

PROPOSED IMPLEMENTING GUIDELINES ON THE POLICY ON COLLATERAL SHARING

Pursuant to the National Electrification Administration (NEA) Board of Administrators' Resolution No. 54 dated 21 August 2002, approving the policy by which lien on the properties of the Electric Cooperatives (ECs), mortgaged to NEA may be shared with other banks and other financial institutions (the "Non-NEA Lenders"), the following implementing guidelines are hereby issued:

I. Rationale

Electrification is a very expensive undertaking. The ECs are in constant need of long term funds to finance electrification projects specially rehabilitation and upgrading of its distribution system. In the past, the NEA financed almost 90% of the ECs funding requirements. Consequently, all properties of the ECs are mortgaged to NEA.

With the passage of Electric Power Industry Reform Act (EPIRA) of 2001, the NEA was given additional mandate to develop and implement programs to prepare the ECs in operating and competing under the deregulated electricity market within five (5) years from the effectivity of the said Act and to strengthen the technical capacity and financial viability of ECs. However, the NEA has limited financial resources to support this mandate. The ECs have to resort to borrowing from sources outside of NEA which require collaterals. Thus, EC properties mortgaged to NEA will have to be shared with Non-NEA Lenders.

II. Scope

These implementing guidelines shall govern the process to be followed when ECs apply for approval to borrow funds from Non-NEA Lenders which require the sharing of EC's properties mortgaged to NEA is required.

III. General Requirements

Upon the request of the ECs borrowing from Non-NEA Lenders, the board of Administrators may share the lien on pari-passu and co-equal basis in proportion to the respective claim for loan principal, accrued but unpaid interest collection cost, prepayment premium and penalties, if any, on such properties of the ECs mortgaged to NEA subject to the following conditions and requirements:

1. The purpose of the EC's borrowing is for revenue enhancement, performance improvement projects, rehabilitation and upgrading projects or for rural electrification investment projects within the approved medium term plan of the Electric Cooperative.
2. Appraisal of the assets of the EC has been conducted at least once in the last three (3) years in accordance with Loan Policy 24 – Appraisal of Mortgage Properties and corresponding asset increment is reflected in the EC's financial statements in accordance with the approved Guidelines and Pro-Forma Entries on Appraisal of Electric Cooperatives Properties. In the event that inflation did not raise price levels more than 25% since last appraisal, there is no need for another appraisal.
3. The total outstanding loans of the EC do not exceed 50% of the revalued net utility plant in service.
4. The requirements of the provision of Section 9 of P.D. 269 have been fully met in the sense that the proposed loan from the Non-NEA Lenders is, in the judgment of the NEA Board of Administrators, (1) necessary or desirable to achieve the total electrification of the Philippines on an area coverage service basis, (ii) necessary to make or keep the EC's project operationally viable, (iii) necessary or desirable to enable the EC to accomplish the purposes for which it has already received a NEA loan, and (iv) the Non-NEA loan will not result in any diminution of the security of the ability of the EC to repay any of its outstanding indebtedness below the level of such security and ability were additional borrowings from a Non-NEA Lender not undertaken.

IV. Documentary Requirements

An EC borrowing funds from the Non-NEA Lender for which sharing of EC properties mortgaged to NEA is required, shall submit an application for clearance/approval to Accounts Management Department (AMD) together with the following documents:

1. EC Board of Resolution requesting NEA to share mortgaged properties and collateral to their loan application with the Non-NEA Lenders;
2. Duly certified audited financial statements of the EC for the last two (2) years;
3. Appraisal report prepared by a recognized and independent consultant/appraisal company accredited by NEA conducted in the last three (3) years;
4. Details of loan application with the Non-NEA Lender including economic, technical and financial study.

V. Default of EC

In case NEA takes action as a result of default on loans of an EC that has availed itself of collateral sharing, NEA agrees to include the approved secured Non-NEA Lender in their action to settle such shared loan.

VI. NEA's Evaluation and Approval of NEA

AMD shall conduct evaluation of the request immediately after the above requirements have been submitted. Coordination with other NEA departments shall be made by AMD, and the recommendations on the EC's request shall be submitted by AMD to the NEA Deputy Administrator for Finance, Loans and AMD within 30 calendar days from AMD's receipt of the aforementioned documentary requirements.

The Deputy Administrator for Finance, Loans and AMD shall act on the aforesaid recommendations decide whether to deny or endorse the same, and in case he or she decides to endorse said recommendations, he or she shall endorse the same to the NEA Board of Administrators, through the NEA Administrator, for approval, all within 10 calendar days from receipt thereof.

VII. Mortgage Sharing Indenture (MSI)

Upon approval of the EC's aforesaid request by the NEA Board of Administrators, the EC shall execute a Mortgage Sharing Indenture (MSI) in favor of NEA and the Non-NEA Lender (Model MSI Attached). Upon execution of a MSI by all parties, EC shall effect the cancellation and/or amendment of applicable existing mortgages.

VIII. Non-NEA Lender Rights

Evert Non-NEA Lender approved for collateral sharing pursuant to these Implementing Guidelines shall be allowed to implement additional requirements for loan in accordance with its rules, policies and regulations.