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SECOND DIVISION

[G.R. Nos. 176935-36. October 20, 2014]

ZAMBALES II ELECTRIC COOPERATIVE, INC. (ZAMECO II) BOARD OF DIRECTORS, NAMELY, JOSE S. DOMINGUEZ (PRESIDENT), ISAIAS Q. VIDUA (VICE-PRESIDENT), VICENTE M. BARRETO (SECRETARY), JOSE M. SANTIAGO (TREASURER), JOSE NASERIV C. DOLOJAN, JUAN D. FERNANDEZ and HONORIO L. DILAG, JR. (MEMBERS), *petitioners, vs.* **CASTILLEJOS CONSUMERS ASSOCIATION, INC. (CASCONA), REPRESENTED BY DOMINADOR GALLARDO, DAVID ESPOSO, CRISTITA DORADO, EDWIN CORPUZ, E. ROGER DOROPAN, JOSEFINA RAMIREZ, FERNANDO BOGNOT, JR., CARMELITA DE GUZMAN, MAXIMO DE LOS SANTOS, AURELIO FASTIDIO, BUENAVENTURA CELIS, ROBERTO LADRILLO, CORAZON ACAYAN, CARLITO CARREON, EDUARDO GARCIA, MARCIAL VILORIA, FILETO DE LEON and MANUEL LEANDER,** *respondents.*

ZAMBALES II ELECTRIC COOPERATIVE, INC. (ZAMECO II) BOARD OF DIRECTORS, JOSE S. DOMINGUEZ (PRESIDENT), ISAIAS Q. VIDUA (VICE-PRESIDENT), VICENTE M . BARRETO (SECRETARY), JOSE M. SANTIAGO (TREASURER), JOSE NASERIV C. DOLOJAN, JUAN D. FERNANDEZ and HONORIO L. DILAG, JR. (MEMBERS), *petitioners, vs.* **NATIONAL ELECTRIFICATION ADMINISTRATION (NEA) NEA-OFFICE OF THE ADMINISRATIVE COMMITTEE, ENGR. PAULINO T. LOPEZ and CASTILLEJOS CONSUMERS ASSOCIATION, INC. (CASCONA),** *respondents.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; NATIONAL ELECTRIFICATION ADMINISTRATION (NEA); DISCIPLINARY JURISDICTION OVER REGULATED ELECTRIC COOPERATIVES.—** The NEA's **disciplinary jurisdiction** over the petitioners stems from **its power of supervision and control over regulated electric cooperatives** and over the board of directors who manage their operation. In the exercise of this broad power, the NEA may take preventive and/or disciplinary measures including the suspension, removal and replacement of any or all of the members of the board of directors, officers or employees of the cooperative. x x x [T]he Electric Power Industry Reform Act of 2001 **(EPIRA) continued to recognize the NEA's jurisdiction** by expressly providing that the NEA shall continue to exercise its functions under P.D. No. 269, as amended by P.D. No. 1645, "**insofar as they are consistent with this Act."**

2. **ID.; ID.; COOPERATIVE CODE (RA 6939) ESTABLISHING THE COOPERATIVE DEVELOPMENT AUTHORITY (CDA); REQUIRES ELECTRIC COOPERATIVES TO QUALIFY AND REGISTER WITH THE CDA TO REMOVE THEM FROM NEA'S JURISDICTION.—** To promote rural electrification, the EPIRA gave electric cooperatives the option to convert into either a stock cooperative under the Cooperative Code, in relation to R.A. No. 6939, or a stock corporation under the Corporation Code. This conversion, in turn, requires the **"approval of a simple majority of the required number of turnout of voters as provided in the [Guidelines] in a referendum conducted for [the] purpose."** In either case, a **"successful conversion"** would effectively place an electric cooperative outside the NEA's disciplinary jurisdiction, and within the coverage of the CDA or the Securities and Exchange Commission (*SEC*), as the case may be. x x x Although Section 9 of R.A. No. 6939 transferred the NEA's registration functions of electric cooperatives to the CDA, the transfer did not amount to the consequent renunciation of the NEA's regulatory jurisdiction. In fact, **the Cooperative Code cautions us against such a wholesale interpretation** when it emphatically

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expressed "*that nothing in this Code shall be interpreted to mean the amendment or repeal of any provision of [P.D. No.] 269.*" R.A. No. 6939 and the Cooperative Code outline the **registration procedure for the NEA cooperatives to qualify and register with the CDA** to remove an electric cooperative from the NEA's coverage and disciplinary jurisdiction. x x x It is thus essential that ZAMECO II registers **within three (3) years** from the effectivity of R.A. No. 6939 and the Cooperative Code (*i.e.*, on April 1, 1990) to place it outside the NEA coverage. Records indubitably show that **ZAMECO II failed to qualify and register within the three-year statutory period; its supposed certificate of registration was issued only on December 4, 2007 or seventeen (17) years after the effectivity of the Cooperative Code and R.A. No. 6939.**

3. ID.; ID.; THE PHILIPPINE COOPERATIVE CODE OF 2008 (RA 9520); EXISTING ELECTRIC COOPERATIVE REGISTERED UNDER EPIRA DISTINGUISHED FROM THOSE REGISTERED UNDER THE COOPERATIVE CODE BEFORE AMENDMENT; CASE AT BAR.— On March 22, 2009, Congress **enacted R.A. No. 9520 which amended the Cooperative Code and renamed it as the Philippine Cooperative Code of 2008.** x x x [I]t distinguishes between existing electric cooperatives that are registered under the provisions of the EPIRA, on one hand, and those that are registered under the provisions of the Cooperative Code (and R.A. No. 6939) prior to its amendment. **Electric Cooperatives registered under the provision of the EPIRA must comply with the procedural requirements of conversion, *i.e.*, approval by a simple majority of the required number of turnout of voters in a referendum conducted for the purpose, in order to be considered "duly registered" because both the EPIRA and** the Philippine Cooperative Code of 2008 **expressly impose this requirement.** Otherwise, it will be considered as an electric cooperative that is ***not*** registered with the CDA. The significance of compliance with the proper procedure is stressed by the use of the adverb **duly,** which means *in the proper or expected way*, to modify the verb **registered.** In contrast, those electric cooperatives that have **registered and qualified** within **the three-year period** under the Cooperative Code need not comply with the conversion

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requirement because they are **"deemed registered"** with the CDA, by virtue of the express provision of the Philippine Cooperative Code of 2008, subject to some other requirements. In the present case, ZAMECO II cannot be considered a **"deemed registered"** electric cooperative under the Philippine Cooperative Code of 2008 because it failed to register with the CDA within the three-year qualification period under the Cooperative Code. Neither can ZAMECO II be considered as **"duly registered"** under the Philippine Cooperative Code of 2008 because it failed to comply with the procedural requirements of a simple majority vote and a referendum for purposes of conversion under the EPIRA. Without a valid registration with the CDA, then the petitioners' claim against the NEA's continued exercise of jurisdiction has no leg to stand on.

4. ID.; ID.; NATIONAL ELECTRIFICATION ADMINISTRATION REFORM ACT OF 2013 (RA 10531); NEA RETAINS POWER OF SUPERVISION OVER ALL ELECTRIC COOPERATIVES.— [O]n February 4, 2013, Congress enacted R.A. No. 10531, known as the National Electrification Administration Reform Act of 2013. Aware of the effects of restructuring the electric power industry under the EPIRA on electric cooperatives under P.D. No. 269, as amended, and on the responsibilities of the appropriate government agencies, like the NEA and the CDA, Congress enacted R.A. No. 10531 with a declared threefold state policy: *first*, to empower and strengthen the NEA; *second*, to empower and enable electric cooperatives (organized under P.D. No. 269 and its amendments, and the Philippine Cooperative Code of 2008; and related laws) to cope with the changes brought about by the EPIRA; and *third*, to promote the sustainable development in the rural areas through rural electrification. Towards these ends, Congress further authorized the NEA to "supervise the management and operations of all electric cooperatives." x x x Also, R.A. No. 10531 reiterated Section 57 of the EPIRA, giving the electric cooperative the option either to remain as a non-stock, non-profit cooperative or convert into and register as a stock cooperative under the CDA or a stock corporation under the SEC in accordance with the law's IRR. Unlike the EPIRA's IRR, the IRR of R.A. No. 10531, which was drafted in coordination with the NEA and the CDA, among others, contains

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a more detailed enumeration of the requirements for conversion to be determined by the NEA itself. This enumeration still includes the conduct of a referendum. More importantly, R.A. No. 10531 expressly provides that the NEA's power of supervision applies whether an electric cooperative remains as a non-stock cooperative or opts to register with the CDA as a stock cooperative.

APPEARANCES OF COUNSEL

Isagani M. Jungco and *Cayetano Sebastian Ata Dado & Cruz* for petitioners.

Escolangco Law Office for CASCONA.

R E S O L U T I O N

BRION, *J.*:

The Court notes the March 25, 2010 Report submitted by the Court of Appeals (*CA*) pursuant to our March 13, 2009 Decision[1] and takes this Report into account in fully resolving the case in caption.

By way of background, our March 13, 2009 Decision remanded the case to the CA to resolve the factual issue raised in relation with the registration of Zambales II Electric Cooperative, Inc. (*ZAMECO II*) with the Cooperative Development Authority (*CDA*). We needed to settle these factual issues to determine whether the November 24, 2004[2] resolution and February 15, 2005 decision[3] of the National Electrification Administration (*the NEA*) may still be enforced against petitioners Jose S. Dominguez, Isaias Q. Vidua, Vicente M. Barreto, Jose M. Santiago, Jose Naseriv C. Dolojan, Juan D. Fernandez and Honorio L. Dilag, Jr. (*petitioners*).

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[1] *Rollo*, pp. 1356-1378.

[2] *Id.* at 109-125.

[3] *Id.* at 128-131.

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Factual Antecedents

I. Background

a. The NEA proceedings

The petitioners are members of the Board of Directors of the ZAMECO II, an electric cooperative organized and registered under Presidential Decree (*P.D.*) No. 269.[4] Castillejos Consumers Association, Inc. (*CASCONA*), on the other hand, is an organization of electric consumers from the municipality of Castillejos, Zambales under the coverage area of ZAMECO II.

On November 21, 2002, CASCONA filed a letter-complaint[5] with the NEA seeking the removal of the petitioners from the Board based **on the NEA's June 25, 1998 Financial Audit Report of ZAMECO II for the period January 1, 1989 to September 30, 1997.**[6] The NEA endorsed the letter-complaint[7]

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[4] 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.

[5] *Rollo*, pp. 132-135.

[6] Management and Financial Audit Report of ZAMECO II for the period from 01 January 1989 to 30 September 1997, *id.* at 137-156. Among the accusations were the following: 1) illegal payment of 13th Month Pay and Excessive Mid-Year and Christmas Bonus to the petitioners; 2) excessive expenses of the Board President, petitioner Mr. Jose S. Dominguez, charged to ZAMECO Power Corporation (ZPC) and Central Luzon Power Transmission Development Corporation (CLPTDC) but advanced by ZAMECO II and treated as receivables by the ZAMECO II from the aforesaid corporations; 3) anomalous contract with Philreca Management Corporation (PMC) for ZAMECO II's Systems Loss Reduction Program; and 4) overstaying as members of the Board of Directors of ZAMECO II.

[7] *Rollo*, pp. 132-135.

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to the NEA-Office of the Administrative Committee (*the NEA-ADCOM*), which in turn immediately set the case for mandatory conference after completion of the exchange of pleadings between the parties. The NEA-ADCOM thereafter issued its Report and Recommendations,[8] recommending the removal of the petitioners from office. The NEA-ADCOM's Report and Recommendations was eventually endorsed to the NEA for its consideration.

On November 24, 2004, the NEA issued its resolution[9] (*NEA Resolution*) removing the petitioners from office with the accessory penalty of perpetual disqualification to run for the same position.[10] To address the operational vacuum caused by the petitioners' removal, the NEA urged the NEA Administrator to designate a Project Supervisor to manage the operations of ZAMECO II, until the election and constitution of a new set of Board of Directors.[11]

In arriving at its conclusions, the NEA relied on the NEA-ADCOM's Report and Recommendations and **the July 24, 2003 Audit Report** that was not part of the letter-complaint,[12] or of the proceedings before the NEA-ADCOM. The petitioners thus moved for reconsideration of the NEA resolution contending that they had been denied due process as they had never been notified of the charges based on the July 24, 2003 Audit Report. The NEA, however, would later deny the petitioners' motion for reconsideration,[13] in its February 15, 2005 decision (*NEA decision*), prompting the petitioners to seek the CA's intervention, under Rule 43 of the Rules of Court, docketed as CA-G.R. No. SP 88845.[14]

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[8] *Id.* at 337-352.

[9] *Id.* at 109-125.

[10] *Id.* at 124.

[11] *Id.* at 125.

[12] *Id.* at 132-135.

[13] *Id.* at 128-131.

[14] *Id.* at 72-103.

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Previously, the NEA also designated Engr. Paulino T. Lopez as ZAMECO II's Project Supervisor in its Office Order No. 2005-003 (*NEA Office Order*).[15] The petitioners promptly questioned this NEA Office Order with the CA *via* a Rule 65 special civil action for *certiorari*, with prayer for a temporary restraining order (*TRO*),[16] docketed as CA-G.R. SP No. 88195.

The CA eventually consolidated these two cases,[17] and on October 4, 2006, rendered its decision,[18] denying both petitions and affirming the assailed the NEA issuances. The petitioners timely moved for reconsideration,[19] but the CA denied their motion.[20] The petitioners then filed the present Rule 45 petition for review[21] with this Court.

b. The Rule 45 proceedings

The petitioners argued that the NEA's jurisdiction over electric cooperatives originated from the loans extended by the NEA. According to the petitioners, Republic Act (*R.A.*) No. 9136, otherwise known as the "*Electric Power Industry Reform Act of 2001"*(*EPIRA*),[22] effectively abrogated the NEA's power to supervise and control electric cooperatives after it transferred to the Power Sector Assets and Liabilities Management Corporation (*PSALM*) all outstanding financial obligations of

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[15] *Id.* at 373 and 1175. Among the duties of Engr. Paulino T. Lopez were: 1) to oversee the operations of ZAMECO II; 2) to sign/ countersign all checks and other banking transactions; 3) to supervise the preparations for the actual conduct of district elections; and 4) to ensure assumption into office of the newly-elected directors.

[16] *Id.* at 374-395.

[17] *Id.* at 885-887.

[18] *Id.* at 55-66.

[19] *Id.* at 888-897.

[20] *Id.* at 68-71.

[21] *Id.* at 10-48.

[22] AN ACT ORDAINING REFORMS IN THE ELECTRIC POWER INDUSTRY, AMENDING FOR THE PURPOSE CERTAIN LAWS AND FOR OTHER PURPOSES.

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electric cooperatives to the NEA.[23] They likewise claimed a denial of due process as the NEA failed to notify them of the charges based on the July 24, 2003 Audit Report. **Subsequently, the petitioners filed a supplemental petition,[24] contending that ZAMECO II's registration with the CDA on December 4, 2007, had ousted the NEA of its jurisdiction.**

The NEA, in its Comment[25] of November 18, 2008, assailed the validity of ZAMECO II's registration with the CDA. It claimed that ZAMECO II failed to comply with the EPIRA's formal conversion requirements to structure either as a stock cooperative under R.A. No. 6938 (*Cooperative Code*), in relation to R.A. No. 6939,[26] or as a stock corporation under the Batas Pambansa Blg. 68 (Corporation Code), before it registered with the CDA.

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[23] *Id.*, Section 60. *Debts of Electric Cooperatives*. – Upon the effectivity of this Act, all outstanding financial obligations of electric cooperatives to NEA and other government agencies incurred for the purpose of financing the rural electrification program shall be assumed by the PSALM Corp. in accordance with the program approved by the President of the Philippines within one (1) year from the effectivity of this Act which shall be implemented and completed within three (3) years from the effectivity of this Act. The ERC shall ensure a reduction in the rates of electric cooperatives commensurate with the resulting savings due to the removal of the amortization payments of their loans. Within five (5) years from the condonation of debt, any electric cooperative which shall transfer ownership or control of its assets, franchise or operations thereof shall repay PSALM Corp. the total debts including accrued interests thereon.

[24] *Rollo*, pp. 1157-1166.

[25] *Id.* at 1212-1226.

[26] 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.

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The NEA thus insisted on assuming jurisdiction over ZAMECO II in light of its invalid registration.[27]

c. The Court's March 13, 2009 Decision

We denied the petitioners' petition for lack of merit in our Decision[28] of March 13, 2009. We ruled that the NEA's regulatory power over electric cooperatives is not dependent on the existence of any creditor-debtor relationship between them. The passage of the EPIRA and its creation of the PSALM, which assumed all outstanding financial obligations of electric cooperatives, did not therefore affect the power of the NEA particularly over administrative cases involving the board of directors, officers and employees of electric cooperatives.

The NEA's authority is expressly recognized under the last paragraph of Section 58, Chapter VII of the EPIRA, which states that "*the NEA shall continue to be under the supervision of the [Department of Energy] and shall exercise its functions under [P.D. No. 269], as amended by [P.D. No. 1645]*[29] *insofar as they are consistent with this Act.*"

Although we agreed with the petitioners' observation that they had been denied due process before the NEA, as they had not been informed of the charges based on the July 24, 2003 Audit Report, we refused to nullify the entire proceedings. We found substantial evidence to support the other allegations in the letter-complaint, to justify the petitioners' removal from office.

Lastly, while we upheld the NEA's assumption and exercise of jurisdiction over electric cooperatives, we recognized the adverse effect of ZAMECO II's **supposed registration with**

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[27] *Rollo,* pp. 1236-1237.

[28] *Zambales II Electric Cooperative, Inc. (ZAMECO II) Board Of Directors v. Castillejos Consumers Association, Inc. (CASCONA),* G.R. Nos. 176935-36, March 13, 2009, 581 SCRA 320.

[29] AMENDING PRESIDENTIAL DECREE NO. 269, INCREASING THE CAPITALIZATION AND BROADENING THE LENDING AND REGULATORY POWERS OF THE NATIONAL ELECTRIFICATION ADMINISTRATION AND FOR OTHER PURPOSES.

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the CDA as a stock cooperative on the NEA's power to enforce its assailed resolution and decision. Since the validity of ZAMECO II's registration involved a factual question, we remanded the case to the CA for further proceedings. To quote our ruling:

> WHEREFORE, the instant case is hereby REMANDED to the Court of Appeals for further proceedings in order to determine whether the procedure outlined in Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001, and its Implementing Rules for the conversion of an electric cooperative into a stock cooperative under the Cooperative Development Authority had been complied with. The Court of Appeals is directed to raffle this case immediately upon receipt of this Decision and to proceed accordingly with all deliberate dispatch. Thereafter, it is directed to forthwith transmit its findings to this Court for final adjudication. No pronouncement as to costs.

d. *Motion for Partial Reconsideration and the Court's August 10, 2009 Resolution*

The petitioners moved for reconsideration of our March 13, 2009 Decision on the ground that the EPIRA's condonation of these NEA loans *ipso facto* deprived the NEA of any power to regulate or supervise ZAMECO II.[30] The petitioners further argued that a CDA certificate of registration is a conclusive evidence of registration under the Cooperative Code; it was thus unnecessary to remand the case to the CA to resolve the factual issue of validity of registration.[31] We denied the petitioners' Motion for Partial Reconsideration for lack of merit in our August 10, 2009 Resolution.[32]

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[30] *Rollo*, pp. 1383-1389 and 1391-1393.

[31] See Article 17 of THE PHILIPPINE COOPERATIVE CODE OF 2008; *rollo*, pp. 1393-1394 and 1450-1451; see also the petitioners' separate Manifestation dated March 16, 2009 and July 2, 2009, *id.* at 1423-1425 and 1450-1451.

[32] *Rollo*, pp. 1470-1472. In view of the denial of petitioners' motion for reconsideration, an Entry of Judgment was made in the case, stating that the Court's March 13, 2009 Decision has become final and executory on September 2, 2009 (*id.* at 1474 and 1477).

e. Entry of Judgment and its subsequent recall

In view of the denial of the petitioners' Motion for Partial Reconsideration, this Court issued an Entry of Judgement on September 2, 2009,[33] stating that our March 13, 2009 Decision had become final and executory. The petitioners, afterwards, promptly filed a motion to set aside the entry of judgment on the sole ground that our March 13, 2009 Decision is an interlocutory order.[34]

On February 3, 2010, we granted the petitioners' motion[35] and recalled the Entry of Judgment as our Decision was interlocutory in character. It **still left something to be done** by the CA, *i.e.*, to determine whether the proceedings outlined in the EPIRA and its Implementing Rules and Regulations (*IRR*), for the conversion of an electric cooperative into a stock cooperative under the CDA, had been complied with. In this sense, our March 13, 2009 Decision cannot attain a final and executory character.

II. CA's Compliance Report

On March 25, 2010, the CA submitted its Report pursuant to our March 13, 2009 Decision. The CA found that **ZAMECO II's registration with the CDA did not comply with the referendum requirement under the EPIRA's IRR.** In the absence of a referendum, ZAMECO II failed to obtain the required simple majority vote in order to validly convert it into either a stock cooperative or a stock corporation. On June 16, 2010 we issued a resolution noting the CA's Report.[36]

The Court's Ruling

In view of the CA's Report, we find no reason to depart from our March 13, 2009 Decision and August 10, 2009

[33] *Id.* at 1473-1474.

[34] *Id.* at 1479-1491.

[35] *Id.* at 1504-1507.

[36] *Id.* at 1541-1542.

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Resolution. Before proceeding to discuss the validity of ZAMECO II's registration in 2007, however, we shall first determine the basis of the NEA's jurisdiction up to the time of its challenge by the petitioners.

A. *The NEA's creation and disciplinary jurisdiction*

The present NEA was created in 1973 under P.D. No. 269 to administer the country's total electrification on an area coverage basis, by organizing, financing and regulating electric cooperatives throughout the country. The NEA's enforcement powers under P.D. No. 269, however, was limited.[37]

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[37] The original text of P.D. No. 269, Section 10 states: *Enforcement Powers*. If any public service entity which has borrowed funds from the NEA, or from any other lender with the NEA's lawfully required prior approval, shall default in its principal or interest payments, or shall fail, after notice from the NEA, to comply with any other term or condition of the loan agreement or of any rule or regulation promulgated by the NEA in administering the provisions of this Decree, the Board of Administrators is hereby authorized and empowered in its discretion to do any or any combination of the following:

(a) Refuse to make, or give my lawfully required approval to, any new loan to the borrower;

(b) Withhold without limitation the NEA's advancement, or withhold its approval for any other lender with respect to which the NEA has such approving power to make advancement, of funds pursuant to any loan already made to the borrower;

(c) Withhold any technical or professional assistance otherwise being furnished or that might be furnished to the borrower;

(d) Foreclose any mortgage or deed of trust or other security held by the NEA on the properties of such borrower, in connection with which the NEA, may, subject to any superior or co-equal rights in such lien held by any other lender; (1) bid for and purchase or otherwise acquire such properties; (2) pay the purchase price thereof and any costs and expenses incurred in connection therewith out of the revolving fund; (3) accept title to such properties in the name of the Republic of the Philippines; and (4) even prior to the institution of foreclosure proceedings, operate or lease such properties for such period, and in such manner as may be deemed necessary or advisable to protect the investment therein, including the improvement, maintenance and rehabilitation of systems to be foreclosed, but the NEA shall, within five years after acquiring such properties in foreclosure proceedings, sell the same for such consideration as it determines

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In 1979, P.D. No. 1645 amended P.D. No. 269 and **broadened the NEA's regulatory powers,** among others. Specifically, the amendments **emphatically recognized the NEA's power of supervision and control** over electric cooperatives; and **gave it the power to conduct investigations, and impose preventive or disciplinary sanctions over the board of directors** of regulated entities. Section 10 of P.D. No. 269, as amended by P.D. No. 1645 reads:

Section 10. Enforcement Powers and Remedies. **In the exercise of its power of supervision and control over electric cooperatives** and other borrower, supervised or controlled entities, **the NEA is empowered to issue orders, rules and regulations and *motu-propio* or upon petition of third parties, to conduct investigations, referenda and other similar actions in all matters affecting said electric cooperatives and other borrower, or supervised or controlled entities.**

If the electric cooperative concerned or other similar entity fails after due notice to comply with the NEA orders, rules and regulations and/or decisions, or with any of the terms of the Loan Agreement, the NEA Board of Administrators may avail of any or all of the following remedies:

x x x x x x x x x

(e) **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 Cooperative, other borrower institutions or supervised or controlled entities as the NEA Board of Administrators may**

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to be reasonable and upon such terms and conditions as it determines most conducive to the achievement of the purposes of this Decree; or

(e) Take any other remedial measure for which the loan agreements may provide.

In addition to the foregoing, the Board of Administrators may, at its own instance and in the name of the NEA, petition any court having jurisdiction for such purpose or any administrative agency possessing regulatory powers for such purpose (including the Board of Power and Waterworks) to issue such order and afford such lawful relief as may be necessary.

x x x x x x x x x

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deem fit and necessary and to take any other remedial measures as the law or the Loan Agreement may provide. [Emphasis supplied]

Likewise, Section 24 of P.D. No. 269, as amended by P.D. No. 1645, stressed that the board of directors of a regulated electric cooperative is subject to the NEA's control and supervision. That provision reads:

Section 24. Board of Directors. (a) **The Management of a Cooperative shall be vested in its Board, subject to the supervision and control of the NEA** which shall have the right to be represented and to participate in all Board meetings and deliberations and to approve all policies and resolutions. [Emphasis supplied]

The NEA's **disciplinary jurisdiction** over the petitioners stems from **its power of supervision and control over regulated electric cooperatives** and over the board of directors who manage their operation. In the exercise of this broad power, the NEA may take preventive and/or disciplinary measures including the suspension, removal and replacement of any or all of the members of the board of directors, officers or employees of the cooperative.

B. *The Cooperative Code and the CDA*

The enactment in March 1990 of the Cooperative Code[38] and R.A. No. 6939 establishing the CDA **did not automatically divest the NEA of its control over the NEA's regulated entities.**

Although Section 9 of R.A. No. 6939 transferred the NEA's registration functions of electric cooperatives to the CDA,[39]

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[38] Published in Malaya on March 15, 1990. Took effect on April 1, 1990.

[39] R.A. No. 6939. **Section 9. *Power to Register Cooperatives.*** - The power to register cooperatives shall be vested solely on the Authority. The functions of the following departments and agencies relating to the registration of cooperatives as such are hereby transferred to the Authority:

(a) The Department of Agriculture;

(b) The Bureau of Agricultural Cooperatives Development;

(c) The Department of Transportation and Communications;

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the transfer did not amount to the consequent renunciation of the NEA's regulatory jurisdiction. In fact, **the Cooperative Code cautions us against such a wholesale interpretation** when it emphatically expressed "*that nothing in this Code shall be interpreted to mean the amendment or repeal of any provision of [P.D. No.] 269.*"[40]

R.A. No. 6939 and the Cooperative Code outline the **registration procedure for the NEA cooperatives to qualify and register with the CDA** to remove an electric cooperative from the NEA's coverage and disciplinary jurisdiction.[41] Section 128 of the Cooperative Code provides:

Section 128. Transitory Provisions. - All cooperatives registered under Presidential Decrees 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**

(d) The Sugar Regulatory Administration;

(e) The National Electrification Administration; and

(f) Any other pertinent government agency.

[40] The repealing clause of the COOPERATIVE CODE reads:

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. [Boldfacing supplied]

[41] Section 96 of the COOPERATIVE CODE reads pertinently reads:

Section 96. *Definition and Coverage*. - A public service cooperative, within the meaning of this Code, is one organized to render public service as authorized under a franchise or certificate of public convenience and necessity duly issued by the appropriate government agency. Such services may include the following:

x x x x x x x x x

(2) Ice plants and cold storage services. Electric cooperatives created under [P.D.] No. 269 shall be governed by this Chapter if they qualify as cooperative under the provisions of this Code;

x x x x x x x x x

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they shall submit to the nearest Cooperative Development Authority office the certificate of registration, copies of the articles of cooperation and by-laws 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 cooperative created under 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.** [Emphasis supplied]

Section 17 of R.A. No. 6939 similarly provides:

Section 17. *Transitory Provisions.* — All cooperatives registered under Presidential Decree Nos. 175 and 775, and Executive Order No. 898 shall be deemed registered with the Cooperative Development Authority: Provided, however, That they shall submit to the nearest Cooperative Development Authority office their certificates of registration, copies of their articles of incorporation and bylaws, and their latest duly audited financial statements within one (1) year from 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 the said cooperatives.** [Emphasis ours]

It is thus essential that ZAMECO II registers **within three (3) years** from the effectivity of R.A. No. 6939 and the Cooperative Code (*i.e.*, on April 1, 1990) to place it outside the NEA coverage. Records indubitably show that **ZAMECO II failed to qualify and register within the three-year statutory period; its supposed certificate of registration was issued only on December 4, 2007**[42] **or seventeen (17) years after**

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[42] *Rollo,* p. 1194.

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the effectivity of the Cooperative Code[43] **and R.A. No. 6939**.

C. The EPIRA

i. P.D. No. 269 Electric Cooperatives under the EPIRA

The EPIRA, which took effect in 2001, instituted institutional reforms in the electric power industry and its regulation. One notable change was the creation of the Energy Regulatory Commission (*ERC*) tasked with the regulation of the restructured electric power industry, the promotion of competition, the encouragement of market development, choice and the use of sanctions for the abuse of market power.[44] The EPIRA likewise considered an electric cooperative organized under P.D. No. 269, to be a distribution utility, over which the ERC exercises jurisdiction.[45]

A reading of the EPIRA, however, shows that the ERC's jurisdiction pertains to and is exercised in conjunction with the ERC's highly technical mandate.[46] This is completely different from the NEA's own jurisdiction that is largely administrative

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[43] Took effect on April 1, 1990.

[44] The EPIRA, Section 43.

[45] *Id.* Section 4 (p) and (q).

[46] This jurisdictional mandate may be seen scattered in the several provisions of the EPIRA, among others, as follows: ERC shall ensure that NPC shall provide to all electric power industry participants open and non-discriminatory access to its transmission system, prior to the transfer of the transmission functions by NPC to TRANSCO. Any violation thereof shall be subject to the fines and penalties (Section 8); Failure of a TRANSCO concessionaire to comply with such obligations under the Grid Code and Transmission Development Plan shall result in the imposition of appropriate sanctions or penalties by the ERC (Section 21); Failure of a distribution utility to submit a feasible and credible plan (to comply) and/or failure to implement the same shall serve as grounds for the imposition of appropriate sanctions, fines or penalties (Section 23); Electricity suppliers shall be subject to the rules and regulations concerning abuse of market power, cartelization, and other anti-competitive or discriminatory behavior to be promulgated by the ERC (Section 29); The ERC shall promote competition, encourage market development, ensure customer choice and penalize abuse of market power in the restructured

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and comparatively less technical in character. In short, the functions of these two agencies are not inconsistent with the supervisory power exercised by the NEA or with the ERC's own power under the EPIRA. Far from expressly divesting the NEA of its jurisdiction, the **EPIRA continued to recognize the NEA's jurisdiction** by expressly providing that the NEA shall continue to exercise its functions under P.D. No. 269, as amended by P.D. No. 1645, "**insofar as they are consistent with this Act.**"[47]

ii. Conversion of Electric Cooperatives under the EPIRA

To promote rural electrification, the EPIRA gave electric cooperatives the option to convert into either a stock cooperative

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electricity industry x x x. Towards this end, it shall be responsible for the following key functions in the restructured industry:

(k) Monitor and take measures in accordance with this Act to penalize abuse of market power, cartelization, and anti-competitive or discriminatory behavior by any electric power industry participant;

(l) Impose fines or penalties for any non-compliance with or breach of this Act, the IRR of this Act and the rules and regulations which it promulgates or administers;

x x x x x x x x x

(r) In the exercise of its investigative and quasi-judicial powers, act against any participant or player in the energy sector for violations of any law, rule and regulation governing the same, including the rules on cross-ownership, anti-competitive practices, abuse of market positions and similar or related acts by any participant in the energy sector or by any person, as may be provided by law, and require any person or entity to submit any report or data relative to any investigation or hearing conducted pursuant to this Act;

(s) Inspect, on its own or through duly authorized representatives, the premises, books of accounts and records of any person or entity at any time, in the exercise of its quasi-judicial power for purposes of determining the existence of any anti-competitive behavior and/or market power abuse and any violation of rules and regulations issued by the ERC;

x x x x x x x x x

The ERC shall have the original and exclusive jurisdiction over all cases contesting rates, fees, fines and penalties imposed by the ERC in the exercise of the above mentioned powers, functions and responsibilities and over all cases involving disputes between and among participants or players in the energy sector (Section 43).

[47] The EPIRA, Section 58.

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under the Cooperative Code, in relation to R.A. No. 6939, or a stock corporation under the Corporation Code. This conversion, in turn, requires the "**approval of a simple majority of the required number of turnout of voters as provided in the [Guidelines] in a referendum conducted for [the] purpose**." In either case, a "**successful conversion**" would effectively place an electric cooperative outside the NEA's disciplinary jurisdiction, and within the coverage of the CDA or the Securities and Exchange Commission (*SEC*), as the case may be.[48] Section 57 of the EPIRA provides:

> **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 Acts No. 6938, 7160 and 8241.

Rule 7, Section 7(c)(i) of the EPIRA's IRR provides that the conversion and registration shall be implemented in the following manner:

> x x x x x x x x x
>
> (i) [Electric Cooperatives] 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, as the case may be. The NEA, within six (6) months from the effectivity of these Rules, shall promulgate the guidelines in accordance with Section 5 of Presidential Decree No. 1645.

On this critical point, we see no reason to depart from the findings of the CA. As the petitioners themselves admitted, the requirements for conversion were not observed prior to their

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[48] *See generally* Section 7(c) of the EPIRA's IRR.

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registration with the CDA.[49] During the CA proceedings, counsel for the petitioners, Atty. Alberto Jacinto, categorically admitted the following:

x x x x x x x x x

JUSTICE BARZA:

My question is simple, did you comply with the procedures outlined in Republic Act No. 9136 [EPIRA]?

ATTY. JACINTO:

With respect to referendum, no Your Honor.

x x x x x x x x x

JUSTICE BARZA:

What about the obtainment of a simple majority vote, was there?

ATTY. JACINTO:

There was none, Your Honor.

x x x x x x x x x[50]

In short, the CDA's issuance of a certificate of registration in favor of ZAMECO II in **December 2007 did not operate to oust the NEA of its jurisdiction because the petitioners failed to comply with the statutory requirement of conversion outlined under the EPIRA.** The petitioners cannot claim that ZAMECO II was validly converted under the Cooperative Code (in relation with R.A. No. 6939) because the period to qualify and register under these laws had already lapsed. Thus, the lack of a proper registration with the CDA justifies the NEA's continued exercise of jurisdiction over the petitioners.

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[49] In his letter dated September 30, 2008, Engr. Fidel Correa, ZAMECO II's General Manager, admitted that the ZAMECO II board of directors passed a resolution on September 13, 2008 calling for a Special General Membership Assembly to conduct a referenda, leading to the conversion of ZAMECO II into a stock cooperative (*rollo*, p. 1251). Thus, there was yet no referendum held at the time of ZAMECO II's registration (*rollo*, p. 1237).

[50] *Id.* at 1520-1521.

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D. ***Implied repeal by R.A. No. 9520 and the doctrine of adherence of jurisdiction***

On March 22, 2009, Congress **enacted R.A. No. 9520**[51] **which amended the Cooperative Code and renamed it as the Philippine Cooperative Code of 2008**.

Among the significant changes introduced by the Philippine Cooperative Code of 2008 was the inclusion of a new chapter applicable specifically to electric cooperatives.[52] According to the petitioners, the Philippine Cooperative Code of 2008 **categorically considered electric cooperatives as registered** electric cooperatives if they had previously registered with the CDA under the Cooperative Code, **without need to convert themselves into stock cooperatives.**

In support of their allegations, the petitioners cited Article 132(6) of the Philippine Cooperative Code of 2008, which provides that "[*e*]*lectric cooperatives registered and confirmed with the [CDA] under [the Cooperative Code] and [R.A.] No. 6939 are hereby* ***deemed registered*** *under [the Philippine Cooperative Code of 2008*]." Pursuant to this **alleged recognition of registration** enshrined under Philippine Cooperative Code of 2008, the petitioners, citing Article 132(3) of the Philippine Cooperative Code of 2008,[53] insisted that the NEA could no longer exercise disciplinary jurisdiction over ZAMECO II and

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[51] AN ACT AMENDING THE COOPERATIVE CODE OF THE PHILIPPINES TO BE KNOWN AS THE "PHILIPPINE COOPERATIVE CODE OF 2008."

[52] *Id.* See generally Chapter XVII.

[53] *Id.* Section 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: *Provided, however,* That the security of tenure and the collective bargaining agreement between the cooperative management and the employees shall be respected, with no diminution of their existing salaries, emoluments, ranks and other benefits;

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its board of directors. In addition, the petitioners stressed that the repealing clause of the Philippine Cooperative Code of 2008 expressly repealed Section 10 of P.D. No. 269, as amended by P.D. No. 1645, which deals with the NEA's enforcement powers and remedies.[54]

In their discussions, the petitioners heavily relied on the selective interpretation of Articles 132 and 143 of the Philippine Cooperative Code of 2008. We, however, do not consider the

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(2) The electric cooperatives registered with the Authority with existing loans obtained from the 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;**

(4) Electric cooperatives registered with the Authority are entitled to congressional allocations, grants, subsidiaries and other financial assistance for rural electrification which can be coursed through the Department of Energy, the Authority and/or local government units. The electric cooperatives registered under this Code can avail of the financial services and technical assistance provided by the government financial institutions and technical development agencies on terms respecting their independence as autonomous cooperatives;

(5) All condoned loans, subsidies, grants and other assistance shall form part of the donated capital and funds of the electric cooperatives and as such, it shall not be sold, traded nor be divided into shareholdings at any time; these donated capital/fund shall be valuated for the sole purpose of determining the equity participation of the members: *Provided*, That in the case of dissolution of the cooperative, said donated capital shall be subject to escheat; and

(6) Electric cooperatives registered and confirmed with the Authority under Republic Act No. 6938 and Republic Act No. 6939 are hereby deemed registered under this Code.

[54] PHILIPPINE COOPERATIVE CODE of 2008, 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.

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petitioners' arguments to be sufficiently persuasive for the reasons we discuss below.

a. The statute must be construed as a whole

i. The Philippine Cooperative Code of 2008 merely continued the requirement under the EPIRA's IRR

It is a basic rule of statutory construction that a law must be construed as a whole. This means that the meaning of the law or its intent (to repeal or not an earlier law) is not to be extracted from a single part, portion or section or from isolated words and phrases, clauses or sentences, but from a general consideration or view of the act as a whole.[55] In short, every provision of the law must be considered together with the other provisions, and must be kept subservient to the general intent of the enactment as a whole.[56]

Applying this principle to the present case, we find that the supposed inconsistency between the EPIRA and the Philippine Cooperative Code of 2008 is more apparent than real. A reading of the law in its entirety shows that far from dispensing with the requirement of conversion, Congress even expressly adopted and continued the similar procedural requirement under the EPIRA's IRR before an electric cooperative may be registered with the CDA and be entitled to the provisions of the Cooperative Code and the Philippine Cooperative Code of 2008. Articles 127 and 128 of Philippine Cooperative Code of 2008 categorically state:

x x x x x x x x x

ART. 127. *Registration of Electric Cooperatives*. **– The registration of an electric cooperative with the Authority under this Code**

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[55] *Aquino v. Quezon City*, 529 Phil. 486, 498 (2006).

[56] *Paras v. Commission on Elections*, G.R. No. 123169, November 4, 1996, 264 SCRA 49, 54.

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shall be submitted for approval to the members through a referendum, called for the purpose as provided for under Articles 183 and 129 of this Code.

ART. 128. *Voting Requirement for Registration.* – In compliance with the referendum as a voting procedure, the required number of votes for registration with the Authority shall be twenty percent (20%) of all members in good standing. (Emphasis supplied)

x x x x x x x x x

Notably, the aforesaid provisions of the Philippine Cooperative Code of 2008 expressly require that the registration of an electric cooperative with the CDA shall be submitted for approval to the members through a referendum.[57] It also provides that for purposes of the referendum requirement, the required number of votes for registration with the CDA shall be twenty percent (20%) of all members in good standing.[58] If only to stress the requirement for a referendum, one of the documents required to be submitted for purposes of registration is a copy of the board resolution certifying to the result of the vote approved through a referendum approving the registration of the cooperative with the CDA.[59]

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[57] PHILIPPINE COOPERATIVE CODE OF 2008, ART. 127. *Registration of Electric Cooperatives.* – The registration of an electric cooperative with the Authority under this Code shall be submitted for approval to the members through a referendum, called for the purpose as provided for under Articles 183 and 129 of this Code.

[58] *Id.* ART. 128. *Voting Requirement for Registration.* – In compliance with the referendum as a voting procedure, the required number of votes for registration with the Authority shall be twenty percent (20%) of all members in good standing.

[59] *Id.* ART. 129. *Documents to be Submitted for Registration with the Authority*. – For purposes of registration, electric cooperatives shall submit the following documents:

> (a) Copy of the board resolution certifying to the result of the vote approved through a referendum approving the registration of the cooperative with the Authority in compliance with Article 128;
>
> x x x x x x x x x

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In other words, ***the requirement for a referendum under the Philippine Cooperative Code of 2008, which is similar to the requirement under the IRR of the EPIRA strongly militates against the claim that the Philippine Cooperative Code of 2008 deprived the NEA of its jurisdiction simply because of the supposed registration with the CDA***. Congress's continued recognition of the need for conducting a referendum as a condition for registration speaks very loudly against the petitioners' suggestion of a repeal of this significant statutory requirement by ***the Philippine Cooperative Code of 2008***.

The rationale for the requirement of a referendum under both laws is that the conversion of an electric cooperative from a non-stock cooperative under P.D. No. 269, as amended, to either a stock cooperative or a stock corporation previously, under the Cooperative Code and currently, under the EPIRA and the Philippine Cooperative Code of 2008 is a matter that affects the ownership status of the consumers-members of the cooperatives themselves. Since the cooperatives operate on the principles, among others, of voluntary and open membership[60] and democratic control, then a matter that directly touches on these principles must be decided by the cooperative's membership.

At this point, we observe that even the petitioners themselves recognized the necessity of conversion under the IRR of the EPIRA by attempting to comply with this requirement, albeit belatedly. This recognition is apparent from the letter by ZAMECO II's General Manager to the Mayor of the Municipality of Castillejos, Zambales, informing him of ZAMECO II's registration with the CDA. This letter in part states:

x x x x x x x x x

Accordingly, the ZAMECO II Board of Directors passed [a resolution] on **September 13, 2008** calling for a Special General Membership Assembly x x x to conduct massive information drives and referenda

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[60] See Article 4 of THE COOPERATIVE CODE. See also Article 4 of The PHILIPPINE COOPERATIVE CODE OF 2008.

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leading to conversion of our electric cooperative into a stock cooperative and the issuance of Credit Memorandum to be converted into Membership Equity Shares, eventually conferring evidence of ownership of ZAMECO II to its Members-Customers-Owners (MCOs). x x x

The agenda x x x includes x x x Discussion on the Pros (Advantages) and Cons (Disadvantages) of Conversion; x x x[61]

x x x x x x x x x

Accordingly, it is too late in the day for the petitioners to change their position.

ii. Section 132(6) of the Philippine Cooperative Code of 2008 does not refer to cooperatives registered under the EPIRA

We also find applicable to the present case the rule that *repeals by implication* are not favored. An implied repeal will not be allowed *unless it is convincingly and clearly demonstrated that the two laws are clearly repugnant and patently inconsistent with each other that they cannot co-exist.*[62]

Accordingly, courts will only recognize and give a repealing effect to a new law once it is clearly shown that in enacting the new law, Congress' intent was to abrogate the old one. The intention to repeal must be clear and manifest; otherwise, at least, as a general rule, the later act is to be construed as a continuation of, and not a substitute for, the first act and will continue insofar as the two acts are the same from the time of the first enactment.[63] The requirement of patent inconsistency for implied repeal to apply is miserably wanting in this case.

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[61] *Rollo,* p. 1251.

[62] *Republic of the Philippines v. International Communication Corporation,* 527 Phil. 518, 528 (2006).

[63] *Mecano v. Commission on Audit,* G.R. No. 103982, December 11, 1992, 216 SCRA 500, 505-506.

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Notably, the Philippine Cooperative Code of 2008 clearly distinguishes **the kind of registration** with the CDA that produces jurisdictional implications insofar as existing electric cooperatives are concerned. Article 132 of the Philippine Cooperative Code of 2008 provides as follows:

ART. 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: *Provided, however*, That the security of tenure and the collective bargaining agreement between the cooperative management and the employees shall be respected, with no diminution of their existing salaries, emoluments, ranks and other benefits;

(2) The electric cooperatives registered with the Authority with existing loans obtained from the 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;**

(4) Electric cooperatives registered with the Authority are entitled to congressional allocations, grants, subsidiaries and other financial assistance for rural electrification which can be coursed through the Department of Energy, the Authority and/or local government units. The electric cooperatives registered under this Code can avail of the financial services and technical assistance provided by the government financial institutions and technical development agencies on terms respecting their independence as autonomous cooperatives;

(5) All condoned loans, subsidies, grants and other assistance shall form part of the donated capital and funds of the electric cooperatives and as such, it shall not be sold, traded nor be divided into shareholdings at any time; these donated capital/fund shall be valuated for the sole purpose of determining the equity participation of the

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members: *Provided*, That in the case of dissolution of the cooperative, said donated capital shall be subject to escheat; and

(6) Electric cooperatives registered and confirmed with the Authority under Republic Act No. 6938 [the Cooperative Code] and Republic Act No. 6939 are hereby deemed registered under this Code. [Emphasis supplied].

A reading of the above-provision would lead to two important observations. ***First,*** only those electric cooperatives that "are ***duly registered*** with the [CDA] ***and issued a certificate of registration" at the time of the effectivity of the Philippine Cooperative Code of 2008*** (or on April 6, 2009) are excluded from the NEA's jurisdiction under P.D. No. 269, as amended. If this electric cooperative obtained a loan from the NEA after the EPIRA took effect on June 26, 2001, the NEA may exercise regulatory or supervisory powers over it but only for the purpose of enforcing the terms of the loan until its full payment or settlement.[64] ***Second,*** electric cooperatives that are registered and confirmed with the CDA ***under the Cooperative Code in relation to R.A. No. 6939*** are "**deemed registered**" under the law.[65] Article 144 of the Philippine Cooperative Code of 2008, pertinently reads:

ART.144. *Transitory Provisions.*- (1) All cooperatives registered and confirmed with the Authority **under Republic Act No. 6938 and Republic Act No. 6939,** are hereby **deemed registered** under this code, and a new certificate of registration shall be issued by the authority: *Provided*, That such cooperative shall submit to the nearest office of the authority a copy of their certificate of registration or certificate of confirmation, the articles of cooperation, their bylaws, and their latest audited financial statement within one (1) year from the effectivity of this code, otherwise the (*sic*) shall be deemed cancelled *motu proprio*.

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[64] See The PHILIPPINE COOPERATIVE CODE OF 2008, Section 123(1) to (3).

[65] *Id.*, Article 132(6) of the Philippine Cooperative Code of 2008 provides that "[e]lectric cooperatives registered and confirmed with the Authority under Republic Act No. 6938 and Republic Act No. 6939 are hereby deemed registered under this Code."

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(2) Following the issuance of the new certificate of registration, the registered cooperatives shall secure their certificate of tax exemption from the nearest office of the Bureau of Internal Revenue (BIR): *Provided*, That such exemptions shall be valid of (*sic*) five (5) years from the date of issue: *Provided, further*, That all unpaid assessments of previously registered cooperative shall be the subject of compromise settlement on terms favorable to such cooperative; and: *Provided, finally*, That the BIR and the authority shall be jointly issue (*sic*) the necessary regulations on this exemption and compromise within ninety (90) days from the effectivity from this Code. [Emphasis supplied]

x x x x x x x x x

The Philippine Cooperative Code of 2008 thus distinguishes between existing electric cooperatives that are registered under the provisions of the EPIRA, on one hand, and those that are registered under the provisions of the Cooperative Code (and R.A. No. 6939) prior to its amendment. **Electric Cooperatives registered under the provision of the EPIRA must comply with the procedural requirements of conversion, *i.e.*, approval by a simple majority of the required number of turnout of voters in a referendum conducted for the purpose, in order to be considered "duly registered" because both the EPIRA and** the Philippine Cooperative Code of 2008 **expressly impose this requirement.** Otherwise, it will be considered as an electric cooperative that is ***not*** registered with the CDA.

The significance of compliance with the proper procedure is stressed by the use of the adverb **duly,** which means *in the proper or expected way*,[66] to modify the verb **registered.** In contrast, those electric cooperatives that have **registered and qualified** within **the three-year period** under the Cooperative Code need not comply with the conversion requirement because they are "**deemed registered**" with the CDA, by virtue of the express provision of the Philippine Cooperative Code of 2008, subject to some other requirements.[67]

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[66] http://www.merriam-webster.com/dictionary/duly, last accessed October 4, 2014.

[67] The IRR of The PHILIPPINE COOPERATIVE CODE OF 2008 is consistent with this distinction under the law by classifying the electric

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In the present case, ZAMECO II cannot be considered a "**deemed registered"** electric cooperative under the Philippine Cooperative Code of 2008 because it failed to register with the CDA within the three-year qualification period under the Cooperative Code. Neither can ZAMECO II be considered as "**duly registered**" under the Philippine Cooperative Code of 2008 because it failed to comply with the procedural requirements of a simple majority vote and a referendum for purposes of conversion under the EPIRA. Without a valid registration with the CDA, then the petitioners' claim against the NEA's continued exercise of jurisdiction has no leg to stand on.

The petitioners cannot make a stubborn reliance on their certificate of registration with the CDA alone to claim the "effects of registration." The Philippine Cooperative Code of 2008 itself expressly requires that for an electric cooperative to be excluded from the NEA's jurisdiction, it must be "***duly registered*** with the [CDA] **and issued a certificate of registration**" at the time of the effectivity of the Philippine Cooperative Code of 2008. In the face of the petitioners' own admission that they have not actually complied with the essential registration requirement, what petitioners actually have, at most, is a paper registration with the CDA. For the purpose of determining the NEA's jurisdiction and the validity of enforcing its decision against them, the Court cannot give weight to this paper registration and make the issue of jurisdiction merely a farce.

More importantly, the classification of electric cooperatives as "**duly registered**," "**deemed registered**" or "**not registered**," instead of lumping them together, completely negates the petitioners' theory of implied repeal.

If the Philippine Cooperative Code of 2008 intended to dispense with the conversion requirement under the EPIRA, then there would have been no need to classify electric cooperatives based

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cooperatives that may be registered with the CDA under the Philippine Cooperative Code of 2008 into three: *one,* electric cooperatives that are not registered with the CDA; *two,* new electric cooperatives; and *three,* electric cooperatives that are deemed registered under Art. 144 of the Code.

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on the law under which they registered. More specifically, the two-fold requirement that electric cooperatives (which failed to register within the three-year period under the Cooperative Code, prior to its amendment) be **duly registered** *and* issued a certificate of registration **is a recognition of the continuing need for complying with the conversion requirement even under the Philippine Cooperative Code of 2008.**[68]

E. *The NEA and the electric cooperatives under the new law*

At any rate, the Court judicially notices that on February 4, 2013, Congress enacted R.A. No. 10531, known as the National Electrification Administration Reform Act of 2013. Aware of the effects of restructuring the electric power industry under the EPIRA on electric cooperatives under P.D. No. 269, as amended, and on the responsibilities of the appropriate government agencies, like the NEA and the CDA, Congress enacted R.A. No. 10531 with a declared threefold state policy: *first*, to empower and strengthen the NEA; *second*, to empower and enable electric cooperatives (organized under P.D. No. 269 and its amendments, and the Philippine Cooperative Code of 2008; and related laws) to cope with the changes brought about by the EPIRA; and *third*, to promote the sustainable development in the rural areas through rural electrification.[69]

Towards these ends, Congress further authorized the NEA to "supervise the management and operations of all electric cooperatives." Pursuant to its power of supervision, Congress granted it the following powers:

x x x x x x x x x

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[68] The IRR of The PHILIPPINE COOPERATIVE CODE OF 2008 reiterates that one of the requirements for the registration is a "certified true copy of the board resolution certifying the result of the vote approved through a referendum approving the registration of the cooperative with the Authority in compliance with Article 128."

[69] See Section 2 of R.A. No. 10531.

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(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 the NEA may provide, to attain the objectives of this Act: and[70] [Emphasis supplied]

Also, R.A. No. 10531 reiterated Section 57 of the EPIRA, giving the electric cooperative the option either to remain as a non-stock, non-profit cooperative or convert into and register as a stock cooperative under the CDA or a stock corporation under the SEC in accordance with the law's IRR.[71] Unlike the EPIRA's IRR, the IRR of R.A. No. 10531, which was drafted in coordination with the NEA and the CDA, among others, contains a more detailed enumeration of the requirements for conversion to be determined by the NEA itself. This enumeration still includes the conduct of a referendum.[72]

More importantly, R.A. No. 10531 expressly provides that the NEA's power of supervision applies whether an electric cooperative remains as a non-stock cooperative or opts to register with the CDA as a stock cooperative. This only means that even assuming *arguendo* that the petitioners validly registered ZAMECO II with the CDA in 2007, the NEA is not completely ousted of its supervisory jurisdiction over electric cooperatives

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[70] *Id.,* Section 11, adding a new section, to be designated as Section 26-B, to P.D. No. 269, which pertinently reads:

x x x x x x x x x

The NEA may, after due notice to the board of directors and officers of the electric cooperative, disqualify, suspend or remove any director or officer, who commits any act which renders him unfit for the position.

[71] *Id.,* Section 12.

[72] See Section 23 of Department of Energy Department Circular No. DC-2013-07-0015.

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under the R.A. No. 10531. This law may be considered as curative statute that is intended to address the impact of a restructured electric power industry under the EPIRA on electric cooperatives, which has not been fully addressed by the Philippine Cooperative Code of 2008.

WHEREFORE, premises considered, the Court **DENIES** the petition with finality for lack of merit. Costs against the petitioners.

SO ORDERED.

Carpio (Chairperson), Mendoza, Perlas-Bernabe,[*] and *Jardeleza,*[**] *JJ.,* concur.

FIRST DIVISION

[G.R. No. 187581. October 20, 2014]

PHILIPPINE BANK OF COMMUNICATIONS, *petitioner, vs.* **BASIC POLYPRINTERS AND PACKAGING CORPORATION,** *respondent.*

SYLLABUS

1. COMMERCIAL LAW; CORPORATIONS; CORPORATE REHABILITATION; DISCUSSED.— Under the Interim Rules, rehabilitation is the process of restoring "*the debtor to a position of successful operation and solvency, if it is shown that its continuance of operation is economically feasible and its creditors can recover by way of the present value of*

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[*] Designated as Acting Member in lieu of Associate Justice Marvic M.V.F. Leonen, per Special Order No. 1841 dated October 13, 2014.

[**] Designated as Acting Member in lieu of Associate Justice Mariano C. Del Castillo, per Special Order No. 1838 dated October 13, 2014.