

HOUSE OF REPRESENTATIVES

*Introduced by Representative Rufus B. Rodriguez*

House Bill No. 1827

**EXPLANATORY NOTE**

The most concrete effect of the Electric Power Industry Reform Act of 2001 (EPIRA) specific to Mindanao is the special treatment extended to the Agus-Pulangui Hydropower Complex. The EPIRA deferred the privatization of Agus-Pulangui for 10 years. Today, its privatization is in limbo after the lapse of the 10-year period, and government has not come up with a definite policy whether or not to privatize these assets. The problem is that there are investors who are holding back their investments in power generation because they are waiting for the possible privatization of the Agus-Pulangui dams, which are the crown jewels of NAPOCOR/PSALM assets. In foreign electricity markets, hydropower assets are prized possessions because they usually earn windfall profits; thus, investors are probably holding back and saving their resources to bid and win such lucrative assets. If government says it will no longer be privatizing Agus-Pulangui, the speculation would stop and investors would be more definite in their business decisions. Given the shortage in Mindanao, there is always incentive for new players to come in.

This bill seeks to make definite the national policy for the Agus-Pulangui Hydropower Complexes not to privatize the crown jewels of the Mindanao power industry, and to formulate a viable way to operate and maintain these assets that provide majority of the electricity in Mindanao.

Non-privatization is the wise policy decision because government should not hand over possible windfall profits to any private entity when these resources could be used to alleviate the power situation in Mindanao. Remember that under the Electric Power Industry Reform Act of 2001 (EPIRA) generation plants now are deregulated and government has less control at how much a private power plant can charge. If privatized, the new owner may be able to sell electricity at around PhP 14.00 per kw/hr compared to how much NAPOCOR sells hydropower electricity at around PhP 3.00 per kw/hr. Give the insufficiency of power capacity in Mindanao, electric cooperatives, distribution utilities, and other consumers have no choice but to accept the prices imposed upon them. Why hand over clean windfall profits to the private sector when the lucrativeness of hydropower plants can be used to directly benefit Mindanao? If these assets are left with government, hydropower can blend power rates and mitigate spikes in power prices.

This bill seeks to cure the problem with the present set-up of the Agus-Pulangui Hydropower Complexes, which is not viable. Under the present EPIRA, the NAPOCOR is supposed to turn over all its income to the Power Sector Assets and Liabilities Management (PSALM) to service NAPOCOR debts. PSALM has the discretion how much it would return for the operation and maintenance of the Agus-Pulangui complexes. Remember that PSALM and NAPOCOR have responsibility over and have to worry about the entire Philippine electric power industry, and the Agus-Pulangui is just one of a myriad of their concerns. Under, this set-up, NAPOCOR barely has any resources to operate and maintain, much less improve these assets. There has to be a revision of the structure how Agus-Pulangui is operated and treated overall. A power corporation specifically for Mindanao would be able to focus and safeguard the power situation in the region.



My proposal is to set-up a Mindanao Power Corporation (MinPow) that will operate and maintain the Agus-Pulangi Hydroelectric Complexes. MinPow can acquire the Agus-Pulangi dams from NAPOCOR/PSALM under similar terms and conditions as in a privatization context. For example, NGCP paid for Transco's transmission system at around 25% down payment with amortizations for 25 years. Why not have the same terms and conditions for the transfer between NAPOCOR/PSALM and MinPow? This way, the Agus-Pulangi Complex remains part of the equation in paying the power industry's debts pursuant to the policy of the EPIRA. Considering the lucrative nature of hydropower plants, MinPow would easily be able to pay for the transfer price by simply imputing such transfer price (along with other provisions for rehabilitating and improving the assets) in its power rates as approved by the ERC.

A Mindanao Power Fund is also established to address any impending power crises instead of waiting for the National Government to act and dole out taxpayers' money. This fund can be raised as part of the power rates that can be charged by MinPow. This is also more equitable because the fund is borne by ratepayers who benefit from the Mindanao assets instead of being paid for by taxpayers nationwide. The rate of Php .30 per kw/hr is exactly the same as the mandatory rate reduction under the EPIRA, and can be utilized by the corporation to safeguard the power supply situation in Mindanao. The Mindanao Power Fund can also be utilized to lower residential power rates.

Indeed, there are sectors who believe that the Agus-Pulangi complexes should be privatized simply because government (particularly NAPOCOR), by experience, has been inefficient and terrible at running the power industry. According to them, the private sector should be allowed to operate the plants better and more efficiently. This is mainly due to the distrust surrounding the NAPOCOR.


First, as already mentioned, the Agus-Pulangi hydropower complexes are the crown jewels of the NAPOCOR/PSALM assets. The main reason why it appears to be neglected is because of the setup wherein NAPOCOR has to turn over all its income to PSALM to service NAPOCOR's debts. Considering how lucrative hydropower plants are, the Agus-Pulangi plants are likely subsidizing the rest of NAPOCOR operations nationwide and unfortunately, without provisions for rehabilitating and improving the plants. I do not see any good reason to hand such assets over to the private sector. I think it is better to tailor fit how the plants should be treated to avoid sacrificing efficiency and economy.

Secondly, an argument for privatization is that continued government ownership of the hydroelectricity would discourage private investors because they will not be able to compete with its low prices. This can be addressed by rationing the hydropower to electric cooperatives and distribution utilities pro rata. This way, all these electric cooperatives and distribution utilities have the benefit of blending their rates with cheap hydropower. Rationing the cheap hydropower would also avoid allegations of favoritism and ensure that cheap power benefits individual ratepayers rather than large consumers. On the other hand, competition among power generators is not sacrificed because there is not sacrificed because there is still the same number of customers with sufficient demand to whom they can sell their electricity. Actually, a stronger argument against privatization is that in a privatization context, the feared lack of competition is still present but instead of government, a private industry player is holding market power with high incentive to earn profits at the expense of the rest of the population.

Thirdly, there are allegations that Mindanao electric cooperatives and consumers are spoiled and refuse to share the burden in the costs of power. My proposal addresses this concern by having a Mindanao Power Company with regulated rates that enable it to raise (a) sufficient funds for buying Agus-Pulangi from NAPOCOR/PSALM; (b) sufficient funds for operating and maintaining such assets efficiently, and even; (c) sufficient funds for

improving such assets. It also provides for the Mindanao Power Fund, which ensures lessening subsidy by the National Government in any power crisis situation.

This bill should also be supported by non-Mindanaoans because the creation- of the Mindanao Power Corporation rationalizes costs and promotes economic efficiency because any future Mindanao Power Situation shall be borne by Mindanao ratepayers, instead of being borne by taxpayers nationwide. Let Mindanaoans be responsible and bear costs for the upkeep of the Agus-Pulangui complexes, and their power situation.



RUFUS B. RODRIGUEZ



HOUSE OF REPRESENTATIVES

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House Bill No. 1827

AN ACT

**CREATING THE MINDANAO POWER CORPORATION, APPROPRIATING FUNDS THEREFOR AND FOR OTHER PURPOSES**

*Be enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:*

**Section 1.** This Act shall be known as the "Charter of the Mindanao Power Corporation (MinPOW)".

**Sec 2.** Declaration of Policy for the Mindanao Power Situation – Congress hereby adopts the policy of non-privatization of the Agus-Pulangui Hydropower Complexes because these are essential to the public welfare of the communities of Mindanao and would be better left under government control considering their inherently profitable nature, and therefore, the operation, maintenance, expansion, and/or improvement of such Hydropower complexes could be done with minimal government subsidy, while sustaining the required level of power supply in Mindanao.

**Sec 3.** Mindanao Power Corporation (MinPOW) – MinPOW (hereinafter Corporation) is hereby created and shall exist for fifty years from the effectivity of this Act. The authorized capital stock of the Corporation shall be One Billion pesos divided into Ten Million shares having a par value of one hundred pesos each, which shares are not to be transferred, negotiated, pledged, mortgaged, or otherwise given as security for the payment of any obligation, unless approved by the ratepayers of Mindanao in a plebiscite conducted with the help of Mindanao Electric Cooperatives.

The Corporation shall acquire the Agus-Pulangui Hydropower Complexes from the Power Sector Assets and Liabilities Management (PSALM) on terms that is not more onerous than Twenty-Five (25%) initial down payment with Seventy-Five (75%) to be amortized for Twenty-Five (25) years.

The Corporation is mandated to extend the benefits of its hydropower complexes to the greatest number of the population as possible, and the Corporation shall undertake and implement faithfully such projects as will promote the total electrification of all provinces, cities, municipalities and barangays existing in the various regions of Mindanao.

**Sec 4.** Powers and General Functions – The powers, functions, rights and activities of the Corporation shall be the following:

- (a) to have continuous succession under its corporate name until otherwise provided by law;
- (b) To prescribe its by-laws not inconsistent with this Act;
- (c) To adopt and use a seal and alter it at its pleasure;
- (d) To sue and be sued in any court;
- (e) To conduct investigations and surveys for the development of water power in the Mindanao region;
- (f) To take water from any public stream, river, creek, lake, spring or waterfall in the Philippines, for the purposes specified in this Act; to intercept and divert the flow of

waters from lands of riparian owners and from persons owning or interested in waters which are or may be necessary for said purposes, upon payment of just compensation therefor; to alter, straighten, obstruct or increase the flow of water in streams or water channels intersecting or connecting therewith or contiguous to its works or any part thereof: Provided, That just compensation shall be paid to any person or persons whose property is, directly or indirectly, adversely affected or damaged thereby;

- (g) To operate, maintain, repair, rehabilitate, expand and/or improve the Agus-Pulangi Hydropower Complexes acquired from the Power Sector Assets and Liabilities Management Corporation (PSALM) under terms and conditions provided in this act with authority to sell electric power in bulk to electric cooperatives, distribution utilities, and other entities in accordance with this act;
- (h) To adopt measures necessary and desirable to ensure sufficiency of power it committed to electric cooperatives and distribution utilities, and to supply power in Mindanao in general including the expansion of existing power plants, establishment of new plants, and contracting of ancillary or support services with other power generators;
- (i) To acquire whether by negotiation or by eminent domain, promote, hold, transfer, sell, lease, rent, mortgage, encumber and otherwise dispose of property incident to, or necessary, convenient or proper to carry out the purposes for which the Corporation was created;
- (j) Subject to Constitutional requirements and with mandate from the President, MinPOW shall have authority to operate idle power plants whether temporarily or permanently to prevent, control, avoid or curb any imminent and actual power shortages;
- (k) To construct works on, across, along or otherwise any stream, watercourse, canal, ditch, flume, street, avenue, highway or railway of private and public ownership, as the location of said works may require: Provided, That said works be constructed in such a manner as not to endanger life or property: And provided, further, That the stream, watercourse, canal ditch, flume, street, avenue, highway, so crossed or intersected be restored as near as possible to their former state, or in a manner not to impair unnecessarily their usefulness. Every person or entity whose right-of-way or property is lawfully crossed or intersected by said works shall not obstruct any such crossings or intersection and shall grant the Board or its representative, the proper authority for the execution of such work. The Corporation is hereby given the right-of-way to locate, construct and maintain such works over and throughout the lands owned by the Republic of the Philippines or any of its branches and political subdivisions. The Corporation or its representatives may also enter upon private property in lawful performance or prosecution of its business and purposes, including the construction of necessary lines thereon subject to just compensation as provided by law: Provided, That the owner of such private property shall be indemnified for any actual damage caused thereby: Provided, further, That said action for damages is filed within five years after the rights of way, transmission lines, substations, plants or other facilities shall have been established: Provided, finally, That after the said period, no suit shall be brought to question the said rights of way, transmission lines, substations, plants or other facilities;
- (l) To exercise the right of eminent domain for the purpose of this Act in the same manner provided by law for condemnation proceedings instituted by the national, provincial and municipal governments;
- (m) When essential to the proper administration of its corporate affairs or necessary for the proper transaction of its business or to carry out the purposes for which it was organized, to contract indebtedness and issue bonds subject to approval of the President upon recommendation of the Secretary of Finance;
- (n) To exercise such powers and functions of the corporation as provided in the Corporation Code and do such things as may be reasonably necessary to carry out



the business and purposes for which it was organized, or which, from time to time; may be declared by the Board to be necessary, useful, incidental or auxiliary to accomplish the said purpose;

- (o) To cooperate with, and to coordinate its operations with those of the National Electrification Administration and public service entities;
- (p) To exercise complete jurisdiction and control over watersheds surrounding the reservoirs of Agus-Pulangui Hydro complexes and other plants and/or projects constructed or proposed to be constructed by the Corporation. The National Power Corporation (NAPOCOR) and the PSALM shall upon written advice by the Corporation, forthwith surrender jurisdiction to the Corporation of all areas embraced within the watersheds the NAPOCOR currently holds in Mindanao, subject to existing private rights, the needs of waterworks systems, and the requirements of domestic water supply. For new projects and upon determination by the Corporation of the areas required for watersheds for specific projects in Mindanao, the relevant government agencies, institutions, and/or entities shall, upon written advice, surrender jurisdiction to the Corporation of all areas embraced within the said watersheds, subject to existing private rights, the needs of waterworks systems, and the requirements of domestic water supply;
- (q) In the prosecution and maintenance of its projects, the Corporation shall adopt measures to prevent environmental pollution and promote the conservation, development and maximum utilization of natural resources; and
- (r) Generally, to exercise all the powers of a corporation under the Corporation Law insofar as they are not inconsistent with the provisions of this act.

**Sec 5. Disposition of Hydroelectric Power** – The Corporation shall have authority to sell the hydroelectricity pursuant to the following parameters:

- (a) The existing capacity of the Agus-Pulangui Hydropower Complexes shall be allocated pro rata primarily to electric cooperatives and distribution utilities the majority of whose customers are residential rate payers in Mindanao;
- (b) Consumers other than electric cooperatives and distribution utilities may contract for direct supply of electricity that has been unsold or uncommitted to Mindanao electric cooperatives and distribution utilities;
- (c) if and when possible, the Corporation is allowed to participate in the Wholesale Electric Spot Market (WESM) provided that any and all its income shall be utilized solely for operating, maintaining, expanding and improving the hydropower complexes and/or its other assets, and as part of the Mindanao Power Fund.

Existing power supply agreements involving the Agus-Pulangui Hydropower Complexes shall, within a period of one year from the effectivity of this Act, be reviewed and renegotiated to comply with the foregoing parameters. Non-committed power generated by the Agus-Pulangui Hydro complexes shall immediately be allocated to electric cooperatives and distribution utilities that cater mainly to residential ratepayers.

**Sec 6. Rate-fixing** – The rates charged by the Corporation shall be subject to approval by the Energy Regulatory Commission as follows:

a. Rates shall allow the recovery of just and reasonable costs and a reasonable return on the rate base (RORB) or other internationally accepted methodology to enable the Corporation to operate viably. In case the rate setting methodology used is RORB, it shall be subject to the following guidelines:

- (i) For purposes of determining the rate base, the Corporation may be allowed to revalue its eligible assets not more than once every three (3) years by an independent appraisal company: Provided, however, That ERC may give an exemption in case of unusual devaluation: Provided, further, That the ERC shall exert efforts to minimize price shocks in order to protect the consumers;

- (ii) Interest expenses are not allowable deductions from permissible return on rate base;
  - (iii) In determining eligible cost of services that will be passed on to the end-users, the ERC shall establish minimum efficiency performance standards for the Corporation including systems losses, interruption frequency rates, and collection efficiency;
  - (iv) Further, in determining rate base, the Corporation shall not be allowed to include management inefficiencies like cost of project delays not excused by force majeure, penalties and related interest during construction applicable to these unexcused delays; and
  - (v) Any significant operating costs or project investments of the Corporation which shall become part of the rate base shall be subject to verification by the ERC to ensure that the contracting and procurement of the equipment, assets and services have been subjected to transparent and accepted industry procurement and purchasing practices to protect the public interest.
- b. The rate shall ensure that the Corporation would be able to service the acquisition cost of the Agus-Pulangi Hydropower Complexes;
  - c. The rate is sufficient for operating and maintenance expenses, as well as capital expenditures projected to be necessary within the next 10 years pursuant to a development plan; provided that interest on loans, bonds and other debts shall not be included as expenses;
  - d. the rate allows for systems losses subject to the caps determined by the ERC based on the load density, sales mix, cost of service, delivery voltage and other technical considerations it may promulgate;
  - e. The rate shall include Thirty Centavos (PhP.30) per kWh allocated to the Mindanao Power Fund as created by this Act and administered by the Corporation to improve the Mindanao power situation and to help avert any possible power shortage-by:
    - A. Preventing idleness of power plants through:
      - i. Contracting electricity from readily available power plants in Mindanao; provided, the price shall be the best available price reasonably comparable to prices offered by similar plants in Luzon and the Visayas;
      - ii. Operating idle power plants, whether owned by the private sector or by government, but subject to constitutional and legal requirements;
    - B. Contracting power plants that can generate electricity within 30 days; provided, the price shall be the best available price reasonably comparable to prices offered by similar plants in Luzon and the Visayas.

The Mindanao Power Fund shall be utilized to lower residential rates in such manner as may be determined by the Corporation as approved by the ERC; provided it does not sacrifice energy security in the region.

**Sec 7. The MinPOW Board; Composition; Compensation of Members; Qualifications; Powers and Duties** – The corporate powers of the Corporation shall be vested in and exercised by the Board composed of seven members consisting of a chairman, vice-chairman and five directors who, with the exception of the vice-chairman, shall be appointed by the President of the Philippines, two of whom shall represent Electric Cooperatives, one shall represent private Distribution Utilities, one shall represent the Mindanao consumers/ratepayers, one shall represent labor, and one shall represent the business sector. The General Manager shall be chosen by majority vote of the Board of Directors and shall be the ex-officio Vice-Chairman of the Board. The members of the Board shall each serve a term of three years, except that any person appointed to fill a vacancy shall serve only for the unexpired term of the member whom he succeeds.

Every member of the Board shall possess any one or a combination of the following qualifications: A duly licensed professional of recognized competence in engineering, in business management and finance, or in law, particularly in the field of corporate practice, with at least ten years actual and distinguished experience in their respective fields of



expertise, or a recognized labor leader with sufficient training, particularly in labor-management relations, and of good moral character. All appointees by the President of the Philippines shall be residents of Mindanao.

The members of said Board shall receive a per diem and allowances for actual meetings attended or actual work done in such amounts as generally practiced by other government-owned and controlled corporations.

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

**Sec 8. Powers and Functions of the Board** – The Board shall have the following specific powers and duties:

- (a) To formulate and adopt policies and measures for the management and operation of the Corporation; provided that policies and measures, including the compensation structure of the Corporation, that has any rate impact or otherwise affects the prices of electricity sold to residential consumers shall be subject to approval by the ERC;
- (b) To adopt an annual and supplemental budget of receipts and expenditures of the Corporation according to its requirements, which may include financial assistance to municipalities which are the site of or contiguous to watersheds, lakes or natural sources of hydroelectric power being utilized by the Corporation, subject to the approval of the ERC: Provided, That copies of the budgets of receipts and expenditures herein referred to shall be disclosed to and shall be subject to audit and verification by the ERC during rate fixing;
- (c) Subject to the provisions of existing laws and regulations and upon the recommendation of the General Manager, to organize, reorganize and determine the Corporation's staffing pattern and the number of personnel, to fix their salaries and to define their powers and duties;
- (d) To appoint and fix the compensation of the General Manager, subject to the approval of the President of the Philippines, and to appoint and fix the compensation of the Assistant General Manager, regional managers, and department chiefs;
- (e) For cause, to suspend, or remove, by a majority vote of all members of the Board, the General Manager, the Assistant General Manager, regional managers and department chiefs, with the approval of the Office of Economic Coordination; and
- (f) To adopt and set down guidelines for the employment of personnel on the basis of merit, technical competence and moral character.

**Sec 9. The General Manager; His Powers and Duties; Regional Managers and Other Officers and Employees of the Corporation** – The management of the Corporation shall be vested in the General Manager, assisted by an Assistant General Manager, a department chief for finance, a department chief for engineering and construction, a department chief for administration, and such additional officers and employees as the said Board may provide and choose. For this purpose, the General Manager shall have the following powers and duties:

- (a) To execute and administer the policies and measures approved by the Board, and have the responsibility for the efficient discharge of management functions;
- (b) To submit for the consideration of the Board such other policies and measures which he deems necessary to carry out the purposes and provisions of this Act;
- (c) To direct and supervise the operation and internal administration of the Corporation and, for this purpose, may delegate some or any of his administrative responsibilities and duties to other officers of the Corporation;
- (d) Subject to the guidelines and policies set up by the Board, to appoint and fix the number and compensation of subordinate officials and employees of the Corporation; and, for cause, to remove, suspend or otherwise discipline, any subordinate employee with the approval of the Board;
- (e) To prepare an annual report on the activities of the Corporation at the close of each fiscal year and submit a copy thereof to the Board for transmittal to the President of



the Philippines, President of the Senate, and Speaker of the House of Representatives, the Joint Congressional Power Commission, and to the chairman of the committee concerned in the Senate and in the House of Representatives: Provided, That the Corporation shall similarly submit to the respective chairman of the said committees of Congress a report of its operations and financial statements within fifteen (15) days from the end of every quarter: And provide, further, That said committees, either motu proprio or upon the request of any of their members, or of any Member of Congress, as the case may be, shall have the authority to look into all the matters relative to the financial and business operations and expenditures of the Corporation;

- (f) To exercise such other powers and duties as may be vested in him by the Board from time to time. In the case of absence or disability of the General Manager, the Assistant General Manager shall act in his place.

Under the supervision and control of the General Manager, relevant officers of the corporation shall take charge of the operations of the Corporation as well as prepare its power development program.

**Sec 10. Authority to Incur Indebtedness and Issue Bonds; Their Conditions, Privileges and Exemptions; Sinking Funds; Guarantee –**

(a) Domestic Indebtedness. - Whenever the Board deems it necessary for the Corporation to incur indebtedness or to issue bonds to carry out the purpose for which the Corporation has been organized, it shall, by resolution, so declare and state the purpose for which the proposed debt is to be incurred and the conditions of the bonds. In order that such resolution be valid, it shall be passed by the affirmative vote of at least four members of the Board and approved by the President of the Philippines upon recommendation of the Secretary of Finance.

The bonds shall be issued under the following conditions: (1) they shall be in registered form and transferable at the Office of the Treasurer of the Philippines; (2) they shall not be sold at less than par; (3) they shall be payable ten years or more from date of issue as may be determined by the Secretary of Finance before their issuance but may be redeemable, at the pleasure of the Board, after five years from such date of issue; (4) they shall bear interest at an annual rate to be determined before their issuance by the Secretary of Finance; (5) the interest may be payable quarterly, semi-annually or annually as may be determined by the Secretary of Finance before the issuance of the bonds; and (6) both principal and interest shall be payable in legal tender of the Philippines.

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

A sinking fund shall be created, the total thereof at each annual due date of the bonds shall be equal to an amount of annuity earning an annual interest of nine-tenths of the rate of interest of the bonds as fixed by the Secretary of Finance. The sinking fund shall be under the custody of the Treasurer of the Philippines, who shall invest the same subject to the approval of the Board and the Secretary of Finance.

The Republic of the Philippines or any of its agencies, instrumentalities organized for the purpose of issuing guarantees shall guarantee the payment by the Corporation of both the principal and the interest of the bonds issued by said Corporation by virtue of this Act, and shall pay such principal and interest in case the Corporation fails to do so. Such government guarantees shall be covered by the sums necessary to make the payments guaranteed by this Act duly appropriated, out of the general funds in the National Treasury not otherwise appropriated: Provided, That the sums so paid by the Republic of the Philippines shall be refunded by the Corporation: Provided, further, That the Corporation shall set aside ten per centum of its annual net operating revenues before interests as a



reserve or sinking fund to answer for amounts advanced to it by the National Government for any loan, credit and indebtedness contracted by the former for which the latter shall be held answerable as primary obligor or guarantor under the provisions of this Act: Provided, furthermore, That the setting aside of the amounts mentioned herein shall be automatically cease the moment the accumulated sinking fund or reserve exceeds the amounts advanced to the Corporation by the National Government under this Act: And, provided, finally, That the Corporation may periodically make partial payments to the National Government out of the said reserves.

The total principal indebtedness of the Corporation under this subsection, exclusive of interest, shall not at any time exceed Ten Billion pesos.

(b) Foreign Loans. - The Corporation is hereby authorized to contract loans, credits, any convertible foreign currency or capital goods, and indebtedness from time to time from foreign governments, or any international financial institutions or fund sources the total outstanding amount of which, exclusive of interests, shall not exceed One Billion United States dollars or the equivalent thereof in other currencies, on such terms and conditions as it shall deem appropriate for the accomplishment of its purposes and to enter into and execute agreements and other documents specifying such terms and conditions.

The President of the Philippines, by himself, or through the Secretary of Finance or the Governor of the Central Bank, is hereby authorized to negotiate and contract with foreign governments or any international financial institutions, in the name and on behalf of the Corporation, one or several loans, for the purpose of assisting in the reconstruction, or promoting the development, of the economy of the country.

The President of the Philippines, by himself, or through the Secretary of Finance or the Governor of the Central Bank, is hereby further authorized to guarantee, absolutely and unconditionally, as primary obligor and not as surety merely, in the name and on behalf of the Republic of the Philippines, the payment of the loan or loans herein authorized as well as the performance of all or any of the obligations undertaken by the Corporation in the territory of the Republic of the Philippines pursuant to loan agreements entered into with foreign governments or any international financial institutions.

Negotiation and contracting of any loan, credit or indebtedness under this subsection shall be subject to applicable laws.

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

**Sec 11.** Rehabilitation, Expansion, or Construction of the Agus-Pulangi Hydropower Plant and other Power Projects Recommended by the General Manager – Upon determination by the General Manager, on his own initiative or on the recommendation of any interested party, that the construction of any project by the Corporation is advisable, a report to the Board, on the engineering and economic feasibility of the project together with preliminary plans and estimates of the cost of the proposed development and the estimated income to be derived therefrom shall be submitted by the General Manager.

The Board may thereupon, at its discretion, designate a consulting board composed of two competent and impartial engineers and one competent economist to pass upon the different aspects of the project and comment in view, decide whether or not the project shall be constructed, and what changes, if any, shall be made in the scheme proposed by the General Manager.

**Sec 12.** Construction or Repair Work Awarded upon Public Bidding; Exceptions – All work of construction or repair of the Corporation involving an estimated cost of One Million Pesos or more shall be awarded by the General Manager, with the approval of the Board, to the



responsible bidder who made the lowest or most advantageous bid. Notice to bidders shall be published as provided by law. In case no satisfactory bid is received, the General Manager may proceed to advertise anew, or with the approval of the Board, do the work by administration. Before award of contract is made, the General Manager shall require the contractor to give an adequate bond to secure the proper accomplishment of the work under contract and to satisfy all obligations for materials used and labor employed upon the same: Provided, That any repair, reconstruction or other work of an emergency nature may be authorized by the Board to be undertaken by administration or by contract: And, provided, further, That any single work of construction or repair involving an estimated total cost of less than One Million Pesos may, at the option of the General Manager, be authorized by him to be undertaken by administration or by other advantageous means after a canvass of the market to determine the lowest or most advantageous price.

**Sec 13.** Penalty for Destroying, Injuring or Interfering with any project of the Corporation, or maliciously Interfering with any Person in the Discharge of his Duties Connected therewith – Any person or persons who shall maliciously destroy, injure, or interfere with any canal, raceway, ditch, lock, pier, inlet, crib, bulkhead, dam, gate, sluice, reservoir, aqueduct, conduit, pipes, culvert, post, abutment, conductor, cable-wire, insulator, weir, benchmark, monument, or other works, appliance, machinery, building or property of the Corporation, or who shall maliciously do any act which shall injuriously affect the quantity or quality of the water or electrical energy of the Corporation or the supply, transmission, measurement, or regulation thereof, or who shall maliciously interfere with any person engaged in the discharge of duties connected therewith, or who shall maliciously prevent, obstruct and interfere with the survey, works and the construction of access road and transmission lines or any related works of the Corporation, shall be guilty of felony and punished with a fine ranging from one to five thousand pesos or with imprisonment ranging from one to five years, or both such fine and imprisonment, at the discretion of the Court, and any injured party shall have the right to recover all damages suffered and cost of suit in a separate civil action in any court of competent jurisdiction.

**Sec 14.** Appropriation of Public Waters – Subject to existing rights, all unappropriated public waters which may be used and developed for hydraulic power purposes shall be granted to the Corporation: Provided, That in case of conflict with the needs for domestic water supply, the latter shall prevail.

**Sec 15.** Non-profit Character of the Corporation – The Corporation shall be non-profit and shall devote all its returns from its capital investment, as well as excess revenues from its operation, for operating, maintaining, expanding and improving the hydropower complexes and/or its other assets, and as part of the Mindanao Power Fund. It shall be subject to audit by the Commission on Audit.

**SEC 16.** Separability Clause – If any provision of this Act is held invalid or unconstitutional, the same shall not affect the validity and effectivity of the other provisions hereof.

**SEC 17.** Repealing Clause – All laws, decrees, executive orders, rules and regulations and other issuances or part thereof, which are inconsistent with this Act, are hereby repealed, amended, or modified accordingly.

**SEC 18.** Effectivity – This Act shall take fifteen (15) days after its publication in two (2) newspapers of general circulation.

Approved,