H. Res. No. 2239

Republic of the Philippines
Congress of the Philippines
House of Representatives
Metro Manila
Eighteenth Congress
Third Regular Session

Begun and held in Metro Manila, on Monday, the twenty-sixth day of July, two thousand twenty-one.

RESOLUTION NO. 213

RESOLUTION URGING THE NATIONAL ELECTRIFICATION ADMINISTRATION BOARD OF ADMINISTRATORS TO STRICTLY ADHERE TO AND COMPLY WITH THE PROVISIONS OF NEA MEMORANDUM NO. 2017-035, ON THE SELECTION OF GENERAL MANAGERS OF ELECTRIC COOPERATIVES, PARTICULARLY ON THE CASE OF THE BENGUET ELECTRIC COOPERATIVE, AND TO TAKE THE APPROPRIATE ACTIONS TO FULFILL THE MANDATE OF THE NATIONAL ELECTRIFICATION ADMINISTRATION AS SPECIFIED IN PRESIDENTIAL DECREE NO. 269, AS AMENDED, AS THE GOVERNMENT AGENCY WITH SUPERVISORY POWERS AND FUNCTIONS OVER ELECTRIC COOPERATIVES
WHEREAS, Republic Act No. 10531, “Strengthening the National Electrification Administration (NEA), Further Amending Presidential Decree No. 269, as Amended,” was enacted into law on May 19, 2013;

WHEREAS, Section 6 of Republic Act No. 10531 states the supervisory powers of the NEA over electric cooperatives, 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;

(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, on October 24, 2017, the NEA issued NEA Memorandum No. 2017-035, which provides the policy on the selection, hiring, and termination of services or suspension of General Managers for all electric cooperatives;

WHEREAS, in the said Memorandum, there were two options provided on how the Board of Directors of the electric cooperative can hire or select a new General Manager: first, by publishing the vacancy and accepting applicants for the position; and second, by recommending a General Manager to the NEA, both of which shall undergo a process of hiring as indicated by the NEA Memorandum No. 2017-035;
WHEREAS, should the electric cooperative prefer the first option and open the vacant position for application, then, under Item No. III, Section 2, paragraph (b) of NEA Memorandum No. 2017-035, the applicant for the position of General Manager must pass: (i) a prequalifying 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, Item No. III, Section 2, paragraphs (d) and (e) of the above-stated Memorandum state that the prequalified applicants will be invited to appear for personal interview before the Selection Committee of the NEA, and only applicants who attain a score of 80 or above shall qualify for further consideration for the position;

WHEREAS, Item No. III, Section 2, paragraph (b) of the same Memorandum states that the list of applicants who pass the final interview shall then be transmitted by the NEA to the Board of Directors of the electric cooperative for its consideration;

WHEREAS, Item No. III, Section 2, paragraph (e) of the Memorandum states that only the applicants who obtain the score of 80 or above, and who possess all the qualifications and none of the disqualifications shall be qualified to undergo the final interview;

WHEREAS, Item No. III, Section 3 of the same Memorandum states that if the Board of Directors of the electric cooperative rejects all prequalified applicants in the list of names forwarded to it by the NEA, a board resolution shall be submitted to the NEA containing the reasons for the rejection;

WHEREAS, the Benguet Electric Cooperative, Inc. (BENECO) was organized on October 5, 1973 as a nonstock, nonprofit, service-oriented entity and 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 the Province of Benguet for a period of 50 years;

WHEREAS, on April 30, 2020, General Manager Gerardo P. Verzosa officially retired from the BENECO after serving for more than four decades;

WHEREAS, pursuant to the approved succession plan and organizational structure of the electric cooperative, the BENECO opted to promote the Assistant General Manager to the position vacated by Mr. Verzosa by making a recommendation and appointment pursuant to the second option allowed under NEA Memorandum No. 2017-035;

WHEREAS, on May 1, 2020, Engr. Melchor S. Licoben was appointed as the Officer-in-Charge of the BENECO which appointment was duly confirmed by the NEA on June 24, 2020. The BENECO did not declare the vacancy of the position of General Manager in view and in consideration of Engr. Licoben’s appointment to the position;

WHEREAS, on the other hand, the NEA considered the position of General Manager vacant in view of the retirement of Mr. Verzosa and thus considered the two as competitors for the position;

WHEREAS, the two applicants who vied for the position of General Manager and were screened by the NEA through its Selection Committee passed the initial screening, and qualified to undergo the final interview before the NEA Board of Administrators (BOA);

WHEREAS, Item No. III, Section 2, paragraph (h) of NEA Memorandum No. 2017-035 states that: “The list of applicants who passed the NEA Board final interview, with necessary information and results of the Background Investigation, shall then be transmitted to the EC Board for perusal and selection.”;
specified in Presidential Decree No. 269, as amended, as the
government agency with supervisory powers and functions
over electric cooperatives.

Resolved, further, To recommend that the NEA BOA
revoke NEA BOA Resolution No. 2021-47, considering that
there was no vacancy in the position of General Manager of
the BENECO.

Resolved, furthermore, To remind the NEA to avoid
repeated ultra vires acts, specifically in its selection of the
General Manager of the BENECO and maintain the status quo
on retaining the current Officer-in-Charge of the BENECO,
under pain of contempt, until all the issues on the selection
of the General Manager of the BENECO have been resolved.

Resolved, finally, That copies of this Resolution be
furnished the Department of Energy and the National
Electrification Administration.

Adopted,

[Signature]

LORD ALLAN JAY Q. VELASCO
Speaker

This Resolution was adopted by the House of Representatives
on September 23, 2021.

[Signature]

MARK LLANSO Z. MENDOZA
Secretary General

WHEREAS, in Regular Board Resolution No. 2021-47
dated April 29, 2021, the NEA BOA endorsed only the applicant
who garnered the higher score in the final interview without
the results of the qualifying examination that would have
measured and showed the applicants' emotional and intelligence
quotients, computer literacy, knowledge of the industry and
management perspectives, and other related documents as
required under NEA Memorandum No. 2017-035 Part III,
Item 2, thereby also effectively limiting the choice of BENECO
Board, notwithstanding that both applicants were qualified to be
appointed to the position of General Manager;

WHEREAS, the action of the NEA BOA clearly constituted
an ultra vires act as it acted beyond the metes and bounds of
its power and authority, as defined by its own charter, relevant
laws, and NEA issuances;

WHEREAS, the act of the NEA BOA amounts to
usurpation of the power of the Board of Directors of the
BENECO to appoint their own officials, particularly the General
Manager, as provided for in the law as well as its own
constitution and bylaws, and such act gave unwarranted
benefit, advantage, or preference which manifested partiality
and evident bad faith in favor of one applicant;

WHEREAS, the power granted by law to the NEA BOA
and its own issuances is limited only to the screening of the
applicants for the position of General Manager and to validate
if said applicants possess all the qualifications required by
law and none of the disqualifications, based on the established
guidelines as above-stated for reason that the employer of
said applicants is not the NEA, but the electric cooperative;

WHEREAS, the law is clear that the powers of the NEA
over electric cooperatives are supervisory in nature and should
not in any way be exercised to control their affairs;

WHEREAS, the supervisory powers under Presidential
Decree No. 269, as amended by Republic Act No. 10531, which
are delegated to the NEA to exercise its administrative functions,
allow the agency to issue advisories and memoranda and rules for
administrative proceedings, in this case, the selection, hiring, and termination of services and suspension of General Managers for all electric cooperatives;

WHEREAS, an inquiry into the current policy on the selection of a General Manager of an electric cooperative was conducted due to the complaints received by some House Members from different stakeholders, member-consumer-owners, and the local and national publicity generated by the BENECO problem;

WHEREAS, the House of Representatives directed the Committee on Energy to inquire into the matter in view of the fact that electric cooperatives are utility franchise holders which business is imbued with public interest;

WHEREAS, during the said deliberations, the Committee on Energy discovered that the NEA and the NEA BOA are not very familiar with the selection process or NEA Memorandum No. 2017-035, which is tantamount to a failure in implementing the rules and regulations;

WHEREAS, the NEA BOA, in the exercise of the authority to process the applications for the position of General Manager took upon itself to interpret and apply selected provisions of its own issuance that will only cater to its intention considering that even the memorandum it issued has provisions that are clear and precise with no room for misinterpretation;

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

WHEREAS, the insistence of the NEA BOA to substitute their judgement and select and appoint the General Manager of the BENECO is an overreach of their powers and an ultra vires act;

WHEREAS, the Committee on Energy endorsed to maintain the status quo on retaining the current Officer-in-Charge of the BENECO until all the issues on the selection of General Manager has been resolved;

WHEREAS, in this case, the State, through its agencies and instrumentalities, has only given to NEA the power of supervision over electric cooperatives;

WHEREAS, the NEA, as an instrumentality of the State, shall perform its functions as overseer of electric cooperatives through the exercise of its administrative authority by not only issuing rules and regulations but also strictly adhering to and complying with the same;

WHEREAS, there is no need for further legislation to amend Presidential Decree No. 269 and Republic Act No. 10531 insofar as the NEA and the electric cooperatives are concerned because there are rules and regulations that define the relationship between the electric cooperatives and the NEA, and that electric cooperatives are not government agencies, GOCCs, or instrumentalities and their being member-consumer-owned electric cooperatives shall be respected and, following the principles under Republic Act No. 6938, otherwise known as the “Cooperative Code of the Philippines”, as amended by Republic Act No. 9520, shall be accorded their freedom to manage their affairs following the principle of subsidiarity;

WHEREAS, laws, administrative rules and regulations are mandatory and shall be strictly followed and there is no room to breach the rules, not even the NEA itself, which has promulgated the rules: Now, therefore, be it

Resolved, as it is hereby resolved by the House of Representatives, To urge the National Electrification Administration Board of Administrators to strictly adhere to and comply with the provisions of NEA Memorandum No. 2017-035, on the selection of General Managers of electric cooperatives, particularly in the case of the Benguet Electric Cooperative, and to take the appropriate actions to fulfill the mandate of the National Electrification Administration as
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