



Republic of the Philippines

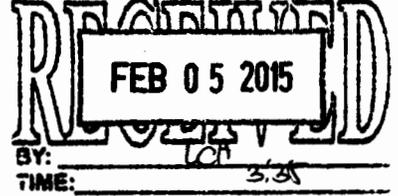
Supreme Court

Manila

EN BANC

NOTICE

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE



Sirs/Mesdames:

Please take notice that the Court en banc issued a Resolution dated **JANUARY 27, 2015**, which reads as follows:

“G.R. No. 178082 - PHILIPPINE FEDERATION OF ELECTRIC COOPERATIVES (PHILFECO); BATANGAS II ELECTRIC COOPERATIVE, INC. (BATELEC II); NEGROS ORIENTAL ELECTRIC COOPERATIVE, INC. II (NORECO II); SORSOGON ELECTRIC COOPERATIVE, INC. II (SORECO II); PANGASINAN ELECTRIC COOPERATIVE, INC. I (PANELCO I); QUIRINO ELECTRIC COOPERATIVE, INC. (QUIRELCO); PALAWAN ELECTRIC COOPERATIVE, INC. (PALECO); and PANGASINAN ELECTRIC COOPERATIVE, INC. III (PANELCO III), Petitioners v. EDUARDO ERMITA, in his capacity as Executive Secretary, Office of the President, and NATIONAL ELECTRIFICATION ADMINISTRATION (NEA), Respondents; RUPERTO H. MANALO, NATALIO M. PANGANIBAN, DAKILA P. ATIENZA, LEOVINO S. HIDALGO, ADRIAN C. RAMOS, MICHAEL ANGELO C. RIVERA, and GONZALO O. BANTUGON, Intervenors.

The policy of the State to provide cheap and dependable electric power and facilities throughout the country gained impetus upon the enactment of Republic Act (R.A.) No. 2717,¹ a law that created the Electrification Administration (EA). Several years thereafter, R.A. No. 6038² created the National Electrification Administration (NEA) to replace the EA, thereby repealing R.A. No. 2717. On August 6, 1973, President Marcos issued Presidential Decree (P.D.) No. 269³ in order to

¹ An Act to Create the Electrification Administration, And Other Purposes.

² An Act Declaring A National Policy Objective for the Total Electrification of the Philippines on an Area Coverage Service Basis, Providing for the Organization of the National Electrification Administration, the Organization, Promotion and Development of Electric Cooperatives to Attain the Objective, Prescribing Terms and Conditions for their Operation, The Repeal of Republic Act No. 2717, And for Other Purposes.

³ Creating the “National Electrification Administration” as a Corporation, Prescribing Its Powers and Activities, Appropriating the Necessary Funds Therefor and Declaring a National Policy Objective for the Total Electrification of the Philippines on an Area Coverage Service Basis, The Organization, Promotion and Development of Electric Cooperatives to Attain the Said Objective, Prescribing Terms and Conditions for Their Operations, the Repeal of Republic Act No. 6038, and For Other Purposes.

institutionalize the NEA as a body corporate, and to grant the NEA supervision and control over electric cooperatives. President Marcos later promulgated P.D. No. 1645⁴ to strengthen the institutional capabilities of the NEA, and to broaden the regulatory powers of the NEA over electric cooperatives.

On April 27, 1990, R.A. No. 6938 (*Cooperative Code*) came into effect.⁵ Under Section 128 of the *Cooperative Code*, existing electric cooperatives created under P.D. No. 269 were allowed to register with the Cooperative Development Authority (CDA).

Section 128 of the *Cooperative Code* further decreed that Section 3 and Section 5 of P.D. No. 1645 would become inapplicable to CDA-registered electric cooperatives. A similar provision was replicated in Section 17 of R.A. No. 6939,⁶ the law institutionalizing the CDA (CDA Law).

On June 26, 2001,⁷ R.A. No. 9136 (*Electric Power Industry Reform Act of 2001*), or EPIRA, became effective. EPIRA seeks to provide a framework for the restructuring of the electric power industry. The corresponding rules and regulations promulgated for the implementation of EPIRA were approved by the Joint Congressional Power Commission on February 27, 2002.

On May 9, 2007, President Arroyo signed E.O. No. 623⁸ to affirm the NEA's continuing regulatory and supervisory authority over all electric cooperatives, whether registered with the CDA or with the Securities and Exchange Commission (SEC) pursuant to Section 57 of EPIRA.

E.O. No. 623 provides as follows:

WHEREAS, Republic Act (R.A.) No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001 (EPIRA)", took effect on June 26, 2001;

WHEREAS, Section 57 of R.A. No. 9136 provides that:

⁴ *Amending Presidential Decree No. 269, Increasing the Capitalization and Broadening the Lending and Regulatory Powers of the National Electrification Administration and For Other Purposes.*

⁵ See *Baguio Market Vendors Multi-Purpose Cooperative (BAMARVEMPCO) v. Cabato-Cortes*, G.R. No. 165922, February 26, 2010, 613 SCRA 733, 735.

⁶ *An Act Creating the Cooperative Development Authority to Promote the Viability and Growth of Cooperatives as Instruments of Equity, Social Justice and Economic Development, Defining its Powers, Functions and Responsibilities, Rationalizing Government Policies and Agencies with Cooperative Functions, Supporting Cooperative Development, Transferring the Registration and Regulation Functions of Existing Government Agencies on Cooperatives As Such And Consolidating the Same with the Authority, Appropriating Funds Therefor, and For Other Purposes.*

⁷ See *Orocio v. Anguluan*, G.R. Nos. 179892-93, January 30, 2009, 577 SCRA 531, 536.

⁸ *Affirming the Continuing Regulatory and Supervisory Authority of the National Electrification Administration, Under Republic Act No. 9136 and Presidential Decree No. 269 (As Amended by Presidential Decree No. 1645), Over All Electric Cooperatives, Registered or Not Registered with the Cooperative Development Authority or the Securities and Exchange Commission.*

“Sec. 57. Conversion of Electric Cooperatives.
– Electric cooperatives are hereby given the option to convert into either stock cooperative under the Cooperatives Development Act (CDA) or stock corporation under the Corporation Code. x x x.”

WHEREAS, Rule 7, Section 7, Paragraph (c) (i) of the Implementing Rules and Regulations (IRR) of EPIRA, provided that the conversion and registration of electric cooperatives (ECs) shall be implemented in the following manner:

“(i) ECs shall, upon approval of a simple majority of the required number of turnout of voters as provided in the Guidelines in the Conduct of Referendum (Guidelines), in a referendum conducted for such purpose, be converted into a Stock Cooperative or Stock Corporation and thereafter shall be governed by the Cooperative Code of the Philippines or the Corporation Code. The NEA, x x x, shall promulgate the guidelines in accordance with Section 5 of Presidential Decree No. 1645.”

WHEREAS, Rule 7, Section 7, Paragraph (c) (ii), IRR of EPIRA provided further that:

“(ii) ECs converted into Stock Corporations shall be registered with the SEC in accordance with the Corporation Code, while those converted into Stock Cooperatives, shall be registered with the CDA: *Provided, however*, That the ECs which opt to remain as Non-Stock Cooperatives shall continue to be registered with the NEA and shall be governed by the provisions of Presidential Decree No. 269.”

WHEREAS, the foregoing provisions of R.A. No. 9136 and its IRR superseded Articles 122 and 128 of R.A. No. 6938, otherwise known as the “Cooperative Code of the Philippines”, insofar as registration and conversion of ECs to stock cooperative under R.A. No. 6938 within three (3) years from the effectivity of the Rules and Regulations promulgated by NEA and the Cooperative Development Authority (CDA) is concerned;

WHEREAS, Articles 122 and 128 of R.A. No. 6938 refer only to ECs that opted to register with CDA pursuant to R.A. No. 6938 and not to ECs that opted to register with CDA pursuant to Section 57 of R.A. No. 9136;

WHEREAS, consistent with R.A. No. 9136, NEA shall continue to exercise its authority under Section 3 and 5 of Presidential Decree (P.D.) No. 1645 over all ECs, registered or not



registered with the CDA or the Securities and Exchange Commission (SEC);

NOW, THEREFORE, I, GLORIA MACAPAGAL-ARROYO, President of the Republic of the Philippines, by virtue of the powers vested in me by law, do hereby order:

SECTION 1. The ECs are hereby given the option to convert to stock corporations and be registered under the Corporation Code, or to stock cooperatives and be registered under the Cooperative Code of the Philippines, following the National Electrification Administration (NEA) Guidelines.

SECTION 2. The NEA shall continue to exercise its regulatory and supervisory authority (institutional, financial, and technical) under Republic Act (R.A.) No. 9136; Presidential Decree (P.D.) No. 269, as amended by P.D. No. 1645, specifically Section 3 and 5 thereof, over all ECs, registered or not registered with the Cooperative Development Authority (CDA) or the Securities and Exchange Commission (SEC).

SECTION 3. All orders, issuances, rules and regulations or parts thereof inconsistent with this Executive Order are hereby repealed or modified accordingly.

SECTION 4. This Executive Order shall take effect immediately.

DONE in the City of Manila, this 9th day of May, in the year of Our Lord, Two Thousand and Seven.

Contending that E.O. No. 263 was an invalid presidential issuance, herein petitioners, namely: Philippine Federation of Electric Cooperatives (PHILFECO), a cooperative federation registered with the CDA, Batangas II Electric Cooperative, Inc. (BATELEC II), Negros Oriental Electric Cooperative, Inc. II (NORECO II), Sorsogon Electric Cooperative, Inc. II (SORECO II), Pangasinan Electric Cooperative, Inc. I (PANELCO I), Quirino Electric Cooperative, Inc. (QUIRELCO), Palawan Electric Cooperative, Inc. (PALECO), and Pangasinan Electric Cooperative, Inc. III (PANELCO III), all CDA-registered electric cooperatives, commenced this special civil action for *certiorari* and prohibition (with prayer for the issuance of a temporary restraining order, writ of preliminary injunction and/or *status quo ante* order).

The petitioners submit that the issuance of E.O. No. 623 by respondent Executive Secretary was in clear violation of the express provisions of the *Cooperative Code* and the CDA Law, and also unconstitutional for usurping the power of Congress to alter or repeal the laws duly passed by Congress; that, in particular, Section 128 of the

Cooperative Code expressly orders the inoperability of Section 3 and Section 5 of P.D. No. 1645 to cooperatives duly registered with the CDA, while Section 17 of the CDA Law affirms the express repeal of Section 3 and Section 5 of P.D. No. 1645 as they relate to electric cooperatives duly registered with the CDA; that E.O. No. 623 thereby ignores the express repeal, and proceeds to declare such repealed provisions to be still operative; that by virtue of its unconstitutionality, E.O. No. 623 is not a law, confers no rights, imposes no duties, and affords no protection, rendering null and void all acts done pursuant to it; and that, consequently, the enforcement and effectivity of E.O. No. 623 should be prohibited.

Owing to the gravity of the issues raised by the petitioners, the Court issued an order enjoining respondent Executive Secretary and the NEA to observe the *status quo ante* between the parties.⁹

During the pendency of the petition, the incumbent directors of BATELEC II, namely: Ruperto H. Manalo, Natalio M. Panganiban, Dakila P. Atienza, Leovino S. Hidalgo, Adrian C. Ramos, Michael Angelo C. Rivera and Gonzalo O. Bantugon, filed a motion for intervention,¹⁰ claiming that Jose Rizal Remo had misrepresented himself as the President of BATELEC II with authority to represent BATELEC II despite his having been already removed by the NEA from that position, together with the other members of the Board of Directors who had passed Resolution No. 07-033 and Resolution No. 07-030 authorizing Remo to file the petition. The Court granted the motion for intervention on December 11, 2007.¹¹

Issues

Petitioners raise the following issues for consideration of the Court:

I

WHETHER OF NOT THE RESPONDENT EXECUTIVE SECRETARY COMMITTED GRAVE ABUSE OF ITS (sic) EXECUTIVE DISCRETION IN ISSUING E.O. NO. 623, REVIVING THE REGULATORY AND SUPERVISORY POWERS OF NEA OVER ELECTRIC COOPERATIVES DULY REGISTERED WITH THE CDA, DESPITE THE EXPRESS PROVISION OF THE LAW, DULY PASSED BY CONGRESS, NEGATING THE SAME.

II

WHETHER OR NOT THIS HONORABLE SUPREME COURT MAY PROHIBIT THE ENFORCEMENT OF E.O. NO. 623 FOR BEING VIOLATIVE OF REPUBLIC ACT NOS. 6938 AND 6939, AS WELL AS ARTICLE VI, SECTION 1 OF THE PHILIPPINE

⁹ *Rollo*, pp. 67-68.

¹⁰ *Id.* at 122-148.

¹¹ *Id.* at 245-246.

CONSTITUTION AS WELL AS THE CONSTITUTIONAL POLICY ON THE BALANCE OF POWER HENCE MAKING IT VOID AB INITIO.

III

WHETHER OR NOT A TEMPORARY RESTRAINING ORDER (TRO) AND/OR WRIT OF PRELIMINARY INJUNCTION, PREVENTING THE EXECUTION OF SUBJECT EXECUTIVE ORDER MAY VALIDLY ISSUE IN THE LIGHT OF THE CIRCUMSTANCES OF THE CASE.¹²

The petitioners challenge the authority of the President to issue E.O. No. 623, submitting that the President has not been vested with legislative powers except those provided in Article VI, Section 23(2) and Section 28(2) of the 1987 Constitution;¹³ that the President cannot ordain an executive order that is contrary to what Congress has enacted; and that in issuing E.O. No. 623, the President has revived Section 3 and Section 5 of P.D. No. 1645, provisions that Article 128 of the *Cooperative Code* and Section 17 of the CDA Law expressly made inoperable to electric cooperatives.

The petitioners maintain that E.O. No. 623 gives the impression that EPIRA revived the NEA's authority over electric cooperatives, notwithstanding that Section 58, Chapter II of EPIRA only granted to the NEA the authority to assure the technical and financial viability of electric cooperatives; and that in issuing E.O. No. 623, the President has effectively repealed Article 128 of the *Cooperative Code* and Section 17 of the CDA Law, thereby usurping the legislative powers of Congress in direct violation of Section 1, Article VI of the 1987 Constitution.¹⁴

In contrast, the respondents and the intervenors counter that the President did not usurp the legislative powers of Congress because the *Administrative Code of 1987* has clothed the President with rule-making powers. They posit that the petitioners, by basing their contentions on the third paragraph of said provisions without taking the succeeding paragraph into account, have offered a limited construction of Article 128 of the *Cooperative Code* and of Section 17 of the CDA Law; and that both paragraphs, construed together, have merely excluded from the application of Section 3 and Section 5 of P.D. No. 1645 the electric cooperatives created under P.D. No. 269 that had qualified and registered with the CDA within three years from the effectivity of the *Cooperative Code* and the CDA Law.

Lastly, the intervenors argue that E.O. No. 623, the *Cooperative Code* and the CDA Law, being all *in pari materia*, should be construed in harmony with each other; and that, therefore, the petitioners' piecemeal interpretation of the laws contravene a basic statutory principle that every

¹² Id. at 17.

¹³ Id. at 18.

¹⁴ Id. at 19-21.

part of a statute must be interpreted together and kept subservient to the general intent of the entire enactment.

Is E.O. No. 623 unconstitutional for reviving the supervisory and regulatory powers of the NEA over all electric cooperatives?

Ruling

We dismiss the petition for *certiorari* and prohibition for being moot and academic.

At the time this petition was filed, the NEA's supervision and control powers over electric cooperatives were outlined in P.D. No. 269, as amended, the *Cooperative Code*, the CDA Law, and the EPIRA. The petitioners submit, however that both the *Cooperative Code* and the CDA Law removed the supervisory and regulatory powers of the NEA over electric cooperatives.

The petitioners are mistaken.

Both Article 128 of the *Cooperative Code* and Section 17 of the CDA Law are *transitory* provisions, and relate to the enforceability of these laws in light of the present set up between the NEA and the electric cooperatives. Their provisions similarly run as follows:

x x x Transitory Provisions. – All cooperatives registered under Presidential Decree Nos. 175 and 775 and Executive Order No. 898, and all other laws shall be deemed registered with the Cooperative Development Authority: Provided, however, That they shall submit to the nearest Cooperative Development Authority office their certificate of registration, copies of their articles of incorporation and bylaws, and their latest duly audited financial statements within one (1) year from the effectivity of this Act, otherwise, their registration shall be cancelled: **Provided, further, That cooperatives created under Presidential Decree No. 269, as amended by Presidential Decree No. 1645, shall be given three (3) years within which to qualify and register with the Authority: Provided, finally, That after these cooperatives shall have qualified and registered, the provisions of Sections 3 and 5 of Presidential Decree No. 1645 shall no longer be applicable to said cooperatives.** (Bold emphasis supplied)

It is plainly erroneous for the petitioners to insist, therefore, that the NEA was completely divested of its authority over the electric cooperatives after the above-quoted transitory provision rendered Sections 3 and 5 of P.D. No. 1645 inapplicable.



First of all, Article 128 of the *Cooperative Code* and Section 17 of the CDA Law contain three provisos. The first proviso requires all cooperatives regardless of the manner of their registration to submit certain documents to the CDA within one year from the effectivity of the *Cooperative Code* or the CDA Law. The second proviso specifically excludes the electric cooperatives created under P.D. No. 269 from the effect of the first proviso and instead gives them three years within which to submit the required documents. The third proviso supplements the second proviso, to the effect that after these electric cooperatives shall have complied with the three-year ultimatum, they shall no longer be covered by Section 3 and Section 5 of P.D. No. 1645.

We note that the petitioners' arguments are based on the second proviso. Considering that the office of a proviso is to modify the operation of that part of the statute immediately preceding the proviso, or restrains or qualifies the generality of the language that it follows,¹⁵ the proviso is thus to be construed with reference to the immediately preceding part of the provisions to which it is attached.¹⁶ Hence, it is the registration with the CDA within the prescribed three-year period, not the mere registration with the CDA, that made the electric cooperatives created under P.D. No. 269 exempt from the scope of Section 3 and Section 5 of P.D. No. 1645.

In *Philippine Rural Electric Cooperatives Association, Inc. (PHILRECA) v. The Secretary, Department of Interior and Local Government*,¹⁷ the Court already recognized the distinction between CDA registered electric cooperatives and those organized under P.D. No. 269 with reference to Article 128 of the *Cooperative Code* in this wise:

To be sure, the transitory provisions of R.A. No. 6938 are indicative of the recognition by Congress of the fundamental distinctions between electric cooperatives organized under P.D. No. 269, as amended, and cooperatives under the new *Cooperative Code*. Article 128 of the *Cooperative Code* provides that all cooperatives registered under previous laws shall be deemed registered with the CDA upon submission of certain requirements within one year. However, cooperatives created under P.D. No. 269, as amended, are given three years within which to qualify and register with the CDA, after which, provisions of P.D. No. 1645 which expand the powers of the NEA over electric cooperatives, would no longer apply.¹⁸

Secondly, assuming that the *Cooperative Code* and the CDA Law rendered Sections 3 and 5 of P.D. No. 1645 inapplicable, the NEA would

¹⁵ *Fernandez v. National Labor Relations Commission*, G.R. No. 106090, February 28, 1994, 230 SCRA 460, 466-467; *Chinese Flour Importers Association v. Price Stabilization Board*, No. L-4465, 89 Phil 439, 450 (1951).

¹⁶ *Mercado, Sr. v. NLRC*, G.R. No. 79869, September 5, 1991, 201 SCRA 332, 342.

¹⁷ G.R. No. 143076, June 10, 2003, 403 SCRA 558.

¹⁸ *Id.* at 570.

still be left with a host of other supervisory and regulatory powers under P.D. No. 269 and P.D. No. 1645, to wit:

- (1) under the declared policies, to exercise continuing regulatory surveillance over electric service areas granted with franchises to operate;¹⁹
- (2) to promote, encourage and assist electric cooperatives in achieving the objective of making service available throughout the nation on an area coverage basis as rapidly as possible;²⁰
- (3) to exercise the authority provided in granting a loan in favor of electric cooperatives;²¹
- (4) to give consent on the sale, lease or any form of disposition of property by the cooperative;²²
- (5) to require a cooperative to extend or improve service, to cease and correct any practice or act which is determined to be a violation of the provisions of Section 35 of P.D. No. 269, among others;²³
- (6) to conduct hearings and investigations and to issue such orders in implementing the provisions of P.D. No. 269, and to require any public service entity or the officials thereof to furnish to the NEA such information and data;²⁴
- (7) to issue rules and regulations;²⁵
- (8) to issue notices,²⁶ contempt,²⁷ and subpoena;²⁸
- (9) to invest and/or grant loans for the development of power generation industries or companies;²⁹ and
- (10) to be represented and to participate in all Board meetings and deliberations and to approve all policies and resolutions.³⁰

Furthermore, Section 127 of the *Cooperative Code* expressly recognized the effectivity of P.D. No. 269, thus:

¹⁹ Section 2, P.D. No. 269.

²⁰ Section 4, P.D. No. 269.

²¹ Sections 7 and 9, P.D. No. 269.

²² Section 36(b), P.D. No. 269.

²³ Section 46, P.D. No. 269.

²⁴ Section 47, P.D. No. 269.

²⁵ Section 49, P.D. No. 269.

²⁶ Section 50, P.D. No. 269.

²⁷ Sections 52 and 54, P.D. No. 269.

²⁸ Section 54, P.D. No. 269.

²⁹ Section 2 (p), P.D. No. 1645.

³⁰ Section 7, P.D. No. 1645.

Section 127. Repeals.—Except as expressly provided by this Code, Presidential Decree No. 175 and all other laws, or parts thereof, inconsistent with any provision of this Code shall be deemed repealed: **Provided, however, That nothing in this Code shall be interpreted to mean the amendment or repeal of any provision of Presidential Decree No. 269: Provided further, That the electric cooperatives which qualify as such under this Code shall fall under the coverage thereof.** (Bold emphasis supplied)

Thirdly, despite the institutional changes brought about by the EPIRA, the NEA continued to wield supervisory authority over the electric cooperatives. To recall, the EPIRA transferred the franchising powers of the NEA to Congress³¹ and its rate fixing powers to the Energy Regulation Commission (ERC).³² These changes notwithstanding, the EPIRA did not completely oust the NEA from exercising its authority over all electric cooperatives. This is clear from the text of Section 58 of the EPIRA,³³ which additionally mandated the NEA to lend technical, financial and institutional assistance to electric cooperatives. Likewise, Section 30³⁴ of the EPIRA further authorized the NEA to act as the guarantor in favor of the electric cooperatives participating in the Wholesale Electricity Spot Market (WESM) scheme. Significantly, Section 80³⁵ of the EPIRA provided for the continued effectivity of P.D. No. 269, as amended by P.D. No. 1647.

In *Zambales II Electric Cooperative, Inc. (ZAMECO II) Board of Directors v. Castillejos Consumers Association, Inc. (CASCONA)*,³⁶ the

³¹ Section 27, R.A. No. 9136.

³² Sections 34, 35, 36, 38, 43(g), 43(j), 43(k), 73, R.A. No. 9136.

³³ Section 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.

³⁴ Section 30. Wholesale Electricity Spot Market.—x x x

NEA may, in exchange for adequate security and a guarantee fee, act as a guarantor for purchases of electricity in the wholesale electricity spot market by any electric cooperative or small distribution utility to support their credit standing consistent with the provisions hereof. For this purpose, the authorized capital stock of NEA is hereby increased to Fifteen billion pesos (₱15,000,000,000.00).

All electric cooperatives which have outstanding uncollected billings to any local government unit shall report such billings to NEA which shall, in turn, report the same to the Department of Budget and Management (DBM) for collection pursuant to Executive Order 190 issued on December 21, 1999.

³⁵ Section 80. Applicability and Repealing Clause.—The applicability provisions of Commonwealth Act No. 146, as amended, otherwise known as the “Public Service Act”; Republic Act 6395, as amended, revising the charter of NPC; Presidential Decree 269, as amended, referred to as the National Electrification Decree; Republic Act 7638, otherwise known as the “Department of Energy Act of 1992;” Executive Order 172, as amended, creating the ERB; Republic Act 7832 otherwise known as the “Anti-Electricity and Electric Transmission Lines/Materials Pilferage Act of 1994”, shall continue to have full force and effect except insofar as they are inconsistent with this Act. (Emphasis supplied)

³⁶ G.R. Nos. 176935-36, March 13, 2009, 581 SCRA 320.

Court upheld the supervisory authority of the NEA over the electric cooperatives, to wit:

The passage of the EPIRA and its creation of PSALM Corp. which assumed all outstanding financial obligations of electric cooperatives did not affect the power of the NEA particularly over administrative cases involving the board of directors, officers and employees of electric cooperatives. This authority is expressly recognized under the last paragraph of Sec. 58, Chapter VII of the EPIRA which states that, "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."

X X X X

A review of the provisions of the EPIRA reveals that the ERC has been given the specific mandate to "promote competition, encourage market development, ensure customer choice and penalize abuse of market power in the restricted electricity industry." PSALM Corp., on the other hand, was created in order to "manage the orderly sale, disposition, and privatization of NPC generation assets, real estate and other disposable assets, and IPP contracts with the objective of liquidating all NPC financial obligations and stranded contract costs in an optimal manner." Obviously, the functions of these two agencies do not come into conflict and are not inconsistent with the supervisory power exercised by NEA in the instant case.

Furthermore, Sec. 8 of E.O. No. 119 specifically provides that: The assumption by PSALM of the Rural Electrification Loan/s of an EC shall be revoked for failure to continually comply with Section 5 of this Executive Order ..." Sec. 5, in turn, provides that the assumption of Rural Electrification Loans shall be effective upon compliance with certain terms and conditions, among which, is the continued compliance by the electric cooperatives with all NEA policies governing their relationship with NEA pursuant to P.D. Nos. 269 and 1645. These provisions explicitly recognize the continued authority of the NEA over electric cooperatives and the requirement for the latter to remain compliant with NEA policies on pain of having the assumption of their loan obligations by PSALM Corp. revoked.³⁷

We even held in the same ruling that the NEA's supervision and control over the electric cooperatives in light of the EPIRA included the imposition of disciplinary actions brought against the members of the Boards of Directors, officers and employees of the electric cooperatives, *viz*:

³⁷ Id. at 330-331.

P.D. No. 269, as amended by P.D. No. 1645, vested NEA with the authority to supervise and control electric cooperatives. In the exercise of its authority, it has the power to conduct investigations and other similar actions in all matters affecting electric cooperatives. The failure of electric cooperatives to comply with NEA orders, rules and regulations and/or decisions authorizes the latter to take preventive and/or disciplinary measures, including suspension and/or removal and replacement of any or all of the members of the Board of Directors, officers or employees of the electric cooperative concerned.³⁸

Lastly, contrary to the posture taken by the petitioners, the assailed executive order did not set aside the provisions of the *Cooperative Code* and the CDA Law. The fifth, sixth and seventh *Whereas* clauses of E.O. No. 623 have expressly recognized the inapplicability of Section 5 and Section 6 of P.D. No. 1645 to the electric cooperatives registered with the CDA under R.A. No. 6938, to wit:

X X X X

WHEREAS, the foregoing provisions of R.A. No. 9136 and its IRR superseded Articles 122 and 128 of R.A. No. 6938, otherwise known as the "Cooperative Code of the Philippines," insofar as registration and conversion of ECs to stock cooperative under R.A. No. 6938 within three (3) years from the effectivity of the Rules and Regulations promulgated by NEA and the Cooperative Development Authority (CDA) is concerned;

WHEREAS, Articles 122 and 128 of R.A. No. 6938 refer only to ECs that opted to register with CDA pursuant to R.A. No. 6938 and not to ECs that opted to register with CDA pursuant to Section 57 of R.A. No. 9136;

WHEREAS, consistent with R.A. No. 9136, NEA shall continue to exercise its authority under Section 3 and 5 of Presidential Decree (P.D.) No. 1645 over all ECs, registered or not registered with the CDA or the Securities and Exchange Commission (SEC);

X X X X

Ineluctably, the challenged issuance covered only the electric cooperatives registered under Section 57 of the EPIRA,³⁹ not those under R.A. No. 6938.

³⁸ Id. at 329.

³⁹ Section 57. *Conversion of Electric Cooperatives*.—Electric cooperatives are hereby given the option to convert into either stock cooperative under the Cooperatives Development Act or stock corporation under the Corporation Code. Nothing contained in this Act shall deprive electric cooperatives of any privilege or right granted to them under existing laws, particularly those under the provisions of Republic Act Nos. 6938, 7160 and 8241.

Nevertheless, the NEA and the intervenors argue that the petitioners fall within the scope of E.O. No. 623 because they registered under the EPIRA, not the *Cooperative Code*. Unfortunately, this Court is not prepared to rule on the matter for this is not the *lis mota* of the petition and which may only be raised in a *quo warranto* petition.

Two important legislations have meanwhile modified the power of supervision and control belonging to the NEA.

First was Republic Act No. 9520 (*Philippine Cooperative Code of 2008*), signed into law on February 17, 2009. Paragraphs (1) to (3) of Article 132 of the *Philippine Cooperative Code of 2008* explicitly provided that all electric cooperatives registered with the CDA, save those with existing loans with the NEA after June 26, 2001, shall no longer be covered by P.D. No. 269, as amended by P.D. No. 1645, thus:

Article 132. Effects of Registration with the Authority.—(1) Upon the effectivity of this Code, electric cooperatives that are duly registered with the Authority, and issued a certificate of registration, shall no longer be covered by Presidential Decree No. 269, as amended by Presidential Decree No. 1645; Provided, That electric cooperatives registered with the Authority shall now be covered by the provisions of this Code as well as future rules and issuances of the Authority: x x x.

(2) The electric cooperatives registered with the Authority with existing loans obtained from NEA after June 26, 2001 shall continue to observe the terms of such loans until full payment or settlement thereof.

(3) Except as provided in the immediately preceding paragraph, the NEA shall no longer exercise regulatory or supervisory powers on electric cooperatives duly registered with the Authority; x x x.

Paragraph (3), Article 144 of *Philippine Cooperative Code of 2008*⁴⁰ expressed the same intention to remove all electric cooperatives from coming under the supervisory and regulatory powers of the NEA.

Article 143 of the *Philippine Cooperative Code of 2008* further explicitly declared:

⁴⁰ Art. 144. Transitory provisions. – (1) x x x;
(2) x x x x

(3) Registration of electric cooperatives with the Authority shall not be considered as a transfer of ownership of its assets and liabilities nor shall it constitute a change in the nature, structure, and status of the cooperative. Said registration shall not result in the revocation of the condoned loans under Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act: Provided, That electric cooperatives with existing loans shall not be subject to the control and supervision of its creditors and shall only be limited to the fulfillment of its civil obligations. (emphasis supplied)



Art. 143. Repealing Clause.—Except as expressly provided by this Code, Presidential Decree No. 175 and all other laws, or parts thereof, inconsistent with any provision of this Code shall be deemed repealed: Provided, That the provisions of Sections 3, 5, and 7 of Presidential Decree No. 1645, Executive Order No. 623, series of 2007, Revenue Regulation No. 20-2001, and all laws, decrees, executive orders, implementing rules and regulations, BIR circulars, memorandum orders, letters of instruction, local government ordinances, or parts thereof inconsistent with any of the provisions of this Act are hereby repealed, amended or modified accordingly.

In sum, the NEA was vested with supervisory and regulatory powers over the electric cooperatives since its creation by P.D. No. 269. With the enactment of the *Cooperative Code* and the CDA Law, the NEA continued to possess those powers granted by P.D. No. 269, including its amendatory law, P.D. No. 1645. Except the electric cooperatives created under P.D. No. 269 that failed to register with the CDA within the three-year period provided in the transitory provisions of the *Cooperative Code* and the CDA Law, and those created under the *Cooperative Code*, the powers of the NEA vested by Sections 3 and 5 of P.D. No. 1645 became inapplicable. However, with the enactment of the EPIRA, the electric cooperatives, regardless of the manner of their creation, were placed under the continued supervision and regulation of the NEA pursuant to Section 58 of the EPIRA. It was only after the enactment of the *Philippine Cooperative Code of 2008* that the NEA was finally ousted of its supervisory and regulatory powers over all the electric cooperatives registered with the CDA. It should be stressed that *Philippine Cooperative Code of 2008* merely modified or amended the provisions of E.O. No. 623 *pro tanto*; hence, E.O. No. 623 has remained a valid presidential issuance. Clearly, the President did not act in an arbitrary, capricious, whimsical or despotic exercise of power in issuing E.O. No. 623.⁴¹

The second is Republic Act No. 10531 (*National Electrification Administration Reform Act of 2013*), signed into law by President Aquino on May 7, 2013, which seeks to empower and strengthen the NEA in pursuing the electrification program through electric cooperatives.⁴² Section 5 of Republic Act No. 10531 expands the powers and functions of the NEA under Section 4 of P.D. No. 269 to include, among others, **the authority to supervise the management and operations of all electric cooperatives**. This power of supervision is made explicit in Section 6 of the law, *viz*:

⁴¹ *Angeles v. Hon. Secretary of Justice*, G.R. No. 142612, July 29, 2005, 465 SCRA 106, 113-114; *BAYAN (Bagong Alyansang Makabayan) v. Zamora*, G.R. No. 138587, October 10, 2000, 342 SCRA 449, 494.

⁴² Sec. 2(b), R.A. No. 10531.

Sec. 6. A new section, to be designated as Section 4-A, is hereby inserted under Presidential Decree No. 269, as amended to read as follows:

SEC. 4-A. Supervisory Powers of the NEA Over Electric Cooperatives. – 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.

Republic Act No. 10531 does not distinguish between the electric cooperatives registered with the CDA, the NEA or the SEC, inasmuch as Section 5 expressly subjects all electric cooperatives to the supervisory powers of the NEA. The deliberation on the proposed bill made this legislative intention clear, viz:

REP. ESCUDERO. I am all for the strengthening of the NEA. But how do we solve the problem of some electric cooperatives being recognized by the national development for cooperatives and not by the NEA?

REP. ABAD. **This particular bill seeks to give supervisory powers to all electric cooperatives, whether they are part of the CDA or the NEA.** The particular purpose is really more to ensure that the standards for technical, financial viability and operational professionalism as distribution utilities are met and enforced so that the total electrification program of the country would really be successful, and will have achieved the impact that the government would want to achieve.

REP. ESCUDERO. Thank you.

Does this mean that the CDA will no longer be involved in recognizing electric cooperative?

REP. ABAD. That is not true. **Electric cooperatives can still opt to become part of the CDA. That is their option. They can opt to be stock cooperatives as distribution utilities. So all cooperatives, my dear colleague, would still have the option in terms of what kind or where they will be registered.**⁴³ (Bold emphasis supplied)

That electric cooperatives may still exercise their option to remain as non-stock, non-profit cooperative or convert into and register as a stock cooperative or a stock corporation was well recognized by Section 12 of Republic Act No. 10531. The same section however maintained the power of supervision belonging to the NEA over electric cooperatives whether registered with the CDA or the SEC. Section 12 reads:

Sec. 12. Section 32 of Presidential Decree No. 269, as amended, is hereby further amended to read as follows:

Sec. 32. Registration of All Electric Cooperatives. – All electric cooperatives may choose to remain as a non-stock, non-profit cooperative or convert into and register as: (a) a stock cooperative under the CDA; or (b) a stock corporation under the SEC, in accordance with the guidelines to be included in the IRR of this Act.

Such choice shall carry with it the attendant requirements of compliance with the laws and regulatory guidelines governing the respective government agencies having jurisdiction over their registration.

Regardless of the choice made, the NEA shall have authority over electric cooperatives, whether stock or non-stock, to require the submission of reportorial requirements as may be necessary relative to their operations as electric distribution utilities x x x:

x x x x

Likewise, the supervisory and oversight functions of the NEA, as may be detailed in this Act and its IRR, shall be applicable to both stock and non-stock cooperatives.

⁴³ Congressional Record, Vol. 3, No. 63d, June 6, 2012, p. 13.

Electric cooperatives which register with the CDA shall continue to enjoy the benefits under this Act.

Existing electric cooperatives may likewise opt to register as stock corporations with the SEC; *Provided, however,* That electric cooperatives registered with the SEC shall no longer enjoy the incentives provided for in this Act.

Despite the registration of the electric cooperatives under the CDA or the SEC, the NEA shall retain its supervisory and disciplinary power over them in the conduct of its operation as electric distribution utilities. (Emphasis supplied)

Finally, Section 18 of Republic Act No. 10531⁴⁴ expressly repeals Article 132(3) of the *Philippine Cooperative Code of 2008* that ousted the NEA of its supervisory authority over CDA-registered electric cooperatives. **As it now stands, the NEA is vested with the appropriate power of supervision and control over all electric cooperatives regardless of the manner of their creation and their option to be registered with the CDA or the SEC.**

Insisting to resolve the petition would no longer serve any constructive purpose because of the intervening enactment of Republic Act No. 10531. The action to determine whether or not E.O. No. 623 was unconstitutional for reviving the supervisory and regulatory powers of the NEA over all electric cooperatives has been thereby rendered moot and academic, banishing the need to still decide this action. Indeed, there is no longer any justiciable controversy to be resolved once the issue of constitutionality has been overtaken by supervening events. Also, judicial intervention will no longer be necessary unless the issues raised therein are capable of being raised again between the parties.

WHEREFORE, the Court **DISMISSES** the petition for *certiorari* and prohibition for being moot and academic, without pronouncement on costs of suit.” Sereno, C.J., on leave. Brion, J., on official leave. (adv6)

Very truly yours,


ENRIQUETA E. VIDAL
Clerk of Court

⁴⁴ Section 18. *Repealing Clause.* – Article 132(3) of Republic Act No. 9520 and Section 30 of Republic Act No. 9126 (EPIRA) on NEA’s authorized capital stock are hereby repealed. Any other provision of law, presidential decree, executive order, or rules and regulations inconsistent with the provisions of this Act or with the rules and regulations issued pursuant thereto are hereby repealed or modified accordingly.

ATTY. ERNESTO P. TABAO (reg)
Counsel for Petitioners
WESTWOOD LAW
Suite 1004 Atlanta Centre
31 Annapolis St., Greenhills
San Juan, Metro Manila

~~PUBLIC INFORMATION OFFICE (x)~~
LIBRARY SERVICES (x)
[For uploading pursuant to A.M. No. 12-7-1-SC]

JUDICIAL RECORDS OFFICE (x)
JUDGMENT DIVISION (x)
Supreme Court

G.R. No. 178082
wmd 12715 (adv6) 2415

THE SOLICITOR GENERAL (reg)
134 Amorsolo St., Legaspi Village
1229 Makati City

THE GOVERNMENT CORPORATE COUNSEL (reg)
3rd Flr., MWSS Building
Katipunan Road, Diliman 1105 Quezon City

THE EXECUTIVE SECRETARY (reg)
Rm.234, Mabini Hall, Malacañang Palace
Manila

THE ADMINISTRATOR (reg)
National Electrification Administration
NIA Road, Government Center
Diliman, 1104 Quezon City

ATTYS. ADOLPHO M. GUERZON & SHERWIN T.
DE PERALTA (reg)
Manalo Puno Jacson & Guerzon Law Offices
Counsel for Movants-Intervenors
2/F Unioil Center, Madrigal Business Park
Acacia St.t cor. Commercial Avenue
Ayala Alabang, 1780 Muntinlupa City

