

FURTHER AMENDING CERTAIN SECTIONS OF REPUBLIC ACT NUMBERED SIXTY-THREE HUNDRED NINETY-FIVE ENTITLED “AN ACT REVISING THE CHAPTER OF THE NATIONAL POWER CORPORATION,” AS AMENDED B...

PRESIDENTIAL DECREE NO. 1360, April 25, 1978

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WHEREAS, the accelerated power expansion program of the National Power Corporation involving as it does the construction of generation facilities in Luzon, Visayas and Mindanao and the setting up of transmission line grids require a greater degree of corporate flexibility in the implementation of said power program as well as in corporate management;

WHEREAS, in pursuing said accelerated power expansion program for generation and transmission facilities, the present capitalization of P8 Billion and the ceiling of foreign borrowing pegged at \$4 Billion would be rendered insufficient by the year 1987 and, therefor, a corresponding increase thereon is necessary in order that such programs would be successfully completed;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Republic of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order and decree as follows:

SECTION 1. Section 5 of Republic Act Numbered Sixty-Three Hundred Ninety-Five, as amended, is hereby amended with the first and second paragraphs thereof duly revised to read as follows:

"SECTION 5. Capital Stock of the Corporation—The authorized capital stock of the Corporation shall be Fifty Billion Pesos (P50,000,000,000.00) divided into Five Hundred Million (500,000,000) shares having a par value of One Hundred Pesos each, which shares are not to be transferred, negotiated, pledged, mortgaged, or otherwise given as security for the payment of any obligation. The sum of Three Hundred Million Pesos of said capital stock has been subscribed and paid wholly by the Government of the Philippines in accordance with the provisions of Republic Act Numbered Four Thousand Eight Hundred Ninety-Seven.

"The remaining Forty-Nine Billion Seven Hundred Million Pesos shall be subscribed by the Government of the Republic of the Philippines and shall be paid as follows:

"(a) The sum of Twenty-Nine Million Two Hundred Sixty-Seven Thousand Six Hundred Pesos representing outstanding cost and interest of reparation goods procured by the Corporation pursuant to the provisions of Republic Act Numbered Seventeen Hundred Eighty-Nine, shall be additional paid-in subscription of the Government of the Philippines for Two Hundred Ninety-Two Thousand Six Hundred Seventy-Six shares of stock of said capital stock.

"(b) The balance of said subscription shall be paid by the conversion into equity capital of the existing bonded indebtedness, cost of reparations goods that may be allocated in the future, and surpluses of the Corporation and in the absence thereof, from an annual appropriation of Two Hundred Million Pesos which is hereby appropriated out of any funds in the National Treasury not otherwise appropriated, be they collections from any or all taxes accruing to the general fund or proceeds from loans, the issuance of bonds, treasury bills or notes which are hereby authorized to be incurred or to be issued by the Secretary of Finance for the purpose,

such annual appropriation to be programmed and released by the Budget Commission in accordance with the schedule of cash requirements to be submitted by the Corporation; Provided, that this annual appropriation of Two Hundred Million Pesos and the programming and release thereof shall remain in force until the balance of the unpaid subscription of the Government to the capital stock of the Corporation shall have been paid in full."

SECTION 2. Section 6 of the same Act is hereby amended to read as follows:

"SECTION 6. The National Power Board; its composition; compensation of members; qualifications; powers and duties:—The corporate powers of the Corporation shall be vested in and exercised by a Board of seven members consisting of a Chairman, Vice-Chairman and five directors who shall be appointed by the President of the Philippines.

"The President of the Corporation shall be the ex-officio Vice-Chairman of the Board.

"The said members of the Board shall serve for terms of three years, except that any person appointed to fill a vacancy shall serve only for the unexpired term of the member whom he succeeds.

"The Board shall meet as often as may be necessary upon call of the Chairman of the Board or upon call by a majority of all the Board members.

The members of said Board shall receive a per diem of not to exceed Five Hundred Pesos for each regular or special meeting of the Board actually attended by them, and upon approval of the Secretary of Energy, shall receive such other allowances as the Board may prescribe, any provision of law to the contrary notwithstanding.

"A majority of the members of the Board shall constitute a quorum for the transaction of business.

"The Board, shall, moreover, have the following specific powers and duties:

"(a) To formulate and adopt policies and measures for the management and operation of the Corporation;

"(b) To adopt an annual and supplemental budget of receipts and expenditures of the Corporation according to its requirements;

"(c) To organize, reorganize and determine the Corporation's organization structure and staffing pattern; abolish and create offices and positions; fix the number of its officers and personnel; transfer and re-assign such officers and personnel; fix their compensation, allowances and benefits, the provisions of Presidential Decree No. 985 to the contrary notwithstanding;

"(d) To fix the compensation of the President of the Corporation who shall be appointed by the President of the Philippines; and to appoint and fix the compensation of other corporate officers;

"(e) For cause, to suspend or remove any corporate officer appointed by the Board;

"(f) To adopt and set down guidelines for the employment of personnel on the basis of merit, technical competence and moral character;

"(g) To take care that in fixing the rates and fees to be charged by the Corporation considerations of adequacy, reliability and sustained power service at the least possible cost to the public and of limited return on investments as proscribed in section 5 hereof, shall be taken;

"(h) Any provision of law to the contrary notwithstanding to write off bad debts."

SECTION 3. Section 7 of the same Act is hereby amended, to read as follows:

"SECTION 7. The President of the Corporation, his powers and duties; and other Corporate Officers and employees of the Corporation:—The President of the Corporation who shall be the Chief Executive Officer of the Corporation, shall be assisted by such number of Corporate Officers and employees as may be deemed

necessary by the Board of Directors of the Corporation.

"The President of the Corporation shall have the following powers and duties:

"(a) To execute and administer the policies and measures approved by the Board, and have the responsibility for the efficient discharged of management functions;

"(b) To submit for the consideration of the Board such policies and measures which he deems necessary to carry out the purposes and provisions of this Act;

"(c) To direct and supervise the operation and internal administration of the Corporation and, for this purpose, may delegate some or any of his administrative responsibilities and duties to other officers of the Corporation;

"(d) Subject to the guidelines and policies set up by the Board, to appoint and fix the number and compensation of subordinate officials and employees of the Corporation; and for cause, to remove, suspend or otherwise discipline any subordinate employee of the Corporation;

"(e) To prepare an annual report to the Board on the activities of the Corporation at the close of each fiscal year and upon approval thereof, submit a copy to the President of the Philippines and to such other agencies as may be required by law;

"(f) To represent the Corporation in all dealings and transactions with other offices, agencies and instrumentalities of me Government and with all persons and other entities, private or public, domestic or foreign;

"(g) To exorcise such other powers and duties as may be vested in him by the Board from time to time.

"The Commission on Audit shall appoint a representative who shall be the Auditor of the Corporation. In carrying out his responsibilities, he shall be assisted by such number of personnel as shall be necessary, whose appointments shall be subject to the approval of the Board. The salaries of the Auditor and his staff shall be fixed and approved by the Board."

SECTION 4. Section 8 of the same Act is hereby amended to read as follows:

"(a) Domestic Indebtedness—Whenever the Board deems it necessary for the Corporation to incur indebtedness by contracting loans with domestic financial institutions or to issue bonds to carry out the purpose for which the Corporation has been organized, it shall, by resolution, approved by at least four members of the Board, so declare and state the purpose for which the proposed, debt is to be incurred and such terms and conditions as it shall deem appropriate for the accomplishment of the said purpose; Provided, that in the case of bond issues, the same shall be subject to the approval of the President of the Philippines upon recommendation of the Secretary of Finance.

"The bonds issued under the authority of this subsection shall be exempt from the payment of all taxes by the Republic of the Philippines, or by any authority, branch, division or political subdivision thereof which facts shall be stated upon the face of said bonds. Said bonds shall be receivable as security in any transaction with the Government in which such security is required.

"The Republic of the Philippines hereby guarantees the payment by the Corporation of both the principal and the interest of the bends issued by said Corporation by virtue of this Act, and shall pay such principal and interest in case the Corporation fails to do so, and there are hereby appropriated, out of the general funds in the National Treasury not otherwise appropriated, the sums necessary to make the payments guaranteed by this Act; Provided, That the sums so paid by the Republic of the Philippines shall be refunded by the Corporation; Provided, further, That the Corporation shall set aside five per centum of its annual net operating revenues before interests as a reserve or sinking fund to answer for amounts advanced to it by the National Government for any loan, credit and indebtedness contracted by the former for which the latter shall be answerable as

primary obligor or guarantor under the provisions of this Act; Provided, furthermore, That the setting aside of the amounts mentioned herein shall automatically cease the moment the accumulated sinking fund or reserve exceeds the amounts advanced to the Corporation by the National Government under this Act; And, Provided, finally, That the Corporation may periodically make partial payments to the National Government out of the said reserves.

"(b) Foreign Loans—The Corporation is hereby authorized to contract loans, credits, in any convertible foreign currency, or capital goods, and indebtedness from time to time from foreign governments, or any international financial institution or fund source, or to issue bonds, in such amount and in any foreign currency on such terms and conditions as it shall deem appropriate for the accomplishment of its purposes and to enter into and execute agreements and other documents specifying such terms and conditions.

"The President of the Philippines, by himself, or through his duly authorized representative, is hereby authorized to negotiate and contract with foreign governments or any international financial institutions or fund sources, in the name and on behalf of the Corporation, one or several loans, for the purpose of assisting in the reconstruction, or promoting the development of the economy of the country.

"The President of the Philippines, by himself, or through his duly authorized representative, is hereby further authorized to guarantee, absolutely and unconditionally as primary obligor and not as surety merely, in the name and on behalf of the Republic of the Philippines, the payment of the loans, credits, indebtedness and bonds issued up to the amount herein authorized, which shall be over and above the amount which the President of the Philippines is authorized to guarantee under Republic Act Numbered Sixty-One Hundred Forty-Two, as amended, as well as the performance of all or any of the obligations undertaken by the Corporation in the territory of the Republic of the Philippines pursuant to loan agreements entered into with foreign governments or any international financial institutions or fund sources.

"In the contracting of any loan, credit or indebtedness under this Act, the President of the Philippines may, when necessary agree to waive or modify the application of any law granting preferences or imposing restrictions on international competitive bidding, including among others, Act Numbered Four Thousand Two Hundred Thirty-Nine, Commonwealth Act Numbered One Hundred Thirty-Eight, the provisions of Commonwealth Act Numbered Five Hundred Forty-One, Republic Act Numbered Five Thousand One Hundred Eighty-Three, insofar as such provisions do not pertain to constructions primarily for national defense or security purposes; Provided, however, That as far as practicable, utilization of the services of qualified domestic firms in the prosecution of projects financed under this Act shall be encouraged; Provided, further, That in case where international competitive bidding shall be conducted preference of at least fifteen per centum shall be granted in favor of articles, materials or supplies of the growth, production or manufacture of the Philippines; Provided, finally, That the method and procedure in the comparison of bids shall be the subject of agreement between the Philippine Government and the lending institution.

"The loans, credits and indebtedness contracted under this subsection and the payment of the principal, interest and other charges thereon, as well as the importation of machinery, equipment, materials, supplies and services, by the Corporation, paid from the proceeds of any loan, credit or indebtedness incurred under this Act, shall also be exempt from all direct and indirect taxes, fees, imposts, other charges and restrictions, including import restrictions previously and presently imposed, and to be imposed by the Republic of the Philippines, or any of its agencies and political subdivisions."

SECTION 5. A new section shall be inserted to be known as Section 160A of the same Act, to read as follows:

"SECTION 16-A—Transitory Provisions:

"(a) The word "President" in Section 3(k) of this Act shall refer to the President of the Philippines;

"(b) The phrase "General Manager of the Corporation" in this Act, as amended, shall mean the President of the

Corporation; And further, the phrase "Regional Manager" in this Act, shall mean Corporate Officer;

"(c) Until the President of the Philippines appoints the President of the Corporation, the incumbent General Manager of the Corporation shall, as may be determined by the Board, either act as President of the Corporation or hold such office with such duties and responsibilities as shall be determined by the Board; Provided, That, upon the assumption of office by the President of the Corporation appointed by the President of the Philippines, said incumbent General Manager of the Corporation shall without any diminution in salary, allowances and benefits, hold such office and perform such duties and responsibilities as shall be determined by the Board."

SECTION 6. Repealing Clause. All laws, decrees, executive orders, administrative orders, rules and regulations inconsistent herewith are hereby repealed, amended or modified accordingly.

SECTION 7. This Decree shall take effect immediately.

Done in the City of Manila, this 25th day of April, in the year of Our Lord, nineteen hundred and seventy-eight.

(Sgd.) FERDINAND E. MARCOS
President
Republic of the Philippines

By the President:

(Sgd.) JACOBO C. CLAVE
Presidential Executive Assistant

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