A RESOLUTION

URGING THE COMMITTEE ON ENERGY TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE OVERREACH OF THE NATIONAL ELECTRIFICATION ADMINISTRATION ON THE SCREENING, SELECTION, AND APPOINTMENTS OF GENERAL MANAGERS OF ELECTRIC COOPERATIVES AND TO REVISIT, DEFINE AND REVIEW ITS MANDATE, POWERS AND FUNCTIONS FOR THAT PURPOSE

WHEREAS, Presidential Decree No. 269, issued on August 6, 1973, transformed the National Electrification Administration (NEA) into a corporation wholly owned and controlled by the government, which aimed to assist and enable the ECs to become effective financially and operationally viable;

WHEREAS, Republic Act. No. 9136 also known as the “Electric Power Industry Reform Act of 2001” or EPIRA, was passed on June 8, 2001;

WHEREAS, the role of the NEA was expressly enumerated under Sec. 58, Republic Act No. 9136, as follows:

“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.”

WHEREAS, Republic Act. No. 10531 strengthening the National Electrification Administration and amending P.D. 269 was passed on July 23, 2012.

WHEREAS, Sec. 6 of Republic Act No. 10531 (RA 10531),² specified the supervisory powers of NEA over ECs, as follows:

“In the exercise of its power of supervision over electric cooperatives, the NEA shall have the following 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 electric cooperatives;

² National Electrification Administration Reform Act of 2013.
(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 electric cooperative, 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 this Act; and

(c) appoint independent board of directors in the electric cooperative.

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

WHEREAS, in Sec. 11, the Fit and Proper Rule provision, of the same law prescribes the nature and extent of supervision of NEA over the ECs as regards the latter’s management and operations with due regard to its economic viability, to wit:

“SEC. 26-B. Fit and Proper Rule. – To ensure that the management and operations of electric cooperatives 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 electric cooperatives and disqualify those found unfit.

A candidate’s integrity, experience, education, competence and probity shall be considered in determining whether he or she shall be fit and proper to become a director or officer of the electric cooperative.

For this purpose, the minimum qualifications of a director or officer of the electric cooperative shall be as follows:

(a) He or she is a Filipino citizen;
(b) He or she is a graduate of a four (4)-year course;
(c) He or she is between twenty-one (21) and seventy (70) years old, on the date of election;
(d) He or she is of good moral character;
(e) He or she is a member of the electric cooperative in good standing for the last five (5) years immediately preceding the election or appointment;
(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.

The NEA may, after due notice to the board of directors and officers of the electric cooperative, disqualify, suspend or remove any director or officer, who commits any act which renders him unfit for the position.

WHEREAS, the said provisions of RA 10531 expressly provide the minimum qualifications and the grounds for disqualifications of a director or any officer of the ECs, including its GM;

WHEREAS, on October 24, 2017, NEA issued its NEA Memorandum No. 2017-035, which revised the policy on the selection, hiring, and termination of services/suspension for GMs of all the ECs;

WHEREAS, under Item No. III, Section 2, par. b of NEA Memorandum No. 2017-035, the applicant for GM must pass (i) a pre-qualifying written examination to be administered by the NEA, which shall measure the Intelligence Quotient, Emotional Quotient, computer literacy, knowledge of the industry and management perspectives of the applicant and (ii) an essay examination to gauge applicants' knowledge and capability relevant to the operation of an electric/power industry;

WHEREAS, under Item No. III, Section 2, pars. D and E of the above stated memorandum, the pre-qualified applicants will be invited to appear for personal
interview before the selection committee of NEA, and only applicants who attained a score of 80 or above shall qualify for further consideration for the position of GM;

WHEREAS, under Item No. III, Section 2, par. H of the same memorandum, the list of applicants who passed the final interview shall then be transmitted by NEA to the EC Board for perusal and selection of its GM;

WHEREAS, applicants who are qualified for final interview should be those applicants who obtained the score of 80 or above, as explicitly stated in Item No. III, Section 2, par. E of the memorandum, and who possessed all the qualifications and none of the disqualifications;

WHEREAS, under Item No. III, Section 3 of the same memorandum, in the event that the EC BOD rejects all pre-qualified applicants from the list of names forwarded to it by the NEA, a Board Resolution shall be submitted to the NEA containing the reasons for rejections;

WHEREAS, the Benguet Electric Cooperative, Inc. (BENECO) was organized on October 5, 1973 as a non-stock, non-profit, service-oriented entity and was granted by the former National Electrification Commission on March 20, 1978 the sole franchise to operate an electric light and power service in the City of Baguio and Benguet province for a period of fifty (50) years;

WHEREAS, the position of the GM of BENECO has been vacant since April 2020, and two applicants vied for the position of GM, were screened by the NEA thru its Selection Committee, passed the initial screening, and proceeded to the final interview before the NEA Board of Administrators;

WHEREAS, according to NEA Board of Administrators RB Resolution No. 2021-47 dated April 29, 2021, both applicants obtained at least a score of 80 percent during their final interview, which made both of them qualified for the position of GM;

WHEREAS, pursuant to Item No. III, Section 2, par. H of NEA Memorandum 2017-035, both applicants should have been included in the list of applicants to be
transmitted by NEA to BENECO BOD for perusal, selection, and appointment of its own GM;

WHEREAS, in the same RB Resolution No. 2021-47 dated April 29, 2021, the NEA Board of Administrators endorsed only the applicant with the higher score in the final interview with the NEA Board of Administrators, effectively limiting the choice of BENECO Board, notwithstanding that both applicants are qualified to be appointed as GM of BENECO;

WHEREAS, the act of NEA Board of Administrators clearly constituted a ultra vires act as they acted beyond the metes and bounds of their power and authority, as defined by its own charter, relevant laws, and NEA issuances;

WHEREAS, said act of the NEA Board of Administrators amounts to the usurpation of the power of Electric Cooperatives Board of Directors to appoint its own officials, particularly General Manager, as provided by law as well as its own Constitution and Bylaws, and such act gave unwarranted benefit, advantage or preference in the discharge of their official administrative functions, through manifest partiality and evident bad faith to, one favored applicant;

WHEREAS, the power granted to the NEA Board of Administrators by law and to its own issuances is limited only to a mere screening of the applicants for GMs of ECs and to validate if said officials possess all the qualifications required by law and none of the disqualifications, based on established guidelines above-stated;

WHEREAS, the NEA Board of Administrators have absolutely no power to select and appoint the GM or the power to designate a “probable appointee” for the position of General Manager of BENECO;

WHEREAS, the law is quite clear that the power of NEA over Electric Cooperatives are supervisory in nature and should not be equivalent to control;
WHEREAS, the power of appointment is essentially a discretionary power and must be performed by the agency in which it is vested, the only condition being that the appointee possess the qualifications required by law;

WHEREAS, it is quite clear that the discretionary power and authority to appoint a General Manager exclusively belongs to the Board of Directors of the Electric Cooperative concerned and not to the Board of Administrators of NEA;

WHEREAS, the insistence of the NEA Board of Administrators to substitute their judgement and to select and appoint the General Manager of BENECO is an over reach of their powers and is an ultra vires act.

NOW THEREFORE, BE IT RESOLVED, AS IT IS HEREBY RESOLVED, by the House of Representatives, urging the Committee on Energy to, in aid of legislation, to conduct an inquiry on the overreach of the National Electrification Administration on the screening, selection, and appointments of General Managers of Electric Cooperatives and to revisit, define and review its mandate, powers and functions for that purpose.

Adopted,

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