



Republic of the Philippines
National Electrification Administration
Quezon City

04 November 2008

MEMORANDUM No. 2008-026

TO : ALL ELECTRIC COOPERATIVES (ECs)

SUBJECT : OGCC OPINION NO. 220, SERIES OF 2008
RE: CDA REGISTRATION OF ECs UNDER THE CONTROL
AND SUPERVISION OF NEA

We are furnishing you a copy of the legal opinion of the Office of the Government Corporate Counsel (OGCC) on our two specific queries relative to the action of the Cooperative Development Authority (CDA) using as basis its **Memorandum Circular No. 2006-06** dated May 18, 2006, in registering ECs already registered under PD 269.


The first query: Is the CDA required to observe the provisions of RA No. 9136 (EPIRA) before it can register ECs within the Philippines?

OGCC's Answer: "CDA is required to observe the specific provisions of the EPIRA and its implementing Rules before it can register electric cooperatives."

The second query: Assuming that it is not required to do so, can CDA register the ECs in total disregard of its very own requirements for qualification and in violation of RA No. 6938?

OGCC's Answer: "Suffice it to say that apart from EPIRA, there is no other law allowing the registration of ECs under PD 269 after the lapse of the 3 year period specified in RA 6938. Thus, the CDA cannot register ECs created under PD 269, as amended, but only newly-organized ECs or newly-organized service cooperatives involved in electricity distribution as set forth in Sections 3 and 9 of RA 6939 and Article 97 of RA 6938."

Please be guided accordingly.


EDITA S. BUENO
Administrator

NATIONAL ELECTRIFICATION
ADMINISTRATION

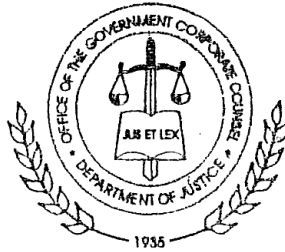
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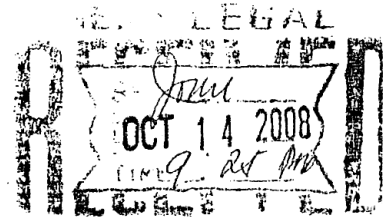
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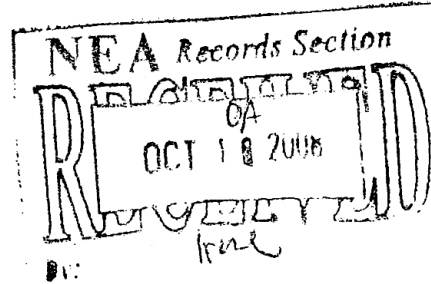
REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF JUSTICE
OFFICE OF THE GOVERNMENT CORPORATE COUNSEL
3rd Floor MWSS Administration Building, Katipunan Road
Balara, Quezon City



OPINION NO. 220
Series of 2008

September 30, 2008

MS. EDITA S. BUENO
Administrator
National Electrification Administration
NIA Road, Government Center,
Diliman, Quezon City



Re: Request for Legal Opinion Regarding the
CDA Registration of Electric Cooperatives
under the Control and Supervision of the
National Electrification Administration

Madam:

This refers to your request for legal opinion on the following specific queries:

1. Is the Cooperative Development Authority (CDA) required to observe the Provisions of Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001" before it can register electric cooperatives (EC's) within the Philippines?

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2. Assuming that it is not required to do so, can CDA register the ECs in total disregard of its very own requirements for qualification and in violation of Republic Act No. 6938?

By way of background, you state that the mandate of NEA is to provide total electrification on an area-coverage basis throughout the countryside. In line with this function, it was previously tasked to organize and promote the development of ECs to pursue this objective.

According to you, the issue of CDA registration had its inception with Articles 122 and 128 of the Cooperative Development Code of the Philippines, which provide, to wit:

"ARTICLE 122. Electric Cooperatives. – *Electric cooperatives shall be covered by this Code. However, there shall be transition period of three (3) years within which the Cooperative Development Authority and the National Electrification Administration shall help and assist electric cooperatives to qualify under this Code. The Cooperative Development Authority and the National Electrification Administration shall jointly promulgate rules and regulations to the end that the provisions of this law are harmonized with the provisions of Presidential Decree No. 269.*

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ARTICLE 128. Transitory Provisions. – *All cooperatives registered under Presidential Decree No. 175 and 775 and Executive Order No. 898, and all other laws, shall be deemed registered with the Cooperative Development Authority. Provided, however, That they shall submit to the nearest Cooperative Development Authority office their certificate of registration, copies of the articles of cooperation and by-laws and their latest duly audited financial statements within one (1) year from the effectivity of this Act, otherwise their registration shall be cancelled: Provided, further, That cooperatives created under Presidential Decree No. 269, as amended by Presidential Decree No. 1645 shall be given*

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three (3) years within which to qualify and register with the Authority: Provided finally, That after these cooperatives shall have qualified and registered, the provisions of Sections 3 and 5 of Presidential Decree No. 1645 shall no longer be applicable to said cooperatives."

Based on the afore-quoted provisions, CDA was given 3 years to register the ECs subject to the requirements laid down by law and subject to the guidelines to be jointly promulgated by NEA and CDA. According to you, the period of registration was extended twice and yet, out of one hundred nineteen (119) ECs, only five (5) ECs registered with the CDA. You likewise state that CDA registered some ECs despite non-compliance with the legal requirement and guidelines, prompting NEA to seek the legal view of the Department of Justice (DOJ), which opined in DOJ Opinion No. 41, Series of 1996, viz:

"Unlike other existing cooperatives which shall be deemed registered with the CDA but whose "registration shall be cancelled" if they fail to submit their certificate of registration, copies of articles of cooperation and bylaws and their latest duly audited financial statements within one year from the effectivity of the Act, ECs are not considered registered outright but must apply and qualify for permanent registration with the CDA within the given three-year period. However, failure of such ECs to apply and/or qualify for permanent registration with the CDA will not mean cancellation or forfeiture of their registration with the NEA. They shall remain as NEA – registered ECs entitled to all the benefits and incentives granted under P.D. No. 269, as amended, but of course not to the benefits and incentives granted under R.A. No. 6938. Moreover, if such ECs should decide to register under R.A. No. 6938 after the lapse of the prescribed three years, such ECs shall undergo the required procedures for registration of new cooperatives, including the submission of an economic survey". (See Sec. 1, Rule VIII, ORR). (Emphasis supplied).



You said that NEA filed a complaint against CDA before the Office of the Solicitor General (OSG) in connection with the declaration of nullity and/or cancellation of the permanent CDA registration of the Negros Oriental Electric Cooperative, Inc. (NARECO II) and Camarines Norte Electric Cooperative, Inc. (CANORECO). In its Decision dated March 11, 1998, OSG ruled in favor of NEA and came up with the following directives:

"WHEREFORE, in view of all the foregoing, judgment is hereby rendered:

1. *Declaring as MANDATORY all the requirements for registration set forth in Section 1, Rule III of the Omnibus Rules and Regulations on the Registration of Electric Cooperatives under R.A. 6938.*
2. *Directing respondent CDA to strictly abide by and enforce compliance with all the aforementioned mandatory requirements for registration of electric cooperatives organized under P.D. 269.*
3. *Directing respondent CDA to undertake the necessary proceedings pursuant to Section 3 (g) of R.A. 6939 to determine compliance or non-compliance by NORECO II and CANORECO of all the aforementioned requirements for registration with respondent CDA and thereafter to issue the appropriate orders or resolutions therefore.*
4. *Directing respondent CDA to limit its exercise of jurisdiction and authority to supervise and regulate electric cooperatives originally registered with petitioner NEA under P.D. 269, only to said cooperatives which have duly qualified and registered with respondent CDA in strict compliance with Article 97 of R.A. 6938 and Section 1, Rule III of the Omnibus Rules and Regulations on Registration of Electric Cooperatives under R.A. 6938.*

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SO ORDERED.

Makati City, March 11, 1998."

After the lapse of the three (3) year period, CDA opined that it can no longer register the ECs. Thus in its Memorandum dated January 14, 1999, CDA declared that:

"We respectfully submit that the CDA has no authority nor power under R.A. 6939/6938 to issue provisional registration. Hence, there is no legal basis for the same. The initial provisional registration issued to ECs last March 1993 was made possible in compliance with the instruction from President Fidel V. Ramos during the International Conference on Rural Electrification and the PHILRECA to review and look into the possibility of granting the electric cooperatives provisional registration at the time that the Omnibus Rules and Regulations (ORR) were being finalized to avail of the tax exemption privileges granted to cooperatives under the Cooperative Code.

The above condition is no longer existing, the ORR has long been finalized and made effective last May 4, 1994. The three (3) years transition period within which the ECs may permanently register with CDA has likewise expired on May 4, 1997 with only five (5) out of 119 ECs were able to comply with registering with the Authority.

Granting for the sake of argument but without conceding that there is no legal impediment for the Authority to provisionally register ECs, the same shall be granted only upon an undertaking to be executed by an applicant EC to permanently register with us within a period of one (1) year. Once provisionally registered, they shall be fully and completely subject to the provision of R.A. 6938.

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In view of the foregoing, the issue of granting provisional registration to ECs for them to enjoy the rights and privileges under R.A. 6938 is not possible for lack of legal basis." (Emphasis supplied).

However, in a complete turn around, CDA came up with a new set of guidelines embodied in its Memorandum Circular No. 2006-06 dated May 18, 2006 relative to the registration of ECs registered under PD 269, as amended, where it categorized the ECs into two (2): a) those previously provisionally registered with CDA and those that failed to obtain a Provisional Certificate of Registration. It likewise came up with a different set of documentary requirements for both categories.

You state that using the aforesaid new CDA Memorandum as basis, CDA continues to register the ECs in complete disregard of the directives earlier laid down by the OSG and in violation of the requirements for conversion mandated under RA 9136 and RA 6938.

Hence, the present queries.

Section 57 of Republic Act No. 9136 gave Electric Cooperatives (ECs) previously/currently operating under Presidential Decree No. 296, as amended, the option to convert into a stock cooperative under the Cooperatives Development Act which reads as follows:

"Section 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 [NEA Charter], as amended, and other existing laws."*

Further, Section 7(c) of Rule 7 of the EPIRA Implementing Rules and Regulation (IRR), explicitly provides ECs the option to convert into Stock Cooperatives under the Cooperative Development Authority (CDA) or

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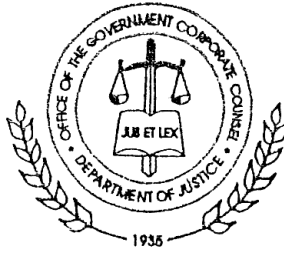
Stock Corporations under the Corporation Code. Said rule reads as follows:

**"Section 7. Structural and Operational Reforms
Between and Among Distribution Utilities.**

XXX XXX XXX

- (c) Pursuant to Section 57 of the Act, ECs are given the option to convert into Stock Cooperatives under the CDA or Stock Corporations under the Corporation Code. Nothing contained in the Act shall deprive ECs of any privilege or right granted to them under Section 39 of Presidential Decree No. 269, as amended, and other existing laws. The conversion and registration of ECs shall be implemented in the following manner:
- (i) ECs shall, upon approval of a simple majority of the required number of turnout of voters as provided in the Guidelines in the Conduct of Referendum (Guidelines), in a referendum conducted for such purpose, be converted into a Stock Cooperative or Stock Corporation and thereafter shall be governed by the Cooperative Code of the Philippines or the Corporation Code, as the case may be. The NEA, within six (6) months from the effectivity of these Rules, shall promulgate the guidelines in accordance with Section 5 of Presidential Decree No. 1645.
 - (ii) ECs converted into Stock Corporations shall be registered with the SEC in accordance with the Corporation Code, while those converted into Stock Cooperatives, shall be registered with the

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CDA: *Provided, however, That the ECs which opt to remain as non-Stock Cooperatives shall continue to be registered with the NEA and shall be governed by the provisions of Presidential Decree No. 269, as amended.*

- (iii) *An EC heretofore converted, regardless of the corporate form, or its successor entity, shall retain its franchise rights: Provided, further, That its operations shall be regulated by the ERC and other Government instrumentalities insofar as practicable and consistent with the Act."*

Before that, the Cooperative Code (Republic Act No. 6938) and the CDA Charter (Republic Act No. 6939) both gave the electric cooperatives already operating under the provisions of P.D. 269, as amended by P.D. 1645, three (3) years within which to qualify and register with the CDA. Article 128 of R.A. 6938 succinctly provides:

"ARTICLE 128. Transitory Provisions. – xxx xxx xxx. **Provided, further,** *That cooperative created under Presidential Decree No. 1645, shall be given three (3) years within which to qualify and register with the Authority. Provided, finally,* **That** *after these cooperatives shall have qualified and registered, the provisions of Sections 3 and 5 of Presidential Decree No. 1645 shall no longer be applicable to said cooperatives."*

From the foregoing provision, it is clear that after the expiration of such three (3) year period, CDA no longer has any authority whatsoever to register ECs already existing and operating under PD 269, as amended. CDA's power to register ECs was only revived with the passage of the EPIRA pursuant to Section 57 as above-stated but only after the EC has first complied with the conversion requirements of said law, specifically, Sec. 7(c) [i to iii] of Rule 7 of the IRR of 9136.

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Thus, in answer to your first query, CDA is required to observe the specific provisions of the EPIRA and its Implementing Rules before it can register electric cooperatives.

Anent your second query, suffice it to say that apart from the EPIRA there is no other law allowing the registration of ECs under PD 269 after the lapse of the 3 year period specified in R.A. 6938.

Thus, CDA cannot register ECs created under PD 269, as amended, but only newly organized electric cooperatives or newly organized service cooperatives involved in electricity distribution as set forth in Sections 3 and 9 of R.A. 6939 and Article 97 of R.A. 6938.

Please be guided accordingly.

Very truly yours,

A handwritten signature in black ink, appearing to read "Alberto C. Agra", with a large, stylized flourish at the end.

ALBERTO C. AGRA
Government Corporate Counsel