



Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

EIGHTEENTH CONGRESS

Third Regular Session



COMMITTEE REPORT NO. 1243

Submitted by the Committee on Energy on September 21, 2021

Re: House Resolution No. 2239

Recommending its adoption pursuant to House Resolution 1776 and informing the House of its findings and recommendations

Sponsors: Representatives Juan Miguel M. Arroyo, Presley de Jesus and Sergio C. Dagooc

Mr. Speaker:

The Committee on Energy, to which was referred House Resolution No. 1776, introduced by Representatives Presley C. de Jesus, Sergio C. Dagooc, Adriano A. Ebcas and Godofredo N. Guya, entitled:

“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”


has considered the same and recommends the adoption of House Resolution No. 2239, entitled:

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

pursuant to House Resolution No. 1776 and informs the House of its findings and recommendations with Representatives Presley C. de Jesus, Sergio C. Dagooc, Adriano A. Ebcas, Godofredo N. Guya, Juan Miguel M. Arroyo, Jericho Jonas B. Nograles, Hector S. Sanchez, Abdullah D. Dimaporo, Luisa Lloren Cuaresma, Diego C. Ty, John Marvin “Yul Servo” C. Nieto, Alyssa Sheena P. Tan, Ruth Mariano-Hernandez, Jose Gay G. Padiernos, Rose Marie “Baby” J. Arenas, Rufus B. Rodriguez, Cristal L. Bagatsing and Tyrone D. Agabas, as authors thereof.

Respectfully submitted:



JUAN MIGUEL MACAPAGAL ARROYO
Chairperson
Committee on Energy

The HONORABLE SPEAKER
HOUSE OF REPRESENTATIVES
Quezon City



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House Resolution No. 2239

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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 (RA 10531), “*Strengthening the National Electrification Administration (NEA), Further Amending Presidential Decree No. 269, as Amended,*” was enacted into law on May 07, 2013;

WHEREAS, Section 6 of RA 10531 states the supervisory powers of 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 for General Managers of all the electric cooperatives.

WHEREAS, in the said memorandum, there were two options provided on how the Board of Directors of an electric cooperative can hire or select a new General Manager: first, by publication of 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 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, Item No. III, Section 2, Paragraphs (d) and (e) of the above stated memorandum states that the pre-qualified 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 (h) 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 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 pre-qualified 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 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, on April 30, 2020, General Manager Gerardo P. Verzosa officially retired from the BENECO after serving for more than four (4) 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 in 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*”;

WHEREAS, in RB 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 the usurpation of the power of 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 By-Laws, and such act gave unwarranted benefit, advantage, or preference manifested partiality and evident bad faith to 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 P.D. No. 269, as amended by R.A. No. 10531, which are delegated to the NEA to exercise its administrative functions, allows the agency to issue advisories and memoranda and rules for

administrative proceedings, in this case, the selection, hiring, and termination of services and suspension for General Managers of all the 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 BENEKO 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 2017-035, which is tantamount to a failure in implementing 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 and 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 to select and appoint the General Manager of the BENEKO is an overreach of their powers and is an *ultra vires* act;

WHEREAS, the Committee on Energy endorsed to maintain the “*status quo*” on retaining the current Officer-in-Charge of BENEKO 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 the 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 P.D. No. 269 and R.A. No. 10531 in so far as the NEA and the electric cooperatives are concerned because there are rules and regulations that define the relationship between the electric cooperatives and 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 of R.A. 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, to urge the National Electrification Administration Board of Administrators to strictly adhere to and to 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 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 BENECON;

RESOLVED, FURTHERMORE, to remind the NEA to avoid repeated *ultra vires* acts, specifically in its selection of the General Manager of BENECON and maintain the *status quo* on retaining the current Officer-in-Charge of BENECON, under pain of contempt, until all the issues on the selection of the General Manager of BENECON have been resolved;

RESOLVED, FINALLY, that copies of this Resolution be furnished the Department of Energy and the National Electrification Administration.

Adopted,



COMMITTEE ON ENERGY

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REPORT ON THE INQUIRY CONDUCTED RE: HOUSE RESOLUTION NO. 1776

I. PREFATORY STATEMENT

1. On June 02 and August 18, 2021, the Committee conducted an inquiry, in aid of legislation, on House Resolution No. 1776, introduced by Representatives Presley C. de Jesus, Sergio C. Dagooc, Adriano A. Ebcas and Godofredo N. Guya, entitled: *“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”*, with the end in view of finding appropriate and viable solutions to address the same.

The Committee invited resource persons from the Department of Energy (DOE), represented by Undersecretary Emmanuel P. Juaneza and Director Mario Marasigan; National Electrification Administration (NEA), represented by Administrator Edgardo R. Masongsong, Deputy Administrator Rossan Rosero-Lee, Department Manager Atty. Vic Alvaro and OIC Deputy Administrator Mr. Nollie Alamillo; NEA Board of Administrators (NEA BOA), represented by Board Members Agustin Maddatu, Rene Gonzales and Alipio Cirilo Badelles; Office of the Government Corporate Counsel (OGCC), represented by Atty. Bel D. Derayunan and Atty. Isabelita D. Vena; Philippine Rural Electric Cooperative Association (PHILRECA), represented by Executive Director Atty. Janeene Depay-Colingan; Philippine Federation of Electric Cooperative (PHILFECO), represented by Chief Executive Officer Ponciano Payuyo; National Center of Electric Cooperative Consumers (NCECCO), represented by National Chairman Reynaldo Villanueva; National Association of General Managers of Electric Cooperatives (NAGMEC), represented by President Allan Laniba; Philippine Association of Board of Directors of Rural Electric Cooperatives, Inc. (PHABDREC), represented by President Atty. Gloria Corrales; and Benguet Electric Cooperative Board of Directors (BENECO BOD), represented by President of the Board of Directors Atty. Esteban Somngi and Corporate Legal Counsel Atty. Delmar O. Cariño. The Committee directed the resource persons to shed light on the issues raised in the House Resolution in order to find viable solutions to address the same.

II. ISSUES DISCUSSED

- 1. On the selection of the new General Manager of the Benguet Electric Cooperative (BENECO) which was allegedly influenced surreptitiously by the National Electrification Administration Board of Administrators (NEA BOA) in terms of qualifications criteria**

The BENECO Board of Directors finds the actions made by the NEA BOA on endorsing one applicant for BENECO General Manager inappropriate and contrary to its own issuances, such as NEA Memorandum Order No. 2017-035, on the Revised Policy on the Selection, Hiring, Termination of Service/Suspension for GM of Electric Cooperatives (ECs). Based on the Memorandum Order, the NEA BOA has no power to select and appoint the GM. Its power is limited to the screening of the applicants for the position of General Managers of electric cooperatives and to validate if the said applicants possess all the qualifications required by law. The BENECO Board of Directors opined that the power and authority to appoint a GM exclusively belongs to the Board of Directors of the electric cooperative concerned.

- 2. On the NEA Memorandum 2017-035 dated October 24, 2017**

Representative Adriano A. Ebcas sought clarifications on certain sections on the NEA Memorandum 2017-035, as follows:

- If there are requirements as regards the educational attainment, work experience, personality and character, and other qualifications; and
- If the same are included in the NEA guidelines on the qualification standards, who determines the qualification standards, who are the members during the final interview, who conducted the final interview in the case of the BENECO and the reason for the exclusion of the NEA Deputy Administrator during the final interview, and the parameters in rating the interviewee.

NEA BM Rene Gonzales explained that the NEA Memorandum No. 2017-035 was approved by the BOA and admitted that although he was not familiar on the Memorandum, he agreed to recommend only one applicant because of the information that the provision in the Memorandum was for the Selection Committee. The BOA is not covered in the said provision.

BM Gonzales stated that the requirements as regards the educational attainment, work experience, personality and character and other qualifications are included in the NEA guidelines and the Screening Committee determines the qualification standards. In the case of the BENECO, the Members of the BOA were the only members in the final interview. The NEA Deputy Administrator, who was usually present during the final interview, was excluded.

Minority Leader Joseph Stephen “Caraps” S. Paduano corrected the impression of BM Gonzales that the NEA Memorandum No. 2017-035 is not a law. BM Gonzales clarified that the NEA BOA followed what was on the list in Section 4 (a) which states that the function of the NEA BOA is “*to endorse to the BOD ALL APPLICANTS who have passed in the final interview*” (emphasis supplied).

Representative Mark Go noted that it is clearly specified in the NEA Memorandum No. 2017-035 that the Board of Directors of the electric cooperative has the authority to appoint or terminate a General Manager in accordance with the guidelines set forth by the NEA. He clarified that the NEA’s only role is to endorse a candidate, but the Board of Directors has the final decision.

Mr. Nollie Alamillo, NEA Department Manager, stated that in as far as the NEA Memorandum No. 2017-035 is concerned, the Body that has the authority to select and appoint General Manager is the Board of Directors of the concerned EC. He referred to Section 3, item number three of the NEA Memorandum No. 2017-035 on who has the authority to select and appoint the General Manager.

Vice Chairperson Presley C. de Jesus and Minority Leader Paduano queried on the legal basis of Roman Numeral No. III that gives the authority to NEA to appoint GMs. NEA Deputy Administrator Atty. Rossan Rosero-Lee stated that the provision in Roman Numeral III was more of the exception rather than the rule.

Minority Leader Paduano stressed that there was no such thing as exception to the law. He queried if the NEA has the mandate to appoint such cases. Atty. Rosero-Lee replied that the NEA can invoke the police power of the State in extreme or unreasonable cases.

Representative Dagooc sought clarification from NEA BOA Alternate Chairperson Usec. Juaneza on the definition of the word “*unreasonable*” in the NEA Memorandum No. 2017-035. Usec. Juaneza stated that “*unreasonable*” means elements which are (1) contrary to the law; and (2) contrary to social norms and ethics.

3. On the selection of applicant for BENECO GM

On the endorsement of the applicants, the Board of Administrators present in the meeting had different explanations. For BM Agustin Maddatu, he endorsed all applicants, while BM Gonzales just endorsed one (1) applicant per deliberation by the BOA.

As regards the query of Vice Chairperson de Jesus on why the process was not applied in the case of BENECO, BM Gonzales stated that there was only one (1) applicant who passed the final interview as the BENECO General Manager.

Usec. Juaneza clarified that their participation in the selection of General Managers was after the endorsement to the NEA BOA.

BENECO Corporate Legal Counsel Atty. Delmar O. Cariño contended that if there is no numerical rating in the results and evaluation on the final interview by the NEA BOA, then there is no legal basis for the NEA BOA to endorse only the candidate or the applicant with the higher score. Therefore, the submission by the NEA BOA of the names of the candidates or applicants to the electric cooperative Board of Directors becomes ministerial.

Representative Dagooc manifested his observations on the qualifications of all the applicants for BENECO GM. He said that one of the applicants did not possess two (2) qualifications required in the NEA Memorandum, but said applicant was not disqualified by the screening Committee.

Mr. Alamillo of the NEA-Institutional Development Department clarified on the following:

- (1) There is no provision in the guidelines that states that the Screening Committee has the authority to disqualify;
- (2) The Screening Committee disclosed all credentials, personal circumstances of the applicants before the conduct of the final interview during the presentation to the NEA BOA; and
- (3) The functions of the Screening Committee are listed on item 2, Screening of Applicants in NEA Memorandum No. 2017-035.

Since the Screening Committee has no authority to disqualify and there is no provision that the Screening Committee should qualify those who are not qualified, the Screening Committee divulged the information on qualifications of applicants to the NEA BOA during the conduct of the final interview.

Mr. Alamillo clarified that the Screening Committee is the same as the Selection Committee. The Selection Committee chooses the best qualified applicants on the basis of scores obtained in the interview. Thus, the recommendation of the Screening Committee was based on the interview.

4. On the endorsement of one (1) instead of two (2) applicants as BENECO General Manager

Energy Chairperson Juan Miguel M. Arroyo noted that the NEA was accused of meddling too much in the appointment of the GMs to the point that it is the one which chose the General Managers. For clarification, Chairperson Arroyo queried on the endorsement of one (1) instead of two (2) applicants to BM Maddatu and on his reason for his decision to endorse only one applicant considering that both had passed the final interview.

BM Maddatu denied that they overextended their power on the selection of the General Managers. According to him, the NEA BOA interviewed all the applicants, and they endorsed the one they think has an experience, is honest and cooperative. BM Maddatu revealed that in his 5-years as NEA BM, it was the first time that they endorsed one (1) applicant. This was based on their interpretation on the Memorandum which stated that they can endorse only one (1) applicant.

Usec. Juaneza clarified that the exclusion of the Selection Committee in the final interview was based on Section 2 (g) of the Memorandum. However, Deputy Administrator Rosero-Lee and Department Manager Atty. Vic Alvaro stated that the final interview conducted on the BENECO General Manager applicant was the first time that the Deputy Administrator was excluded, contradicting the statement of Usec. Juaneza's statement.

BM Gonzales stated that there are parameters in rating the interviewee and these are applicable to all the interviewees. BM Maddatu revealed that the Screening Committee follows no particular rating. He disclosed that since it is not indicated in the Memorandum any pass or fail mark, the NEA BOA decided to endorse the applicant with the highest score during the final interview to the BENECO Board of Directors.

Usec. Juaneza stated that: (1) NEA BOA has not selected the GM but plainly endorsed and there are processes that must be followed.

5. On the BENECO Board of Directors' Statement on the Selection of BENECO General Manager

As regards the rights of the Board of Directors to choose the General Managers, Atty. Carino of the BENECO Board of Directors, revealed the following:

- The NEA BOA passed a resolution to endorse only one (1) candidate instead of two (2) qualified candidates;
- The NEA BOA resolution, which was accompanied by a transmittal letter to the Board of Directors dated May 06, 2021, particularly ordered the Board of Directors to act by way of a resolution on the NEA BOA Resolution on May 14, 2021. Atty. Carino revealed that it is indicated in the last paragraph of the transmittal letter that there was an intent to muzzle the right of the Board of Directors to reject the NEA BOA Resolution because attached thereto was already a performance management contract which the letter stated that the BENECO should execute what was contained in the NEA BOA Resolution.
- Atty. Carino seemed to understand that the NEA BOA wanted the Board of Directors to already confirm the lone endorsement and sign the performance management contract.

6. On the query if the NEA Memoranda No. 2017-035 and 2018-004 were followed during the selection process, Usec Juaneza stated that the selection of the BENECO General Manager went through the process prescribed in the Memoranda.

7. On why the NEA BOA sought for legal opinion from the OGCC after the BENECO Board rejected its recommendation for BENECO General Manager

Usec. Juaneza stated that they sought the opinion of the OGCC because the BENECO Board of Directors rejected their recommendation. BENECO Board of Directors submitted a Resolution appointing Engr. Melchor S. Licoben as the General Manager. He promised to provide the Committee with the copy of the NEA/OGCC Opinion. He likewise requested to submit in writing the ambiguities of the OGCC opinion.

NEA Legal Services Atty. Vic Alvaro clarified that the legal opinion they gave to the NEA BOA was based on what is indicated in the NEA Memoranda No. 2017-035 and 2018-004, while the legal opinion the OGCC has given to the NEA BOA was based on the application and selection process of BENECO General Manager.

8. On why the NEA BOA submitted only one (1) applicant and did not submit to the BENECO all the applicants who passed the interview, Usec Juaneza said that the NEA BOA submitted the two names as written in the NEA BOA Resolution. He admitted, however, that they only endorsed or recommended the one with the highest score. Vice Chairperson de Jesus emphasized that as specified in the NEA Memorandum, it should be **all the applicants who passed**, not the only one (1) who get the highest score, that should be recommended to the electric cooperative.

BENECO Board of Directors President Atty. Esteban Somngi confirmed that only one (1), not two (2), applicant was endorsed by the NEA BOA, which they submitted to the BENECO Board of Directors.

9. On the submission of requested documents from the meeting conducted on June 02, 2021, the NEA informed the Committee, through a letter, that it cannot submit records of the meeting because there is no record, while the results of the exams are confidential. Chairperson Arroyo stated that constitutional bodies, like the House of Representatives, are not covered by the Data Privacy Act. He suggested to subpoena the NEA BOA for the submission of the documents, to which Vice Chairperson de Jesus agreed upon.

10. **On the selection process**, NEA-Institutional Development Department Head Nollie Alamillo stated that they followed NEA Memorandum No. 2017-035. He presented to the Committee the relevant guidelines indicated in the Memorandum. As for the result of the selection process for BENEKO General Manager, he said that they submitted their recommendation to the NEA BOA for final interview and he is not authorized by the NEA BOA to divulge other information that they have already submitted to the Board.

Usec. Juaneza stated that the prequalified applicants went through the selection process, including the University of the Philippines' emotional quotient examination. One applicant is an engineer, with experience on the electric cooperative management and supervision, while the other is not an engineer and no experience on electric cooperative management and supervision. Usec. Juaneza promised to submit the information requested by the Committee.

11. Representative Dagooc noted that there is a blatant disregard on the part of the NEA BOA in terms of following the provisions, particularly on the qualifications of the applicants. Specifically, there was a violation of NEA Memorandum No. 2017-035, Part III, No. 1 (d). One of the candidates failed to meet the following mandatory qualifications:

- Item d.1 on educational qualification: **Applicant must have a bachelor's degree** from accredited schools/universities **in any of the following fields** (*emphasis supplied*): Engineering (preferably Electrical, Mechanical and Electronics and Communications Engineer), Business Administration/Finance Management, Accountancy, or Behavioral Science.
- Item d.6 on work experiences: **at least five (5) years of experience** (*emphasis supplied*) with proven track record in the effective management of a successful electric utility-related business enterprise.

As regards the query of Representative Dagooc, Usec Emmanuel Juaneza confirmed that indeed, one of the applicants failed to meet the above-mentioned qualifications.

12. **On how an EC can hire and appoint a General Manager**

Representative Dagooc established that according to NEA Memorandum No. 2017-035, there are two (2) ways an electric cooperative can hire or select a new General Manager: First, by publication of vacancy and accepting applicants for the position; and second, by recommending a General Manager to the NEA, both of which shall undergo the hiring process as indicated in the memorandum.

13. That of the two approaches mentioned above, the BENEKO Board of Directors used the second option available to it and appointed and recommended a department manager for the position, hence, there was no vacancy in the first place.

BENEKO's representatives confirmed the existence of a plantilla position for Assistant General Manager in their organizational structure. The plantilla position and the organizational structure were approved by the NEA. On the query of Representative Dagooc on what is the rationale of the said plantilla position and organizational structure, BENEKO's Board President Atty. Esteban Somngi confirmed that this was for succession planning, i.e., in the event of resignation or retirement of the electric cooperative's General Manager, the Board of Directors will promote the Assistant General Manager. This is the reason why upon the effectivity of the previous General Manager's retirement, the Board of Directors simply chose Option B of hiring a General Manager and immediately promoted the Assistant General Manager to the position of General Manager.

III. **FACTS/FINDINGS**

Based on the inquiry conducted, the Committee gathered the following facts:

1. That initially, there has been no legal opinion sought before the NEA-Legal Service Office as regards the decision on the final interview and the determination on the qualifications for the position of electric cooperative's General Manager.
2. That there was a specific guidance submitted to the NEA BOA on the result of the evaluation and screening of candidates. The guidance came from the presentation shown to the Board before the conduct of the actual final interview, which disclosed all the qualifications and personal circumstances of the applicants, including the background investigation and all clearances, administrative cases, or other cases that the applicant may have. After the background investigation, applicants with no derogatory records were called for final interview before the NEA BOA.
3. That the BENECO Board of Directors already named Engr. Licoben as GM prior to the entry of another applicant, and clearly the BENECO Board of Directors did not declare vacancy as it promoted the Assistant General Manager, based on its policy as reflected in the organizational structure.
4. That the BENECO Board of Directors rejected NEA BOA Resolution No. 2021-47 and reiterated the appointment of Engr. Licoben as BENECO's General Manager.
5. That, per their own admission, the NEA BOA are not very familiar with the selection process and that they did not review the Memorandum. In view of this, they failed to properly supervise and implement the regulations.
6. That there was a clear violation and grave abuse of discretion due to lack or excess of jurisdiction especially on the part of the NEA BOA, specifically on the qualifications of applicants on the NEA Memorandum No. 2017-035, Part III, No. 1(d):
 - Item d.1 on educational qualification: **Applicant must have a bachelor's degree** from accredited schools/universities **in any of the following fields** (*emphasis supplied*): Engineering (preferably Electrical, Mechanical and Electronics and Communications Engineer), Business Administration/Finance Management, Accountancy, or Behavioral Science.
 - Item d.6 on work experiences: **at least five (5) years of experience** (*emphasis supplied*) with proven track record in the effective management of a successful electric utility-related business enterprise.

NEA BOA still decided to process the application of the candidate despite the lack of credentials as required on the two mandatory qualifications.

7. NEA BOA believes that the NEA Memorandum No. 2017-035 needs to be revisited by the NEA as an organization and as an agency itself. According to Usec. Juaneza, the "*review process has already been initiated and the ambiguities have been noted*".
8. That the NEA BOA made a decision based on its own ambiguous interpretation of the NEA Memorandum.
9. That the argument of the NEA BOA that it only exercised its power to endorse by endorsing one candidate for approval of BENECO Board of Directors has no merit. *Quando aliquid prohibetur ex directo, prohibetur et per obliquum*: you cannot do indirectly what you cannot do directly.
10. That following the aforementioned principle, NEA should do it legally and return to the process and nominate all qualified applicants and not just the one with the highest score because it is not mandated by its statutory charter to appoint.
11. That the NEA cannot unreasonably invoke police powers in lieu of citing relevant statutory provisions on its power to appoint BENECO General Manager.

12. That the NEA Memorandum, being an administrative legislation, has the force and effect of law and not even the origin of the issuance can disregard the same. The said issuances were duly recorded in the UP Law Center, Office of the National Administrative Register (Administrative Rules and Procedure) rendering it valid and effective. The NEA BOA has no right to amend or reinterpret a mandatory provision of the NEA Memoranda No. 2017-035 and 2018-004 since such was not part of the duly recorded and legally sanctioned and administrative regulation.
13. That the NEA BOA took upon itself to interpret and apply the law according to its misplaced belief that as the State's supervisory agency over electric cooperatives and pursuant to the police powers of the State, it has the power and privilege to set aside the clear provision of the NEA Memorandum.
14. That the process of selecting the qualified candidates and its consequential interview is the issue, and its corollary laws must be respected by all parties.
15. That there is a pending case involving the NEA BOA and BENECO before the Presidential Anti-Corruption Commission and the Regional Trial Court in Baguio City.
16. That there was indeed a meeting between the NEA BOA and some members of the Committee, but Vice Chairperson de Jesus revealed that the NEA BOA stood on its decision while they wanted to establish a common ground.

IV. COMMITTEE ACTION/RECOMMENDATIONS

The Committee hereby recommends the following:

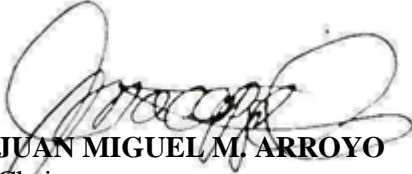
1. Contrary to the observation of the NEA BOA, there is no urgent need for further legislation to amend further P.D. No. 269 and R.A. No. 10531 in so far as the NEA and the electric cooperatives are concerned. There are enough rules and regulations that clearly define the relationship between the electric cooperatives and NEA. This observation is similarly applicable to the case of NEA's administrative issuances like the NEA Memoranda Order No. 2017-035 and 2018-004. These issuances have the force of a law and, for as long as the provisions are clear, should be followed by all parties, including the one who issued the same.
2. If NEA is convinced that its issuances should be revised, it should do so using the correct procedure of revising or amending rules and regulations. And when the issuances have been revised and submitted through proper channels already, then and only then can it implement the new guidelines.
3. There is a need to discuss the unresolved issues in an Executive Session, wherein all the members and concerned agencies may make clarifications and explanations on the issue and afterwards, arrive at a consensus to find a solution to the problem especially in the hiring and selection of the General Managers, particularly that of the BENECO General Manager;
4. The NEA and the NEA BOA should submit to the Committee the copies of the Minutes of the deliberations of the Selection Committee and the NEA BOA *en banc* and other pertinent documents regardless of its classification, which will be handled accordingly pertaining to the whole selection process for the position of BENECO General Manager, including the recordings of the final interview and the results of all the examinations and tests administered by the agency and the UP Department of Psychology, as well as the manual of corporate governance, which includes the hiring of GMs for ECs;
5. The NEA should be admonished, because it committed grave abuse of discretion due to lack or excess of jurisdiction in the issuances on the hiring and selection of General Managers;
6. The "*status quo*" must be observed on retaining the current Officer-in-Charge of BENECO until all the issues on the selection of General Manager have been resolved to ensure that there will be no interregnum that will affect the operations and services of the BENECO;
7. The Department of Energy, through its Secretary, and the National Electrification Administration, through its Administrator, shall be furnished with this Committee Report; and

8. The House adopts the attached House Resolution, entitled:

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

Respectfully submitted,



JUAN MIGUEL M. ARROYO
Chairperson
Committee on Energy

THE HONORABLE SPEAKER
HOUSE OF REPRESENTATIVES
Quezon City