

DEPARTMENT CIRCULAR NO. _____

**PRESCRIBING THE IMPLEMENTING RULES AND REGULATIONS OF
REPUBLIC ACT NO. 10531, OTHERWISE KNOWN AS “THE NATIONAL
ELECTRIFICATION ADMINISTRATION REFORM ACT OF 2013”**

Pursuant to Section 16 of Republic Act No. 10531, otherwise known as the “National Electrification Administration Reform Act of 2013” (Act), the Department of Energy (DOE), in coordination with the National Electrification Administration (NEA) and Cooperative Development Authority (CDA) and in consultation with the Electric Cooperatives (ECs), the electric power industry participants, relevant government agencies, non-government organizations and other stakeholders, hereby issues, adopts and promulgates the following rules and regulations implementing the provisions of the Act.

**RULE I.
GENERAL PROVISIONS
TITLE AND SCOPE, DECLARATION OF POLICY
AND DEFINITION OF TERMS**

The succeeding implementing rules and regulations shall include the general provisions to be followed in implementing the major structural reforms for the empowerment of the NEA and the ECs in pursuit of the country’s total electrification, in an accelerated and sustainable manner.

Section 1. Title. These rules and regulations shall be referred to as the "Implementing Rules and Regulations (IRR) of the Act.”

Section 2. Scope. This IRR shall cover and establish the structural changes in the NEA and ECs.

Section 3. Declaration of Policy. It is hereby declared the policy of the State to:

- a) Promote the sustainable development in the rural areas through rural electrification;

- b) Strengthen the NEA to pursue the electrification program and bring electricity, through the ECs as its implementing arm, to the countryside even in missionary or economically unviable areas; and
- c) Empower ECs to cope with the changes brought about by the restructuring of the electric power industry pursuant to Republic Act No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001” or “EPIRA.”

Section 4. Definition of Terms. For the purpose of this IRR, the following terms are defined as follows:

- a) “Act” refers to Republic Act No. 10531, otherwise known as the “NEA Reform Act of 2013”;
- b) “Ailing Electric Cooperatives” refers to an EC as defined in Rule IV of this IRR;
- c) “Appointive Office” for the purposes of this IRR, refers to a co-terminus position with the appointing authority;
- d) “Barangay” refers to the basic political unit as defined under Republic Act No. 7160, otherwise known as the “Local Government Code of 1991”;
- e) “Cooperative Code” refers to Republic Act No. 9520, otherwise known as the “Philippine Cooperative Code of 2008”;
- f) “Cooperative Development Authority” or “CDA” refers to the government entity created under Republic Act No. 6939, as amended;
- g) “Corporation Code” refers to Batas Pambansa Bilang 68, otherwise known as the “Corporation Code of the Philippines”;
- h) “Department of Energy” or “DOE” refers to the Government agency created pursuant to Republic Act No. 7638 whose expanded functions are provided in the EPIRA and Republic Act No. 9513 otherwise known as the “Renewable Energy Act of 2008”;
- i) “Electric Cooperative” or “EC” refers to an electric distribution utility organized and registered pursuant to Presidential Decree No. 269, as amended, Republic Act No. 9520, and other related laws;
- j) “Energy Regulatory Commission” or “ERC” refers to the regulatory agency created under “EPIRA”;
- k) “Generating Facility” refers to a facility for the production of electricity;

- l) "Grid" refers to the high voltage backbone system of interconnected transmission lines, substations and related facilities, located in each of Luzon, Visayas, Mindanao, or as may otherwise be determined by the ERC in accordance with Section 45 of the EPIRA;
- m) "National Electrification Administration" or "NEA" refers to the government agency created under Presidential Decree No. (PD) 269, as amended by PD 1645 and with additional mandate set forth in the RA 9136 and RA 10531;
- n) "Public Office" refers to any position which requires the performance of public functions/duties of the government by virtue of direct provision of law, either by popular election, or appointment by competent authority;
- o) "Securities and Exchange Commission" or "SEC" refers to the government agency created under Commonwealth Act No. 83, as amended;
- p) "Small Power Utilities Group" or "SPUG" refers to the functional unit of National Power Corporation (NPC) created to pursue missionary electrification;
- q) "Stock Cooperative" refers to a duly-registered association of Persons with a common bond of interest, who have voluntarily joined together to achieve a lawful common social or economic end, making equitable contributions to the capital required and accepting a fair share of the risk and benefits of the undertakings in accordance with the universally accepted cooperative principles as defined under Republic Act No. 9520; and
- r) "Stock Corporation" refers to an artificial being created by operation of law, with capital stock divided into shares, and authorized to distribute to its Shareholders' dividends out of its surplus profits, having the right of succession and the powers, attributes and properties expressly authorized by law or incident to its existence.

RULE II.

THE NATIONAL ELECTRIFICATION ADMINISTRATION

Section 5. Powers, Functions and Privileges of the NEA. The supervisory and oversight functions of the NEA, as detailed in the Act and this IRR, shall be applicable to both stock and non-stock cooperatives.

Pursuant to Section 4 of PD 269, as amended by the Act, the NEA, in order to strengthen the ECs, help them become economically viable and prepare them for the implementation of retail competition and open access pursuant to Section 31 of the EPIRA, is authorized and empowered to:

- a) Have a continuous succession under its corporate name until otherwise provided by law;
- b) Adopt and use a seal and alter it at its pleasure;
- c) Sue and be sued in any court: Provided, That the NEA shall, unless it consents otherwise, be immune to suits for acts *ex delicti*;
- d) Make contracts of every name and nature and execute all instruments necessary or convenient for the carrying on of its business;
- e) Supervise the management and operations of all ECs;
- f) Exercise step-in rights as defined in Rule IV of this IRR;
- g) Provide institutional, financial and technical assistance to ECs upon request of the ECs;
- h) Pursue the total electrification of the country through the ECs by way of enhancing distribution development and, in case of missionary areas, shall be done in coordination with the NPC-SPUG which shall be responsible for the generation and transmission requirements, as necessary;
- i) Devote all returns from its capital investments to attain the objectives of the Act;
- j) Ensure the economic and financial viability and operation of all ECs;
- k) Restructure ailing ECs with the end in view of making them economically and financially viable;
- l) Develop, set and enforce institutional and governance standards for the efficient operation of ECs such as, but not limited to, the observance of appropriate procurement procedure, including transparent and competitive bidding. Such standards shall be enforced through a mechanism of incentives and disincentives to complying and non-complying ECs, respectively;
- m) Formulate and impose administrative sanctions and penalties and when warranted, file criminal cases against those who are found in violation of any of the provisions of the Act and its IRR;
- n) Serve as guarantor to qualified ECs in their transactions with various parties such as, but not limited to, co-signing in power supply contracts;

- o) Grant loans to ECs, for the construction or acquisition, operation and maintenance of subtransmission and distribution facilities and all related properties, equipment, machinery, fixtures, and materials for the purpose of supplying area coverage service, and thereafter to grant loans for the restoration, improvement or enlargement of such facilities or for such other purposes as may be deemed necessary;
- p) Subject to the prior approval and/or opinion of the Monetary Board, borrow funds from any source, private or government, foreign or domestic, and secure the lenders thereof by pledging, sharing or subordinating one or more of the NEA's own loan securities;
- q) Exercise primary and exclusive jurisdiction in the adjudication of complaints against EC officers, election disputes and all matters relating to the effective implementation of the provisions of the Act;
- r) Deputize local law enforcement agencies to enforce or implement its orders or decisions, with the power to cite for contempt any party or witness to any case before it for contumacious conduct, as a quasi-judicial agency; and
- s) 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 as necessary, useful, incidental or auxiliary to accomplish such purposes.

The NEA shall ensure that all ECs comply with the timely submission of the reportorial requirements set forth in this IRR. For this purpose, the NEA shall prepare monthly and quarterly assessment reports on the abovementioned information. Said reports shall be submitted by NEA to the DOE and the JCPC together with its recommended policies to attain the objectives of the Act.

For this purpose, the authorized capital stock of the NEA is hereby increased to Twenty-five billion pesos (P25,000,000,000.00) divided into two hundred fifty million (P250,000,000) shares with a par value of One hundred pesos (P100.00).

Section 6. Supervisory Powers of the NEA over ECs. Pursuant to Section 6 of the Act, in the exercise of its power of supervision over ECs, the NEA shall have the following additional powers:

- a) Issue orders, rules and regulations, *motu proprio* or upon petition of third parties, to conduct investigations, referenda and other similar actions on all matters affecting the ECs;
- b) Issue preventive or disciplinary measures including, but not limited to, suspension or removal and replacement of any or all of the members of the

board of directors and officers of the EC, as the NEA may deem fit and necessary and to take any other remedial measures as the law or any agreement or arrangement with NEA may provide, to attain the objectives of the Act; and

- c) Appoint independent board of directors in the EC.

The NEA shall, in the exercise of its supervisory and disciplinary powers under the Act, strictly observe due process of law.

Section 7. Jurisdiction of the NEA over Administrative Cases. The NEA in the exercise of its quasi-judicial functions, shall have jurisdiction over the following administrative cases:

- a) Cases involving complaints against EC Officers, including those cases or investigation and other similar actions arising from NEA's exercise of its *motu proprio* powers as provided in Section 6 of the Act. The EC Officers being referred to in this IRR shall only cover the following;
 - i. Members of the Board of Directors;
 - ii. General Manager;
 - iii. Department Managers;
 - iv. Sub-Office Area Managers;
 - v. Members of the Bids and Awards Committee; or
 - vi. Other designated/responsible officers with functions and rank equivalent to any one of those enumerated above.
- b) Election disputes involving any elective officer of an EC; and
- c) Cases or disputes involving any matter relating to the effective implementation of the provisions of the Act.

Section 8. Step-In Rights in Cases of Ailing ECs. Consistent with Section 7 of the Act and Rule V of this IRR, the NEA shall be guided by the following:

- a) The NEA shall immediately step-in and take over from its Board the operations of any ailing EC. Within one hundred eighty (180) days after take-over, the NEA may convert the ailing cooperative to either a stock cooperative registered with the CDA or a stock corporation registered with the SEC.
- b) The NEA shall in determining the propriety of the conversion, be guided by the ability of the member-consumers of said EC to pay for their shares in the stock cooperative or stock corporation.
- c) The NEA may appoint or assign third persons to the Board of the EC until the election of a new board of directors to manage the EC is necessary. The NEA

may create a management team for the purpose: *Provided*, That the NEA shall call for the election of a new set of board of directors within ninety (90) days from the exercise of the step-in rights.

Section 9. Injunction or Temporary Restraining Order. Pursuant to Section 8 of the Act, no injunction or temporary restraining order shall be issued against the implementation of any order, ruling or decision of the NEA, except by the Court of Appeals, and only upon the posting of a bond sufficient to cover the liabilities and expenditures arising during the pendency of the writ or injunction or temporary restraining order: *Provided*, That the injunction shall only be effective for a period not exceeding sixty (60) days.

RULE III. THE ELECTRIC COOPERATIVES

Section 10. Mandates, Powers, Functions and Privileges of ECs. In addition to the mandates, powers, functions, and privileges accorded to ECs under EPIRA and its IRRs, and pursuant to Section 9 of the Act, the ECs are hereby empowered to:

- a) To construct, acquire, own, operate and maintain electric subtransmission 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. In the event of the need of such lands and thoroughfares for the primary purpose of the government, the EC shall be properly compensated.
- b) To engage in power generation within its franchise area. For the purpose of clarity, the EC shall ensure the quality of electricity service consistent with the standards provided in the EPIRA and its IRR, the Philippine Grid Code, the Philippine Distribution Code, and other relevant laws and standards including environmental, health and safety standards. The engagement of any EC in the power generation business shall contribute to greater efficiency and lower cost of operations as a distribution utility. In the exercise of its mandate, any EC may engage in power generation business through any of the following:
 - i. Construction of embedded generating facility in accordance with the cross ownership and market share limitations and standards set forth in EPIRA and its IRRs, as well as health, safety and environmental clearances from the appropriate government agencies under existing laws.
 - ii. Acquisition of an existing generating facility from:
 - 1) Privately-owned generation facility;

- 2) Government-owned generating facility in the main grid;
- 3) For NPC-SPUG areas, an EC may participate in a bid on an existing NPC-SPUG generating facility and its qualified bid shall be given preference in case of a tie: *Provided*, however, That in cases where there is no other qualified bidder, the lone bid shall remain as valid basis for the determination of the final award subject to the following conditions:

- A. bid offer is not lower than the valuation of the assets using Commission on Audit (COA) rules and regulations;
- B. EC is prepared to fully take over the generation function of the area from the NPC-SPUG. For this purpose, the NEA and the EC concerned shall, in consultation with NPC-SPUG, shall prescribe the parameters from which the full take over date shall be determined.

The full take over date refers to the date where the EC shall assume the ownership and assume the operation and maintenance of the generating facility.

In the exercise of its oversight function over ECs, the NEA shall ensure that such take-over shall not adversely affect the viability of the EC as a distribution utility and shall redound to better services and least-cost supply for its captive market.

- C. EC submits its graduation program from the Universal Charge for Missionary Electrification (UC-ME) subsidy.
- iii. Generate electricity through lease and/or rental of a generating facility for purposes of supplying its franchise area requirement in least-cost manner.

Any EC that opts to engage in power generation business shall include such plan and activities in its annual Distribution Utility Development Plan (DDP), duly approved and endorsed by the NEA.

The EC shall submit a monthly report on the operations and performance of its generating facility/ies to the DOE, the ERC and the NEA not later than the 15th day of the succeeding month.

- c) Explore the option of forming a consortium or partnership among ECs, which have contiguous franchise areas or share a common sub-transmission line, may form a consortium or partnership in order to become financially and technical capable to engage in the business of generation of electricity supply.

Section 10. Registration of ECs. Pursuant to Section 12 of the Act, the following shall govern the registration of ECs:

- a) All ECs may choose to remain as a non-stock, non-profit cooperative or convert into and register as:
 - i. Stock cooperative under the CDA; or
 - ii. Stock corporation under the SEC, in accordance with the guidelines to be included in this IRR.

Such choice shall carry with it the attendant requirements of compliance with the laws and regulatory guidelines governing the respective government agencies having jurisdiction over their registration.

- b) Regardless of the choice made, the NEA shall have the authority over ECs, whether stock or non-stock, to require the submission of reportorial requirements as may be necessary relative to their operations as electric distribution utilities including, but not limited to:
 - i. Monthly Financial and Statistical Report (MFSR);
 - ii. Monthly separate MFSR. Monthly Engineering Report (MER) and barangay and *sitio* electrification report for electric cooperatives on grid with isolated area/s served by NPC-SPUG;
 - iii. Monthly status of barangay and *sitio* energization and house connections;
 - iv. Monthly Institutional Services Department (ISD) report;
 - v. Monthly Performance Standard Monitoring Report (PSMR);
 - vi. Monthly summary of complaints received and acted upon;
 - vii. Monthly report on compliance with the Grid and Distribution Code;
 - viii. Monthly Engineering Report (MER);

- ix. Quarterly report on power supply contracts;
 - x. Annual work plan;
 - xi. Annual Distribution Development Plan (DDP);
 - xii. Five (5)-year investment plan submitted annually;
 - xiii. Annual Cash Operating Budget (COB);
 - xiv. Audited financial statements;
 - xv. Annual Collective Bargaining Agreement (CBA) or Collective Negotiation Agreement (CNA); and
 - xvi. Copy of Capital Expenditure (CapEx) and Operating Expenditure (OpEx) plans.
- c) In the event that an EC opts to register with the CDA, it shall continue to enjoy the benefits under the Act.
- d) Existing ECs may likewise opt to register as stock corporations with the SEC: *Provided*, however, That ECs registered with the SEC shall no longer enjoy the incentives provided for in the Act.
- e) Despite the registration of the ECs under the CDA or the SEC, the NEA shall retain its supervisory and disciplinary power over them in the conduct of its operation as electric distribution utilities.

Section 11. Governance Structure of ECs. In compliance with Section 10 of the Act, it is hereby prescribed the independence of the Board of Directors and Officers of ECs.

- a) To ensure the long-term business and economic viability of ECs, the management, operations and strategic planning of electric cooperatives shall, as much as practicable, be insulated from local politics.

Towards this end, no person shall be elected or appointed as an officer or be eligible to run as a board member of an EC if:

- i. Such person or his/her spouse holds any public office;
- ii. Such person or his/her spouse has been a candidate in the last preceding local or national elections;
- iii. Such person has been convicted by final judgment of a crime involving moral turpitude;

- iv. Such person has been terminated for cause from public office or private employment;
- v. Such person is related to any member of the EC board of directors, general manager and department managers within the fourth civil degree of consanguinity or affinity;
- vi. Such person is a representative of a juridical person; and
- vii. Such person is employed by or financially interested in a competing enterprise or a business selling electric energy or electrical hardware to the EC or doing business with the EC, including the use or rental of poles.

Section 12. Board of Directors. The Board of Directors is the collegial body composed of representatives elected from each district to promulgate policies, rules and regulations necessary for the viable operation of the EC, and exercise its corporate power.

Section 13. Qualifications of a Director and Officer. Pursuant to Section 11 of the Act, a candidate's integrity, experience, education, competence and probity shall be considered in determining whether he/she shall be fit and proper to become a director or officer of the EC. For this purpose, the minimum qualifications of a director or officer of the EC shall be as follows:

- a) He or she is a Filipino citizen;
- b) He or she is a graduate of a 4-year course ;
- c) He or she should at least be twenty-one (21) years old and not over seventy (70) years old on the date of election;
- d) He or she is of good moral character;

For purposes of this IRR, good moral character may be established with the submission of a certificate issued by any of the following:

- i. Barangay where the candidate resides;
- ii. National Bureau of Investigation;
- iii. Philippine National Police; or
- iv. Leader of the religious sect where the candidate is affiliated.

- e) He or she is a member of the EC in good standing for the last five (5) years immediately preceding the election or appointment and shall continue to be a member in good standing during his or her incumbency;

For purposes of this IRR, a member of good standing shall mean that said member:

- i. must have no unsettled or outstanding obligations to the cooperative during his membership in the cooperative whether personal or through commercial or industrial connections of which he or she is the owner/co-owner;

An unsettled or outstanding obligation is an account which has not been paid within seven (7) days after the due date. For incumbent member of the Board who will seek re-election, unsettled or outstanding obligation includes power bills, cash advances, disallowances (including NEA audit findings) and materials and equipment issuances. At any given time during his membership in the cooperative, he or she must be totally free of any unsettled or outstanding indebtedness and/or disallowances with the EC.

- ii. has not been apprehended for electric pilferage;

A mere apprehension of electric pilferage by the EC, even without conviction for such offense by any court, shall be a valid ground for disqualification. The word "apprehension" should be taken in the strict context as used in Republic Act No. 7832, otherwise known as "Anti-Electricity and Electric Transmission Lines or Materials Pilferage Act of 1994", which means that a person is caught flagrante delicto for violating the provision of said Act;

- iii. has not been removed for cause as director or an employee from any EC;

In general, removal or termination of service from the EC is caused by a grave offense or violation/s of policies, rules and regulations. A former director or employee with a record of termination/removal for cause from public office or for just cause as defined in Article 282 of the Labor Code as amended, shall not be qualified to be elected or appointed as director of an EC.

- f) He or she is an actual resident and consumer in the district that he or she seeks to represent for at least two (2) years immediately preceding the election; and

- g) He or she has attended at least two (2) Annual General Membership Assemblies (AGMA) for the last five (5) years immediately preceding the election or appointment.

Section 15. Disqualifications of a Director and Officer. Pursuant to Section 11 of the Act, any person shall be ineligible to be elected or be appointed as member of the board of directors or officers of EC if:

- a) Such person or his or her spouse holds any public office;
- b) Such person or his or her spouse has been a candidate in the last preceding local or national elections;
- c) Such person has been convicted by final judgment of a crime involving moral turpitude;
- d) Such person has been terminated from public office/government employment or private employment for just cause as defined in Article 282 of the Labor Code;

For this purpose, termination from public office shall mean removal.

- e) Such person is related to any member of the EC Board of Directors, Department Manager, NEA-appointed Project Supervisor or Acting General Manager and its equivalent or higher position within the fourth civil degree of consanguinity or affinity; and,
- f) Such person is employed by or financially interested in a competing enterprise or a business selling electric energy or electrical hardware to the cooperative or doing business with the cooperative, including the use or rental of poles.

For purposes of this IRR, “doing business” shall refer to the transactions related to the core or main line of business of the EC, which is conveyance of electricity through its distribution facilities.

Section 16. Continuing Qualification Requirement. To ensure that the management and operations of ECs are carried out with due regard to its economic viability, the NEA shall prescribe, pass upon and review the qualifications and disqualifications of individuals appointed or elected to ECs and disqualify those found unfit.

An EC director, in order to continue as such director, must continue to possess all the qualifications and none of the disqualifications of a director throughout his/her term or tenure of office.

Section 17. Suspension or Removal of a Director or Officer. The NEA may, after due notice to the Board of Directors and Officers of the EC, disqualify, suspend or remove any Director or Officer, who commits any act which renders him or her unfit for the position in accordance with the standards of this IRR.

The proceedings herein may be undertaken *motu proprio* or through a complaint initiated against the Director or Officer.

Section 18. Incentives of ECs. Consistent with Section 13 of the Act, ECs which comply with the financial and operational standards set by the NEA shall enjoy the following incentives:

- a) To be entitled to congressional allocations, grants, subsidies and other financial assistance for rural electrification;
- b) To receive all subsidies, grants and other assistance which shall form part of the donated capital and funds of the electric cooperatives, and as such, it shall not be sold, traded nor divided into share holdings at any time. These donated capital and funds shall be appraised and valued for the sole purpose of determining the equity participation of the members: Provided, That in case of dissolution or conversion of the electric cooperative, said donated capital and funds shall be subject to escheat; and
- c) To avail of the preferential rights granted to cooperatives under Republic Act No. 7160, otherwise known as the 'Local Government Code of 1991', and other related laws.

As a further incentive, the NEA may prioritize the grant of incentives in favor of ECs that are managed effectively and efficiently and comply consistently with its mandates and directives.

RULE IV. NEA STEP-IN RIGHTS

Section 19. Obligations of NEA. To carry out its expanded mandate and to ensure that ECs are financially viable and are able to meet the operational and financial standards and take preventive measures, the NEA shall have the following obligations:

- a) Develop standards and protocols for the efficient operations of ECs, which shall consider the following:
 - i. Observance of appropriate procurement procedures, including transparent and competitive bidding;

- ii. Financial, Operational, Institutional and Governance Standards;
 - iii. Incentives for compliant ECs including options for conversion to stock cooperative under the CDA or stock corporation under SEC;
 - iv. Fines and Penalties for non-compliant ECs;
 - v. Timelines and Procedures for Enforcement and Monitoring;
 - vi. Audit; and
 - vii. Reportorial Requirements for the ECs as set forth in this IRR.
- b) Develop leading financial and operational parameters to serve as triggers for intervention of the NEA in the EC operations at least one year prior to being categorized as ailing EC: *Provided*, That the obligations as set forth in (a) and (b) shall be developed within sixty (60) days from the issuance of this IRR and shall be approved by the DOE: *Provided* further, That subsequent amendments shall likewise be approved by the DOE.
- c) Evaluate and categorize ECs based on standards set with due consideration to the ailing ECs;
- d) Enforce performance standards and submit quarterly compliance report to the DOE and JCPC which shall include summary of compliance to key performance standards and recommendation for rehabilitation or take-over in case of ailing ECs;
- e) Protect the interest of the members-consumers and the public in general, the NEA shall have the right to intervene to ensure rehabilitation, financial turn-around and viability of ailing ECs;
- f) Create a NEA rehabilitation team to assist the ailing ECs achieve improve its financial and technical conditions. The rehabilitation team shall among others:
- i. Monitor list and status of ailing ECs;
 - ii. Recommend actions plans for the recovery of the ailing EC which may include the following:
 - 1. Convert the ailing EC to either stock cooperative registered with the CDA or stock corporation registered with the SEC. *Provided*, That such conversion shall be guided by the ability of the member-consumers of said electric cooperative to pay for their shares in the stock cooperative or stock corporation.

2. Appoint or assign third persons to the Board of the EC until the NEA decides that the election of a new board of directors to manage the electric cooperative is necessary. The NEA may create a management team for the purpose.

In the exercise of its step-in rights, the NEA shall strictly observe due process of law. The step-in rights may only be exercised by the NEA in case of failure of the EC to meet operational and financial standards set forth in this IRR.

- iii. Recommend alternative options to ensure the rehabilitation of the ailing EC which may include private sector participation; and
- iv. Prepare a report on the implementation of the rehabilitation plan for submission the DOE and JCPC.

Section 20. Ailing ECs. In accordance with the standards set under this IRR, the NEA may declare an EC as an “Ailing EC” when such EC falls under any of the following circumstances:

- a) Has negative Net Worth for the last three (3) years. For this purpose, Negative Net Worth shall mean as the financial condition of an EC in which its liabilities are greater than its assets.
- b) Has accumulated ninety (90) days arrearages in power supply purchases from generating companies and power suppliers/sources of electricity, and the transmission charges by the TransCo or its Concessionaire;
- c) Unable to provide electric service due to technical and/or financial inefficiencies including, but not limited to, high systems loss, low collection efficiency, below standard current ratio, operating loss, huge liabilities and/or institutional problems such as governance, and non-adherence to NEA and EC policies;
- d) Unable to efficiently perform its electric distribution utility obligations or continue in business due to organizational, external and internal factors;
- e) When an EC has failed to meet other operational standards established by NEA; and
- f) Unable to set up or continuously support its WESM prudential requirements.

Within sixty (60) days from the effectivity of this IRR, the NEA shall submit a set of standards to determine the classification of ECs guided by the parameters of this IRR. Provided that, the NEA shall classify ECs based on the standards mentioned in the

preceding sentence; Provided further that the classification serve as the baseline and/or benchmark of the particular EC.

Section 21. NEA's Exercise of Step-In Rights. The NEA shall immediately exercise its step-in rights over an ailing EC through the following:

- a) Appoint or assign a PS or PS/AGM or assign third persons to the Board of EC until the NEA decides that the election of a new Board of Directors to lead the EC is necessary. The NEA may also create a Management Team for the purpose.
- b) In case of organizational and/or internal conflicts as provided under circumstances in this IRR, the NEA shall give the CDA or other appropriate government agency where the EC is legally registered, the opportunity to resolve or take remedial measures without prejudice to the exercise of its step-in-rights.
- c) May enter into partnership with a qualified private sector investor, under any of the following frameworks:
 - i. Joint Venture;
 - ii. Investment Management Contract;
 - iii. Management Contract;
 - iv. Operations and Maintenance Contract;
 - v. Special Equipment and Materials Lease Agreement;
 - vi. Concession;
 - vii. Merger and Consolidation; and
 - viii. Other variants deemed applicable to the EC.

For this purpose, the NEA is hereby constituted as the agent of the concerned EC.

- d) If within a reasonable period, not exceeding one hundred eighty (180) days from its take-over, the NEA determines that such EC is unable to continue its operation in the ordinary course of business, it may initiate structural reforms such as conversion of the ailing EC to either a Stock Cooperative registered with the CDA or a Stock corporation registered with the SEC.
- e) May institute appropriate legal actions such as Extra-judicial Foreclosure and Insolvency (Voluntary/Involuntary) and Bankruptcy proceedings.

RULE V. CONVERSION OF ELECTRIC COOPERATIVES

Section 22. Conversion of Electric Cooperatives. Consistent with Section 12 of the Act, any EC may opt to convert may choose to remain as a non-stock, non-profit cooperative or convert into and register as:

- a) A stock cooperative under the CDA; or
- b) A stock corporation under the SEC, in accordance with the guidelines set in this IRR. As such, the following shall guide the conversions of ECs, either as a stock cooperative, registered with CDA or as a stock corporation, registered with SEC.

Section 23. Conversion Guidelines. The NEA shall, in determining the propriety of the conversion, be guided by the ability of the member-consumers of the said EC to pay for their shares in the stock cooperative or stock corporation. Specifically, the conversion shall adhere to the following:

- a) Compliance by the EC to the standards to be set by NEA pursuant to this IRR;
- b) ECs conduct, in coordination with NEA, of a massive information-education campaign in the district level within the EC's coverage area, on the importance of the Act and the IRR including rights, duties and obligations of an EC whether stock or non-stock; incentives and disincentives; options for conversion and its' effect; and the authority and responsibilities of NEA over the ECs;
- c) ECs conduct of consultation with its bona fide member-consumers on whether to convert or not, through series of district meetings, which shall be undertaken in the following manner:
 - i. Simultaneously, where the meetings or consultations are held on the same day at various venues (barangay); or
 - ii. Sequentially, where the meetings or consultations are held one after the other in different venues (barangays).
- d) In the conduct of consultations, the EC shall comply with the following:
 - i. **Notice of Membership Meeting.** At least ten (10) days before the scheduled consultation/meeting, all the bona fide member-consumers in the district shall be notified through print and broadcast media. In addition, the complete information on the said meeting/consultation shall be mailed or delivered to the addresses of the member-consumers. Likewise, the said notice shall be posted in strategic places within the district.
 - ii. **Master list of Voters.** A sanitized master list of bona fide member-consumers entitled to vote in each district shall be prepared by the EC through its Institutional Services Department or equivalent department. Such list shall be the basis for determining the attendance or turn out of voters in each meeting held, whether simultaneous or sequential.

- iii. **Required Number of Votes for Conversion.** The approval of at least a simple majority, or fifty per centum (50%) plus one (1), of all members entitle to vote of the EC, shall be considered a valid decision for conversion.
- iv. **Voting System.** Each bona fide member-consumer shall be entitled to one (1) vote. The voting shall be done through secret balloting, and no proxy voting shall be allowed.
- v. **Over-all Decision.** The final decision on the issue on conversion, on whether or not the EC will convert, will be based on the majority decision, as culled from the result of the general assembly, or the cumulative result of the district meetings, as the case may be. Provided that the conduct of referendum may only be conducted ten (10) years from the last conducted referendum.

Section 24. Conversion Requirements. In addition to the provisions of RA No. 9520 and Batas Pambansa Bilang 128, the ECs must comply with the provisions of Sec. 7(c)(i) of Rule 7 of the implementing rules of RA 9136.

Section 25. Conversion Procedure and/or Mechanics. The following shall guide the mechanics and/or procedures for the conversion provided in the preceding sections:

- a) The Board of Directors shall pass a Resolution scheduling the district/s, date/s, venue/s and time of the assembly/meetings. Likewise, the Board of Directors shall appropriate the corresponding budget for the program/activities.
- b) The concerned departments, spearheaded by the EC's Institutional Services Department shall prepare and execute the requirements set under the said resolution.
- c) In not less than twenty five (25) days before the General Assembly or District Meetings, the Institutional Services Department or its equivalent department shall prepare the Sanitized Master list of Voters in alphabetical order and classified according to barangays to facilitate registration and voting; and;
- d) The Board Member of the concerned district shall be responsible for ensuring the success of the assembly/referendum/meeting in the said district. Likewise, he shall preside in the district assembly meeting/s.
- e) There shall be a determination of attendance where only the bona fide member-consumers whose names are listed in the sanitized master list of voters prepared by the EC shall be allowed to vote.

- f) Where meetings are held simultaneously, as defined in this Section, the total number of votes shall be determined on a cumulative basis.
- g) Where meetings are held sequentially, as defined in this section, the same procedure shall be followed.
- h) For all the meetings conducted regardless of the Procedure/Mechanics applied, the Presiding Officer shall introduce and present to the assembly the issues related to conversion, such as the following:
 - i. Historical profile of the EC;
 - ii. The advantages/disadvantages of each of the three options;
 - iii. Open Forum;
 - iv. Casting of votes;
 - v. Declaration of the results of voting by the Presiding Officer; and
 - vi. Adjournment.
- i) Documentation requirements:
 - i. Preparation of the minutes of meeting indicating the highlights, particularly the over-all decision of the bonafide member-consumers whether to convert or not.
 - ii. Regardless of the results of the voting, a Certificate of Membership Decision to convert or not, indicating the over-all decisions of the bona fide member-consumers of the EC and certifying the truthfulness and veracity of the statements therein, shall be executed and attested on behalf of the EC by its Board President or Board Vice-President.
- j) For this purpose, a bona fide member-consumer shall refer to a person who is a member-consumer in good standing who has met all the requirements set within the context of ECs by-laws and has been listed/included in the Master list of voters, to have voting rights, under the one-member, one vote policy of the EC.

Within sixty (60) days from the effectivity of this IRR, the NEA shall cause the conduct of referendum of all remaining non-stock ECs on options to:

- a) Remain as non-stock, non-profit EC;
- b) Convert into stock cooperative under the CDA; or

- c) Convert into stock corporation under the SEC: *Provided*, that within one hundred eighty (180) days from effectivity of this IRR, said ECs shall have decided and issued Board Resolution on its registration.

For monitoring purposes, the NEA shall submit to the DOE a quarterly report detailing the progress of the registration.

RULE VI. TOTAL ELECTRIFICATION

Section 26. Total Electrification. In pursuit of the total electrification of the country, the NEA and all ECs shall electrify all remaining unelectrified households within their respective franchise areas, in a sustainable manner by enhancing distribution development in order to facilitate greater access to target beneficiaries.

In the case of missionary areas, shall be done in coordination with the NPC-SPUG which shall be responsible for the generation and transmission requirements, as necessary.

Section 27. Total Electrification Plan. Towards this end, the NEA shall develop, in consultation with the ECs, and in case of missionary areas, with NPC-SPUG, within ninety (90) days from the effectivity of this IRR, a Total Electrification Plan, which will detail among others:

- a) Time bound targets for the attainment of the individual electrification program in each of the ECs' franchise areas. For this purpose, the ECs are encouraged to adopt appropriate and least-cost technology.
- b) Financial requirements and sources of funds for project implementation.
- c) Work program and schedules.

The NEA shall update and submit the Plan to the DOE, every fifteenth (15th) of March of each year. Such Plan shall be approved by the DOE.

The ERC shall provide the necessary regulatory actions in recognizing the cost associated in providing missionary electrification.

**RULE VII.
FINAL PROVISIONS**

Section 28. Compliance of NEA with DOE. Consistent with Section 58 of EPIRA, the NEA shall continue to be under the supervision of the DOE.

Section 29. Penalties. Pursuant to Section 14 of the Act, any person who wilfully violates any rule or regulation promulgated pursuant to the authority granted in this IRR shall, upon conviction, be punished by a fine of not less than fifty thousand pesos (P50,000.00) but not more than five hundred thousand pesos (P500,000.00) or by imprisonment of not less than six (6) months but not more than one (1) year, or both, at the discretion of the court: *Provided*, That if the violation is committed by a juridical person, the penalty herein prescribed shall be imposed upon the official and/or employee thereof responsible for the violation: *Provided*, further, That if the violation is committed by a government official or employee, including those in government-owned or controlled corporations, such person shall, in addition to the penalty provided herein, be subjected to administrative disciplinary action.

Section 30. Congressional Oversight. In order to facilitate the exercise of oversight powers of the Joint Congressional Power Commission (JCPC) over the implementation of the Act, the Board of Administrators shall submit to the JCPC a semi-annual report on the initiatives and activities on rural electrification, including the supervision of NEA over the ECs of the performance of their franchise obligation.

Section 31. Separability Clause. Should any provision in this IRR be subsequently declared unconstitutional, the same shall not affect the validity or the legality of the other provisions.

Section 32. Effectivity. This IRR shall take effect fifteen (15) days from its publication in at least two newspapers of general circulation and shall remain in effect until otherwise revoked.

Issued in Energy Center, Bonifacio Global City, Taguig City on _____.

CARLOS JERICHO L. PETILLA
Secretary