its domestic and international aspects, gather and collate information and statistics bearing on the industry, submit an annual report to the President of the Philippines on its activities and the results of its studies, including therein such matters as it may deem appropriate subjects of legislation or executive action; and keep itself regularly and thoroughly informed of conditions in the industry in order to enable it to perform its functions, exercise its powers and discharge its duties effectively.

"The annual report shall include, among others, the following data on a company-by-company basis:

"(a) Volume, weight, type, import price, and supplier of crude oil and petroleum products imported;

"(b) Tonnage type, nationality and ownership of vessels used in importing crude oil and petroleum products, as well as shipping costs;

"(c) Audited financial statements of petroleum refineries and marketing companies;

"(d) Data on exported products, price of same, country of destination, and vessel used;

"(e) Listed wholesale price of gasoline on a monthly basis;

"(f) Posted and market prices crude oil at sources of importation and other known sources of crude oil supply; and

"(g) Cost of refining petroleum products."

"(C) The powers and functions of the Philippine National Oil Company relating to the regulation of oil or petroleum operations, as defined in Presidential Decree No. 334, as amended, including the importation of refined petroleum products, are hereby transferred to the Department or its bureaus as appropriate."

SEC. 5. Section 19 of the same Decree is hereby amended to read as follows:

"SEC. 19. *Benefits of Personnel Who May Be Laid Off and Incentives of Employees.* – Personnel of agencies abolished or otherwise affected by this reorganization who are laid off as a result of the implementation of this Decree shall be entitled to

benefits and privileges provided for under Sections 5 and 6 of Republic Act No. 5435, as amended."

SEC. 6. Section 20 of the same Decree is amended to read as follows:

"SEC. 20. *Appropriation.* – To carry out the purposes of this Decree there is hereby appropriated out of any funds in the National Treasury not otherwise appropriated, the sum of Ten million pesos (P 10,000,000.00) for the operation of the Department and its Bureaus, including such amount thereof as may be needed to augment the appropriations of the Board of Energy, for the remaining period of FY 1978 in addition to whatever applicable appropriation that may be transferred to it from among the government agencies reorganized under this Decree. Thereafter, the appropriation for the Department, its bureaus and the Board of Energy shall be included in the Annual *General Appropriation Act*.

"Subject to existing rules and regulations, the funds and monies, collected or which otherwise come into the possession of the Department, its Bureaus and the Philippine Atomic Energy Commission from fees, surcharges, fines and penalties which they are authorized to impose and collect including those under Section 4 (c), Section 6 (e), Section 7 (d) and (e) of this Decree as well as an amount to be determined at the beginning of every fiscal year representing ten percent (10%) of the outstanding balance of funds and monies, forming part of the Special Fund under Section 8 of Presidential Decree No. 910, shall be disbursed for the health, welfare and other similar benefits of their personnel; for the acquisition, maintenance and repair of urgently needed equipment and for expenses necessary for the effective discharge of their powers and functions under this Decree.

"Provisions of existing laws, rules and regulations to the contrary notwithstanding, officials and employees of government departments, bureaus, offices, instrumentalities including government-owned and controlled corporations, may be appointed in the interest of the service to serve through temporary detail assignment in the Department of Energy, its Bureaus, and Commissions as well as the Board of Energy and may receive allowances and other emoluments therefrom, in addition to their regular compensation from their permanent office of employment."

SEC. 7. This Decree shall take effect immediately.

Done in the City of Manila, this 11th day of June, in the year of Our Lord, nineteen hundred and seventy-eight.

EXECUTIVE ORDER NO. 20

PLACING THE OFFICES, AGENCIES AND CORPORATIONS ATTACHED TO THE MINISTRY OF ENERGY UNDER THE ADMINISTRATIVE SUPERVISION OF THE OFFICE OF THE PRESIDENT

WHEREAS, there in a need to place all the offices, agencies and corporations attached to the Ministry of Energy under the administrative supervision of one office in the meantime that the Presidential Commission on Government Reorganization is still studying the over-all structure of the government.

WHEREAS, the President of the Philippines is the Chief Executive of the government and as such the Office of the President exercises administrative supervision and control over all the various ministries.

NOW, THEREFORE, I, CORAZON C. AQUINO, President of the Philippines, by virtue of the powers vested in me by the fundamental law of the land, do hereby order:

SECTION 1. All the offices, agencies as well as corporations attached to the Ministry of Energy are hereby placed under the administrative supervision of the Office of the President until such time when a determination shall have been made.

SEC. 2. This Executive Order shall take effect immediately.

Done in the City of Manila, this 19th day of June, in the year of Our Lord, nineteen hundred and eighty-six.

EXECUTIVE ORDER NO. 131

REORGANIZING THE MINISTRY OF NATURAL RESOURCES AND RENAMING IT AS THE DEPARTMENT OF ENVIRONMENT, ENERGY AND NATURAL RESOURCES ABOLISHING THE MINISTRY OF ENERGY INTEGRATING ALL OFFICES AND AGENCIES WHOSE FUNCTIONS RELATE TO ENERGY AND NATURAL RESOURCES INTO THE MINISTRY DEFINING ITS POWERS AND FUNCTIONS AND FOR OTHER PURPOSES

Recalling that the reorganization of the government is mandated expressly in Article II, Section 1 (a), and Article III of the Freedom Constitution;

Having in mind that, pursuant to Executive Order No. 5 (1986), it is directed that necessary and proper changes in the organizational and functional structures of the government, its agencies and its instrumentalities, be effected in order to promote efficiency and effectiveness in the delivery of public services;

Realizing that the Ministry of Natural Resources must be reorganized and strengthened in order to increase its capacity to carry out powers and functions related to the demands of economic recovery, particularly the administration management, development, conservation, regulation and proper use of the country's natural resources, for the benefit of all Filipinos;

Affirming that the government needs at line agency for the formulation and supervision of its energy resource development program on

a unified and coordinated manner;

Cognizant of the important influence of the energy sector in the social and economic life of the country;

Taking note that the magnitude, compity and strategic importance of the country's energy requirements, demand an integrated planning and supervision of the country's comprehensive energy program geared toward achieving energy self-reliance and the judicious conservation and efficient utilization of the country's resources;

NOW, THEREFORE, I, CORAZON C. AQUINO, President of the Philippines, by virtue of the powers vested in me by the sovereign will of the Filipino People and the Freedom Constitution, do hereby order:

SECTION 1. *Title.* – This Executive Order shall otherwise be known as the *Reorganization Act of the Ministry of Environment, Energy and Natural Resources*.

SEC. 2. *Reorganization.* – The Ministry of Natural Resources, is hereby reorganized structurally and functionally in accordance with the provisions of this Executive Order. The Ministry of Energy is hereby abolished and all its pertinent functions together with applicable appropriations, records, equipment and personnel as may be necessary are transferred to the Ministry, now reorganized and renamed the Ministry of Environment, Energy and Natural Resources, hereinafter referred to as the Ministry.

SEC. 3. *Declaration of Policy.* – It is hereby declared the policy of the State to ensure the judicious use, development, management, renewal, and conservation of the country's forest, mineral, land, water including marine waters and other natural resources, including the protection and enhancement of the quality of the environment, and equitable access of the different segments of the population to the development and use of the country's natural resources not only for the present generation but for future generations as well.

It is also the policy of the state to recognize and apply the importance of energy and natural resources relative to their utilization, development and conservation.

It is further the policy of the state to ensure the continuous, adequate and economic supply of energy with the end in view of ultimately achieving self-reliance in the country's energy requirements, through intensive exploration and development of indigenous energy resources, and through the judicious conservation and efficient utilization of energy consistent with the country's accelerated economic growth objectives.

SEC. 4. *Mandate.* – The Ministry shall be the primary government agency responsible for the conservation, management, development and proper use of the country's energy and natural resources.

Natural resources specifically include but will not be limited to, forest and grazing lands, water, mineral resources, including those in reservation and watershed areas, and lands of the public domain.

Energy resources include but will not be limited to, those from fossil fuels such as petroleum, coal, natural gas and gas liquids, nuclear-fuel resources, geothermal resources, hydroelectric resources, and existing and potential forms of non-conventional energy resources.

The ministry shall be responsible for the exploration, development, marketing, distribution, storage and efficient utilization as well as the licensing and regulation of all energy and natural resources as may be provided for by law in order to ensure equitable sharing of the benefits derived therefrom for the welfare of the present and future generations of Filipinos.

To accomplish its mandate, the Ministry shall be guided by the following objectives that will

serve as basis for policy formulation:

(a) Assure the availability and sustainability of the country's energy and natural resources through judicious use and systematic restoration or replacement, whenever possible;

(b) Increase the productivity of natural resources in order to meet the demands for forest, mineral, land and water resources of a growing population;

(c) Enhance the contribution of energy and natural resources for achieving national economic and social development;

(d) Promote equitable access to natural resources by the different sectors of the population;

(e) Conserve specific terrestrial and marine areas representative of the Philippine natural and cultural heritage for present and future generations.

SEC. 5. *Powers and Functions.* – To accomplish its mandate, the Ministry shall have the following powers and functions:

(a) Advise the President on the promulgation of laws relative to the development, use, regulation, and conservation of the country's energy and natural resources;

(b) Formulate, implement, and supervise the government's policies, plans and programs pertaining to the management, conservation, development, use and replenishment of the country's energy and natural resources;

(c) Encourage, guide and where necessary, regulate business activities relative to the exploration, exploitation, development, extraction, importation, exportation, transport, marketing, distribution and storage of fossil, nuclear, a geothermal, hydroelectric, and non-conventional forms of energy resources and prescribe and collect reasonable fees in the exercise of such powers;

(d) Promulgate rules and regulations in accordance with law governing the exploration, development, conservation, extraction, disposition, use and such other commercial activities tending to cause the depletion and degradation of our natural resources;

(e) Exercise supervision and control over forest lands, alienable and disposable lands, mineral and energy resources and in the process of exercising such control the Ministry shall impose appropriate taxes, fees, charges, rentals and any such form of levy for the use, occupation or exploitation of such resources;

(f) Undertake exploration, assessment, classification and inventory of the country's energy and natural resources using ground surveys, remote sensing and complementary technologies;

(g) Promote proper and mutual consultation with the private sector involving energy and natural resources development, use and conservation;

(h) Issue licenses and permits for activities related to the use and development of aquatic resources, treasure hunting, salvaging of sunken vessels and other similar activities;

(i) Undertake geological surveys of the whole country including its territorial waters;

(j) Establish policies and implement programs for the:

1. Accelerated inventory, surveys and classification of lands, forest, and mineral resources using appropriate technology, to be able to come up with a more accurate assessment of resource quality and quantity;

2. Equitable distribution of natural resources through the judicious

administration, regulation, utilization, development and conservation of public lands, forest, water and mineral resources (including mineral reservation areas), that would benefit a greater number of Filipinos;

3. Promotion, development and expansion of natural resource-based industries;

4. Preservation of cultural and natural heritage through wildlife conservation and segregation of national parks and other protected areas;

5. Maintenance of a wholesome natural environment by enforcing environmental protection laws;

6. Encouragement of greater participation and private initiative in natural resource management.

(k) Promulgate rules and regulations necessary to:

1. Accelerate cadastral and emancipation patent surveys, land use planning and public land titling;

2. Harness forest resources in a sustainable manner, to assist rural development, support forest based industries, and provide raw materials to meet increasing demands, at the same time keeping adequate reserves for environmental stability;

3. Expedite mineral resources surveys, promote the production of metallic and non-metallic minerals and encourage mineral marketing; and

4. Assure conservation and judicious and sustainable development of aquatic resources.

(l) Assess, review and provide direction to, in coordination with concerned government agencies, energy research and development programs, including identification of sources of energy and determination of their commercial feasibility for development;

(m) Regulate the development, disposition, extraction, exploration and use of the country's forest, land, water and mineral resources.

(n) Assume responsibility for the assessment, development, protection, licensing and regulation as provided for by law, where applicable, of all energy and natural resources, the regulation and monitoring of service contractors, licensees, lessees, and permit for the extraction, exploration, development and use of natural resources products; the implementation of programs and measures with the end in view of promoting close collaboration between the government and the private sector; the effective and efficient classification and sub-classification of lands of the public domain; and the enforcement of energy and natural resources and environmental laws, rules and regulations.

(o) Promulgate rules, regulations and guidelines on the issuance of licenses, permits, concessions, lease agreements and such other privileges concerning the development, exploration and utilization of the country's marine, freshwater, and brackish water and overall aquatic resources of the country and shall continue to oversee, supervise and police our natural resources; to cancel or cause to cancel such privileges upon failure, non-compliance or violations of any regulations, orders and for all other causes which are in furtherance of the conservation of natural resources and supportive of the national interest;

(p) Exercise other powers and functions and perform such other acts as may be necessary, proper or incidental to the attainment of its mandates and objectives.

SEC. 6. *Structural Organization.* – The Ministry consists of the Ministry Proper with five (5) Offices as defined in Section 11 hereof and the following:

(a) Office of Energy and Environment;

(b) Office of Natural Resources;

(c) Office of Field Operations;

(d) Legal and Supportive Services;

(e) Office of Policy and Planning;

The staff sectoral bureaus on the other hand, shall be composed of:

(a) Forest Management Bureau;

(b) Land Management Bureau;

(c) Mines and Geo-Sciences Bureau;

(d) Environmental Protection Bureau;

(e) Energy Development Bureau;

(f) Energy Utilization Bureau;

SEC. 7. *Minister of Environment Energy and Natural Resources.* – The authority and responsibility for the exercise of the mandate of the Ministry, the accomplishment of its objectives and discharge of its powers and functions shall be vested in the Minister of Environment, Energy and Natural Resources, hereinafter referred to as the Minister, who shall be appointed by the President and who shall have supervision and control over the Ministry. For such purposes, the Minister shall have the following functions:

(a) Advice the President on the promulgation of rules, regulations and other issuances relative to the conservation, management, development and proper use of the country's natural resources;

(b) Establish policies and standards for the efficient and effective operations of the Ministry in accordance with the programs of the government;

(c) Promulgate rules, regulations and other issuances necessary in carrying out the Ministry's mandate, objectives, policies, plans, programs and projects;

(d) Exercise supervision and control over all functions and activities of the Ministry;

(e) Delegate authority for the performance of any administrative or substantive function to any Deputy Minister or other officers of rank at the Ministry proper;

(f) Perform other functions as may be provided by law or assigned appropriately by the President.

SEC. 8. *Office of the Minister.* – The Office of the Minister shall consist of the Minister and his immediate staff.

SEC. 9. *Deputy Minister.* – The Minister shall be assisted by five (5) Deputy Ministers appointed by the President upon the recommendation of the Minister, one to be responsible for Energy and Environment, one for Natural Resources, one for Field Operations, one for Legal and Support Services and one for Policy and Planning. For such purpose, a Deputy Minister shall have the following functions:

(a) Advise the Minister in the promulgation of Ministry orders, administrative orders and other issuances, with respect to his area of responsibility;

(b) Exercise supervision and control over the offices, services, operating units and officers (the term "officers" as used in this Executive Order is intended to be within the meaning of the term "official" as used in the freedom Constitution) and employees under his responsibility,

(c) Promulgate rules and regulations, consistent with Ministry policies, that will efficiently and effectively govern the activities of units under his responsibility;

(d) Coordinate the functions and activities of the units under his responsibility with those of other units under the responsibility of other Deputy Ministers;

(e) Exercise delegated authority on substantive and administrative matters

related to the functions and activities of units under his responsibility to the extent granted by the Minister through administrative issuances;

(f) Perform other functions as may be provided by law or assigned appropriately by the Minister.

SEC. 10. *Assistant Ministers.* – The Minister and the Deputy Ministers shall also be assisted by seven (7) Assistant Ministers appointed by the President upon the recommendation of the Minister, responsible for the following: one for Planning and Project Management, one for Foreign Funded and Special Projects, one for Luzon field office, one for Visayas field office, one for Mindanao field office, one for Management Services, and one for Legal Services.

SEC. 11. *Office of the Deputy Minister for Natural Resources.* – Office to be headed by Deputy Minister shall have the following powers and functions:

(a) Assist and advise the Minister on the promulgation of all office order, rules and regulations related to natural resources;

(b) Establish policies and standards for the effective, efficient and economical operations of the Ministry in accordance with the programs of government related to natural resources;

(c) Promulgate rules and regulations necessary to carry out ministry objectives, policies, plans, programs and projects related to natural resources;

(d) Exercise supervision and control over all functions and activities of bureaus and offices in the Ministry with regards to natural resources concern:

(e) Delegate authority for the performance of any administrative and substantive function to any Assistant Minister or other officials of rank at the Ministry proper concerned with natural resources matter;

SEC. 11 A. *Office of the Deputy Minister for Environment and Energy.* – Office to be headed by Deputy Minister shall have the following powers and functions:

(a) Assist and advise the Minister on the promulgation of all office order, rules and regulations related to the energy and environment;

(b) Establish policies and standards for the effective, efficient, and economical operations of the Ministry in accordance with the programs of government related to energy and environment;

(c) Promulgate rules and regulations necessary to carry out ministry objectives, policies, plans, programs and projects related to energy and environment;

(d) Exercise supervision and control over all functions and activities of bureaus and offices in the Ministry with regard to energy and environment;

(e) Delegate authority for the performance of any administrative and substantive function to any Assistant Minister or other officials of rank at the Ministry proper concerned with energy and environment.

SEC. 11 B. *Office of the Deputy Minister for Legal and Support Services.* – Office to be headed by Deputy Minister shall have the following powers and functions:

(a) Assist and advise the Minister on the promulgation of all office orders, rules and regulations related to the financial management, administrative services, human resources development services and legal services;

(b) Establish policies and standards for the effective, efficient and economical operations of the Ministry in accordance with the programs of government related to financial management, administrative services, human resources development services and legal services;

(c) Promulgate rules and regulations necessary to carry out ministry objectives, policies, plans, programs and projects related to financial management, administrative services, human resources development services and legal services;

(d) Exercise supervision and control over all functions and activities of bureaus and offices in the Ministry with regard to financial management, administrative services, human resources development services and legal services;

(e) Delegate authority for the performance of any administrative and substantive function to any Assistant Minister or other officials of rank at the Ministry proper concerned with financial management, administrative services, human resources development services and legal services;

(f) Develop and recommend policies and programs on personnel development, management, selection, placement and promotion standards including welfare services; conduct career and personnel development programs for the Ministry; develop and maintain a system for maintenance of the Ministry including its communication, transportation and printing services;

(g) Develop and maintain adequate record and report filing systems and books of account; certify for the Ministry availability of funds, including obligations of the same; prepare and process payrolls and vouchers for payments of salaries and wages of officers and employees of the Ministry;

(h) Issue allotments advice in support of the budget requirement for the conduct of operations under each program and project;

(i) Develop and recommend efficient and effective methods and procedures on budget disbursement, and cost and financial accounting and management. Administrative and Finance Divisions of all bureaus, shall continue to function as staff support to their respective bureaus, as coordinated by the Ministry's Support Services Office.

SEC. 11 C. *Office of the Deputy Minister for Field Operations.* – The Field Operations Office shall be headed by a Deputy Minister, assisted by three (3) Assistant Ministers, one for Luzon, one for Visayas and one for Mindanao, and shall have the following functions:

(a) Oversee the implementation and operations of the Ministry's policies, plans and programs in the regional and field offices.

(b) Provide the Ministry with the latest information, data and/or statistics on the latest programs, projects and activities being implemented in the field and transmit such information to the Office of Public Affairs, whenever applicable, to keep the public informed on energy and natural resources developments; monitor the execution/implementation of regional projects and activities of the licenses, permittees, and other lessees involved in the utilization of energy and natural resources.

SEC. 12. *Office of the Deputy Minister for Policy and Planning.* – Office to be headed by Deputy Minister shall have the following powers and functions:

(a) Shall serve as the central coordinating unit for policy, planning and project development and management;

(b) Shall develop a Ministry-wide framework for policy formulation and program planning;

(c) Shall conduct resource policy analysis;

(d) Shall institute an effective system of monitoring and evaluation of Ministry programs and projects;

(e) Shall coordinate official development assistance and implementation of foreign-assisted projects;

(f) Shall establish contacts with foreign funding institutions;

(g) Shall monitor the activities of regional/international institutions/ instrumentalities and trade movements affecting energy and natural resources sectors;

(h) Shall coordinate and integrate proposed projects prepared by the sectoral bureaus and attached agencies for local and foreign fundings;

(i) Shall coordinate information systems of the different natural resources agencies/ services of the Ministry;

(j) Shall integrate all applied research functions on the development, production, harvesting, processing and use of environment, energy and natural resources of the different bureaus. It shall have the following institutes: forestry, mines, and land management. The Forest Research Institute (FORI) is hereby transferred into the Natural Resource Research Office. It shall be responsible for assembling and storing natural resources research outputs and promoting the application of utilization of these results by the Ministry's clienteles.

SEC. 13. *Legal Services Office.* – The Legal Services Office shall be headed by an Assistant Minister. It shall advise and assist the Minister with respect to legal matters; prepare recommendations or orders involving the disposition, utilization and development of public lands, forest, minerals and other natural resources; review the issuances of licenses, permits and deeds of conveyance sales and other transfer of rights involving development and utilization of natural resources; and appear and act as counsel of the Ministry.

The Legal Divisions of all bureaus, shall continue to function as staff support to their respective bureaus, as coordinated by the Ministry's Legal Services Office.

SEC. 14. *Public Affairs Office.* – The Public Affairs Office to be headed by a Director, shall serve as the public information arm of the Ministry; be responsible for disseminating information on energy and natural resources development policies, plans, programs and projects; and respond to public queries related to the development and conservation of energy and natural resources.

The Public Affairs Offices of all bureaus are hereby abolished and their functions are transferred to the Public Affairs Office in accordance with Section 24 (b) hereof.

SEC. 15. *Special Concerns Office.* – The Special Concerns Office to be headed by a Director, shall be responsible for handling priority areas/subjects identified by the Minister which necessitate special and immediate attention.

SEC. 16. *Forest Management Bureau.* – The Bureau of Forest Development (BFD) and the Wood Industry Development Authority (WIDA), are hereby abolished and in their stead the Forest Management Bureau is hereby created. The Forest Management Bureau, to be headed by a Director and assisted by an Assistant Director shall advise the Minister on matters pertaining to forest development and conservation. Its primary functions are:

(a) Recommend policies and/or programs for the effective protection, development, occupancy, management and conservation of forest lands and watersheds, including grazing and mangrove areas, reforestation and rehabilitation of critically denuded/ degraded forest reservations, improvement of water resource use and development, development of national parks, preservation of wilderness areas, game refuges and wildlife sanctuaries,

ancestral lands, wilderness areas and other natural preserves, development of forest plantations including rattan, bamboo, and other valuable non-timber forest resources, rationalization of the wood-based industries, regulation of the utilization and exploitation of forest resources including wildlife, to ensure continued supply of forest goods and services.

(b) Advise the regional offices in the implementation of the above policies and/or programs.

(c) Develop plans, programs, operating standards and administrative measures to promote the Bureau's objectives and functions.

(d) Assist in the monitoring and evaluation of forestry and watershed development projects to ensure efficiency and effectiveness.

(e) Perform other functions as may be assigned by the Minister.

SEC. 17. *Lands Management Bureau.* – There is hereby created the Lands Management Bureau which shall absorb functions of the Bureau of Lands, which is hereby abolished in accordance with Section 24 (b) hereof, and the relevant functions of the Human Settlements Regulatory Commission, excluding those related to highly urbanized areas. The Lands Management Bureau, to be headed by a Director and assisted by an Assistant Director, shall advise the Minister on matters pertaining to rational land management and disposition and shall have the following functions:

(a) Recommend policies and programs for the efficient and effective administration, surveys, management and disposition of alienable and disposable lands of the public domain and other lands outside the responsibilities of other government agencies;

(b) Advise the Regional Offices on the efficient and effective implementation of policies, programs and projects for more effective public lands management;

(c) Assist in the monitoring and evaluation of land surveys, management and disposition of lands to ensure efficiency and effectiveness thereof;

(d) Develop operating standards and procedures to promote the Bureau's objectives and functions;

(e) Perform other functions as may be assigned by the Minister.

SEC. 18. *Mines and Geo-Sciences Bureau.* – There is hereby created the Mines and Geo-Sciences Bureau which shall absorb the functions of the Bureau of Mines and Geo-Sciences, Gold Mining Industry Development Board and the Mineral Reservations Board, all of which are hereby abolished in accordance with Section 24 (b) hereof. The Mines and Geo-Sciences Bureau, to be headed by a Director and assisted by an Assistant Director, shall advise the Minister on matters pertaining to geology and mineral resources exploration, development and conservation and shall have the following functions:

(a) Recommend policies, regulations and/or programs related to the exploration, development, exploitation and conservation of mineral resources, metallic and non-metallic, including the development of the mining industry;

(b) Advise the Minister on the granting of mining rights and contracts over areas containing metallic and non-metallic mineral resources:

(c) Advise the Regional Offices on the effective implementation of mineral development and conservation programs as well as geological surveys;

(d) Assist in the monitoring and evaluation of the Bureau's programs and projects to ensure efficiency and effectiveness thereof,

(e) Develop operating standards and procedures to enhance the Bureau's efficiency and effectiveness;

(f) Perform other functions as may be assigned by the Minister.

SEC. 18 A. *Environmental Protection Bureau.* – The National Environmental Protection Council (NEPC), National Pollution Control Commission (NPCC) and the Environmental Center of the Philippines (ECP) are hereby integrated and merged into a single bureau in accordance with Section 24 (c) hereof. The Bureau shall be responsible for the formulation, enforcement and monitoring of an integrated program of natural resources conservation and environmental protection, as well as, formulation of policies and guidelines for the establishment of environmental quality standards and impact assessments, and the conservation of natural resources.

SEC. 18 B. *Energy Utilization Bureau.* – The Energy Utilization Bureau is hereby transferred. The Energy Utilization Bureau, to be headed by a Director and assisted by an Assistant Director shall advise the Minister on matters pertaining to energy utilization. Its primary functions are:

(a) Recommend policies and/or programs for effective energy utilization;

(b) Advise the regional offices in the implementation of the above policies and/or programs;

(c) Develop plans, programs, operating standards and administrative measures to promote the bureau's objectives and functions;

(d) Assist in the monitoring and evaluation of energy resources utilization to ensure efficiency and effectiveness;

(e) Perform other functions as may be assigned by the Minister,

SEC. 18 C. *Energy Development Bureau.* – The Energy Development Bureau is hereby transferred. The Energy Development Bureau, to be headed by a Director and assisted by an Assistant Director shall advise the Secretary on matters pertaining to energy development. Its primary functions are:

(a) Recommend policies and/or programs for effective energy development;

(b) Advise the regional offices in the implementation of the above policies and/or programs;

(c) Develop plans, programs, operating standards and administrative measures to promote the bureau's objectives and functions;

(d) Assist in the monitoring and evaluation of energy resources utilization to ensure efficiency and effectiveness;

(e) Perform other functions as may be assigned by the Secretary.

SEC. 19. *Attached and Administratively-Supervised Agencies of the Ministry.* – The following government agencies/corporations are hereby attached to the Department.

(a) National Mapping and Resource Information Authority. – The Natural Resources Management Center (NRMC), National Cartography Authority (NCA), the Bureau of Coast and Geodetic Survey (BCGS), and the Land Classification. Teams based at the then Bureau of Forest Development, are hereby integrated and merged into a single agency to be called National Mapping and Resource Information Authority in accordance with Section 24 (e) hereof, which shall provide the Ministry and the government with map-making services. The authority shall act as the central mapping agency which will serve the needs of the line agencies of the Ministry and other government offices with regard to information and researches, and shall

expand its capability in the production and maintenance of maps, charts and similar photogrammetry and cartography materials.

The Authority shall be responsible for conducting research on remote sensing technologies such as satellite imagery analysis, airborne multi-spectral scanning systems, and side-looking airborne radar; provide remote sensing services and vital data on the environment, water resources, agriculture, and other information needed by other government agencies and the private sector; integrate all techniques of producing maps from the ground surveys to various combinations or remote sensing techniques in a cost-effective and acceptable manner; and the integration of geographic and related information to facilitate access to and analysis of data and its transformation into useful information for resource policy formulation, planning and management. It shall be the central depository and distribution facility for natural resources data in the form of maps, statistics, text, charts, etc. store on paper, film or computer compatible media and shall operate information services and networks to facilitate transfer, sharing, access and dissemination of natural resource information in all regions and provinces of the country.

(b) Manila Seedling Bank Foundation, Inc. – It shall continue to serve the government and private sectors involved in all kinds of tree planting activities by providing them with healthy tree seedlings and planting materials by operating seedling nurseries and seed orchards. It shall also accept tree planting contracts from both government and private sectors in the establishment of agro-forest farms and tree plantations, and pilot-test innovative packages of nursery and plantation development technologies that can be adopted locally and internationally.

(c) Natural Resources Development Corporation. – The Natural Resources Development Corporation (NRDC), the National Development Corporation Plantation Inc. (NDCPI), National Coal Authority are integrated and hereby merged into the Natural Resources Development Corporation in accordance with Section 24 (e) hereof and shall be under the direct supervision of the Minister. It shall be charged primarily with promoting natural resource development and conservation through:

1. Direct involvement in pioneering but potentially viable production, use, and marketing ventures or projects using new/innovative technologies, systems, and strategies such as but not limited to stumpage sales system, industrial forest plantation or logging operations, rattan tissue culture: *Provided, however,* That no such activities which compete with the private sector shall be undertaken;

2. Regulation and supervision of the processing of forest products, grading and inspection of lumber and other processed products, and monitoring of the movement of timber and other forest products.

(d) The National Electrification Administration. – It shall continue to operate as a principal implementing arm of the Ministry in aspects and components of energy policies, programs, and plans which can not be carried out by the private sector.

SEC. 20. *Field Offices of the Ministry.* – The field offices of the Ministry are the Environment, Energy and Natural Resources Regional Offices in the thirteen (13) administrative regions of the country, the Environment Energy and Natural Resources Provincial Office in every province and the Community Office in every municipality whenever feasible. The regional offices of the Bureau

of Forest Development, Mines and Geo-Sciences Bureau and Bureau of Lands in each of the thirteen (13) administrative regions are hereby integrated and consolidated into the Ministry-wide Regional Environment, Energy and Natural Resources Office of the Ministry, in accordance with Section 24 (e) hereof and shall be directly under the supervision and control of the Deputy Minister for Field Operations. A Regional Office shall be headed by a Regional Director and shall be assisted by four (4) Assistant Regional Directors for Forestry, Lands Management, Mines and Aquatic Resources, respectively, where applicable, and who shall be Career Executive Service Officers.

SEC. 21. *Functions of the Energy, Environment and Natural Resources Regional Office.* – The Environment, Energy and Natural Resources Regional Office shall have, within its administrative region, the following functions:

(a) Implement laws, policies, plans, programs, projects, rules and regulations of the Ministry;

(b) Provide efficient and effective delivery of services to the people;

(c) Coordinate with regional offices of other ministries, offices, agencies in the region;

(d) Coordinate with local government units;

(e) Recommend and, upon approval, implement programs and projects on forestry, aquatic, minerals, and land management and disposition;

(f) Conduct comprehensive inventory of natural resources in the region and formulate regional short-and long-term development plans for the conservation, utilization and replacement of natural resources;

(g) Evolve respective regional budget in conformity with the priorities established by the Regional Development Councils;

(h) Supervise the processing of natural resources products, grade and inspect minerals, lumber and other wood processed products, and monitor the movement of these products;

(i) Perform other functions as may be provided by law.

Major natural resources related programs and projects undertaken by other agencies or in joint undertaking with the then Bureau of Forest Development are hereby absorbed by the Ministry-wide Environment, Energy and Natural Resources Regional offices, in accordance with Section 24 (b) or (c), as the case may be, such as: Calauit Game Preserve and Wildlife Sanctuary, Presidential Committee on the Conservation of Tamaraw, Ninoy Aquino Parks and Wildlife Center (formerly Parks and Wildlife Nature Center), shares in Kabuhayan Program and Agro Forestry State Projects of the KKK Processing Authority, all national parks, wildlife sanctuaries and game preserves previously managed and administered by the Ministry of Human Settlements including National Parks Reservation situated in the provinces of Bulacan, Rizal, Laguna and Quezon formerly declared as Bagong Lipunan Sites of said Ministry, Magat Forest Reservation and Mt. Arayat National Park, formerly with the Ministry of Tourism.

The natural resources provincial and community offices shall absorb, respectively, the functions of the district offices of the bureaus, which are hereby abolished in accordance with Section 24 (b) hereof. The provincial and community natural resource office shall be headed by a provincial natural resource officer and community natural resource officer, respectively.

SEC. 22. *Transfers.* – The following government corporate offices are hereby transferred from the abolished Ministry of Energy and be placed under the direct supervision and control of the Office of the President:

(a) The Philippine National Oil Company;

(b) The National Power Corporation;

SEC. 23. *Special Provisions.* – All executive issuances or fiats (Presidential Decrees, Executive Orders, Letters of Instructions, Proclamations), and other issuances, contracts, concessions permits or other forms of privilege for the exploration, exploitation, development or utilization of natural resources issued to a certain person and/or entity beyond the constitutional limit during the last ten (10) years are hereby revoked and such lands are hereby reverted to the public domain. Such issuances shall, henceforth be subjected to a review by the Minister to determine the most appropriate and beneficial land uses, and issue the necessary orders or directives pertaining thereto.

SEC. 24. *Transitory Provisions.* – In accomplishing the acts of reorganization herein prescribed, the following transitory provisions shall be complied with, unless otherwise provided elsewhere in this Executive Order:

(a) The transfer of a government unit shall include the functions, appropriation, funds, records, equipment, facilities, choses in action, rights, other assets, and liabilities, if any, of the transferred unit as well as the personnel thereof, as may be necessary, who shall, in a hold-over capacity, continue to perform respective duties and responsibilities and receive the corresponding salaries and benefits unless in the meantime are separated from government service pursuant to Executive Order No. 17 (1986) or Article III of the Freedom Constitution. Those personnel from the transferred unit whose positions are not included in the Ministry's new position structure and staffing pattern approved and prescribed by the Minister or who are not reappointed shall be deemed separated from the service and shall be entitled to the benefits provided in the second paragraph of Section 25 hereof.

(b) The transfer of functions which results in the abolition of the government unit that exercised them shall include the appropriations, funds, records, equipment, facilities, choses in action, rights, other assets and personnel as may be necessary to the proper discharge of the transferred functions. The abolished unit's remaining appropriations and funds if any, shall revert to the General Fund and its remaining assets, if any, shall be allocated to such appropriate units as the Minister shall determine or shall otherwise be disposed in accordance with the *Government Auditing Code* and other pertinent laws, rules and regulations. Its liabilities, if any shall likewise be treated in accordance with the *Government Auditing Code* and other pertinent laws, rules and regulations. Its personnel shall, in a hold-over capacity, continue to perform their duties and responsibilities and receive the corresponding salaries and benefits unless in the meantime they are separated from the service pursuant to Executive Order No. 17 (1986) or Article III of the Freedom Constitution. Its personnel whose positions are not included in the Ministry's structure and staffing pattern approved and prescribed by the Minister under Section 25 hereof or who is not reappointed, shall be deemed separated from the service and shall be entitled to the benefits provided in the second paragraph of the same Section 25.

(c) Any transfer of functions which does not result in the abolition of the government unit that has exercised them shall include the appropriations, funds, records, equipment, facilities, choses in action, rights, and assets and personnel as may be necessary to the proper discharge of the transferred functions. The liabilities, if any, that may have been incurred in connection with the discharge of the transferred functions, shall be treated

in accordance with the *Government Auditing Code* and other pertinent laws, rules and regulations. Such personnel shall, in a hold-over capacity, continue top perform their duties and responsibilities and receive the corresponding salaries and benefits unless in the meantime they are separated from the service pursuant to Executive Order No. 17 (1986) or Article III of the Freedom Constitution. Any personnel, whose position is not included in the Ministry's new position structure and staffing pattern approved and prescribed by the Minister under Section 25 hereof or who is not reappointed, shall be deemed separated from the service and shall be entitled to the benefits provided in the second paragraph of the same Section 25.

(d) In case of the abolition of the government unit which does not result in the transfer of its functions another unit, the appropriations and funds of the abolished entity shall revert to the General Fund, while the records, equipment, facilities, choses in action, rights, and other assets thereof shall be allocated such appropriate entities as the Minister shall determine or shall otherwise be disposed in accordance with the *Government Auditing Code* and other pertinent laws, rules and regulations. The liabilities of the abolished units shall be treated in accordance with the *Government Auditing Code* and other pertinent laws, rules and regulations, while the personnel thereof, whose position, is not included in the Ministry's new position structure and staffing pattern approved and prescribed by the Minister under Section 25 hereof or who has not been reappointed, shall be deemed separated from the service and shall be entitled to the benefits provided in the second paragraph of the same Section 25.

(e) In case of merger or consolidation of government units, the new or surviving unit shall exercise the functions (subject to the reorganization herein prescribed and the laws, rules and regulations pertinent to the exercise of such functions), and shall acquire the appropriations, funds, records, equipment, facilities, choses in action, rights, other assets, liabilities, if any, and personnel, as may be necessary, of the units that compose the merged unit shall, in a hold-over capacity continue to perform their respective duties and responsibilities and receive the corresponding salaries and benefits unless in the meantime they are separated from the service pursuant to Executive Order No. 17 (1986) or Article III of the Freedom Constitution. Any such personnel, whose position is not included in the Ministry's new position structure and staffing pattern approved and prescribed by the Minister under Section 25 hereof or who are not reappointed, shall be deemed separated from the service and shall be entitled to the benefits provided in the second paragraph of the same Section 25.

(f) In case of termination of a function which does not result in the abolition of the government unit which perform such function, the appropriations and funds intended to finance the discharge of such function shall revert to the General Fund while the records, equipment, facilities, choses in action, rights and other assets used in connection with the discharge of such function shall be allocated to the appropriate units as the Ministry shall determine or shall otherwise be disposed in accordance with the *Government Auditing Code* and other pertinent laws, rules and regulations. The liabilities, if any, that may have been incurred in connection with the discharge of such function shall likewise be treated in accordance with the *Government Auditing Code* and other pertinent laws, rules and regulations. The personnel who have performed such function, whose positions are not included in the Ministry's new position structure and

staffing pattern approved and prescribe by the Minister under Section 25 hereof or who have not been re-appointed, shall be deemed separated from the service and shall be entitled to the benefits provided in the second paragraph of the same Section 25 hereof.

SEC. 25. *New Structure and Pattern.* – Upon approval of this Executive Order, the officers and employees of the Ministry shall, in a hold-over capacity, continue to perform their respective duties and responsibilities and receive the corresponding salaries and benefits unless in the meantime they are separated from government service pursuant to Executive Order No. 17 (1986) or Article III of the Freedom Constitution.

The new position structure and staffing pattern of the Ministry shall be approved and prescribed by the Minister within one hundred and twenty (120) days from the publication of this Executive Order and the authorized positions created thereunder shall be filled with regular appointments by him or by the President as the case may be. Those incumbents whose positions are not included therein or who are not reappointed shall be deemed separated from the service. Those separated from the service shall receive the retirement benefits to which they may be entitled under existing laws, rules and regulations. Otherwise, they shall be paid the equivalent of one (1) month basic salary for every year of service in the government, or a fraction thereof, computed on the basis of the highest salary received, but in no case shall payment exceed the equivalent of twelve (12) months salary.

No court or administrative body shall issue any writ or preliminary injunction or restraining order to enjoin the separation/replacement of any officer or employee effected under this Executive Order.

SEC. 26. *Periodic Performance Evaluation.* – The Ministry of is hereby required to formulate and enforce a system of measuring and evaluating periodically and objectively the performance of the Ministry and submit the same annually to the President.

SEC. 27. *Notice or Consent Requirement.* – If any reorganizational change herein authorized is of such substance of materiality as to prejudice third persons with rights recognized by law or contract such that notice to or consent of creditors is required to be made or obtained pursuant to any agreement entered into with any of such creditors, such notice or consent requirement shall be complied with prior to the implementation of such reorganizational change.

SEC. 28. *Change of Nomenclatures.* – In the event of the adoption of a new Constitution which provides for a Presidential form of government, the Ministry shall be called Department of Natural Resources and the titles of Minister, Deputy Minister, and Assistant Minister shall be changed to Secretary Undersecretary and Assistant Secretary, respectively.

SEC. 29. *Prohibition Against Structural Changes.* – No change in the reorganization herein prescribed shall be valid except upon prior approval of the President for the purpose of promoting efficiency and effectiveness in the delivery of public services.

SEC. 30. *Funding.* – Funds needed to carry out the provisions of this Executive Order shall be taken from funds available in the Ministry.

SEC. 31. *Implementing Authority of the Minister.* – The Minister shall issue such orders, rules and regulations and other issuances as may be necessary to ensure the effective implementation of the provisions of this Executive Order.

SEC. 32. *Separability.* – Any portion or provision of this Executive Order that may be declared unconstitutional shall not have the effect of nullifying other portions or provisions hereof as long as such remaining portions or provisions can still subsist and be

given effect in their entirety.

SEC. 33. *Repealing Clause.* – All laws, ordinances, rules, regulations and other issuances or parts thereof, which are inconsistent with this Executive Order, are hereby repealed or modified accordingly.

SEC. 34. *Effectivity.* – This Executive order shall take effect immediately upon its approval.

Approved in the City of Manila, Philippines, this 30th day of January, in the year of Our Lord, nineteen hundred and eight-seven.

EXECUTIVE ORDER NO. 131-A

SUSPENDING THE IMPLEMENTATION OF EXECUTIVE ORDER NO. 131, DATED JANUARY 30, 1987

WHEREAS, Executive Order No. 131 was issued by the President to reorganize the Ministry of Natural Resources;

WHEREAS, in the aforesaid reorganization measure, the Ministry of Environment, Energy and Natural Resources was identified as the line agency for the formulation and supervision of the government's resource development program on a unified and coordinated manner;

WHEREAS, new developments necessitate a review of the prior decision to combine the aspects of energy, environment, and natural resources in one Department;

NOW, THEREFORE, I, CORAZON C. AQUINO, President of the Philippines, do hereby order:

SECTION 1. The implementation of Executive Order No. 131 is hereby suspended.

SEC. 2. All laws, orders, issuances, rules and regulations or parts thereof inconsistent with this Executive Order are hereby repealed or modified accordingly.

SEC. 3. This Executive Order shall take effect immediately.

Done in the City of Manila, this 6th day of March in the year of Our Lord, nineteen hundred and eighty-seven.

EXECUTIVE ORDER NO. 193

PROVIDING FOR THE REORGANIZATION OF THE OFFICE OF ENERGY AFFAIRS AND FOR OTHER PURPOSES

WHEREAS, under Article II, Section I of the provisional Constitution, as adopted in Proclamation No. 3 dated March 25, 1986, the President shall give priority to measures to achieve the mandate of the people to completely reorganize the government;

WHEREAS, Article XVIII, Section 16, of the 1987 Constitution recognizes that the reorganization of the government shall be continued even after the ratification of the Constitution;

WHEREAS, under Article XVIII, Section 6, of the 1987 Constitution, the president shall continue to exercise legislative powers until the First Congress is convened;

WHEREAS, pursuant to Executive Order No. 20, dated June 19, 1986 for the administrative supervision of all the offices, agencies and corporations attached to the Ministry of Energy, the Office of Energy Affairs in the Office of the President was created;

WHEREAS, there is a need to reorganize the Office of Energy Affairs for better administration and formulation of plans and policies for energy resource development and utilization functions;

NOW, THEREFORE, I, CORAZON C. AQUINO, President of the Philippines, do hereby order:

SECTION 1. *Title.* – This Executive Order shall otherwise be known as the Act Providing for the Reorganization of the Office of Energy Affairs.

SEC. 2. *The Office of Energy Affairs.* – The Office of Energy Affairs is hereby reorganized structurally and functionally, in accordance with the provisions of this Executive Order. The Office of Energy Affairs shall be under the Office of the President.

SEC. 3. *Mandate.* – The Office of Energy Affairs, hereinafter referred to as the Energy Office, shall be primarily responsible for the formulation, planning, monitoring, implementation of, and coordination of policies and programs in the field of energy. The primary function of the Energy Office shall be to ensure a continuous, adequate and economic supply of energy with the end in view of ultimately achieving self-reliance in the country's energy requirements, through intensive exploration and development of indigenous energy resources, and through the judicious conservation and efficient utilization of energy consistent with the country's accelerated economic growth objectives.

SEC. 4. *Powers and Functions.* – The Energy Office shall have the following powers and functions:

(a) Formulate policies, consistent with Section 3 and pertinent national guidelines, and coordinate all activities which the government may need to undertake relative to the exploration, development, marketing, distribution, storage, and efficient utilization of energy resources from fossil fuels such as petroleum, coal natural gas and gas liquids, nuclear-fuel resources, geothermal resources, hydroelectric resources, and existing potential forms of non-conventional energy resources;

(b) Establish and administer a comprehensive and integrated program for the exploration, exploitation, development, extraction, importation, exportation, transport, marketing, distribution, storage, and efficient utilization of fossil, nuclear, geothermal, hydroelectric and non-conventional forms of energy resources;

(c) Encourage and guide business activities relative to the exploration, exploitation, development, extraction, importation, exportation, transport, marketing, distribution and storage of fossil, nuclear, geothermal, hydroelectric, and non-conventional forms of energy resources;

(d) Assess, review and provide direction to, in coordination with concerned government agencies, energy research and development programs, including identification of source of energy and determination of their commercial feasibility for development;

(e) Formulate such rules and regulations as may be necessary to implement the objectives and provisions of this Executive Order;

(f) Perform other functions as established by law or as ordered by higher authority; and

(g) Exercise all powers necessary or incidental to attain the objectives of this Executive Order.

SEC. 5. *Structural Organization.* – The Energy Office shall consist of the following:

(a) Office of the Executive Director;

(b) Office of the Deputy Executive Director for Energy Operations;

(c) Office of the Deputy Executive Director for Energy Staff Services;

(d) Special Concerns Services; and

(e) Regional Field Offices.

SEC. 6. *Executive Director.* – The authority and responsibility for the exercise of the mandate of the Energy Office and for the discharge of its powers and functions shall be vested in the Executive Director who shall have supervision and control of the Energy Office and shall be appointed by the President. The Executive Director shall have the following powers and functions:

(a) Establish policies for the effective, efficient and economical operations of the Energy Office in accordance with the programs of government;

(b) Promulgate rules and regulations necessary to carry out Energy Office's objectives, policies, plans, programs and projects;

(c) Exercise supervision and control over all functions and activities of the Energy Office;

(d) Delegate authority for the performance of any administrative or substantive function of the Deputy Executive Director or other officials of rank at the Energy Office; and

(e) Perform such other functions as may be provided by law or assigned by the President.

SEC. 7. *Office of the Executive Director.* – The Office of the Executive Director shall consist of the Executive Director, the Deputy Executive Directors for Energy Operations and Energy Staff Services, and their immediate staff.

SEC. 8. *Deputy Executive Directors.* – The Executive Director shall be assisted by two (2) Deputy Executive Directors who shall be appointed by the President upon the recommendation of the Executive Director. The Deputy Executive Directors shall have the following functions:

(a) Advise the Executive Director on matters relative to the promulgation of administrative orders and other issuances of the Energy Office;

(b) Recommend the promulgation of rules and regulations, consistent with the policies of the Energy Office;

(c) Coordinate the functions and activities of the units under his authority;

(d) Exercise delegated authority on substantive and administrative matters to the extent granted by the Executive Director through administrative issuances; and

(e) Perform such other functions as may be provided by law or assigned by the Executive Director.

SEC. 9. *Office of the Deputy Executive Director for Energy Operations.* – The Office of the Deputy Executive Director for Energy Operations shall consist of the Energy Executive Director for Energy operations and his immediate staff as determined by him; the Director for Energy Development Services; and the Director for Energy Utilization and Promotion Services.

(a) *Energy Development Services.* – The Energy Development Services shall be responsible for program and project planning relative to the exploration, exploitation, development and

extraction of energy resources. Energy resources shall mean any substance by itself or in combination with others, or after processing or refining or the application to of technology, emanates, generates, or causes the emanation or generation of energy, such as but not limited to petroleum or petroleum products, coal, marsh gas, methane gas, geothermal and hydroelectric sources of energy, uranium, and other similar and radioactive minerals, solar energy, tidal power, as well as non-conventional existing and potential sources. It shall conduct energy research and studies and perform consultative training and advisory services to the practitioners and institutions in the areas of regulated activity. It shall perform such other functions as may be provided by law or directed by the President.

(b) *Energy Utilization and Promotion Services.* – The Energy Utilization and Promotion Services shall be responsible for program and project planning for the encouragement and guidance of business activities relative to importation, exportation, storage, shipping, transporting, refinement, processing, marketing, and distribution of energy resources. It shall also exercise such powers and functions, as appropriate, of the abolished Oil Industry Commission under Republic Act No. 6173, as amended, which were transferred to the Ministry of Energy under Section 12 of P.D. No. 1206, as amended. It shall also be responsible for the promotion and utilization of non-conventional energy technologies and resources. It shall perform such other functions as may be provided by law or as directed by the President.

SEC. 10. *Office of the Deputy Executive Director for Energy Staff Services.* – The Office of the Deputy Executive Director for Energy Staff Services shall consist of the Deputy Executive Director for Energy Staff Services and his immediate staff as determined by him; the Director for Financial and Management Services; the Director for Planning Services; and the Director for Legal Affairs and Counseling Services.

(a) *Financial and Management Services.* – The Financial and Management Services shall be responsible for providing the Energy Office with services relative to the budgetary, financial and management improvement matters, assuring the integrity of financial operations and compliance with the requirements of the Commission on Audit and optimizing internal operating efficiency. It shall also be responsible for providing the Energy Office with services relating to personnel, information, records, supplies, collection and disbursements, security, custodial work and all other administrative matters.

(b) *Planning Services.* – The Planning Services shall be responsible for the providing the Energy Office with services relating to planning, programming, and project development, including power development, policies and programs and their priorities as may be warranted by domestic or international developments. It shall also review and evaluate energy development programs, including those which concern the development and utilization of non-conventional forms of energy resources.

(c) *Legal Affairs and Counseling Services.* – The Legal Affairs and Counseling Services shall be responsible for providing legal advice and services on all policy, program and operational matters of the Energy Office. It shall also provide legal counseling services in cases in which the Energy Office is a party. It shall also handle administrative cases against Energy Office personnel and submit recommendations pertaining to them.

SEC. 11. *Special Concerns Services.* – The Special Concerns Services to be headed by a Director, shall be responsible for handling

priority areas/subjects identified by the Executive Director which necessitate special and immediate attention.

The Director of the Special Concerns Services shall report to the Executive Director through the Deputy Executive Director for Energy Operations.

SEC. 12. *Regional Field Offices.* – Regional Field offices may be established by the Energy Office, subject to the approval of the President, in Luzon, Visayas and Mindanao as the Executive Director may determine as necessary to promote operating efficiency in the delivery of vital frontline service. They shall be responsible for the energy resource surveys, scanning and investigation in these areas, and compliance with the promulgated rules, standards and regulations.

The Regional Field Offices shall have, within their respective regions, the following functions:

(a) Implement laws, policies, programs, rules and regulations of the Energy Office;

(b) Coordinate with other offices and agencies in the region;

(c) Coordinate with local government units; and

(d) Perform other functions as may be provided by law or assigned to them by the Executive Director.

The Regional Offices shall initially report to the Executive Director through the Deputy Executive Director for Energy Operations.

SEC. 13. *Delegation of Power by the Executive Director.* – The Executive Director shall have the authority to delegate such substantive and administrative powers and authorities as may be necessary to the heads of various offices in the Energy Office.

SEC. 14. – *Coordination with Other Energy Agencies.* – The Energy Office shall coordinate with the Philippine National Oil Company, National Power Corporation and National Electrification Administration in the exercise of its functions, particularly as these pertain to the formulation of energy sector policies, plans and programs.

SEC. 15. *Abolitions and Transfers.* – The following organizational changes shall be complied with:

(a) The Bureau of Energy Development is hereby abolished and its pertinent functions together with applicable appropriations, records, equipment and such personnel as may be necessary shall be transferred to the Office of the Deputy Executive Director for Energy Operations.

(b) The non-regulatory powers and functions of the Bureau of Energy Utilization together with applicable appropriations, records, equipment and such personnel as may be necessary shall be transferred to the Office of the Deputy Executive Director for Energy Operations.

(c) The regulatory and adjudicatory powers and functions of the Bureau of Energy Utilization remain with the Energy Regulatory Board as mandated by Executive Order No. 172.

(d) The National Coal Authority, as created by virtue of Presidential Decree No. 1722, is hereby abolished. Its regulatory powers and functions together with applicable appropriations, records, equipment and such personnel as may be necessary shall be transferred to the Energy Regulatory Board. Its non-regulatory powers and functions together with applicable appropriations, records, equipment and such personnel as may be necessary shall be transferred to the appropriate units of the Energy Office. Its assets and liabilities shall be transferred to the national government, for disposal by the appropriate body.

(e) The Watershed Management Unit presently tasked with the implementation

of Presidential Decree No. 1515, as amended, and the Environmental Unit are hereby abolished. Their powers and functions are transferred to the Department of Environment and Natural Resources consistent with Section 4 of Executive Order No. 192: *Provided,* That in the interest of promoting operating efficiency, the Department shall enter into agreement as appropriate with concerned government energy agencies which shall allow the latter to oversee the watershed and environment aspects in their respective areas of interest such as those where geothermal operations and water-based projects are conducted.

SEC. 16. *Transitory Provisions.* – The following provisions shall be complied with in the abolition, transfers, and mergers or consolidations prescribed under Section 15 hereof.

(a) The transfer of functions which results in the abolition of the government unit that has exercised them shall include the appropriations, funds, records, equipment, facilities, other assets and personnel as may be necessary to the proper discharge of the transferred functions. The abolished unit's remaining appropriations and funds, if any, shall be allocated to such appropriate units as the Executive Director shall determine or shall otherwise be disposed of in accordance with the *Auditing Code* and other pertinent laws, rules and regulations. Its liabilities, if any, shall likewise be treated in accordance with the *Auditing Code* and other pertinent laws, rules and regulations.

Its personnel shall, in hold-over capacity, continue to perform their duties and responsibilities and receive the corresponding salaries and benefits. Its personnel whose positions are not included in the Office's new position structure and staffing pattern approved and prescribed by the Executive Director under Section 17 hereof or who are not reappointed, shall be entitled to the benefits provided for in Section 17 hereof.

(b) The transfer of functions which does not result in the abolition of the government unit that has exercised them shall include the appropriations, funds, records, equipment, facilities, other assets and personnel as may be necessary to the proper discharge of the transferred functions. The liabilities, if any, that may have been incurred in connection with the discharge of the transferred functions, shall be treated in accordance with the *Auditing Code* and other pertinent laws, rules and regulations. Such personnel shall, in a hold-over capacity, continue to perform their respective duties and responsibilities and receive the corresponding salaries and benefits. Any such personnel, whose position is not included in the new position structure and staffing pattern of the Energy Office approved and prescribed by the Executive Director under Section 17 hereof or who has not been reappointed, shall be entitled to the benefits provided for in the same Section 17.

(c) In case of merger or consolidation of government units, the new or surviving unit shall exercise the functions (subject to the reorganization herein prescribed and the laws, rules and regulations, pertinent to the exercise of such functions) and shall acquire the appropriations, funds records, equipment facilities, other assets, liabilities, if any, and personnel of (1) the units that compose the merged unit or (2) the absorbed unit, as the case may be. Such personnel shall, in a hold-over capacity, continue to perform their respective duties and responsibilities and receive the corresponding salaries and benefits. Any such personnel, whose position is not included in the new position structure and staffing pattern of the Energy Office approved

and prescribed by the Executive Director under Section 17 hereof or who is not appointed, shall be entitled to the benefits provided in the same Section 17.

SEC. 17. *New Structure and Staffing Pattern.* – Upon approval of this Executive Order, the officers and employees of the Energy Office shall be in a holdover capacity, until such time that the reorganization of the Office is completed.

The new position structure and staffing pattern of the Energy Office shall be approved and prescribed by the Executive Director within ninety (90) days from the approval of this Executive Order and the authorized positions created thereunder shall be filled with regular appointments by the Executive Director or the President, as the case may be. Those separated from the service as a result of this reorganization shall receive the retirement benefits to which they may be entitled under existing laws, rules and regulations. Otherwise, they shall be paid the equivalent of one month basic salary for every year of continuous satisfactory service, or the equivalent nearest fraction thereof favorable to them on the basis of highest salary received, but in no case shall such payment exceed the equivalent of twelve (12) months salary.

SEC. 18. *Periodic Performance Evaluation.* – The Energy Office is hereby required to formulate and enforce a system of measuring and evaluating periodically and objectively the performance of the Energy Office and submit the same annually to the President.

SEC. 19. *Notice or Consent Requirement.* – If any reorganization change herein authorized is of such substance or materiality as to prejudice third persons with rights recognized by law or contract such that notice or consent of creditors; such notice or consent requirement shall be complied with prior to the implementation of such reorganization change.

SEC. 20. *Prohibition Against Change.* – No change in reorganization herein prescribed shall be valid except upon prior approval of the President for the purpose of promoting efficiency and effectiveness in the delivery of public services.

SEC. 21. *Funding.* – Funds needed to carry out the provisions of this Executive Order shall be taken from the existing appropriations of the Office of Energy Affairs.

SEC. 22. *Implementing Authority of Executive Director.* – The Executive Director shall issue such rules, regulations and other issuances as may be necessary to ensure the effective implementation of the provisions of this Executive Order.

SEC. 23. *Applicability Clause.* – The applicable provisions of existing laws, orders or issuances governing the administration and development of energy resources shall continue to have full force and effect, except insofar as inconsistent with this Executive Order.

SEC. 24. *Repealing Clause.* – All laws, ordinances, orders, proclamations, rules, regulations, issuances or parts thereof, which are consistent with any of the provisions of this Executive Order are hereby repealed or modified accordingly.

SEC. 25. *Separability.* – Any portion or provisions of this Executive Order that may be declared unconstitutional shall not have the effect of nullifying the other provisions thereof: *Provided,* That such remaining portions can still stand and be given effect in their entirety to accomplish the objectives of this executive order.

SEC. 26. *Effectivity.* – This Executive Order shall take effect immediately upon its approval.

Approved in the City of Manila, this 10th day of June, in the year of our Lord, nineteen hundred and eighty-seven.

REPUBLIC ACT NO. 7638

AN ACT CREATING THE DEPARTMENT OF ENERGY RATIONALIZING THE ORGANIZATION AND FUNCTIONS OF GOVERNMENT AGENCIES RELATED TO ENERGY AND FOR OTHER PURPOSES

CHAPTER I

General Provisions

SECTION 1. *Short Title.* – This Act shall be known as the "Department of Energy Act of 1992."

SEC. 2. *Declaration of Policy.* – It is hereby declared the policy of the State: (a) to ensure a continuous, adequate, and economic supply of energy with the end in view of ultimately achieving self-reliance in the country's energy requirements through the integrated and intensive exploration, production, management, and development of the country's indigenous energy resources, and through the judicious conservation, renewal and efficient utilization of energy to keep pace with the country's growth and economic development and taking into consideration the active participation of the private sector in the various areas of energy resource development; and (b) to rationalize, integrate, and coordinate the various programs of the Government towards self-sufficiency and enhanced productivity in power and energy without sacrificing ecological concerns.

SEC. 3. *Definition of Terms.* – (a) "Energy projects" shall mean activities or projects relative to the exploration, extraction, production, importation-exportation, processing, transportation, marketing, distribution, utilization, conservation, stockpiling, or storage of all forms of energy products and resources.

(b) "Board" shall mean the Energy Regulatory Board.

SEC. 4. *Department of Energy.* – To carry out the above-declared policy, there is hereby created the Department of Energy, hereinafter referred to as the Department, which shall prepare, integrate, coordinate, supervise, and control all plans, programs, projects, and activities of the Government relative to energy exploration, development, utilization, distribution, and conservation.

SEC. 5. *Powers and Functions.* – The Department shall have the following powers and functions:

(a) Formulate policies for the planning and implementation of a comprehensive program for the efficient supply and economical use of energy consistent with the approved national economic plan and with the policies on environmental protection and conservation and maintenance of ecological balance, and provide a mechanism for the integration, rationalization, and coordination of the various energy programs of the Government;

(b) Develop and update the existing Philippine energy program which shall provide for an integrated and comprehensive exploration, development, utilization, distribution and conservation of energy resources, with preferential bias for environment-friendly, indigenous, and low-cost sources of energy. The program shall include a policy direction towards the privatization of government agencies related to energy, deregulation of the power and energy industry and reduction of dependency on oil-fired plants. Said program shall be updated within nine (9) months from its completion and not later than the fifteenth day of September every year thereafter;

(c) Establish and administer programs for the exploration, transportation, marketing, distribution, utilization, conservation, stockpiling and storage of energy resources of all forms, whether conventional or nonconventional;

(d) Exercise supervision and control over all government activities relative to energy projects in order to attain the goals embodied in Section 2 of this Act;

(e) Regulate private sector activities as provided under existing laws: *Provided,* That the Department shall endeavor to provide for an environment conducive to free and active private sector participation and investment in all energy activities.

At the end of four (4) years from the effectivity of this Act, the Department shall, upon approval of the President, institute the programs and timetable of deregulation of appropriate energy projects and activities of the energy industry;

(f) Assess the requirements of, determine priorities for, provide direction to, and disseminate information resulting from energy research and development programs for the optimal development of various forms of energy production and utilization technologies;

(g) Formulate and implement programs, including a system of providing incentives and penalties, for the judicious and efficient use of energy in all energy-consuming sectors of the economy;

(h) Formulate and implement a program for the accelerated development of nonconventional energy systems and the promotion and commercialization on its applications;

(i) Devise ways and means of giving direct benefits to the province, city, or municipality, especially the community and people affected, and equitable and preferential benefit to the region that hosts the energy resource and/or the energy-generating facility: *Provided, however,* That the other provinces, cities, municipalities, or regions shall not be deprived of their energy requirements;

(j) Encourage private enterprises engaged in energy projects, including corporations, cooperatives, and similar collective organizations, to broaden the base of their ownership and thereby encourage the widest public ownership of energy-oriented corporations;

(k) Formulate such rules and regulations as may be necessary to implement the objectives of this Act; and

(l) Exercise such other powers as may be necessary or incidental to attain the objectives of this Act.

CHAPTER II

The Department Proper

SEC. 6. *Composition.* – The Department Proper shall be composed of the Office of the Secretary and the Offices of the Undersecretaries and Assistant Secretaries, and the bureaus and services of the Department.

SEC. 7. *Office of the Secretary.* – The Office of the Secretary shall consist of the Secretary and his immediate staff.

SEC. 8. *The Secretary.* – The Secretary shall be appointed by the President, subject to confirmation by the Commission on Appointments.

No officer, external auditor, accountant, or legal counsel of any private company or enterprises primarily engaged in the energy industry shall be eligible for appointment as Secretary within two (2) years from his retirement, resignation, or separation therefrom.

The Secretary shall have the following functions:

(a) Establish policies and standards for the effective, efficient, and economical operation of the Department, in accordance with the programs of the Government;

(b) Exercise direct supervision and control over all functions and activities of the Department, as well as all its officers and personnel;

(c) Devise a program of international information on the geological and contractual conditions obtaining in the Philippines for oil and gas exploration in order to advance the industry;

(d) Create regional offices and such other service units and divisions as may be necessary;

(e) Create regional or separate grids as may be necessary or beneficial; and

(f) Perform such other functions as may be necessary or proper to attain the objectives of this Act.

The Secretary shall be an *ex officio* member of the Board of the National Economic and Development Authority (NEDA). He shall also be a member of the NEDA's Committee on Infrastructure (INFRACOM) and the Investment Coordinating Council (ICC). For this purpose, the provisions of Executive Order No. 292, otherwise known as the *Administrative Code of 1987*, relative to the creation and organization of the NEDA and its component agencies and offices are hereby modified accordingly.

The Secretary shall also be a member of the body authorized to formulate, prescribe, or amend the necessary guidelines for the financing, construction, operation, and maintenance of the infrastructure projects by the private sector, under Republic Act No. 6957, otherwise known as the *Build-Operate-Transfer Law*.

SEC. 9. *The Undersecretaries.* – The Secretary shall be assisted by three (3) Undersecretaries who shall be appointed by the President upon the recommendation of the Secretary. They shall have the powers and functions as provided for in Section 10, Chapter 2, Book IV of the *Administrative Code of 1987*.

The Office of the Undersecretaries shall consist of the Undersecretaries and their respective immediate staff.

SEC. 10. *Assistant Secretaries.* – The Secretary shall also be assisted by three (3) Assistant Secretaries, one (1) for operations, one (1) for policy and programs, and another for administrative services. The Assistant Secretaries shall be appointed by the President upon the recommendation of the Secretary.

SEC. 11. *Qualifications.* – No person shall be appointed Secretary, Undersecretary, or Assistant Secretary of the Department unless he is a citizen and resident of the Philippines, of good moral character, and of proven competence in any of the following fields: (a) energy or utility economics; (b) public administration; (c) physical or engineering sciences; (d) management; or (e) law.

SEC. 12. *Bureaus and Services.* – Subject to the power of the Secretary, with the approval of the President, to reorganize, restructure, and redefine the functions of the bureaus and services for the effective discharge of the powers and functions of the Department under this Act, the Department shall have the following bureaus and services: Energy Resource Development Bureau; Energy Utilization Management Bureau; Energy Industry Administration Bureau; Energy Planning and Monitoring Bureau; and Administrative Support Services.

The bureaus and services shall have the following powers and functions:

(a) *Energy Resource Development Bureau* –

(1) Assist in the formulation and implementation of policies to

develop and increase the domestic supply of local energy resources like fossil fuels, nuclear fuels, and geothermal resources;

(2) Assist in the formulation of sectoral programs and plans relative to the exploration, development, and extraction of local energy resources and implement, monitor, and regularly review said program;

(3) Conduct energy research and studies in support of the abovementioned activities;

(4) Provide consultative training and advisory services to practitioners and institutions in the areas of regulated activities; and

(5) Assist in the formulation of financial and fiscal policies, rules, guidelines, and requirements relative to the operation of service contractors and implement and enforce said policies.

(b) *Energy Utilization Management Bureau* –

(1) Assist in the formulation and implementation of policies for the efficient and economical transformation, conversion, processing, refining, marketing, distribution, transportation, and storage of petroleum, coal, natural gas, geothermal, and other nonconventional energy resources such as wind, solar, biomass, and others; and ensure their efficient and judicious utilization;

(2) Monitor sectoral energy consumption and conduct energy audits, technical training, energy management advisory services, and technology application on efficient energy utilization;

(3) Develop, promote and commercialize applications of biomass, solar, small hydro, wind, wood, and charcoal and other nonconventional energy systems including new and more efficient and economical transformation, conversion, processing, refining, marketing, distribution, transportation, and storage technologies for conventional energy resources;

(4) Assist in the formulation of an integrated rural energy program to effectively address the needs of rural development and environmental programs and implement, monitor, and regularly review said program;

(5) Assist in the formulation of an operational plan for the allocation of oil, fuel, and energy sources in the event of the declaration of critically low-energy supply provided for in Section 25 of this Act;

(6) Provide information on energy technology and develop middle and long-term energy technology development in cooperation with the Department of Science and Technology;

(7) Monitor the implementation of energy projects in coordination with the Department of Environment and Natural Resources to ensure compliance with prescribed environmental standards;

(8) Recommend appropriate courses of action to resolve major issues may impede energy project siting or result in adverse environmental impact;

(9) Require industrial, commercial, and transport establishments to collect or cause the collection of waste oil for recycling as fuel or lubricating oil; and

(10) Develop and implement a continuing energy conservation program designed to optimize energy

utilization, including a nationwide information campaign on energy conservation.

(c) *Energy Industry Administration Bureau* –

(1) Assist in the formulation of regulatory policies to encourage and guide the operations of both government and private entities involved in energy resource supply activities such as independent power production, electricity distribution, as well as the importation, exportation, stockpiling, storage, shipping, transportation, refinement, processing, marketing, and distribution of all forms of energy products, whether conventional or nonconventional;

(2) Draw up plans to cope with contingencies of energy supply interruptions; and

(3) Assist in the formulation of financial and fiscal policies, rules, guidelines, and requirements relative to the operations of entities involved in the supply of energy resources such as oil companies, petroleum product dealers, coal importing and distributing companies, natural gas distribution entities, independent power producers, and all other entities involved in conventional supply activities and implement and enforce said policies.

(d) *Energy Planning and Monitoring Bureau* –

(1) Assist in the development and updating of an integrated energy plan for the short, medium, and long-term periods to provide a comprehensive assessment on the demand scenarios and supply options as well as the impacts of energy policies on the economy, poverty, and environment;

(2) Develop and maintain a centralized, comprehensive, and unified data and information program to ensure the efficient collection, evaluation, analysis, and dissemination of data and information on reserves of various energy resources, production, demand, development technology, and related economic and statistical information which are required for policy formulation, program planning and implementation;

(3) Supervise, coordinate, and integrate the formulation, monitoring, and review of programs and plans for energy supply development such as power development, local energy resource development and production, and energy importation;

(4) Regularly review and analyze past and current patterns of energy consumption vis-à-vis growth and development performance of the various economic sectors to evaluate current and foreseeable trends in energy demand; and conduct energy supply-demand balancing studies to define energy supply and utilization strategies, estimate the resources required, and assess the energy program's economic, environmental, social, and political impact;

(5) Assume the incorporation of national environmental goals in the formulation and implementation of energy programs, and to advance the goals of restoring, protecting, and enhancing environmental quality, and assuring public health and safety; and

(6) Conduct studies on international energy issues that have a direct impact on negotiations involving energy resources and technologies.

(e) *Administrative Support Services* – The Administrative Support Services shall be composed of the Office of the Legal Counsel and the Financial and

Management Services.

The Office of the Legal Counsel shall be responsible for providing legal advice and services on all policies, programs, and operational matters of the Department. It shall provide legal counselling services in cases where the Department is a party and shall also handle administrative cases against any personnel of the Department and submit recommendations pertaining to them.

The Financial and Management Services, which shall consist of the Human Resources Management Division, General Services Divisions, and the Financial Management Division, shall be responsible for providing the Department with services relative to personnel information, records, supplies, equipment, collection and disbursements, security, and custodial works. It shall also be responsible for providing the Department with staff advice and assistance on budgetary, financial, and management improvement matters.

CHAPTER III

Attached Agencies and Corporations

SEC. 13. *Attached Agencies and Corporations.* – The Philippine National Oil Company (PNOC), the National Power Corporation (NPC), and the National Electrification Administration (NEA) are hereby placed under the supervision of the Department, but shall continue to perform their respective functions insofar as they are not inconsistent with this Act. Their annual budget shall be submitted to Congress for approval. The Secretary shall, in a concurrent capacity, be the *ex officio* chairman of the respective boards of the PNOC, NPC, and NEA, unless otherwise directed by the President: *Provided,* That in no case shall the Secretary be the chief executive officer or chief operating officer of the said agencies or their subsidiaries, any law to the contrary notwithstanding.

To this end, Section 6, paragraph (3) of Presidential Decree No. 927 and Section 8 of Presidential Decree No. 334, providing that the Chairman of the PNOC shall be the president and chief executive officer thereof, are accordingly repealed.

The Secretary may recommend to the President the reorganization of the boards of directors of the PNOC, NPC, and NEA.

SEC. 14. *Council of Energy Advisers.* – A council of advisers on energy affairs consisting of five (5) members and appointed from the industry, labor, and consumer sectors shall advise the President on the overall energy program, especially on private sector initiatives and proposals.

The President shall convene the council within thirty (30) days upon approval of this Act.

CHAPTER IV

Transitory Provisions

SEC. 15. *Abolition of Agencies.* – The Office of Energy Affairs and the Energy Coordinating Council are hereby abolished subject to Section 17 of this Act.

SEC. 16. *Transfer of Powers and Functions.* – The powers and functions of the Energy Coordinating Council and the Office of Energy Affairs are hereby transferred to the Department.

The foregoing transfer of powers and functions shall include all applicable funds and appropriations, records, equipment, property, and personnel as may be necessary.

The same shall apply to agencies and government units which have not been abolished but whose functions have been transferred to the Department.

As the successor-in-office of the Office of Energy Affairs, the Department shall administer the activities of the Technology Transfer for Energy Management (TTEM) project. For this purpose, the Department shall continue the utilization of all funds, monies, interests, reflows, and properties

outstanding and accruing from the TTEM project upon its termination for the following purposes:

(a) To finance energy conservation projects of industrial and commercial establishments;

(b) To monitor implemented sub-projects and document the actual energy savings generated; and

(c) To disseminate information on implemented sub-projects through case studies and seminars/workshops so as to encourage replication by other industrial and commercial establishments.

SEC. 17. *Transfer of Rights, Assets, and Liabilities.* – The Department shall, by virtue of this Act, be subrogated to all the rights and assume all the liabilities of the Office of Energy Affairs, the Energy Coordinating Council, and all other agencies, or government units whose functions and powers have been transferred to the Department, and all their funds, records, property, assets, equipment, and such personnel as necessary, including unexpended appropriations and/or allocations. All contracts and liabilities of said offices, agencies, and government units are hereby transferred to and assumed by the Department and shall be acted upon in accordance with the *Auditing Code* and other pertinent laws, rules, and regulations: *Provided,* That the officers and employees of said offices, agencies, and government units shall continue in a holdover capacity until such time as the new officers and employees of the Department shall have been duly appointed pursuant to the provisions of this Act.

SEC. 18. *Rationalization or Transfer of Functions of Attached or Related Agencies.* – The non-price regulatory jurisdiction, power and functions of the Energy Regulatory Board as provided for in Section 3 of Executive Order No. 172 are hereby transferred to the Department.

The foregoing transfer of power and functions shall include all applicable funds and appropriations, equipment, property, and such personnel as may be necessary: *Provided,* That only each amount of funds and appropriations of the Board as well as only the personnel thereof which are completely or primarily involved in the exercise by said board of its non-price regulatory powers and functions shall be affected by such transfer.

The power of the NPC to determine, fix and prescribe the rates being charged to its customers under Section 4 of Republic Act No. 6395, as amended, as well as the power of electric cooperatives to fix rates under Section 16 (o), Chapter II of Presidential Decree No. 269, as amended, are hereby transferred to the Energy Regulatory Board. The Board shall exercise its new powers only after due notice and hearing and under the same nature provided for under Executive Order No. 172.

SEC. 19. *Structure and Staffing Pattern.* – The organizational framework and staffing pattern of the Department shall be prescribed and approved by the Secretary within sixty (60) days after the approval of this Act and the authorized positions created therein shall be filled by regular appointments by the President or the Secretary as the case may be: *Provided,* That, in the filling of positions created, preference shall be given to the personnel of the Office of Energy Affairs, the Energy Coordinating Council, and the Energy Regulatory Board: *Provided, however,* That if such individuals possess the same qualifications, seniority shall be given priority.

SEC. 20. *Separation from Service.* – Employees separated from the service as a result of this reorganization shall, within six (6) months from their separation from the service, receive the retirement benefits to which they may be entitled under existing laws, rules, and regulations.

CHAPTER V

Appropriations

SEC. 21. *Appropriations.* – Such sums as may be necessary for the implementation of this Act shall be taken from the current fiscal year appropriations of the Office of Energy Affairs, the Office of Energy Affairs' special fund created under Section 8 of Presidential Decree No. 910, and such amounts as the President of the Philippines may allocate from other resources in accordance with law: *Provided,* That the total amount shall not exceed Three hundred million pesos (P 300,000,000). Thereafter, the amount needed for the operation and maintenance of the Department shall be included in the annual *General Appropriations Act*.

Subject to existing rules and regulations, the funds and monies collected or which otherwise come into the possession of the Department and its bureaus from fees, surcharges, fines, and penalties which the Department and its bureaus may impose and collect under this Act, as well as an amount to be determined at the beginning of every calendar year representing twenty percent (20%) of the outstanding balance of the funds and monies forming part of the special fund under Section 8 of Presidential Decree No. 910, shall be disbursed for expenses necessary for the effective discharge of the powers and functions of the Department under this Act.

CHAPTER VI

Miscellaneous Provisions

SEC. 22. *Disclosure and Divestment of Financial Interest.* – Before assumption of office, the Secretary of the Department, the Undersecretaries, and the Assistant Secretaries shall submit to the Civil Service Commission a list of all companies, partnerships, or business enterprises, including nonprofit organizations, in which he or any immediate member of their families within the second degree of consanguinity or affinity have any form of financial interests or employment relationship, including consultancy: *Provided, however,* That all other forms of employment relationship held by the heads of the offices of the Department shall be immediately terminated upon assumption of office.

Within thirty (30) days thereafter, complete divestments of financial interests in any institution, firm, or company which fall under the supervisory or regulatory jurisdiction of the Department shall be made: *Provided, however,* That in cases where confirmation of appointment by the Commission on Appointments is required, the divestment mandated herein shall be complied with within thirty (30) days after such confirmation.

The divestment prescribed in the preceding paragraph shall likewise apply to the member of the immediate family within the second degree of consanguinity having interest in any institution or activity which falls under the regulatory jurisdiction or supervision of the Department and the attached agencies.

SEC. 23. *Relationship with Other Government Departments.* – The Department and its priority projects shall enjoy preferential treatment to the exploration, development, exploitation, and extraction of petroleum, coal, and other geothermal resources, and in the matter of providing technical support necessary for the establishment of power-generating plants.

Upon request of the Department or any of its bureaus, all government agencies with functions relative to the approval of the projects of the Department or its duly authorized and endorsed entities, whether government or private, shall act upon and resolve the matter within ten (10) calendar days. Toward this end, the Secretary, with the approval of the President, may establish an interagency secretariat for the purpose of expediting the approval of said projects.

SEC. 24. *Visitorial Powers.* – The Secretary of the Department or his representative shall have visitorial and examining authority over

nongovernment entities with contracts for the exploration, development, or utilization of the natural resources for energy purposes in order to determine the share of the Government in the revenue or product thereof, and to ascertain all funds collectible and products due the Government, and that all such funds collectible and products due the Government have actually been collected or delivered.

During such examination, the nongovernment entity concerned shall produce all the reports, records, books of accounts, and other papers that may be required.

The refusal by any such nongovernment entity to allow an examination of its books of accounts and pertinent records or its concealment of any material information concerning its financial status shall be a breach of its contract with the Government and shall constitute a legal ground for the cancellation thereof.

SEC. 25. *Contingency Powers.* – In time of critically low-energy supply or imminent danger thereof, the President may, upon the determination and recommendation of the Secretary, issue a declaration of the same. Thereafter, the Secretary is hereby authorized to implement the fuel and energy allocation plan provided in Section 12 (b) (5) of this Act, and to formulate other measures for the conservation of energy including, but not limited to, power or fuel rationing, load curtailments, and restrictions on the use of government vehicles and resources.

SEC. 26. *Repealing Clause.* – All laws, presidential decrees, executive orders, and rules and regulations, or parts thereof, inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

However, in no case are the provisions of Republic Act No. 6969 repealed, amended, or modified by the provisions of this Act.

SEC. 27. *Separability Clause.* – If, for any reason, any section or provision of this Act is held unconstitutional or invalid, the other sections or provisions hereof shall not be affected thereby.

SEC. 28. *Effectivity Clause.* – This Act shall take effect after its complete publication in at least two (2) national newspapers of general circulation.

Approved,
December 9, 1992

DEPARTMENT CIRCULAR NO. 2002-07-004

RULES OF PRACTICE AND PROCEDURE BEFORE THE DEPARTMENT OF ENERGY

Pursuant to the provisions of Section 5 (k) of R.A. 7638, otherwise known as the Department of Energy Act of 1992, in compliance with Executive Order No. 26 dated 7 October 1992, and in line with Department Special Order No. 2000-07-016, dated 13 July 2000, the following Rules of Practice and Procedure are hereby adopted and promulgated:

PART I – GENERAL PROVISIONS

RULE 1
Title, Definition, Scope and Construction

Section 1. Title of Rules – These Rules shall be known as the Rules of Practice and Procedure of the Department of Energy.

Section 2. Definitions – For purposes of these Rules, the terms:

(a) "Department" shall refer to the Department of Energy.

(b) "Deregulation Act" shall refer to the "Downstream Oil Industry Deregulation Act of 1998".

(c) "Director" shall mean the Director of the Office of the Legal Counsel.

(d) "EPIRA" shall refer to Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001."

(e) "Energy Act" shall refer to Republic Act No. 7638, the Department of Energy Act of 1992.

(f) "OLC" shall mean the Office of the Legal Counsel of the Department of Energy.

(g) "Public Service Act" shall refer to C.A. No. 146, as amended.

(h) "Rules" shall refer to these Rules.

(i) "Secretary" shall refer to the Secretary of Energy.

Section 3. Scope – These rules shall govern all pleadings, practice and procedure before the Department in all matters concerning inquiry, investigation, hearing, study and/or any other proceedings conducted by the Department in the hearing, study and/or any other proceedings conducted by the Department in the performance of its functions. However, in the public interest and consistent with due process, the Department may, in any particular matter, except itself from these rules and apply such fair and reasonable procedures to assist the parties to obtain speedy disposition of cases.

These rules shall likewise cover applications for the issuance of permits or other forms of authorization to entities involved in the supply and distribution of energy resources.

Section 4. Construction – These rules shall be liberally construed in order to protect and promote public interest and attain the objectives of the Public Service Act, the Energy Act, the Deregulation Act, the EPIRA and any other law, statute, executive order or decree that is being, or may hereafter be, implemented by the Department in the most speedy and inexpensive disposition of cases. In the broader interest of justice and to avoid unnecessary delay, the Department may resort to summary proceedings in cases hereinafter provided.

Section 5. Suppletory Application of the Rules of Court of the Philippines. – In the absence of any applicable provision in, and provided they are not inconsistent with these Rules, the pertinent provisions of the Revised Rules of Court of the Philippines may, in the interest of expeditious disposition of cases and whenever practicable and convenient, be applied by analogy or in a suppletory manner.

RULE 2
PARTIES

Section 1. Who may be a Party – Any person or group of persons whether natural or juridical, who may be affected by the decision to be rendered by the Department in a particular case may be a party and may appeal, and participate in the manner hereinafter provided.

Section 2. Applicant – An applicant is any person who applies with the Department for a permit for the operation of services involved in energy resource supply activities or who seeks any other form of authorization, to undertake any matter or business that is within the jurisdiction of the Department.

Section 3. Complainant – A complainant is any aggrieved person who files a complaint against another party for legal redress on matters within the jurisdiction of the Department.

Section 4. Petitioner – A petitioner is any person who files an application with the Department ex parte, or where there are no parties in opposition, praying for the exercise of the powers of the Department, for authority to do some act which requires the sanction of the Department.

Section 5. Respondent – A respondent is any person or party, who may or may not be a holder of a permit or other form of authorization to whom an order is issued by the Department to appear or give his explanation in writing, or who is otherwise summoned to answer any allegation, imputation or issue in any case, hearing or proceeding cognizable by the Department, or any person who may also hearing or proceeding cognizable by the Department, or any person who may also be adversely or is otherwise affected by a complaint or petition.

Section 6. Oppositor – An oppositor is any person who interposes any objection against the approval of an application or petition.

RULE 3
PLEADINGS

Section 1. Pleading – The pleadings allowed by these Rules are the application, the complaint, the petition, the opposition, the answer, and such further pleadings as the Department may allow.

Section 2. Form of Pleading, Copies – All pleadings filed with the Department must be in triplicate and typewritten or printed on legal size bond paper and shall be in English. Every pleading shall contain the names and addresses of all the parties, the Department file number and designation of the pleading.

Section 3. Application – By means of an application or petition for permit or other forms of authorization, the applicant seeks for authorization or permission to undertake any matter within the power of the Department under the Public Service Act, the Energy Act, the Deregulation Act, the EPIRA or any other law, statute, executive order or decree that is being, or may hereafter be, implemented by the Department, stating the ultimate facts on which the relief sought is based.

The Department will refer to the proper bureau or office the evaluation of the technical and financial qualifications of an applicant for a permit or other forms of authorization.

Section 4. Complaint – A complaint is a concise statement of the ultimate facts constituting the acts or matters complained of, and shall specify the relief sought. The names and addresses of the complainants and the respondents must be stated in the complaint, and whenever practicable, the date and place of the commission of the alleged act or omission complained of.

Section 5. Petition – A petition is an application made to the Department ex parte or where there are no parties in opposition, praying for the exercise of the powers of the Department for authority to do some act which requires the sanction of the Department.

Section 6. Opposition – An opposition is a pleading filed by an oppositor against the grant of an application or petition in which the oppositor states his right or interest affected by the application or petition and the ultimate facts constituting all his grounds for opposition.

Section 7. Answer – An answer is a pleading in which the respondent sets forth the defense upon which he relies. The respondent to whom an order is issued by the Department to show cause or against whom a complaint or petition is filed, shall file an answer within ten (10) calendar days from receipt of the order, complaint or petition, order, complaint or petition.

Section 8. Verification – All pleadings filed with the Department must be verified and accompanied by such documents as would reasonably tend to establish prima facie the truth of the factual allegations thereof.

Section 9. Service – Service may be by personal delivery or by registered mail, properly addressed to each party, together with all annexes attached thereto. All pleadings and motions submitted to the Department for filing must show proof of service thereof upon all parties to the case.

Section 10. Service upon Parties Represented by Counsel – When any party is represented by counsel, service shall be made to his counsel of record.

Section 11. Contents of Pleadings – All pleadings filed with the Department must state clearly and categorically the ultimate facts upon which the pleader relies. Pleadings shall contain a prayer for the principal relief sought and may also add a general prayer for such further or other reliefs as may be deemed just and equitable.

Section 12. Amendments – Any modification or supplement to an application, complaint, petition or other pleadings shall be deemed as an amendment and must comply with the formal requirements of pleadings as mentioned in these rules.

Section 13. Amendment when Allowed – Amendments may be made as a matter of right at any time before any responsive pleading is filed and, thereafter, only with leave of the Department.

Section 14. Defect of Form – No defect in the form of any pleading allowed to be filed under these Rules will prejudice the pleader; however, the Department may direct amendments or require the submission of additional affidavits or supporting documents.

Section 15 Filing Fees – The Treasury Division of the Administrative Services Unit of the Department shall receive, collect or take the following fees:

a. For filing a complaint – P 10,000.00;

b. For filing an appeal – P 10,000.00;

c. For certified copies of any paper, record, judgment – P 10.00 per page;

d. For filing an application for the grant of permit or other form of authorization to construct, install, own, operate and maintain pipeline system to transport energy resources – P 10.00 per meter of pipeline.

RULE 4
MOTIONS IN GENERAL

Section 1. Scope & Contents – Every application for any procedural or interlocutory ruling or relief may be made through a motion. Motions shall state the relief sought and the grounds therefor and, if necessary, shall be accompanied by supporting affidavits and documents. Motions shall be in writing and copies thereof shall be served upon all parties at least three (3) days before the hearing thereof. All written motions shall specify the date and time for the hearing thereof.

Section 2. Provisional Permit or Authorization – Motions praying for the issuance of a provisional permit or other form of authorization to operate must be in writing and accompanied by affidavit(s) of merit and other supporting documents showing the necessity of the relief prayed for, together with proof of service to the other party. Such motions shall be governed by Rule 15 hereof.

PART II – PROCEDURE IN APPLICATIONS

RULE 5
APPLICATION

Section 1. How Commenced – Any proceeding the object of which is to obtain a permit or any form of authorization under the Public Service Act, the Energy Act, the Deregulation Act, the EPIRA and/or any other law, statute, executive order or decree that is being, or may hereinafter be, implemented by the

Department shall be commenced by the filing of the corresponding application.

Section 2. Contents – The application shall contain a concise statement of the service proposed or permit or authorization applied for, and the ultimate facts that would qualify or entitle the applicant to the grant of the permit or authorization. When the application is predicated on a permit or other form of authorization, sale, lease, mortgage or any other contract, such permit or authorization or contract shall be impleaded in the application by alleging in substance its salient provisions and appending to the application a copy of the permit or authorization, contract or pertinent document.

RULE 6
NOTICE OF APPLICATION

Section 1. Issuance of the Notice – After the filing of the application, it shall be docketed, and the hearing officer/s duly designated by the Department shall issue a notice that such application has been filed with the Department and furnish the list of affected parties, if any, to the applicant.

Section 2. Publication and Service – The applicant shall cause the aforesaid notice, at his own expense, to be published once in one (1) newspaper of general circulation in the Philippines at least ten (10) calendar days before the date of the proceeding; provided, that if an application covers only one (1) region, publication in the local newspaper circulated within that region is sufficient. The applicant shall also serve copies of the notice, with copies of the application, to the affected parties, as furnished by the Department.

RULE 7
OPPOSITION

Section 1. Contents – Within ten (10) calendar days from receipt by the affected party of the notice referred to in Section 1 Rule 6 hereof, a written opposition, not a motion to dismiss, may be filed against an application with copy served upon the applicant, in which the oppositor shall state concisely his right of interest affected by the application and the ultimate facts constituting all his grounds for opposition.

PART III – PROCEDURE IN COMPLAINTS AND PETITIONS

RULE 8
COMPLAINTS & PETITIONS

Section 1. How Commenced – Any action, the object of which is to subject a holder of a permit or authorization or any person operating without authority from the Department to any penalty that may be imposed, or other measure that may be taken in the public interest by the Department for violation by such holder or any person of the provisions of the Public Service Act, the Energy Act, the Deregulation Act, the EPIRA or any other law, statute, executive order or decree that is being, or may hereinafter be, implemented by the Department, or the terms and conditions of his certificate or any order, decision or regulations of the Department shall be commenced by the filing of a complaint or petition.

Section 2. Sufficiency of Complaint or Petition – A complaint or a petition is sufficient if it contains the name of the complainant or offended party, the name of the respondent, a reference, whenever practicable, to the provisions of the law, statute, executive order or decree being implemented by the Department or the permit or authorization, order, decision or regulation violated; the acts or omissions complained of as constituting the offense, and the date and place of the commission of the offense.

Section 3. Separate Allegations – Whenever two or more offenses are charged in one (1) complaint or petition, each offense must be separately alleged.

RULE 9
MOTU PROPRIO ACTIONS

Section 1. Institution of Action by the Department – The Department may motu proprio initiate an action or inquiry against any person or entity when so required by law, public or national interest, and/or in its exercise of any of the powers vested upon it. In the exercise thereof, the Department may commence such hearing or inquiry by an order to show cause, setting forth the grounds for such order.

Section 2. Other Instances – When the basis of a motu proprio action is a violation of Department orders, rules or regulations, the order shall allege with definiteness and clarity, the violation and also the range or extent of the sanction that may be imposed should the violation be substantiated.

RULE 10
ANSWER

Section 1. Answer – Within a period of ten (10) calendar days from receipt of a motu proprio order or a copy of the petition or complaint, the respondent shall file an answer whether admitting or denying the material allegations or facts set forth in said motu proprio order, petition or complaint, or setting forth the reason why respondent cannot admit or deny said allegations. The pleader must state the facts and law upon which he relies for his defense with definiteness and clarity.

RULE 11
MOTION TO DISMISS

Section 1. Grounds – No motion to dismiss shall be entertained unless such motion is incorporated in the answer of the respondent under any of the following grounds:

(A) The facts alleged in the complaint or motu proprio order do not constitute a violation of the Department's rules and regulations or do not entitle the complainant or petitioner to the relief sought.

(B) The Department has no jurisdiction over the nature of the case or controversy.

(C) The applicant has not complied with the jurisdictional requirements of an application.

PART IV – PROCEEDINGS BEFORE THE DEPARTMENT

RULE 12
PRE-HEARING CONFERENCE

Section 1. Pre-Hearing Conference – After the answer or the opposition has been filed, the hearing officer/s duly designated by the Department shall issue notice to all the parties to appear for a pre-hearing conference to consider:

(A) The possibility of an amicable settlement in cases that may be compromised;

(B) Simplification of the issues through stipulation of facts and/or admission, including admissions of documents and their authenticity; and

(C) Such other matters as may aid in the just, speedy, and inexpensive disposition of the case.

Section 2. Failure to Appear – All parties and their counsels, if any, shall attend the pre-hearing conference with full authority to enter into an agreement on any and all matters necessary to expedite the proceedings. The Department may, in case of failure to appear on the part of a party and his counsel, issue an order of default against the absent party, and, thereafter, the hearing officer/s may receive evidence ex parte.

Section 3. Amicable Settlement – When an amicable settlement is reached as provided under Section 1 (A), Rule 12 hereof, it shall be reduced to writing duly signed by the parties. Such compromise agreement shall

then be the basis of an order or decision of the Department.

Section 4. Nature of Proceedings – The proceedings before the Department shall be non-litigious in nature. Subject to the requirements of due process, the technicalities of law and procedure and the rules obtaining in the courts of law shall not strictly apply thereto. The Department may avail itself of all reasonable means to ascertain the facts of the controversy speedily, including ocular inspection and examination of well informed persons.

Section 5. Postponement – Postponement or continuance of hearing may be granted only on highly meritorious grounds provided that no more than two (2) postponements or continuances shall be allowed.

RULE 13
SUMMARY PROCEEDINGS

Section 1. Cases that may be the subject of summary proceedings are:

(A) Non-Contested Cases – When there is no opposition filed against an application or no answer has been filed against a complaint or petition or when the opposition or the answer filed fails to tender an issue, the Department may conduct summary proceedings.

(B) Contested Cases – When the opposition or the answer does not contest the material allegations of the application or the complaint for violation of Department rules and regulations, respectively, although affirmative defenses are stated therein, the Department may conduct summary proceedings.

(C) Applications – All applications for permit or other forms of authority to engage in business in the petroleum industry in whatever capacity, or classification may be conducted through summary proceedings.

Section 2. Summary Proceedings, How Conducted – After the time for filing an answer has expired and none has been filed or after the issues have been joined by the filing of the answer or the opposition, and the hearing officer/s shall have determined that the case is one which may be the subject of summary proceedings under Section 1 of this Rule 13, the hearing officer/s shall summon the proceedings under Section 1 of this Rule 13, the hearing officer/s shall summon the parties to appear before him/them and require the parties to bring all documentary evidence that they may have in support of their claims or defenses.

Section 3. Offer of Exhibit/Documentary Evidence – The complainant, the petitioner or applicant shall submit all documentary evidence he may have which shall be authenticated before the hearing officer/s and marked as exhibits; then the respondent, or the oppositor shall submit counter documents or affidavits which shall be authenticated before the hearing officer/s as exhibits after which the parties shall formally offer their respective exhibits in the same order, stating the purposes for which they are offered. After the formal offer of evidence, the hearing officer/s may propound clarificatory questions on the documents presented and may require the submission of position papers or memoranda.

Section 4. Submission of Memorandum, Position Paper, etc. – In order to expedite resolution of the case, the hearing officer/s may require the parties to submit, in addition to the memoranda, position papers or last pleading required of them, a draft of the decision they seek, stating clearly and distinctly the facts and the law or rules and regulations upon which it is based. Following the termination of the hearing and the submission by the parties of the required memorandum and draft of the decision they seek, the Department may, after considering and appreciating the applicable laws, rules and regulations and the evidence submitted,

adopt, in whole or in part, either of the parties' draft decision or reject both.

RULE 14
POWERS AND DUTIES OF HEARING OFFICER/S

Section 1. Powers and Duties – The hearing officer/s shall have the following powers and duties:

(A) To administer oaths and affirmations;

(B) To receive evidence and rule on the admissibility of evidence as to relevance, materiality or competence of such evidence.

Section 2. Period to Decide Case – Should the hearing officer/s determine that the case cannot be heard by summary proceedings, he/they shall inform the Secretary who shall then issue an order setting the case for hearing, which hearing shall be terminated within sixty (60) calendar days from initial hearing.

Section 3. Role of Hearing Officer/s in Proceedings – The hearing officer/s shall personally preside in the conferences/ hearings and, except as otherwise provided by law, he/they shall determine the order of presentation of evidence by the parties, subject to the requirements of due process. He/they shall take full control of the proceedings, examine the parties and their witnesses to satisfy himself/themselves with respect to the matters at issue, and may allow the parties or their counsel to ask questions only for the purpose of clarifying points of law or fact involved in the case. He/they shall limit the presentation of evidence to matters relevant to the issue before him/them and necessary for a just and speedy matters relevant to the issue before him/them and necessary for a just and speedy disposition of the case.

Section 4. Presentation of Evidence – The party initiating the case shall be the first to present his evidence to support his case.

Section 5. Extent of Cross-Examination – In the cross-examination of witnesses, only relevant, pertinent and material questions necessary to enlighten the hearing officer/s shall be allowed.

Section 6. Records of Proceedings – The proceedings before a hearing officer/s need not be recorded by stenographers but the hearing officer/s shall prepare a written summary of the proceedings, including the substance of the evidence presented, in consultation with the parties. The written summary shall be signed by the parties and shall form part of the records.

RULE 15
PROVISIONAL RELIEF

Section 1. Grounds for Provisional Relief – Upon the filing of an application, complaint or petition or at any stage thereafter, a party to a case may, pending hearing of the main case, file a motion seeking a procedural remedy, interlocutory order or a provisional authority to operate or undertake any activity within the jurisdiction of the Department, setting forth the remedy or relief prayed for and the grounds relied upon for the grant of such provisional relief. The motion must be accompanied by an affidavit of merit and other supporting documents together with proof of service to the other party.

Section 2. Grant of Provisional Relief – The Department may grant or deny a motion for provisional relief, without prejudice to a final decision on the matter. However, nothing shall prohibit the Department, motu proprio, from granting any provisional relief to any party when public interest so requires.

RULE 16
DECISIONS AND MOTIONS FOR RECONSIDERATION

Section 1. Contents of Decisions – The decisions of the Department shall be signed by the Secretary and shall be clear, concise and include a brief statement of the (a) facts of the case; (b) issue (s) involved; (c) finding of facts; (d) applicable law or rules; (e) conclusion and reasons therefor, and (f) the dispositive portion. They shall be filed with the hearing officer/s who shall, within three (3) days from receipt thereof, cause true copies thereof to be served upon the counsel of the parties, or in the absence of any counsel of record, on the parties themselves.

Section 2. Decisions – The Department shall render a final decision, order, ruling or resolution in accordance with the following rules:

(a) In Summary Proceedings. – When summary proceedings have been conducted, the Department shall, within ten (10) calendar days after the case has been submitted for resolution, render a decision, order, been submitted for resolution, render a decision, order, ruling or resolution on the matter.

(b) In Contested Proceedings. – In contested proceedings where a formal hearing has been conducted, the Department shall render a decision, order, ruling or resolution within thirty (30) calendar days after the case has been submitted for decision.

(c) Grant of Other Relief. – In all decisions, orders, rulings or resolutions, the Department may grant such other relief or impose such terms as it may deem necessary in order to promote public interest.

Section 3. Motions for Reconsideration – Motions for reconsideration of any order, resolution or decision of the Department shall not be entertained except when based on palpable or patent errors, provided that the motion is under oath and filed within ten (10) calendar days from receipt of the order, resolution or decision, with proof of service that a copy of the same has been furnished within the reglementary period, the adverse party and provided further, that only one (1) such motion from the same party shall be entertained. No pleading shall be allowed other than the motion for reconsideration and opposition thereto. The filing of a motion for reconsideration shall interrupt the running of the period for filing an appeal with the Office of the President.

RULE 17
APPEAL

Section 1. Appeal. – Any party may appeal the order, ruling, or decision of the Department to the Office of the President. However, interlocutory orders cannot be the subject of an appeal.

Sec. 2. Procedure on Appealed Cases. – In case of an appeal under the preceding section, the following rules shall apply:

(a) An appeal from an order, decision or ruling of the Department shall be perfected by filing with the Department a notice of appeal and with the Office of the President, within a period of fifteen (15) calendar days from notice of such order, ruling or decision; copy of the notice of appeal must be furnished all parties to the case;

(b) Before an appeal will be filed it must be shown that a motion for reconsideration from the order, ruling or decision has been filed with the Department and the same has been denied.

(c) Upon the filing of the notice of appeal, the appellant shall pay with the Department an appeal fee of One Thousand Pesos (P

10,000.00), whereupon, the Department shall act on the notice of appeal and shall transmit the certificate of payment of the appeal fee to the Office of the President.

(d) Appellant's position paper shall contain the following data/matters:

1) Exact date of the appealed order, ruling, decision;

2) Exact date when the appealed order, ruling or decision was received by him;

3) Information regarding compliance with the requirements for appeal under these rules;

4) Brief statement of the case and the facts;

5) Reasons or grounds for appeal;

6) Arguments in support of the appeal;

7) Relief sought.

The Secretary may require the filing of additional pleadings to provide additional information.

e) Any party filing the required pleading or documents and other pleadings pertinent to the appealed case shall furnish the adverse party/ies, including the Department, copies thereof.

Sec. 3. Effect of Appeal. – An appeal shall stay the award, order or decision of the Department unless otherwise provided by law, or the appellate agency directs execution pending appeal, as it may deem just, considering the nature and circumstances of the case.

Sec. 4. Appeal from the Order of the Secretary. – The order of the Secretary in appealed cases shall be appealable within fifteen (15) calendar days from receipt thereof to the Office of the President of the Philippines.

Sec. 5. Execution of Order, Ruling or Decision of the Department. – The order, ruling, decision, or resolution of the Department shall become executory fifteen (15) calendar days after the expiration of the period of appeal if no appeal is taken.

Sec. 6. Entry of Judgment. – The judgment of the Department shall be entered upon finality, or fifteen (15) calendar days after the expiration of the period to appeal, if no appeal is taken.

RULE 18
EFFECTIVITY

These rules shall take effect fifteen (15) days after publication in the Official Gazette or in at least two (2) newspapers of general circulation.

Fort Bonifacio, Taguig, Metro Manila, July 31, 2002.

VICENTE S. PÉREZ, JR..

ADMINISTRATIVE ORDER NO. 38

PROVIDING FOR THE INSTITUTIONAL STRENGTHENING OF THE DEPARTMENT OF ENERGY BY REDEFINING THE FUNCTIONS AND SERVICES OF ITS BUREAUS, SERVICE UNITS AND OFFICES

WHEREAS, Section 12 of Republic Act No. 7638, known as the *Department of Energy Act of 1992*, empowers the Secretary of Energy, subject to the approval of the President, to reorganize, restructure, and redefine the functions of the bureaus and services for the effective discharge of the powers and functions of the Department;

WHEREAS, Section 8 (d) of the said Act also empowers the Secretary of Energy to create regional offices and such other service units and divisions as may be necessary;

WHEREAS, after the creation of the Department of Energy, several laws were passed that expanded the role and functions of the Department of Energy, such as the *Downstream Oil Industry Deregulation Act of 1998* (Republic Act No. 8479), the *Philippine Clean Air Act of 1999* (Republic Act No. 8749), and most recently, the *Electric Power Industry Reform Act of 2001* (Republic Act No. 9136);

WHEREAS, owing to the Department's expanded role in the allocation, mobilization and optimum employment of our country's energy resources, there is a need to institutionally strengthen the Department of Energy to cope with these developments;

WHEREAS, the Secretary of Energy recommends the issuance of this Administrative Order;

NOW, THEREFORE, I, GLORIA MACAPAGAL-ARROYO, President of the Philippines, by virtue of the powers vested in me by law, do hereby order:

SECTION 1. *Policy on Institutional Strengthening.* – The Secretary of Energy is authorized to implement the institutional strengthening of the Department of Energy, its bureaus, units and offices, upon prior concurrence of the Department of Budget and Management, and guided by the declared policy under Section 2, Chapter 1, Book IV of the *Administrative Code of 1987* that bureaus and offices shall be grouped primarily on the basis of major functions to achieve simplicity, economy and efficiency in government operations and minimize duplication and overlapping of activities.

SEC. 2. *Bureaus and Their Functions and Services.* – Pursuant to Section 12 of Republic Act No. 7638, the Department of Energy shall maintain the following bureaus:

(a) *The Energy Resource Development Bureau (ERDB).* – The ERDB shall have the following functions and services:

  (i) formulate and implement policies, programs, regulations on the exploration, development production of energy from indigenous petroleum, petrochemical, coal and geothermal energy resources; and

  (ii) undertake product and market development of coal and geothermal resources/industries.

(b) *The Energy Utilization Management Bureau (EUMB).* – The EUMB shall have the following functions and services:

  (i) formulate and implement policies, programs, regulations on new energy technologies, alternative fuels and the efficient, economical transformation, marketing and distribution of conventional renewable energy resources; and

(ii) undertake plans, programs and strategies to ensure efficient and judicious utilization of conventional and renewable energy resources.

(c) *The Energy Policy and Planning Bureau.* – The Energy Planning and Monitoring Bureau is hereby renamed as the Energy Policy and Planning Bureau (EPPB). The EPPB shall have the following functions and services:

(i) develop, prepare and update an integrated national energy plan and other support plans for the energy sector;

(ii) formulate energy policies, programs and strategies;

(iii) undertake comprehensive assessment of the demand scenarios and supply options; and

(iv) undertake studies on the impact of energy policies on the economy and environment.

(d) *The Electric Power Industry Administration Bureau and the Oil Industry Administration Bureau.* – To identify and particularize areas of responsibility in industry administration, the Energy Industry Administration Bureau is hereby re-defined according to industry, as follows: (i) the Electric Power Industry Administration Bureau (EPIAB) and (ii) the Oil Industry Administration Bureau (OIAB)

The EPIAB shall have the following functions and services:

(i) supervise the restructuring of the electric power industry, with a view to establishing a competitive, market-based environment and encouraging private sector participation;

(ii) formulate plans and programs that would ensure adequate, efficient and reliable supply of electricity; and

(iii) formulate plans, programs and strategies on rural electrification.

The OIAB shall have the following functions and services:

(i) formulate and implement policies, programs, and regulations on the downstream oil industry, including the importation, exportation, stockpiling, storage, shipping, transportation, refining, processing, marketing and distribution of petroleum crude oils, products and by-products; and

(ii) monitor developments in the downstream oil industry.

(e) *Administrative Services, Financial Services and Legal Services.* – To better define the broad administrative support functions of the Administrative Support Services created under Republic Act No. 7638, the said unit is hereby redefined into three (3) distinct services; namely: the Administrative Services, the Financial Services, and the Legal Services.

The Administrative Services shall formulate and implement policies, programs, and regulations on human resource, treasury and fund management, and general administrative services.

The Financial Services shall have the following functions and services:

(i) formulate and implement fiscal policies, programs, and regulations, including those on indigenous energy resource service contractors;

(ii) monitor the utilization of government-administered energy funds; and

(iii) provide staff support services pertaining to budget and accounting.

The Legal Services shall have the following functions and services:

(i) provide legal advice, legal counseling, and legal support to service contract negotiations and hearings; and

(ii) serve as the official legislative liaison office of the Department of Energy to the Congress of the Philippines.

SEC. 3. *Other Service Units and Offices and Their Functions and Services.* – Upon the recommendation of the Secretary of Energy and pursuant to Section 8 (d) of Republic Act No. 7638, the Department of Energy shall have the following additional service units and offices:

(a) Natural Gas Office (NGO) – The NGO shall formulate and implement policies, programs and regulations on the development and promotion of natural gas, as well as undertake product and market development of natural gas.

(b) Consumer Welfare Promotion Office (CWPO) – The CWPO shall formulate and implement policies, plans, and programs for consumer information, welfare promotion, empowerment and protection.

(c) Public Affairs Office (PAO) – The PAO shall prepare and implement plans and programs for media and public relations, as well as coordinate activities for special events of the Department of Energy.

(d) Investment Promotion Office (IPO) – The IPO shall formulate and implement policies and programs on promotion of investments in energy resource exploration, technology and infrastructure, among others.

Further, existing service units and offices shall be renamed and their functions re-defined as follows:

(a) The Internal Audit Unit – The existing Management and Audit Division shall be renamed and re-defined as the Internal Audit Unit (IAU). The IAU shall monitor, audit and review the implementation of existing internal control systems, work processes and policies, and shall recommend improvements and corrective actions thereto.

(b) The Information Technology and Management Services – The current Geodata and Information Services Division and Management Information Division shall be integrated, renamed and re-defined as the Information Technology and Management Services (ITMS). The ITMS shall formulate policies, implement programs, and provide services on information and communications technology, geo-informatics, and data and information management.

(c) The Energy Research and Testing Laboratory Services (ERTLS) – The following existing laboratory units shall be subsumed under one (1) service unit, the ERTLS: (i) the Appliance Testing Laboratory, (ii) the National Petroleum Testing Laboratory, and (iii) the Energy Research Laboratory.

The ERTLS shall have the following functions and services:

(i) research and conduct scientific and physical tests on rocks, oil and gas, coal, waters, processed fuels and trace metals, among others, in support of the exploration and development of indigenous energy resources; and

(ii) provide technical testing on energy efficiency and calibration methodologies with a view to enhancing energy efficiency programs.

(d) Luzon, Visayas, and Mindanao Field Offices – The existing Visayas and Mindanao Field Offices shall be expanded to include Luzon Field Offices. The

operatives of these field offices shall be the immediate representatives of the Department of Energy in said field offices for the implementation of its policies, plans, programs, and regulations therein.

SEC. 4. *Separation and Other Benefits.* – Pursuant to Section 63 of the *Electric Power Industry Reform Act of 2001* (Republic Act No. 9136), officers and employees separated from the Energy Industry Administration Bureau as a result hereof shall be entitled to the corresponding benefits therein. All other officers and employees separated as a result hereof shall be entitled to the benefits provided under the *Government Service Insurance Act of 1997* (Republic Act No. 8291).

SEC. 5. *Appropriations for Staffing Pattern.* – Institutional strengthening in accordance hereof shall not result in any increase in the corresponding appropriations for the Department of Energy. Further, the Secretary of Energy shall submit to the Department of Budget and Management for evaluation and final approval the resultant staffing pattern for the Department of Energy.

SEC. 6. *Implementing Guidelines, Rules and Regulations.* – The Secretary of Energy shall promulgate the necessary implementing guidelines, rules and regulations to ensure the orderly implementation of this Administrative Order.

SEC. 7. *Effectivity.* – This Administrative Order shall take effect immediately.

Done in the City of Manila, this 23rd day of August, in the year of our Lord, Two Thousand and Two.

ADMINISTRATIVE ORDER NO. 38-A

AMENDING ADMINISTRATIVE ORDER NO. 38 DATED AUGUST 23, 2002 IN ORDER TO PROVIDE FOR THE SEPARATION BENEFITS PROVIDED BY LAW FOR OFFICERS AND EMPLOYEES OF THE DEPARTMENT OF ENERGY DISPLACED OR SEPARATED AS A RESULT OF THE RESTRUCTURING OF THE ELECTRIC POWER INDUSTRY

WHEREAS, Administrative Order No. 38 dated August 23, 2002 effected the institutional strengthening of the Department of Energy to enable the Department of Energy to respond adequately to its expanded role and functions arising from the passage of new laws, including Republic Act No. 9136, otherwise known as the *Electric Power Industry Reform Act of 2001*;

WHEREAS, Section 63 of the *Electric Power Industry Act of 2001* provides for the separation benefits of government officials and employees affected by the restructuring of the electric power industry;

WHEREAS, the institutional strengthening of the Department of Energy as a necessary component in the restructuring of the electric power industry resulted in the displacement or separation from service of several officers and employees of the Department of Energy, other than those belonging to its Energy Industry Administration Bureau;

WHEREAS, the Secretary of Energy recommends the issuance of this Administrative Order, with the concurrence of the Secretary of Budget and Management;

NOW, THEREFORE, I, GLORIA MACAPAGAL-ARROYO, President of the Philippines, by virtue of the powers vested in me by law, do hereby order:

SECTION 1. *Amendment.* – Section 4 of Administrative Order No. 38 dated August 23,

2002 is hereby amended to read as follows:

"SEC. 4. *Separation and Other Benefits.* – Pursuant to Section 63 of the *Electric Power Industry Reform Act of 2001* (Republic Act No. 9136), officers and employees separated from the Department of Energy as a result hereof shall be entitled to the corresponding benefits therein: *Provided,* That before an officer or employee may avail of separation benefits hereunder, the Secretary of Energy shall have approved the separation from the service of and issued the appropriate clearance for the particular officer or employee concerned."

SEC. 2. *Implementing Guidelines, Rules and Regulations.* – The Secretary of Energy shall promulgate, with the concurrence of the Secretary of Budget and Management, the necessary implementing guidelines, rules and regulations to ensure the orderly implementation of this Administrative Order.

SEC. 3. *Effectivity.* – This Administrative Order shall take effect immediately.

Done in the City of Manila, this 2nd day of July, in the year of our Lord, Two Thousand and Three.

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 30

CREATING THE ENERGY INVESTMENT COORDINATING COUNCIL IN ORDER TO STREAMLINE THE REGULATORY PROCEDURES AFFECTING ENERGY PROJECT

WHEREAS, pursuant to Section 9, Article II of the 1987 Philippine Constitution, the State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living and an improved quality of life for all;

WHEREAS, Section 2 or Republic Act (RA) No. 9163 or the Electric Power Industry Reform Act of 2001 states that it is the declared policy of the State to ensure and accelerate the total electrification of the country; to ensure the quality, reliability, security and affordability of the supply of electric power; to assure socially and environmentally compatible energy sources and infrastructure;

WHEREAS, RA 7638 or the Department of Energy (DOE) Act of 1992 created the DOE to prepare, integrate, coordinate, supervise, and control all plans, programs, projects, and activities of the Government relative to energy exploration, development, utilization, distribution, and conservation;

WHEREAS, Section 23 of RA 7638 mandates all government agencies, with functions

relative to the approval of the projects of the DOE, to immediately act upon and resolve such matters pertaining to these projects upon the request of DOE;

WHEREAS, the Philippine Energy Plan (PEP) was crafted to mainstream access of the larger populace to reliable and affordable energy services to fuel, most importantly, local productivity and countryside development;

WHEREAS, it is a priority of the government to streamline its processes to ensure effective and timely implementation of projects to guarantee the immediate delivery of adequate and reliable government services;

WHEREAS, Section 17, Article VII of the 1987 Philippine Constitution states that the President shall have control of all the executive departments, bureaus, and offices, and shall ensure that the laws be faithfully executed;

WHEREAS, Section 4, Article X of the 1987 Philippine Constitution states that the President shall exercise general supervision over local governments;

WHEREAS, there is an urgent need to construct additional power plants to provide sufficient available electricity capacity of the appropriate power plant category to accelerate and promote rapid economic growth in an open and competitive power market environment;

NOW, THEREFORE, I, RODRIGO ROA DUTERTE, President of the Philippines, by virtue of the powers vested in me by the Constitution and existing laws, do hereby order:

SECTION 1. *Declaration of Policy.* – It is the policy of the State to ensure a continuous, adequate and economic supply of energy. Hence, an efficient and effective administrative process for energy projects of national significance should developed in order to avoid unnecessary delays in the implementation of the Philippine Energy Plan (PEP).

SEC 2. *Energy Projects of National Significance (EPNS).* - EPNS are major energy project for power generation, transmission and/or ancillary services including those required to maintain grid stability and security, identified and endorsed by the DOE as "project of national significance" that are in consonance with the policy thrusts and specific goals of the PEP, and which possess any of the following attributes:

a. significant capital investment of at least P3.5 Billion;

b. significant contribution to the country's economic development;

c. significant consequential economic impact;

d. significant potential contribution to the country's balance of payments;

e. significant impact on the environment;

f. complex technical processes and engineering designs; and/or

g. significant infrastructure requirements.

SEC 3. *Energy Investment Coordinating Council (EICC).* - There is hereby created an EICC that will spearhead to coordinate national government efforts to harmonize, integrate and streamline regulatory processes, requirements and forms relevant to the development of energy investment in the country, primarily with regard to EPNS, to uphold transparency and accountability among concerned agencies.

SEC 4. *Composition.* - The EICC shall be chaired by a representative from the DOE and shall be composed of representatives from the following agencies as members:

a. Department of the Environment and Natural Resources (DENR)
   a.1) Biodiversity Management Bureau
   a.2) Environmental Management Bureau
   a.3) Forest Management Bureau
   a.4) Land Management Bureau

b. National Electrification Administration

c. National Grid Corporation of the Philippines

d. National Power Corporation

e. National Transmission Corporation

f. Department of Finance
   f.1) Bureau of Customs
   f.2) Bureau of Internal Revenue

g. Department of Justice
   g.1) Bureau of Immigration

h. Department of Transportations
   h.1) Civil Aviation Authority of the Philippines
   h.2) Marine Industry Authority
   h.3) Philippine Coast Guard
   h.4) Philippine Ports Authority

i. Housing and Land Use Regulatory Board

j. Palawan Council for Sustainable Development

k. Other agencies and government instrumentalities whose participation in the EICC may be deemed necessary by the Council to attain the objectives of this Order.

SEC 5. *Functions.* – The EICC shall convene within thirty (30) days from the effectivity of this Order and exercise the following functions:

a. Establish a simplified approval process, and harmonize the relevant rules and regulations of all government agencies involved in obtaining permits and regulatory approvals, to expedite the development and implementation of EPNS and other energy projects;

b. Prepare rules governing the resolution of inter-agency issues affecting the timely and efficient implementation of EPNS and other energy projects;

c. Maintain a database of information and a web-based monitoring system which shall be the vehicle for information exchange on the updates on the applications of EPNS and other energy projects;

d. Create inter-agency subcommittees as may be necessary to fulfill its mandate;

e. Submit a quarterly progress report of the Office of the President; and

f. Perform such other functions as may be necessary and incidental to attain the objectives of this Order.

SEC 6. *Secretariat.* – The EICC shall be supported by a Secretariat to be headed by the DOE with representatives from the other member agencies as may be needed, with the following functions:

a. Provide the necessary administrative and technical support to aid the EICC in fulfilling its functions;

b. Serve as the repository of all documents and data of the EICC;

c. Monitor the status of the processing of all energy application using the web-based monitoring system; and

d. Perform such other tasks and functions delegated by the EICC.

SEC 7. *Baselines in the Processing of EPNS.* – The rules, regulations and processes to be agreed upon within the EICC and to be

adopted by its member-agencies shall be adhere to the following baselines with regard to EPNS:

a. **Presumption of Prior Approvals.** Government agencies and instrumentalities that receive an application for a permit involving EPNS shall process such applications without awaiting the action of any other agency. The processing agency shall act on the presumption that the relevant permits from other government agencies had already been issued.

b. **Action within Thirty (30) Days.** Government agencies and instrumentalities shall act upon applications for permits involving EPNS within a specified processing timeframe not exceeding thirty (30) days from the submission of complete documentary requirements. Should such application be denied, the denial should be made in writing, expressly providing the grounds therefor. If no decision is made within the specified processing timeframe, the approving authority may no longer deny the application and shall issue the relevant permit within five (5) working days after the lapse of such processing timeframe.

No deviation from the baselines shall be allowed except when absolutely necessary either to enable an agency to comply with a specific statutory directive or to avoid prejudicing the public interest. All regulations and procedures taken up in the EICC which deviate from such baselines, and the justifications therefor, shall be included in the reports of the EICC to the Office of the President.

SEC 8. *Environmental Compliance Certificate (ECCs) for EPNS.* – The procedures for the issuance of ECCs which may be required for EPNS shall be among the matters to be discussed within the EICC. In light of such discussions, the DENR shall formulate guidelines on the issuance of such ECCs consistent with the objectives and provisions of this Order including, in particular, the baselines stated in Section 7 hereof. Such guidelines shall be submitted to the Office of the President for approval within sixty (60) days from the effectivity of this Order.

SEC 9. *Cooperation of Other Agencies.* – The EICC may call upon any agency or instrumentality of the Government of such assistance as may be necessary in the performance of its functions. Local government units are enjoined to adopt policies and procedures consistent with this Order, with respect to the processing of permits involving EPNS.

SEC 10. *Funding.* – The funds to support the initial operations of the EICC shall be sourced from the DOE, subject to applicable budgetary rules and regulations. Thereafter, appropriations for the implementation of this Order shall be incorporated in the regular budget of the DOE.

SEC 11. *Repeal.* – All executive orders, proclamations, rules, regulations, previous issuances or part thereof, inconsistent with the provisions of this Order are hereby repealed, amended or modified accordingly.

SEC 12. *Seperability.* – If any section or part of this Executive Order is held unconstitutional or invalid, the other sections or provisions of this Order are hereby repealed, amended or modified accordingly.

SEC 13. *Effectivity.* – This Order shall take effect immediately upon publication in a newspaper of general circulation.

DONE in the City of Manila, this 28th day of June, in the year of Our Lord, Two Thousand and Seventeen

Chapter 2
EPIRA and Renewable Energy Act

REPUBLIC ACT NO. 9136

AN ACT ORDAINING REFORMS IN THE ELECTRIC POWER INDUSTRY, AMENDING FOR THE PURPOSE CERTAIN LAWS AND FOR OTHER PURPOSES

CHAPTER I

TITLE AND DECLARATION OF POLICY

SECTION 1 . *Short Title*. – This Act shall be known as the "Electric Power Industry Reform Act of 2001". It shall hereinafter be referred to as the Act.

SECTION 2. *Declaration of Policy.* – It is hereby declared the policy of the State:

(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 enhance the competitiveness of Philippine products in the global market;

(d) To enhance the inflow of private capital and broaden the ownership base of the power generation, transmission and distribution sectors;

(e) To ensure fair and non-discriminatory treatment of public and private sector entities in the process of restructuring the electric power industry;

(f) To protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power;

(g) To assure socially and environmentally compatible energy sources and infrastructure;

(h) To promote the utilization of indigenous and new and renewable energy resources in power generation in order to reduce dependence on imported energy;

(i) To provide for an orderly and transparent privatization of the assets and liabilities of the National Power Corporation (NPC);

(j) To establish a strong and purely independent regulatory body and system to ensure consumer protection and enhance the competitive operation of the electricity market; and

(k) To encourage the efficient use of energy and other modalities of demand side management.

SEC. 3. *Scope.* – This Act shall provide a framework for the restructuring of the electric power industry, including the privatization of

the assets of NPC, the transition to the desired competitive structure, and the definition of the responsibilities of the various government agencies and private entities.

SEC. 4. *Definition of Terms.* -

(a) "Aggregator" refers to a person or entity, engaged in consolidating electric power demand of end-users in the contestable market, for the purpose of purchasing and reselling electricity on a group basis;

(b) "Ancillary Services" refer to those services that are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of the transmission system in accordance with good utility practice and the Grid Code to be adopted in accordance with this Act;

(c) "Captive Market" refers to electricity end-users who do not have the choice of a supplier of electricity, as may be determined by the Energy Regulatory Commission (ERC) in accordance with this Act;

(d) "Central Dispatch" refers to the process of issuing direct instructions to electric power industry participants by the grid operator to achieve the economic operation and maintenance of quality, stability, reliability and security of the transmission system;

(e) "Co-Generation Facility" refers to a facility which produces electrical an/or mechanical energy and forms of useful thermal energy such as heat or steam which are used for industrial commercial heating or cooling purposes through the sequential use of energy;

(f) "Commission" refers to the decision-making body of the ERC composed of a Chairman and four (4) members as provided under Section 38 hereof;

(g) "Concession Contract" refers to the award by the government to a qualified private entity of the responsibility for financing, operating, expanding, maintaining and managing specific Government-owned assets;

(h) "Contestable Market" refers to the electricity end-users who have a choice of a supplier of electricity, as may be determined by the ERC in accordance with this Act;

(i) "Customer Service Charge" refers to the component in the retail rate intended for the cost recovery of customer-related services including, but not limited to, meter reading, billing administration and collection;

(j) "Demand Side Management" refers to measures undertaken by distribution utilities to encourage end-users in the proper management of their load to achieve efficiency in the utilization of fixed infrastructures in the system;

(k) "Department of Energy" or "DOE" refers to the government agency created pursuant to Republic Act No. 7638 whose expanded functions are provided herein;

(l) "Department of Finance" or "DOF" refers to the government agency created pursuant to Executive Order No. 127;

(m) "Distribution Code" refers to a compilation of rules and regulations governing electric utilities in the operation and maintenance of their distribution systems which includes, among others, the standards for service and performance, and defines and establishes the relationship of the distribution systems with the facilities or installations of the parties connected thereto;

(n) "Distribution of Electricity" refers to the conveyance of electric power by a distribution utility through its distribution

system pursuant to the provisions of this Act;

(o) "Distribution System" refers to the system of wires and associated facilities belonging to a franchised distribution utility extending between the delivery points on the transmission or subtransmission system or generator connection and the point of connection to the premises of the end-user;

(p) "Distribution Wheeling Charge" refers to the cost or charge regulated by the ERC for the use of a distribution system and/ or the availment of related services;

(q) "Distribution Utility" refers to any electric cooperative, private corporation, government- owned utility or existing local government unit which has an exclusive franchise to operate a distribution system in accordance with this Act;

(r) "Electric cooperative" refers to a distribution utility organized pursuant to Presidential Decree No. 269, as amended, or as otherwise provided in this Act;

(s) "Electric Power Industry Participant" refers to any person or entity engaged in the generation, transmission, distribution or supply of electricity;

(t) "End-user" refers to any person or entity requiring the supply and delivery of electricity for its own use;

(u) "Energy Regulatory Board" or "ERB" refers to the independent, quasi-judicial regulatory body created under Executive Order No. 172, as amended;

(v) "Energy Regulatory Commission" or "ERC" refers to the regulatory agency created herein;

(w) "Franchise Area" refers to a geographical area exclusively assigned or granted to a distribution utility for distribution of electricity;

(x) "Generation Company" refers to any person or entity authorized by the ERC to operate facilities used in the generation of electricity;

(y) "Generation of Electricity" refers to the production of electricity by a generation company or a co-generation facility pursuant to the provisions of this Act;

(z) "Grid" refers to the high voltage backbone system of interconnected transmission lines, substations and related facilities;

(aa) "Grid Code" refers to the set of rules and regulations governing the safe and reliable operation, maintenance and development of the high voltage backbone transmission system and its related facilities;

(bb) "Independent Power Producer" or "IPP" refers to an existing power generating entity which is not owned by NPC;

(cc) "Inter-Class Cross Subsidy" refers to an amount charged by distribution utilities to industrial and commercial end-users as well as to other subsidizing customer sectors in order to reduce electricity rates of other customer sectors such as the residential end-users, hospitals, and streetlights;

(dd) "Inter-Regional Grid Cross Subsidy" refers to an amount embedded in the electricity rates of NPC charged to its customers located in a viable regional grid in order to reduce the electricity rates in a less viable regional grid;

(ee) "Intra- Regional Grid Cross Subsidy" refers to an amount embedded in the electricity rates of NPC charged to distribution utilities and non-utilities with higher load factor and/or

delivery voltage in order to reduce the electricity rates charged to distribution utilities with lower load factor and/or delivery voltage located in the same regional grid;

(ff) "IPP Administrator" refers to qualified independent entities appointed by PSALM Corporation who shall administer, conserve and manage the contracted energy output of NPC IPP contracts;

(gg) "Isolated Distribution System" refers to the backbone system of wires and associated facilities not directly connected to the national transmission system;

(hh) "Lifeline Rate" refers to the subsidized rate given to low-income captive market end-users who cannot afford to pay at full cost;

(ii) "National Electrification Administration" or "NEA" refers to the government agency created under Presidential Decree No. 269, as amended, and whose additional mandate is further set forth herein;

(jj) "National Power Corporation" or "NPC" refers to the government corporation created under Republic Act No. 6395, as amended;

(kk) "National Transmission Corporation or "TRANSCO" refers to the corporation organized pursuant to this Act to acquire all the transmission assets of the NPC;

(ll) "Open Access" refers to the system of allowing any qualified person the use of transmission, and/or distribution system, and associated facilities subject to the payment of transmission and/or distribution retail wheeling rates duly approved by the ERC;

(mm) "Philippine Energy Plan" or "PEP" refers to the overall energy program formulated and updated yearly by the DOE and submitted to Congress pursuant to Republic Act No. 7638;

(nn) "Power Development Program" or "PDP" refers to the indicative plan for managing electricity demand through energy-efficient programs and for the upgrading, expansion, rehabilitation, repair and maintenance of power generation and transmission facilities, formulated and updated yearly by the DOE in coordination with the generation, transmission and distribution utility companies;

(oo) "Power Sector Assets and Liabilities Management Corporation" or "PSALM Corp." refers to the corporation created pursuant to Section 49 hereof;

(pp) "Privatization" refers to the sale, disposition, change and transfer of ownership and control of assets and IPP contracts from the Government or a government corporation to a private person or entity;

(qq) "Renewable Energy Resources" refers to energy resources that do not have an upper limit on the total quantity to be used. Such resources are renewable on a regular basis and the renewable rate is rapid enough to consider availability over an indefinite time. These include, among others, biomass, solar, wind, hydro and ocean energy;

(rr) "Restructuring" refers to the process of reorganizing the electric power industry in order to introduce higher efficiency, greater innovation and end-user choice. It shall be understood as covering a range of alternatives enhancing exposure of the industry to competitive market forces;

(ss) "Retail Rate" refers to the total price paid by end-users consisting of the charges for generation, transmission and related ancillary services,

distribution, supply and other related charges for electric service;

(tt) "Small Power Utilities Group" or "SPUG" refers to the functional unit of NPC created to pursue missionary electrification function;

(uu) "Stranded contract costs of NPC or distribution utility" refer to the excess of the contracted cost of electricity under eligible contracts over the actual selling price of the contracted energy output of such contracts in the market. Such contracts shall have been approved by the ERB as of December 31, 2000;

(vv) "Stranded Debts of NPC" refer to any unpaid financial obligations of NPC which have not been liquidated by the proceeds from the sales and privatization of NPC assets;

(ww) "Subtransmission Assets" refer to the facilities related to the power delivery service below the transmission voltages and based on the functional assignment of assets including, but not limited to step-down transformers used solely by load customers, associated switchyard/substation, control and protective equipment, reactive compensation equipment to improve customer power factor, overhead lines, and the land such facilities/ equipment are located. These include NPC assets linking the transmission system and the distribution system which are neither classified as generation nor transmission;

(xx) "Supplier" refers to any person or entity authorized by the ERC to sell, broker, market or aggregate electricity to the end-users;

(yy) "Supplier's Charge" refers to the charge imposed by electricity suppliers for the sale of electricity to end-users, excluding the charges for generation, transmission and distribution wheeling;

(zz) "Supply of Electricity" means the sale of electricity by a party other than a generator or a distributor in the franchise area of a distribution utility using the wires of the distribution utility concerned;

(aaa) "Transmission Charge" refers to the regulated cost or charges for the use of a transmission system which may include the availment of ancillary services;

(bbb) "Transmission Development Plan" or "TDP" refers to the program for managing the transmission system through efficient planning for the expansion, upgrading, rehabilitation, repair and maintenance, to be formulated by DOE and implemented by the TRANSCO pursuant to this Act;

(ccc) "Transmission of Electricity" refers to the conveyance of electricity through the high voltage backbone system; and

(ddd) "Universal Charge" refers to the charge, if any, imposed for the recovery of the stranded cost and other purposed pursuant to Section 34 hereof.

CHAPTER II

ORGANIZATION AND OPERATION OF THE ELECTRIC POWER INDUSTRY

SEC. 5. *Organization.* – The electric power industry shall be divided into four (4) sectors, namely: generation, transmission, distribution and supply.

SEC. 6. *Generation Sector.* – Generation of electric power, a business affected with public interest, shall be competitive and open.

Upon the effectivity of this Act, any new generation company shall, before it operates, secure from the Energy Regulatory Commission (ERC) a certificate of compliance

pursuant to the standards set forth in this Act, as well as health, safety and environmental clearances from the appropriate government agencies under existing laws.

Any law to the contrary notwithstanding, power generation shall not be considered a public utility operation. For this purpose, any person or entity engaged or which shall engage in power generation and supply of electricity shall not be required to secure a national franchise.

Upon implementation of retail competition and open access, the prices charged by a generation company for the supply of electricity shall not be subject to regulation by the ERC except as otherwise provided in this Act.

Pursuant to the objective of lowering electricity rates to end-users, sales of generated power by generation companies shall be value added tax zero-rated.

The ERC shall, in determining the existence of market power abuse or anti-competitive behavior, require from generation companies the submission of their financial statements.

SEC. 7 *Transmission Sector.*- The transmission of electric power shall be regulated common electricity carries business, subject to the ratemaking powers of the ERC.

The ERC shall set the standards of the voltage transmission that shall distinguish the transmission from the subtransmission assets. Pending the issuance of such new standards, the distinction between the transmission and subtransmission assets shall be as follows: 230 kilovolts and above in the Luzon grid, 69 kilovolts and above in the Visayas and in the isolated distribution systems, and 138 kilovolts and above in the Mindanao Grid: Provided, That for the Visayas and the isolated distribution system, should the 69 kilovolt line not form part of the main transmission grid and be directly connected to the substation of the distribution utility, it shall form part of the subtransmission system.

SEC. 8. *Creation of the National Transmission Company*.– There is hereby created a National Transmission Corporation, hereinafter referred to as TRANSCO, which shall assume the electrical transmission function of the National Power Corporation (NPC), and have the powers and functions hereinafter granted. The TRANSCO shall assume the authority and responsibility of NPC for the planning, construction and centralized operation and maintenance of its high voltage transmission facilities, including grid interconnections and ancillary services.

Within six (6) months from the effectivity of this Act, the transmission and subtransmission facilities of NPC and all other assets related to transmission operations, including the nationwide franchise of NPC for the operation of the transmission system and the grid, shall be transferred to the TRANSCO.

The TRANSCO shall be wholly owned by the Power Sector Assets and Liabilities Management Corporation (PSALM Corp.).

The subtransmission functions and assets shall be segregated from the transmission functions, assets and liabilities for transparency and disposal: *Provided*, That the subtransmission assets shall be operated and maintained by TRANSCO until their disposal to qualified distribution utilities which are in a position to take over the responsibility for operating, maintaining, upgrading, and expanding said assets.

All transmission and subtransmission related liabilities of NPC shall be transferred to and assumed by the PSALM Corp.

TRANSCO shall negotiate with and thereafter transfer such functions, assets, and associated liabilities to the qualified distribution utility or utilities connected to such subtransmission facilities not later than two (2) years from the effectivity of this Act or the start of open access, whichever comes earlier: *Provided*, That in the case of electric cooperatives, the TRANSCO shall grant concessional financing over a period of twenty (20) years:

Provided, however, That the installment payments to TRANSCO for the acquisition of subtransmission facilities shall be given first priority by the electric cooperatives out of the net income derived from such facilities. The TRANSCO shall determine the disposal value of the subtransmission assets based on the revenue potential of such assets.

In case of disagreement in valuation, procedures, ownership participation and other issues, the ERC shall resolve such issues.

The take over by a distribution utility of any subtransmission asset shall not cause a diminution of service and quality to the end-users. Where there are two or more connected distribution utilities, the consortium or juridical entity shall be formed by and composed of all of them and thereafter shall be granted a franchise to operate the subtransmission asset by the ERC.

The subscription rights of each distribution utility involved shall be proportionate to their load requirements unless otherwise agreed by the parties.

Aside from the PSALM Corp., TRANSCO and connected distribution utilities, no third party shall be allowed ownership or management participation, in whole or in part, in such subtransmission entity.

The TRANSCO may exercise the power of eminent domain subject to the requirements of the Constitution and existing laws. Except as provided herein, no person, company or entity other than the TRANSCO shall own any transmission facilities.

Prior to the transfer of the transmission functions by NPC to TRANSCO, and before the promulgation of the Grid Code, ERC shall ensure that NPC shall provide to all electric power industry participants open and non-discriminatory access to its transmission system. Any violation thereof shall be subject to the fines and penalties imposed herein.

SEC. 9. *Functions and Responsibilities.* – Upon the effectivity of this Act, the TRANSCO shall have the following functions and responsibilities:

(a) Act as the system operator of the nationwide electrical transmission and subtransmission system, to be transferred to it by NPC;

(b) Provide open and non-discriminatory access to its transmission system to all electricity users;

(c) Ensure and maintain the reliability, adequacy, security, stability and integrity of the nationwide electrical grid in accordance with the performance standards for the operations and maintenance of the grid, as set forth in a Grid Code to be adopted and promulgated by the ERC within six (6) months from the effectivity of this Act;

(d) Improve and expand its transmission facilities, consistent with the Grid Code and the Transmission Development Plan (TDP) to be promulgated pursuant to this Act, to adequately serve generation companies, distribution utilities and suppliers requiring transmission service and/or ancillary services through the transmission system: *Provided,* That TRANSCO shall submit any plan for expansion or improvement of its facilities for approval by the ERC;

(e) Subject to technical constraints, the grid operator of the TRANSCO shall provide central dispatch of all generation facilities connected, directly or indirectly, to the transmission system in accordance with the dispatch schedule submitted by the market operator, taking into account outstanding bilateral contracts; and

(f) TRANSCO shall undertake the preparation of the TDP.

In the preparation of the TDP, TRANSCO shall consult the other participants of the electric power industry such as the generation companies, distribution utilities, and the electricity end-users. The TDP shall

be submitted to the DOE for integration with the Power Development Program and the Philippine Energy Plan, provided for in Republic Act No. 7638 otherwise known as 'the Department of Energy Act of 1992".

A generation company may develop and own or operate dedicated point-to-point limited transmission facilities that are consistent with the TDP: *Provided* , That such facilities are required only for the purpose of connecting to the transmission system, and are used solely by the generating facility, subject to prior authorization by the ERC: *Provided, further,* That in the event that such assets are required for competitive purposes, ownership of the same shall be transferred to the TRANSCO at a fair market price: *Provided, finally,* That in the case of disagreement on the fair market price, the ERC shall determine the fair market value of the asset.

SEC. 10. *Corporate Powers of the TANSCO.* – As a corporate entity, TRANSCO shall have the following corporate powers:

(a) To have continuous succession under its corporate name until otherwise provided by law;

(b) To adopt and use a corporate seal and to change, alter or modify the same, if necessary;

(c) To sue and be sued;

(d) To enter into a contract and execute any instrument necessary or convenient for the purpose for which it is created;

(e) To borrow funds from any source, whether private or public, foreign or domestic, and issue bonds and other evidence of indebtedness: *Provided*. That in the case of the bond issues, it shall be subject to the approval of the President of the Philippines upon recommendation of the Secretary of Finance: *Provided, further,* That foreign loans shall be obtained in accordance with existing laws, rules and regulations of the Bangko Sentral ng Pilipinas;

(f) To maintain a provident fund which consists of contributions made by both the TRANSCO and its officials and employees and their earnings for the payment of benefits to such officials and employees or their heirs under such terms and conditions as it may prescribe;

(g) To do any act necessary or proper to carry out the purpose for which it is created, or which, from time to time, may be declared by the TRANSCO Board as necessary, useful, incidental or auxilliary to accomplish its purposes and objectives; and,

(h) Generally, to exercise all the powers of a corporation under the corporation law insofar as they are not inconsistent with this Act.

SEC. 11. *TRANSCO Board of Directors.* – All the powers of the TRANSCO shall be vested in and exercised by a Board of Directors. The Board shall be composed of a Chairman and six (6) members. The Secretary of the Department of Finance (DOF) shall be the *ex officio* Chairman of the Board. The other members of the TRANSCO Board shall include the Secretary of the Department of Energy (DOE), the Secretary of the Department of Environment and Natural Resources (DENR), the President of TRANSCO, and three (3) members to be appointed by the President, each representing Luzon, Visayas and Mindanao.

The members of the Board so appointed by the President of the Philippines shall serve for a term of six (6) years, except that any person appointed to fill-in a vacancy shall serve only the unexpired term of his/her predecessor in office. All members of the Board shall be professionals of recognized competence and expertise in the fields of engineering , finance, economics, law or business management. No member of the Board or any of his relatives within the fourth civil degree of consanguinity or affinity shall have any interest, either as investor, officer or director, in any generation company or distribution utility or other entity

engaged in transmitting, generating and supplying electricity specified by ERC.

SEC. 12. *Powers and Duties of the Board.* – The following are the powers of the Board:

(a) To provide strategic direction for TRANSCO, and formulate medium and long-term strategies pursuant to the vision, mission, and objectives of TRANSCO;

(b) To develop and adopt policies and measures for the efficient and effective management and operation of TRANSCO;

(c) To organize, re-organize, and determine the organizational structure and staffing patterns of TRANSCO; abolish and create offices and positions; fix the number of its officers and employees; transfer and re-align such officers and personnel; fix their compensation, allowance, and benefits;

(d) To fix the compensation of the President of TRANSCO and to appoint and fix the compensation of other corporate officers;

(e) For cause, to suspend or remove any corporate officer appointed by the Board;

(f) To adopt and set guidelines for the employment of personnel on the basis of merit, technical competence, and moral character; and

(g) Any provisions of the law to the contrary notwithstanding, to write-off bad debts.

SEC. 13. *Board Meetings.* – The Board shall meet as often as may be necessary upon the call of the Chairman of the Board or by a majority of the Board members.

SEC. 14. *Board Per Diems and Allowances.* – The members of the Board shall receive *per diem* for each regular or special meeting of the board actually attended by them, and, upon approval of the Secretary of the Department of Finance, such other allowances as the Board may prescribe.

SEC. 15. *Quorum.* – The presence of at least four (4) members of the Board shall constitute a quorum, which shall be necessary for the transaction of any business. The affirmative vote of a majority of the members present in a quorum shall be adequate for the approval of any resolution, decision or order, except when the Board shall otherwise agree that a greater vote is required.

SEC. 16. *Powers of the President of TRANSCO.* – The President of TRANSCO shall be appointed by the President of the Philippines. In the absence of the Chairman, the President shall preside over board meetings.

The President of TRANSCO shall be the Chief Executive Officer of TRANSCO and shall have the following powers and duties:

(a) To execute and administer the policies and measures approved by the Board, and take responsibility for the efficient discharge of management functions;

(b) To oversee the preparation of the budget of TRANSCO;

(c) To direct and supervise the operation and internal administration of TRANSCO and, for this purpose, may delegate some or any of his administrative responsibilities and duties to other officers of TRANSCO;

(d) Subject to the guidelines and policies set up by the Board, to appoint and fix the number and compensation of subordinate officials and employees of TRANSCO; and for cause, to remove, suspend, or otherwise discipline any subordinate employee of TRANSCO;

(e) To submit an annual report to the Board on the activities and achievements of TRANSCO at the close of each fiscal year and upon approval thereof, submit a copy to the President of the Philippines and to such other agencies as may be required by law;

(f) To represent TRANSCO in all dealings and transactions with other offices, agencies,

and instrumentalities of the Government and with all persons and other entities, private or public, domestic or foreign; and

(g) To exercise such other powers and duties as may be vested in him by the Board from time to time.

SEC. 17. *Exemption from the Salary Standardization Law.* – The salaries and benefits of employees in the TRANSCO shall be exempt from Republic Act. No. 6758 and shall be fixed by the TRANSCO Board.

SEC. 18. *Profits.* – The net profit, if any, of TRANSCO shall be remitted to the PSALM Corp. not later than ninety (90) days after the immediately preceding quarter.

SEC. 19. *Transmission Charges.* – The transmission charges of the TRANSCO shall be filed with and approved by the ERC pursuant to Paragraph (f) of Section 43 hereof.

SEC. 20. *TRANSCO Related Businesses.* – TRANSCO may engage in any related business which maximizes utilization of its assets: *Provided,* That a portion of the net income derived from such undertaking utilizing assets which form part of the rate base shall be used to reduce transmission wheeling rates as determined by the ERC. Such portion of net income used to reduce the transmission wheeling rates shall not exceed fifty percent (50%) of the net income derived from such undertaking. Separate accounts shall be maintained for each business undertaking to ensure that the transmission business shall neither subsidize in any way such business undertaking nor encumber its transmission assets in any way to support such business.

SEC. 21. *TRANSCO Privatization.* – Within six (6) months from the effectivity of this Act, the PSALM Corp. shall submit a plan for the endorsement by the Joint Power Commission and the approval of the President of the Philippines. The President of the Philippines thereafter shall direct PSALM Corp. to award in open competitive bidding, the transmission facilities, including grid interconnections and ancillary services to a qualified party either through an outright sale or a concession contract. The buyer/concessionaire shall be responsible for the improvement, expansion, operation, and/or maintenance of its transmission assets and the operation of any related business. The award shall result in maximum present value of proceeds to the national government. In case a concession contract is awarded, the concessionaire shall have a contract period of twenty-five (25) years, subject to review and renewal for a maximum period of another twenty-five (25) years.

In any case, the awardee shall comply with the Grid Code and the TDP as approved. The sale agreement/concession contract shall include, but not limited to, the provision for performance and financial guarantees or any other covenants which the national government may require. Failure to comply with such obligations shall result in the imposition of appropriate sanctions or penalties by the ERC.

The awardee shall be financially and technically capable, with proven domestic and./or international experience and expertise as a leading transmission system operator. Such experience must be with a transmission system of comparable capacity and coverage as the Philippines.

SEC. 22. *Distribution Sector.* – The distribution of electricity to end-users shall be a regulated common carrier business requiring a national franchise. Distribution of electric power to all end-users may be undertaken by private distribution utilities, cooperatives, local government units presently undertaking this function and other duly authorized entities, subject to regulation by the ERC.

SEC. 23. *Functions of Distribution Utilities.* – A distribution utility shall have the obligation to provide distribution services and connections to its system for any end-user within its franchise area consistent with the Distribution Code. Any entity engaged therein

shall provide open and non-discriminatory access to its distribution system to all users.

Any distribution utility shall be entitled to impose and collect distribution wheeling charges and connection fees from such end-users as approved by the ERC.

A distribution utility shall have the obligation to supply electricity in the least cost manner to its captive market, subject to the collection of retail rate duly approved by the ERC.

To achieve economies of scale in utility operations, distribution utilities may, after due notice and public hearing, pursue structural and operational reforms such as but not limited to, joint actions between or among the distribution utilities, subject to the guidelines issued by the ERC. Such joint actions shall result in improved efficiencies, reliability of service, reduction of costs and compliance to the performance standards prescribed in the IRR of this Act.

Distribution utilities shall submit to the ERC a statement of their compliance with the technical specifications prescribed in the Distribution Code and the performance standards prescribed in the IRR of this Act. Distribution utilities which do not comply with any of the prescribed technical specifications and performance standards shall submit to the ERC a plan to comply, within three (3) years, with said prescribed technical specifications and performance standards. The ERC shall, within sixty (60) days upon receipt of such plan, evaluate the same and notify the distribution utility concerned of its action. Failure to submit a feasible and credible plan and/or failure to implement the same shall serve as grounds for the imposition of appropriate sanctions, fines or penalties.

Distribution utilities shall prepare and submit to the DOE their annual distributions developments plans. In the case of electric cooperatives, such plans shall be submitted through the National Electrification Administration.

Distribution utilities shall provide universal service within their franchise, over a reasonable time from the requirement thereof, including unviable areas, as part of their social obligations, in a manner that shall sustain the economic viability of the utility, subject to the approval by the ERC in the case of private or government-owned utilities. To this end, distribution utilities shall submit to the DOE their plans for serving such areas as part of their distribution development plans. Areas which a franchised distribution utility cannot or does not find viable may be transferred to another distribution utility, if any is available, who will provide the service, subject approval by ERC. In cases where franchise holders fail and/or refuse to service any area within their franchise territory and allowed another utility to service the same, then the status quo shall be respected.

Distribution utilities may exercise the power of eminent domain subject to the requirements of the Constitution and existing laws.

SEC. 24. *Distribution Wheeling Charge.* – The distribution wheeling charges of distribution utilities shall be filed with and approved by the ERC pursuant to Paragraph (f) of Section 43 hereof.

SEC.25. *Retail Rate.* – The retail rates charged by distribution utilities for the supply of electricity in their captive market shall be subject to regulation by the ERC based on the principle of full recovery of prudent and reasonable economic costs incurred, or such other principles that will promote efficiency as may be determined by the ERC.

Every distribution utility shall identify and segregate in its bills to end-users the components of the retail rate, as defined in this Act.

SEC. 26. *Distribution Related Businesses.* – Distribution utilities may, directly or indirectly, engage in any related business undertaking which maximizes the utilization of their assets: *Provided,* That a portion of the net income derived from such undertaking utilizing

assets which form part of the rate base shall be used to reduce its distribution wheeling charges as determined by the ERC. *Provided, further,* That such portion of net income used to reduce their distribution wheeling charges shall not exceed fifty percent (50%) of the net income derived from such undertaking: *Provided, finally,* That separate accounts are maintained for each business undertaking to ensure that the distribution business shall neither subsidize in any way such business undertaking nor encumber its distribution assets in any way to support such business.

SEC. 27. *Franchising Power in the Electric Power Sector.* – The power to grant franchises to persons engaged in the transmission and distribution of electricity shall be vested exclusively in the Congress of the Philippines and all laws inconsistent with this Act particularly, but not limited to, Section 43 of PD 269, otherwise known as the "National Electrification Decree", are hereby deemed repealed or modified accordingly: *Provided,* That all existing franchises shall be allowed to their full term: *Provided, further*, That in the case of electric cooperatives, renewals and cancellations shall remain with the National Electrification Commission under the National Electrification Administration for five (5) more years after the enactment of this Act.

SEC. 28. *De-Monopolization and Shareholding Dispersal.* – In compliance with the constitutional mandate for dispersal of ownership and de-monopolization of public utilities, the holdings of persons, natural or juridical, including directors, officers, stockholders and related interests, in a distribution utility and their respective holding companies shall not exceed twenty-five (25%) percent of the voting shares of stock unless the utility or the company holding the shares or its controlling stockholders are already listed in the Philippine Stock Exchange (PSE): *Provided,* That controlling stockholders of small distribution utilities are hereby required to list in the PSE within five (5) years from the enactment of this Act if they already own the stocks. New controlling stockholders shall undertake such listing within five (5) years from the time they acquire ownership and control. A small distribution company is one whose peak demand is equal to or less than Ten megawatts (10MW).

The ERC shall, within sixty (60) days from the effectivity of this Act, promulgate the rules and regulations to implement and effect this provision.

This Section shall not apply to electric cooperatives.

SEC. 29. *Supply Sector.* – The supply sector is a business affected with public interest. Except for distribution utilities and electric cooperatives with respect to their existing franchise areas, all suppliers of electricity to the contestable market shall require a license from the ERC.

For this purpose, the ERC shall promulgate rules and regulations prescribing the qualifications of electricity suppliers which shall include, among other requirements, a demonstration of their technical capability, financial capability, and creditworthiness: *Provided,* That the ERC shall have authority to require electricity suppliers to furnish a bond or other evidence of the ability of a supplier to withstand market disturbances or other events that may increase the cost of providing service.

Any law to the contrary notwithstanding, supply of electricity to the contestable market shall not be considered a public utility operation. For this purpose, any person or entity which shall engage in the supply of electricity to the contestable market shall not be required to secure a national franchise.

The prices to be charged by suppliers for the supply of electricity to the contestable market shall not be subject to regulation by the ERC.

Electricity suppliers shall be subject to the rules and regulations concerning abuse of market power, cartelization, and other anti-competitive or discriminatory behavior to be

promulgated by the ERC.

In its billings to end-users, every supplier shall identify and segregate the components of its supplier's charge, as defined herein.

SEC. 30. *Wholesale Electricity Spot Market.* – Within one (1) year from the effectivity of this Act, the DOE shall establish a wholesale electricity spot market composed of the wholesale electricity spot market participants. The market shall provide the mechanism for identifying and setting the price of actual variations from the quantities transacted under contracts between sellers and purchasers of electricity.

Jointly with the electric power industry participants, the DOE shall formulate the detailed rules for the wholesale electricity spot market. Said rules shall provide the mechanism for determining the price of electricity not covered by bilateral contracts between sellers and purchasers of electricity users. The price determination methodology contained in said rules shall be subject to the approval of ERC. Said rules shall also reflect accepted economic principles and provide a level playing field to all electric power industry participants. The rules shall provide, among others, procedures for:

(a) Establishing the merit order dispatch instructions for each time period;

(b) Determining the market-clearing price for each time period;

(c) Administering the market, including criteria for admission to and termination from the market which includes security or performance bond requirements, voting rights of the participants, surveillance and assurance of compliance of the participants with the rules and the formation of the wholesale electricity spot market governing body;

(d) Prescribing guidelines for the market operation in system emergencies; and

(e) Amending the rules.

The wholesale electricity spot market shall be implemented by a market operator in accordance with the wholesale electricity spot market rules. The market operator shall be an autonomous group, to be constituted by DOE, with equitable representation from electric power industry participants, initially under the administrative supervision of the TRANSCO. The market operator shall undertake the preparatory work and initial operation of the wholesale electricity spot market. Not later than one (1) year after the implementation of the wholesale electricity spot market, an independent entity shall be formed and the functions, assets and liabilities of the market operator shall be transferred to such entity with the joint endorsement of the DOE and the electric power industry participants. Thereafter, the administrative supervision of the TRANSCO over such entity shall cease.

Subject to the compliance with the membership criteria, all generating companies, distribution utilities, suppliers, bulk consumers/end-users and other similar entities authorized by the ERC shall be eligible to become members of the wholesale electricity spot market.

The ERC may authorize other similar entities to become eligible as members, either directly or indirectly, of the wholesale electricity spot market. All generating companies, distribution utilities, suppliers, bulk consumers/end-users and other similar entities authorized by the ERC, whether direct or indirect members of the wholesale electricity spot market, shall be bound by the wholesale electricity spot market, shall be bound by the wholesale electricity spot market rules with respect to transactions in that market.

NEA may, in exchange for adequate security and a guarantee fee, act as a guarantor for purchases of electricity in the wholesale electricity spot market by any electric cooperative or small distribution utility to support their credit standing consistent with the provisions hereof. For this purpose,

the authorized capital stock of NEA is hereby increased to Fifteen billion pesos (P15,000,000,000.00).

All electric cooperatives which have outstanding uncollected billings to any local government unit shall report such billings to NEA which shall, in turn, report the same to the Department of Budget and Management (DBM) for collection pursuant to Executive Order 190 issued on December 21, 1999.

The cost of administering and operating the wholesale electricity spot market shall be recovered by the market operator through a charge imposed to all market members: *Provided,* That such charge shall be filed with and approved by the ERC.

In cases of national and international security emergencies or natural calamities, the ERC is hereby empowered to suspend the operation of the wholesale electricity spot market or declare a temporary wholesale electricity spot market failure.

SEC. 31. *Retail Competition and Open Access.* – Any law to the contrary notwithstanding, retail competition and open access on distribution wires shall be implemented not later than three (3) years upon the effectivity of this Act, subject to the following conditions:

(a) Establishment of the wholesale electricity spot market;

(b) Approval of unbundled transmission and distribution wheeling charges;

(c) Initial implementation of the cross subsidy removal scheme;

(d) Privatization of at least seventy (70%) percent of the total capacity of generating assets of NPC in Luzon and Visayas; and

(e) Transfer of the management and control of at least seventy percent (70%) of the total energy output of power plants under contract with NPC to the IPP Administrators.

Upon the initial implementation of open access, the ERC shall allow all electricity end-users with a monthly average peak demand of at least one megawatt (1MW) for the preceding twelve (12) months to be the contestable market. Two (2) years thereafter, the threshold level for the contestable market shall be reduced to seven hundred fifty kilowatts (750kW). At this level, aggregators shall be allowed to supply electricity to end-users whose aggregate demand within a contiguous area is at least seven hundred fifty kilowatts (750kW). Subsequently and every year thereafter, the ERC shall evaluate the performance of the market. On the basis of such evaluation, it shall gradually reduce threshold level until it reaches the household demand level. In the case of electric cooperatives, retail competition and open access shall be implemented not earlier than five (5) years upon the effectivity of this Act.

SEC. 32. *NPC Stranded Debt and Contract Cost Recovery.* – Stranded debt of NPC shall refer to any unpaid financial obligations of NPC.

Stranded contract costs of NPC shall refer to the excess of the contracted cost of electricity under eligible IPP contracts of NPC over the actual selling price of the contracted energy output of such contracts in the market. Such contracts shall have been approved by the ERB as of December 31, 2000.

The national government shall directly assume a portion of the financial obligations of NPC in an amount not to exceed Two hundred billion pesos (P200,000,000,000,00)

The ERC shall verify the reasonable amounts and determine the manner and duration for the full recovery of stranded debt and stranded contract costs as defined herein: *Provided,* That the duration for such recovery shall not be shorter than fifteen (15) years nor longer than twenty-five (25) years. The ERC shall, at the end of the first year of the implementation of stranded cost recovery and every year thereafter, conducts a review to determine whether there is under-recovery or over-recovery and adjust (tune-

up) the level of stranded cost recovery charge accordingly. Any amount to be included for stranded cost recovery shall be reflected as a separate item in the consumer billing statement.

SEC. 33. *Distribution Utilities Stranded Contract Costs Recovery.* - Stranded contract costs of distribution utilities shall refer to the excess of the contracted cost of electricity under eligible contracts of such utilities over the actual selling price of such contracts in the market. Such contracts shall have been approved by the ERB as of December 31, 2000.

A distribution utility shall recover stranded contract costs: *Provided, however,* That such costs of the IPPs of distribution utilities are subject to review by ERC in order to determine fairness and reasonableness in relation to the average price of land-based IPP projects entered into by NPC at the time they were contracted. The ERC shall take into consideration all factors that affect the total cost of NPC IPP generation projects, including direct or indirect subsidies or incentives provided by the Government.

Within one (1) year from the start of open access, any distribution utility that seeks recovery of stranded contract costs shall file with the ERC notice of such intent together with an estimate of such obligations, including the present value thereof and such other supporting data as may be required by the ERC. Any distribution utility that does not file within the date specified shall not be eligible for such recovery.

Any distribution utility which seeks to recover stranded cost shall have a duty to mitigate its potential stranded contract costs by making reasonable best efforts to:

(a) reduce the costs of its existing contracts with IPPs to a level not exceeding the average buying price of other land-based electric power generators; and

(b) submit to an annual earnings review by the ERC and use its earnings above its authorized rate of return to reduce the book value of contracts until the end of the stranded cost recovery period.

Other mitigating measures which are reasonably known and generally accepted within the electric power industry shall be utilized. The ERC shall not require the distribution utility to take a loss to reduce stranded contract costs or divest assets, unless the divestiture is imposed as a penalty as provided herein.

The relevant distribution utility shall submit to the ERC quarterly reports showing the amount of stranded costs recovered and the balance remaining to be recovered.

Within three (3) months from the submission of the application for stranded cost recovery by the relevant distribution utilities, the ERC shall verify the reasonable amounts and determine the manner and duration for the full recovery of stranded contract costs as defined herein: *Provided,* That the duration for such recovery shall not be shorter than fifteen (15) years nor longer than twenty-five (25) years. Any amount to be included for stranded cost recovery shall be reflected as a separate item in the consumer billing statement.

The ERC shall, at the end of the first year of the implementation of stranded cost recovery and every year thereafter, conduct a review to determine whether there is under-recovery or over recovery and adjust (true-up) the level of stranded cost recovery charge accordingly. In case of an over-recovery, the ERC shall ensure that any excess amount shall be remitted to the Special Trust Fund created under Section 34 hereof. A separate account shall be created for these amounts which shall be held in trust for any future claims of distribution utilities for stranded cost recovery. At the end of the stranded cost recovery period, any remaining amount in this account shall be used to reduce the electricity rates to the end-users.

SEC. 34. *Universal Charge.* – Within one (1) year from the effectivity of this Act, a universal charge to be determined, fixed and approved by the ERC., shall be imposed on all electricity end-users for the following purposes:

(a) Payment for the stranded debts in excess of the amount assumed by the National Government and stranded contract costs of NPC and as well as qualified stranded contract costs of distribution utilities resulting from the restructuring of the industry;

(b) Missionary electrification;

(c) The equalization of the taxes and royalties applied to indigenous or renewable sources of energy vis-a-vis imported energy fuels;

(d) An environmental charge equivalent to one-fourth of one centavo per kilowatt-hour (P0.0025/kWh), which shall accrue to an environmental fund to be used solely for watershed rehabilitation and management. Said fund shall be managed by NPC under existing arrangements; and

(e) A charge to account for all forms of cross-subsidies for a period not exceeding three (3) years.

The universal charge shall be non-bypassable charge which shall be passed on and collected from all end-users on a monthly basis by the distribution utilities. Collections by the distribution utilities and the TRANSCO in any given month shall be remitted to the PSALM Corp. on or before the fifteenth (15th) of the succeeding month, net of any amount due to the distribution utility. Any end-user or self-generating entity not connected to a distribution utility shall remit its corresponding universal charge directly to the TRANSCO.

The PSALM Corp., as administrator of the fund, shall create a Special Trust Fund which shall be disbursed only for the purposes specified herein in an open and transparent manner. All amounts collected for the universal charge shall be distributed to the respective beneficiaries within a reasonable period to be provided by the ERC.

SEC. 35. *Royalties, Returns and Tax Rates for Indigenous Energy Resources.* – The provisions of Section 79 of Commonwealth Act No. 137 (C.A. No. 137) and any law to the contrary notwithstanding, the President of the Philippines shall reduce the royalties, returns and taxes collected for the exploitation of all indigenous sources of energy, including but not limited to, natural gas and geothermal steam, so as to effect parity of tax treatment with the existing rates for imported coal, crude oil, bunker fuel and other imported fuels.

To ensure lower rates for end-users, the ERC shall forthwith reduce the rates of power from all indigenous sources of energy.

SEC. 36. *Unbundling of Rates and Functions.* – Within six (6) months from the effectivity of this Act, NPC shall file with the ERC its revised rates. The rates of NPC shall be unbundled between transmission and generation rates and the rates shall reflect the respective costs of providing each service.

Inter-grid and intra-grid cross subsidies for both the transmission and the generation rates shall be removed in accordance with this Act.

Within six (6) months from the effectivity of this Act, each distribution utility shall file its revised rates for the approval by the ERC. The distribution wheeling charge shall be unbundled from the retail rate and the rates shall reflect the respective costs of providing each service. For both the distribution retail wheeling and supplier's charges, inter-class subsidies shall be removed in accordance with this Act.

Within six (6) months from the date of submission of revised rates by NPC and each distribution utility, the ERC shall notify the entities of their approval.

Any electric power industry participant shall functionally and structurally unbundle its business activities and rates in accordance with the sectors as identified in Section 5 hereof. The ERC shall ensure full compliance with this provision.

CHAPTER III

ROLE OF THE DEPARTMENT OF ENERGY

SEC. 37. *Powers and Functions of the DOE*.– In addition to its existing powers and functions, the DOE is hereby mandated to supervise the restructuring of the electricity industry. In pursuance thereof, Section 5 of RA 7638 otherwise known as "The Department of Energy Act of 1992" is hereby amended to read as follows:

(a) Formulate policies for the planning and implementation of a comprehensive program for the efficient supply and economical use of energy consistent with the approved national economic plan and with the policies on environmental protection and conservation and maintenance of ecological balance, and provide a mechanism for the integration, rationalization, and coordination of the various energy programs of the Government;

(b) Develop and update annually the existing Philippine Energy Plan, hereinafter referred to as 'The Plan', which shall provide for an integrated and comprehensive exploration, development, utilization, distribution, and conservation of energy resources, with preferential bias for environment-friendly, indigenous, and low-cost sources of energy. The plan shall include a policy direction towards the privatization of government agencies related to energy, deregulation of the power and energy industry, and reduction of dependency on oil-fired plants. Said Plan shall be submitted to Congress not later than the fifteenth day of September and every year thereafter;

(c) Prepare and update annually a Power Development Program (PDP) and integrate the same into the Philippine Energy Plan. The PDP shall consider and integrate the individual or joint development plans of the transmission, generation, and distribution sectors of the electric power industry, which are submitted to the Department: *Provided, however*, That the ERC shall have exclusive authority covering the Grid Code and the pertinent rules and regulations it may issue;

(d) Ensure the reliability, quality and security of supply of electric power;

(e) Following the restructuring of the electricity sector, the DOE shall, among others:

  (i) Encourage private sector investments in the electricity sector and promote development of indigenous and renewable energy sources;

  (ii) Facilitate and encourage reforms in the structure and operations of distribution utilities for greater efficiency and lower costs;

  (iii) In consultation with other government agencies, promote a system of incentives to encourage industry participants, including new generating companies and end-users to provide adequate and reliable electric supply; and

  (iv) Undertake in coordination with the ERC, NPC, NEA and the Philippine Information Agency (PIA), information campaign to educate the public on the restructuring of the electricity sector and privatization of NPC assets.

(f) Jointly with the electric power industry participants, establish the wholesale electricity spot market and formulate the

detailed rules governing the operations thereof;

(g) Establish and administer programs for the exploration, transportation, marketing, distribution, utilization, conservation, stockpiling, and storage of energy resources of all forms, whether conventional or non-conventional;

(h) Exercise supervision and control over all government activities relative to energy projects in order to attain the goals embodied in Section 2 of RA 7638;

(i) Develop policies and procedures and, as appropriate, promote a system of energy development incentives to enable and encourage electric power industry participants to provide adequate capacity to meet demand including, among others, reserve requirements;

(j) Monitor private sector activities relative to energy projects in order to attain the goals of the restructuring , privatization, and modernization of the electric power sector as provided for under existing laws: *Provided,* That the Department shall endeavor to provide for an environment conducive to free and active private sector participation and investment in all energy activities;

(k) Assess the requirements of, determine priorities for, provide direction to, and disseminate information resulting from energy research and development programs for the optimal development of various forms of energy production and utilization technologies;

(l) Formulate and implement programs, including a system of providing incentives and penalties, for the judicious and efficient use of energy in all energy-consuming sectors of the economy;

(m) Formulate and implement a program for the accelerated development of non-conventional energy systems and the promotion and commercialization of its applications;

(n) Devise ways and means of giving direct benefit to the province, city, or municipality, especially the community and people affected, and equitable preferential benefit to the region that hosts the energy resource and/or the energy-generating facility: *Provided, however*, That the other provinces, cities, municipalities, or regions shall not be deprived of their energy requirements;

(o) Encourage private enterprises engaged in energy projects, including corporations, cooperatives, and similar collective organizations, to broaden the base of their ownership and thereby encourage the widest public ownership of energy-oriented corporations;

(p) Formulate such rules and regulations as may be necessary to implement the objectives of this Act; and

(q) Exercise such other powers as may be necessary or incidental to attain the objectives of this Act.

CHAPTER IV

REGULATION OF THE ELECTRIC POWER INDUSTRY

SEC. 38. *Creation of the Energy Regulatory Commission.* There is hereby created an independent, quasi-judicial regulatory body to be named the Energy Regulatory Commissions (ERC). For this purpose, the existing Energy Regulatory Board (ERB) created under Executive Order No. 172, as amended, is hereby abolished.

The Commission shall be composed of a Chairman and four (4) members to be appointed by the President of the Philippines. The Chairman and the members of the Commission shall be natural-born citizens and residents of the Philippines, persons of good moral character, at least thirty-five (35) years

of age, and of recognized competence in any of the following fields: energy, law, economics, finance, commerce, or engineering, with at least three (3) years actual and distinguished experience in their respective fields of expertise: *Provided,* That out of the four (4) members of the Commission, at least one (1) shall be a member of the Philippine Bar with at least ten (10) years experience in the active practice of law, and one (1) shall be a certified public accountant with at least ten (10) years experience in active practice.

Within three (3) months from the creation of the ERC, the Chairman shall submit for the approval by the President of the Philippines the new organizational structure and plantilla positions necessary to carry out the powers and functions of the ERC.

The Chairman of the Commission, who shall be a member of the Philippine Bar, shall act as the Chief Executive Officer of the Commission.

All members of the Commission shall have a term of seven (7) years: *Provided,* That for the first appointees, the Chairman shall hold office for seven (7) years, two (2) members shall hold office for five (5) years and the other two (2) members shall hold office for three (3) years; *Provided, further,* That appointment to any future vacancy shall only be for the unexpired term of the predecessor: *Provided, finally,* That there shall be no reappointment and in no case shall any member serve for more than seven (7) years in the Commission.

The Chairman and members of the Commission shall assume office of the beginning of their terms: *Provided,* That, if upon the effectivity of this Act, the Commission has not been constituted and the new staffing pattern and plantilla positions have not been approved and filled-up, the current Board and existing personnel of ERB shall continue to hold office.

The existing personnel of the ERB, if qualified, shall be given preference in the filling up of plantilla positions created in the ERC, subject to existing civil service rules and regulations.

Members of the Commission shall enjoy security of tenure and shall not be suspended or removed from office except for just cause as specified by law.

The Chairman and members of the Commission or any of their relatives within the fourth civil degree of consanguinity or affinity, legitimate or common law, shall be prohibited from holding any interest whatsoever, either as investor, stockholder, officer or director, in any company or entity engaged in the business of transmitting, generating, supplying or distributing any form of energy and must, therefore, divest through sale or legal disposition of any and all interests in the energy sector upon assumption of office.

The presence of at least three (3) members of the Commission shall constitute a quorum and the majority vote of two (2) members in a meeting where a quorum is present shall be necessary for the adoption of any rule, ruling, order, resolution, decision, or other act of the Commission in the exercise of its quasi-judicial functions: *Provided,* That in fixing rates and tariffs, an affirmative vote of three (3) members shall be required.

SEC. 39. *Compensation and Other Emoluments for ERC Personnel*. – The compensation and other emoluments for the Chairman and members of the Commission and the ERC personnel shall be exempted from the coverage of Republic Act No. 6758, otherwise known as the "Salary Standardization Act". For this purpose, the schedule of compensation of the ERC personnel, except for the initial salaries and compensation of the Chairman and members of the Commission, shall be submitted for approval by the President of the Philippines. The new schedule of compensation shall be implemented within six (6) months from the effectivity of this Act and may be upgraded by the President of the Philippines as the need arises: *Provided,* That in no case shall the rate be upgraded more than once a year.

The Chairman and members of the Commission shall initially be entitled to the same salaries, allowances and benefits as those of the Presiding Justice and Associate Justices of the Supreme Court, respectively. The Chairman and the members of the Commission shall, upon completion of their term or upon becoming eligible for retirement under existing laws, be entitled to the same retirement benefits and the privileges provided for the Presiding Justice and Associate Justices of the Supreme Court, respectively.

SEC. 40. *Enhancement of Technical Competence.* – The ERC shall establish rigorous training programs for its staff for the purpose of enhancing the technical competence of the ERC in the following areas: evaluation of technical performance and monitoring of compliance with service and performance standards, performance-based rate-setting reform, environmental standards and such other areas as will enable the ERC to adequately perform its duties and functions.

SEC. 41. *Promotion of Consumer Interests.* – The ERC shall handle consumer complaints and ensure the adequate promotion of consumer interests.

SEC. 42. *Budget of the ERC.* – The amount of One hundred fifty million pesos (P150,000,000.00) is hereby allocated from the existing budget of the ERB for the initial operation of the ERC. Any balance shall initially be sourced from the Office of the President of the Philippines. Thereafter, the annual budget of the ERC shall be included in the regular or special appropriations.

SEC. 43. *Functions of the ERC.* – The ERC shall promote competition, encourage market development, ensure customer choice and penalize abuse of market power in the restructured electricity industry. In appropriate cases, the ERC is authorized to issue cease and desist order after due notice and hearing. Towards this end, it shall be responsible for the following key functions in the restuctured industry:

(a) Enforce the implementing rules and regulations of this Act;

(b) Within six (6) months from the effectivity of this Act, promulgate and enforce, in accordance with law, a National Grid Code and a Distribution Code which shall include, but not limited to, the following:

  (i) Performance standards for TRANSCO O & M Concessionaire, distribution utilities and suppliers: *Provided,* That in the establishment of the performance standards, the nature and function of the entities shall be considered; and

  (ii) Financial capability standards for the generating companies, the TRANSCO, distribution utilities and suppliers: *Provided, further,* That such standards are set to ensure that the electric power industry participants meet the minimum financial standards to protect the public interest. Determine, fix, and approve, after due notice and public hearings the universal charge, to be imposed on all electricity end-users pursuant to Section 34 hereof.

(c) Enforce the rules and regulations governing the operations of the electricity spot market and the activities of the spot market operator and other participants in the spot market, for the purpose of ensuring a greater supply and rational pricing of electricity;

(d) Determine the level of cross subsidies in the existing retail rate until the same is removed pursuant to Section 74 hereof;

(e) Amend or revoke, after due notice and hearing, the authority to operate of any person or entity which fails to comply with the provisions hereof, the IRR or any order or resolution of the ERC. In the event a divestment is required, the ERC shall allow the affected party sufficient time to remedy the infraction or for an

orderly disposal, but in no case exceed twelve (12) months from the issuance of the order;

(f) In the public interest, establish and enforce a methodology for setting transmission and distribution wheeling rates and retail rates for the captive market of a distribution utility, taking intro account all relevant considerations, including the efficiency or inefficiency of the regulated entities. The rates must be such as to allow the recovery of just and reasonable costs and a reasonable return on rate base (RORB) to enable the entity to operate viably. The ERC may adopt alternative forms of internationally-accepted rate-setting methodology as it may deem appropriate. The rate-setting methodology so adopted and applied must ensure a reasonable price of electricity. The rates prescribed shall be non-discriminatory. To achieve this objective and to ensure the complete removal of cross subsidies, the cap on the recoverable rate of system losses prescribed in Section 10 of Republic Act No. 7832, is hereby amended and shall be replaced by caps which shall be determined by the ERC based on load density, sales mix, cost of service, delivery voltage and other technical considerations it may promulgate. The ERC shall determine such form or rate-setting methodology, which shall promote efficiency. In case the rate setting methodology used is RORB, it shall be subject to the following guidelines:

(i) For purposes of determining the rate base, the TRANSCO or any distribution utility may be allowed to revalue its eligible assets not more than once every three (3) years by an independent appraisal company: *Provided, however,* That ERC may give an exemption in case of unusual devaluation: *Provided, further,* That the ERC shall exert efforts to minimize price shocks in order to protect the consumers;

(ii) Interest expenses are not allowable deductions from permissible return on rate base;

(iii) In determining eligible cost of services that will be passed on to the end-users, the ERC shall establish minimum efficiency performance standards for the TRANSCO and distribution utilities including systems losses, interruption frequency rates, and collection efficiency;

(iv) Further, in determining rate base, the TRANSCO or any distribution utility shall not be allowed to include management inefficiencies like cost of project delays not excused by force majeure, penalties and related interest during construction applicable to these unexcused delays; and

(v) Any significant operating costs or project investments of the TRANSCO and distribution utilities which shall become part of the rate base shall be subject to verification by the ERC to ensure that the contracting and procurement of the equipment, assets and services have been subjected to transparent and accepted industry procurement and purchasing practices to protect the public interest.

(g) Three (3) years after the imposition of the universal charge, ensure that the charges of the TRANSCO or any distribution utility shall bear no cross subsidies between grids, within grids, or between classes of customers, except as provided herein;

(h) Review and approve any changes on the terms and conditions of service of the TRANSCO or any distribution utility;

(i) Allow the TRANSCO to charge user fees for ancillary services to all electric power

industry participants or self-generating entities connected to the grid. Such fees shall be fixed by the ERC after due notice and public hearing;

(j) Set a lifeline rate for the marginalized end-users;

(k) Monitor and take measures in accordance with this Act to penalize abuse of market power, cartelization, and anti-competitive or discriminatory behavior by any electric power industry participant;

(l) Impose fines or penalties for any non-compliance with or breach of this Act, the IRR of this Act and the rules and regulations which it promulgates or administers;

(m) Take any other action delegated to it pursuant to this Act;

(n) Before the end of April of each year, submit to the Office of the President of the Philippines and Congress, copy furnished the DOE, an annual report containing such matters or cases which have been filed before or referred to it during the preceding year, the actions and proceedings undertaken and its decision or resolution in each case. The ERC shall make copies of such reports available to any interested party upon payment of a charge which reflects the printing costs. The ERC shall publish all its decisions involving rates and anticompetitive cases in at least one (1) newspaper of general circulation, and/or post electronically and circulate to all interested electric power industry participants copies of its resolutions to ensure fair and impartial treatment;

(o) Monitor the activities in the generation and supply of the electric power industry with the end in view of promoting free market competition and ensuring that the allocation or pass through of bulk purchase cost by distributors is transparent, non-discriminatory and that any existing subsidies shall be divided pro-rata among all retail suppliers;

(p) Act on applications for or modifications of certificates of public convenience and/or necessity, licenses or permits of franchised electric utilities in accordance with law and revoke, review and modify such certificates, licenses or permits in appropriate cases, such as in cases of violations of the Grid Code, Distribution Code and other rules and regulations issued by the ERC in accordance with law;

(q) Act on applications for cost recovery and return on demand side management projects;

(r) In the exercise of its investigative and quasi-judicial powers, act against any participant or player in the energy sector for violations of any law, rule and regulation governing the same, including the rules on cross-ownership, anti-competitive practices, abuse of market positions and similar or related acts by any participant in the energy sector or by any person, as may be provided by law, and require any person or entity to submit any report or data relative to any investigation or hearing conducted pursuant to this Act;

(s) Inspect, on its own or through duly authorized representatives, the premises, books of accounts and records of any person or entity at any time, in the exercise of its quasi-judicial power for purposes of determining the existence of any anti-competitive behavior and/or market power abuse and any violation of rules and regulations issued by the ERC;

(t) Perform such other regulatory functions as are appropriate and necessary in order to ensure the successful restructuring and modernization of the electric power industry, such as, but not limited to, the rules and guidelines under which generation companies, distribution utilities which are not publicly listed shall

offer and sell to the public a portion not less than fifteen percent (15%) of their common shares of stocks: *Provided, however,* That generation companies, distribution utilities or their respective holding companies that are already listed in the PSE are deemed in compliance. For existing companies, such public offering shall be implemented not later than five (5) years from the effectivity of this Act. New companies shall implement their respective public offerings not later than five (5) years from the issuance of their certificate of compliance; and

(u) The ERC shall have the original and exclusive jurisdiction over all cases contesting rates, fees, fines and penalties imposed by the ERC in the exercise of the above mentioned powers, functions and responsibilities and over all cases involving disputes between and among participants or players in the energy sector.

All notices of hearings to be conducted by the ERC for the purpose of fixing rates or fees shall be published at least twice for two successive weeks in two (2) newspapers of nationwide circulation.

SEC. 44. *Transfer of Powers and Functions*. – The powers and functions of the Energy Regulatory Board not inconsistent with the provisions of this Act are hereby transferred to the ERC. The foregoing transfer of powers and functions shall include all applicable funds and appropriations, records, equipment, property and personnel as may be necessary.

SEC. 45. *Cross Ownership, Market Power Abuse and Anti-Competitive Behavior.* – No participant in the electricity industry or any other person may engage in any anti-competitive behavior including, but not limited to, cross-subsidization, price or market manipulation, or other unfair trade practices detrimental to the encouragement and protection of contestable markets.

No generation company, distribution utility, or its respective subsidiary or affiliate or stockholder or official of a generation company or distribution utility, or other entity engaged in generating and supplying electricity specified by ERC within the fourth civil degree of consanguinity or affinity, shall be allowed to hold any interest, directly or indirectly, in TRANSCO or its concessionaire. Likewise, the TRANSCO, or its concessionaire or any of its stockholders or officials or any of their relatives within the fourth civil degree of consanguinity or affinity, shall not hold any interest, whether directly or indirectly, in any generation company or distribution utility. Except for *ex officio* government-appointed representatives, no person who is an officer or director of the TRANSCO or its concessionaire shall be an officer or director of any generation company, distribution utility or supplier.

An "affiliate" means any person which, alone or together with any other person, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another person. As used herein, "control" shall mean the power to direct or cause the direction of the management policies of a person by contract, agency or otherwise.

To promote true market competition and prevent harmful monopoly and market power abuse, the ERC shall enforce the following safeguards:

(a) No company or related group can own, operate or control more than thirty percent (30%) of the installed generating capacity of a grid and/or twenty-five percent (25%) of the national installed generating capacity. "Related group" includes a person's business interests, including its subsidiaries, affiliates, directors or officers or any of their relatives by consanguinity or affinity, legitimate or common law, within the fourth civil degree;

(b) Distribution utilities may enter into bilateral power supply contracts subject to review by the ERC: *Provided,* That such review shall only be required for distribution utilities whose markets have not reached household demand level. For the purpose of preventing market power abuse between associated firms engaged in generation and distribution, no distribution utility shall be allowed to source from bilateral power supply contracts more than fifty percent (50%) of its total demand from an associated firm engaged in generation but such limitation, however, shall not prejudice contracts entered into prior to the effectivity of this Act. An associated firm with respect to another entity refers to any person which, alone or together with any other person, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such entity; and

(c) For the first five (5) years from the establishment of the wholesale electricity spot market, no distribution utility shall source more than ninety percent (90%) of its total demand from bilateral power supply contracts.

For purposes of this Section, the grid basis shall consist of three (3) separate grids, namely Luzon, Visayas and Mindanao. The ERC shall have the authority to modify or amend this definition of a grid when two or more of the three separate grids become sufficiently interconnected to constitute a single grid or as conditions may otherwise permit.

Exceptions from these limitations shall be allowed for isolated grids that are not connected to the high voltage transmission system. Except as otherwise provided for in this Section, any restriction on ownership and/or control between or within sectors of the electricity industry may be imposed by ERC only insofar as the enforcement of the provisions of this Section is concerned.

The ERC shall, within one (1) year from the effectivity of this Act., promulgate rules and regulations to ensure and promote competition, encourage market development and customer choice and discourage/penalize abuse of market power, cartelization and any anti-competitive or discriminatory behavior, in order to further the intent of this Act and protect the public interest. Such rules and regulations shall define the following:

(a) the relevant markets for purposes of establishing abuse or misuse of monopoly or market position;

(b) areas of isolated grids; and

(c) the periodic reportorial requirements of electric power industry participants as may be necessary to enforce the provisions of this Section.

The ERC shall, *motu proprio*, monitor and penalize any market power abuse or anti-competitive or discriminatory act or behavior by any participant in the electric power industry. Upon finding that a market participant has engaged in such act or behavior, the ERC shall stop and redress the same. Such remedies shall, without limitation, include the imposition of price controls, issuance of injunctions, requirement of divestment or disgorgement of excess profits and imposition of fines and penalties pursuant to this Act.

The ERC shall, within one (1) year from the effectivity of this Act, promulgate rules and regulations providing for a complaint procedure that, without limitation, provides the accused party with notice and an opportunity to be heard.

SEC. 46. *Fines and Penalties.* – The fines and penalties that shall be imposed by the ERC for any violation of or non-compliance with this Act or the IRR shall range from a minimum of fifty thousand pesos (P50,000.00) to a maximum of Fifty million pesos (P50,000,000.00) .

Any person who is found guilty of any of the prohibited acts pursuant to Section 45 hereof shall suffer the penalty of *prision mayor* and fine ranging from Ten thousand pesos (P10,000.00) to Ten million pesos (P10,000,000.00) , or both, at the discretion of the court.

The members of the Board of Directors of the juridical companies participating in or covered in the generation companies, the distribution utilities, the TRANSCO or its concessionaire or supplier who violate the provisions of this Act may be fined by an amount not exceeding double the amount of damages caused by the offender or by imprisonment of one (1) year or two (2) years or both at the discretion of the court. This rule shall apply to the members of the Board who knowingly or by neglect allows the commission or omission under the law.

If the offender is a government official or employee, he shall, in addition, be dismissed from the government service with prejudice to reinstatement and with perpetual or temporary disqualification from holding any elective or appointive office.

If the offender is an alien, he may, in addition to the penalties prescribed, be deported without further proceedings after service of sentence.

Any case which involves question of fact shall be appealable to the Court of Appeals and those which involve question of law shall be directly appealable to the Supreme Court.

The administrative sanction that may be imposed by the ERC shall be without prejudice to the filing of a criminal action, if warranted.

To ensure compliance with this Act, the penalty of *prision correccional* or a fine ranging from Five thousand pesos (P5,000.00) to Five million pesos (P5,000,000.00), or both, at the discretion of the court, shall be imposed on any person, including but not limited to the president, member of the Board, Chief Executive Officer or Chief Operating Officer of the corporation, partnership, or any other entity involved, found guilty of violating or refusing to comply with any provision of this Act or its IRR, other than those provided herein.

Any party to an administrative proceeding may, at any time, make an offer to the ERC, conditionally or otherwise, for a consented decree, voluntary compliance or desistance and other settlement of the case. The offer and any or all of the ultimate facts upon which the offer is based shall be considered for settlement purposes only and shall not be used as evidence against any party for any other purpose and shall not constitute an admission by the party making the offer of any violation of the laws, rules, regulations, orders and resolutions of the ERC, nor as a waiver to file any warranted criminal actions.

In addition, Congress may, upon recommendation of the DOE and/or ERC, revoke such franchise or privilege granted to the party who violated the provisions of this Act.

CHAPTER V

PRIVATIZATION OF THE ASSETS OF THE NATIONAL POWER CORPORATION

SEC. 47. *NPC Privatization.* – Except for the assets of SPUG, the generation assets, real estate, and other disposable assets as well as IPP contracts of NPC shall be privatized in accordance with this Act.

Within six (6) months from the effectivity of this Act, the PSALM Corp. shall submit a plan for the endorsement by the Joint Congressional Power Commission and the approval of the President of the Philippines, on the total privatization of the generation assets, real estate, other disposable assets as well as existing IPP contracts of NPC and thereafter, implement the same, in accordance with the following guidelines, except as provided for in Paragraph (f) herein:

(a) The privatization value to the National Government of the NPC generation

assets, real estate, other disposable assets as well as IPP contracts shall be optimized;

(b) The participation by Filipino citizens and corporations in the purchase of NPC assets shall be encouraged:

In the case of foreign investors, at least seventy-five percent (75%) of the funds used to acquire NPC-generation assets and IPP contracts shall be inwardly remitted and registered with the Bangko Sentral ng Pilipinas.

(c) The NPC plants and/or IPP contracts assigned to IPP Administrators, its related assets and assigned liabilities, if any, shall be grouped in a manner which shall promote the viability of the resulting generation companies (gencos), ensure economic efficiency, encourage competition, foster reasonable electricity rates and create market appeal to optimize returns to the government from the sale and disposition of such assets in a manner consistent with the objectives of this Act. In the grouping of the generation assets and IPP contracts of NPC, the following criteria shall be considered:

1) A sufficient scale of operations and balance sheet strength to promote the financial viability of the restructured units;

2) Broad geographical groupings to ensure efficiency of operations but without the formation of regional companies or consolidation of market power;

3) Portfolio of plants and IPP contracts to achieve management and operational synergy without dominating any part of the market or of the load curve; and

4) Such other factors as may be deemed beneficial to the best interest of the National Government while ensuring attractiveness to potential investors.

(d) All assets of NPC shall be sold in an open and transparent manner through public bidding, and the same shall apply to the disposition of IPP contracts;

(e) In cases of transfer of possession, control, operation or privatization of multi-purpose hydro facilities, safeguards shall be prescribed to ensure that the national government may direct water usage in cases of shortage to protect potable water, irrigation, and all other requirements imbued with public interest;

(f) The Agus and the Pulangui complexes in Mindanao shall be excluded from among the generation companies that will be initially privatized. Their ownership shall be transferred to the PSALM Corp. and both shall continue to be operated by the NPC. Said complexes may be privatized not earlier than ten (10) years from the effectivity of this Act, and except for Agus III, shall not be subject to Build-Operate-Transfer (B-O-T), Build-Rehabilitate-Operate- Transfer (B-R-O-T) and other variations thereof pursuant to Republic Act No. 6957, as amended by Republic Act No. 7718. The privatization of Agus and Pulangui complexes shall be left to the discretion of PSALM Corp. in consultation with Congress;

(g) The steamfield assets and generating plants of each geothermal complex shall not be sold separately. They shall be combined and each geothermal complex shall be sold as one package through public bidding. The geothermal complexes covered by this requirement include, but are not limited to, Tiwi-Makban, Leyte A and B (Tongonan), Palinpinon, and Mt. Apo;

(h) The ownership of the Caliraya-Botokan-Kalayaan (CBK) pump storage complex shall be transferred to the PSALM Corporation;

(i) Not later than three (3) years from the effectivity of this Act, and in no case later than the initial implementation of open access, at least seventy percent (70%) of the total capacity of generating assets of NPC and of the total capacity of the power plants under contract with NPC located in Luzon and Visayas shall have been privatized: *Provided,* That any unsold capacity shall be privatized not later than eight (8) years from the effectivity of this Act; and

(j) NPC may generate and sell electricity only from the undisposed generating assets and IPP contracts of PSALM Corp. and shall not incur any new obligations to purchase power through bilateral contracts with generation companies or other suppliers.

SEC. 48. *National Power Board of Directors*. – Upon the passage of this Act, Section 6 of R.A. 6395, as amended, and Section 13 of RA 7638, as amended, referring to the composition of the National Power Board of Directors, are hereby repealed and a new Board shall be immediately organized. The new Board shall be composed of the Secretary of Finance as Chairman, with the following as members: the Secretary of Energy, the Secretary of Budget and Management, the Secretary of Agriculture, the Director- General of the National Economic and Development Authority, the Secretary of Environment and Natural Resources, the Secretary of Interior and Local Government, the Secretary of the Department of Trade and Industry, and the President of the National Power Corporation.

CHAPTER VI

POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT

SEC. 49. *Creation of Power Sector Assets and Liabilities Management Corporation.* – There is hereby created a government-owned and -controlled corporation to be known as the "Power Sector Assets and Liabilities Management Corporation", hereinafter referred to as the "PSALM Corp.", which shall take ownership of all existing NPC generation assets, liabilities, IPP contracts, real estate and all other disposable assets. All outstanding obligations of the NPC arising from loans, issuances of bonds, securities and other instruments of indebtedness shall be transferred to and assumed by the PSALM Corp. within one hundred eighty (180) days from the approval of this Act.

SEC. 50. *Purpose and Objective, Domicile and Term of Existence*. – The principal purpose of the PSALM Corp. is to manage the orderly sale, disposition, and privatization of NPC generation assets, real estate and other disposable assets, and IPP contracts with the objective of liquidating all NPC financial obligations and stranded contract costs in an optimal manner.

The PSALM Corp. shall have its principal office and place of business within Metro Manila.

The PSALM Corp. shall exist for a period of twenty five (25) years from the effectivity of this Act, unless otherwise provided by law, and all assets held by it, all moneys and properties belonging to it, and all its liabilities outstanding upon the expiration of its term of existence shall revert to and be assumed by the National Government.

SEC. 51. *Powers.* – The Corporation shall, in the performance of its functions and for the attainment of its objective, have the following powers:

(a) To formulate and implement a program for the sale and privatization of the NPC assets and IPP contracts and the liquidation of NPC debts and stranded contract costs, such liquidation to be completed within the term of existence of the PSALM Corp.;

(b) To take title to and possession of, administer and conserve the assets transferred to it; to sell or dispose of the same at such price and under such terms and conditions as it may deem necessary

or proper, subject to applicable laws, rules and regulations;

(c) To take title to and possession of the NPC IPP contracts and to appoint, after public bidding in transparent and open manner, qualified independent entities who shall act as the IPP Administrators in accordance with this Act;

(d) To calculate the amount of the stranded debts and stranded contract costs of NPC which shall form the basis for ERC in the determination of the universal charge;

(e) To liquidate the NPC stranded contract costs utilizing proceeds from sales and other property contributed to it, including the proceeds from the universal charge;

(f) To adopt rules and regulations as may be necessary or proper for the orderly conduct of its business or operations;

(g) To sue and be sued in its name;

(h) To appoint or hire, transfer, remove and fix the compensation of its personnel: *Provided, however,* That the Corporation shall hire its own personnel only if absolutely necessary, and as far as practicable, shall avail itself of the services of personnel detailed from other government agencies;

(i) To own, hold, acquire, or lease real and personal properties as may be necessary or required in the discharge of its functions;

(j) To borrow money and incur such liabilities, including the issuance of bonds, securities or other evidences of indebtedness utilizing its assets as collateral and/or through the guarantees of the National Government: *Provided, however,* That all such debts or borrowings shall have been paid off before the end of its corporate life;

(k) To restructure existing loans of NPC;

(l) To collect, administer, and apply NPC's portion of the universal charge; and

(m) To restructure the sale, privatization or disposition of NPC assets and IPP contracts and/or their energy output based on such terms and conditions which shall optimize the value and sale prices of said assets.

SEC. 52. *Power Sector Assets and Liabilities Management Corporation, Meetings, Quorum and Voting.* – The Corporation shall be administered, and its powers and functions exercised, by a Board of Directors which shall be composed of the Secretary of Finance as the Chairman, the Secretary of Budget and Management, the Secretary of the Department of Energy, the Director-General of the National Economic and Development Authority, the Secretary of the Department of Justice, the Secretary of the Department of Trade and Industry and the President of the PSALM Corp. as *ex officio* members thereof.

The Board of Directors shall meet regularly and as frequently as may be necessary to enable it to discharge its functions and responsibilities. The presence at a meeting of four (4) members shall constitute a quorum, and the decision of the majority of three (3) members present at a meeting where there is quorum shall be the decision of the Board of Directors .

SEC. 53. *Powers of the President of PSALM Corp.* – The President of PSALM Corp. shall be appointed by the President of the Philippines. In the absence of the Chairman, the President shall preside over Board meetings.

The PSALM Corp. President shall be the Chief Executive Officer of PSALM Corp. and shall have the following powers and duties:

(a) To execute and administer the policies and measures approved by the Board, and take responsibility for the efficient discharge of management functions;

(b) To oversee the preparation of the budget of PSALM Corp.;

(c) To direct and supervise the operation and internal administration of PSALM Corp. and, for this purpose, may delegate some or any of his administrative responsibilities and duties to other officers of PSALM Corp;

(d) Subject to the guidelines and policies set up by the Board, to appoint and fix the number and compensation of subordinate officials and employees of PSALM Corp; and for cause, to remove, suspend, or otherwise discipline any subordinate employee of PSALM Corp;

(e) To submit an annual report to the Board on the activities and achievements of PSALM Corp. at the close of each fiscal year and upon approval thereof, submit a copy to the President of the Philippines and to such other agencies as may be required by law;

(f) To represent PSALM Corp. in all dealings and transactions with other offices, agencies, and instrumentalities of the Government and with all persons and other entities, private or public, domestic or foreign; and

(g) To exercise such other powers and duties as may be vested in him by the Board from time to time.

SEC. 54. *Exemption from the Salary Standardization Law*. – The salaries and benefits of employees in the PSALM Corp. shall be exempt from Republic Act No. 6758 and shall be fixed by the PSALM Corp. Board.

SEC. 55. *Property of the PSALM Corp.* – The following funds, assets, contributions and other property shall constitute the property of the PSALM Corp.:

(a) The generation assets, real estate, IPP contracts, other disposable assets of NPC, proceeds from the sale or disposition of such assets and the residual assets from B-O-T, R-O-T, and other variations thereof;

(b) Transfers from the National Government;

(c) Proceeds from loans incurred to restructure or refinance NPC's transferred liabilities: *Provided, however,* That all borrowings shall be fully paid for by the end of the life of the PSALM Corp.;

(d) Proceeds from the universal charge allocated for stranded contract costs and the stranded debts of NPC;

(e) Net profit of NPC;

(f) Net profit of TRANSCO;

(g) Official assistance, grants, and donations from external sources; and

(h) Other sources of funds as may be determined by PSALM Corp. necessary for the above- mentioned purposes.

SEC. 56. *Claims Against the PSALM Corp.* – The following shall constitute the claims against the PSALM Corp.:

(a) NPC liabilities transferred to the PSALM Corp.;

(b) Transfers from the national government;

(c) New loans; and

(d) NPC stranded contract costs.

CHAPTER VII

PROMOTION OF RURAL ELECTRIFICATION

SEC. 57. *Conversion of Electric Cooperatives.* – Electric cooperatives are hereby given the option to convert into either stock cooperative under the *Cooperatives Development Act* or stock corporation under the *Corporation Code*. Nothing contained in this Act shall deprive electric cooperatives of any privilege or right granted to them under Presidential Decree No. 269, as amended, and other existing laws.

SEC. 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 electric 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.

SEC. 59. *Alternative Electric Service for Isolated Villages.* – The provision of electric service in remote and unviable villages that the franchised utility is unable to service for any reason shall be opened to other qualified third parties.

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 Corp. 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 thereof shall repay PSALM Corp. the total debts including accrued interests thereon.

CHAPTER VIII

GENERAL PROVISIONS

SEC. 61. *Reportorial Requirements*. – The DOE shall take the necessary measures to ensure that the provisions of this Act are properly implemented, and shall submit to the Power Commission a semiannual report on the implementation of this Act, on or before the last week of April and October of each year.

SEC. 62. *Joint Congressional Power Commission.* – Upon the effectivity of this Act, a congressional commission, hereinafter referred to as the "Power Commission", is hereby constituted. The Power Commission shall be composed of fourteen (14) members with the chairmen of the Committee on Energy of the Senate and the House of Representatives and six (6) additional members from each House, to be designated by the Senate President and the Speaker of the House of Representatives, respectively. The minority shall be entitled to *pro rata* representation but shall have at least one (1) representative in the Power Commission.

The Commission shall, in aid of legislation, perform the following functions, among others:

(a) Set the guidelines and overall framework to monitor and ensure the proper implementation of this Act;

(b) Endorse the initial privatization plan within one (1) month from submission of such plan to the Power Commission by PSALM Corp. for approval by the President of the Philippines;

(c) To ensure transparency, require the submission of reports from government agencies concerned on the conduct of public bidding procedures regarding privatization of NPC generation and transmission assets;

(d) Review and evaluate the performance of the industry participants in relation to the objectives and timelines set forth in

this Act;

(e) Approve the budget for the programs of the Power Commission and all disbursements therefrom, including compensation of all personnel;

(f) Submit periodic reports to the President of the Philippines and Congress;

(g) Determine inherent weaknesses in the law and recommend necessary remedial legislation or executive measures; and

(h) Perform such other duties and functions as may be necessary to attain its objectives.

In furtherance hereof, the Power Commission is hereby empowered to require the DOE, ERC, NEA, TRANSCO, generation companies, distribution utilities, suppliers and other electric power industry participants to submit reports and all pertinent data and information relating to the performance of their respective functions in the industry. Any person who willfully and deliberately refuses without just cause to extend the support and assistance required by the Power Commission to effectively attain its objectives shall, upon conviction, be punished by imprisonment of not less than one (1) year but not more than six (6) years or a fine of not less than Fifty thousand pesos (P50,000.00) but not more than Five hundred thousand pesos (P500,000.00) or both at the discretion of the court.

The Power Commission shall adopt its internal rules of procedures; conduct hearings and receive testimonies, reports and technical advice; invite or summon by subpoena *ad testificandum* any public official, private citizen or any other person to testify before it, or require any person by subpoena *duces tecum* to produce before it such records, reports, documents or other materials as it may require; and generally require all the powers necessary to attain the purposes for which it is created. The Power Commission shall be assisted by a secretariat to be composed of personnel who may be seconded from the Senate and the House of Representatives and may retain consultants. The secretariat shall be headed by an executive director who has sufficient background and competence on the policies and issues relating to electricity industry reforms as provided in this Act. To carry out its powers and functions, the initial sum of twenty-five million pesos (P25,000,000.00) shall be charged against the current appropriations of the Senate. Thereafter, such amount necessary for its continued operation shall be included in the annual *General Appropriations Act.*

The Power Commission shall exist for period of ten (10) years from the effectivity of this Act and may be extended by a joint concurrent resolution.

SEC. 63. *Separation Benefits of Officials and Employees of Affected Agencies.* – National government employees displaced or separated from the service as a result of the restructuring of the electricity industry and privatization of NPC assets pursuant to this Act, shall be entitled to either a separation pay and other benefits in accordance with existing laws, rules or regulations or be entitled to avail of the privileges provided under a separation plan which shall be one and one-half month salary for every year of service in the government: *Provided, however,* That those who avail of such privilege shall start their government service anew if absorbed by any government-owned successor company. In no case shall there be any diminution of benefits under the separation plan until the full implementation of the restructuring and privatization.

Displaced or separated personnel as a result of the privatization, if qualified, shall be given preference in the hiring of the manpower requirements of the privatized companies.

The salaries of employees of NPC shall continue to be exempt from the coverage of Republic Act No. 6758, otherwise known as "The Salary Standardization Act".

With respect to employees who are not retained by NPC, the government, through the Department of Labor and Employment, shall endeavor to implement re-training, job counseling, and job placement programs.

SEC. 64. *Fiscal Prudence.* – To promote the prudent management of government resources, the creation of new positions and the levels of or increase in salaries and all other emoluments and benefits of TRANSCO and PSALM Corp. personnel shall be subject to the approval of the President of the Philippines. The compensation and all other emoluments and benefits of the officials and members of the Board of the TRANSCO and PSALM Corp. shall be subject to the approval of the President of the Philippines.

SEC. 65. *Environmental Protection.* – Participants in the generation, distribution and transmission sub-sectors of the industry shall comply with all environmental laws, rules, regulations and standards promulgated by the Department of Environment and Natural Resources including, in appropriate cases, the establishment of an environmental guarantee fund.

SEC. 66. *Benefits to Host Communities.* – The obligations of generation companies and energy resource developers to communities hosting energy generating facilities and/or energy resource developers as defined under Chapter II, Sections 289 to 294 of the *Local Government Code* and Section 5(i) of Republic Act No. 7638 and their implementing rules and regulations and applicable orders and circulars consistent with this Act shall continue: *Provided,* That the obligations mandated under Chapter II, Section 291 of Republic Act No. 7160, shall apply to privately-owned corporations or entities utilizing the national wealth of the locality.

To ensure the effective implementation of the reduction in cost of electricity in the communities where the source of energy is located, the mechanics and procedures prescribed in the Department of the Interior and Local Government (DILG)-DOE Circulars No. 95-01 and 98-01 dated October 31, 1995 and September 30, 1998, respectively and other issuances related thereto shall be pursued.

Towards this end, the fund generated from the eighty percent (80%) of the national wealth tax shall, in no case, be used by any local government unit for any purpose other than those for which it was intended.

In case of any violation or noncompliance by any local government official of any provision thereof, the DILG shall, upon prior notice and hearing, order the project operator, through the DOE, to withhold the remittance of the royalty payment to the host community concerned pending completion of the investigation. The unremitted funds shall be deposited in a government bank under a trust fund.

SEC. 67. *NPC Offer of Transition Supply Contracts.* – Within six (6) months from the effectivity of this Act, NPC shall file with the ERC for its approval a transition supply contract duly negotiated with the distribution utilities containing the terms and conditions of supply and a corresponding schedule of rates, consistent with the provisions hereof, including adjustments and/or indexation formulas which shall apply to the term of such contracts. The term of the transition supply contracts shall not extend beyond one (1) year from the introduction of open access. Such contracts shall be based on the projected demand of such utilities less any of their currently committed quantities under eligible IPP contracts as defined in Section 33 hereof: *Provided*, That the total generation capacity of such signed transition supply contracts shall not exceed the level of NPC owned, controlled or committed capacity as of the effectivity of this Act. Such transition supply contracts shall be assignable to the NPC successor generating companies.

Within six (6) months from the date of submission of the transition supply contract by NPC, the ERC shall notify NPC of their approval of the rates contained therein.

The ERC shall maintain a record of the contract terms and rates offered by NPC. Likewise, the ERC shall update monthly, the rates using the appropriate adjustment and/or indexation formula.

Notwithstanding the provisions of Section 25 hereof, the rates charged by a distribution utility for the generation component of the supply of electricity in their distribution retail supply rate shall, for the term of the transition supply contracts, not exceed the transition supply contract rates, as updated monthly.

The recovery of costs incurred by a distribution utility for any generation component in excess of the transition supply contract rates shall be disallowed by the ERC, except for eligible contracts as defined under Section 33 hereof: *Provided,* That such limitation on the recovery of generation component costs by a distribution utility shall apply only to the equivalent quality and quantity of electricity still available to the distribution utility from NPC.

SEC. 68. *Review of IPP Contracts.* – An inter-agency committee chaired by the Secretary of Finance, with the Secretary of the Department of Justice and the Director-General of the National Economic Development Authority as members thereof is hereby created upon the effectivity of this Act.

The Committee shall immediately undertake a thorough review of all IPP contracts. In cases where such contracts are found to have provisions which are grossly disadvantageous, or onerous to the Government, the Committee shall cause the appropriate government agency to file an action under the arbitration clauses provided in said contracts or initiate any appropriate action under Philippine laws. The PSALM Corporation shall diligently seek to reduce stranded costs, if any.

SEC. 69. *Renegotiation of Power Purchase and Energy Conversion Agreements between Government Entities.* – Within three (3) months from the effectivity of this Act, all power purchase and energy conversion agreements between the PNOC-Energy Development Corporation (PNOC-EDC) and NPC, including but not limited to the Palimpinon, Tongonan and Mt. Apo Geothermal complexes, shall be reviewed by the ERC and the terms thereof amended to remove any hidden costs or extraordinary mark-ups in the cost of power or steam above their true costs. All amended contracts shall be submitted to the Joint Congressional Power Commission for approval. The ERC shall ensure that all savings realized from the reduction of said mark-ups shall be passed on to all end-users.

SEC. 70. *Missionary Electrification*. – Notwithstanding the divestment and/or privatization of NPC assets, IPP contracts and spun-off corporations, NPC shall remain as a National Government-owned and -controlled corporation to perform the missionary electrification function through the Small Power Utilities Group (SPUG) and shall be responsible for providing power generation and its associated power delivery systems in areas that are not connected to the transmission system. The missionary electrification function shall be funded from the revenues from sales in missionary areas and from the universal charge to be collected from all electricity end-users as determined by the ERC.

SEC. 71. *Electric Power Crisis* – Upon the determination by the President of the Philippines of an imminent shortage of the supply of electricity, Congress may authorize, through a joint resolution, the establishment of additional generating capacity under such terms and conditions as it may approve.

SEC. 72. *Mandated Rate Reduction.* – Upon the effectivity of this Act, residential end-users shall be granted a rate reduction from NPC rates of thirty centavos per kilowatt-hour (P0.30/kWh). Such reduction shall be reflected as a separate item in the consumer billing statement.

Sec. 73. *Lifeline Rate* – A socialized pricing mechanism called a lifeline rate for the

marginalized end-users shall be set by the ERC, which shall be exempted from the cross subsidy phase-out under this Act for a period often (10) years, unless extended by law. The level of consumption and the rate shall be determined by the ERC after due notice and hearing.

Sec. 74. *Cross Subsidies* – Cross subsidies within a grid between grids and / or classes of customers shall be phased out in a period not exceeding three (3) years from the establishment by the ERC of a universal charge which shall be collected from all electricity end-users. Such level of cross subsidies shall be made transparent and identified separately in the billing statements provided to end-users by the suppliers.

The ERC may extend the period for the removal of cross subsidies for a maximum period of one (1) year upon finding that cessation of such mechanism would have a material adverse effect upon the public interest, particularly the residential end-user; or would have an immediate, irreparable, and adverse financial effect on distribution utility.

CHAPTER IX

FINAL PROVISIONS

SEC. 75. *Statutory Construction* - This Act shall, unless the context indicates otherwise, be construed in favor of the establishment, promotion, preservation of competition and people empowerment so that the widest participation of the people, whether directly or indirectly, is ensured. With respect to NPC's debts and IPP and related contracts, nothing in this Act shall be construed as: (1) an implied waiver of any right, action or claim, against any person or entity, of NPC or the Philippine Government arising from or relating to any such contracts; or (2) a conferment of new or better rights to creditors and IPP contractors in addition to subsisting rights granted by the NPC or the Philippine Government under existing contracts.

SEC. 76. *Education and Protection of End Users*.- End-users shall be educated about the implementation of retail access and its impact on end-users and on the proper use of electric power. Such education shall include, but not limited to, the existence of competitive electricity suppliers, choice of competitive electricity services, regulated transmission and distribution services, systems reliability, aggregation, market, itemized billing, stranded cost, uniform disclosure requirements, low-income bill payment, energy conservation and safety measures.

The DOE, in coordination with the NPC, NEA, ERC and the Office of Press Secretary-Philippine Information Agency (OPS-PIA), shall undertake an information campaign to educate the public on the restructuring of the electric power industry and privatization of NPC.

SEC. 77. *Implementing Rules and Regulations.* – The DOE shall, in consultation with relevant government agencies, the electric power industry participants, non-government organization and end-users, promulgate the Implementing Rules and Regulation (IRR) of the Act within six (6) months from the effectivity of this Act, subject to the approval by the Power Commission.

SEC. 78. *Injunction and Restraining Order.* – The implementation of the provisions of the Act shall not be restrained or enjoined except by an order issued by the Supreme Court of the Philippines.

SEC. 79. *Separability Clause* – If for any reason, any provision of this act is declared unconstitutional or invalid, the other parts or provisions hereof which are not affected thereby shall continue to be in full force and effect.

SEC. 80. *Applicability and Repealing Clause* – The applicability provisions of Commonwealth Act No. 146, as amended, otherwise known as the "Public Service Act"; Republic Act 6395, as amended, revising the charter of

NPC; Presidential Decree 269, as amended, referred to as the *National Electrification Decree;* Republic Act 7638, otherwise known as the "Department of Energy Act of 1992"; Executive Order 172, as amended, creating the ERB; Republic Act 7832 otherwise known as the "Anti-Electricity and Electric Transmission Lines / Materials Pilferage Act of 1994", shall continue to have full force and effect except insofar as they are inconsistent with this Act.

The provision with respect to electric power of Section 11(c) of Republic Act 7916, as amended, and Section 5(f) of Republic Act 7227, are hereby repealed or modified accordingly.

Presidential Decree No. 40 and all laws, decrees, rules and regulations, or portion thereof, inconsistent with this Act are hereby repealed or modified accordingly.

SEC. 81. *Effectivity Clause*. – This Act shall take effect on the fifteenth day following its publication in at least two (2) national paper of general circulation.

Approved,

AQUILINO Q. PIMENTEL JR.
President of the Senate

FELICIANO BELMONTE JR.
Speaker of the House of Representatives

This Act which is a consolidation of House Bill No. 8457 and Senate Bills No. 1712, 1621, 1943 and 2000 was finally passed by the House of Representatives and the Senate on May 31, 2001 and June 4, 2001, respectively.

LUTGARDO B. BARBO
Secretary of the Senate

ROBERTO P. NAZARENO
Secretary General House of Representatives

Approved: JUN 08 2001

GLORIA MACAPAGAL - ARROYO
President of the Philippines

REPUBLIC ACT NO. 9513

AN ACT PROMOTING THE DEVELOPMENT, UTILIZATION AND COMMERCIALIZATION OF RENEWABLE ENERGY RESOURCES AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

CHAPTER I

TITLE AND DECLARATION OF POLICIES

SECTION 1. *Short Title.* – This Act shall be known as the *"Renewable Energy Act of 2008"*. It shall hereinafter be referred to as the "Act".

SEC 2. *Declaration of Policies.* – It is hereby declared the policy of the State to:

(a) Accelerate the exploration and development of renewable energy resources such as, but not limited to, biomass, solar, wind, hydro, geothermal and ocean energy sources, including hybrid systems, to achieve energy self-reliance, through the adoption of sustainable energy development strategies to reduce the country's dependence on fossil fuels and thereby minimize the country's exposure to price fluctuations in the international markets, the effects of which spiral down to almost all sectors of the economy;

(b) Increase the utilization of renewable energy by institutionalizing the development of national and local capabilities in the use of renewable energy systems, and promoting its efficient and cost-effective commercial application by providing fiscal and nonfiscal incentives;

(c) Encourage the development and utilization of renewable energy resources as tools to effectively prevent or reduce harmful emissions and thereby balance the goals of economic growth and development with the protection of health and the environment; and

(d) Establish the necessary infrastructure and mechanism to carry out the mandates specified in this Act and other existing laws.

SEC 3. *Scope.* – This Act shall establish the framework for the accelerated development and advancement of renewable energy resources, and the development of a strategic program to increase its utilization.

SEC 4. *Definition of Terms.* – As used in this Act, the following terms are herein defined:

(a) "Biomass energy systems" refer to energy systems which use biomass resources to produce heat, steam, mechanical power or electricity through either thermochemical, biochemical or physico-chemical processes, or through such other technologies which shall comply with prescribed environmental standards pursuant to this Act;

(b) "Biomass resources" refer to non-fossilized, biodegradable organic material originating from naturally occurring or cultured plants, animals and micro-organisms, including agricultural products, by-products and residues such as, but not limited to, biofuels except corn, soya beans and rice but including sugarcane and coconut, rice hulls, rice straws, coconut husks and shells, corn cobs, corn stovers, bagasse, biodegradable organic fractions of industrial and municipal wastes that can

be used in bioconversion process and other processes, as well as gases and liquids recovered from the decomposition and/or extraction of non-fossilized and biodegradable organic materials;

(c) "Board of Investments" (BOI) refers to an attached agency of the Department of Trade and Industry created under Republic Act No. 5186, as amended;

(d) "Co-generation systems" refer to facilities which produce electrical and/or mechanical energy and forms of useful thermal energy such as heat or steam which are used for industrial, commercial heating or cooling purposes through the sequential use of energy;

(e) "Department of Energy" (DOE) refers to the government agency created pursuant to Republic Act No. 7638 whose functions are expanded in Republic Act No. 9136 and further expanded in this Act;

(f) "Department of Environment and Natural Resources" (DENR) refers to the government agency created pursuant to Executive Order No. 192;

(g) "Department of Finance" (DOF) refers to the government agency created pursuant to Executive Order No. 127, as amended;

(h) "Department of Science and Technology" (DOST) refers to the government agency created pursuant to Executive Order No. 128;

(i) "Department of Trade and Industry" (DTI) refers to the government agency created pursuant to Executive Order No. 133;

(j) "Distributed generation" refers to a system of small generation entities supplying directly to the distribution grid, any one of which shall not exceed one hundred kilowatts (100 kW) in capacity;

(k) "Distribution of Electricity" refers to the conveyance of electricity by a Distribution Utility through its distribution system pursuant to the provision of Republic Act No. 9136;

(l) "Distribution Utility" (DU) refers to any electric cooperative, private corporation, government-owned utility or existing local government unit which has an exclusive franchise to operate a distribution system in accordance with its franchise and Republic Act No. 9136;

(m) "Electric Power Industry Reform Act of 2001" or Republic Act No. 9136 refers to the law mandating the restructuring of the electric power sector and the privatization of the National Power Corporation;

(n) "Energy Regulatory Commission" (ERC) refers to the independent quasi-judicial regulatory agency created pursuant to Republic Act No. 9136;

(o) "Generation Company" refers to any person or entity authorized by the ERC to operate facilities used in the generation of electricity;

(p) "Generation Facility" refers to a facility for the production of electricity and/or thermal energy such as, but not limited to, steam, hot or cold water;

(q) "Geothermal energy" as used herein and in the context of this Act, shall be considered renewable and the provisions of this Act is therefore applicable thereto if geothermal energy, as a mineral resource, is produced through: (1) natural recharge, where the water is replenished by rainfall and the heat is continuously produced inside the earth; and/or (2) enhanced recharge, where hot water used in the geothermal process is re-injected into the ground to produce more steam as well as to provide additional recharge to the convection system;

(r) "Geothermal Energy Systems" refer to machines or other equipment that converts geothermal energy into useful power;

(s) "Geothermal Resources" refer to mineral resources, classified as renewable energy resource, in the form of: (i) all products of geothermal processes, embracing indigenous steam, hot water, and hot brines; (ii) steam and other gases, hot water, and hot brines resulting from water, gas, or other fluids artificially introduced into geothermal formations; (iii) heat or associated energy found in geothermal formations; and (iv) any by-product derived from them;

(t) "Government Share" refers to the amount due the National Government and Local Government Units from the exploitation, development, and utilization of naturally-occurring renewable energy resources such as geothermal, wind, solar, ocean and hydro excluding biomass;

(u) "Green Energy Option" refers to the mechanism to empower end-users to choose renewable energy in meeting their energy requirements;

(v) "Grid" refers to the high voltage backbone system of interconnected transmission lines, substations, and related facilities, located in each of Luzon, Visayas, and Mindanao, or as may otherwise be determined by the ERC in accordance with Republic Act No. 9136;

(w) "Hybrid Systems" refer to any power or energy generation facility which makes use of two or more types of technologies utilizing both conventional and/or renewable fuel sources, such as, but not limited to, integrated solar/wind systems, biomass/fossil fuel systems, hydro/fossil fuel systems, integrated solar/biomass systems, integrated wind/fossil fuel systems, with a minimum of ten (10) megawatts or ten percent (10%) of the annual energy output provided by the RE component;

(x) "Hydroelectric Power Systems" or "Hydropower Systems" refer to water-based energy systems which produce electricity by utilizing the kinetic energy of falling or running water to turn a turbine generator;

(y) "Hydroelectric Power Development" or "Hydropower Development" refers to the construction and installation of a hydroelectric power-generating plant and its auxiliary facilities, such as diversion structure, headrace, penstock, substation, transmission, and machine shop, among others;

(z) "Hydroelectric Power Resources" or "Hydropower Resources" refer to water resources found technically feasible for development of hydropower projects which include rivers, lakes, waterfalls, irrigation canals, springs, ponds, and other water bodies;

(aa) "Local government share" refers to the amount due the LGUs from the exploitation, development and utilization of naturally-occurring renewable energy resources;

(bb) "Micro-scale Project" refers to an RE project with capacity not exceeding one hundred (100) kilowatts;

(cc) "Missionary Electrification" refers to the provision of basic electricity service in unviable areas with the aim of bringing the operations in these areas to viability levels;

(dd) "National government share" refers to the amount due the national government from the exploitation, development and utilization of naturally-occurring renewable energy resources;

(ee) "National Power Corporation" (NPC) refers to the government corporation created under Republic Act No. 6395, as amended by Republic Act No. 9136;

(ff) "National Transmission Corporation" (TRANSCO) refers to

the corporation created pursuant to Republic Act No. 9136 responsible for the planning, construction, and centralized operation and maintenance of high voltage transmission facilities, including grid interconnection and ancillary services;

(gg) "Net Metering" refers to a system, appropriate for distributed generation, in which a distribution grid user has a two-way connection to the grid and is only charged for his net electricity consumption and is credited for any overall contribution to the electricity grid;

(hh) "Non-power applications" refer to renewable energy systems or facilities that produce mechanical energy, combustible products such as methane gas, or forms of useful thermal energy such as heat or steam, that are not used for electricity generation, but for applications such as, but not limited to, industrial/commercial cooling, and fuel for cooking and transport;

(ii) "Ocean Energy Systems" refer to energy systems which convert ocean or tidal current, ocean thermal gradient or wave energy into electrical or mechanical energy;

(jj) "Off-Grid Systems" refer to electrical systems not connected to the wires and related facilities of the On-Grid Systems of the Philippines;

(kk) "On-Grid System" refers to electrical systems composed of interconnected transmission lines, distribution lines, substations, and related facilities for the purpose of conveyance of bulk power on the grid of the Philippines;

(ll) "Philippine Electricity Market Corporation" (PEMC) refers to the Corporation incorporated upon the initiative of the DOE composed of all Wholesale Electricity Spot Market (WESM) Members and whose Board of Directors will be the PEM Board;

(mm) "Philippine National Oil Company" (PNOC) refers to the government agency created pursuant to Presidential Decree No. 334, as amended;

(nn) "Power applications" refer to renewable energy systems or facilities that produce electricity;

(oo) "Registered RE Developer" refers to a RE Developer duly registered with the DOE;

(pp) "Renewable Energy (Systems) Developers" or "RE Developers" refer to individual/s or a group of individuals formed in accordance with existing Philippine Laws engaged in the exploration, development and utilization of RE resources and actual operation of RE systems/facilities;

(qq) "Renewable Energy Market" (REM) refers to the market where the trading of the RE certificates equivalent to an amount of power generated from RE resources is made;

(rr) "Renewable Energy Policy Framework" (REPF) refers to the long-term policy developed by the DOE which identifies among others, the goals and targets for the development and utilization of renewable energy in the country;

(ss) "Renewable Portfolio Standards" refer to a market-based policy that requires electricity suppliers to source an agreed portion of their energy supply from eligible RE resources;

(tt) "Renewable Energy Service (Operating) Contract (RE Contract) " refers to the service agreement between the Government, through the DOE, and RE Developer over a period in which the RE Developer has the exclusive right to a particular RE area for exploration and development. The RE Contract shall be divided into two (2) stages: the pre-development stage and the development/ commercial stage. The preliminary assessment and feasibility study up to financial closing shall refer to the pre-development stage. The construction and installation of facilities up to operation phase shall refer to the development stage;

(uu) "Renewable Energy Resources" (RE Resources) refer to energy resources that do not have an upper limit on the total quantity to be used. Such resources are renewable on a regular basis, and whose renewal rate is relatively rapid to consider availability over an indefinite period of time. These include, among others, biomass, solar, wind, geothermal, ocean energy, and hydropower conforming with internationally accepted norms and standards on dams, and other emerging renewable energy technologies;

(vv) "Renewable Energy Systems" (RE Systems) refer to energy systems which convert RE resources into useful energy forms, like electrical, mechanical, etc.;

(ww) "Rural Electrification" refers to the delivery of basic electricity services, consisting of power generation, sub-transmission, and/or extension of associated power delivery system that would bring about important social and economic benefits to the countryside;

(xx) "Solar Energy" refers to the energy derived from solar radiation that can be converted into useful thermal or electrical energy;

(yy) "Solar Energy Systems" refer to energy systems which convert solar energy into thermal or electrical energy;

(zz) "Small Power Utilities Group" (SPUG) refers to the functional unit of the NPC mandated under Republic Act No. 9136 to pursue missionary electrification function;

(aaa) "Supplier" refers to any person or entity authorized by the ERC to sell, broker, market or aggregate electricity to the end-users;

(bbb) "Transmission of Electricity" refers to the conveyance of electric power through transmission lines as defined under Republic Act No. 9136 by TRANSCO or its buyer/concessionaire in accordance with its franchise and Republic Act No. 9136;

(ccc) "Wind Energy" refers to the energy that can be derived from wind that is converted into useful electrical or mechanical energy;

(ddd) "Wind Energy Systems" refer to the machines or other related equipment that convert wind energy into useful electrical or mechanical energy;

(eee) "Wholesale Electricity Spot Market" (WESM) refers to the wholesale electricity spot market created pursuant to Republic Act No. 9136;

CHAPTER II

ORGANIZATION

SEC 5. *Lead Agency.* – The DOE shall be the lead agency mandated to implement the provisions of this Act.

CHAPTER III

ON-GRID RENEWABLE ENERGY DEVELOPMENT

SEC 6. *Renewable Portfolio Standard (RPS).* – All stakeholders in the electric power industry shall contribute to the growth of the renewable energy industry of the country. Towards this end, the National Renewable Energy Board (NREB), created under Section 27 of this Act, shall set the minimum percentage of generation from eligible renewable energy resources and determine to which sector RPS shall be imposed on a per grid basis within one (1) year from the effectivity of this Act.

SEC 7. *Feed-In Tariff System.* – To accelerate the development of emerging renewable energy resources, a feed-in tariff system for electricity produced from wind, solar, ocean, run-of-river hydropower and biomass is hereby mandated. Towards this end, the ERC in consultation with the National Renewable Energy Board (NREB) created under Section 27 of this Act shall formulate and promulgate feed-in tariff system rules within one (1) year upon the effectivity of this Act which shall include, but not limited to the following:

(a) Priority connections to the grid for electricity generated from emerging renewable energy resources such as wind, solar, ocean, run-of-river hydropower and biomass power plants within the territory of the Philippines;

(b) The priority purchase and transmission of, and payment for, such electricity by the grid system operators;

(c) Determine the fixed tariff to be paid to electricity produced from each type of emerging renewable energy and the mandated number of years for the application of these rates, which shall not be less than twelve (12) years;

(d) The feed-in tariff to be set shall be applied to the emerging renewable energy to be used in compliance with the renewable portfolio standard as provided for in this Act and in accordance with the RPS rules that will be established by the DOE.

SEC 8. *Renewable Energy Market (REM).* – To facilitate compliance with Section 6 of this Act, the DOE shall establish the REM and shall direct PEMC to implement changes to the WESM Rules in order to incorporate the rules specific to the operation of the REM under the WESM.

The PEMC shall, under the supervision of the DOE, establish a Renewable Energy Registrar within one (1) year from the effectivity of this Act and shall issue, keep and verify RE Certificates corresponding to energy generated from eligible RE facilities. Such certificates will be used for compliance with the RPS. For this purpose, a transaction fee, equal to half of what PEMC currently charges regular WESM players, may be imposed by PEMC.

SEC 9. *Green Energy Option.* – The DOE shall establish a Green Energy Option program which provides end-users the option to choose RE resources as their sources of energy. In consultation with the NREB, the DOE shall promulgate the appropriate implementing rules and regulations which are necessary, incidental or convenient to achieve the objectives set forth herein.

Upon the determination of the DOE of its technical viability and consistent with the requirements of the green energy option program, end users may directly contract from RE facilities their energy requirements distributed through their respective distribution utilities.

Consistent herewith, TRANSCO or its successors-in-interest, DUs, PEMC and all relevant parties are hereby mandated to provide the mechanisms for the physical connection and commercial arrangements necessary to ensure the success of the Green Energy Option. The end-user who will enroll under the energy option program should be informed by way of its monthly electric bill, how much of its monthly energy consumption and generation charge is provided by RE facilities.

SEC 10. *Net-metering for Renewable Energy.* – Subject to technical considerations and without discrimination and upon request by distribution end-users, the distribution utilities shall enter into net-metering agreements with qualified end-users who will be installing RE system.

The ERC, in consultation with the NREB and the electric power industry participants, shall establish net metering interconnection standards and pricing methodology and other commercial arrangements necessary to ensure success of the net-metering for renewable energy program within one (1) year upon the effectivity of this Act.

The distribution utility shall be entitled to any Renewable Energy Certificate resulting from net-metering arrangement with the qualified end-user who is using an RE resource to provide energy and the distribution utility shall be able to use this RE certificate in compliance with its obligations under RPS.

The DOE, ERC, TRANSCO or its successors-in-interest, DUs, PEMC and all relevant parties are hereby mandated to provide the mechanisms for the physical connection and commercial arrangements necessary to ensure the success of the Net-metering for Renewable Energy program, consistent with the Grid and Distribution Codes.

SEC 11. *Transmission and Distribution System Development.* – TRANSCO or its successors-in-interest or its buyer/concessionaire and all DUs, shall include the required connection facilities for RE-based power facilities in the Transmission and Distribution Development Plans: *Provided*, That such facilities are approved by the DOE. The connection facilities of RE power plants, including the extension of transmission and distribution lines, shall be subject only to ancillary services covering such connections.

CHAPTER IV

OFF-GRID RENEWABLE ENERGY DEVELOPMENT

SEC 12. *Off-Grid Areas.* – Within one (1) year from the effectivity of this Act, NPC-SPUG or its successors-in-interest and/or qualified third parties in off-grid areas shall, in the performance of its mandate to provide missionary electrification, source a minimum percentage of its total annual generation upon recommendation of the NREB from available RE resources in the area concerned, as may be determined by the DOE.

As used in this Act, successors-in-interest refer to entities deemed technically and financially capable to serve/take over existing NPC-SPUG areas.

Eligible RE generation in off-grid and missionary areas shall be eligible for the provision of RE Certificates defined in Section 8 of this Act. In the event there are no viable RE resources in the off-grid and missionary areas, the relevant electricity supplier in the off-grid and missionary areas shall still be obligated under Section 6 of this Act.

CHAPTER V

GOVERNMENT SHARE

SEC 13. *Government Share.* – The government share on existing and new RE development projects shall be equal to one percent (1%) of the gross income of RE resource developers resulting from the sale of renewable energy produced and such other income incidental to and arising from the renewable energy generation, transmission, and sale of electric power except for indigenous geothermal

energy, which shall be at one and a half percent (1.5%) of gross income.

To further promote the development of RE projects, the government hereby waives its share from the proceeds of micro-scale projects for communal purposes and non-commercial operations, which are not greater than one hundred (100) kilowatts.

CHAPTER VI

ENVIRONMENTAL COMPLIANCE

SEC 14. *Compliance with Environmental Regulations.* – All RE explorations, development, utilization, and RE systems operations shall be conducted in accordance with existing environmental regulations as prescribed by the DENR and/or any other concerned government agency.

CHAPTER VII

GENERAL INCENTIVES

SEC 15. *Incentives for Renewable Energy Projects and Activities.* – RE developers of renewable energy facilities, including hybrid systems, in proportion to and to the extent of the RE component, for both power and non-power applications, as duly certified by the DOE, in consultation with the BOI, shall be entitled to the following incentives:

(a) Income Tax Holiday (ITH) – For the first seven (7) years of its commercial operations, the duly registered RE developer shall be exempt from income taxes levied by the national government.

Additional investments in the project shall be entitled to additional income tax exemption on the income attributable to the investment: *Provided*, That the discovery and development of new RE resource shall be treated as a new investment and shall therefore be entitled to a fresh package of incentives: *Provided*, *further*, That the entitlement period for additional investments shall not be more than three (3) times the period of the initial availment of the ITH.

(b) Duty-free Importation of RE Machinery, Equipment and Materials – Within the first ten (10) years upon the issuance of a certification of an RE developer, the importation of machinery and equipment, and materials and parts thereof, including control and communication equipment, shall not be subject to tariff duties: *Provided*, *however*, That the said machinery, equipment, materials and parts are directly and actually needed and used exclusively in the RE facilities for transformation into energy and delivery of energy to the point of use and covered by shipping documents in the name of the duly registered operator to whom the shipment will be directly delivered by customs authorities: *Provided*, *further*, That endorsement of the DOE is obtained before the importation of such machinery, equipment, materials and parts are made.

Endorsement of the DOE must be secured before any sale, transfer or disposition of the imported capital equipment, machinery or spare parts is made: *Provided*, That if such sale, transfer or disposition is made within the ten (10)-year period from the date of importation, any of the following conditions must be present:

(i) If made to another RE developer enjoying tax and duty exemption on imported capital equipment;

(ii) If made to a non-RE developer, upon payment of any taxes and duties due on the net book value of the capital equipment to be sold;

(iii) Exportation of the used capital equipment, machinery, spare parts or source documents or those required for RE development; and

(iv) For reasons of proven technical obsolescence.

When the aforementioned sale, transfer or disposition is made under any of the conditions provided for in the foregoing paragraphs after ten (10) years from the date of importation, the sale, transfer or disposition shall no longer be subject to the payment of taxes and duties;

(c) Special Realty Tax Rates on Equipment and Machinery. – Any law to the contrary notwithstanding, realty and other taxes on civil works, equipment, machinery, and other improvements of a Registered RE Developer actually and exclusively used for RE facilities shall not exceed one and a half percent (1.5%) of their original cost less accumulated normal depreciation or net book value: *Provided*, That in case of an integrated resource development and generation facility as provided under Republic Act No. 9136, the real property tax shall only be imposed on the power plant;

(d) Net Operating Loss Carry-Over (NOLCO). – The NOLCO of the RE Developer during the first three (3) years from the start of commercial operation which had not been previously offset as deduction from gross income shall be carried over as a deduction from gross income for the next seven (7) consecutive taxable years immediately following the year of such loss: *Provided*, *however*, That operating loss resulting from the availment of incentives provided for in this Act shall not be entitled to NOLCO;

(e) Corporate Tax Rate. – After seven (7) years of income tax holiday, all RE Developers shall pay a corporate tax of ten percent (10%) on its net taxable income as defined in the National Internal Revenue Act of 1997, as amended by Republic Act No. 9337. *Provided*, That the RE Developer shall pass on the savings to the end-users in the form of lower power rates.

(f) Accelerated Depreciation. – If, and only if, an RE project fails to receive an ITH before full operation, it may apply for Accelerated Depreciation in its tax books and be taxed based on such: *Provided*, That if it applies for Accelerated Depreciation, the project or its expansions shall no longer be eligible for an ITH. Accelerated depreciation of plant, machinery, and equipment that are reasonably needed and actually used for the exploration, development and utilization of RE resources may be depreciated using a rate not exceeding twice the rate which would have been used had the annual allowance been computed in accordance with the rules and regulations prescribed by the Secretary of the Department of Finance and the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended. Any of the following methods of accelerated depreciation may be adopted:

i) Declining balance method; and

ii) Sum-of-the years digit method

(g) Zero Percent Value-Added Tax Rate. – The sale of fuel or power generated from renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy and other emerging energy sources using technologies such as fuel cells and hydrogen fuels, shall be subject to zero percent (0%) value-added tax (VAT), pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337.

All RE Developers shall be entitled to zero-rated value added tax on its purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities.

This provision shall also apply to the whole process of exploring and developing renewable energy sources up to its conversion into power, including but not limited to the services performed by subcontractors and/or contractors.

(h) Cash Incentive of Renewable Energy Developers for Missionary Electrification. – A renewable energy developer, established after the effectivity of this Act, shall be entitled to a cash generation-based incentive per kilowatt hour rate generated, equivalent to fifty percent (50%) of the universal charge for power needed to service missionary areas where it operates the same, to be chargeable against the universal charge for missionary electrification;

(i) Tax Exemption of Carbon Credits. – All proceeds from the sale of carbon emission credits shall be exempt from any and all taxes;

(j) Tax Credit on Domestic Capital Equipment and Services. – A tax credit equivalent to one hundred percent (100%) of the value of the value-added tax and custom duties that would have been paid on the RE machinery, equipment, materials and parts had these items been imported shall be given to an RE operating contract holder who purchases machinery, equipment, materials, and parts from a domestic manufacturer for purposes set forth in this Act: *Provided*, That prior approval by the DOE was obtained by the local manufacturer: *Provided, further*, That the acquisition of such machinery, equipment, materials, and parts shall be made within the validity of the RE operating contract.

SEC 16. *Environmental Compliance Certificate (ECC).* – Notwithstanding Section 17 (b) (3) (iii) of Republic Act No. 7160, it would be sufficient for the renewable energy developer to secure the Environmental Compliance Certificate (ECC) from the corresponding regional office of the DENR.

SEC 17. *Exemption from the Universal Charge.* – Power and electricity generated through the RES for the generator's own consumption and/or for free distribution in the off-grid areas shall be exempted from the payment of the universal charge provided for under Section 34 of Republic Act No. 9136.

SEC 18. *Payment of Transmission Charges.* – A registered renewable energy developer producing power and electricity from an intermittent RE resource may opt to pay the transmission and wheeling charges of TRANSCO or its successors-in-interest on a per kilowatt-hour basis at a cost equivalent to the average per kilowatt-hour rate of all other electricity transmitted through the grid.

SEC 19. *Hybrid and Cogeneration Systems.* – The tax exemptions and/or incentives provided for in Section 15 of this Act shall be availed of by registered RE Developer of hybrid and cogeneration systems utilizing both RE sources and conventional energy: *Provided, however*, That the tax exemptions and incentives shall apply only to the equipment, machinery and/or devices utilizing RE resources.

SEC 20. *Intermittent RE Resources.* – TRANSCO or its successors-in-interest, in consultation with stakeholders, shall determine the maximum penetration limit of the Intermittent RE-based power plants to the Grid, through technical and economic analysis. Qualified and registered RE generating units with intermittent RE

resources shall be considered "must dispatch" based on available energy and shall enjoy the benefit of priority dispatch. All provisions under the WESM Rules, Distribution and Grid Codes which do not allow "must dispatch" status for intermittent RE resources shall be deemed amended or modified. The PEMC and TRANSCO or its successors-in-interest shall implement technical mitigation and improvements in the system in order to ensure safety and reliability of electricity transmission.

As used in this Act, RE generating unit with intermittent RE resources refers to a RE generating unit or group of units connected to a common connection point whose RE energy resource is location-specific naturally difficult to precisely predict the availability of RE energy resource thereby making the energy generated variable, unpredictable and irregular and the availability of the resource inherently uncontrollable, which include plants utilizing wind, solar, run-of-river hydro or ocean energy.

SEC 21. *Incentives for RE Commercialization.* – All manufacturers, fabricators and suppliers of locally-produced RE equipment and components duly recognized and accredited by the DOE, in consultation with DOST, DOF and DTI, shall, upon registration with the BOI, be entitled to the privileges set forth under this section.

Consistent with Article 7, Item (20) of EO No. 226, the registration with the BOI, as provided for in Section 15 and Section 21 of this Act, shall be carried out through an agreement and an administrative arrangement between the BOI and the DOE, with the end-view of facilitating the registration of qualified RE facilities based on the implementing rules and regulations that will be developed by DOE. It is further mandated that the applications for registration will be positively acted upon by BOI on the basis of the accreditation issued by DOE.

The Renewable Energy Sector is hereby declared a priority investment sector that will regularly form part of the country's Investment Priority Plan, unless declared otherwise by law. As such, all entities duly accredited by the DOE under this Act shall be entitled to all the incentives provided herein.

(a) Tax and Duty-free Importation of Components, Parts and Materials. - All shipments necessary for the manufacture and/or fabrication of RE equipment and components shall be exempted from importation tariff and duties and value added tax: *Provided*, *however*, That the said components, parts and materials are:

  (i) not manufactured domestically in reasonable quantity and quality at competitive prices;

  (ii) directly and actually needed and shall be used exclusively in the manufacture/fabrication of RE equipment; and

  (iii) covered by shipping documents in the name of the duly registered manufacturer/fabricator to whom the shipment will be directly delivered by customs authorities: *Provided*, *further*, That prior approval of the DOE was obtained before the importation of such components, parts and materials;

(b) Tax Credit on Domestic Capital Components, Parts and Materials. – A tax credit equivalent to one hundred percent (100%) of the amount of the value-added tax and customs duties that would have been paid on the components, parts and materials had these items been imported shall be given to an RE equipment manufacturer, fabricator, and supplier duly recognized and accredited by the DOE who purchases RE components, parts and materials from a domestic manufacturer: *Provided*, That such components, and parts are directly

needed and shall be used exclusively by the RE manufacturer, fabricator and supplier for the manufacture, fabrication and sale of the RE equipment: *Provided*, *further*, That prior approval by the DOE was obtained by the local manufacturer;

(c) Income Tax Holiday and Exemption. – For seven (7) years starting from the date of recognition/accreditation, an RE manufacturer, fabricator and supplier of RE equipment shall be fully exempt from income taxes levied by the National Government on net income derived only from the sale of RE equipment, machinery, parts and services; and

(d) Zero-rated value added tax transactions – All manufacturers, fabricators and suppliers of locally produced renewable energy equipment shall be subject to zero-rated value added tax on its transactions with local suppliers of goods, properties and services.

SEC 22. *Incentives for Farmers Engaged in the Plantation of Biomass Resources.* – For a period of ten (10) years after the effectivity of this Act, all individuals and entities engaged in the plantation of crops and trees used as biomass resources such as but not limited to jatropha, coconut, and sugarcane, as certified by the Department of Energy, shall be entitled to duty-free importation and be exempted from Value-Added Tax (VAT) on all types of agricultural inputs, equipment and machinery such as, but not limited to, fertilizer, insecticide, pesticide, tractor, trailers, trucks, farm implements and machinery, harvesters, threshers, hybrid seeds, genetic materials, sprayers, packaging machinery and materials, bulk handling facilities, such as conveyors and mini-loaders, weighing scales, harvesting equipment, and spare parts of all agricultural equipment.

SEC 23. *Tax Rebate for Purchase of RE Components.* – To encourage the adoption of RE technologies, the DOF, in consultation with DOST, DOE, and DTI, shall provide rebates for all or part of the tax paid for the purchase of RE equipment for residential, industrial, or community use. The DOF shall also prescribe the appropriate period for granting the tax rebates.

SEC 24. *Period of Grant of Fiscal Incentives.* – The fiscal incentives granted under Section 15 of this Act shall apply to all RE capacities upon the effectivity of this Act. The National Renewable Energy Board, in coordination with the Department of Energy, shall submit a yearly report on the implementation of this Act to the Philippine Congress, through the Joint Congressional Power Commission, every January of each year following the period in review, indicating among others, the progress of RE development in the country and the benefits and impact generated by the development and utilization of its renewable energy resources in the context of its energy security and climate change imperatives. This shall serve as basis for the Joint Congressional Power Commission review of the incentives as provided for in this Act towards ensuring the full development of the country's RE capacities under a rationalized market and incentives scheme.

SEC 25. *Registration of RE Developers and local manufacturers, fabricators and suppliers of locally-produced renewable energy equipment.* – RE Developers and local manufacturers, fabricators and suppliers of locally-produced renewable energy equipment shall register with the Department of Energy, through the Renewable Energy Management Bureau. Upon registration, a certification shall be issued to each RE Developer and local manufacturer, fabricator and supplier of locally-produced renewable energy equipment to serve as the basis of their entitlement to incentives provided under Chapter VII of this Act.

SEC 26. *Certification from the Department of Energy.* – All certifications required to qualify RE developers to avail of the incentives provided for under this Act shall be issued by the DOE through the Renewable Energy

Management Bureau.

The Department of Energy, through the Renewable Energy Management Bureau shall issue said certification fifteen (15) days upon request of the renewable energy developer or manufacturer, fabricator or supplier.

Provided, That the certification issued by the Department of Energy shall be without prejudice to any further requirements that may be imposed by the concerned agencies of the government charged with the administration of the fiscal incentives abovementioned.

CHAPTER VIII

GENERAL PROVISIONS

SEC 27. *Creation of the National Renewable Energy Board (NREB).* – The NREB is hereby created. It shall be composed of a Chairman and one (1) representative each from the following agencies: DOE, DTI, DOF, DENR, NPC, TRANSCO or its successors-in-interest, PNOC and PEMC who shall be designated by their respective secretaries on a permanent basis; and one (1) representative each from the following sectors: RE Developers, Government Financial Institutions (GFIs), private distribution utilities, electric cooperatives, electricity suppliers and non-governmental organizations, duly endorsed by their respective industry associations and all to be appointed by the President of the Republic of the Philippines.

The Chairman shall, within one (1) month from the effectivity of this Act, convene the NREB.

The NREB shall be assisted by a Technical Secretariat from the Renewable Energy Management Bureau of the DOE, created under Section 32 hereof, and shall directly report to the Office of the Secretary or the Undersecretary of the Department, as the case maybe, on matters pertaining to the activities of the NREB. The number of staff of the Technical Secretariat and the creation of corresponding positions necessary to complement and/or augment the existing plantilla of the REMB shall be determined by the Board, subject to approval by the Department of Budget and Management (DBM) and to existing civil service rules and regulations.

The NREB shall have the following powers and functions:

(a) Evaluate and recommend to the DOE the mandated RPS and minimum RE generation capacities in off-grid areas, as it deems appropriate;

(b) Recommend specific actions to facilitate the implementation of the National Renewable Energy Program (NREP) to be executed by the DOE and other appropriate agencies of government and to ensure that there shall be no overlapping and redundant functions within the national government departments and agencies concerned;

(c) Monitor and review the implementation of the NREP, including compliance with the RPS and minimum RE generation capacities in off-grid areas;

(d) Oversee and monitor the utilization of the Renewable Energy Trust Fund created pursuant to Section 28 of this Act and administered by the DOE; and

(e) Perform such other functions, as may be necessary, to attain the objectives of this Act.

SEC 28. *Renewable Energy Trust Fund (RETF).* – A Renewable Energy Trust Fund is hereby established to enhance the development and greater utilization of renewable energy. It shall be administered by the DOE as a special account in any of the GFIs. The RETF shall be exclusively used to:

(a) Finance the research, development, demonstration, and promotion of the widespread and productive use of RE

systems for power and non-power applications, as well as to provide funding for R & D institutions engaged in renewable energy studies undertaken jointly through public-private sector partnership, including provision for scholarship and fellowship for energy studies;

(b) Support the development and operation of new RE resources to improve their competitiveness in the market: *Provided*, That the grant thereof shall be done through a competitive and transparent manner;

(c) Conduct nationwide resource and market assessment studies for the power and non-power applications of renewable energy systems;

(d) Propagate RE knowledge by accrediting, tapping, training, and providing benefits to institutions, entities and organizations which can extend the promotion and dissemination of RE benefits to the national and local levels; and

(e) Fund such other activities necessary or incidental to the attainment of the objectives of this Act.

Use of the fund may be through grants, loans, equity investments, loan guarantees, insurance, counterpart fund or such other financial arrangements necessary for the attainment of the objectives of this Act: *Provided*, That the use or allocation thereof shall, as far as practicable, be done through a competitive and transparent manner.

The RETF shall be funded from:

(a) Proceeds from the emission fees collected from all generating facilities consistent with Republic Act No. 8749 or the Philippine Clean Air Act;

(b) One and 1/2 percent (1.5%) of the net annual income of the Philippine Charity Sweepstakes Office;

(c) One and 1/2 percent (1.5%) of the net annual income of the Philippine Amusement and Gaming Corporation;

(d) One and 1/2 percent (1.5%) of the net annual dividends remitted to the National Treasury of the Philippine National Oil Company and its subsidiaries;

(e) Contributions, grants and donations: *Provided*, That all contributions, grants and donations made to the RETF shall be tax deductible subject to the provisions of the National Internal Revenue Code. Towards this end, the BIR shall assist the DOE in formulating the Rules and Regulations to implement this provision;

(f) One and 1/2 percent (1.5%) of the proceeds of the Government share collected from the development and use of indigenous non-renewable energy resources;

(g) Any revenue generated from the utilization of the RETF; and

(h) Proceeds from the fines and penalties imposed under this Act.

SEC 29. *Financial Assistance Program.* – Government financial institutions such as the Development Bank of the Philippines (DBP), Land Bank of the Philippines (LBP), Phil-Exim Bank and other government financial institutions shall, in accordance with and to the extent allowed by the enabling provisions of their respective charters or applicable laws, provide preferential financial packages for the development, utilization and commercialization of RE projects as duly recommended and endorsed by the DOE.

SEC 30. *Adoption of Waste-To-Energy Technologies.* – The DOE shall, where practicable, encourage the adoption of waste-to-energy facilities such as, but not limited to, biogas systems. The DOE shall, in coordination with the DENR, ensure compliance with this provision.

As used in this Act, waste-to-energy technologies shall refer to systems which convert to biodegradable materials such as, but not limited to, animal manure or agricultural waste, into useful energy through processes such as anaerobic digestion, fermentation and gasification, among others, subject to the provisions and intent of Republic Act No. 8749 (Clean Air Act of 1999) and Republic Act No. 9003 (Ecological Solid Waste Management Act of 2000).

SEC 31. *Incentives for RE Host Communities/ LGUs.* – Eighty percent (80%) of the share from royalty and/or government share of RE host communities/LGUs from RE projects and activities shall be used directly to subsidize the electricity consumption of end users in the RE host communities/LGUs whose monthly consumption do not exceed one hundred (100) kwh. The subsidy may be in the form of rebates, refunds and/or any other forms as may be determined by DOE, DOF and ERC, in coordination with NREB.

The DOE, DOF and ERC, in coordination with the NREB and in consultation with the distribution utilities shall promulgate the mechanisms to implement this provision within six months from the effectivity of this Act.

SEC 32. *Creation of the Renewable Energy Management Bureau.* – For the purpose of implementing the provisions of this Act, a Renewable Energy Management Bureau (REMB) under the DOE is hereby established, and the existing Renewable Energy Management Division of the Energy Utilization Management Bureau of the DOE, whose plantilla shall form the nucleus of REMB, is hereby dissolved. The organizational structure and staffing complement of the REMB shall be determined by the Secretary of the DOE, in consultation with the Department of Budget and Management, in accordance with existing civil service rules and regulations. The budgetary requirements necessary for the creation of the REMB shall be taken from the current appropriations of the DOE. Thereafter, the funding for the REMB shall be included in the annual General Appropriations Act.

The REMB shall have the following powers and functions:

(a) Implement policies, plans and programs related to the accelerated development, transformation, utilization and commercialization of renewable energy resources and technologies;

(b) Develop and maintain a centralized, comprehensive and unified data and information base on renewable energy resources to ensure the efficient evaluation, analysis, and dissemination of data and information on renewable energy resources, development, utilization, demand and technology application;

(c) Promote the commercialization/ application of renewable energy resources including new and emerging technologies for efficient and economical transformation, conversion, processing, marketing and distribution to end users;

(d) Conduct technical research, socio-economic and environmental impact studies of renewable energy projects for the development of sustainable renewable energy systems;

(e) Supervise and monitor activities of government and private companies and entities on renewable energy resources development and utilization to ensure compliance with existing rules, regulations, guidelines and standards;

(f) Provide information, consultation and technical training and advisory services to developers, practitioners and entities involved in renewable energy technology and develop renewable energy technology development strategies; and

(g) Perform other functions that may be necessary for the effective

implementation of this Act and the accelerated development and utilization of the renewable energy resources in the country.

CHAPTER IX

FINAL PROVISIONS

SEC 33. *Implementing Rules and Regulations (IRR).* – Within six (6) months from the effectivity of this Act, the DOE shall, in consultation with the Senate and House Committees on Energy, relevant government agencies and RE stakeholders, promulgate the IRR of this Act.

SEC 34. *Congressional Oversight.* – Upon the effectivity of this Act, the Joint Congressional Power Commission created under Section 62 of Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001" shall exercise oversight powers over the implementation of this Act.

SEC 35. *Prohibited Acts.* – The following acts shall be prohibited:

(a) Non-compliance or violation of the RPS rules;

(b) Willful refusal to undertake net metering arrangements with qualified distribution grid users;

(c) Falsification or tampering of public documents or official records to avail of the fiscal and non-fiscal incentives provided under this Act;

(d) Failure and willful refusal to issue the single certificate referred to in Section 26 of this Act; and

(e) Non-compliance with the established guidelines that DOE will adopt for the implementation of this Act.

SEC 36. *Penalty Clause.* – Any person who willfully commits any of the prohibited acts enumerated under this Act, shall be imposed with the penalties provided herein. Any person, who willfully aids or abets the commission of a crime prohibited herein or who causes the commission of any such act by another shall be liable in the same manner as the principal.

In the case of association, partnership or corporations, the penalty shall be imposed on the partner, president, chief operating officer, chief executive officer, directors or officers responsible for the violation.

The commission of any prohibited acts provided for under Section 35, upon conviction thereof, shall suffer the penalty of imprisonment of from one (1) year to five (5) years, or a fine ranging from a minimum of One Hundred Thousand Pesos (P100,000.00) to One Hundred Million Pesos (P100,000,000.00), or twice the amount of damages caused or costs avoided for non-compliance, whichever is higher, or both upon the discretion of the court.

The DOE is further empowered to impose administrative fines and penalties for any violation of the provisions of this Act, its IRR and other issuances relative to this Act.

This is without prejudice to the penalties provided for under existing environmental regulations prescribed by the DENR and/or any other concerned government agency.

SEC 37. *Appropriations.* – Such sums as may be necessary for the initial implementation of this Act shall be taken from the current appropriations of the DOE. Thereafter, the fund necessary to carry out the provisions of this Act shall be included in the annual General Appropriations Act.

SEC 38. *Separability Clause***.** – If any provision of this Act is held invalid unconstitutional, the remainder of the Act or the provision not otherwise affected shall remain valid and subsisting.

SEC 39. *Repealing Clause.* – Any law, presidential decree or issuance, executive order, letter of instruction, administrative rule

or regulation contrary to or inconsistent with the provisions of this Act is hereby repealed, modified or amended accordingly.

Consistent with the foregoing paragraph and Section 13 of this Act, Section 1 of Presidential Decree No. 1442 or the Geothermal Resources Exploration and Development Act, insofar as the exploration of geothermal resources by the government, and Section 10 (1) of Republic Act No. 7156 otherwise known as the "Mini-Hydro Electric Power Incentive Act", insofar as the special privilege tax rate of two percent (2%) are hereby repealed, modified or amended accordingly.

SEC 40. *Effectivity Clause.* – This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

Approved

(Sgd.) PROSPERO C. NOGRALES
Speaker of the House of Representative

(Sgd.) MANNY VILLAR
President of the Senate

This Act which is a consolidation of Senate Bill No. 2046 and House Bill No. 41935 was finally passed by the Senate and the House of Representative on October 8, 2008.

(Sgd.) MARILYN B. BARUA-YAP
Secretary General
House of Representative

(Sgd.) EMMA LIRIO-REYES
Secretary of the Senate

Approved: DEC 16, 2008

(Sgd.) GLORIA MACAPAGAL-ARROYO
President of the Philippines

Chapter 3
National Power Corporation

REPUBLIC ACT NO. 6395

AN ACT REVISING THE CHARTER OF THE NATIONAL POWER CORPORATION[1]

SECTION 1. The Charter of the National Power Corporation is hereby revised, and shall henceforth read as follows:

"SECTION 1. Declaration of Policy. – Congress hereby declares that (1) the comprehensive development, utilization and conservation of Philippine water resources for all beneficial uses, including power generation, and (2) the total electrification of the Philippines through the development of power from all sources to meet the needs of industrial development and dispersal and the needs of rural electrification are primary objectives of the nation which shall be pursued coordinately and supported by all instrumentalities and agencies of the government, including its financial institutions.

"SEC. 2. The National Power Corporation; Its Corporate Life; 'Corporation' and 'Board' Defined. – To carry out the above-stated policy, specifically to undertake the development of hydroelectric generation of power and the production of electricity from nuclear, geothermal and other sources, as well as the transmission of electric power on a nationwide basis, the public corporation created under Commonwealth Act Numbered One hundred twenty and know as the 'National Power Corporation' shall continue to exist for fifty years from and after the expiration of its present corporate existence.

"In the pursuit of its objectives, the Corporation shall, s far as feasible, spread the benefits of its projects and operations to the greatest number of the population possible, and the Corporation shall prosecute faithfully such projects as will promote the total electrification of Luzon Islands, Visayan Islands and the Mindanao Islands.

"The words 'Corporation' and 'Board' appearing in this Act shall respectively refer to the National Power Corporation and the National Power Board.

"SEC. 3. Powers and General Functions of the Corporation. – The powers, functions, rights and activities of the Corporation shall be the following:

"(a) To have continuous succession under its corporate name until otherwise provided by law;

"(b) To prescribe its by-laws not inconsistent with this Act;

"(c) To adopt and use a seal and alter it at its pleasure;

"(d) To sue and be sued in any court;

"(e) To conduct investigations and surveys for the de¬velopment of water

[1] Republic Act No. 6395 repealed Commonwealth Act No. 120, as amended

power in any part of the Philippines;

"(f) To take water from any public stream, river, creek, lake, spring or waterfall in the Philippines, for the purposes specified in this Act; to intercept and divert the flow of waters from lands of riparian owners and from persons owning or interested in waters which are or may be necessary for said purposes, upon payment of just compensation therefor; to alter, straighten, obstruct or increase the flow of water in streams or water channels intersecting or connecting therewith or contiguous to its works or any part thereof: Provided, That just compensation shall be paid to any person or persons whose property is, directly or indirectly, adversely affected or damaged thereby;

"(g) To construct, operate and maintain power plants, auxiliary plants, dams, reservoirs, pipes, mains, transmission lines, power stations and substations, and other works for the purpose of the developing hydraulic power from any river, creek, lake, spring and waterfall in the Philippines and supplying such power to the inhabitants thereof; to acquire, construct, install, maintain, operate, and improve gas, oil or steam engines, and/or other prime movers, generators and machinery in plants and/or auxiliary plants for the production of electric power; to establish, develop, operate, maintain and administer power and lighting system for the transmission and utilization of its power generation; to sell electric power in bulk to (1) industrial enterprises, (2) city, municipal or provincial system and other government institutions, (3) electric cooperatives, (4) franchise holders, and (5) real estate subdivisions: Provided, That the sale of power in bulk to industrial enterprises and real estate subdivisions may be undertaken by the Corporation when the power requirement of such enterprises or real estate subdivisions is not less than 100 kilowatts: Provided, further, That no restriction shall apply to sale of power in bulk to enterprises registered with the Board of Investments: Provided, finally, That the Corporation shall continue to sell electricity to industrial enterprises under existing contracts, and provide for the collection of charges for any service rendered;" (As amended by Presidential Decree No. 395, dated February 26, 1974.)

"(h)To acquire, promote, hold, transfer, sell, lease, rent, mortgage, encumber and otherwise dispose of property incident to, or necessary, convenient or proper to carry out the purposes for which the Corporation was created." (As amended by Presidential Decree No. 938, dated May 27, 1976.)

"(i) To construct works across, or otherwise, any stream, watercourse, canal, ditch, flume, street, avenue, highway, or railway of private and public ownership as the location of said works may require: Provided, That said works be constructed in such a manner as not to endanger life or property: And, Provided, further, That the stream, watercourse, canal, ditch, flume, street, avenue, highway or railway so crossed or intersected be restored as near as possible to their former state or in a manner not to impair unnecessarily their usefulness. Every person or entity whose right-of-way or property is lawfully crossed or intersected by said works shall not abstract any such crossings or intersections and shall grant the Corporation or its representatives, the proper authority

for the execution of such work. The Corporation is hereby given the right-of-way to locate, construct, and maintain such works over and throughout the lands owned by the Republic of the Philippines or any of its branches and political subdivisions. The Corporation or its representatives may also enter upon private property in the lawful performance or prosecution of its business or purposes, including the construction of the transmission lines thereon: Provided, That the owner of such private property shall be paid the just compensation therefor in accordance with the provisions hereinafter provided: Provided, further, That any action by any person claiming compensation and/or damages shall be filed within five (5) years after the right-of-way, transmission lines, substations, plants or other facilities shall have been established: Provided, finally, That after the said period no suit shall be brought to question the said right-of-way, transmission lines, substations, plants or other facilities nor the amounts of compensation and/or damages involved." (As amended by Presidential Decree No. 938, dated May 27, 1976.)

"(j) To exercise the right of eminent domain for the purpose of this Act in the manner provided by law for instituting condemnation proceedings by the national, provincial, and municipal government as modified or amended by Presidential Decree No. 42." (As amended by Presidential Decree No. 938, dated May 27, 1976.)

"(k) When essential to the proper administration of its corporate affairs or necessary for the proper transaction of its business or to carry out the purposes for which it was organized, to contract indebtedness and issue bonds subject to approval of the President upon recommendation of the Secretary of Finance;

"(l) To exercise such powers and do such things as may be reasonably necessary to carry out the business and purposes for which it was organized, or which, from time to time, may be declared by the Board to be necessary, useful, incidental or auxiliary to accomplish the said purpose, including the establishment of subsidiaries; (As amended by Presidential Decree No. 380, dated January 22, 1974.)

"(m) To cooperate with, and to coordinate its operations with those of the Power Development Council, the National Electrification Administration and public service entities; (As amended by Presidential Decree No. 380, dated January 22, 1974.)

"(n) To exercise complete jurisdiction and control over watersheds surrounding the reservoirs of plants and/or projects constructed or proposed to be constructed by the Corporation. Upon determination by the Corporation of the areas required for watersheds for a specific project; the Bureau of Forestry, the Reforestation Administration and the Bureau of Lands shall, upon written advice by the Corporation, forthwith surrender jurisdiction to the Corporation of all areas embraced within the watersheds, subject to existing private rights, the needs of waterworks systems, and the requirements of domestic water supply;

"(o) In the prosecution and maintenance of its projects and plants, the Corporation shall adopt measures to prevent environmental pollution and enhance the conservation,

development and maximum utilization of natural resources, including the improvement and beautification of its reservoirs and other areas to promote tourism and related purposes, and to provide for the necessary corporate funds therefor; and" (As amended by Presidential Decree No. 380, dated January 22, 1974.)

"(p) Generally, to exercise all the powers of a corporation under the Corporation Law insofar as they are not inconsistent with the provisions of this Act.

SEC. 3A. In acquiring private property or private property rights through expropriation proceedings where the land or portion thereof will be traversed by the transmission lines, only a right-of-way easement thereon shall be acquired when the principal purpose for which such land is actually devoted will not be impaired, and where the land itself or portion thereof will be needed for the projects or works, such land or portion thereof as necessary shall be acquired.

In determining the just compensation of the property or property sought to be acquired through expropriation proceedings, the same shall –

"(a) With respect to the acquired land or portion thereof, not exceed the market value declared by the owner or administrator or anyone having legal interest in the property, or such market value as determined by the assessor, whichever is lower.

(b) With respect to the acquired right-of-way easement over the land or portion thereof, not to exceed ten percent (10%) of the market value declared by the owner or administrator or anyone having legal interest in the property, or such market value as determined by the assessor whichever is lower.

In addition to the just compensation for easement of right-of-way, the owner of the land or owner of the improvement, as the case may be, shall be compensated for the improvements actually damaged by the construction and maintenance of the transmission lines, in an amount not exceeding the market value thereof as declared by the owner or administrator, or anyone having legal interest in the property, or such market value as determined by the assessor whichever is lower: Provided, That in cases any buildings, houses and similar structures are actually affected by the right-of-way for the transmission lines, their transfer, if feasible, shall be effected at the expense of the Corporation: Provided, further, That such market value prevailing at the time the Corporation gives notice to the landowner or administrator or anyone having legal interest in the property, to the effect that his land or portion thereof is needed for its projects or works shall be used as basis to determine the just compensation therefor." (As amended by Presidential Decree No. 938, dated May 27, 1976.)

"SEC. 4. Fixing of Rates by the Board and Review by the Public Service Commission. – The Board shall fix the rates and fees to be charged by the Corporation so that the Corporation's rate of return shall be not more than ten per centum (10%) on a rate base composed of the sum of its net assets in operation as revalued from time to time plus two months' operating capital: Provided, That in determining the rate of return, interest on loans, bonds and other debts shall not be included as expenses. Such rates and fees shall be effective and enforceable fifteen (15) days after publication in a newspaper of general circulation. The Public Service Commission shall have exclusive original jurisdiction over all cases contesting said rates or fees. Any complaint against such

rates or fees shall be filed with the Public Service Commission within thirty (30) days after the effectivity of such rates or fees, but the filing of such complaint or action shall not stay the effectivity of said rates or fees. The Public Service Commission shall verify the rate base, and the rate of return computed therefrom, in accordance with the standards herein outlined. The Public Service Commission shall finish, within sixty (60) calendar days, any and all proceedings necessary and/or incidental to the case, and shall render its findings or decisions thereon within thirty (30) calendar days after said case is submitted for decision.

"In cases where the decision is against the fixed rates or fees, excess payments shall be reimbursed and/or credited to future payments, in the discretion of the Commission.

"The decision of the Public Service Commission shall be appealable to the Supreme Court in accordance with the provisions of the Rules of Court.

"The Corporation shall charge in any interconnected system a uniform schedule of rates for all its customers that fall within the same classification. Towards this end, the Corporation shall prescribe a standard form of contract and appropriate rules and regulations for the sale of electricity, which shall be uniformly applied and become effective on all power customers after they are duly notified or fifteen days after their publication in newspapers of general circulation. All subsisting power contracts are hereby considered revised to give immediate effectivity to the provisions." (As amended by Presidential Decree No. 380, dated January 22, 1974.)

"The rates to be charged in any interconnected system in Luzon, Visayas, and Mindanao, respectively, shall be determined independently from each other, and expenses or fixed investments in any one region shall not be utilized for purposes of fixing the rates to be charged in another region, but shall be determined in the light of conditions and circumstances obtaining in each region.

"SEC. 5. Capital Stock of the Corporation. – SEC. 5. Capital Stock of the Corporation. – The authorized capital stock of the Corporation shall be Fifty Billion Pesos (P 50,000,000,000.00) divided into Five Hundred Million (P 500,000,000) shares having a par value of One Hundred Pesos each, which shares are not to be transferred, negotiated, pledged, mortgaged, or otherwise given a security for the payment of any obligation. The sum of Three Hundred Million Pesos of said capital stock has been subscribed and paid wholly by the Government of the Philippines in accordance with the provisions of Republic Act Numbered Four Thousand Eight Hundred Ninety-Seven.

"The remaining Forty-Nine Billion Seven Hundred Million Pesos shall be subscribed by the Government of the Republic of the Philippines and shall be paid as follows:

"(a) The sum of Twenty-Nine Million Two Hundred Sixty-Seven Thousand Six Hundred Pesos representing outstanding cost and interest of reparation goods procured by the Corporation pursuant to the provisions of Republic Act Numbered Seventeen Hundred Eighty-Nine, shall be additional paid-in subscription of the Government of the Philippines for Two Hundred Ninety-Two Thousand Six Hundred Seventy-Six shares of stock of said capital stock.

"(b) The balance of said subscription shall be paid by the conversion into equity capital of the existing bonding indebtedness, cost of reparation goods that may be allocated in

the future and surpluses of the Corporation as well as from such as shall be appropriated annually out of any funds in the National Treasury not otherwise appropriated, be they collections from any or all taxes accruing to the general funds or proceeds from loans, the issuance of bonds, treasury bills or notes which are hereby authorized to be insured or to be issued by the Secretary of Finance for the purpose, such annual appropriation to be programmed and released by the Budget Commission in accordance with the schedule of cash requirements to be submitted by the corporation until the balance of the unpaid subscription of the Government to the capital stock of the Corporation shall have been paid in full. (As amended by Presidential Decree No. 1443, dated June 11, 1978.)

"SEC. 6. The National Power Board; its composition; compensation of members; qualifications; powers and duties. – The corporate powers of the Corporation shall be vested in and exercised by a Board of seven members consisting of a Chairman, Vice-Chairman and five directors who shall be appointed by the President of the Philippines.

"The President of the Corporation shall be the ex-officio Vice-Chairman of the Board.

"The said members of the Board shall serve for terms of three years, except that any person appointed to fill a vacancy shall serve only for the unexpired term of the member whom he succeeds.

"The Board shall meet as often as may be necessary upon call of the Chairman of the Board or upon call by a majority of all the Board members.

"The members of said Board shall receive a per diem of not to exceed Five Hundred Pesos for each regular or special meeting of the Board actually attended by them, and upon approval of the Secretary of Energy, shall receive such other allowances as the Board may prescribe, any provision of law to the contrary notwithstanding.

"A majority of the members of the Board shall constitute a quorum for the transaction of business.

"The Board, shall, moreover, have the following specific powers and duties:

"(a) To formulate and adopt policies and measures for the management and operation of the Corporation;

"(b) To adopt an annual and supplemental budget of receipts and expenditures of the Corporation according to its requirements;

"(c) To organize, reorganize and determine the Corporation's organization structure and staffing pattern; abolish and create offices and positions; fix the number of its officers and personnel; transfer and re-assign such officers and personnel; fix their compensation, allowances and benefits, the provisions of Presidential Decree No. 985 to the contrary notwithstanding;

"(d) To fix the compensation of the President of the Corporation who shall be appointed by the President of the Philippines; and to appoint and fix the compensation of other corporate officers;

"(e) For cause, to suspend or remove any corporate officer appointed by the Board;

"(f) To adopt and set down guidelines for the employment of personnel on the basis of merit, technical competence and moral character;

"(g) To take care that in fixing the rates and fees to be charged by the Corporation considerations of adequacy, reliability and sustained power service at the least possible cost to the public and of limited return on investments as prescribed in Section 5 hereof, shall be taken;

"(h) Any provision of law to the contrary notwithstanding, to write off bad debts." (As amended by Presidential Decree No. 1360, dated June 11, 1978.)

"SEC. 7. The President of the Corporation, his powers and duties; and other Corporate Officers and employees of the Corporation. – The President of the Corporation who shall be the Chief Executive Officer of the Corporation, shall be assisted by such number of Corporate Officers and employees as may be deemed necessary by the Board of Directors of the Corporation.

"The President of the Corporation shall have the following powers and duties:

"(a) To execute and administer the policies and measures approved by the Board, and have the responsibility for the efficient discharge of management functions;

"(b) To submit for the consideration of the Board such policies and measures which he deems necessary to carry out the purposes and provisions of this Act;

"(c) To direct and supervise the operation and internal administration of the Corporation and, for this purpose, may delegate some or any of his administrative responsibilities and duties to other officers of the Corporation;

"(d) Subject to the guidelines and policies set up by the Board, to appoint and fix the number and compensation of subordinate officials and employees of the Corporation; and for cause, to remove, suspend or otherwise discipline any subordinate employee of the Corporation;

"(e) To prepare an annual report of the Board on the activities of the Corporation at the close of each fiscal year and upon approval thereof, submit a copy to the President of the Philippines and to such other agencies as may be required by law;

"(f) To represent the Corporation in all dealings and transactions with other offices, agencies and instrumentalities of the Government and with all persons and other entities, private or public, domestic or foreign;

"(g) To exercise such other powers and duties as may be vested in him by the Board from time to time.

"The Commission on Audit shall appoint a representative who shall be the Auditor of the Corporation. In carrying out his responsibilities, he shall be assisted by such number of personnel as shall be necessary, whose appointments shall be subject to the approval of the Board. The salaries of the Auditor and his staff shall be fixed and approved by the Board." (As amended by Presidential Decree No. 1360, dated June 11, 1978.)

"SEC. 8. Authority to Incur Indebtedness and Issue Bonds; Their Conditions, Privileges and Exemptions, Sinking Funds; Guarantee. –

"(a) Domestic Indebtedness. – Whenever the Board deems it necessary for the Corporation to incur indebtedness by contracting loans with domestic financial institutions or to issue bonds to carry out the purposes for which the Corporation has been

organized, it shall, by resolution, approved by at least four members of the Board, so declare and state the purpose for which the proposed debt is to be incurred and such terms and conditions as it shall deem appropriate for the accomplishment of the said purpose: Provided, That in the case of bond issues, the same shall be subject to the approval of the President of the Philippines upon recommendation of the Secretary of Finance.

"The bonds issued under the authority of this subsection shall be exempt from the payment of all taxes by the Republic of the Philippines, or by any authority, branch, division or political subdivision thereof of which facts shall be stated upon the face of said bonds. Said bonds shall be receivable as security in any transaction with the Government in which such security is required.

"The Republic of the Philippines hereby guarantees the payment by the Corporation of both the principal and the interest of the bonds issued by said Corporation by virtue of this Act, and shall pay such principal and interest in case the Corporation fails to do so, and there are hereby appropriated, out of the general funds in the National Treasury not otherwise appropriated, the sums necessary to make the payments guaranteed by this Act: Provided, That the sums so paid by the Republic of the Philippines shall be refunded by the Corporation: Provided, further, That the Corporation shall set aside five per centum of its annual net operating revenues before interests as a reserve or sinking fund to answer for amounts advanced to it by the National Government for any loan, credit and indebtedness contracted by the former for which the latter shall be answerable as primary obligor or guarantor under the provisions of this Act: Provided, furthermore, That the setting aside of the amounts mentioned herein shall automatically cease the moment the accumulated sinking fund or reserve exceeds the amounts advanced to the Corporation by the National Government under this Act: And, Provided, finally, That the Corporation may periodically make partial payments to the National Government out of the said reserves.

"(b) Foreign Loans. – The Corporation is hereby authorized to contract loans, credits, in any convertible foreign currency, or capital goods, and indebtedness from time to time from foreign governments, or any international financial institution or fund source, or to issue bonds, in such amount and in any foreign currency on such terms and conditions as it shall deem appropriate for the accomplishment of its purposes and to enter into and execute agreements and other documents specifying such terms and conditions.

"The President of the Philippines, by himself, or through his authorized representative, is hereby authorized to negotiate and contract with foreign governments or any international financial institutions or fund sources, in the name and on behalf of the Corporation, one or several loans, for the purpose of assisting in the reconstruction, or promoting the development of the economy of the country.

"The President of the Philippines, by himself, or through his duly authorized representative, is hereby further authorized to guarantee, absolutely and unconditionally as primary obligor and not as surety merely, in the name and on behalf of the Republic of the Philippines, the payment of the loans, credits, indebtedness and bonds issued up to the amount herein authorized, which shall be over and above the amount which the President of the Philippines is authorized

to guarantee under Republic Act Numbered Sixty-One Hundred Forty-Two, as amended, as well as the performance of all or any of the obligations undertaken by the Corporation in the territory of the Republic of the Philippines pursuant to loan agreements entered into with foreign governments or any international financial institutions or fund sources.

"In the contracting of any loan credit or indebtedness under this Act, the President of the Philippines may, when necessary agree to waive or modify the application of any law granting preferences or imposing restrictions on international competitive bidding, including among others, Act Numbered Four Thousand Two Hundred Thirty-Nine, Commonwealth Act Numbered One Hundred Thirty-Eight, the provisions of Commonwealth Act Numbered Five Hundred Forty-One, Republic Act Numbered Five Thousand One Hundred Eighty-Three, insofar as such provisions do not pertain to constructions primarily for national defense or security purposes: Provided, however, That as far as practicable, utilization of the services of qualified domestic firms in the prosecution of projects financed under this Act shall be encouraged: Provided, further, That in case where international competitive bidding shall be conducted preference of at least fifteen per centum shall be granted in favor of articles, materials or supplies of the growth, production of manufacture of the Philippines: Provided, finally, That the method and procedure in the comparison of bids shall be the subject of agreement between the Philippine Government and the lending institution.

"The loans, credits and indebtedness contracted under this subsection and the payment of the principal, interest and other charges thereon, as well as the importation of machinery, equipment, materials, supplies and services, by the Corporation, paid from the proceeds of any loan, credit or indebtedness incurred under this Act, shall also be exempt from all direct and indirect taxes, fees, imposts, other charges and restrictions, including import restrictions previously and presently imposed, and to be imposed by the Republic of the Philippines, or any of its agencies and political subdivisions." (As amended by Presidential Decree No. 1360, dated June 11, 1978.)

"SEC. 9. Construction of Power Projects Recommended by the General Manager. – Upon determination by the General Manager, on his own initiative or as recommended by the regional manager concerned, that the construction of any project by the Corporation is advisable, a report to the Board, on the engineering and economic feasibility of the project together with preliminary plans and estimates of the cost of the proposed development and the estimated income to be derived therefrom shall be submitted by the General Manager.

"The Board may thereupon, at its discretion, designate a consulting board composed of two competent and impartial engineers and one competent economist to pass upon the different aspects of the project and comment on the report of the General Manager. The Board shall, with the said report and comment in view, decide whether or not the project shall be constructed, and what changes, if any, shall be made in the scheme proposed by the General Manager.

"SEC. 10. Construction, Repair Works, or Contracts for Services and Furnishing of Supplies, Materials and Equipment Awarded Upon Public Bidding: Exceptions. – All works or construction or repair of the Corporation as well as contracts for the services and furnishing of supplies, materials and equipment shall be awarded by the Corporation

in accordance with ceilings and rules imposed by the Board: Provided, however, That these do not conflict with existing Executive Orders and/ or presidential issuance on awards of contracts ." (As amended by Presidential Decree No. 938, dated May 27, 1976.)

"SEC. 11. Penalty for Destroying, Injuring or Interfering with any project of the Corporation, or maliciously Interfering with any Person in the Discharge of his Duties Connected therewith. – Any person or persons who shall maliciously destroy, injure, or interfere with any canal, raceway, ditch, lock, pier, inlet, crib, bulkhead, dam, gate, sluice, reservoir, aqueduct, conduit, pipes, culvert, post, abutment, conductor, cable-wire, insulator, weir, benchmark, monument, or other works, appliance, machinery, building or property of the Corporation, or who shall maliciously do any act which shall injuriously affect the quantity or quality of the water or electrical energy of the Corporation or the supply, transmission, measurement, or regulation thereof, or who shall maliciously interfere with any person engaged in the discharge of duties connected therewith, or who shall maliciously prevent, obstruct and interfere with the survey, works and the construction of access road and transmission lines or any related works of the Corporation, shall be guilty of felony and punished with a fine ranging from one to five thousand pesos or with imprisonment ranging from one to five years, or both such fine and imprisonment, at the discretion of the Court, and any injured party shall have the right to recover all damages suffered and cost of suit in a separate civil action in any court of competent jurisdiction.

"SEC. 12. Appropriation of Public Waters. – Subject to existing rights, all unappropriated public waters which may be used and developed for hydraulic power purposes shall be granted to the Corporation by the Secretary of Public Works and Communications: Provided, That in case of conflict with the needs for domestic water supply, the latter shall prevail.

"SEC. 13. Non-profit Character of the Corporation; Exemption from All Taxes, Duties, Fees, Imposts and Other Charges by the Government and Government Instrumentalities. – The Government shall be non-profit and shall devote all its return form its capital investment as well as excess revenues from its operation, for expansion. To enable the Corporation to pay its indebtedness and obligations and in furtherance and effective implementation of the policy enunciated in Section One of this Act, the Corporation, including its subsidiaries, is hereby declared exempt from the payment of all forms of taxes, duties, fees, imposts as well as costs and service fees including filing fees, appeal bonds, supersedeas bonds, in any court or administrative proceedings." (As amended by Presidential Decree No. 938, dated May 27, 1976.)

"SEC. 14. Contract with Franchise Holders, Conditions of. – The Corporation shall, in any contract for the supply of electric power to a franchise holder, require as a condition that the franchise holder, if it receives at least sixty per cent of its electric power and energy from the Corporation, shall not realize a rate of return of more than twelve per cent annually on a rate base composed of the sum of its net assets in operation revalued from time to time, plus two-month operating capital, subject to the non-impairment-of-obligations-of-contracts provision of the Constitution: Provided, That in determining the rate of return, interest on loans, bonds and other debts shall not be included as expenses. It shall likewise be a condition in the contract that the Corporation shall cancel or revoke the contract upon judgment

of the Public Service Commission after due hearing and upon a showing by customers of the franchise holder that household electrical appliances, have been damaged resulting from deliberate overloading by, or power deficiency of, the franchise holder. The Corporation shall renew all existing contracts with franchise holders for the supply of electric power and energy in order to give effect to the provisions hereof.

"SEC. 15. Laws Governing Relations of Corporation with Electric Cooperatives. – Nothing in this Act, shall, directly or indirectly, alter, modify, or repeal the provisions of Republic Act Numbered Six thousand thirty-eight, particularly in respect of the rights of electric cooperatives registered under the same Act. In its contracts and relations with such cooperatives, the Corporation shall be governed by the provisions of the said Act and the specific legislative franchise of such cooperatives.

"SEC. 15-A. The Corporation shall be under the direct supervision of the Office of the President and all legal matters shall be handled by the Chief Legal Counsel of the Corporation: Provided, That the Solicitor General's Office shall have supervision in the handling of court cases only of the Corporation.

"Considering that the operation of the business of the Corporation affects public convenience and welfare, all industrial disputes in the Corporation shall be settled by the compulsory arbitration." (As amended by Presidential Decree No. 380, dated January 22, 1974.)

"SEC. 16. Non-impairment of Collective Bargaining Agreements and Rights of Labor Unions. – Nothing in this Act shall be construed to impair existing collective bargaining agreements with the labor unions in the Corporation or the right of employees to organize and bargain collectively or diminish the rights of labor in the Corporation under the Industrial Peace Act or other labor laws."

"SEC. 16-A. Transitory Provisions. –

"(a) The word 'President' in Section 3 (k) of this Act shall refer to the President of the Philippines;

"(b) The phrase 'General Manager of the Corporation' in this Act, as amended, shall mean the President of the Corporation; And further, the phrase 'Regional Manager' in this Act, shall mean Corporate Officer;

"(c) Until the President of the Philippines appoints the President of the Corporation, the incumbent General Manager of the Corporation shall, as may be determined by the Board, either act as President of the Corporation or hold such office with such duties and responsibilities as shall be determined by the Board: Provided, That upon the assumption of office by the President of the Corporation appointed by the President of the Philippines, said incumbent General Manager of the Corporation shall without any diminution in salary, allowances and benefits, hold such office and perform such duties and responsibilities as shall be determined by the Board." (As amended by Presidential Decree No. 1360, dated June 11, 1978.)

"SEC. 17. Separability Clause. – The provisions of this Act are hereby declared to be separable, and in the event any one or more of such provisions are held unconstitutional, they shall not affect the validity of other provisions.

"SEC. 18. Repealing Clause. – All laws, executive and administrative orders, or parts thereof, inconsistent with any provision of this Act are hereby repealed or modified accordingly."

SEC. 2. Effective Date. – This Act shall take effect upon its approval.

Approved, September 10, 1971

EXECUTIVE ORDER NO. 224

VESTING ON THE NATIONAL POWER CORPORATION THE COMPLETE JURISDICTION, CONTROL AND REGULATION OVER WATERSHED AREAS AND RESERVATIONS SURROUNDING ITS POWER GENERATING PLANTS AND PROPERTIES OF SAID CORPORATION

WHEREAS, watershed areas are critical and essential to the life span of water-based projects including flood control and other environmental programs;

WHEREAS, the sustained operational capability of hydro and geothermal plants depends on the productive condition of the watersheds;

WHEREAS, due to its importance to the over-all economic-undertaking, it has become imperative that its inalienable and non-disposable character be assured, and therefore, more stringent measures be adopted for its protection, development, management and rehabilitation;

WHEREAS, the National Power Corporation pursuant to its mandated responsibility for developing and generating cheap, reliable electricity for national development has developed and administered watersheds in its geothermal and hydroelectric power plants;

WHEREAS, with its mandated functions, the National Power Corporation is in a better position and has the manpower and resources to exercise the desired protection, development, management and rehabilitation of watershed areas supporting water-based power plants;

WHEREAS, the National Power Corporation is vested by law with the power to exercise complete jurisdiction and control over watersheds surrounding the reservoir of plants and/or projects constructed or proposed to be constructed pursuant to the provisions of Section 3, paragraph (N), R.A. 6395;

NOW, THEREFORE, I, CORAZON C. AQUINO, President of the Republic of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order the following:

SECTION 1. The National Power Corporation shall have complete jurisdiction, control and regulation over the following watershed areas and reservations:

(1) Upper Agno Watershed Reservation as covered by Proclamation No. 548;

(2) Angat Watershed Reservation as covered by Proclamation Nos. 505 and 599;

(3) Caliraya-Lumot Watershed Reservation as covered by Proclamation No. 573;

(4) Makiling-Banahaw Geothermal Reservations as covered by Proclamation No. 1111;

(5) Buhi-Barat Watershed as covered by Proclamation No. 573;

(6) Tiwi Geothermal Reservation as covered by Presidential Proclamation No. 739;

SEC. 2. The National Power Corporation shall be held responsible for the management,

protection, development and rehabilitation of the aforementioned watershed areas, including but not limited to the following:

(1) Enforcement of forestry laws, rules and regulations governing the Integrated Management of Watershed Reservation under Ministry Order No. 83-01-13, Series of 1982;

(2) Identification of areas which require immediate rehabilitation and development;

(3) Preparation of plans and programs using the integrated multiple use concept of Watershed Management for the maximum utilization of watershed resources;

(4) Formulation and/or implementation of measures to prevent denudation of the forest cover and siltation of existing reservoirs;

(5) Public education and information drive to create awareness among the populace of the importance of forest resources and watershed areas;

(6) Promotion of the development and conservation of existing vegetative cover;

(7) Formulation of plans and development programs for resettlement and relocation;

(8) Coordination with other government agencies/instrumentalities, religious and civic groups in undertaking forest conservation measures in watershed areas;

(9) Afforestation, reforestation and physical rehabilitation measures in critically denuded watershed areas;

(10) Development, maintenance and management of tree farms within adequately vegetative watersheds for the production of transmission line poles.

SEC. 4. The provisions of existing laws, decrees, orders, rules and regulations as are inconsistent herewith are hereby repealed, amended or modified accordingly.

SEC. 5. This Executive Order shall take effect immediately.

Done in the City of Manila, this 16th day of July in the year of our Lord, nineteen hundred and eighty-seven.

Chapter 4
Philippine National Oil Company

PRESIDENTIAL DECREE NO. 334

CREATING THE PHILIPPINE NATIONAL OIL COMPANY, DEFINING ITS POWERS AND FUNCTIONS, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES

WHEREAS, in spite of the planned accelerated power development program using indigenous resources and the planned institution of conservation measures, the country will still be highly dependent on oil for a considerable length of time;

WHEREAS, it is imperative for the government to take a more active role in assuring adequate supply of oil reducing the element of uncertainty on sources of crude oil supply.

WHEREAS, international political development in 1973 which led to an oil situation of crisis proportions have emphasized the need for such government activity; and

WHEREAS, there is a compelling need for the government to embark on measures which will help insure stable supply of petroleum products in order to sustain the growth of the economy and of the social well-being of the nation;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution as Commander-in-Chief of all the Armed Forces of the Philippines and pursuant to Proclamation No. 1081 dated September 21, 1972 and General Order No. 1 dated September 22, 1972, as amended, do hereby order and decree as part of the law of the land, the following:

SECTION 1. Short Title. – This decree shall be known as the "Charter of the Philippine National Oil Company.

SEC. 2. Declaration of Policy. – It is the declared policy of the State to promote industrial and over-all economic development through the effective and efficient utilization of energy. In line with this policy, the establishment of an organized entity is necessary in order to assure adequate supply of oil and oil products as well as power and energy to all users and consequently enable the unimpeded and efficient growth of the economy. (As amended by Presidential Decree No. 927.)

SEC. 3. Creation, Name, Domicile and Term. – There is hereby created a body corporate to be known as the Philippine National Oil Company, hereinafter referred to as the "Company", which shall undertake and transact the corporate business relative primarily to oil or petroleum operations and other energy resources exploitation as defined hereunder, and for that purpose, the Company shall have capacity to sue and be sued.

Oil or Petroleum Operations" shall include actual exploration, production, refining, tankerage and/or shipping, storage, transport, marketing, and related activities concerning oil and petroleum products.

Energy resources exploitation" shall include exploration, discovery, development, extraction, utilization, refining, processing, transport, and marketing of all forms of energy resources. "Energy resources" means any substance, mineral or otherwise, which by itself or in combination with other substances or after processing or refining or the application to it of technology emanates, gives off, generates or causes, the emanation or generation of heat or power or energy such as, but not limited to, petroleum or oil, coal, marsh gas, methane gas, geothermal sources of heat and power, uranium and other minerals and deposits.

The principal office of the Company shall be determined by its Board of Directors. It may establish such offices, agencies, subsidiaries, branches or correspondents in the Philippines or abroad as its business operation would require.

The Company shall have a term of fifty (50) years from the issuance hereof, which shall be deemed renewed for an equal period unless sooner dissolved by law. (As amended by Presidential Decree No. 927.)

SEC. 4. Purposes. – The Company shall have the following purposes:

(a) To provide and maintain an adequate and stable supply of oil and petroleum products for the domestic requirement and for that purpose to engage in, control, supervise and regulate the transportation, storage, importation, exportation, refining, supply, sale and distribution of crude oil, refined petroleum and petroleum based products, whether imported or produced by local refineries;

(b) To promote the exploration, exploitation and development of local oil, petroleum and other energy resources;

(c) To foster conditions relating to oil or petroleum operations and other energy resources exploitation conducive to a balanced and sustainable growth of the economy. (As amended by Presidential Decree No. 927.)

SEC. 5. Powers and Functions of the Company. – The Company shall have the following powers and functions:

(a) To undertake, by itself or otherwise, exploration, exploitation, and development of all energy resources of the country, including surveys and activities related thereto;

(b) To establish, maintain, control and direct in any area within the national territory as it may deem appropriate, a petroleum and energy base territory and construct, install or maintain therein duty-free ports adequate for the use of vessels engaged in offshore oil drilling operations, airports sufficient for direct service flights, telecommunications center and ship-to-shore communications facilities, provide electric power and fresh water supply, and perform such other acts as it may deem necessary and advantageous or convenient to such operations;

(c) To lease, at reasonable rates, to private domestic entities or person such portion or portions of the petroleum and energy base, including facilities necessary for warehousing, logistical centers for the storage of oil drilling and oil well supplies, fabrication of off-shore drilling components and structures, mechanical repair facilities and the like; spaces for the office, habitation and recreational requirements of personnel directly engaged in offshore oil drilling and in manning the various logistical support operations and their immediate dependents;

(d) To undertake all other forms of petroleum or oil operations and other energy resources exploitations;

(e) To enter into contracts, with or without public bidding, with any person or

entity, domestic or foreign, and with governments for the undertaking of the varied aspects of oil or petroleum operation, and energy resources exploitation including the acquisition, by way of purchase, lease or rent or other deferred payment arrangements of equipment and/or raw materials and supplies, as well as for services connected therewith under such term and conditions as it may deem proper and seasonable;

(f) To borrow money from local and foreign sources as may be necessary for its operations;

(g) Any provision of law to the contrary notwithstanding, including but not limited to Section 13 of Act 1459, as amended, to invest its funds as it may deem proper and necessary in any activity related to its purposes, including in any bonds or securities issued and guaranteed by the Government of the Philippines and the Company may organize and incorporate subsidiary corporations for the purpose. The capital stock of corporations organized and incorporated by the Company may be subscribed in whole or in a part by the Company. Where the Company has a controlling interest of not less than fifty-one percent (51%) of the issued and outstanding capital stock of such subsidiaries, the securities, including shares of capital stock, issued by the subsidiaries and corporations owned and/or controlled by it, as well as the sale of and/or subscription to such securities and shares of capital stock shall be exempt from registration, licensing or other requirements imposed under the Securities Act (C. A. No. 83, as amended) any other law, decree, order or regulation.

(h) To purchase, hold alienate, mortgage, pledge or otherwise dispose of the shares of the capital stock of, or any bond, security of other corporations or associations of this or any other country; and while the owner of said stock, to exercise all the rights of ownership, including the right to vote thereon;

(i) To hold lands and acquire rights over mineral lands in excess of the areas permitted to private corporations, associations and persons by statute;

(j) To engage in export and import business of oil, petroleum, other forms and sources of energy and their derivatives, as well as in related activities;

(k) To acquire assets, real or personal, or interest therein, and encumber or otherwise dispose the same as it may deem proper and necessary in the conduct of its business;

(l) Subject to existing regulations, if it deems necessary, to establish and maintain such communication system, whether by radio, telegraph or any other manner, without the need of a separate franchise therefor;

(m) To determine its organizational structure, and the number and salaries of its officer and employees;

(n) To establish and maintain offices, branches, agencies, subsidiaries, correspondents or other units anywhere as may be needed by the Company and reorganize or abolish the same as it may deem proper;

(o) To exercise the right of eminent domain as may be necessary for the purpose for which the Company is created;

(p) Subject to payment of the proper amount, to enter private lands for the purpose of conducting geological or geophysical studies in connection with petroleum, mineral and other energy resources, exploration and exploitation;

(q) To acquire easement over public and private lands necessary for the purpose

of carrying out any work essential to its petroleum operation and energy resources exploitation, subject to payment of just compensation;

(r) To establish and maintain a technical educational system for the sustained development of the necessary manpower to manage and operate its affairs and business;

(s) To adopt a code of by-laws to complement this charter;

(t) To adopt and use a corporate seal which shall be judicially noticed;

(u) To perform such acts and exercise such functions as may be necessary for the attainment of the purposes and objectives herein specified;

(v) To perform such other functions as may be provided by law. (As amended by Presidential Decree No. 927.)

SEC. 6. Governing Body. – The Company shall be governed by a Board of Directors, hereinafter referred to as the "Board" which shall be composed of nine (9) members, to be appointed by the President of the Philippines. The members of the Board shall serve for a term of three (3) years or until their successors shall have been appointed and qualified. In case of any vacancy in the Board, the same shall be filled by the President of the Philippines for the unexpired term.

No person shall be appointed as member of the Board unless he is a natural born citizen of the Philippines, at least thirty-five (35) years of age and of established integrity.

The Chairman of the Board, who shall be the chief executive officer of the Company, as well as the President of the Company shall be appointed by the President of the Philippines. The other officers of the Company shall be appointed by the Board. (As amended by Presidential Decree No. 927, dated April 30, 1976.)

SEC. 7. Capital Stock. – The Company shall have a capital stock divided into ten million no-par shares to be subscribed, paid for and voted as follows:

(a) Two million shares of stock shall be originally subscribed and paid for by the Republic of the Philippines at an original issue value of P 50 per share.

(b) The remaining eight million shares of stock may be subscribed and paid for by the Republic of the Philippines or by government financial institutions at values to be determined by the Board, but in no cases less than the original issued value above stated to the Republic of the Philippines.

The voting power pertaining to shares of stock subscribed by the government of the Republic of the Philippines shall be vested in by the President of the Philippines or in such person or persons as he may designate.

The voting power pertaining to shares of stock subscribed by the government institutions shall be vested in them. (As amended by Presidential Decree No. 1516, dated June 11, 1978.)

SEC. 8. Duties and Responsibilities of the Chairman of the Board and President. – The Chairman of the Board and the President shall exercise such powers and perform such duties as may be provided in the By-Laws or as may be vested in them by the Board. (As amended by Presidential Decree No. 1516, dated June 11, 1978.)

SEC. 9. Issuance of Bonds. – The Company, upon the recommendation of the Secretary of Finance and with the approval of the President, is hereby authorized to issue bonds or other securities, whether tax-exempt or not, which may be guaranteed by the government, to finance its oil or petroleum operation.

SEC. 10. General Counsel. – The Secretary of Justice or the Solicitor General shall

perform the duties of General Counsel of the Company. Any provision of law to the contrary notwithstanding, the Secretary of Justice of the Solicitor General and such personnel as may be necessary to assist him in the performance of his duties and responsibilities shall receive such allowances as shall be fixed by the Board. (As amended by Presidential Decree No. 1516, dated June 11, 1978.)

SEC. 11. Auditor. – The Commission on Audit shall appoint, subject to the approval of the Board, a representative who shall be the Auditor of the Company and such personnel as may be necessary to assist said representative, in the performance of his duties. The salaries of the Auditor and his staff shall be approved by the Board. The Auditors of corporations owned or controlled by the Company shall be appointed by their respective boards of directors.

SEC. 12. Exemption from Civil Service Law. – The officers and employees of the Company shall not be subject to the Civil Service Law, rules and regulations, and shall likewise be exempt from the regulations of the Wage and Position Classification Office.

SEC. 13. Loans. – The Company as well as an affiliate corporation in which it holds, owns and/or controls by itself or jointly with one or more Government owned or controlled corporations of at least seventy-five (75%) of the issued and outstanding shares of stock entitled to vote, when specifically authorized by the President of the Philippines, is hereby authorized to contract loans, credits, in any convertible foreign currency or capital goods, and indebtedness from time to time from foreign governments, or any international financial institutions or fund sources, or any other entities, on such terms and conditions it shall deem appropriate for the accomplishment of its purposes and to enter into and execute agreements and other documents specifying such terms and conditions.

The Republic of the Philippines, through the President of the Philippines or his duly authorized representative, may guarantee, absolutely and unconditionally, as primary obligor and not as surety merely, the payment of the loans, credits and indebtedness secured by the Company or any of its affiliate corporations, as provided above, which may be over and above the amount which the President of the Philippines is authorized to guarantee under Republic Act Numbered Sixty One Hundred Forty-Two, as amended, as well as the performance of all or any of the obligations undertaken by the Company or its affiliate corporations in the territory of the Republic of the Philippines pursuant to loan agreements entered into with foreign governments or any international financial institutions or fund sources.

The loans, credits and indebtedness contracted under this subsection and the payment of the principal, interest and other charges thereon, as well as the importation of machinery, equipment, materials, supplies and services, by the Company and or any of its affiliate corporations as defined herein, paid from the proceeds of any loan, credit or indebtedness incurred under this Act, shall also be exempt from all direct and indirect taxes, duties, fees, imposts, and all other charges and restrictions, including import restrictions previously and presently imposed, and to be imposed by the Republic of the Philippines, or any of its agencies and political subdivisions. (As amended by Presidential Decree No. 572, dated November 5, 1974.)

SEC. 13. Loans. – The Company is hereby authorized to contract loans, credits, any convertible foreign currency or capital goods, and indebtedness from time to time from foreign governments, or any international financial institutions or fund sources, or any other entities, on such terms and conditions it shall deem appropriate for the accomplishment of its purposes and to enter into and execute agreements and other documents specifying such terms and conditions.

The Republic of the Philippines, through the President of the Philippines, or his duly authorized representative, may guarantee, absolutely and unconditionally, as primary obligor and not as surety merely, the payment of the loans, credits and indebtedness issued up to the amount herein authorized, which may be over and above the amount which the President of the Philippines is authorized to guarantee under Republic Act Numbered Sixty One Hundred Forty-Two, as amended, as well as the performance of all or any of the obligations undertaken by the Company in the territory of the Republic of the Philippines pursuant to loan agreements entered into with foreign governments or any international financial institutions or fund sources.

SEC. 14. Government Financial Institutions Guarantees. – The provision of any law to the contrary notwithstanding, any financial institution owned or controlled by the Government of the Republic of the Philippines, other than the Central Bank, Government Service and Insurance System and the Social Security System, is hereby empowered to guarantee acceptance credits, loans, transactions, undertakings, or obligations of any kind which may be incurred by the Company, whether directly or indirectly, in favor of any person, association or entity, whether domestic or foreign.

SEC. 15. Privileges and Incentives. – The Company shall be entitled to all the incentives and privileges granted by law to private enterprises engaged in petroleum or oil operations.

In addition the company shall be exempt from all taxes, duties, fees, imposts, and all other charged imposed directly or indirectly by the Republic of the Philippines, its provinces, cities, municipalities and other government agencies and instrumentalities: Provided, That the Company's affiliate corporations as provided in Section 13 hereof, as amended, shall be exempt only from all taxes, duties, fees, imposts, and all other charges imposed directly or indirectly by the Republic of the Philippines, its provinces, cities, municipalities and other government agencies and instrumentalities, on importations of aircrafts, vessels, tankers, barges and other floating structures, including any machinery, engines, motors, equipment, spare parts and materials thereof.

Other government offices and other government-owned or controlled corporations shall extend whatever assistance may be needed by the Company or any of its affiliates and subsidiaries, including the details of its officials and employees to the Company or any of its subsidiaries on full time or part time basis under arrangements satisfactory to the Company or any of its subsidiaries and the other government office or corporation concerned. Said officials and employees, as well as the directors of the Company and its affiliates and subsidiaries, may receive allowances and other emoluments, notwithstanding the provision of any law to the contrary.

The employees of the Company shall be entitled to all the retirement and insurance benefits and leave privileges of government employees. However, subsidiaries of the Company organized to undertake purely business ventures shall not as a matter of right, be subject to the provisions of the Government Service and Insurance System, as provided for under R.A. 186, as amended, as well as to many law, executive orders and decrees relating to leave of absences, retirement privileges, regular working hours, and other government employee benefits. (As amended by Presidential Decree No. 572, dated November 5, 1974.)

SEC. 16. Appropriations. – For the initial funding requirements of the Company, the sum of Two Hundred Million Pesos is hereby set aside and appropriated from the General Funds, not otherwise appropriated.

SEC. 17. Reports. – The Company shall, within three months after the end of every fiscal year, submit its annual report to the

President. It shall likewise submit such periodic or other reports as may be required of it from time to time.

SEC. 18. Separability Clause. – Should any provision of this Decree be held unconstitutional, no other provision hereof shall be affected thereby.

SEC. 19. Repealing Clause. – All laws, decrees, executive orders, administrative orders, rules or regulations inconsistent herewith are hereby repealed, amended or modified accordingly.

SEC. 20. Effectivity. – This Decree shall take effect immediately.

Done in the City of Manila, this 9th day of November, in the year of Our Lord, nineteen hundred and seventy-three.

EXECUTIVE ORDER NO. 171

AMENDING CERTAIN PROVISIONS OF PRESIDENTIAL DECREE NO. 334, AS AMENDED, AND EXECUTIVE ORDER NO. 131

WHEREAS, there is a need to reorganize the Philippine National Oil Company (PNOC) to make it responsive to the requirements of the industry;

WHEREAS, pending the adoption by Congress of a law standardizing the compensation of government-owned and controlled corporations with original charters, there is a need to make the PNOC salaries competitive with the private sector;

NOW, THEREFORE, I, CORAZON C. AQUINO, President of the Philippines, do hereby order:

SECTION 1. The Philippine National Oil Company (PNOC) shall have the following purposes:

(a) To provide and maintain an adequate and stable supply of oil and petroleum products for the domestic requirement and for that purpose to engage in the transportation, storage, importation, exportation, refining, supply, sale and distribution of crude oil, refined, petroleum and petroleum based products, whether imported or produced by local refineries;

(b) To engage in the exploration, exploitation and development operations and other energy resources;

(c) To foster conditions relating to oil or petroleum operations and other energy resources exploitation conducive to a balanced and sustainable growth of the economy;

(d) To undertake, by itself or otherwise, exploration, exploitation, and development of all energy resources of the country, including surveys and activities related thereto;

(e) To undertake all other forms of petroleum or oil operations and other energy resources exploitation.

SEC. 2. All of the powers and functions of PNOC as provided in P.D. 334, as amended, except the regulatory functions, are hereby maintained.

SEC. 3. As a transitory measure, PNOC shall, for a period of two (2) years, continue to use the facilities of the National Coal Authority which is to be integrated with the Natural Resources Development Corporation pursuant to Executive Order No. 131, subject

to continued payment at current rate without escalation for a period of two (2) years.

SEC. 4. Pending the adoption by Congress of a law standardizing salaries and benefits of government-owned and controlled corporations with original charters, the personnel of PNOC shall be exempt from the Office of Compensation and Position Classification.

SEC. 5. The directors and officers of PNOC may hold concurrent positions in PNOC subsidiaries and receive reasonable compensation therefor.

SEC. 6. Employees and officers of the subsidiaries of PNOC may be detailed to PNOC for periods not exceeding one (1) year, or when necessary to maximize manpower use, they may be given concurrent positions in PNOC, subject to a cost-sharing arrangement between PNOC and its subsidiaries.

SEC. 7. For efficiency of operations and maximum utilization of personnel, PNOC may, if warranted, set up a management company to supervise and coordinate the various activities of PNOC and its subsidiaries.

SEC. 8. The provisions of paragraph 4, Section 4, Section 5 (c) and (f) of Executive Order No. 131, Charter of the Department of Environment, Energy and Natural Resources, to the extent inconsistent herewith, are hereby amended accordingly. lawphi1.net

SEC. 9. This Executive Order shall take effect immediately.

Done in the City of Manila, this 8th day of May, in the year of Our Lord, nineteen hundred and eighty-seven.

EXECUTIVE ORDER NO. 223

VESTING ON THE PHILIPPINE NATIONAL OIL COMPANY (PNOC) THE JURISDICTION, CONTROL, MANAGEMENT, PROTECTION, DEVELOPMENT AND REHABILITATION OVER THE WATERSHED AREAS OF GEOTHERMAL RESERVATIONS WHERE PNOC HAS GEOTHERMAL PROJECTS, PLANTS, AND PROPERTIES

WHEREAS, indigenous geothermal resource is an energy alternative that can provide a principal energy supply to boost the country's economy;

WHEREAS, the Government has declared some geothermal rich areas of the country as geothermal reservations under the jurisdiction and control of the Office of Energy Affairs (OEA) through the National Power Corporation (NPC) pursuant to Presidential Decree 1515 and 1749;

WHEREAS, PNOC has substantially invested in the development of the Tongonan, Palinpinon and Bacon-Manito geothermal fields and presently supplies geothermal steam to the geothermal power plants in Tongonan and Palinpinon;

WHEREAS, being a major developer of these vital energy alternatives, it is the inherent responsibility of PNOC to protect and manage the watershed areas surrounding the geothermal resource to ensure the sustained steam supply to government power plants;

WHEREAS, PNOC was deputized by OEA under MOE Order 83-06-15 in conjunction with P.D. 1749 to undertake the management, protection, development and rehabilitation of the watershed areas of Tongonan, Palinpinon, and Bacon-Manito Geothermal Reservations;

WHEREAS, PNOC has in place an efficient logistics network and an established and qualified watershed management body currently undertaking the protection,

rehabilitation, and development of these reservations;

NOW, THEREFORE, I, CORAZON C. AQUINO, President of the Philippines, do hereby direct:

SECTION 1. PNOC shall have jurisdiction, control and management, and shall be responsible for the protection, development and rehabilitation of the watershed areas surrounding the following geothermal reservations:

(a) Tongonan Geothermal Reservation pursuant to Presidential Proclamation No. 1112;

(b) Palinpinon Geothermal Reservation pursuant to Presidential Decree No. 1413;

(c) Bacon-Manito Geothermal Reservation pursuant to Presidential Proclamation No. 2036-A; and

(d) Other Geothermal Reservations as may be discovered, identified, determined, and to be developed by PNOC, and proclaimed by the President of the Philippines.

SEC. 2. To effectively accomplish this mandate, PNOC shall exercise jurisdiction and control over the aforesaid watershed areas including but not limited to the performance of the following acts:

(a) Enforcement of forestry laws, rules and regulations within said watershed areas;

(b) Identification of areas which require immediate rehabilitation and development;

(c) Preparation of plans and programs for the maximum utilization of watershed resources;

(d) Formulation and/or implementation of measures to prevent denudation of watershed cover;

(e) Public education and information drive to create awareness among the populace of the importance of forests and uses of watershed areas;

(f) Promotion of the development and conservation of existing vegetative cover;

(g) Formulation of plans and development programs for resettlement and relocation;

(h) Coordination with other government agencies/instrumentalities religious and civic groups in undertaking forest conservation measures in watershed areas;

(i) Afforestation, reforestation and physical rehabilitation measures in critically denuded watershed areas.

SEC. 3. The provisions of existing laws, decrees, orders, rules and regulations as are inconsistent herewith are hereby repealed, amended or modified accordingly.

SEC. 4. This Order shall take effect immediately.

Done in the City of Manila, this 16th day of July, in the year of Our Lord nineteen hundred and eighty-seven.

EXECUTIVE ORDER NO. 39

MANDATING THE SECRETARY OF ENERGY TO SIT AS EX OFFICIO CHAIRMAN OF THE BOARD OF DIRECTORS OF PNOC EXPLORATION AND PNOC RENEWABLES CORPORATION

WHEREAS, Republic Act (RA) No. 7638 or the "Department of Energy Act of 1992" mandates the Department of Energy (DOE) to carry out the policy of the State to achieve self-reliance in the country's energy requirements and to prepare, integrate, coordinate, supervise and control all plans, programs, projects and activities of the Government relative to energy exploration, development, utilization, distribution and conservation;

WHEREAS, Presidential Decree (PD) No. 334 (s. 1973) created the Philippines National Oil Company (PNOC) as a government-owned and controlled corporation (GOCC) to undertake and transact the corporate business relative primarily to oil or petroleum operations and other energy resources exploitation, and granted it the power to establish and maintain subsidiaries as it may deem proper;

WHEREAS, RA 7638 placed the PNOC under the supervision of the DOE with the Secretary acting, in a concurrent capacity, as it's *ex officio* Chairman of the Board, unless otherwise directed by the President;

WHEREAS, the PNOC, exercising its authority to establish and maintain subsidiaries as it may deem proper, incorporated under Batas Pambansa (BP) Blg. 68, or the Corporation Code of the Philippines, the PNOC Exploration Corporation (PNOC-EC), which is 99.79% owned by the PNOC, and the PNOC Renewables Corporation (PNOC-RC), a wholly-owned subsidiary of the PNOC.

WHEREAS, in view of the respective mandates of the PNOC-EC and the PNOC-RC to, among others, explore, produce and utilize petroleum and renewable energy sources as stated in the Articles of Incorporation, there is a need to close policy coordination between those corporations and the DOE, in order to achieve the national policy of energy self-reliance;

WHEREAS, the Administrative Code of 1987 states that coordination between a department and an attached agency or corporation may be accomplished by having the department represented in the governing board of the attached agency or corporation either as chairman or member, if permitted by the charter;

WHEREAS, RA 7638, while prohibiting the Secretary of Energy from being the chief executive officer or chief operating officer of the subsidiaries of PNOC, does no prohibit him from being the *ex officio* Chairman of the Board of such subsidiaries;

WHEREAS, RA 10149 or the "GOCC Governance Act of 2011" defines an *ex officio* board member as any individual who sits or acts as a member of the board of directors/ trustees by virtue of such individual's title to another office, and without further warrant or appointment;

WHEREAS, the Administration has declared as a priority agenda the streamlining and rationalization of Government offices and processes to serve public interest;

NOW, THEREFORE, I, RODRIGO ROA DUTERTE, the President of the Philippines, by virtue of the powers vested in the Constitution and existing laws, do hereby order:

SECTION 1. Secretary of Energy as Ex Officio Chairman. The Secretary of the Department of Energy shall be the *ex officio* Chairman of the Board of Directors of both the PNOC-EC

and the PNOC-RC.

The Department of Energy, PNOC, PNOC-EC and PNOC-RC shall, in the expeditious manner allowed by existing laws and rules, undertake all such actions as may be necessary to implement the provisions of this Order, which may include the amendment of the company By-law of the PNOC-EC and PNOC-RC.

SECTION 2. Repeal. All orders, rules, regulations and issuances or parts thereof which are inconsistent with this Order are hereby repealed or modified accordingly.

SECTION 3. Separability. If any part or provision of this Order be declared invalid or unconstitutional, the other provisions not affected thereby shall remain valid and subsisting.

SECTION 4. Effectivity. This Executive Order shall take effect immediately upon publication in a newspaper of general circulation.

Done, in the City of Manila, this 5th day of September in year of our Lord, Two Thousand and Seventeen.

By the President,

SALVADOR C. MEDIALDEA
Executive Secretary

Chapter 5
National Electrification Administration

REPUBLIC ACT NO. 6038

AN ACT DECLARING A NATIONAL POLICY OBJECTIVE FOR THE TOTAL ELECTRIFICATION OF THE PHILIPPINES ON AN AREA COVERAGE SERVICE BASIS, PROVIDING FOR THE ORGANIZATION OF THE NATIONAL ELECTRIFICATION ADMINISTRATION, THE ORGANIZATION, PROMOTION AND DEVELOPMENT OF ELECTRIC COOPERATIVES TO ATTAIN THE OBJECTIVE, PRESCRIBING TERMS AND CONDITIONS FOR THEIR OPERATION, THE REPEAL OF R.A. NO. 2717, AND FOR OTHER PURPOSES

CHAPTER I

POLICY AND DEFINITIONS

SECTION 1. Title. – This Act shall be referred to as the "National Electrification Administration Act."

SEC. 2. Declaration of National Policy. – The total electrification of the Philippines on an area coverage basis being vital to the welfare of its people and the sound development of the Nation, it is hereby declared to be the policy of the State to pursue and foster, in an orderly and vigorous manner, the attainment of this objective. For this purpose, the State shall promote, encourage and assist all public service entities engaged in supplying electric service, particularly electric cooperatives, which are willing diligently to pursue this objective.

Because of their non-profit nature, cooperative character and the heavy financial burdens that they must sustain to become effectively established and operationally viable, electric cooperatives particularly shall be given every tenable support and assistance by the National Government, its instrumentalities and agencies to the fullest extent of which they are capable; and, being by their nature substantially self-regulating and the Congress having, by the enactment of this Act, substantially covered all phases of their organization and operation requiring or justifying regulation, and in order to further encourage and promote their development, they should be subject to minimal regulation by other administrative agencies.

SEC. 3. Definitions. – As used in this Act, the following words or terms shall have the following meanings, unless a different meaning clearly appears from the context:

(a) "NEA" shall mean the National Electrification Administration, "Board of Administrators" shall mean the Board of Administrators, and "Administrator" shall mean the Administrator, provided for in this Act.

(b) "Cooperative" shall mean a corporation organized under this Act or a cooperative supplying or empowered to supply service which has heretofore been organized under the Philippine Non-Agricultural Co-operative Act, whether converted under this Act or not.

(c) "Public service entities" shall mean (1) a cooperative and (2) any local government

or (3) other privately-owned public service entities in operation which supply and are empowered to supply service and are subject to regulation by the Public Service Commission.

(d) "Person" shall mean any natural person, firm, association, cooperative, corporation, business trust, partnership, the National Government or any political subdivision, agency or instrumentality thereof.

(e) "Service" shall mean electric service, either at wholesale or retail, including the furnishing of any auxiliary or related service.

(f) "Dependable and adequate service" shall mean service that, consistent with normal standards and levels of service based upon good utility management and operating practices, is sufficient in quantity, having regard for the demands for service currently existing and reasonably anticipated within the foreseeable future, and that is accessible on a constant and continuous basis except for outages occasioned by the need for normal repair, maintenance, construction or renovation work or by acts beyond the reasonable ability of the public service entity to prevent or control.

(g) "Area" shall mean the geographic area franchised to a public service entity or any lesser geographic area for service to which the public service entity has borrowed or may borrow funds for the acquisition or construction and operation, maintenance or renovation of service facilities.

(h) "Area coverage" shall mean dependable and adequate service that, on the basis of reasonable and standard extension and service policies, rates, charges and other terms and conditions, will be or is being made available to all persons within the affected area as above defined who request such service and are able and willing to abide by and comply with all such reasonable and standard terms and conditions, regardless of the relative location of such persons within the affected area or of their proximity to existing or proposed service facilities: Provided, That the financial feasibility of the public service entity's entire operation is not thereby impaired.

(i) "Interest rate per centum per annum" shall mean an interest rate that is accrued solely upon the unpaid balance of any loan principal which has actually been advanced to a borrower and upon any interest payment which has become due or been deferred and has not been paid by the borrower, computed on an annual basis.

(j) "Loan" shall mean a loan the total principal amount of which, as and when required for application to the purposes thereof, is, at the time of the making thereof, assured from funds that are or will become available therefore.

(k) "GSIS", "SSS", "DBP", "NEC", "NEC-FS" and "NPC" shall mean, respectively, Government Service Insurance System, Social Security System, Development Bank of the Philippines, National Economic Council, National Economic Council-Foreign Source and National Power Corporation.

(l) "Average interest rate" shall mean that average which is determined by dividing (a) the sum of the yearly interest payment applying to all outstanding borrowed indebtedness and of the yearly interest payment that will apply to the new borrowed indebtedness being proposed (but excluding interest that will or may be paid on deferred or overdue interest payments) by (b) the sum of all outstanding borrowed indebtedness and the new borrowed indebtedness being proposed.

(m) "Non-profit" shall mean that a cooperative shall not engage in business for the purpose of making a profit for itself or its patrons, but it shall not mean that a cooperative may not account on a patronage basis to its patrons for any receipts in excess of its expenses in relation to its operations in serving such patrons or in relation to investments of any of its surplus funds pending their use by the cooperative or their refund to patrons; nor shall it mean that such excess receipts may not be refunded to its patrons, or may not be converted into patron-furnished capital subject to later redemption and retirement by the cooperative.

(n) "Board" shall mean the board of directors of a cooperative.

CHAPTER II

THE NATIONAL ELECTRIFICATION ADMINISTRATION

SEC. 4. National Electrification Administration. Board of Administrators. – For the purpose of administering the provisions of this Act there is hereby established an agency to be known as the National Electrification Administration, the powers of which shall be vested in and exercised by a Board of Administrators composed of a Chairman and four members, one of whom shall be the Administrator, as ex-officio member. The Chairman and the three other members shall be appointed by the President of the Philippines with the consent of the Commission on Appointments to serve for a term of six years: Provided, That the terms of the first appointees shall be six years for the Chairman and one member and three years for two members, respectively, and that the term of the ex-officio member shall be co-terminus with his term as the Administrator. All vacancies, except through expiration of the term, shall be filed for the unexpired term only. The Chairman and every member of the Board of Administrators shall serve without compensation and any form of allowances but, unless he is a public official or employee, shall be entitled to a per diem of not more than fifty pesos for each meeting actually attended by him: Provided, That the total of such per diems shall not exceed five hundred pesos per month per member.

The Board of Administrators shall meet regularly at least twice a month and as often as the exigencies of the NEA's affairs demand. The presence of at least three members shall constitute a quorum which shall be necessary for the transaction of any business. The affirmative vote of a majority of the members present shall be necessary for the approval of any resolution, decision or order of the Board. In the absence of the Chairman at a Board meeting duly called, the Administrator, as ex-officio member shall preside over the meeting.

The Board of Administrators is hereby authorized to carry out the provisions and purposes of this Act, and, subject to the approval of the President, to promulgate rules and regulations to govern its proceedings and the exercise of the NEA's authority, to organize, reorganize and determine the NEA's personnel and its staffing pattern, and to define their powers and duties.

The Board of Administrators shall have under its control and supervision an Administrator who shall serve as the Chief Executive Officer of the NEA responsible for carrying out its purposes and programs under the direction of the Board of Administrators, exercise such power and authority as the Board may delegate to him, and perform such acts as he is under this Act authorized and directed and as the Board may authorize and/or direct him so to do. The Administrator shall be a person of known integrity, competence and experience in technical and executive fields related to the purposes of this Act. He shall be appointed by the President of the Philippines with the consent of the Commission on Appointments and shall receive a salary to be fixed by the Board of Administrators with the approval of the President not exceeding twenty four

thousand pesos per annum. He shall serve for a term of six years and shall not be removable except for cause.

SEC. 5. Authorities, Powers and Directives. – The Board of Administrators is hereby authorized, empowered and directed to promote, encourage and assist public service entities, particularly cooperatives, to the end of achieving the objective of making service available throughout the nation on an area coverage basis as rapidly as possible; and for such purpose it is hereby, without limiting the generality of the foregoing and in addition to other authorizations, powers and directives established by this Act, specifically authorized, empowered and directed:

(a) To make loans to public service entities, with preference to cooperatives for the construction or acquisition of generating, transmission and distribution facilities and all related properties, equipment, machinery, fixtures, and materials for the purpose of supplying area coverage service and thereafter to make loans for the restoration, improvement or enlargement of such facilities: Provided, That the public service entity applying for a loan, if neither a cooperative nor a local government, must be in operation at the time of application;

(b) To assist public service entities, with preference to cooperatives, in planning, developing, coordinating, establishing, operating, maintaining, repairing and renovating facilities and systems for supplying area coverage service, and for such purpose to furnish, to the extent possible from the NEA technical staff and otherwise but without charge therefore, technical and professional assistance and guidance, information, data and the results of any investigations, studies or reports conducted or made by the NEA;

(c) When sufficient funds therefore are not available from the revolving fund hereinafter established, to serve, without charge for such service, as the agent of public serve entities which are cooperatives or local governments in securing loans directly to such entities from any other source for the same purposes for which NEA loans are authorized in subparagraph (a) of this section; and to approve or disapprove any other loans to cooperatives as provided for in section 11 of this Act;

(d) To receive from cooperatives all articles of incorporation, amendment, consolidation, merger, conversion and dissolution, and all certificates of changes in the location of principal offices and of elections to dissolve, and, upon determining that such are in conformity with this Act, to certify the same, to file them in the records of the NEA, and to maintain a registry of such filing: Provided, That the duties specified in this subsection shall be performed by the Administrator under the supervision of the Board of Administrators;

(e) To so cooperate and coordinate the NEA's administration with, to exchange such information, studies and reports with, and to seek such cooperation and coordination from, other departments, agencies and instrumentalities of the National Government, including the National Power Corporation, as will most effectively conduce to the achievement of the purposes of this Act; and

(f) At least annually, not later than January 31st, to report to the President and the Congress on the status of electrification of the Philippines, including a comprehensive reporting of loans made, loan funds advanced, loans secured from other sources and the advances thereof, the names and locations of the borrowers, the number of services contemplated by such loans, the number actually receiving service as a result of such loans, the number of electrified and the remaining number of unelectrified premises throughout the Nation, the amounts

of usage by consumers, loan and other activities programmed for the ensuing year, and all such other information and data as will accurately reveal the progress being made toward achievement of the purposes of this Act; and to publish such report for dissemination to and use by other interested departments, agencies and instrumentalities of the National Government and by borrowers under this Act.

SEC. 6. Loans from GSIS, SSS and DBP. – The GSIS, SSS and DBP are hereby authorized, empowered and directed to make loans directly to public service entities for the same purposes for which NEA loans are authorized in subparagraph (a) of section five. Any other provision of law to the contrary notwithstanding, such a loan shall be made by any of the foregoing three whenever:

(a) Application for such loan has been made to it on behalf of such entity by the Administrator, accompanied by his determination and certification that (1) sufficient funds for such a loan are not available out of the revolving fund hereinafter established; (2) such loan is necessary to enable the borrower to accomplish the loan purposes established in subparagraph (a) of section five; (3) in his judgment the loan will be repaid with interest on schedule and will not result in any diminution of the security of, or of the ability of the borrower to repay, any outstanding indebtedness of the borrower to the NEA or any other lending source below than level of such security and ability were such additional borrowing not being undertaken; (4) no lender other than the NEA or if such be the case the lender being applied to, then holds or has the right to secure a first lien on the properties of the borrower to be financed by such loan; and (5) his willingness in relation to the properties to be financed by such loan, (A) to release any after-acquired property clause in any lien the NEA already has on the borrower's properties to, or (B) to share any such lien on a co-equal basis in proportion to their respective loans with, or (C) to subordinate any such lien in favor of, the lender; and

(b) The NEC determines and certifies to the lender: (1) that the funds of such lender, having regard for the amount, term, interest charge, repayment schedule and security of such loan, are sufficient and available for such purpose; (2) that such loan will not impair or unduly deter the achievement of the primary purposes for which the lender has accumulated such funds; (3) the loan term, which shall not exceed thirty-five years; (4) the repayment schedule, which shall not cause payments of principal or interest to come due more often than every quarter; (5) the interest rate, which shall not exceed (A) the lowest interest rate being then received by the lender on loans of ten-or-more-year terms made by the lender during the preceding twelve months (or, if no such loans have been made during the preceding twelve months, on such loans made by the lender during the preceding five years; or, if no such loans have been made during the preceding five years, on the longest-term loan made by the lender during the preceding three years), or (B) six per centum per annum, whichever is the lesser: Provided, That if six per centum per annum is lesser, the NEC may, but shall not be required to, fix the interest rate to be not in excess of (i) such higher rate as will result in an average interest rate to the borrower of not in excess of six per centum per annum or (ii) the lowest interest rate determined under (A) above, whichever is the lesser; and (B) the other terms and conditions of the loan;

(c) Such loan, when added to the outstanding principal indebtedness to such lender for any other loans made pursuant to this section, will not aggregate in excess of one hundred million pesos; and

(d) The borrower executes such documents as shall be necessary to effectuate such borrowing and give the lender as security therefor an exclusive or shared first lien on the properties being financed by the loan, and the Administrator executes such instruments as shall be necessary to release to the lender any after-acquired property clause of, or to share with or subordinate in favor of the lender, any such lien the NEA then already has upon such borrower's properties, whichever the NEC shall require.

The beginning schedule of repayment of the principal of such loans, of the interest charges thereon, or both, may be deferred for a period not to exceed seven years from the advance of such principal, upon the Administrator's request and if the NEC certifies to the lender its approval thereof, in which event provision for such deferment shall be incorporated into the loan agreement and interest shall accrue and be payable on any interest payments so deferred.

Advances to the borrower of loans made pursuant to this section, and advances to a cooperative borrower form any other non-NEA source, shall be made directly to the borrower by the lender at such time or times in such amount or amounts as the Administrator approves; and the Administrator, with respect to such loans, advances, application by the borrower of such advances to their purposes, repayments by the borrower of the principal of and interest upon such loans, and all operations of the borrower affecting the loan security and the borrower's conformity with loan agreements, shall establish and implement the same procedures and requirements affecting the borrower as though such loan had been made by the NEA. Annually, and at any time a borrower's condition indicates that it may default in its loan agreement, or whenever so requested by such a lender or by the NEC, the NEA shall furnish a current and comprehensive report of the status and operations of the borrower relating to its ability to conform with its loan agreement and to its financial and operating conditions in general. To the extent that a loan made pursuant to this section has not been advanced to the borrower within five years after the effective date of the loan agreement, the same shall be rescinded unless the lender and borrower, upon the NEA's approval, agree otherwise, which agreement shall be executed by all three in writing and become a part of the loan agreement.

This section shall not constitute a limitation on the right and ability otherwise lawfully possessed by such a lender to make such loans to such public service entities on terms and conditions more favorable to such entities than herein prescribed.

SEC. 7. Revolving Fund. – A revolving fund, out of which the Board of Administrators is hereby authorized, empowered and directed to make loans to public service entities for the purposes set forth in subparagraph (a) of section 5, is hereby established to consist of the following:

(a) Any portion of the twenty-five million pesos heretofore appropriated pursuant to Section 6 of Republic Act 2717 that has not already been loaned or, if loaned, that has not already been advanced and for lawful reason will not be advanced;

(b) The following sums, which are hereby appropriated: twenty million pesos for the fiscal year 1970 and the same amount each year for the next nine fiscal years: Provided, That the Congress shall not be limited as to the amount it may further appropriate in any year for this purpose;

(c) Any fund or physical asset which NEC-FS may make available to the NEA for such loan purposes;

(d) Any fund or physical asset which the President, pursuant to Section six of Republic Act Numbered Twenty-seven hundred seventeen, may have already made, or, as he is hereby authorized and empowered so to do, may hereafter

make available to the NEA for such loan purposes from any sum or assets received from or out of Japanese reparations including proceeds from the sale thereof or loans obtained under the Japanese Reparations Treaty;

(e) All moneys not already expended which have heretofore been received by the Electrification Administration from payments to it of the principal of and interest upon any loans it has heretofore made pursuant to Republic Act Numbered Twenty-seven hundred seventeen, except to the extent such moneys may have already been allocated to the EA for administrative or other purposes, and all moneys hereafter received by the NEA from payments to it of the principal of and interest upon any loans heretofore made under Republic Act Numbered Twenty-seven hundred seventeen or hereafter made under this Act;

(f) The sum of two million dollars worth of goods and services from Japanese Reparations for the fourteenth year schedule and the same amount each year for the next four year schedules, which are hereby allocated to the revolving fund of the NEA;

(g) The sum of two million pesos for the fiscal year 1970 and the same amount each year for the next four fiscal years, which are hereby allocated to the revolving fund of the NEA out of the proceeds of the sale of Japanese Reparations Goods; and

(h) The proceeds corresponding to the share of the National Government in all franchise taxes paid by electric service entities, which are hereby appropriated for the purpose of augmenting the revolving fund.

No portion of the revolving fund shall, without the prior approval of the Congress, be expended by the NEA for any purpose other than the loans herein and in section nine authorized and the acquisition authorized in section eleven. The Board of Administrators shall annually, not later than January thirty-first, report to the Congress and the President the current status and amount of the revolving fund and the anticipated status and amount thereof in the ensuing year.

SEC. 8. Loan Standards. – In making a loan authorized in section 7, the Board of Administrators is hereby authorized, empowered and directed:

(a) Before making such loans, to determine and certify that (1) the project or projects being financed thereby are financially feasible for the purpose of, and will result in, area coverage in the area or areas to be affected thereby; (2) funds are or will be available for the total advance of such loan to the borrower on the schedule contemplated by the loan agreement, subject only to the borrower's compliance with the loan agreement; and (3) in the NEA's judgment the security for such loan is reasonably adequate and the principal of and interest upon such loan will be repaid on schedule and within the time agreed;

(b) To require that such loan be self-liquidating within a term to be fixed by the NEA of not in excess of thirty-five years and, unless the borrower requests a shorter term, of not less than twenty-five years;

(c) To impose upon the loan principal an interest charge to be fixed by the NEA at not in excess of three per centum per annum;

(d) To fix the schedule for repayment of the principal of and the interest upon such loan in installments recurring not more often than every quarter, which installments may be in unequal amounts and larger in the later years of the loan term than in the earlier years;

(e) To require in the loan agreement that the borrower's rates, charges, rules and regulations, policies and all other terms and conditions affecting its extension and furnishing of service shall be such as to assure achievement of the loan purposes, and that the same shall be filed with and for such purpose approved by the Board of Administrators before being put into effect or changed by the borrower; and

(f) Subject to the foregoing, to establish and require compliance with such procedures, rules and regulations as the Board of Administrators may determine to be necessary or appropriate to assure that the purposes of such loan will be timely achieved and that the loan agreement and the provisions of this Act will be complied with.

Notwithstanding the foregoing provisions of this section, the Board of Administrators may fix any higher interest rate or any shorter or longer term for loans made from funds or physical assets made available from sources stated in subparagraphs (c) and (d) of section 7, but only if and not to exceed the extent to which such is required by, or otherwise is made a condition of the availability of such funds or assets from, such sources: Provided, That the Board of Administrators may, unless the conditions attaching to the availability of such funds require otherwise, combine such funds with the other funds in the revolving fund and fix a blended interest charge on loans made generally therefrom at not in excess of the rate which will assure repayment to the revolving fund of interest at three per centum per annum on that portion of funds not derived from such sources and of such higher interest per centum per annum as is required on that portion of funds that is derived from such sources.

SEC. 9. Loans for Electric-Related Purposes. – The Board of Administrators is hereby authorized, empowered and directed to make loans, out of the revolving fund, for the purpose of financing the wiring of premises of persons served or to be served as a result of loans made under Section 7, and for the acquisition and installation by such persons of electrically-powered appliances, equipment, fixtures and machinery of all kinds for commercial, agricultural and industrial uses. Such loans may be made directly (a) to public service entities which have received loans under section 7, which entities shall relend such funds to persons served or to be served by them, or (b) to any person served or to be served by such an entity. Such loans shall be made for such terms, shall bear interest at such rate not to exceed six per centum per annum, and shall be subject to such other terms and conditions as the Board of Administrators shall determine to be necessary and appropriate to assure repayment thereof within the time agreed: Provided, however, That at no time shall the total of loans made for the purposes stated under this section exceed ten per centum of the total of the revolving fund nor shall any such loan to any borrower exceed ten per centum of the total loan to such borrower from the revolving fund.

SEC. 10. Authority to Extend Loans and Release or Subordinate Securities. – Whenever in its judgment such is necessary or desirable to achieve the purposes of this Act, and particularly if such is necessary to make or keep a project operationally viable, the Board of Administrators is hereby authorized and empowered (a) by agreement with the borrower, to extend the time of payment of principal or interest, or both, beyond the loan agreement term of any loan made by the NEA under this Act, or to defer, for not in excess of seven years, the time when the repayment schedule for principal or interest, or both, shall begin, or to re-schedule payments of principal or interest, or both, or when none of the foregoing is sufficient, to compromise and amount owing by a borrower to the NEA subject to provisions of existing laws; and (b) upon the NEA's determination that such is necessary or desirable for the purpose of enabling a borrower to accomplish the purposes for which it has already received an

NEA loan and that such will not result in any diminution of the security of, or of the ability of the borrower to repay, any outstanding indebtedness of the borrower below the level of such security and ability were additional borrowings from another lender not undertaken, to release any after-acquired property clause contained in any lien the NEA holds on a borrower's properties to, or to share any such lien on a co-equal basis in proportion to their respective loans with, or to subordinate any such lien in favor of, any other lender of funds to a public service entity for the purposes for which loans are authorized under this Act.

SEC. 11. Enforcement Powers. – If any public service entity which has borrowed funds from the NEA, or from any other lender through the services of the NEA as its agent, or from any other lender with the NEA's lawfully required prior approval, shall default in its principal or interest payments, or shall fail, after notice from the NEA, to comply with any other term or condition of a loan agreement or of any rule or regulation promulgated by the NEA in administering the provisions of this Act, the Board of Administrators is hereby authorized and empowered in its discretion to do any or any combination of the following:

(a) Refuse to make, secure as agent, or give any lawfully required approval to, any new loan to the borrower;

(b) Withhold without limitation the NEA's advancement, or withhold its approval for any other lender with respect to which the NEA has such approving power to make advancement, of funds pursuant to any loan already made to the borrower;

(c) Withhold any technical or professional assistance otherwise being furnished or that might be furnished to the borrower;

(d) Foreclose any mortgage or deed of trust or other security held by the NEA on the properties of such borrower, in connection with which the NEA may, subject to any superior or co-equal rights in such lien held by any other lender, (1) bid for and purchase or otherwise acquire such properties, (2) pay the purchase price thereof and any costs and expenses incurred in connection therewith out of the revolving fund, (3) accept title to such properties in the name of the Republic of the Philippines, and (4) operate or lease such properties for such period, not exceeding five years, and in such manner as may be deemed necessary or advisable to protect the investment therein, including the improvement, maintenance and rehabilitation of foreclosed systems, but the NEA shall, within five years after acquiring such properties, sell the same for such consideration as it determines to be reasonable and upon such terms and conditions as it determines most conducive to the achievement of the purposes of this Act; or

(e) Take any other remedial measure for which the loan agreement may provide.

In addition to the foregoing, the Board of Administrators may, at its own instance and in the name of the NEA, petition any court having jurisdiction for such purpose or any administrative agency possessing regulatory powers for such purpose (including the Public Service Commission) to issue such order and afford such lawful relief as may be necessary.

No borrower shall, without the approval of the Board of Administrators and of any other lender holding or sharing a lien on such borrower's properties, sell or dispose of the property, rights, franchises, permits or any other assets acquired and/or mortgaged under the provisions of this Act until all outstanding indebtedness to the NEA and any other such lender, including all interest owing thereon, shall have been repaid: Provided, That the NEA may by appropriate rule or regulation grant general permission to borrowers to dispose of incidental properties (excluding real property), rights, franchises, permits or other assets no longer deemed necessary or useful in conducting the

borrower's operations.

No cooperative shall borrow money from any source without the Board of Administrators' prior approval: Provided, That the Board of Administrators may, by appropriate rule or regulation, grant general permission to cooperatives to secure short-term loans not requiring the encumbering of their real properties or of a substantial portion of their other properties or assets.

SEC. 12. Staff. – To enable the NEA to implement more effectively the provisions of this Act, the Board of Administrators shall have and provide for a technical staff and such other staffs or personnel is it may deem proper. The Administrator shall appoint the personnel of the NEA, subject to the approval of the Board of Administrators and the requirements of existing law. He shall, furthermore, have control and supervision over them.

SEC. 13. Execution of Public Works Acts. – The NEA shall execute all electrification projects that may be authorized in any Public Works Acts; and for this purpose it may call for assistance and cooperation consistently with section 5(e).

SEC. 14. Administrative Expenses. – The NEA's administrative expenses shall be appropriated annually by the Congress.

SEC. 15. Conflict of Interest. –

(a) No member, officer, attorney, agent, or employee of the NEA shall in any manner, directly or indirectly, participate in the determination of any question affecting any association or corporation in which he is directly or indirectly interested or any person to whom he is related within the third degree of affinity or consanguinity. Any person violating the provisions of this subsection shall be removed from office and shall upon conviction be punished by a fine not to exceed ten thousand pesos or imprisonment not to exceed five years, or both.

(b) No officer or employee of the NEA or any government official who may exercise executive or supervisory authority over the NEA, either directly or indirectly, for himself or as the representative or agent of others, shall become a guarantor, endorser, or surety for loans from the NEA to others, or in any manner be an obligor for money borrowed from the NEA. Any such officer or employee who violates the provisions of this subsection shall be punished by a fine of not less than one thousand pesos nor more than five thousand pesos, or imprisonment for not less than one year nor more than five years, or both.

(c) No loan shall be granted by the NEA to any person related to any member of the Board of Administrators or to the Administrator within the third degree of consanguinity or affinity, or to any corporation, partnership, or company wherein any member of the Board of Administrators or the Administrator is a shareholder: Provided, That the foregoing prohibition shall not apply to a cooperative of which any member of the Board of Administrators or the Administrator or any such relative is a member. Violation by any member of the Board of Administrators or the Administrator of the provisions of this subsection is sufficient cause for his removal by the President of the Philippines; and the violator shall furthermore be punished as provided in subsection (b).

(d) No fee, commission, gift, or charge of any kind shall be exacted, demanded, or paid for obtaining loans from the NEA. Any officer, employee or agent of the NEA or the Government exacting, demanding or receiving any fee, commission, gift or charge of any kind for service in obtaining a loan shall be punished by a fine of not less than one thousand nor more than three thousand pesos, or imprisonment for not less than one year nor more than

three years, or both.

(e) Any person who, for the purpose of obtaining, renewing, or increasing a loan or the extension of the period thereof, on his own or another's behalf, shall give any false information or cause through his intrigue or machination the existence and production of any false information with regard to the identity, situation, productivity or value of security, or with regard to a point which might affect the granting or denial of the loan, whether the latter has been consummated or not, and every officer or employee of the NEA who through connivance shall allow by action or omission such false information to pass unnoticed, thereby causing damage to the NEA or exposing the latter to the danger of suffering such damage, shall be punished by a fine of not less than the amount of the loan obtained or applied for nor more than three times such amount, or imprisonment for not less than three months nor more than three years, or both.

(f) Any officer or employee of the NEA who violates, or causes or permits another person to violate, and (2) any other person who violates or aids or abets the violation of, any provision of this Act not specifically punishable in the preceding subsections shall be punished by a fine not exceeding two thousand pesos, or imprisonment not exceeding one year, or both.

SEC. 16. Supervision over NEA; Power Development Council. – The NEA shall be under the supervision of the Office of the President of the Philippines. All orders, rules and regulations promulgated, and all appointments made by the NEA as well as all transactions subject to the authority and jurisdiction of the NEA involving more than five hundred thousand pesos shall be subject to the approval of the Office of the President of the Philippines.

In order to achieve coordination and cooperation among different agencies and sectors having to do with electrification and power development, there is hereby created a Power Development Council whose Chairman shall be a person or official designated by the President of the Philippines, and its members shall be the manager of the NPC, the NEA Administrator, the Chairman of the NEC or a representative designated by him, the Chairman of the Presidential Economic Staff or a representative designated by him, a representative of electric cooperatives to be chosen by a national association of electric cooperatives, and a representative of the Philippine Electric Plant Owners Association to be designated by its board. The council shall meet at least once a month and shall adopt an integrated plan of electrification and power development, coordinate the activities and operations of all sectors involved in electrification, conduct relevant studies and researches, and recommend such policies and measures to the proper authorities and parties concerned as it may deem necessary to achieve the total electrification objective declared in this Act.

CHAPTER III

ELECTRIC COOPERATIVES

SEC. 17. Organization and Purpose. – Cooperative non-stock, non-profit membership corporations may be organized, and electric cooperative corporations heretofore formed or registered under the Philippines Non-Agricultural Co-operative Act may as hereinafter provided be converted, under this Act for the purpose of supplying, and of promoting and encouraging the fullest use of, service on an area coverage basis at the lowest cost consistent with sound economy and the prudent management of the business of such corporations.

SEC. 18. Powers. – A cooperative is hereby vested with all power necessary or convenient for the accomplishment of its corporate purpose and capable of being delegated

by the Congress; and no enumeration of particular powers hereby granted shall be construed to impair any general grant of power herein contained, nor to limit any such grant to a power or powers of the same class as those so enumerated. Such powers shall include, but not be limited to, the power:

(a) To sue and be sued in its corporate name;

(b) To have existence for a period of fifty years;

(c) To adopt a corporate seal and alter the same;

(d) To generate, manufacture, purchase, acquire, accumulate and transmit electric power and energy, and to distribute, sell, supply and dispose of electric energy to persons who are its members and to other persons not in excess of ten per centum of the number of its members: Provided, however, That a cooperative may furnish electric cold storage or processing plant service to non-members without limitation; and Provided, further, That a cooperative which acquires existing electric facilities may continue service from such facilities without requiring such persons to become members, but such persons may become members upon such terms as may be prescribed in the cooperative's by-laws;

(e) To assist persons to whom service is or will be supplied by the cooperative in wiring their premises and in acquiring and installing electrically-powered appliances, equipment, fixtures and machinery for agricultural, commercial and industrial uses by the financing thereof or otherwise, and in connection therewith to wire, or cause to be wired, such premises, and to purchase, acquire, lease as lessor or lessee, sell, distribute, install and repair such electrically-powered appliances, equipment, fixtures and machinery;

(f) To assist persons to whom service is or will be supplied by the cooperative in constructing, equipping, maintaining and operating electric cold storage or processing plants, by the financing thereof or otherwise;

(g) To construct, purchase, lease as lessee, or otherwise acquire, and to equip, maintain, and operate, and to sell, assign, convey, lease as lessor, mortgage, pledge, or otherwise dispose of or encumber, electric transmission and distribution lines or systems, electric generating plants, lands, buildings, structures, dams, plants and equipment, and any other real or personal property, tangible or intangible, which shall be deemed necessary, convenient or appropriate to accomplish the purpose for which the cooperative is organized;

(h) To purchase, lease as lessee, or otherwise acquire, and to use, and exercise and to sell, assign, convey, mortgage, pledge or otherwise dispose of or encumber franchises, rights, privileges, licenses and easements;

(i) To borrow money and otherwise contract indebtedness, and to issue notes, bonds, and other evidence of indebtedness, and to secure the payment thereof by mortgage, pledge, or deed of trust of, or any other encumbrance upon, any or all of its then owned or after-acquired real or personal property, assets, franchises, or revenues: Provided, That any borrowing from, or any encumbering of its properties as security in favor of, any lending sources other than the NEA shall require the prior approval of the NEA Administrator and his certification that such is in furtherance of the purposes and is consistent with the provisions of this Act, and that such borrowing and/or encumbering will not diminish the security of, or of the ability of the cooperative to repay, and then-outstanding indebtedness of the cooperative to the NEA or any other

lending source below the level of such security and ability were such additional borrowing not being undertaken;

(j) To construct, maintain and operate electric transmission and distribution lines along, upon, under and across publicly owned lands and public thoroughfares, including, without limitation, all roads, highways, streets, alleys, bridges and causeways: Provided, That such shall not prevent or unduly impair the primary public uses to which such lands and thoroughfares are otherwise devoted;

(k) To exercise the power of eminent domain in the manner provided by law for the exercise of such power by other corporations constructing or operating electric generating plants and electric transmission and distribution lines or systems;

(l) To become a member of other cooperatives or corporations or to own stock therein, provided such cooperatives or corporations are engaged in a business or activities germane to or having a reasonable bearing on the business or activities of the cooperative, its members, its directors, or its employees;

(m) To conduct its business and exercise its powers within or without the province or provinces in which it supplies service;

(n) To adopt, amend and repeal by-laws;

(o) To fix, maintain, implement and collect rates, fees, rents, tolls and other charges and terms and conditions for service: Provided, That by appropriate rules and regulations the NEA shall require that such shall be in furtherance of the purposes and in conformity with the provisions of this Act; and

(p) To do and perform any other acts and things, and to have and exercise any other powers which may be necessary, convenient or appropriate to accomplish the purpose for which the cooperative is organized.

SEC. 19. Name. – The name of a cooperative shall include the words "Electric" and "Cooperative", and the abbreviation "Inc.". The name of a cooperative organized under this Act shall be distinct from the name of any other cooperative already organized or converted under this Act. The foregoing requirement shall not apply to any cooperative which becomes subject to this Act by complying with the provisions of section 34.

SEC. 20. Incorporators. – Five or more persons, including cooperatives, may organize a cooperative in the manner hereinafter provided.

SEC. 21. Articles of Incorporation. – The articles of incorporation of a cooperative shall recite that they are executed pursuant to this Act and shall state: (a) the name of the cooperative; (b) the address of its principal office; (c) the names and addresses of the incorporators; and (d) the names and addresses of its original directors, who shall constitute the board until the first election of the board by the members; and may contain any other provisions not inconsistent with this Act that are deemed necessary or advisable for the conduct of its business. Such articles shall be signed by each incorporator and acknowledged by at least two of the incorporators (or on their behalf, if they are cooperatives).t shall not be necessary to recite in the articles of incorporation the purpose for which the cooperative is organized or any of its corporate powers.

SEC. 22. By-Laws. – Unless reserved to the members in the articles of incorporation, the power to adopt and thereafter to amend or repeal by-laws shall vest in and be exercised by the board, the affirmative votes of a clear majority of all directors in office, after due notice to all directors, being requisite for such purpose. The by-laws shall set forth the basic rights and duties of members and directors

and may contain any other provisions for the regulation and management of the affairs of the cooperative not inconsistent with its articles of incorporation or this Act.

SEC. 23. Members. – Each incorporator of a cooperative shall be a member thereof, but no other person may become a member thereof unless such other person agrees to use services furnished by the cooperative when made available by it. Membership in a cooperative shall not be transferable, except as provided in the by-laws. The by-laws may prescribe additional qualifications and limitations in respect of membership.

The provisions of any law or regulation to the contrary notwithstanding, an officer or employee of the government shall be eligible for membership in any cooperative if he meets the qualifications therefore and he shall not be precluded from being elected to or holding any position therein, or from receiving such compensation or fee in relation thereto as may be authorized by the by-laws: Provided, That elective officers of the government, except barrio captains and councilors, shall be ineligible to become officers and/or directors of any cooperative. For this purpose, individual permission need not be obtained from the proper head of office: Provided, however, That this authority shall not be construed as a permit to the government officer or employee concerned to devote official time to the affairs of the cooperative.

SEC. 24. Meetings of Members. –

(a) An annual meeting of the members of a cooperative shall be held at such time and place as shall be provided in the by-laws.

(b) Special meetings of the members may be called by the President, by the board, by any three directors or, unless a smaller number or percentage be prescribed in the by-laws, by not less than 100 members or five per centum of all members, whichever shall be the lesser.

(c) Except as otherwise provided in this Act and unless otherwise provided for in the by-laws, written or printed notice stating the time and place of each meeting of the members and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be given to each member, either personally or by mail, not less than ten days nor more than twenty-five days before the date of the meeting. If mailed, such notice shall be deemed to be given when deposited in the Philippine mail with postage prepaid, addressed to the member at his address as it appears on the records of the cooperative.

(d) Unless the by-laws prescribe the presence of a greater or lesser percentage or number of the members for such purpose, a quorum for the transaction of business at all meetings of the members of a cooperative having not more than 1,000 members shall be five per centum of all members, present in person, and of a cooperative having more than 1,000 members shall be five per centum of all members or 100, whichever is lesser, present in person. If less than a quorum is present at any meeting, a majority of those present in person may adjourn the meeting from time to time without further notice.

(e) Each member shall be entitled to one vote on each matter submitted to a vote at a meeting of the members. Voting shall be non-cumulative and in person, but, if the by-laws so provide, may also be by mail or by proxy.

SEC. 25. Waiver of Notice. – Any person entitled to notice of a meeting may waive such notice in writing either before or after such meeting. If any such person shall attend such meeting, such attendance shall constitute a waiver of notice of such meeting, unless such person participates herein solely to object to the transaction of any business because the meeting has not been legally

called or convened.

SEC. 26. Board of Directors. – (a) The business of a cooperative shall be managed by a board of not less than five directors, each of whom shall be a member of the cooperative or of another which is a member thereof. The by-laws shall prescribe the number of directors, their qualifications other than those prescribed in this Act, the manner of holding meetings of the board and of electing successors to directors who shall resign, die or otherwise be incapable of acting. The by-laws may also provide for the removal of directors from office and for the election of their successors. Directors shall not receive any salaries for their services as such and, except in emergencies, shall not receive any salaries for their services to the cooperative in any other capacity without the approval of the members. The by-laws may, however, prescribe a fixed fee for attendance at each meeting of the board and may provide for reimbursement of actual expenses of such attendance and of any other actual expenses incurred in the due performance of a director's duties.

(b) The directors of a cooperative named in any articles of incorporation, consolidation, merger or conversion shall hold office until the next annual meeting of the members and until their successors are elected and qualify. At each annual meeting or, in case of failure to hold the annual meeting as specified in the by-laws, at a special meeting called for that purpose, the members shall elect directors to hold office until the next annual meeting of the members, except as otherwise provided in this Act. Each director shall hold office for the term for which he is elected and until his successor is elected and qualifies.

(c) Instead of electing all the directors annually, the by-laws may provide that each year half of them or one third of them, or a number as near thereto as possible, shall be elected on a staggered term basis to serve two-year terms or three-year terms, as the case may be.

(d) A majority of the board of directors in office shall constitute a quorum.

(e) The board shall exercise all of the powers of a cooperative not conferred upon or reserved to the members by this Act or by its articles of incorporation or by-laws.

SEC. 27. Districts. – The by-laws may provide for the division of the territory served or to be served by a cooperative into two or more districts for any purpose, including, without limitation, the nomination and election of directors. The by-laws shall prescribe the boundaries of the districts, or the manner of establishing such boundaries, the manner of changing such boundaries, and the manner in which such districts shall function.

SEC. 28. Officers. – The officers of a cooperative shall consist of a president, vice-president, secretary and treasurer, who shall be elected annually by and from the board. When a person holding any such office ceases to be a director, he shall ipso facto cease to hold such office. The offices of secretary and of treasurer may be held by the same person. The board may also elect or appoint such other officers, agents, or employees as it deems necessary or advisable and shall prescribe their powers and duties. Any officer may be removed from office and his successor elected in the manner prescribed in the by-laws.

SEC. 29. Amendment of Articles of Incorporation. – A cooperative may amend its articles of incorporation by complying with the following requirements: Provided, however, That a change of location of principal office may be effected in the manner set forth in section 30. The proposed amendment shall be presented to a meeting of the members, the notice of which shall set forth or have attached thereto the proposed amendment or an accurate summary thereof. If the proposed amendment, with any changes, is approved by the affirmative vote of not less

than two-thirds of the total votes cast thereof at such meeting, articles of amendment shall be executed and acknowledged on behalf of the cooperative by its president or vice-president and its seal shall be affixed thereto and attested by its secretary. The articles of amendment shall recite that they are executed pursuant to this Act and shall state: (1) the name of the cooperative; (2) the address of its principal office; and (3) the amendment to its articles of incorporation. The president or vice-president executing such articles of amendment shall make and annex thereto an affidavit stating that the provisions of this section in respect of the amendment set forth in such articles were duly complied with.

SEC. 30. Change of Location of Principal Office. – A cooperative may, upon authorization of its board or members, change the location of its principal office by filing a certificate reciting such change of principal office, executed and acknowledged by its president or vice-president under its seal attested by its secretary, in the place provided for in section 36.

SEC. 31. Consolidation. – Any two or more cooperatives (each of which is hereinafter designated a "consolidating cooperative") may consolidate into a new cooperative (hereinafter designated the "new cooperative"), by complying with the following requirements:

(a) The proposition for the consolidation of the consolidating cooperatives into the new cooperative and proposed articles of consolidation to give effect thereto shall be submitted to a meeting of the members of each consolidating cooperative, the notice of which shall have attached thereto a copy of the proposed articles of consolidation or an accurate summary thereof.

(b) If the proposed consolidation and the proposed articles of consolidation, with any amendments, are approved by the affirmative vote of not less than two-thirds of the total votes cast thereon by each consolidating cooperative voting thereon at each such meeting, articles of consolidation in the form approved shall be executed and acknowledged on behalf of each consolidating cooperative by its president or vice-president and its seal shall be affixed thereto and attested by its secretary. The articles of consolidation shall recite that they are executed pursuant to this Act and shall state: (1) the name of each consolidating cooperative and the address of its principal office; (2) the name of the new cooperative and the address of its principal office; (3) a statement that each consolidating cooperative agrees to the consolidation; (4) the names and addresses of the directors of the new cooperative; and (5) the terms and conditions of the consolidation and the mode of carrying the same into effect, including the manner in which members of the consolidating cooperatives may or shall become members of the new cooperative; and may contain any other provisions not inconsistent with this Act that are deemed necessary or advisable for the conduct of the business of the new cooperative. The president or vice-president of each consolidating cooperative executing such articles of consolidation shall make and annex thereto an affidavit stating that the provisions of this section in respect of such articles were duly complied with by such cooperative.

SEC. 32. Merger. – Any one or more cooperatives (each of which is hereinafter designated a "merging cooperative") may merge into another cooperative (hereinafter designated the "surviving cooperative") by complying with the following requirements:

(a) The proposition for the merger of the merging cooperatives into the surviving cooperative and proposed articles of merger to give effect thereto shall be submitted to a meeting of the members

of each merging cooperative and of the surviving, cooperative, the notice of which shall have attached thereto a copy of the proposed articles of merger or an accurate summary thereof.

(b) If the proposed merger and the proposed articles of merger, with any amendments, are approved by the affirmative vote of not less than two-thirds of the total votes cast thereon by each cooperative voting thereon at each such meeting, articles of merger in the form approved shall be executed and acknowledged on behalf of each such cooperative by its president or vice-president and its seal affixed thereto and attested by its secretary. The articles of merger shall recite that they are executed pursuant to this Act and shall state; (1) the name of each merging cooperative and the address of its principal office; (2) the name of the surviving cooperative and the address of its principal office; (3) a statement that each merging cooperative and the surviving cooperative agree to the merger; (4) the names and addresses of the directors of the surviving cooperative; and (5) the terms and conditions of the merger and the mode of carrying the same into effect, including the manner in which members of the merging cooperatives may or shall become members of the surviving cooperatives and may contain any other provisions not inconsistent with this Act that are deemed necessary or advisable for the conduct of the business of the surviving cooperative. The president or vice-president of each cooperative executing such articles of merger shall make and annex thereto an affidavit stating that the provisions of this section in respect of such articles were duly complied with by such cooperative.

SEC. 33. Effect of Consolidation or Merger. –

(a) In the case of a consolidation, the existence of the consolidating cooperative shall cease and the articles of consolidation shall be deemed to be the articles of incorporation of the new cooperative; and in the case of a merger, the separate existence of the merging cooperatives shall cease and the articles of incorporation of the surviving cooperative shall be deemed to be amended to the extent, if any, that changes therein are provided for in the articles of merger;

(b) All the rights, privileges, immunities and franchises and all property, real and personal, including without limitation applications for membership, all debts due on whatever account and all other choses in action of each of the consolidating or merging cooperatives shall be deemed to be transferred to and vested in the new or surviving cooperative without further act or deed;

(c) The new or surviving cooperative shall be responsible and liable for all the liabilities and obligations of each of the consolidating or merging cooperatives, and any claim existing or action or proceeding pending by or against any of the consolidating or merging cooperatives may be prosecuted as if the consolidation or merger had not taken place, but the new or surviving cooperatives shall be substituted in its place; and

(d) Neither the rights of creditors nor any liens upon the property of any such cooperatives shall be impaired by such consolidation or merger.

SEC. 34. Conversion of Existing Corporations. – Any corporation heretofore organized or registered under the Philippine Non-Agricultural Co-operative Act and supplying or having the corporate power to supply electric energy may convert itself into a cooperative under this Act by complying with the following requirements, and shall thereupon become subject to this Act with the same effect as if originally organized hereunder:

(a) The proposition for the conversion of such corporation and proposed articles of conversion to give effect thereto shall be submitted to a meeting of the members or stockholders of such corporation, the notice of which shall have attached thereto a copy of the proposed articles of conversion or an accurate summary thereof.

(b) If the proposition for the conversion and the proposed articles of conversion, with any amendments, are approved by the affirmative vote of not less than two-thirds of the total votes cast thereon by members at such meeting, and/or, if such corporation is a stock corporation or has both members and voting stockholders, by the affirmative vote of the holders of not less than two-thirds of those shares of the capital stock of such corporation represented at such meeting and voting thereon, articles of conversion in the form approved shall be executed and acknowledged on behalf of such corporation by its president or vice-president and its seal shall be affixed thereto and attested by its secretary. The articles of conversion shall recite that they are executed pursuant to this Act and shall state: (1) the name of the corporation and the address of its principal office prior to its conversion into a cooperative; (2) a statement that such corporation elects to become a cooperative, non-profit, membership corporation subject to this Act; (3) its name as a cooperative; (4) the address of the principal office of the cooperative; (5) the names and addresses of the directors of the cooperative, and (6) the manner in which members or stockholders of such corporation may or shall become members of the cooperative; and may contain any other provisions not inconsistent with this Act that are deemed necessary or advisable for the conduct of the business of the cooperative. The president or vice-president executing such articles of conversion shall make and annex thereto an affidavit stating that the provisions of this section were duly complied with in respect of such articles. The articles of conversion shall be deemed to be the articles of incorporation of the cooperative.

SEC. 35. Dissolution. – A cooperative may be dissolved in the following manner: The proposition to dissolve shall be submitted to the members of the cooperative at any annual or special meeting, the notice of which shall set forth such proposition. The members at any such meeting shall approve, by the affirmative vote of not less than a majority of all members of the cooperative, the proposition that the cooperative be dissolved. Upon such approval, a certificate of election to dissolve (hereinafter designated the "certificate") shall be executed and acknowledged on behalf of the cooperative by its president or vice-president under its seal, attested by its secretary, stating: (1) the name of the cooperative; (2) the address of its principal office; and (3) that the members of the cooperative have duly voted that the cooperative be dissolved. Also, an affidavit, made by its president or vice-president executing the certificate, shall state that the statements in the certificate are true. Upon the filing of the certificate and affidavit as provided for in section 36, the cooperative shall cease to carry on its business except to the extent necessary for the winding up thereof, but its corporate existence shall continue until articles of dissolution have been filed. The board shall immediately cause notice of the dissolution proceedings to be mailed to each known creditor of and claimant against the cooperative and to be published once a week for two successive weeks in a newspaper of general circulation in the territory in which the principal office of the cooperative is located. The board shall wind up and settle the affairs of the cooperative, collect sums owing to it, liquidate its property and assets, pay and discharge its debts, obligations and liabilities, other than those to patrons arising by reason of their patronage, and do all other things

required to wind up its business; and, after paying or discharging or adequately providing for the payment or discharge of all its debts, obligations and liabilities, other than those to patrons arising by reason of their patronage, shall distribute any remaining sums and/or unliquidated assets, first, to patrons for the pro rata return of all amounts standing to their credit by reason of their patronage; second, to members for the pro rata repayment of membership fees; and third, to patrons for the amounts of any outstanding contributions in aid of construction they have made. Any sums and/or unliquidated assets then remaining shall be distributed in such manner as provided in the cooperative's articles of incorporation or by-laws, which may provide for distribution of such sums or assets on a patronage basis to persons who were members in one or more prior years or for transfer thereof to a new cooperative to succeed the one being dissolved. The board shall thereupon authorize the execution of articles of dissolution, which shall be executed and acknowledged on behalf of the cooperative by its president or vice-president, and its seal shall be affixed thereto and attested by its secretary. The articles of dissolution shall recite that they are executed pursuant to this Act and shall state: (1) the name of the cooperative; (2) the address of its principal office; (3) the date on which the certificate of election to dissolve was filed; (4) that there are no actions or suits pending against the cooperative; (5) that all debts, obligations and liabilities of the cooperative have been paid and discharged or that provision to the extent possible has been made therefore; and (6) that the provisions of this section have been duly complied with. The president or vice-president executing the articles of dissolution shall make and annex thereto an affidavit stating that the statements made therein are true.

SEC. 36. Filing of Articles and Certificates. – Articles of incorporation, amendment, consolidation, merger, conversion, or dissolution and certificates of changes in the location of principal offices and of elections to dissolve, when executed and acknowledged and accompanied by such affidavits as may be required by applicable provisions of this Act, shall be presented to the Administrator for filing in the records of his office. If he shall find that such conform to the requirements of this Act, he shall so certify and shall file such in the records of his office. Upon such certification and filing, the incorporation, amendment, consolidation, merger, conversion, dissolution or certificate provided for therein shall be in effect.

SEC. 37. Non-profit, Non-discriminatory, Area Coverage Operation and Service. – A cooperative shall be operated on a non-profit basis for the mutual benefit of its members and patrons; shall, as to rates and services make or grant no unreasonable preference or advantage to any member or patron nor subject any member or patron to any unreasonable prejudice or disadvantage; shall not establish or maintain any unreasonable difference as to rates or services either as between localities or as between classes of service; shall not give, pay, or receive any rebate or bonus, directly or indirectly, or mislead its members in any manner as to rates charged for its services; and shall furnish service on an area coverage basis: Provided, That, for any extension of service which if treated on the basis of standard terms and conditions is so costly as to jeopardize the financial feasibility of the cooperative's entire operation, the cooperative may require such contribution in aid of construction, such facilities extension deposit, such guarantee of minimum usage for a minimum term, or such other reasonable commitment on the part of the person to be served as may be necessary and appropriate to remove such jeopardy, but no difference in standard rates for use of service shall be imposed for such purpose.

The by-laws of a cooperative or its contracts with members and patrons shall contain such reasonable terms and conditions respecting membership, the furnishing of service and the disposition of revenues and receipts as may be necessary and appropriate to establish and

maintain its non-profit, cooperative character and to assure compliance with this section. No bona fide applicant for membership or non-member patronage who is able and willing to satisfy and abide by all such terms and conditions shall be denied arbitrarily, capriciously or without good cause.

SEC. 38. Disposition of Property. – (a) The board of a cooperative shall have full power and authority, without authorization by the members thereof, to authorize the execution and delivery of a mortgage or a deed of trust, on the pledging or encumbering otherwise, of any or all of the property, assets, rights, privileges, licenses, franchises and permits of the cooperative, whether acquired or to be acquired, and wherever situated, as well as the revenues therefrom, all upon such terms and conditions as the board shall determine, to secure any borrowing by or indebtedness of the cooperative.

(b) A cooperative may not otherwise sell, lease or except by consolidation or merger, otherwise dispose of its property (other than merchandise and property which shall represent not in excess of ten per centum of the value of the cooperative's total assets, or which in the judgment of the board are not necessary or useful in operating the cooperative) unless such sale, lease or, except in the case of consolidation or merger, other disposition is (1) authorized by the affirmative vote of not less than a majority of all the members of the cooperative and (2) consented to by the NEA and any other lending source which then holds a lien on any of the cooperative's properties.

SEC. 39. Non-liability of Members for Debts of Cooperative. – No member shall be liable or responsible for any debts of the cooperative and the property of the members shall not be subject to execution therefore.

SEC. 40. Limitation of Actions. – No action or suit may be brought against a cooperative, or against any agent, servant or employee thereof, by reason of the maintenance of electric transmission or distribution lines, or any related equipment, facilities or machinery, on any real property after the expiration of a period of five years of continuous maintenance of such lines or related equipment facilities or machinery.

SEC. 41. Assistance to Cooperatives; Exemption from Taxes, Imposts, Duties, Fees; Assistance from the National Power Corporation; Protection of Franchise. – Pursuant to the national policy declared in section 2, the Congress hereby finds and declares that the following assistance to cooperatives is necessary and appropriate:

(a) Provided that it operates in conformity with the purposes and provisions of this Act, a cooperative (1) shall be permanently exempt from paying income taxes, and (2) for a period ending on December 31 of the thirtieth full calendar year after the date of a cooperative's organization or conversion hereunder, or until it shall become completely free of indebtedness incurred by borrowing, whichever first occurs, shall be exempt from the payment (A) of all National Government, local government and municipal taxes and fees, including any franchise, filing, recordation, license or permit fees or taxes and any fees, charges or costs involved in any court or administrative proceeding in which it may be a party, and (B) of all duties or imposts on foreign goods acquired for its operations, the period of such exemption for a new cooperative formed by consolidation, as provided for in section 31, to begin from as of the date of the beginning of such period for the constituent consolidating cooperative which was most recently organized or converted under this Act: Provided, That the Board of Administrators shall, after consultation with the Bureau of Internal Revenue, promulgate rules and regulations provided for in this Act.

(b) The National Power Corporation shall, except with respect to the National Government, give preference in the sale of its power and energy to cooperatives, and shall otherwise provide the maximum support of and assistance to cooperatives of which it is capable, including assistance in developing dependable and reliable arrangements for their supplies of bulk power, either from itself or from other sources. In pursuance of the foregoing policy, the National Power Corporation shall not, except upon prior written agreement approved by the cooperative's board, compete in the sale of power and energy which, without regard to the location of the point of delivery thereof, will be utilized and consumed within any area franchise to a cooperative.

(c) No franchise for service shall be granted to any other person within any area or portion for which a cooperative holds a franchise unless and except to the extent that (1) the cooperative's board consents thereto by resolution duly adopted or (2) the Public Service Commission determines that the cooperative is unable within a reasonable time, or is unwilling, to supply service therein in accordance with the provisions of section 37.

SEC. 42. Regulation by the Public Service Commission and Securities and Exchange Commission. – Pursuant to the national policy declaration in section 2, the Congress hereby establishes that:

(a) To the extent that the Public Service Commission now is or may hereafter be authorized and empowered to do so with respect to other electric public services, the Commission is hereby authorized and empowered:

(1) To grant, condition, restrict or cancel a cooperative's franchise, or to determine whether a cooperative is qualified to receive a franchise;

(2) To require a cooperative to extend or improve service upon the Commission's determination that such should be done in furtherance of the public convenience and necessity and that such may reasonably be done consistently with the purposes and provisions of this Act;

(3) To require a cooperative to cease any discriminatory practice which the Commission finds to be in effect in violation of section 37; and, in connection with such authority, to require a cooperative to file with the Commission for information purposes, and to make accessible to any person upon request therefore, copies of all rates, charges, contract forms, fee or deposit schedules, by-laws, rules and regulations; and

(4) To require a cooperative to interconnect its facilities with, and through such interconnection to sell or exchange electric energy to or with, other electric public services or the National Power Corporation if the National Power Corporation so requests or consents thereto:

(5) Other than an order to require information filings, as provided in (3) of this subsection, the Commission shall issue no order in the exercise of the foregoing powers without affording the cooperative and any other interested person who requests it an opportunity to be heard. Except as provided in this subsection, a cooperative shall be exempt from regulation or control by the Public Service Commission.

(b) The provisions of the Securities Act shall not apply to any note, bond or other evidence of indebtedness issued by any cooperative or to any mortgage, deed of trust or other instrument executed to secure the same. The provisions of said Act shall not apply to the issuance

of membership certificates or any other evidence of member or patron interest by a cooperative.

CHAPTER IV

TRANSITORY PROVISIONS

SEC. 43. The Electrification Administration. – Republic Act Numbered Twenty seven hundred seventeen is hereby repealed and the Electrification Administration created under it is hereby dissolved in the manner hereinafter provided:

(a) The incumbent Administrator and Two Deputy Administrators of the Electrification Administration shall continue to serve the balance of the unserved portion of their respective terms of office;

(b) Any reference to the Electrification Administration in any existing law or in any executive order, administrative order or proclamation of the President shall, with respect to any duty or function assumed by the NEA created in this Act, be deemed hereafter to have reference to the NEA;

(c) The properties, assets, rights, chooses in action, obligations, liabilities, records and contracts of the Electrification Administration are hereby transferred to, and are vested in, and assumed by the NEA;

(d) The personnel of the Electrification Administration who are occupying civil service positions shall be absorbed and transferred to the latter without demotion in rank nor reduction in salary: Provided, That those employees who shall be separated from the service and those not absorbed by the NEA shall be given by the said office at least one month gratuity for every year of service and, or other benefits in accordance with existing laws and regulations chargeable to the corresponding fund and, or any available fund under paragraph (a), section seven of this Act; and

(e) All on-going projects and/or approved loans under the Electrification Administration shall be reviewed and, insofar as found to be economically feasible in accordance with sound management engineering and technological standards, shall be continued and completed on a priority basis: Provided, that steps shall be taken to place them on an area coverage basis.

SEC. 44. Separability of Provisions. – If any provisions of this Act, or the application of such provision to any person or circumstance, is declared invalid, the remainder of the Act or the application of such provision to other persons or circumstances shall not be affected by such declaration.

SEC. 45. Effect on Other Acts. – All Acts or parts of Acts inconsistent herewith are repealed or modified accordingly.

SEC. 46. Effectivity. – This Act shall take effect upon its approval.

Approved, July 28, 1969

PRESIDENTIAL DECREE NO. 269

CREATING THE "NATIONAL ELECTRIFICATION ADMINISTRATION" AS A CORPORATION, PRESCRIBING ITS POWERS AND ACTIVITIES, APPROPRIATING THE NECESSARY FUNDS THEREFOR AND DECLARING A NATIONAL POLICY OBJECTIVE FOR THE TOTAL ELECTRIFICATION OF THE PHILIPPINES ON AN AREA COVERAGE SERVICE BASIS, THE ORGANIZATION, PROMOTION AND DEVELOPMENT OF ELECTRIC COOPERATIVES TO ATTAIN THE SAID OBJECTIVE, PRESCRIBING TERMS AND CONDITIONS FOR THEIR OPERATIONS, THE REPEAL OF REPUBLIC ACT NO. 6038, AND FOR OTHER PURPOSES.

WHEREAS, it is the desire of the government to effect changes and reforms in the social, economic, and political structure of our society;

WHEREAS, detailed studies have clearly emphasized the very close correlation between consumption of energy and gross national product. Electric power, wherever introduced, stimulates the growth of industry and the economy in general;

WHEREAS, electrification of the entire country, one of the primary concerns of the government in order to bring about the desired changes and reforms, can be hastened by rationalizing the distribution of electricity;

WHEREAS, rationalization, which implies the adoption of all measures necessary to obtain the maximum benefit at the minimum expenses, can be achieved by:

1. Establishing island grids and integrating power generating systems.

2. Consolidating electric distribution franchise systems. The existence of small franchise system impede the progress of total electrification, as such small and isolated systems are antithetical to the economies of scale.

3. Implementing the area coverage concept, which will allow the construction of lines to thinly settled areas which are most costly to electrify, provided that the losses from these lines can be reasonably absorbed by the more profitable lines.

WHEREAS, under Republic Act No. 6038, dated August 4, 1969, Presidential Decree No. 40 and Letter of Instruction No. 38, dated November 7, 1972, the National Electrification Administration was given certain powers, duties, and functions to attain total electrification on an area coverage basis; to set up cooperatives for the distribution of power; and to determine privately-owned public utilities which should be permitted to remain in operation; lawphi1.net

WHEREAS, to attain total electrification in the most effective and efficient manner, there is a need to further strengthen and make more flexible the organizational structure of the National Electrification Administration by converting it into a corporation, wholly-owned and controlled by the government, possessed with borrowing authority and corporate powers;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Republic of the Philippines, by virtue of the powers vested in me by the Constitution as Commander-in-Chief of the Armed Forces of the Philippines, and pursuant to Proclamation No. 1081, dated September 21, 1972, and General Order No. 1, dated September 22, 1972, as amended, do hereby repeal Republic Act No. 6038 and do hereby decree, order and make as part of the law of the land the Charter of the National Electrification Administration, which reads as follows:

CHAPTER I

Policy and Definitions

Section 1. Title. This Decree shall be referred to as the "National Electrification Administration Decree."

Section 2. Declaration of National Policy. The total electrification of the Philippines on an area coverage basis being vital to the welfare of its people and the sound development of the Nation, it is hereby declared to be the policy of the state to pursue and foster, in an orderly and vigorous manner, the attainment of this objective. For this purpose, the State shall promote, encourage and assist all public service entities engaged in supplying electric service, particularly electric cooperatives, which are willing to pursue diligently this objective.

Because of their non-profit nature, cooperative character and the heavy financial burdens that they must sustain to become effectively established and operationally viable, electric cooperatives, particularly, shall be given every tenable support and assistance by the National Government, its instrumentalities and agencies to the fullest extent of which they are capable; and, being by their nature substantially self-regulating and Congress, having, by the enactment of this Decree, substantially covered all phases of their organization and operation requiring or justifying regulation, and in order to further encourage and promote their development, they should be subject to minimal regulation by other administrative agencies.

Area coverage electrification cannot be achieved unless service to the more thinly settled areas and therefore more costly to electrify is combined with service to the most densely settled areas and therefore less costly to electrify. Every public service entity should hereafter cooperate in a national program of electrification on an area coverage basis, or else surrender its franchise in favor of those public service entities which will. It is hereby found that the total electrification of the Nation requires that the laws and administrative practices relating to franchised electric service areas be revised and made more effective, as herein provided. It is therefore hereby declared to be the policy of the State that franchises for electric service areas shall hereafter be so issued, conditioned, altered or repealed, and shall be subject to such continuing regulatory surveilance, that the same shall conduce to the most expeditious electrification of the entire Nation on an area coverage basis.

Section 3. Definitions. As used in this Decree, the following words or terms shall have the following meanings, unless a different meaning clearly appears from the context;

(a) "NEA" shall mean the National Electrification Administration, "Board of Administrators" shall mean the Board of Administrators, and "Administrator" shall mean the Administrator, all as provided for in this Decree.

(b) "Cooperative" shall mean a corporation organized under Republic Act No. 6038 or this Decree or cooperative supplying or empowered to supply service which has heretofore been organized under the Philippine Non-Agricultural Cooperative Act, whether covered under this Decree or not.

(c) "Public service entities" shall mean (1) a cooperative, (2) the NPC, and (3) local governments and privately-owned public service entities in operation which furnish and are empowered to furnish retail electric service.

(d) "person" shall mean any natural person, firm, association, cooperative, corporation, business trust, partnership, the National Government or any political subdivision, agency or instrumentally thereof.

(e) "Service" shall mean electric service, either at wholesale or retail, including

the finishing of any auxiliary or related service.

(f) "Dependable and adequate service" shall mean service that, consistent with normal standards and levels of service based upon good utility management and operating practices, is sufficient in quantity, having regard for the demands for service currently existing and reasonably anticipated within the foreseeable future, and that is accessible on a constant and continuous basis except for outages occasioned by the need for normal repair, maintenance, construction or renovation work or by acts beyond the reasonable ability of the public service entity to prevent or control.

(g) "Area" shall mean (1) the geographic area franchised to a public service entity or (2) any lesser geographic area for the furnishing of retail service to which a public service entity pursuant to this Decree borrows, or may apply to borrow, funds from the NEA, or may otherwise secure loans with the approval of the NEA, to finance the acquisition or construction and operation, maintenance or renovation of service facilities.

(h) "Area coverage" shall mean dependable and adequate service that, on the basis of reasonable and standard extension and service policies, rates, charges and other terms and conditions, will be or is being made available to all persons within the affected area as above defined who request such service and are able and willing to abide by and comply with all such reasonable and standard terms and conditions, regardless of the relative location of such persons within the affected area or of their proximity to existing or proposed service facilities: Provided, That the financial feasibility of the public service entity's entire operation is not thereby impaired.

(i) "Interest rate per centum per annum" shall mean an interest rate that is accrued solely upon the unpaid balance of any loan principal which has actually been advanced to a borrower and upon any interest payment which has become due or been deferred and has not been paid by the borrower; computed on an annual basis.

(j) "Loan" shall mean a loan the total principal amount of which, as and when required for application to the purposes thereof, is, at the time of the making thereof, assured from funds that are or will become available therefor.

(k) "NEDA" shall mean National Economic and Development Authority or any successor instrumentality that may hereafter be established to perform the same or substantially similar function; "NPC" shall mean National Power Corporation; and "NEDA-FS" shall mean National Economic and Development Authority-Foreign Source.

(l) "Board of Power and Waterworks" shall mean Board of Power and Waterworks or any successor board, agency or instrumentality that may hereafter be established to perform the same or substantially similar functions.

(m) "Franchise" shall mean the privilege extended to a person to operate an electric system for service to the public at retail within a described geographic area, whether such privilege had been granted by the Congress, by a municipal, city or provincial government or, as herein provided, by the NEA.

(n) "Non-profit" shall mean that a cooperative shall not engage in business for the purpose of making a profit for itself or its patrons, but it shall not mean that a cooperative may not account on a patronage basis to its patrons for

any receipts in excess of its expenses in relation to its operations in serving such patrons or in relation to investment of any of its surplus funds pending their use by the cooperative or their refund to patrons; nor shall it mean that such excess receipts may not be refunded to its patrons, or may not be converted into patron- furnished capital subject to later redemption and retirement by the cooperative.

(o) "Board" shall mean the board of directors of a cooperative.

(p) "Household" shall mean a non-seasonal dwelling capable of receiving service safely, including apartments and other dwelling combinations.

(q) "Congress" shall mean the President during his exercise of Martial Law, or the National Assembly under the new Constitution of 1973, whichever is the case at any given time.

(r) "President" shall mean the President of the Philippines during the existence of Martial Law, or the Prime Minister when the National Assembly comes into existence.

CHAPTER II

The National Electrification administration

Section 4. NEA Authorities, Powers and Directives. The NEA is hereby authorized, empowered and directed to promote, encourage and assist public service entities, particularly cooperatives, to the end of achieving the objective of making service available throughout the nation on an area coverage basis as rapidly as possible; and for such purpose it is hereby, without limiting the generality of the foregoing and in addition to other authorizations, powers and directives established by this Decree, specifically authorized, empowered and directed:

(a) To have a continuous succession under its corporate name until otherwise provided by law;

(b) To prescribe and thereafter to amend and repeal its by-laws not inconsistent with this Decree;

(c) To adopt and use a seal and alter it at its pleasure;

(d) To sue and to be sued in any court: Provided, That NEA shall, unless it consents otherwise, be immune to suits for acts ex delicti;

(e) To make contract of every name and nature and to execute all instruments necessary or convenient for the carrying on of its business;

(f) To make loans to public service entities, with preference to cooperatives, for the construction or acquisition, operation and maintenance of generation, transmission and distribution facilities and all related properties, equipment, machinery, fixtures, and materials for the purpose of supplying area coverage service, and thereafter to make loans for the restoration, improvement or enlargement of such facilities; Provided, That the public service entity supplying for a loan, if neither a cooperative nor a local government, must be in operation at the time of application;

(g) To promote, encourage and assist public service entities and government agencies and corporations having related functions and purposes, with preference to cooperatives, in planning, developing, coordinating, establishing, operating, maintaining, repairing and renovating facilities and systems to supply area coverage service, and for such purpose to furnish, to the extent possible and without change therefor, technical and professional assistance and guidance,

information, data and the results of any investigation, study, or receipt conducted or made by the NEA;

(h) To approve or disapprove any loan from other lenders to public service entities which at the time are borrowers from NEA under sub-paragraphs (f) or (i) of this section, and thereafter, pursuant to Section 10 (b) to disapprove advances of loans from other lenders;

(i) To make loans for the purpose of financing the wiring of premises of persons served or to be served as a result of loans made under sub-paragraph (f) of this Section, and for the acquisition and installation by such persons of electrically-powered appliances, equipment, fixtures and machinery of all kinds for residential, recreational, commercial, agricultural and industrial uses, such loans to be made directly (1) to public service entities which have received loans under sub-paragraph (f) of this section, which entities shall in turn relend such funds to persons served or to be served by them, or (2) to any persons served or to be served by public service entities which have received loans under sub-paragraph (f) of this section: Provided, That at no time shall the total loans made under this sub-paragraph (i) to a public service entity and/or to persons served or to be served by such entity exceed twenty-five (25%) per centum of the outstanding loans to such entity made under sub-paragraph (f) of this section;

(j) To so cooperate, coordinate and exchange such information, studies and reports with, and to seek such cooperation and coordination from, other departments, agencies and instrumentalities of the National Government, including the NPC, as will most effectively conduce to the achievement of the purposes of this Decree;

(k) To borrow funds from any source, private or government, foreign or domestic, and, not inconsistently with section 8, to issue bonds or other evidences of indebtedness therefor and to secure the lenders thereof by pledging, sharing or subordinating one or more of the NEA's own loan securities;

(l) To require the submission of Articles of Incorporation, by-laws, and documents relating to consolidation merger, conversion, dissolution, change in the location of principal offices, and election to dissolve, from all recipients of loans and/or equity investments and upon determination that such are in conformity with this Decree, to certify the same, to file them in the records of the NEA and to maintain a registry of such filings the provisions of Act No. 1458, as amended, to be contrary notwithstanding. (As amended by Presidential Decree No. 1645, dated October 8, 1979.)

(m) To acquire, by purchase or otherwise (including the right of eminent domain, which is hereby granted to the NEA, to be exercised in the manner provided by law for the institution and completion of expropriation proceedings by the National and local governments,) real and physical properties, together with all appurtenant rights, easements, licenses and privileges, whether or not the same be already devoted to the public use of generating, transmitting or distributing electric power and energy, upon NEA's determination that such acquisition is necessary to accomplish the purposes of this Decree and, if such properties be already devoted to the public use described in the foregoing, that such use will be better served and accomplished by such acquisition; Provided, That the power herein granted shall be exercised by the NEA solely as agent for and on behalf of one or more public service entities which shall timely receive, own

and utilize or replace such properties for the purpose of furnishing adequate and dependable service on an area coverage basis, which entity or entities shall then be, or in connection with the acquisition shall become, borrowers from the NEA under sub-paragraph (f) of this section; and Provided further, That the costs of such acquisition, including the cost of any eminent domain proceedings, shall be borne, either directly or by reimbursement to the NEA, whichever the NEA shall elect, by the public service entity or entities on whose behalf the acquisition is undertaken; and otherwise to acquire, improve, hold, transfer, sell, lease, rent, mortgage, encumber and otherwise dispose of property incident to, or necessary, convenient or proper to carry out, the purposes for which NEA was created;

(n) At least annually, not later than June 30th, to report to the President and when the same comes into existence, the Prime Minister and the National Assembly, on the status of electrification of the Philippines, including a comprehensive reporting of loans made, loan funds advanced, loans secured from other sources and the advances thereof, the names and locations of the borrowers, the number of services contemplated by such loans, the number actually receiving service as a result of such loans, the number of electrified and the remaining number of unelectrified households throughout the Nation, the amounts of usage by consumers, loan and other activities programmed for the ensuing year, and all such other information and data as will accurately reveal the progress being made toward the achievement of the purposes of this Decree; and to publish such report for dissemination to and use by other interested departments, agencies and instrumentalities of the National Government and by borrowers under this Decree;

(o) To exercise such powers and do such things as may be necessary to carry out the business and purposes for which the NEA was established, or which from time to time may be declared by the Board of Administrators to be necessary, useful, incidental or auxiliary to accomplish such purposes; and generally, to exercise all the powers of a corporation under the Corporation Law insofar as they are not inconsistent with the provisions of this Decree;

(p) To invest and/or grant loans for the development of power generation industries or companies, including dendro-thermal and mini-hydro-power plants and associated facilities such as alcogas and tree plantations, water impounding reservoirs and feeder roads: Provided, That such investments and loans shall be limited to a specific percentage of total requirements as may be determined by the NEA Board of Administrators;

(q) To organize wholly or partly owned companies and subsidiaries for the purpose of operating power generating and distribution systems and other related activities; and

(r) To organize wholly or partly owned subsidiaries for the purpose of manufacturing materials and equipment for power generating systems. (As amended by Presidential Decree No. 1645, dated October 8, 1979.)

Section 5. National Electrification Administration; Board of Administrators; Administrator.

(a) For the purpose of administering the provisions of this Decree, there is hereby established a public corporation to be known as the National Electrification Administration. All of the powers of the corporation shall be vested in and

exercised by a Board of Administrators, which shall be composed of a Chairman and four (4) members, one of whom shall be the Administrator as ex-officio member. The Chairman and the three other members shall be appointed by the President of the Philippines to serve for a term of six years. Provided, That the terms of the first appointees shall be six years for the Chairman and one member and three years for the two other members, respectively, and that the term of the ex-officio member shall be co-terminous with his term as the Administrator. All vacancies, except through expiration of the terms, shall be filled for the unexpired term only. The Chairman and every member of the Board of Administrators shall be entitled to a per diem of not more than three hundred pesos for each meeting actually attended by them; Provided, That the total of such per diems shall not exceed one thousand five hundred pesos per month per member.

The Board of Administrator shall meet regularly at least twice a month and as often as the exigencies of the agency's affairs demand.

The presence of at lest three members shall constitute a quorum which shall be necessary for the transaction of any business. The affirmative vote of a majority of the members present shall be necessary for the approval of any resolution, decision or order, except when a greater vote is required as sometimes hereinafter provided. In the absence of the Chairman at a Board meeting duly called, the Administrator as ex-officio member shall preside.

The Board shall, without limiting the generality of the foregoing, have the following specific powers and duties.

1. To implement the provisions and purposes of this Decree;

2. To formulate and adopt policies and plans, and to promulgate rules and regulations, for the management, operation and conduct of the business of the NEA;

3. To adopt and, as may be necessary from time to time, to amend annual budgets for the NEA's borrowing and lending programs and for the agency's administration; Provided, That copies of such budgets shall be submitted to the President or the appropriate committee of and as determined by, the National Assembly, when it comes into existence, within fifteen (15) days from the transmission thereof to the NEDA; and Provided, further, That the administrative budget and any amendments thereto shall be subject to the approval of NEDA;

4. To fix the compensation of the Administrator and of the Deputy Administrators, subject to the approval of the President of the Philippines; and

5. To establish policies and guidelines for employment on the basis of merit, technical competence and moral character, and, upon the recommendation of the Administrator to organize or reorganize NEA's staffing structure, to fix the salaries of personnel and to define their powers and duties.

6. To authorize the NEA Administrator to designate, subject to the confirmation of the Board of Administrators, an Acting General Manager and/or Project Supervisor for a Cooperative where vacancies in the said positions occur and/or when the interest of the Cooperative and the program so requires, and to prescribe the functions of said Acting General Manager and/or Project Supervisor, which powers shall not be nullified, altered or diminished by any policy or resolution of the Board of Directors of the Cooperative concerned. (As amended by Presidential Decree No. 1645, dated October 8, 1979.)

(b) The management of NEA shall be vested in the Administrator, who shall be a person of known integrity, competence and experience in technical and executive fields related to the purposes of this Decree. He shall be appointed by the President of the Philippines and shall not be removed except for cause.

The Administrator shall have the following powers and duties:

1. To execute and administer the policies, plans and program, and the rules and regulations, approved or promulgated by the Board of Administrators;

2. To submit for the consideration of the Board of Administrators such policies, plans and programs as he deems necessary to carry out the provisions and purposes of this Decree;

3. To direct and supervise the operation and internal administration of the NEA and, for this purpose, to delegate some or any of his powers and duties to subordinate officials of the NEA;

4. Subject to the guidelines and policies established by the Board of Administrators, to appoint and fix the number and compensation of subordinate officials and employees of the NEA: Provided, however, The provisions of the Civil Service Law and Position Classification Law shall not apply to the appointment and compensation of any such subordinate official or employee;

5. For cause, to remove, suspend, or otherwise discipline any subordinate official or employee;

6. To prepare an annual report on the activities of the NEA at the close of each fiscal year and to submit a copy thereof to the President of the Philippines and when it comes into existence, the Prime Minister and the appropriate committee of, and as determined by, the National Assembly; and

7. To exercise such other powers and duties as may be vested in him by the Board of Administrators.

In case of absence or disability of the Administrator, he shall designate any of the Deputy Administrators who shall act in his place.

(c) The Auditor General shall be ex-officio Auditor of the NEA. The provisions of Section 584 of the Revised Administrative Code, as amended by Republic Acts Numbered 2266 and 2716, shall apply to the Office of the Representative of the Auditor General in the NEA.

Section 6. Capital Stock. – The authorized capital of NEA shall be five billion pesos, divided into fifty (50) million shares with a par value of one hundred pesos (P 100.00) each, which shares shall not be transferred, negotiated, pledged, mortgaged, or otherwise given as security for the payment of any obligation.

The sum of not less than five hundred million pesos shall be earmarked out of the corporate equity investment funds contained in Batas Pambansa Blg. 40 and the same amount is hereby appropriated out of the funds in the National Treasury not otherwise appropriated, for the payment of subscriptions to NEA capital stock, for each year beginning with fiscal year 1981 until the unpaid subscription of the government to the capital stock of the corporation shall have been paid in full: Provided, That additional amounts as may be needed shall be included in the annual General Appropriations Act. (As amended by Presidential Decree No. 1645, dated October 8, 1979.)

Section 7. Loan Standards. In making a loan authorized in Section 4, the Board

of Administrators is hereby authorized, empowered and directed:

a) Before making such loan, to determine and certify that (1) the project or projects being financed thereby are financially feasible for the purpose of, and will result in, area coverage in the area or areas to be affected thereby; (2) funds are or will be available for the total advance of such loans to the borrower on the schedule contemplated by the loan agreement; and (3) in the NEA's judgment and security for such loan is reasonably adequate and the principal of and interest upon such loan will be repaid on schedule and within the time agreed;

b) To require that such loan be self-liquidating within a term to be fixed by the NEA;

c) To impose upon the loan principal an interest charge to be fixed by the NEA;

d) To fix the schedule for repayment of the principal of and the interest upon such loan in installments recurring not more than every quarter, which installments may be in unequal amounts and larger in the later years of the loan term than in the earlier years;

e) To require in the loan agreement that the borrower's rates, charges, rules and regulations, policies and all other terms and conditions affecting its extension and furnishing of service shall be such as to assure achievement of the loan purposes, and that the same shall be filed with and for such purpose approved by the Board of Administrators before being put into effect or charged by the borrower; and

f) Subject to the foregoing, to establish and require compliance with such procedures, rules and regulations as the Board of Administrators may determine to be necessary or appropriate to assure that the purposes of such loan will be timely achieved and that the loan agreement and the provisions of this Decree will be complied with.

Section 8. Contracting Indebtedness: Conditions, Privileges, Exemptions, Sinking Fund, Guarantees. Whenever the Board of Administrators determines that to accomplish the purposes of Chapter II of this Decree it is necessary to contract indebtedness, it shall by a resolution, adopted by the affirmative votes, of at least three members, to declare and authorize the NEA's execution or issuance of, and establish the terms and conditions to be contained in, such bonds, loan agreements or other evidences of indebtedness necessary therefor. Such resolution shall become valid and effective upon approval by the President of the Philippines upon recommendation of the Secretary of Finance.

(a) With respect to domestic indebtedness to be incurred by the NEA, the terms and conditions to be contained in such bonds or other evidences of indebtedness, and other conditions, privileges, exemptions and guarantees attaching thereto, shall include the following:

(1) Such bonds or other evidences of indebtedness (a) shall be in registered form and transferable at the Central Bank of the Philippines; (b) shall not be sold at less than par; (c) shall be payable ten years or more from date of issue, as may be determined by the Secretary of Finance before their issuance, but shall be redeemable, upon the election of the Board of Administrators, after five years from such date of issue; and (d) shall bear interest at an annual rate to be determined before their issuance by the Secretary of Finance. The interest may be payable quarterly, semi-annualy of annually, as determined by the Secretary of Finance in consultation with the Monetary

Board of the Central Bank of the Philippines before date of issuance, and both the principal and interest shall be payable in legal tender of the Philippines.

(2) The bonds or other evidences of indebtedness shall be exempt from the payment of all taxes by the Republic of the Philippines, or by any authority, branch, division, political subdivision thereof, which facts shall be stated upon their face; and they shall be receivable as security in any transaction with the National Government or any of its branches, subdivisions, instrumentalities and its owned or controlled corporations in which a security is required.

(3) The sinking fund shall be established by the National Electrification Administration in such manner that the total annual contributions thereto, accrued at such rate of interest as may be determined by the Secretary of Finance in consultation with the Monetary Board, shall be sufficient to redeem at maturity the bonds issued under this subsection. The sinking fund shall be under the custody of the Central Bank of the Philippines, which shall invest the same, subject to the approval of the Board of Administrators and the Secretary of Finance in consultation with the Monetary Board; Provided, That the proceeds thereof shall accrue to the NEA.

(4) The Republic of the Philippines hereby guarantees the payment by the NEA of both the principal and the interest of the bonds or other evidences of indebtedness, and shall pay such principal and interest in case the NEA fails to do so; and there are hereby appropriated out of the general funds in the National Treasury not otherwise appropriated the sums necessary to make the payments so guaranteed; Provided, That the sums so paid by the Republic of the Philippines shall be refunded by the NEA; and Provided, further, That the NEA, to assure such refunding, shall establish such reserves or sinking funds and comply with such other restrictions and conditions as the Secretary of Finance may prescribe and establish for that purpose.

(b) With respect to foreign indebtedness to be incurred by the NEA, such may be contracted, in the form of loans, credits, convertible foreign currencies, or other forms of indebtedness, from foreign governments or any international financial institution or fund source, including foreign private lenders. The total outstanding amount of such indebtedness, exclusive of interest, shall not exceed five hundred million Unites States dollars (U.S. $500M) or the equivalent thereof in other currencies. The President of the Philippines, by himself or through his duly authorized representative, is hereby authorized to negotiate and to so contract with foreign governments or any international financial institution or fund source in the name and on behalf of the NEA; and is further authorized to guarantee, absolutely and unconditionally, as primary obligor and not merely as a surety, in the name and on behalf of the Republic of the Philippines, the repayment of any indebtedness thereby contracted and the payment thereon of any due interest charge, up to the limited amount authorized by the foregoing, which shall be over and above the amounts which the President is authorized to guarantee under R.A. 6142, and also to guarantee the performance of all or any of the obligations undertaken by the NEA in the territory of the Republic of the Philippines

pursuant to loan agreements entered into pursuant to this sub-paragraph (b). Any indebtedness contracted under this sub-paragraph (b) and the payment of the principal thereof and of any interest or other charges thereon, as well as the importation of machinery, equipment, materials, supplies and service by the NEA, paid from the proceeds of any such contracted indebtedness, shall also be exempt from all direct and indirect taxes, fees, imposts, other charges and restrictions, including import restrictions, by the Republic of the Philippines, or by any authority, branch, division or political subdivision thereof. (As amended by Presidential Decree No. 1645, dated October 8, 1979.)

Section 9. Authority to Extend Loans and Release or Subordinate Securities. Whenever in its judgments such is necessary or desirable to achieve the purposes of this Decree, and particularly if such is necessary to make or keep a project operationally viable, the Board of Administrators is hereby authorized and empowered (a) by agreement with the borrower, to extend the time of payment of principal or interest, or both, beyond the loan agreement term of any loan made by the NEA under this Decree, or to defer, for not in excess of seven years, the time when the repayment schedule for principal or interest, or both, shall begin, or to reschedule payments of principal or interest, or both, or when more of the foregoing is sufficient, to compromise any amount owing by a borrower to the NEA subject to provision of existing laws; and (b) upon the NEA's determination that such is necessary or desirable for the purpose of enabling a borrower to accomplish the purposes for which it has already received an NEA loan and that such will not result in any diminution of the security of, or of the ability of the borrower to repay, any outstanding indebtedness of the borrower below the level of such security and ability were additional borrowings from another lender not undertaken, to release any after-acquired property clause contained in any lien the NEA holds on a borrower's properties to, or to share any such lien on a co-equal basis in proportion to their respective loans with, or to subordinate any such lien in favor of, any other lender of funds to a public service entity or to the NEA for relending to public service entities for the purposes for which loans are authorized under this Decree.

Section 10. Enforcement Powers and Remedies. – In the exercise of its power of supervision and control over electric cooperatives and other borrower, supervised or controlled entities, the NEA is empowered to issue orders, rules and regulations and motu propio or upon petition of third parties, to conduct investigations, referenda and other similar actions in all matters affecting said electric cooperatives and other borrower, or supervised or controlled entities.

If the electric cooperative concerned or other similar entity fails after due notice to comply with NEA orders, rules and regulations and/or decisions, or with any of the terms of the Loan Agreement, the NEA Board of Administrators may avail of any or all of the following remedies:

(a) Refuse to make or approve any loan to the borrower or to release funds to implement loans that are otherwise already approved;

(b) Withhold NEA advances, or withhold approval of advances or fund releases in behalf of any other lender with respect to which the NEA has such power relative to loans made;

(c) Withhold any technical or professional assistance otherwise being furnished or that might be furnished to the borrower;

(d) Foreclosure any mortgage or deed of trust or other security hold by the NEA on the properties of such borrower, in connection with which the NEA may subject to any superior or co-equal rights

in such lien held by any other lender, (1) bid for and purchase or otherwise acquire such properties; (2) pay the purchase price thereof and any costs and expenses incurred in connection therewith out of the revolving fund; (3) accept title to such properties in the name of the Republic of the Philippines; and (4) even prior to the institution of foreclosure proceedings, operate or lease such properties for such period, and in such manner as may be deemed necessary or advisable to protect the investment therein, including the improvement, maintenance and rehabilitation of systems to be foreclosed, but the NEA may, within five years after acquiring such properties in foreclosure proceedings; sell the same for such consideration as it determines to be reasonable and upon such terms and conditions as it determines most conducive to the achievement of the purposes of this Decree; or

(e) Take preventive and/or disciplinary measures including suspension and/or removal and replacement of any or all of the members of the Board of Directors, officers or employees of the Cooperative, other borrower institutions or supervised or controlled entities as the NEA Board of Administrators may deem fit and necessary and to take any other remedial measures as the law or the Loan Agreement may provide."

No Cooperative shall borrow money from any source without the Board of Administrators' prior approval: Provided, That the NEA Board of Administrators, may, by appropriate rule or regulation, grant general permission to Cooperative to secure short-term loans not requiring the encumbrance of their real properties or of a substantial portion of their other properties or assets. (As amended by Presidential Decree No. 1645, dated October 8, 1979.)

Section 11. Execution of Public Works Acts. The NEA shall execute all electrification projects that may be authorized in any Public Works Acts; and for this purpose it may call for assistance and cooperation consistently with Section 4 (j).

Section 12. Conflict of Interest.

(a) No member, officer, attorney, agent or employee of the NEA shall in any manner, directly or indirectly, participate in the determination of any question affecting any public service entity or other entity in which he is directly or indirectly interested or any person to whom he is related within the third degree of affinity or consanguinity. Any person violating the provisions of this subsection shall be removed from office and shall upon conviction be punished by a fine not to exceed ten thousand (P10,000.00) pesos or imprisonment not to exceed five years, or both.

(b) No officer or employee of the NEA or any government official who may exercise executive or supervisory, authority over the NEA, either directly or indirectly, for himself or as the representative or agent of others, shall become a guarantor, endorser, surety for loans from the NEA to others, or in any manner be an obligor for money borrowed from the NEA. Any such officer or employee who violates the provisions of this subsection shall be punished by a fine of not less than one thousand pesos (P1,000.00) nor more than five thousand (P5,000.00) pesos, or imprisonment for not less than one year nor more than five years, or both.

(c) No loan shall be granted by the NEA to any person related to any member of the Board of Administrators or to the Administrator within the third degree of consanguinity or affinity, or to any corporation, partnership, or company wherein any member of the Board of Administrators or the Administrator is a shareholder; Provided, That the foregoing prohibition shall not apply

to a cooperative of which any member of the Board of Administrators or the Administrator or any such relative is a member. Violation by any member of the Board of Administrators or the Administrator of the provisions of this subsection is sufficient cause for this removal by the President of the Philippines; and the violator shall furthermore be punished as provided in subsection (b).

(d) No fee, commission, gift, or charge of any kind shall be exacted, demanded, or paid for obtaining loans from the NEA. Any officer, employee or agent of the NEA or the government exacting, demanding or receiving any fee, commission, gift or charge of any kind for service in obtaining a loan shall be punished by a fine of not less than one thousand nor more than three thousand pesos, or imprisonment for not less than one year nor more than three years, or both.

(e) Any person who, for the purpose of obtaining, renewing, or increasing a loan or the extension of the period thereof, on his own or another's behalf, shall give any false information or cause through his intrigue or machination the existence and production of any false information with regard to the identity, situation, productivity or value of security, or with regard to a point which might affect the granting or denial of the loan, whether the latter has been consummated or not, and any officer or employee of the NEA who through connivance shall allow by action or omission such false information to pass unnoticed, thereby causing damage to the NEA or exposing the latter to the danger of suffering such damage, shall be punished by a fine of not less than the amount of the loan obtained or applied for nor more than three times such amount, or imprisonment for not less than three months nor more than three years, or both.

(f) Any officer or employee of the NEA who violates, or causes or permits another person to violate, and any other person who violates or aids or abets the violation of, any provision of this Decree not specifically punishable in the preceding subsections shall be punished by a fine not exceeding two thousand (P2,000.00) pesos, or imprisonment not exceeding one year, or both.

Section 13. Supervision over NEA; Power Development Council. The NEA shall be under the supervision of the Office of the President of the Philippines. All orders, rules and regulations promulgated, and all appointments made by the NEA as well as transactions subject to the authority and jurisdiction of the NEA involving more than five hundred thousand (P500,000.00) pesos shall be subject to the approval of the Office of the President of the Philippines.

In order to achieve coordination and cooperation among different agencies and sectors having to do with electrification and power development, there is hereby created a Power Development Council whose Chairman shall be a person or official designated by the President of the Philippines, and its members shall be the manager of the NPC, the NEA Administrator, the Director General of the NEDA, the Chairman of the Board of Power and Waterworks, a representative of electric cooperatives to be chosen by a national association of electric cooperatives, and a representative of the Private sector.

The Council shall have a Secretariat to be headed by an Executive Secretary and staffed by such number of personnel as may be determined by the Council. In order to augment the expertise necessary in the performance of its functions, the council may secure the detail of personnel, either on a part-time or full-time basis, as well as other forms of assistance from other government offices and agencies, including government- owned or controlled corporations. The qualifications and compensation of the personnel of the

Secretariat shall be determined by the Council, but their appointments shall be made by the Chairman.

The salaries, expenses, operating expenses and such other necessary financial outlays for PDC shall be provided for from a special annual assessment to be determined by the Chairman of PDC and paid by the NEA and NPC.

The Council shall adopt an integrated plan of electrification and power development, coordinate the activities and operations of all sectors involved in electrification, and recommend such policies and measures to the proper authorities and parties concerned as it may deem necessary to achieve the total electrification objective declared in this Decree.

Section 14. Exemption From All Taxes, Duties, Fees, Imposts and Others Charges by Government and Governmental Instrumentalities. The NEA shall devote all its returns from its capital investments as well as excess revenues from its operation to attain its objectives. To enable the NEA to pay its indebtedness and obligations and in furtherance and effective implementation of the policy enunciated in this Decree, the NEA is hereby declared exempt:

(a) From the payment of all taxes, duties, fees, imposts, charges, costs and restrictions to the Republic of the Philippines, its provinces, cities, municipalities, and other government agencies and instrumentalities, including the taxes, duties, fees, imposts and other charges provided for under the Tariff and Customs Code of the Philippines, R.A. 1973, as amended by Presidential decree No. 34 dated October 27, 1972, and Presidential decree No. 69 dated November 24, 1972, and filing and service fees and other charges or costs in any court or administrative proceedings in which it may be a party;

(b) From all income taxes, franchise taxes and realty taxes to be paid to the National Government, its provinces, cities, municipalities and other government agencies and instrumentalities;

(c) From all import duties, compensating taxes and advance sales tax, wharfage fees on import of foreign goods required for its operations and projects; and

(d) From all taxes, duties, fees, imposts, and all other charges imposed directly or indirectly by the Republic of the Philippines, its provinces, cities, municipalities and other government agencies and instrumentalities, on all petroleum products used by the NEA in the generation, transmission, utilization and sale of electric power.

CHAPTER III
Electric Cooperatives[1]

Section 15. Organization and Purpose. Cooperative non-stock, non-profit membership corporations may be organized, and electric cooperative corporations heretofore formed or registered under the Philippine non-Agricultural Cooperative Act may as hereinafter provided be converted, under this Decree for the purpose of supplying, and of promoting and encouraging the fullest use of, service on an area coverage basis at the lowest cost consistent with sound economy and the prudent management of the business of such corporations.

Section 16. Powers. A cooperative is hereby vested with all powers necessary or convenient for the accomplishment of its corporate purpose and capable of being delegated by the President or the National Assembly when it comes into existence; and no enumeration of particular powers hereby granted shall be construed to impair any general grant of power herein contained, nor to limit any such grant to a power or powers

[1]This was amended by Presidential Decree No. 1645, dated October 8, 1979.)

of the same class as those so enumerated. Such powers shall include but not be limited to, the power:

(a) To sue and be sued in its corporate name;

(b) To have existence for a period of fifty years;

(c) To adopt a corporate seal and alter the same;

(d) To generate, manufacture, purchase, acquire, accumulate and transmit electric power and energy, and to distribute, sell, supply and dispose of electric energy to persons who are its members and to other persons not in excess of ten per centum of the number of its members; Provided, however, That a cooperative may furnish electric cold storage or processing plant service to non-members without limitation; and Provided, further, That a cooperative which acquires existing electric facilities may continue service from such facilities without requiring such persons to become members, but such persons may become members upon such terms as may be prescribed in the cooperative's by-laws;

(e) To assist persons to whom service is or will be supplied by the cooperative in wiring their premises and in acquiring and installing electrically powered-appliances, equipment, fixtures and machinery for agricultural, commercial and industrial uses by the financing thereof or otherwise, and in connection therewith to wire, or cause to be wired, such premises, and to purchase, acquire, lease as lessor or lessee, sell, distribute, install and repair such electrically-powered appliances, equipment, fixtures and machinery;

(f) To assist persons to whom service is or will be supplied by the cooperative in constructing, equipping, maintaining and operating electric cold storage or processing plants, by the financing thereof or otherwise;

(g) To construct, purchase, lease as lessee, or otherwise acquire, and to equip, maintain, and operate, and to sell, assign, convey, lease as lessor, mortgage, pledge, or otherwise dispose of or encumber, electric transmission and distribution lines or systems, electric generating plants, lands, buildings, structures, dams, plants, and equipment, and any other real or personal property, tangible or intangible, which shall be deemed necessary, convenient or appropriate to accomplish the purpose for which the cooperative is organized;

(h) To purchase, lease as lessee, or otherwise acquire, and to use, and exercise and to sell, assign, convey, mortgage, pledge or otherwise dispose of or encumber franchises, rights, privileges, licenses and easements;

(i) To borrow money and otherwise contract indebtedness, and to issue notes, bonds, and other evidence of indebtedness, and to secure payment thereof by mortgage, pledge, or deed of trust of, or any other encumbrance upon, any or all of its then owned or after-acquired real or personal property, assets, franchises, or revenues; Provided, That any borrowing from, or any encumbering of its properties as security in favor of, any lending sources other than the NEA shall require the prior approval of the NEA Administrator and his certification that such is in furtherance of the purposes and is consistent with the provisions of this Decree, and that such borrowing and/or encumbering will not diminish the security of, or of the ability of the cooperative to repay, any then-outstanding indebtedness of the cooperative to the NEA or any other lending source below the level of such security and ability were such additional borrowing not being undertaken;

(j) To construct, maintain and operate electric transmission and distribution lines along, upon, under and across publicly owned lands and public thoroughfares, including, without limitation, all roads, highways, streets, alleys, bridges and causeways; Provided, That such shall not prevent or unduly impair the primary public uses to which such lands and thoroughfares are otherwise devoted;

(k) To exercise the power of eminent domain in the manner provided by law for the exercise of such power by other corporations constructing or operating electric generating plants and electric transmission and distribution lines or systems;

(l) To become a member of other cooperatives or Corporations or to own stock therein, provided such cooperatives to corporations are engaged in a business or activities germane to or having a reasonable relation to the business or activities of the cooperative, its members, its directors, or its employees;

(m) To conduct its business and exercise its powers within or without the province or provinces in which its supplies service;

(n) To adopt, amend and repeal by-laws;

(o) To fix, maintain, implement and collect rates, fees, rents, tolls, and other charges and terms and conditions for service; Provided, That by appropriate rules and regulations the NEA shall require that such shall be in furtherance of the purposes and in conformity with the provisions of this Decree; and

(p) To do and perform any other acts and things, and to have and exercise any other powers which may be necessary, convenient or appropriate to accomplish the purpose for which the cooperative is organized.

Section 17. Name. The name of a cooperative shall include the words "Electric" and "Cooperative", and the abbreviation "Inc.". The name of a cooperative organized under this Decree shall be distinct from the name of any other cooperative already organized or converted under this Decree. The foregoing requirement shall not apply to any cooperative which becomes subject to this Decree by complying with the provisions of Section 31.

Section 18. Incorporators. Five or more persons, including cooperatives, may organize a cooperative in the manner hereinafter provided.

Section 19. Articles of Incorporation. The articles of incorporation of a cooperative shall recite that they are executed pursuant to this Decree and shall state: (a) the name of the cooperative; (b) the address of its principal office; (c) the names and addresses of the incorporators; and (d) the names and addresses of its original directors, who shall constitute the board until the first election of the board by the members; and may contain any other provisions not inconsistent with this Decree that are deemed necessary or advisable for the conduct of its business. Such articles shall be signed by each incorporator and acknowledged by at least two of the incorporators (or on their behalf, if they are cooperatives). It shall not be necessary to recite in the articles of incorporation the purpose for which the cooperative is organized or any of its corporate powers.

Section 20. By-Laws. Unless reserved to the members in the articles of incorporation, the power to adopt and thereafter to amend or repeal by-laws shall vest in and be exercised by the board, the affirmative votes of a clear majority of all directors in office, after due notice to all directors, being requisite for such purpose. The by-laws shall set forth the basic rights and duties of members and directors and may contain any other provision for the regulation and management of the affairs

of the cooperative not inconsistent with its articles of incorporation or this Decree.

Section 21. Members. Each incorporator of a cooperative shall be a member thereof, but no other person may become a member thereof unless such other person agrees to use services furnished by the cooperative when made available by it. Membership in a cooperative shall not be transferable, except as provided in the by-laws. The by-laws may prescribe additional qualifications and limitations with respect to membership.

The provision of any law or regulation to the contrary notwithstanding, an officer or employee of the government shall be eligible for membership in any cooperative if he meets the qualifications therefor and he shall not be precluded from being elected to or holding any position therein, or from receiving such compensation or fee in relation thereto as may be authorized by the by-laws; Provided, That elective officers of the government, except barrio captains and councilors, shall be ineligible to become officers and/or directors of any cooperative. For this purpose, individual permission need not be obtained from the proper head of office; Provided, however, That this authority shall not be construed as a permit to the government officer or employee concerned to devote official time to the affairs of the cooperative.

Section 22. Meetings of Members.

(a) An annual meeting of the members of a cooperative shall be held at such time and place as shall be provided in the by-laws.

(b) Special meetings of the members may be called by the President, by the board, by any three directors or, unless a smaller number or percentage be prescribed in the by-laws, by not less than 100 members or five per centum of all members, whichever shall be the lesser.

(c) Except as otherwise provided in this Decree and unless otherwise provided for in the by-laws, written or printed notice stating the time and place of each meeting of the members and, in the case of special meetings, the purpose or purposes for which the meeting is called, shall be given to each member, either personally or by mail, not less than ten days nor more than twenty- five days before the date of the meetings. If mailed, such notice shall be deemed to be given when deposited in the Philippine mail with postage prepaid, addressed to the member at his address as it appears on the records of the cooperative.

(d) Unless the by-laws prescribe the presence of a greater or lesser percentage or number of the members for such purpose, a quorum for the transaction of business at all meetings of the members of a cooperative having not more than 1,000 members shall be five per centum of all members, present in person, and of a cooperative having more than 1,000 members shall be five per centum of all members or 100, whichever is lesser, present in person. If less than a quorum is present at any meeting, a majority of those present in person may adjourn the meeting from time to time without further notice.

(e) Each member shall be entitled to one vote of each matter submitted to a vote at a meeting of the members. Voting shall be non-cumulative and in person, but, if the by-laws so provide, may also be by mail or by proxy.

Section 23. Waiver of Notice. Any person entitled to notice of a meeting may waive notice in writing either before or after such meeting; however, his attendance shall constitute a waiver of notice of such meeting, unless such person participates therein solely to object to the transaction of any business because the meeting has not been legally called or convened.

Section 24. Board of Directors.

(a) The Management of a Cooperative shall be vested in its Board, subject to the supervision and control of NEA which shall have the right to be represented and to participate in all Board meetings and deliberations and to approve all policies and resolutions.

The composition, qualifications, the manner of elections and filling of vacancies, the procedures for holding meetings and other similar provisions shall be defined in the by-laws of the Cooperative subject to NEA policies, rules and regulations.

No member of the Board shall receive any salary for his service as Director nor for services rendered in any other capacity. However, reasonable per diems for every Board meeting actually attended and reimbursement of actual expenses incurred in the performance of the duties of a member of the Board may be allowed as specified in NEA policies, rules and regulations. (As amended by Presidential Decree No. 1645, dated October 8, 1979.)

(b) The directors of a cooperative named in any articles of incorporation, consolidation, merger or conversion shall hold office until the next annual meeting of the members and until their successors are elected and qualify. At each annual meeting of, in case of failure to hold the annual meeting as specified in the by-laws, at a special meeting called for that purpose, the members shall elect directors to hold office until the next annual meeting of the members, except as otherwise provided in this Decree. Each director shall hold office for the term for which he is elected and until his successor is elected and qualifies.

(c) Instead of electing all the directors annually, the by-laws may provide that each year half of them or one-third of them, or a number as near thereto as possible, shall be elected on a staggered term basis to serve two-year terms or three-year terms, as the case may be.

(d) A majority of the board of directors in office shall constitute a quorum.

(e) The board shall exercise all of the powers of a cooperative not conferred upon or reserved to the members by this Decree or by its articles of incorporation or by-laws.

Section 25. Districts. The by-laws may provide for the division of the territory served or to be served by a cooperative into two or more districts for any purpose, including, without limitation, the nomination and election of directors. The by-laws shall prescribe the boundaries of the districts, or the manner of establishing such boundaries, the manner of changing such boundaries, and the manner in which such districts shall function.

Section 26. Officers. – The officers of a cooperative shall consist of a President, Vice-President, Secretary and Treasurer, who shall be elected annually by and from the Board. When a person holding such office ceases to be a director, he shall ipso facto cease to hold such office. The offices of Secretary and of Treasurer may be held concurrently by one person. The Board may also elect or appoint such other officers, agents or employees as it deems necessary or advisable and shall prescribe their powers and duties, subject to the pertinent provisions of this Decree, the Loan Agreement, and NEA policies, rules and regulation. (As amended by Presidential Decree No. 1645, dated October 8, 1979.)

Section 27. Amendment of Articles of Incorporation. A cooperative may amend its articles of incorporation by complying with the following requirements; Provided, however, That a change of location of principal office may be effected in the manner set forth in Section 28. The proposed amendment shall be presented to a meeting of the members,

the notice of which shall set forth or have attached thereto the proposed amendment or an accurate summary thereof. If the proposed amendment, with any changes, is approved by the affirmative vote of not less than two-thirds of the total votes cast thereon at such meeting, articles of amendment shall be executed and acknowledged on behalf of the cooperative by its president or vice-president and its seal shall be affixed thereto and attested by its secretary. The articles of amendment shall recite that they are executed pursuant to this Decree and shall state: (1) the name of the cooperative; (2) the address of its principal office; and (3) the amendment to its articles of incorporation. The president or vice-president executing such articles of amendment shall make the annex thereto an affidavit stating that the provisions of this section with respect to the amendment set forth in such articles were duly complied with.

Section 28. Change of Location of Principal Office. A cooperative may, upon authorization of its board or members, change the location of its principal office by filing a certificate reciting such change of principal office, executed and acknowledged by its president or vice-president under its seal attested by its secretary, in the place provided for in Section 34.

Section 29. Consolidation. Any two or more cooperatives (each of which is hereinafter designated a "consolidating cooperative") may consolidate into a new cooperative (hereinafter designated the "new cooperative"), by complying with the following requirements:

(a) The proposition for the consolidation of the consolidating cooperatives into the new cooperative and proposed articles of consolidation to give effect thereto shall be submitted to a meeting of the members of each consolidating cooperative, the notice of which shall have attached thereto a copy of the proposed articles of consolidation or an accurate summary thereof.

(b) If the proposed consolidation and the proposed articles of consolidation, with any amendments, are approved by the affirmative vote of not less than two-thirds of the total voted cast thereon by each consolidating cooperatives voting thereon at each such meeting, articles of consolidation in the form approved shall be executed and acknowledged on behalf of each consolidating cooperative by its president or vice-president and its seal shall be affixed thereto and attested by its secretary. The articles of consolidation shall recite that they are executed pursuant to this decree and shall state: (1) the name of each consolidating cooperative and the address of its principal office; (2) the name of the new cooperative and the address of its principal office; (3) a statement that each consolidating cooperative agrees to the consolidation; (4) the names and addresses of the directors of the new cooperative; and (5) the terms and conditions of the consolidation and the mode of carrying the same into effect, including the manner in which members of the consolidating cooperatives may or shall become members of the new cooperative; and may contain any other provisions not inconsistent with this Decree that are deemed necessary or advisable for the conduct of the business of the new cooperative. The president or vice-president of each consolidating cooperative executing such articles of consolidation shall make and annex thereto an affidavit stating that the provisions of this section with respect to such articles were duly complied with by such cooperative.

Section 30. Merger. Any one or more cooperatives (each of which is hereinafter designated a "merging cooperative") may merge with one or more other cooperatives by

complying with the following requirements:

(a) The proposition for the merger of the merging cooperatives into the surviving cooperative and proposed articles of merger to give effect thereto shall be submitted to a meeting of the members of each merging cooperative and of the surviving cooperative, the notice of this shall have attached thereto a copy of the proposed articles of merger or an accurate summary thereof.

(b) If the proposed merger and the proposed articles of merger, with any amendments, are approved by the affirmative vote of not less than two-thirds of the total votes cast thereon by each cooperative voting thereon at each such meeting, articles of merger in the form approved shall be executed and acknowledged on behalf of each such cooperative by its president or vice-president and its seal affixed thereto and attested by its secretary. The articles of merger shall recite that they are executed pursuant to this Decree and shall state: (1) the name of each merging cooperative and the address of its principal office; (2) the name of the surviving cooperative and the address of its principal office; (3) a statement that each merging cooperative and the surviving cooperative agree to the merger (4) the names and addresses of the directors of the surviving cooperative, and (5) the terms and conditions of the merger and the mode of carrying the same into effect, including the manner in which members of the merging cooperatives may or shall become members of the surviving cooperative and may contain any other provisions not inconsistent with this Decree that are deemed necessary or advisable for the conduct of the business of the surviving cooperative. The president or vice-president or each cooperative executing such articles of merger shall make an annex thereto an affidavit stating that the provisions of this section with respect to such articles were duly complied with by such cooperative.

Section 31. Effect of Consolidation or Merger.

(a) In the case of consolidation, the existence of the consolidating cooperative shall cease and the articles of consolidation shall be deemed to be the articles or incorporation of the new cooperative; and in the case of merger, the separate existence of the merging cooperatives shall cease and the articles of incorporation of the surviving cooperative shall be deemed to be amended to the extent, if any, that changes therein are provided for in the articles of merger;

(b) All rights, privileges, immunities and franchises and all property, real and personal, including without limitation applications for membership, all debts due on whatever account and all other choses in action of each of the consolidating or merging cooperatives shall be deemed to be transferred to and vested in the new or surviving cooperative without further act or deed;

(c) The new or surviving cooperative shall be responsible and liable for all liabilities and obligations of each of the consolidating or merging cooperatives, and any claim existing or action or proceeding pending by or against any of the consolidation or merger had not taken place, but the new or surviving cooperatives shall be substituted in its place; and

(d) Neither the rights of creditors nor any liens upon the property of any such cooperatives shall be impaired by such consolidation or merger.

Section 32. Conversion of Existing Corporation. Any corporation heretofore organized or registered under the Philippine Non-Agricultural Cooperative Act and

supplying or having the corporate power to supply electric energy may convert itself into a cooperative under this Decree by complying with the following requirements, and shall thereupon become the subject to this Decree with the same effect as if orginally organized hereunder:

(a) The proposition for the conversion of such corporation and proposed articles of conversion to give effect thereto shall be submitted to a meeting of the members or stockholders of such corporation, the notice of which shall have attached thereto a copy of the proposed articles of conversion or an accurate summary thereof.

(b) If the proposition for the conversion and the proposed articles of conversion, with any amendments, are approved by the affirmative vote of not less than two-thirds of the total votes cast thereon by members at such meeting, and/or, if such corporation is a stock corporation or has both members and voting stockholders, by the affirmative vote of the holders of not less than two-thirds of those shares of the capital stock of such corporation represented at such meeting and voting thereon, articles of conversion in the form approved shall be executed and acknowledged on behalf of such corporation by its president or vice-president and its seal shall be affixed thereto and attested by its secretary. The articles of conversion shall recite that they are executed pursuant to this Decree and shall state: (1) the name of the corporation and the address of its principal office prior to the conversion into a cooperative; (2) a statement that such corporation elects to become a cooperative, non-profit, membership corporation subject to this Decree; (3) its name as a cooperative; (4) the addresses of the principal office of the cooperative; and (5) the names and address of the directors of the cooperative, and (6) the manner in which members or stockholders of such corporation may or shall become members of the cooperative; and may contain any other provisions not inconsistent with this Decree that are deemed necessary or advisable for the conduct of the business of the cooperative. The president or vice-president executing such articles of conversion shall make and annex thereto an affidavit stating that the provisions of this section were duly complied with in respect to such articles. The articles of conversion shall be deemed to be the articles of incorporation of the cooperative.

Section 33. Dissolution. A cooperative may be dissolved in the following manner: The proposition to dissolve shall be submitted to the members of the cooperative at any annual or special meetings, the notice of which shall set forth such proposition. The members at any such meeting shall approve, by the affirmative vote of not less than a majority of all members of the cooperative, the proposition that the cooperative be dissolved (hereinafter designated the "certificate") shall be executed and acknowledged on behalf of the cooperative by its president or vice-president under its seal, attested by its secretary, stating: (1) the name of the cooperative; (2) the address of its principal office; and (3) that the members of the cooperative have duly voted that the cooperative be dissolved. Also, an affidavit, made by its president or vice-president executing the certificate, shall state that the statements in the certificate are true. Upon the filing of the certificate and affidavit as provided for in Section 34, the cooperative shall cease to carry on its business except to the extent necessary for the winding up thereof, but its corporate existence shall continue until articles of dissolution shall have been filed. The board shall immediately cause notice of the dissolution proceedings to be mailed to each known creditor of and claimant against the cooperative and to be

published once a week for two successive weeks in a newspaper of general circulation in the territory in which the principal office of the cooperative is located. The board shall wind up and settle the affairs of the cooperative, collect sums owing to it, liquidate its property and assets, pay an discharge its debts, obligations and liabilities, other than those patrons arising by reason of their patronage, and do all other things required to wind up its business; and, after paying or discharging or adequately providing for the payment or discharge of all its debts, obligations and liabilities, other than those to patrons arising by reason of their patronage, shall distribute any remaining sums and/or unliquidated assets, first, to patrons for the pro rata return of all amounts standing to their credit by reason of their patronage; second, to members for the pro rata repayment of membership fees; and third, to patrons for the amounts of any outstanding contributions in aid of construction they have made. Any sums and/or unliquidated assets then remaining shall be distributed in such manner as provided in the cooperative's articles of incorporation or by-laws, which may provide for distribution of such sums or assets on a patronage basis to persons who were members in one or more prior years or for transfer thereof to a new cooperative to succeed the one being dissolved. The board shall thereupon authorize the execution of articles of dissolution, which shall be executed and acknowledged on behalf of the cooperative by its president or vice-president, and its seal shall be affixed thereto and attested by its secretary. The articles of dissolution shall recite that they are executed pursuant to this Decree and shall state: (1) the name of the cooperative; (2) the address of its principal office; (3) the date on which the certificate of election to dissolve was filed; (4) that there are no actions or suits pending against the cooperative; (5) that all debts, obligations and liabilities of the cooperative have been paid and discharged or that provision to the extent possible has been made therefor; and (6) that the provisions of this section have been duly complied with. The president or vice-president executing the articles of dissolution shall make the annex thereto an affidavit stating that the statement made therein are true.

Section 34. Filing of Articles and Certificates. Articles of incorporations, amendment, consolidation, merger, conversion, or dissolution and certificates of changes in the location of principal offices and of elections to dissolve, when executed and acknowledged and accompanied by such affidavits as may be required by applicable provisions of this Decree, shall be presented to the Administrator for filing in the records of his office. If he shall find that such conform to the requirements of this Decree, he shall so certify and shall file such in the records of his office. Upon such certification and filing, the incorporation, amendment, consolidation, merger, conversion, dissolution or certificate provided for therein shall be in effect.

Section 35. Non-profit, Non-discriminatory, Area Coverage Operation and Service. A cooperative shall be operated on a non-profit basis for the mutual benefit of its members and patrons; shall, as to rates and services make or grant no unreasonable preference or advantage to any member or patron nor subject any member or patron to any unreasonable prejudice or disadvantage; shall not establish or maintain any unreasonable difference as to rates or services either as between localities or as between classes of service; shall not give, pay or receive any rebate or bonus, directly or indirectly, or mislead its members in any manner as to rates charged for its services; and shall furnish service on an area coverage basis; Provided, That for any extension of service which if treated on the basis of standard terms and conditions is so costly as to jeopardize the financial feasibility of the cooperative's entire operation, the cooperative may require such contribution in aid of construction, such facilities extension deposit, such guarantee of minimum usage for a minimum term or such other reasonable commitment on the part of

the person to be served as may be necessary and appropriate to remove such joepardy, but no different in standard rates for use of service shall be imposed for such purpose.

The by-laws of a cooperative or its contracts with members and patrons shall contain such reasonable terms and conditions respecting membership, the furnishing of service and the disposition of revenues and receipts as may be necessary and appropriate to establish and maintain its non-profit, cooperative character and to ensure compliance with this section. No bona fide applicant for membership on non-member patronage who is able and willing to satisfy and abide by all such terms and conditions shall be denied arbitrarily, capriciously or without good cause.

Section 36. Disposition of Property.

(a) The board of a cooperative shall have full power and authority, without authorization by the members thereof, to authorize the execution and delivery of a mortgage or a deed of trust, or the pledging or encumbering otherwise, of any or all of the property, assets, rights, privileges, licenses, franchises and permits of the cooperative, whether acquired or to be acquired, and whenever situated, as well as the revenues therefrom, all upon such terms and conditions as the board shall determine, to secure any borrowing by or indebtedness of the cooperative.

(b) A cooperative may not otherwise sell, lease or, except by consolidation or merger, otherwise dispose of the property (other than merchandise and property which shall represent not in excess of ten per centum of the value of the cooperative's total assets, or which in the judgment of the board are not necessary or useful in operating the cooperative) unless such sale, lease or, except in the case of consolidation or merger, other disposition is (1) authorized by the affirmative vote of not less than a majority of all members of the cooperative and (2) consented by the NEA and any other lending source which then holds a lien on any of the cooperative's properties.

Section 37. Non-Liability of Members for Debts of Cooperative. No member shall be liable or responsible for any debts of the cooperative and the property of the members shall not be subject to execute therefor.

Section 38. Limitation of Actions. No action or suit may be brought against a cooperative, or against any agent, servant or employee thereof, by reason of the maintenance of electric transmission or distribution lines, or any related equipment, facilities or machinery, or any real property after the expiration of a period of five (5) years of continuous maintenance of such lines or related equipment facilities or machinery.

Section 39. Assistance to Cooperatives; Exemption from Taxes, Imposts, Duties, Fees; Assistance from the National Power Corporation. Pursuant to the national policy declared in Section 2, the Congress hereby finds and declares that the following assistance to cooperative is necessary and appropriate:

(a) Provided that it operates in conformity with the purposes and provisions of this Decree, cooperative (1) shall be permanently exempt from paying income taxes, and (2) for a period ending on December 31; of the thirtieth full calendar year after the date of a cooperative's organization or conversion hereunder, or until it shall become completely free of indebtedness incurred by borrowing, whichever event first occurs, shall be exempt from the payment (a) of all National Government, local government and municipal taxes and fees, including franchise, filing, recordation, license or permit fees or taxes and any fees, charges, or costs involved in any court or administrative proceeding in which it may be a party, and (b) of all duties

or imposts on foreign goods acquired for its operations, the period of such exemption for a new cooperative formed by consolidation, as provided for in Section 29, to begin from as of the date of the beginning of such period for the constituent consolidating cooperative which was most recently organized or converted under this Decree: Provided, That the Board of Administrators shall, after consultation with the Bureau of Internal Revenue, promulgate rules and regulations for the proper implementation of the tax exemptions provided for in this Decree.

(b) The National Power Corporation shall, except with respect to the National Government, give preference in the sale of its power and energy to cooperatives, and shall otherwise provide the maximum support of and assistance to cooperatives of which it is capable, including assistance in developing dependable and reliable arrangements for their supplies of bulk power, either from itself, or from other sources. In pursuance of the foregoing policy, the National Power Corporation shall not, except upon prior written agreement approved by the cooperative's board, compete in the sale of power and energy which without regard to the location of the point of delivery thereof, will be utilized and consumed within any area franchised to a cooperative.

Section 40. Exemption from Board of Power and Waterworks and Securities Exchange Commission.

(a) Cooperatives shall be exempt from regulation by the Board of Powers and Waterworks.

(b) The provisions of the Securities Act shall not apply to any note, bond or other evidence of indebtedness issued by any cooperative or to any mortgage, deed of trust, indenture or other instrument executed to secure the same. The provisions of said Act shall not apply to the issuance of membership certificates or any other evidence of member or patron interest by a cooperative.

CHAPTER IV

Franchises; Regulation of cooperatives

Section 41. Applicability. This Chapter shall apply only to electric franchises as in Section 3 defined. It shall not be applicable to franchises for any other utility service or to those separable portions of franchises covering any other type of utility service though such franchises may also cover electric service. The Board of Administrators shall hear and determine all questions which may arise under this section.

Section 42. Repeal of Franchise Powers of Municipal, City and Provincial Governments. The powers of municipal, city and provincial governments to grant franchises, as provided for in Title 34 of the Philippines Statutes or in any special law, are hereby repealed; Provided, That this section shall not impair or invalidate any franchise heretofore lawfully granted by such a government or repeal any other subsiding power of such governments to require that electric facilities and related properties be so located, constructed, operated and maintained as to be safe to the public and not to unduly interfere with the primary use of streets, roads, alleys and other public ways, buildings and grounds over, upon or under which they may be built.

Section 43. Franchising Powers Delegated to the NEA. The power hereafter to grant and thereafter to repeal, alter or amended new franchises, to repeal, alter or amend all franchises heretofore granted by the Congress (or by the President or by the National Assembly after it comes into existence), and to repeal, alter or amend all franchises heretofore granted by any municipal, city or provincial government, is hereby delegated to the NEA, whose

Board of Administrators shall, acting as a Commission, administer the provisions of this Chapter. Provisions of Republic Act 2677 to the country notwithstanding, no municipality shall hereafter initiate the operation, or after December 31, 1973, continue any operation heretofore initiated, of any service for sale at retail unless it shall first obtain a franchise from the NEA in accordance with the provisions of this Chapter. In exercising the powers herein delegated, the NEA shall at all times seek to serve the National objective of the most rapid total electrification of the Philippines on an area coverage basis. Without limiting the generality of the foregoing sentence, the NEA is hereby authorized, empowered and directed:

(a) Within one hundred eighty days after the effective date of this Chapter (and periodically thereafter, at least once annually) to notify and require every person holding a franchise to report to it, within not less than ninety days after such notice, an accurate description of the geographic area encompassed in such franchise, the number of households therein receiving adequate and dependable service, the number of households therein receiving service which is not adequate and dependable, the number and type of other retail customers therein receiving adequate and dependable service or service which is not adequate and dependable, the approximate total number of households therein, the date such franchise was granted and such other information and data as the NEA for the purpose of implementing this section may require, and, on the basis of such reports and otherwise, including complaints:

    1. to review such franchises to determine whether the holders thereof are furnishing service on an area coverage basis or are engaged in effective measures to furnish such service within a reasonable time;

    2. to repeal and cancel any franchise if the NEA finds that the holder thereof is not then furnishing, and is unable or unwilling within a reasonable time to furnish, adequate and dependable service on an area coverage basis within such area; and

    3. to alter and condition such or other existing franchises and to issue new franchises to the end of assuring area coverage service throughout the Nation as in this Decree contemplated; Provided, That no franchise shall be altered, conditioned, repealed or cancelled, and no franchise shall be granted, without first affording the holder thereof, or the contending applicants therefor, if such be the case, and any other interested parties opportunity for hearing; and

(b) Upon determining, after affording opportunity for hearing to all interested parties, that such is necessary or appropriate to assure or expedite the furnishing of service on an area coverage basis, to require any public service entity to interconnect its generation, transmission or distribution facilities or related facilities with, and through such interconnection to exchange, sell or purchase power and energy with, to or from or to transmit power and energy on behalf of, any other public service entity or, if it so requests or consents, the NPC; and, if such public service entities (and, if such be the case, the NPC) are unable between or among themselves to agree upon such, to establish the manner and degree, to fix and apportion the financial responsibility and sharing of costs, and to determine the other terms and conditions of such interconnection, exchange, sale, purchase or transmission; Provided, however, That the provisions of Section 45 to the contrary notwithstanding, the provisions of this paragraph shall apply

to industrial plants, factories, mills, mines and similar or other power generating entities in which case they shall qualify as public service entities for purposes of Section 4 (f).

Section 44. Preference to Cooperatives. Whenever two or more public service entities are affected by and have competing or conflicting interests with respect to the granting, repeal, alteration or conditioning of the same franchise or franchises, and one or more of such entities are cooperatives, the NEA shall accord preference to a cooperative over any other type of public service entity (and shall prefer one cooperative over another) unless and except to the extent that an order in favor of another type of public service entity (or of another cooperative) will, as found by the NEA, result both earlier and ultimately in the furnishing and extending of area coverage service (1) to a greater number of households, (2) over a larger geographic area, and (3) on the basis of the same or lower rates, charges and fees.

Section 45. Furnishing Service Without a Franchise Prohibited. No person shall furnish or extend service to the public within any area for which such person has not been granted a franchise or after such a franchise has been repealed and cancelled or so conditioned or altered as to prohibit service therein; Provided, That such service may be continued and extended therein, and the NEA, after affording opportunity for hearing to any interested party, may by order require that it be so continued and extended until service to the customers of such person is made available by a public service entity lawfully authorized to serve therein.

Section 46. Additional Regulation of Cooperatives by the NEA. In addition to the other ways in which cooperatives are subject to regulation by the NEA as provided in this Decree, the NEA, on its own motion or upon complaint but only after affording opportunity for hearing to all interested parties, is empowered to and shall (1) require a cooperative to extend or improve service upon the NEA's determination that such should be done in furtherance of the purposes of this Decree and that such may reasonably be done without undue impairment of the feasibility of the cooperative's operation and financial condition; and (2) require a cooperative to cease and correct any practice or act which the NEA determines to be in violation of the provisions of Section 35, and in connection with such authority it may require a cooperative to file with the NEA, and to make accessible to any person upon request therefor, copies of all rates, charges, contract forms, fee or deposit schedules, by-laws, and service rules and regulations.

Section 47. Hearings and Investigations. The NEA is empowered to conduct such hearings and investigations and to issue such orders as are necessary for it to implement the provisions of this Chapter, and in connection therewith, without necessary of previous hearing, to require any public service entity or the officials thereof to furnish to it such information and data, including statements of accounts, schedules of rates fees and charges, contracts, service rules and regulations, articles of incorporation, by-laws, audit reports and other internal records, documents, policies and procedures, as will enable the NEA to be sufficiently informed in exercising its powers and authorities; Provided, That no order shall issue finally determining and substantially affecting any right of any person subject to the NEA's jurisdiction without first affording such person and any other interested person opportunity for hearing as a party in the hearing proceeding.

Section 48. Parties and Intervenors in NEA's Proceedings Public service entities or any other interested person may invoke the NEA's exercise of its powers and authorities provided for in Section 43, 44, 45, 46 and 47 by filing verified applications or complaints with the NEA, and the NEA, on its own motion solely, may institute proceedings in connection with all maters coming under its jurisdiction as provided for in said sections.

In any proceeding conducting by the NEA, including proceedings to establish NEA rules and regulations, all persons having a substantial interest therein shall, upon petition therefor, be permitted by the NEA to intervene as full parties, and the NEA, in its discretion, may permit persons having an insubstantial interest therein to intervene as a full party or on such limited basis as the NEA may prescribe.

Section 49. NEA Rules and Regulations. The NEA shall establish appropriate rules and regulations to carry out the provisions of this Chapter IV, including rules for the conduct of NEA investigations, proceedings and hearing; and shall timely publish the same when adopted or amended to the end that all persons affected thereby shall be given reasonable notice thereof.

Section 50. Notice.

(a) With respect to any NEA proceeding, investigation or hearing (including such as are for the purpose of establishing NEA rules and regulations) which may substantially affect the rights or interests of any person or persons (including the general public or the National Government or any department, agency, instrumentality of political subdivision thereof, if such be the case), the NEA shall cause timely notice in writing to be furnished to, or served upon, or appropriately published to such person or persons to the end of affording them reasonable opportunity, as a party or otherwise, directly to participate, or otherwise to have their positions, views and interests adequately presented to or represented, in such proceedings, investigation or hearing.

(b) Upon the completion of any such proceeding, investigation or hearing, the NEA shall cause timely notice of any order issuing thereupon to be furnished to, or served upon, or appropriately published to any person or persons (including the general public or the National Government or any department, agency, instrumentality or political subdivision thereof, if such be the case) who will be directly affected thereby. Such notice shall be supplementary to, not in conflict with or in lieu of, the notices and services otherwise provided for in this Chapter.

Section 51. Hearings Conducted by Board of Administrators or any Member Thereof. NEA hearings pursuant to this Chapter may be conducted by the Board of Administrators en banc or by any one or more members thereof, as the Board of Administrators may decide; Provided, That the Administrator shall preside when the Board of Administrators sits en banc; Provided, further, That all hearings shall be of record; and Provided finally, that findings, determinations, orders and rulings based upon such hearings shall require the affirmative majority of all the members of the Board of Administrators upon the certification, to become a part of such findings, determinations and orders, on the part of any member of the Board who was absent from the hearings that he has read the record of the same.

Section 52. Compensation. The members of the Board of Administrators and other hearing officers as the Board of Administrators may designate shall be entitled to per diem for each hearing actually conducted or attended by them in such amount as may be fixed by the President of the Philippines.

Section 53. Hearing Rules; Contempt. All hearings and investigations conducted by the NEA shall be governed by rules adopted by the NEA, and in the conduct thereof the NEA shall not be bound by the technical rules of legal evidence; Provided, That the NEA or such member of the Board of Administrators when conducting a hearing, may summarily punish for contempt by a fine not exceeding two hundred pesos (P200.00) or by imprisonment not exceeding ten (10) days, or both, any person guilty of misconduct in the presence of the hearing or so near the same as to

interrupt the hearing, proceeding, session or investigation including cases in which a person present at a hearing, proceeding, session or investigation refuses to be sworn as a witness or to answer as such when lawfully required to do so. To enforce the provisions of this section, the NEA, or such member thereof, may, if necessary, request the assistance of the municipal police for the execution of any order made for said purpose.

Section 54. Subpoenas; Contempt.

(a) The NEA may issue subpoenas and subpoenas duces tecum, for witness in any matter of inquiry pending before it, and require the production of all books, papers, tariffs, contracts, agreements, and all other documents which it may deem necessary in any proceeding. Such process shall be issued under the seal of the NEA, signed by one of the members of the NEA Board of Administrators, and may be served by any person of full age, or by registered mail. In case of disobedience to such subpoena, the NEA may invoke the aid of the Supreme Court, or of any Court of First Instance of the Philippines in requiring the attendance and testimony of witnesses and the production of books, papers and documents under the provision of this Chapter, and the Supreme Court, or any Court of First Instance of the Philippines within the jurisdiction of which such inquiry is carried on, may, in case of contumacy or refusal to obey a subpoena, issue to any public service entity subject to the provisions of this Decree, or to any person, an order requiring such public service entity or person to appear before the NEA and produce books and papers if so ordered and give evidence touching the matter in question; and any failure to obey such order of the Court may be punished by such court as contempt thereof.

(b) Any person who shall neglect or refuse to answer any lawful inquiry or produce before the NEA books, papers, tariffs, contracts, agreements, and documents, or other things called for by the NEA if his power to do so, in obedience to the subpoena or lawful inquiry of the NEA, upon conviction thereof by a court of competent jurisdiction, shall be punished by a fine not exceeding five thousand pesos (P5,000.00) or by imprisonment not exceeding one year, or both in the discretion of the court;

(c) Any NEA Board Member shall have the power to administer oaths in all matters under the jurisdiction of the NEA;

(d) Any person who shall testify falsely or make any false affidavit or oath before the NEA or before any of its members shall be guilty of perjury, and, upon conviction thereof in a court of competent jurisdiction, shall be punished as provided by law;

(e) Witnesses appearing before the NEA in obedience to subpoena or subpoena duces tecum shall be entitled to receive the same fees and mileage allowance as witnesses attending Courts of First Instance in civil cases;

(f) Any person who shall obstruct the NEA or any member of the NEA Board while engaged in the discharge of official duties, or who shall conduct himself in a rude, disrespectful or disorderly manner before the NEA or any NEA Board Member while engaged in the discharge of official duties, or shall orally or in writing be disrespectful to, offend or insult any of the NEA board members on occasion or by reason of the performance of official duties, upon conviction thereof by a court of competent jurisdiction, shall be punished for each offense by a fine not exceeding one thousand pesos (P1,000), or by imprisonment not exceeding six months, or both, in the discretion of the court.

Section 55. Testifying. No person shall be excused from testifying or from producing any book, document, or paper in any investigation or inquiry by or upon the hearing before the NEA when ordered so to do by the NEA, except when the testimony or evidence required of him may tend to incriminate him. Without the consent of the interested party, no member or employee of the NEA shall be compelled or permitted to give testimony in any civil suit to which the NEA is not a party, with regard to secrets obtained by him in the discharge of his official duty.

Section 56. Depositions. The NEA may, in any investigation, proceeding or hearing, by its order in writing, cause the deposition of witnesses residing within or without the Philippines to be taken in the manner prescribed by the Rules of Court. Where witnesses reside in places distant from Manila and it would be inconvenient and expensive for them to appear personally before the NEA, the NEA may, by proper order, commission any clerk of the Court of First Instance, municipal judge or justice of the peace of the Philippines to take the deposition of witnesses in any case pending before the NEA. It shall be the duty of the official so commissioned to designate promptly a date or dates for the taking of such deposition, giving timely notice to the parties, and on said date to proceed to take the deposition, reducing it to writing. After the depositions have been taken, the official so commissioned shall certify to the depositions taken and forward them as soon as possible to the NEA. It shall be the duty of the respective parties to furnish stenographers for taking and transcribing the testimony taken. In case there are no stenographers available, the testimony shall be taken in long hand by such person as the clerk of court, the municipal judge or justice or the peace may designate. The NEA may also commission a notary public to take the depositions in the same manner herein provided.

The Board may also, by proper order, authorize any of the attorneys of the legal division or division chiefs of the NEA to hear and investigate any case filed with the NEA or any matter within the jurisdiction of the NEA and in connection therewith to receive such evidence as maybe material thereto. At the conclusion of the hearing or investigation, the attorney or division chief so authorized shall submit the evidence received by him for the Board of Administrators to enable the latter to render its decision.

Section 57. Service. Every order made by the NEA shall be served upon the person or public service entity affected thereby within ten (10) days from the time said order is filed, by personal delivery or by ordinary mail, upon the attorney of record or, in case there be no attorney of record, upon the party interested; and in case a certified copy is sent by registered mail, the registry mail receipt shall be prima facie evidence of the receipt of such order by the public service entity in due course of mail.

Section 58. Reconsideration. Any interested party may request the reconsideration of any order, ruling, or decision of the NEA by means of a petition filed not later than fifteen (15) days after the date of the notice of the order, ruling, of decision in question. The grounds on which the request for reconsideration is based shall be clearly and specifically stated in the petition. Copies of said petition shall be served on all parties interested in the matter. It shall be the duty of the NEA to decide the same within thirty (30) days, either denying the petition or revoking or modifying the order, ruling, or decision under consideration. If no petition for reconsideration is filed, no review by the Supreme Court as hereinafter provided shall be allowed.

Section 59. Court Review. The Supreme Court is hereby given jurisdiction to review any order, ruling, or decision of the NEA and to modify or set aside such order, ruling, or decision when it clearly appears that there was no evidence before the NEA to support reasonably such order, ruling, or decision, or that the same is contrary to law, or that

it was without the jurisdiction of the NEA. The evidence presented to the NEA, together with the record of the proceedings before the NEA, shall be certified by the NEA to the Supreme Court. Any order, ruling, or decision of the NEA may likewise be reviewed by the Supreme Court upon a writ of certiorari in proper cases. The procedure for review, except as herein provided, shall be prescribed by rules of the Supreme Court. Any order, ruling, or decision of the NEA may be reviewed on the application of any person or public service entity aggrieved thereby and who was a party in the subject proceeding, by certiorari in appropriate cases or by a petition for review, which shall be filed within thirty (30) days from the notification of the NEA order, decision, or ruling or reconsideration. Said petition shall be placed on file in the office of the Clerk of the Supreme Court who shall furnish copies thereof to the NEA and other interested parties.

Section 60. No Stay. The institution of a writ of certiorari or other special remedies in the Supreme Court shall in no case supersede or stay any order, ruling, or decision of the NEA unless the Court shall so direct, and the appellant may be required by the Court to give bond in such form and of such amount as may be deemed proper.

Section 61. NEA Council. The chief of the legal division or any other attorney of the NEA shall represent the same in all judicial proceedings. It shall be the duty of the Solicitor General to represent the NEA in any judicial proceeding if, for special reasons, the administrators shall request his intervention.

CHAPTER V

Transitory Provisions

Section 62. Existing NEA Continued.

(a) The existing Board of Administrators of the NEA and the Administrator thereof shall be the Board of Administrators and Administrator provided for under this Decree, and their respective terms shall be and continue as already established.

(b) Any preference to the NEA in any existing law or in any executive order or proclamation of the President shall, with respect to any duty or function assumed by the NEA pursuant to said Decree, be deemed hereafter to have reference to the NEA established under this Decree;

(c) The properties, assets, rights, choses in action, obligations, liabilities, records and contracts of the NEA are hereby transferred to and are vested in, and assumed by the NEA established under this Decree;

(d) All personnel of the NEA shall be absorbed and transferred to the NEA established under this Decree without demotion in rank nor reduction in salary; and

(e) All on-going projects and/or approved loans of the NEA established under Republic Act No. 6038 shall be reviewed by the NEA established under this Decree and, insofar as found to be economically feasible in accordance with sound management, engineering and technological standards, shall be continued and completed on a priority basis.

Section 63. Separability of Provisions. If any provision of this Decree, or the application of such provision to any person or circumstance, is declared invalid, the remainder of the Decree or the application of such provision to other persons or circumstances shall not be affected by such declaration.

Section 64. Effect on Other Acts. All acts or parts of Acts inconsistent herewith are repealed or modified accordingly.

Section 65. Effectivity. This Decree shall take effect immediately.

Done in the City of Manila, this 6th day of August in the year of Our Lord, nineteen hundred and seventy-three.

For further information, please contact:

DEPARTMENT OF ENERGY

LEGAL SERVICES

Energy Center, Rizal Drive cor. 34th St.
Bonifacio Global City

www.doe.gov.ph

ATTY. ARTHUS T. TENAZAS
Director
Tel. No. 840 2273

ATTY. ISIDRO V. ALMENTEROS
Chief, General Legal Services Division
Tel. No. 840 2142

ATTY. GABRIEL B. CORPUZ
Chief, Downstream Conventional Energy Legal Services Division
Tel. No. 840 2242

ATTY. BEN JULIUS G. GAGNI
Chief, Upstream Conventional Energy Legal Services Division
Tel. No. 840 2132

ATTY. MYRA FIERA F. ROA
Chief, Power Legal Services Division
Tel. No. 541 5517

ATTY. DON G. VILLANUEVA
Chief, Renewable Energy Legal Services Division
Tel. No. 892 4619