NATIONAL ADMINISTRATIVE REGISTER · MAY 20, 2011

ADOPTION OF OPTIONS FOR AILING ECS

NEA MEMORANDUM NO. 2011-017, May 20, 2011

Read online (full-text search, related cases, audio case brief): https://batas.org/library/b1bab2c8f835/

I. Rationale

The attainment of total electrification is the primary goal of the government with the aim of accelerating rural development in the countryside. It is significant to note that after more than forty (40) years of electrifying the countryside, the electric cooperatives (ECs) have been instrumental and continue to be necessary in the nation's socio-economic progress. Electric service should be accessible to all and therefore, it is the State's obligation to ensure that this mission is carried out through the next generation.

Unfortunately, there are some electric cooperatives confronted with various problems such as unstable peace and order situation, special or unique culture of the people related to their ethnic and cultural belief, off-grid ECs encountering problems with their low sales volume, unreliable and limited power supply, huge systems losses, ballooning power bill arrearages, EC mismanagement and dismal operations to name a few. For lack of a better term, these electric cooperatives can be considered as "Ailing ECs."

Sec. 58 of Republic Act No. 9136 mandates NEAto develop and implement programs to strengthen the technical and financial viability of the electric cooperatives. It is in this context that NEA now redefines and enhances its programs and priorities towards the transformation of the ECs as catalysts for rural development.

II. Policy Statement

It is the policy of this Agency to provide options for Ailing ECs to ensure continuous delivery of electric service in their area coverage.

III. Scope

An electric cooperative is considered as "Ailing" if it has no means of meeting its outstanding obligations due to financial, technical and/or institutional inefficiency. Ailing ECs may be categorized into two. Those which are "curable" (or have a chance to turnaround based on the same factors of financial, technical and institutional efficiency) and those which are "incurable" (recovery is impossible on the part of the EC).

IV. Parameters

The parameters used in determining whether an EC is ailing or not are as follows:

- High Systems Loss
- Low Collection Efficiency
- Current Ratio
- Operating Loss
- Huge liabilities

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- Negative networth

- Institutional problems (governance, consumer per employee ratio, adherence to policies)

Parameters

Level 1 (Curable)

Level 2 (Incurable)

System Loss (%)

20 -25

26 and above

Collection Efficiency (%)

80 -71

70 and below

Current Ratio

< 1

<1

Operating Loss

Last 3 years (2007-2009)

More than 3 years

Liabilities

6 months to 1 year

More than a year (arrears)

Networth

negative

negative

Inst'l. Problem/s

With lapses

Non-adherence to policies

V. Options

A. For Curable ECs:

1) Give the EC another 180 to 365 days to improve through a

* Performance Commitment Contract
* Work Program which includes:

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-Restructuring of accounts
-System loss reduction
-Reorganization
-Possible deactivation of the Board of Directors

.2) NEA management and operations

* Set-up system of accountability and good governance
* Supervision of rehabilitation program based on timelines
* Operation and management
* Turn-over to next responsible set of officials

B. For Incurable ECs

*Extra-judicial Foreclosure (Sec 5 of PD 1645 in relation to Sec 35-37 of PD 269)
* Private Sector Participation
-Joint Venture
-Investment Management Contract
-Management Contract
-Operations and Maintenance Contract
-Special Equipment and Materials Lease Agreement
-Concession
* Insolvency (Voluntary/Involuntary)

C. Possibility of turn-over of EC to Local Government (LGU)

VI. Guidelines

The following steps shall be undertaken to process the options for Ailing ECs.

Step 1: Implementation of the approved policy for Ailing ECs

Asimulation of the parameters is made on all ECs. Affected EC will be informed of its being part of the group considered as Ailing ECs. It will be provided with a period of 30 to 90 days to submit its Recovery Plan including a Performance Commitment Contract for approval.

Responsible Center:

Composite Team A from the Management Assistance Group (MAG), Electric Distribution Utilities Services (EDUS), Finance and Legal Sectors will review and recommend the appropriate action on the proposed Recovery Plan.

Step 2: Implementation of the 180 day Work Plan

A monthly assessment will then be made to validate the performance of the EC. An EC which continues to deteriorate in performance during the 180 day period will be a candi-date for immediate application of the above-listed options.

After 180 days, an assessment is made on the EC. Composite Team A will submit a report on the performance of the EC. If operations improvement is evident, it will be given another 90 to 180 days to fully recover. Composite Team A will recommend the application of the options.

Responsible Center:

Composite Team A will submit the final report containing the assessment/performance of the EC. The NEA Board will act upon the recommendation.

Step 3: Application of options:

NEA, upon approval of the Board, will issue a Notice of Foreclosure pursuant to PD 269.

Simultaneous with the Foreclosure Proceedings, preparations will be made to start the bidding for due diligence.

The First Mortgage signed by the representative of the EC in favor of NEA usually contains the following provisions:

"6. Effective upon the breach of any condition of this mortgage and in addition to the remedies herein stipulated, the MORTGAGEE is hereby likewise ap-pointed attorney-in-fact of the MORTGAGOR with full power and authority to take actual possession of the mortgaged properties, to lease any of the mort-gaged properties, to collect rents, to eject tenants, to execute bills of sale, ease or agreement that may be deemed convenient for the proper administra-tion of the mortgaged properties. Any amount received from the sale, disposal or administration above mentioned may be applied by the MORTGAGEE to epayment of repairs, improvements, taxes and assessments and other incidental expenses and obligations, to the payment of the original indebtedness and interest thereon. The power herein granted shall not be revoked during the life of this mortgage, and all acts that may be executed by the MORTGAGEE by virtue of said power are hereby ratified, x x x"

Responsible Center:

Composite Team B whose members come from all sectors (Finance, Legal, Engineering and Management Assistance Group) will serve as the core group which in turn, will prepare the Bid documents such as Invitation to Bid, Instructions to Bidders, Bid Data Sheet, Terms of Reference and Others.

Step 4: Bidding is done for due diligence to determine the best option for the EC concerned.

Step 5: After due diligence and the best option for the EC is determined, NEA conducts bidding to implement the option.

Step 6: Biddings and Award

VII. Levels of Approval:

Particulars

Recommending Approval

Approval

a. Recovery Plan and Performance Contract

Composite Team - A will submit to the Deputy Administrators Administrator

b. Monthly Monitoring MAG and EDUS team

DA - MAG/EDUS

c. Final Assessment DAs NEA Board

d. Sanctions and Notice

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DA - MAG/EDUS

Administrator

e. Bidding (Due Diligence)

Composite Team - B will submit report to the DAs

Administrator

f. Options (foreclosure etc.)

Administrator

NEABoard

VIII. Effectivity

This policy had been approved by the NEA Board of Administrators in its 20 May2011 meeting through Resolution No. 13 and shall take effect fifteen (15) days after publication in a newspaper of general circulation.

Adopted: 20 May 2011

(SGD.) EDITA S. BUENO
Administrator

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