



Republic of the Philippines
Department of Environment and Natural Resources
Visayas Avenue, Diliman, Quezon City
Tel. Nos. (02) 8920-0689 / 8925-8275 / 0917-885-3367 / 0917-868-3367
Website: <http://www.denr.gov.ph> / E-mail: web@denr.gov.ph

MEMORANDUM

FOR : The Directors
Legal Affairs Service
Environmental Management Bureau

The Executive Director
National Water Resources Board

FROM : The OIC Director
Policy and Planning Service

SUBJECT : **REQUEST FOR CONCURRENCE AND/OR ADDITIONAL
INPUTS ON THE FINAL DRAFT OF THE IMPLEMENTING
RULES AND REGULATIONS OF REPUBLIC ACT NO. 11659**

DATE : 17 NOV 2022

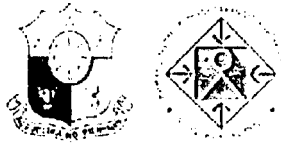
This refers to the electronic mail of the National Economic and Development Authority (NEDA) dated 08 November 2022, transmitting the final draft of the Implementing Rules and Regulations (IRR) for the Republic Act No. 11659 (An Act Amending Commonwealth Act No. 146, otherwise known as the Public Service Act, as amended).

Please be informed that after a series of technical discussion and inter-agency and public consultations for May to September 2022, the resulting draft IRR has now been finalized. Thus, the NEDA is requesting for the signature of the Secretary on the attached copy of the final draft of the said IRR.

In this regard, may we request the concurrence and/or additional inputs (if any) from your good Office to the attached final version of the IRR. Due to the very urgent nature of the subject matter, we would appreciate receiving your feedback on or before **15 November 2022, COB**, to be sent through e-mail at psddivision@gmail.com or policy@denr.gov.ph.

For your appropriate action, please.


MELINDA C. CAPISTRANO



REPUBLIC OF THE PHILIPPINES

NATIONAL ECONOMIC AND DEVELOPMENT AUTHORITY

4 November 2022

SECRETARY MA. ANTONIA YULO-LOYZAGA
Department of Environment and Natural Resources
DENR Building, Visayas Avenue
Diliman, Quezon City

Re: Request for signature on the IRR of RA No. 11659 (amended Public Service Act)

Dear **Secretary Yulo-Loyzaga**:

We thank the Department of Environment and Natural Resources (DENR) for its inputs and comments on the draft Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 11659 entitled "An Act Amending Commonwealth Act No. 146, Otherwise Known as the Public Service Act, as Amended."

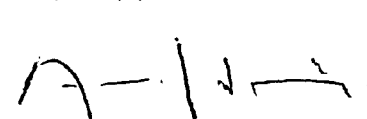

Under Section 30 in relation to Section 3 of RA No. 11659, DENR is one of the identified administrative agencies which shall promulgate, in coordination with the National Economic and Development Authority (NEDA), the IRR of the amended Public Service Act (PSA) within 6 months from its effectivity.

After a series of technical discussions and inter-agency and public consultations from May to September 2022, the resulting draft IRR has now been finalized. With the amended PSA having taken effect on 12 April 2022, we would like to ensure the promulgation of its IRR as soon as possible.

Thus, we would like to respectfully request for your signature on the attached copy of the final draft of the PSA IRR. We would appreciate receiving the signed copy on or before **16 November 2022**. The IRR will take effect 15 days after its publication in the Official Gazette or in a newspaper of general circulation.

Should you have any clarifications, your office may contact Director Bien A. Ganapin of NEDA's Trade, Services and Industry Staff at baganapin@neda.gov.ph, copy &tsis-sd@neda.gov.ph.

Very truly yours,


ARSENIO M. BALISACAN, PhD 
Secretary



Hazel Jasmine P. Donato <hjpdonato@denr.gov.ph>

For approval and signature: Implementing Rules and Regulations of RA 11659 (An Act Amending Commonwealth Act No. 146, Otherwise Known as the Public Service Act, as Amended)

NEDA Office of the Secretary <osec@neda.gov.ph>

Tue, Nov 8, 2022 at 11:00 AM

To: "osec@denr.gov.ph" <osec@denr.gov.ph>, "ohea@denr.gov.ph" <ohea@denr.gov.ph>

Cc: "hjpdonato@denr.gov.ph" <hjpdonato@denr.gov.ph>, "Mojicallarina@gmail.com" <Mojicallarina@gmail.com>, "febtumines@gmail.com" <febtumines@gmail.com>, "julie_turqueza@emb.gov.ph" <julie_turqueza@emb.gov.ph>, "denise_celestial@emb.gov.ph" <denise_celestial@emb.gov.ph>, "Rosemarie G. Edillon" <rgedillon@neda.gov.ph>, "Reynaldo R. Cancio" <rrcancio@neda.gov.ph>, &TSIS-od <&TSIS-od@neda.gov.ph>, &TSIS-sd <&TSIS-sd@neda.gov.ph>, "Bien A. Ganapin" <baganapin@neda.gov.ph>

Dear Secretary Yulo-Loyzaga,


We thank the Department of Environment and Natural Resources for its inputs and comments on the draft Implementing Rules and Regulations (IRR) of Republic Act No. 11659 entitled "An Act Amending Commonwealth Act No. 146, Otherwise Known as the Public Service Act, as Amended."

We are officially transmitting a copy of the final draft of the IRR of the amended Public Service Act, for your approval and signature. A hard copy will also be delivered to your office.

We would appreciate receiving the signed copy on or before **16 November 2022**. Should you have any clarifications, your office may contact Director Bien A. Ganapin of the Trade, Services and Industry Staff of NEDA at baganapin@neda.gov.ph, copy &tsis-sd@neda.gov.ph.

Thank you and best regards.

NEDA -Office of the Secretary

 NEDA Branding

National Economic and
Development Authority

 NEDA Branding

NEDA Office of the Secretary

12 St. J.Escriva Drive, Ortigas Center, Pasig City | 605 Philippines

Tel: (+632) 8631-09-45 to 55 | Fax:

<https://neda.gov.ph>

pdp.neda.gov.ph | 2040.neda.gov.ph | sdg.neda.gov.ph

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2 attachments

 **DENR-PSA.pdf**
253K

 **Final draft RA 11659 IRR.pdf**
1038K

**IMPLEMENTING RULES AND REGULATIONS OF THE REPUBLIC ACT NO. 11659 OR
AN ACT AMENDING COMMONWEALTH ACT NO. 146, OTHERWISE KNOWN AS
THE PUBLIC SERVICE ACT, AS AMENDED**

RULE I. TITLE AND SCOPE

SECTION 1. TITLE. – These rules shall be known as the “Implementing Rules and Regulations (IRR) of Republic Act (R.A.) No. 11659” (Rules).

SECTION 2. DEFINITION OF TERMS. – For the purposes of these Rules, the terms below shall be defined as follows:

- a. **Act** – refers to R.A. No. 11659, or “An Act Amending Commonwealth Act (C.A.) No. 146, otherwise known as the Public Service Act, as amended”.
- b. **Administrative Agency or Administrative Agencies or relevant government department** – as the case may be, refers to relevant government agencies under Section 3 of these Rules, to which the specific powers and duties of the Public Service Commission were transferred pursuant to, and as amended by existing laws. All mention of the word “Commission” in the Act and these Rules shall now refer to this term.
- c. **Certificate** – refers to any franchise, certificate of public convenience, certificate of public convenience and necessity, concession, or any other appropriate form of authorization for the operation of a public service, or a public utility, as may be applicable.
- d. **Completion Date** – refers to the earliest date upon which any ownership interest, including a contingent equity interest, is conveyed, assigned, delivered, or otherwise transferred to a person, or a change in rights that could result in a covered transaction.
- e. **Concession** – refers to a contract granting a private concessionaire the privilege to, among others, finance, construct, manage, operate and/or maintain concession assets.
- f. **Concessionaire** – refers to a person, corporation, firm, or association awarded a concession.

- g. **Control** – refers to the ability to substantially influence or direct the actions or decisions of an entity, whether by contract, agency or otherwise. Control exists when the parent company or entity owns directly or indirectly, through subsidiaries, more than fifty percent (50%) of the capital, taking into account the voting power and beneficial ownership of an entity; controls, through ownership interests, the exercise of more than fifty percent (50%) of the voting rights; unless in exceptional circumstances, it can clearly be demonstrated that such ownership does not constitute control.

Control also exists even when an entity owns fifty percent (50%) or less of the voting power of another entity when:

- i. There is power over more than one half ($\frac{1}{2}$) of the voting rights by virtue of an agreement with investors;
 - ii. There is power to direct or govern the financial and operating policies of the entity under a statute or an agreement;
 - iii. There is power to appoint or remove the majority of the members of the board of directors or equivalent governing body;
 - iv. There is power to cast the majority votes at meetings of the board of directors or equivalent governing body;
 - v. There exists ownership over, or the right to use, all or a significant part of the assets of the entity;
 - vi. There exists rights or contracts that confer decisive influence on the decisions of the entity; or
 - vii. There exists the ability to interfere in the management, operation, administration or control of other entity.
- h. **Covered Transaction** – refers to investments that effectively result in the grant of Control of a public service to a foreigner, a foreign corporation, or a foreign government, and where such proposed investment will affect national security.
- i. **Critical Infrastructure** – refers to any public service which owns, uses, or operates systems and assets, whether physical or virtual, so vital to the Republic of the Philippines that the incapacity or destruction of such systems or assets would have a detrimental impact on national security, including telecommunications and other such vital services as may be declared by the President of the Philippines.

- j. **Distribution of Electricity** – refers to the conveyance of electric power by a distribution utility through its distribution system as defined by Section 4(n) of R.A. No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001, as amended.
- k. **Foreign State-owned Enterprise** – refers to an entity in which a foreign state:
 - i. directly or indirectly owns more than fifty percent (50%) of the capital taking into account both the voting rights and beneficial ownership;
 - ii. controls, through ownership interests, the exercise of more than fifty percent (50%) of the voting rights; or
 - iii. holds the power to appoint a majority of members of the board of directors or any other equivalent management body.

In the case of a subsidiary enterprise, the aforementioned criteria shall apply with the additional official documents covering, but not limited to, the mode of acquisition of the holding or parent enterprise.

- l. **Foreign government or Foreign state** – refers to any government or body exercising governmental functions, other than the Government of the Republic of the Philippines, and the agencies, instrumentalities, or local government units thereof. The term includes, but is not limited to, national and subnational governments, including their respective departments, agencies, and instrumentalities, or separate customs territories possessing full autonomy in the conduct of their external commercial relations.
- m. **Geographical area critical to national security** – refers to a geographical space or jurisdiction of which alienation, privatization, or foreign control or presence, could potentially erode the country's geostrategic advantage and increase its vulnerability to foreign intrusion thereby undermining national security.
- n. **Independent Pension Fund** – refers to an enterprise of a foreign state, through ownership interests, that:
 - i. is engaged exclusively in the following activities:
 - a) administering or providing a plan for pension, retirement, social security, disability, death or employee benefits, or any combination thereof solely for the benefit of natural persons who are contributors to such a plan and their beneficiaries; and

- b) investing the assets of these plans;
- ii. has a fiduciary duty to the natural persons referred to in subparagraph (i) (a); and
- iii. is free from investment direction from the government of the foreign state.

Provided, That (a) investment direction excludes general guidance with respect to risk management and asset allocation that does not deviate from usual investment practices, and (b) the mere presence of government officials on the enterprise's board of directors or investment panel does not demonstrate investment direction.

- o. **Investment** - shall mean the paid-in equity participation in any enterprise organized or existing under the laws of the Philippines and duly recorded in the enterprise's stock and transfer book, or any equivalent registry of ownership. It includes both original and additional investment, whether made directly as in stock subscription, or indirectly through the transfer of equity from one investor to another as in stock purchase. Ownership of bonds (including income bonds), debentures, notes or other evidence of indebtedness does not qualify as investment.

The purchase of stock options or stock warrants is not an investment until the holder thereof exercises his option and actually acquires stock from the corporation.

- p. **National Security** – refers to the requirements and conditions necessary to ensure the territorial integrity of the country and the safety, security, and well-being of Filipino citizens.
- q. **Natural Monopoly** – exists when the market demand for a commodity or service can be supplied by a single entity at a lower cost than by two or more entities.
- r. **NEDA** – refers to the National Economic and Development Authority (NEDA) Secretariat, created under Executive Order No. 230, and which serves as the research and technical support arm and Secretariat of the NEDA Board.
- s. **Person** – refers to both natural and juridical persons, and includes every individual, co-partnership, joint-stock company, or corporation, whether domestic or foreign, their lessees, trustees, or receivers, as well as any

municipality, province, city, government-owned or controlled corporation, or agency of the Government of the Philippines, and whatever other persons or entities that may own or possess or operate public services.

- t. **Petroleum and Petroleum Products Pipeline Transmission System** – refers to the operation and maintenance of pipeline transmission systems to ensure an uninterrupted and adequate supply and transmission of petroleum and petroleum products to the public; and excludes petroleum pipeline systems operated exclusively for private or own use, or incidental to the operations of a distinct business.
- u. **Philippine National** – refers to citizens, partnerships, associations, and corporations defined by Section 3(a) of R.A. No. 7042, otherwise known as the Foreign Investments Act of 1991, as amended.
- v. **Public Service** – refers to those persons defined as such under Section 13(b) of C.A. No. 146, as amended by laws and jurisprudence.

This excludes casual or incidental service devoid of public character and interest as provided for by relevant laws and jurisprudence.

- w. **Public Utility Vehicles (PUVs)** – refer to internal combustion engine vehicles that carry passengers and/or domestic cargo for a fee, offering services to the public, namely trucks-for-hire, UV express service, public utility buses (PUBs), public utility jeepneys (PUJs), tricycles, filcabs, and taxis: Provided, That transport vehicles accredited with and operating through transport network corporations shall not be considered as public utility vehicles.
- x. **Seaport** – refers to a place where ships may anchor or tie up for the purpose of shelter, repair, loading or discharge of passengers or cargo, or for other such activities connected with water-borne commerce, and including all the land and water areas and the structures, equipment and facilities related to these functions, as defined by the charters of relevant authorities or agencies, such as the Philippine Ports Authority (PPA), Subic Bay Metropolitan Authority, PHIVIDEC Industrial Estate Authority, Cebu Port Authority, local government units, and other similar agencies or government bodies.
- y. **Sensitive Personal Data** – refers to the personal information as defined under R.A. No. 10173, otherwise known as the Data Privacy Act of 2012.

- z. **Sewerage Pipeline Systems** – refer to the operation and maintenance of sewerage pipeline systems to ensure public health and safety, as regulated by R.A. No. 6234, as amended, or an An Act Creating the Metropolitan Waterworks and Sewerage System and Dissolving the National Waterworks and Sewerage Authority; and for Other Purposes, and Presidential Decree (P.D.) No. 198, otherwise known as the Provincial Water Utilities Act of 1973, as amended.
- aa. **Sovereign Wealth Fund** – refers to a juridical entity owned, or controlled through ownership interests, by a foreign state that:
- i. serves solely as a special purpose investment fund or arrangement for asset management, investment, and related activities, using financial assets of a foreign state; and
 - ii. adheres to international best practices of sovereign wealth fund management such as membership to the International Forum of Sovereign Wealth Funds.
- bb. **Telecommunications** – refers to any process which enables a telecommunications entity to relay and receive voice, data, electronic messages, written or printed matter, fixed or moving pictures, words, music or visible or audible signals or any controls signals of any design and for any purpose by wire, radio or other electromagnetic, spectral, optical or technological means, as defined by Section 3(a) of R.A. No. 7925, otherwise known as the Public Telecommunications Policy Act of the Philippines, as amended, except passive telecommunications tower infrastructure and components, such as, but not limited to, poles, fiber ducts, dark fiber cables, and passive telecommunications tower infrastructure, as defined by the Department of Information and Communications Technology (DICT), and value-added services, as defined by Section 3(h) of R.A. No. 7925, as amended.
- cc. **Transmission of Electricity** – refers to the conveyance of electricity through the high voltage backbone system, as defined by Section 4(ccc) of R.A. No. 9136, as amended; and
- dd. **Water Pipeline Distribution Systems and Wastewater Pipeline Systems** – refer to the operation and maintenance of water pipeline distribution systems to ensure an uninterrupted and adequate supply and distribution of potable water for domestic and other purposes and the operation and maintenance of

wastewater pipeline systems, except desludging companies and septic tanks, to ensure public health and safety, as regulated by R.A. No. 6234 and P.D. No. 198, as amended.

RULE II. JURISDICTION, POWERS, AND FUNCTIONS OF ADMINISTRATIVE AGENCIES

SECTION 3. RECOGNITION OF TRANSFER OF JURISDICTION TO VARIOUS ADMINISTRATIVE AGENCIES. – All references to the Public Service Commission in C.A. No. 146, as amended, shall pertain to the Administrative Agencies to which the powers and duties of the Public Service Commission were subsequently transferred, in whole or in part, and amended pursuant to the relevant laws. These Administrative Agencies shall include the following:

- a. Civil Aeronautics Board;
- b. Civil Aviation Authority of the Philippines;
- c. Department of Energy;
- d. Department of Environment and Natural Resources (DENR);
- e. DICT;
- f. Department of Transportation;
- g. Energy Regulatory Commission;
- h. Land Transportation Franchising and Regulatory Board;
- i. Land Transportation Office;
- j. Local Water Utilities Administration;
- k. Maritime Industry Authority;
- l. Metropolitan Waterworks and Sewerage System;
- m. National Telecommunications Commission;
- n. National Water Resources Board;
- o. Philippine National Railways;
- p. PPA;
- q. Toll Regulatory Board; and
- r. All other Administrative Agencies that have, or may be authorized to exercise, a similar function as approved by Congress or the responsible authority, as appropriate.

SECTION 4. GENERAL JURISDICTION. – The relevant Administrative Agency shall have jurisdiction and shall exercise supervision over the relevant public service or public utility, as the case may be, in accordance with its mandate, including the

franchise, equipment, and other properties of such public service or public utility, and in the exercise of its authority, the Administrative Agency shall have the necessary powers and the aid of the public force: Provided, That public services, including public utilities, owned or operated by government entities or government-owned or controlled corporations, shall be regulated by the appropriate Administrative Agency in the same way as privately owned public services.

Notwithstanding the immediately preceding clause, any franchise or certificate necessary for the operation of a public service may be granted by Congress unless otherwise previously delegated by law to the relevant administrative agencies.

Nothing in the Act or in these Rules shall be interpreted to diminish, limit, or restrict the authority of Congress from granting franchises to public services, including public utilities, and other activities, as may be provided by law.

SECTION 5. REGULATION AND SUPERVISION OF RELEVANT ADMINISTRATIVE AGENCIES OF PUBLIC SERVICES. – All public services, including those classified as public utilities under the Act and these Rules, shall continue to be regulated and supervised by the relevant Administrative Agencies under existing laws.

SECTION 6. NON-IMPOSITION OF NATIONALITY REQUIREMENTS. – The relevant Administrative Agency shall not impose nationality requirements on the public service not classified as public utility under its jurisdiction or supervision.

SECTION 7. CERTIFICATION REQUIREMENT. – Subject to the provisions of C.A. No. 146, as amended, and such other applicable laws, no public service shall operate in the Philippines without a valid certificate or authorization from the relevant Administrative Agency, as the case may be, to the effect that the operation of said service and the authorization to do business will promote the public interest in a proper and suitable manner.

The relevant Administrative Agency shall prescribe as a condition for the issuance of the certificate or authorization provided in the preceding paragraph that the service can be acquired by the Republic of the Philippines or any instrumentality thereof, or the issuing local government unit, upon payment of just compensation in accordance with the pertinent laws, rules, and regulations of expropriation; and likewise, that the certificate or authorization shall be valid only for a definite period of time and that the violation of any of these conditions shall, after hearing, result

in the immediate cancellation of the certificate or authorization without the necessity of any express action on the part of the issuing authority.

The foregoing is likewise applicable to any extension or amendment of certificates actually in force and to those which may hereafter be issued, to permit to modify itineraries and time schedules of public services, and to authorizations to renew and increase equipment and properties.

In no instance shall this provision be construed as creating a requirement for the obtaining of a new certificate or authorization where none existed prior to the effectivity of these Rules.

SECTION 8. POWERS OF THE RELEVANT ADMINISTRATIVE AGENCY, UPON NOTICE AND HEARING. – Subject to Section 16 of C.A. No. 146, as amended, the relevant Administrative Agency, upon proper notice and hearing, shall have the following powers in accordance with the rules and provisions of the Act, as amended:

- a. To issue certificates authorizing the operation of public service within the Philippines whenever the relevant Administrative Agency finds that the operation of the public service proposed and the authorization to do business will promote the public interest in a proper and suitable manner: Provided, That any certificate authorizing the operation, management or control of a public service shall only be issued to corporations, partnerships, associations or joint stock companies that are constituted and organized under the laws of the Philippines.
- b. To fix and determine the fair and reasonable individual or joint rates, tolls, charges, classifications, tariffs or schedules thereof, as well as commutation, mileage, kilometrage, and other special rates which shall be imposed, observed, and followed thereafter by any public service when the public interest so requires: Provided, That the relevant Administrative Agency may, in its discretion, approve rates proposed by public services provisionally and without necessity of any hearing; but it shall call a hearing thereon within fifteen (15) days thereafter, upon publication and notice to the affected parties in the territory affected, to ratify its prior provisional approval or change, modify or alter the approved rate based on public interest: Provided, further, That in case the public service equipment of an operator is used principally or secondarily for the promotion of a private business, the net profits of said private business shall be considered in

relation with the public service of such operator for the purpose of fixing the rates: Provided, finally, That when the public interest requires, the relevant Administrative Agency may establish and enforce a methodology for setting rates, taking into account all relevant considerations, including the efficiency of the regulated public service. The rates must be such as to allow the recovery of prudent and efficient costs and a reasonable rate of return to enable the public service to operate viably and efficiently. The relevant Administrative Agency may adopt alternative forms consistent with internationally accepted rate-setting methodology. The adopted rate-setting methodology shall ensure a reasonable price of the commodity or service and that the rates prescribed shall not be discriminatory.

This provision shall not be interpreted as mandating rate regulation nor amending or repealing: (1) laws providing a deregulation policy, such as R. A. No. 7925, as amended; R.A. No. 8479, otherwise known as the Downstream Oil Industry Deregulation Act of 1998, as amended; R.A. No. 9136, as amended; R.A. No. 9295, otherwise known as the Domestic Shipping Development Act of 2004, as amended; and R.A. No. 6957, otherwise known as the BOT law, as amended; and (2) regulations promulgated by these Administrative Agencies to deregulate rates.

- c. To fix and determine proper and adequate rates of depreciation of the property of any public service which will be observed in a proper and adequate depreciation account to be carried for the protection of stockholders, bondholders or creditors, in accordance with such rules, regulations, and forms of accounts as the relevant Administrative Agency may prescribe. Said rates shall be sufficient to provide the amounts required over and above the expense of maintenance to keep such property in a state of efficiency corresponding to the progress of the industry. Each public service shall conform its depreciation accounts to the rates so determined and fixed, and, as may be required by the proper Administrative Agency, shall set aside the moneys so provided for out of its earnings and carry the same in a depreciation fund. The income from investments of money in such fund shall likewise be carried in such fund. This fund shall not be expended otherwise than for depreciation, improvements, new constructions, extensions or additions to the property of such public service.
- d. To suspend or revoke any certificate issued under the provisions of the Act when the holder thereof has failed for three (3) consecutive years the annual

performance audit conducted by an independent evaluation team in accordance with the metrics to be set by the relevant Administrative Agency.

In no instance shall this provision be construed as conferring the aforementioned powers of relevant Administrative Agency, upon notice and hearing, where the Administrative Agency's Charter does not provide for such powers and function.

SECTION 9. POWERS OF THE ADMINISTRATIVE AGENCY, WITHOUT PREVIOUS HEARING. – Subject to Section 17 of C.A. No. 146, as amended, the relevant Administrative Agency, without previous hearing, shall have the following powers in accordance with the rules and provisions of C.A. No. 146, as amended, and the Act, subject to established limitations and exceptions and saving provisions to the contrary:

- a. To investigate, upon its own initiative, or upon complaint in writing, any matter concerning any public service as regards matters under its jurisdiction; to require any public service to furnish safe, adequate, and proper service as the public interest may require and warrant; to enforce compliance with any standard, rule, regulation, order or other requirement of C.A. No. 146, as amended, and the Act or of the relevant Administrative Agency, and to prohibit or prevent any public service as herein defined from operating without having first secured a certificate and require existing public services to pay the fees provided for in C.A. No. 146, as amended, and the Act for the issuance of the certificate, under the penalty, at the discretion of the relevant Administrative Agency, of the revocation and cancellation of any acquired right.
- b. To require any public service to pay the actual expenses incurred by the relevant Administrative Agency in any investigation if it shall be found in the same that any rate, toll, charge, schedule, regulation, practice, act or service thereof is in violation of any provision of C.A. No. 146, as amended, and the Act or any certificate, order, rule, regulation or requirement issued or established by the relevant Administrative Agency. The relevant Administrative Agency may also assess against any public service reasonable costs with reference to such investigation.
- c. To require any public service to keep its books, records, and accounts so as to afford an intelligent understanding of the conduct of its business and to that end to require every such public service of the same class to adopt a

uniform system of accounting. Such system shall conform to any system approved and confirmed by the Commission on Audit.

In no instance shall this provision be construed as conferring the aforementioned powers of relevant Administrative Agency, without notice and hearing, where the Administrative Agency's Charter does not provide for such powers and function.

RULE III. PUBLIC SERVICE AND PUBLIC UTILITY; RECLASSIFICATION OF PUBLIC SERVICE

SECTION 10. PUBLIC UTILITY. – The term public utility refers to a public service that operates, manages, or controls for public use any of the following:

- a. Distribution of Electricity;
- b. Transmission of Electricity;
- c. Petroleum and Petroleum Products Pipeline Transmission Systems;
- d. Water Pipeline Distribution Systems and Wastewater Pipeline Systems, including sewerage pipeline systems;
- e. Seaports; and
- f. Public Utility Vehicles.

All concessionaires, joint ventures, and other similar entities that wholly operate, manage or control for public use the sectors above are public utilities. Persons or entities that have mere ownership of facilities but are not involved in the actual management or operations of a public utility are not considered public utilities.

Nothing in the Act and these Rules shall be interpreted as a requirement for legislative franchise where the law does not require any. No other person shall be deemed a public utility unless otherwise subsequently provided by law.

SECTION 11. CRITERIA FOR RECLASSIFICATION OF PUBLIC SERVICE AS PUBLIC UTILITY. – Upon the recommendation of NEDA, the President may recommend to Congress the classification of a particular public service as a public utility on the basis of the following criteria:

- a. The person or juridical entity regularly supplies and transmits, and distributes to the public through a network a commodity or service of public consequence;

- b. The commodity or service is a natural monopoly that needs to be regulated when the common good so requires. For this purpose, natural monopoly exists when the market demand for a commodity or service can be supplied by a single entity at a lower cost than by two or more entities;
- c. The commodity or service is necessary for the maintenance of life and occupation of the public; and
- d. The person or juridical entity, providing the commodity or service, is obligated to provide adequate service to the public on demand.

SECTION 12. REVIEW PROCEDURE FOR RECLASSIFICATION OF PUBLIC SERVICE. –

Pursuant to the preceding paragraph, NEDA, upon request by the Administrative Agency, shall review the reclassification of public service, subject to the following procedures:

- a. The relevant Administrative Agency shall submit a written letter to NEDA requesting to review whether a specific public service should be classified as a public utility based on the identified criteria provided under Section 11 of these Rules, and submit the following documents to NEDA:
 - i. Summary on the profile of the entities providing the public service, including investors or shareholders of such entities for the past three (3) years immediately preceding the date of the submission of request to NEDA;
 - ii. General Information Sheet and Audited Financial Statements of the entities that were submitted to the Securities and Exchange Commission (SEC) and the Bureau of Internal Revenue (BIR), among others, for the past three (3) years immediately preceding the date of submission of request to NEDA;
 - iii. Performance audit and rating of public service entities pursuant to Section 49 (Performance Audit) of these Rules, conducted by the relevant Administrative Agency, for the past two (2) years immediately preceding the date of submission of request to NEDA; and
 - iv. Market study containing relevant details and information proving that the public service is a natural monopoly and where such study is not older than two (2) years, as of date of submission.

NEDA may periodically issue a list of documentary requirements needed to undertake the review, as contemplated in this Section.

- b. Within twenty (20) calendar days from receipt of the documents, NEDA shall provide feedback to the relevant Administrative Agency on the completeness of the documents. NEDA shall return incomplete documents, without prejudice to the resubmission of the documents by the relevant Administrative Agency. NEDA shall only commence action on the request upon the submission of complete documentary requirements.
- c. NEDA, upon consultation with Administrative Agencies and other relevant agencies, shall provide feedback on the review of the reclassification of public service to the requesting Administrative Agency, within sixty (60) calendar days upon receipt of the complete documents.
- d. NEDA may, *motu proprio*, initiate its own review and recommend the classification of public services as public utility. NEDA shall coordinate with the Administrative Agency and other relevant government agencies in the conduct of its own review, including request for documents under this provision, as may be necessary.
- e. NEDA may also consult with relevant stakeholders as part of its review process.
- f. If, upon review, NEDA finds that a public service should be classified as a public utility, it may submit such a recommendation to the Office of the President, for appropriate action.

SECTION 13. FACTORS TO BE CONSIDERED IN THE REVIEW. – NEDA shall consider the following factors in the review of the reclassification of public services:

- a. As natural monopolies need to be regulated when common good requires, the characteristics of a natural monopoly and the common good are, therefore, to be established upon consultation with the Philippine Competition Commission (PCC), taking into consideration, but not limited to, the following:
 - i. *Natural monopoly*
 - 1. Long-tail economies of scale

2. Huge fixed cost
 3. Low marginal cost
 4. Naturally occurring
 5. Unfavorable conditions for competition
- ii. *Common good*
In the context of these Rules, it shall be determined in terms of access, cost, quality and welfare.
- b. The commodity or service is classified as essential, wherein its presence is equivalent to the improvement of life and greater economic opportunities of the people; and its absence means the converse; and
- c. An uninterrupted market supply of the commodity or service is required to meet market demand, whether such market demand is actual or potential.

SECTION 14. BUSINESS AFFECTED WITH PUBLIC INTEREST. – A public service that is not classified as a public utility under the Act shall be considered a business affected with public interest. For this purpose, Section 17, Article XII of the 1987 Constitution concerning the temporary takeover or direction of operation of privately owned public utilities or business affected with public interest during times of national emergency, and Section 18, Article XII of the 1987 Constitution concerning the transfer to public ownership utilities and other private enterprises in the interest of national welfare or defense, shall apply.

RULE IV. OPERATORS OF PUBLIC SERVICES AND PROHIBITIONS

SECTION 15. REQUIREMENT FOR SECURING A CERTIFICATE FROM RELEVANT ADMINISTRATIVE AGENCY. – It shall be unlawful for any individual, partnership, association, corporation or joint-stock company, their lessees, trustees, or receivers appointed by any court whatsoever, or any municipality, province, or other department of the Government of the Philippines, to engage in any public service business without having first secured from the relevant Administrative Agency a certificate as provided for in C.A. No. 146, as amended, and the Act, except grantees of legislative franchises expressly exempting such grantee from the requirement of securing a certificate from the relevant Administrative Agency, as well as concerns at present existing expressly exempted from the jurisdiction of the

relevant Administrative Agency, either totally or in part, by the provisions of Section 13 of C.A. No. 146, as amended.

SECTION 16. UNLAWFUL ACTS. – Subject to Section 19 of C.A. No. 146, as amended, it shall be unlawful for any public service:

- a. To refuse or neglect, when requested by the Postmaster General or his authorized representative, to carry public mail on the regular trips of any public land transportation service maintained or operated by any such public service, upon such terms and conditions and for a consideration in such amounts as may be agreed upon between the Postmaster General and the public service carrier or fixed by the relevant Administrative Agency in the absence of an agreement between the Postmaster General and the carrier. In case the Postmaster General and the public service carrier are unable to agree on the amount of the compensation to be paid for the carriage of the mail, the Postmaster General shall forthwith request the relevant Administrative Agency to fix a just and reasonable compensation for such carriage and the same shall be promptly fixed by the relevant Administrative Agency in accordance with Section 16 of C.A. No. 146.
- b. To refuse or neglect, when requested by the Administrative Agency to urgently use, deliver or render the public service for the purpose of avoiding further loss on human, material, economic, or environment during a state of calamity.

SECTION 17. ACTS REQUIRING THE APPROVAL OF THE ADMINISTRATIVE AGENCY.

– Subject to Section 20 of C.A. No. 146, as amended, and subject to established limitations and exceptions and saving provisions to the contrary, it shall be unlawful for any public service or for the owner, lessee or operator thereof, without the approval and authorization of the relevant Administrative Agency previously had:

- a. To adopt, establish, fix, impose, maintain, or collect or carry into effect any individual or joint rates, commutation, mileage or other special rate, toll, fare, charge, classification or itinerary. The relevant Administrative Agency shall approve only those that are prudent and efficient and not any that are unjustly discriminatory or unduly preferential, only upon reasonable notice to the public services and other parties concerned, giving them a reasonable opportunity to be heard, and the burden of the

proof to show that the proposed rates or regulation are prudent and efficient shall be upon the public service proposing the same.

- b. To establish, construct, maintain, or operate new units or extend existing facilities or make any other addition to or general extension of the service: Provided, That only assets that are useful and necessary for the provision of the public service shall form part of the rate base as determined and approved by the Administrative Agency: Provided, further, That construction of such asset and implementation of such project may be allowed for emergency and other extraordinary cases: Provided, finally, That the public service provider files for approval of such extension or construction of facilities within sixty (60) days from implementation of the project, and without prejudice to the final determination by the Administrative Agency if the said asset is useful and necessary for inclusion in the rate base.

The Administrative Agency may issue regulations prescribing a shorter period than that provided in the preceding paragraphs only in cases of emergency, as may be certified by such Administrative Agency, requiring the installation, construction or maintenance of units, facilities or equipment.

- c. To issue any share of stock without par value: Provided, That it shall be the duty of the relevant Administrative Agency, after hearing, to approve any such issue when satisfied that the same is to be made in accordance with law.
- d. To sell, alienate, mortgage, encumber or lease its property, franchises, certificates, privileges, or rights, or any part thereof, or merge or consolidate its property, franchises, privileges or rights, or any part thereof, with those of any other public service. The approval therein required shall be given, after notice to the public and after hearing the persons interested at a public hearing, if it be shown that there are just and reasonable grounds for making the mortgage or encumbrance, for liabilities of more than one year maturity, or the sale, alienation, lease, merger, or consolidation to be approved, and that the same are not detrimental to the public interest, and in case of sale, the date on which the same is to be consummated shall be fixed in the order of approval: Provided, however, That nothing herein contained shall be

construed to prevent the transaction from being negotiated or completed before its approval or to prevent the sale, alienation, or lease by any public service of any of its property in the ordinary course of its business: Provided, finally, That the need for approval of the sale, alienation, mortgage, encumbrance or lease will be required only for properties of the public service that are used and useful in the delivery of the required public service.

- e. To sell, alienate or in any matter transfer shares of its capital stock to any alien if the result of that sale, alienation, or transfer in itself or in connection with another previous sale shall be the reduction to less than sixty percent (60%) of the capital stock belonging to Philippine Nationals in the operation of a public utility as required by the Constitution. Such sale, alienation or transfer shall be void and of no effect and shall be sufficient cause for ordering the cancellation of the certificate.

RULE V. PENALTIES FOR VIOLATIONS

SECTION 18. PENALTIES FOR VIOLATION OF THE ORDERS, DECISIONS, AND REGULATIONS OF THE ADMINISTRATIVE AGENCY AND OF THE TERMS AND CONDITIONS OF CERTIFICATES. – In the absence of any specific fine or penalty imposed under the Charter of the Administrative Agency or the special law governing the particular public service, any public service violating or failing to comply with the terms and conditions of any certificate or any order, decision, or regulation of the relevant Administrative Agency shall be subject to a fine of not lower than Five Thousand Pesos (P 5,000.00) but not exceeding Two Million Pesos (P 2,000,000.00) per day for every day during which such default or violation continues; and the relevant Administrative Agency is hereby authorized and empowered to impose such fine, after due notice and hearing: Provided, That should a lesser fine or penalty be imposed under the Charter of the Administrative Agency or the special law governing the public service, the amount of fine and penalty provided for under this section shall apply.

In cases where rates collected by the public service exceed the rates authorized by the Administrative Agency, the Administrative Agency may order a refund to consumers in lieu of or in addition to the fine or penalty imposed under the Act or the special law governing the public service. Administrative Agencies shall provide guidelines or incorporate the same in their existing guidelines, as the case may be,

in relation to the determination of excess rates and the prescriptive period within which to claim the refund.

The fines so imposed shall be paid to the Government of the Philippines through the relevant Administrative Agency, and failure to pay the fine or comply with the order to refund in any case within the time specified in the order or decision of the relevant Administrative Agency shall be deemed good and sufficient reason for the suspension of the certificate of said public service until payment shall be made or the order is complied with. Payment may also be enforced by appropriate action brought in a court of competent jurisdiction. The remedy provided in this section shall not be a bar to, or affect any other remedy provided in C.A. No. 146, as amended, and the Act but shall be cumulative and additional to such remedy or remedies.

SECTION 19. PENALTIES FOR COMMISSION OF FORBIDDEN OR PROHIBITED ACTS OR NEGLIGENCE, FAILURE, OR OMISSION TO DO OR PERFORM ANY ACT, BY PUBLIC SERVICE CORPORATIONS. – Any public service corporation that shall perform, commit, or do any act or thing forbidden or prohibited or shall neglect, fail or omit to do or perform any act or thing herein shall be punished, after notice and hearing, by a fine not exceeding Two Million Pesos (P 2,000,000.00), or by imprisonment of not lower than six (6) years and one (1) day and not higher than twelve (12) years, or both, at the discretion of the court.

In case the services of any entity engaged in the operation and management of critical infrastructure are interrupted, it shall act on the customer complaint within ten (10) working days, or provide an action plan to be accomplished within a reasonable period, from the date the complaint, written or otherwise, was received. For this purpose, entities engaged in the operation and management of critical infrastructure shall file a monthly report to the appropriate regulatory agency detailing the service interruptions that occurred during the covered period, the complaints lodged before it, and the actions taken on each complaint.

When entities involved are juridical persons, the penalty of imprisonment shall be imposed on its officers, directors, or employees holding managerial positions, who are knowingly and willfully responsible for such violation.

SECTION 20. PENALTIES FOR WILLFUL COMMISSION OF PROHIBITED ACTS. – Any person, including juridical persons whether foreign or domestic, who shall knowingly and willfully perform, commit, or do, or participate in performing,

committing, or doing, or who shall knowingly and willfully cause, participate, or join with others in causing any public service corporation or company to do, perform or commit, or who shall advise, solicit, persuade, or knowingly and willfully instruct, direct, or order any officer, agent, or employee of any public service corporation or company to perform, commit, or do any act or thing forbidden or prohibited by C.A. No. 146, as amended, and the Act, shall be penalized, after notice and hearing, by a fine not exceeding Two Million Pesos (P 2,000,000.00), or imprisonment of not lower than six (6) years and one (1) day and not higher than twelve (12) years, or both, at the discretion of the court.

When entities involved are juridical persons, the penalty of imprisonment shall be imposed on its officers, directors, or employees holding managerial positions, who are knowingly and willfully responsible for such violation.

SECTION 21. PENALTIES FOR WILLFUL NEGLIGENCE. – Any person, including juridical persons whether foreign or domestic, who shall knowingly and willfully neglect, fail, or omit to do or perform, or who shall knowingly and willfully cause or join or participate with others in causing any public service corporation or company to neglect, fail or omit to do or perform, or who shall advise, solicit, or persuade, or knowingly and willfully instruct, direct, or order any officer, agent, or employee of any public service corporation or company to neglect, fail, or omit to do any act or thing required to be done by C.A. No. 146, as amended, and the Act, shall be punished, after notice and hearing, by a fine not exceeding Two Million Pesos (P 2,000,000.00) or by imprisonment of not lower than six (6) years and one (1) day and not higher than twelve (12) years, or both, at the discretion of the court.

When entities involved are juridical persons, the penalty of imprisonment shall be imposed on its officers, directors, or employees holding managerial positions, who are knowingly and willfully responsible for such violation.

SECTION 22. PENALTIES FOR DESTRUCTION OF APPARATUS OR APPLIANCE OWNED OR OPERATED BY THE COMMISSION. – Any person who shall destroy, injure, or interfere with any apparatus or appliance owned or operated by or in charge of the relevant Administrative Agency or its agents, shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of the amount equivalent to the actual market value of the apparatus or appliance destroyed or injured plus a fine not exceeding Two Million Pesos (P 2,000,000.00) or imprisonment of not lower than six (6) years and one (1) day and not higher than twelve (12) years, or both, at the discretion of the court.

For purposes of determining the actual market value of the apparatus or appliance, the relevant Administrative Agency shall take into consideration the value of the said apparatus or appliance at the time of the destruction of injury, subject to the relevant rules and regulations.

SECTION 23. ADOPTION OF PROHIBITIONS AND PENALTIES. – Administrative agencies with quasi-judicial function accorded by their respective Charters shall incorporate the provisions of the Act and of these Rules in relation to the imposition of fines and penalties for violations of the Act and C.A. No. 146, as amended, in their existing guidelines.

SECTION 24. PRESCRIPTION OF OFFENSES. – Violations of the orders, decisions, and regulations of the relevant Administrative Agency and of the terms and conditions of any certificate issued by the relevant Administrative Agency and violations of the provisions of C.A. No. 146, as amended, and the Act shall prescribe in accordance with Act No. 3326, entitled An Act to Establish Periods of Prescription for Violations Penalized by Special Acts and Municipal Ordinances and to provide when Prescription shall Begin to Run, as amended.

RULE VI. PROCEDURE AND REVIEW

SECTION 25. ADOPTION OF RULES BY RELEVANT ADMINISTRATIVE AGENCY ON THE CONDUCT OF HEARINGS AND INVESTIGATIONS. – All hearings and investigations before the relevant Administrative Agency shall be governed by rules adopted by the relevant Administrative Agency, and in the conduct thereof the relevant Administrative Agency shall not be bound by the technical rules of legal evidence: Provided, That the Hearing Officer may summarily punish for contempt by a fine not exceeding Two thousand pesos (P 2,000.00) or by imprisonment not exceeding ten days, or both, any person guilty of misconduct in the presence of the Hearing Officer or so near the same as to interrupt the hearing or session or any proceedings before them, including cases in which a person present at a hearing, session, or investigation held by the Hearing Officer refuses to be sworn as a witness or to answer as such when lawfully required to do so. To enforce the provisions of this Section, the relevant Administrative Agency may, if necessary, request the assistance of the municipal or city police for the execution of any order made for said purpose.

SECTION 26. RULES ON HEARINGS AND INVESTIGATIONS. – Subject to Section 30 of C.A. No. 146, as amended, the following rules shall apply:

- a. The relevant Administrative Agency may issue subpoenas and subpoenas duces tecum, for witnesses in any matter or inquiry pending before the relevant Administrative Agency and require the production of all books, papers, tariffs, contracts, agreements, and all other documents, which the relevant Administrative Agency may deem necessary in any proceeding. Such process shall be issued under the seal of the relevant Administrative Agency, signed by one of the Hearing Officers, and may be served by any person of full age, or by registered mail. Disobedience to, or failure to comply with, such subpoena, shall constitute indirect contempt, and may be instituted in the manner as provided in the Rules of Court before the appropriate court.
- b. Any person who shall neglect or refuse to answer any lawful inquiry or produce before the relevant Administrative Agency, books, papers, tariffs, contracts, agreements, and documents or other things called for by said Administrative Agency, if in his power to do so, in obedience to the subpoena or lawful inquiry of the relevant Administrative Agency upon conviction thereof by a court of competent jurisdiction, shall be punished by a fine not exceeding Thirty Thousand Pesos (P 30,000.00) or by imprisonment not exceeding six (6) months, or both, at the discretion of the court.
- c. The officials and Hearing Officers of the relevant Administrative Agency shall have the power to administer oaths in all matters under the jurisdiction of the relevant Administrative Agency.
- d. Witnesses appearing before the relevant Administrative Agency in obedience to subpoena or subpoena duces tecum shall be entitled to receive the same fees and mileage as witness attending regional trial courts in civil cases.
- e. Any person who shall obstruct the relevant Administrative Agency or the Hearing Officers while engaged in the discharge of official duties, or who shall conduct himself in a rude, disrespectful or disorderly manner before the relevant Administrative Agency or the Hearing Officers, while engaged in the discharge of official duties, or shall orally or in writing be

disrespectful to, offend or insult either of the Hearing Officers on occasion or by reason of the performance of his official duties, upon conviction thereof by a court of competent jurisdiction, shall be punished for each offense by a fine not exceeding Thirty Thousand Pesos (P 30,000.00), or by imprisonment not exceeding six (6) months, or both, at the discretion of the court.

SECTION 27. ADDITIONAL AUTHORITY OF RELEVANT ADMINISTRATIVE AGENCIES IN THE CONDUCT OF INVESTIGATIONS AND HEARINGS. – The relevant Administrative Agency may, in any investigation or hearing, by its order in writing, cause the deposition of witnesses residing within or without the Philippines to be taken in the manner and under the conditions prescribed by the Rules of Court. Where witnesses reside in places distant from Manila and it would be inconvenient and expensive for them to appear personally before the relevant Administrative Agency, the relevant Administrative Agency may, by proper order, commission any clerk of the Regional Trial Court of the Philippines to take the deposition of witnesses in any case pending before the relevant Administrative Agency. It shall be the duty of the official so commissioned, to designate promptly a date or dates for the taking of such deposition, giving timely notice to the parties, and on said date to proceed to take the deposition, reducing it to writing. After the depositions have been taken, the official so commissioned shall certify to the depositions taken and forward them as soon as possible to the relevant Administrative Agency. It shall be the duty of the respective parties to furnish stenographers for taking and transcribing the testimony taken.

The relevant Administrative Agency may also, by proper order, authorize any of the attorneys of the legal division or division chiefs of the relevant Administrative Agency, if they be lawyers, to hear and investigate any case filed with the relevant Administrative Agency and in connection therewith to receive such evidence as may be material thereto. At the conclusion of the hearing or investigation, the attorney or division chief so authorized shall submit the evidence received by him to the relevant Administrative Agency to enable the latter to render its decision.

SECTION 28. APPEAL. – Any order, ruling, or decision of the Administrative Agency may be appealed in the manner and within the period prescribed under the Rules of Court and other pertinent laws.

SECTION 29. JUDICIAL PROCEEDINGS. – Subject to the provisions of Section 35, Chapter 12, Title III, Book IV of E.O. No. 292, s. 1987, otherwise known as the

Administrative Code of 1987, the chief of the legal division or any other attorneys of the relevant Administrative Agency shall represent the same in all judicial proceedings. It shall be the duty of the Solicitor General to represent the relevant Administrative Agency in any judicial proceeding if, for special reasons, the Hearing Officer shall request his intervention.

SECTION 30. PROCEDURE AND REVIEW. – In addition to the rules and procedures enumerated under Rule VI herein, Sections 30, 31, 33, 34, 36, 37 and 39 of C.A. No. 146, as amended, shall remain applicable to all the relevant Administrative Agency with quasi-judicial functions, as accorded by their respective Charters.

RULE VII. FEES AND RATE SETTING

SECTION 31. ADMINISTRATIVE FEES AND CHARGES. – Administrative Agencies, subject to their relevant charters, may collect from any public service, including any public utility, reasonable fees and charges, and impose appropriate penalties and fines as provided by law; Provided, That such fees, charges, penalties, and fines may be adjusted to its present value every five (5) years using the Consumer Price Index as published by the Philippine Statistics Authority.

The adjustment or revision of charges shall be consistent with existing rules and regulations on the matter including Administrative Order No. 31, s. 2012, or the “Directing and Authorizing All Heads of Departments, Bureaus, Commissions, Agencies, Offices and Instrumentalities of the National Government, Including Government-Owned and/or -Controlled Corporations, to Rationalize the Rates of their Fees and Charges, Increase their Existing Rates and Impose New Fees and Charges”, and any other rules and regulations issued subsequently.

Recommendations by relevant agencies such as the Task Force on Fees and Charges under the National Tax Research Center may also be considered in determining the appropriate administrative fees and charges.

RULE VIII. CRITICAL INFRASTRUCTURE

SECTION 32. TELECOMMUNICATION AS CRITICAL INFRASTRUCTURE. – A public service engaged in the provision of telecommunications services is critical infrastructure under the Act.

No other public service shall be considered critical infrastructure unless declared by the President.

SECTION 33. POWER OF THE PRESIDENT TO DETERMINE CRITICAL INFRASTRUCTURE. – The President of the Philippines is authorized to declare a public service as a critical infrastructure in accordance with the Act and these Rules.

SECTION 34. PROCEDURE FOR DECLARATION OF CRITICAL INFRASTRUCTURE. – NEDA may recommend to the President, *motu proprio* or upon request of the relevant Administrative Agency, the classification of a public service as critical infrastructure.

- a. Administrative Agencies shall submit a written letter to NEDA requesting to review whether a specific public service should be classified as a critical infrastructure. Such letter request shall state the grounds for the request and provide the necessary data/documents to support the proposal.
- b. Upon receipt of the letter request and supporting data/documents, NEDA, upon consultation with Administrative Agencies and other relevant agencies, shall provide feedback to the requesting Administrative Agency within ten (10) calendar days after the receipt of the letter request and indicate the submission of additional documents as necessary.
- c. Upon receipt of supporting and additional documents, NEDA, upon consultation with Administrative Agencies and other relevant agencies, shall provide feedback on the review of the classification of a public service as a critical infrastructure, to the requesting Administrative Agency, within sixty (60) calendar days upon receipt of the complete documents.
- d. NEDA may consult with the relevant stakeholders as part of its review process.
- e. If, upon review, NEDA finds that a public service should be classified as a critical infrastructure, it may submit such a recommendation to the Office of the President.
- f. Any process of review by NEDA shall only commence upon the submission of complete documentary requirements by the Administrative Agencies.

- g. Based on the results of the review, a public service may be declared a critical infrastructure by the President through the issuance of an executive order, as may be deemed necessary.
- h. Upon the declaration by the President that a public service is a critical infrastructure, the provisions applicable to critical infrastructure shall apply prospectively to such relevant public service.
- i. NEDA shall issue additional guidelines or circulars to implement this provision.

RULE IX. MONITORING AND REVIEW OF INVESTMENTS IN PUBLIC SERVICE, PUBLIC UTILITY AND CRITICAL INFRASTRUCTURE

SECTION 35. FOREIGN INVESTMENTS. – Unless otherwise stated in the Act or in these Rules or prohibited by the Philippine Constitution or other laws, a foreign entity or investor may invest directly or indirectly in any public service, including public utilities, subject to the conditions provided in the Act and in these Rules. Such investments shall be monitored by the relevant Administrative Agency.

SECTION 36. POWER OF THE PRESIDENT TO SUSPEND OR PROHIBIT TRANSACTION OR INVESTMENT. – In the interest of national security, the President, after the review, evaluation and recommendation of the relevant government department or Administrative Agency done in accordance with Sections 37 (Factors to Consider in the Conduct of National Security Review) and 38 to 39 (National Security Review Process) of these Rules, may, within sixty (60) calendar days from the receipt of such recommendation, suspend or prohibit any proposed merger or acquisition transaction, or any investment in a public service that effectively results in the grant of control, whether direct or indirect, to a foreigner or a foreign corporation.

In the interest of national security, any proposed merger or acquisition transaction, or any investment in a public service, that satisfies the conditions under Section 37 (Factors to Consider in the Conduct of National Security Review), shall be referred by the relevant Administrative Agency to the Inter-Agency Investment Promotion Coordination Committee (IIPCC), created under R.A. No. 11647 or the amended Foreign Investments Act, for the conduct of the national security review, Provided, That the relevant Administrative Agency shall directly participate in the national

security review of the IIPCC pursuant to Section 38 (Process of National Security Review for Voluntary Declaration) and Section 39 (*Motu Proprio* National Security Review Process) of these Rules; Provided, further, That the Administrative Agency may concur with the IIPCC's recommendation to suspend, prohibit, or proceed with the investment transaction; Provided, finally, That in cases where the Administrative Agency and IIPCC fail to reach a common recommendation, they may submit their separate recommendations to the President.

The PCC shall be informed and consulted on all matters relating to mergers and acquisitions, without prejudice to the PCC's power to review mergers and acquisitions under R.A. No. 10667, otherwise known as the Philippine Competition Act.

SECTION 37. FACTORS TO CONSIDER IN THE CONDUCT OF NATIONAL SECURITY REVIEW. – Investment transactions in any public service satisfying both of the following conditions shall be subject to national security review:

- a. Any proposed merger or acquisition transaction, or any investment in a public service entity, that will result in the grant of control, whether direct or indirect, to a foreigner or a foreign corporation, or a foreign government; and
- b. The investment transaction has national security implications, such as but not limited to:
 - i. Whether the public service entity performs or has previously performed in any contracts that have been classified as either confidential, secret or top secret;
 - ii. Whether the investment transaction involves critical infrastructure, critical technology or sensitive personal data;
 - iii. Whether the public service entity is located in geographical areas critical to national security. The list of geographical areas critical to national security will be subject to the approval of the President as provided in the IRR of R.A. No. 11647; or
 - iv. Other circumstances analogous to the foregoing.

For purposes of these Rules, the term critical technology refers to the following:

- a. Military or defense-related items, software, and technology that are specifically designed, developed, configured, adapted, or modified for military end-use, including those identified in the national strategic goods list (NSGL) as provided in R.A. No. 10697, otherwise known as Strategic Trade Management Act; and
- b. Items regulated by the Department of National Defense, Philippine National Police, Department of Health, DENR or any such appropriate government instrumentality with mandate pursuant to multilateral and international agreements relating to national security, chemical and biological weapons, nuclear technology, or missile technology.

SECTION 38. PROCESS OF NATIONAL SECURITY REVIEW FOR VOLUNTARY DECLARATION.

- a. *Submission of Declaration.* – Should the investment transaction be covered by the review process under the Act and these Rules, any party to a covered transaction may, jointly or separately, voluntarily declare with the relevant government department or Administrative Agency, at least thirty (30) calendar days prior to the date of execution of relevant agreements. The relevant government department or administrative agency shall provide a copy of the submitted declaration to the IIPCC Secretariat.
- b. *Contents of the Declaration.* – The party or parties filing the declaration shall provide the required information as determined by the IIPCC Technical Committee (IIPCC-TC) and approved jointly by the IIPCC and the Administrative Agencies. The declaration must be accurate and complete with respect to all parties and to the investment transaction. Additional information may be requested from the parties to the investment transaction if the declaration is insufficient to assess the investment transaction.
- c. *Acceptance or Rejection of Declaration.* – Upon receipt of the declaration submitted, the relevant government department or Administrative Agency and the IIPCC Secretariat shall jointly inspect the declaration and notify in writing, within ten (10) working days, all parties to an investment transaction that have submitted a declaration, that:

- i. The relevant government department or Administrative Agency and the IIPCC Secretariat have accepted the declaration and the date on which the assessment described in Section 38(d) begins; or
- ii. The relevant department or Administrative Agency and the IIPCC Secretariat have determined not to accept because the declaration is either incomplete or inconsistent with the documents as required in Section 38(b) of these Rules, and an explanation of the material respects in which the declaration is incomplete or inconsistent. Provided, That in the case of merger and acquisition transactions, the relevant Administrative Agency and the IIPCC may initiate a review process subject to the rules as specified in Section 39.

If, after ten (10) working days, the relevant department or Administrative Agency and the IIPCC Secretariat failed to notify the party or parties to the investment transaction, the declaration shall be deemed accepted to proceed to the conduct of initial risk assessment.

- d. *Initial Risk Assessment.* – Within thirty (30) calendar days from the acceptance of the declaration, the relevant department or Administrative Agency, jointly with the IIPCC, shall conduct a risk assessment. In the absence of finding of any threat, the relevant department or Administrative Agency and the IIPCC shall inform the party/parties to the investment transaction of the result of the risk assessment and that the party/parties may proceed with the transaction.
- e. *Comprehensive National Security Review.* – Within sixty (60) calendar days from the issuance determining the presence of a national security threat during the initial risk assessment, the relevant government department or Administrative Agency and the IIPCC shall jointly conduct a comprehensive national security review and submit their recommendation to the President. The PCC shall be informed and consulted on all matters relating to mergers and acquisitions, without prejudice to the PCC's power to review mergers and acquisitions under R.A. No. 10667. Other relevant agencies may also be consulted during the review.

During the course of the review, the relevant government department or Administrative Agency and the IIPCC may request for additional documents as necessary.

- f. *Action of the President.* – Based on the recommendation from the results of the comprehensive national security review, the President may, within sixty (60) calendar days from the receipt of such recommendation, suspend or prohibit any covered transaction. The relevant government department or Administrative Agency and the IIPCC shall jointly inform the party/parties to the investment transaction of the decision of the President.

SECTION 39. MOTU PROPRIO NATIONAL SECURITY REVIEW PROCESS. –

- a. *Initiation of the Review.* – The relevant government department or Administrative Agency, jointly with the IIPCC, may *motu proprio* initiate a national security review if the covered transaction is deemed to satisfy the conditions under Section 37 (Factors to Consider in the Conduct of a National Security Review). The relevant government department or Administrative Agency, jointly with the IIPCC, shall notify the party/parties to the investment transaction and require the submission of relevant documents pursuant to Section 38(b), and at their discretion, request that the party/parties submit additional information within ten (10) working days from the receipt of request, if previous submission is insufficient to assess the investment transaction.
 - i. The PCC shall notify the relevant government department or Administrative Agency and the IIPCC of any proposed mergers and acquisitions involving investments covered by the conditions under Section 37.
 - ii. The relevant government department or Administrative Agency, jointly with the IIPCC, may request assistance from the PCC to compel party/parties to submit all the required documents.
- b. *Motu Proprio Initial Risk Assessment.* – The relevant government department or Administrative Agency, jointly with the IIPCC, shall conduct a risk assessment within thirty (30) calendar days from receipt of the relevant documents. In the absence of finding of any threat, the relevant government department or Administrative Agency, jointly with the IIPCC, shall inform the party/parties to the investment transaction of

the result of the risk assessment and that the party/parties may proceed with the transaction.

- c. *Comprehensive National Security Review.* – Within sixty (60) calendar days from the issuance determining the presence of a national security threat during the initial risk assessment, the relevant government department or Administrative Agency and the IIPCC shall jointly conduct a comprehensive national security review and submit their recommendation to the President. The PCC shall be informed and consulted on all matters relating to mergers and acquisitions, without prejudice to the PCC's power to review mergers and acquisitions under R.A. No. 10667. The relevant government department or Administrative Agency, jointly with the IIPCC, may consult other relevant agencies during the conduct of the review.
- d. *Action of the President.* – Based on the recommendation from the results of the comprehensive national security review, the President may, within sixty (60) days from the receipt of such recommendation, suspend or prohibit any covered transaction. The relevant government department or Administrative Agency, jointly with the IIPCC, shall inform the party/parties to the investment transaction of the decision of the President.

SECTION 40. CRITERIA FOR REVIEWING INVESTMENTS. – The following criteria must be taken into consideration when reviewing investments:

- a. Impact on national security;
- b. Applicability of other Philippine laws and policies;
- c. Implication of any national security risk arising from the investment on the Philippine economy and community;
- d. Whether the investment will affect the ability of the Philippines to protect its strategic and security interests; and
- e. Nature, history, and previous business transactions of the investor and any filed cases against the same, in their country of origin, or in any other country or state that the investor is involved with.

SECTION 41. SUBMISSION OF ADDITIONAL INFORMATION. – Nothing in these Rules shall be construed as prohibiting any party to a covered transaction from submitting additional information while the review is ongoing.

SECTION 42. NOTICE OF RESULTS TO PARTIES. – Upon the completion of the national security review, the relevant government department or Administrative Agency, jointly with the IIPCC, shall promptly notify the parties of the President’s decision on the results of the national security review.

SECTION 43. PRE-DECLARATION CONSULTATIONS. – Nothing in these Rules shall prohibit the parties to a covered transaction from consulting with the relevant government department or Administrative Agency in advance of filing a declaration and, in appropriate cases, to file with the relevant department or Administrative Agency a draft declaration or other appropriate documents to aid in understanding the transaction and to provide an opportunity for the department or Administrative Agency to request additional information to be included in the declaration.

SECTION 44. CONFIDENTIALITY OF INFORMATION. – Any information or documentary material which is filed with or forwarded to the relevant government departments or Administrative Agencies and the IIPCC pursuant to or related to pre-declaration consultations or the national security review, shall be exempt from disclosure, and no such information or documentary material may be made public, except as may be relevant to any administrative or judicial action or proceeding. Subject to the written consent of the party/ parties, the relevant government departments or Administrative Agencies may disclose the information to either the Senate of the Philippines or the House of Representatives of the Philippines or to any of their Committees or Subcommittees.

SECTION 45. INVESTMENTS BY AN ENTITY CONTROLLED BY OR ACTING ON BEHALF OF A FOREIGN GOVERNMENT, OR FOREIGN STATE-OWNED ENTERPRISES.

- a. From the effectivity of the Act, the following are prohibited from making any investment or owning capital in any public service classified as public utility or critical infrastructure:
 - i. foreign government or foreign state-owned enterprise;
 - ii. an entity controlled by a foreign government or foreign state-owned enterprises; or
 - iii. an entity acting on behalf of a foreign government or foreign state-owned enterprises. An entity is considered to be acting on behalf of a foreign government or foreign state-owned enterprise if the foreign government or foreign state-owned enterprise has the ability to intervene in the management, operation, administration or control of an entity.

- b. The Administrative Agencies shall have jurisdiction to monitor and ensure compliance with this Section. For this purpose, the SEC shall provide these Administrative Agencies access to the existing reportorial requirements of these corporations. The Administrative Agencies shall further require documentary evidence to prove the nature of ownership as part of the registration or disclosure of entities intending to operate and maintain public utilities or critical infrastructure in the Philippines.
- c. The entities referred to in Section 45(a) which have existing investments or own capital in public utility entities or public service entities classified as critical infrastructure prior to the effectivity of the Act may maintain such investment and capital ownership, but are prohibited from investing additional capital therein after the effectivity of the Act;
- d. Sovereign wealth funds and independent pension funds of each state may collectively own up to thirty percent (30%) of the capital of such public utility entity or public service classified as critical infrastructure; Provided, That the cumulative foreign investment in any public service classified as a public utility or critical infrastructure, regardless of source of fund, shall not exceed thirty percent (30%) capital investment and shall be subject to review of control and national security, as specified in these Rules.
- e. In the interest of national security, an entity controlled by, or acting on behalf of the foreign government or foreign-owned enterprises shall not make any data or information disclosure, nor extend assistance, support, or cooperation to any foreign government, instrumentalities, or agents.

Provided, That the restrictions on critical infrastructure under this Section shall only apply to investments made after a public service is declared as critical infrastructure.

SECTION 46. RECIPROCITY REQUIREMENT FOR INVESTMENTS IN CRITICAL INFRASTRUCTURE. –

- a. Foreign nationals, whether natural or juridical, shall not be allowed to own more than fifty percent (50%) of the capital of entities engaged in the operation and management of public service classified as critical infrastructure unless the country of such foreign national accords reciprocity

to Philippine nationals as may be provided by foreign law, treaty, or international agreement.

- b. Reciprocity may be satisfied by according rights of similar value in other economic sectors. For this purpose, the reciprocity requirement shall be deemed satisfied if:
 - i. Philippine nationals are allowed to own more than fifty percent (50%) of capital stock in any activity related to agriculture, industry, and services in the home country of the foreign national; or
 - ii. If the home country of the foreign national allows Philippine nationals to invest the same value of capital in any economic activity related to agriculture, industry, and services.
- c. In case of an investment that results in the ownership by a foreign national of more than fifty percent (50%) of the capital stock in a public service classified as critical infrastructure, such public service entity and the relevant Administrative Agency shall ensure that the country of such foreign national accords reciprocity to Philippine nationals as provided under the Act and these Rules.

For this purpose, the Administrative Agency, in case the investment is in existing public service entities classified as critical infrastructure, or the SEC, in case the investment is for public service entities classified as critical infrastructure which are still in the process of registration with the SEC, shall require documentary evidence from the foreign national to prove reciprocity. The documentary evidence may include the following:

- i. A copy of the official publication of the law and/or other government issuances granting rights and privileges to Philippine nationals attested by the foreign government officer having legal custody of the record, or his deputy; or
- ii. Relevant documents granting rights and privileges to Philippine nationals to invest in the country of the foreign investor and certified in accordance with the Apostille Convention or consularised by the Philippine embassy having jurisdiction in the home country of the foreign investor.

Provided, That the restrictions on critical infrastructure under this Section shall only apply to investments made after a public service is declared as critical infrastructure.

SECTION 47. EMPLOYMENT OF FOREIGN NATIONAL. – Unless otherwise provided by law, or by any international agreement, a public service entity shall employ a foreign national only after the determination of non-availability of a Philippine National who is competent, able, and willing to perform the services for which the foreign national is desired. The Department of Labor and Employment (DOLE) shall issue guidelines on the determination of non-availability of a Philippine National.

- a. Any foreign national seeking admission to the Philippines for employment purposes and any public service entity which desires to engage a foreign national for employment in the Philippines must obtain an employment permit pursuant to P.D. No. 442, otherwise known as the Labor Code of the Philippines, as amended.
- b. The public service entity employing foreign nationals shall implement an understudy training or skills development program to ensure the transfer of technology/ skills to Filipinos.
 - i. Understudy training program refers to a training plan designed to transfer technology or skills by designating at least two (2) understudies per foreign national employed. Understudies shall be selected by the employer to be trained by a foreign national who works in the country by the virtue of an alien employment permit to ensure the actual transfer of technology or skills. Understudies must be next-in-rank Filipino regular employees in the same enterprise.
 - ii. Skills development program refers to a training plan designed to transfer technology or skills to at least two (2) trainees per foreign national employed through learning sessions or any similar method. It shall be conducted either by a foreign national who works in the country by virtue of an alien employment permit or by a Filipino, with the necessary qualifications. Trainees must be rank-and-file Filipino Regular Employees.
- c. The public service entity employing foreign nationals shall submit its Understudy Training or Skills Development Program to the DOLE Regional

Office having jurisdiction over the principal place of business within sixty (60) days from the start of the employment of the foreign national. Monitoring of the Understudy Training or Skills Development Program shall be in accordance with Section 5(c), Rule XIV, Book I, Omnibus Rules to Implement the Labor Code of the Philippines.

SECTION 48. INFORMATION SECURITY. – Persons and companies engaged in the telecommunications business shall obtain and maintain certifications from an accredited certification body attesting to compliance with relevant ISO standards on information security, as prescribed by the DICT; Provided, That the maintenance of these certifications shall be a continuing qualification for retention of franchise or other authority to operate; Provided, further, that this Section shall not apply to micro, small and medium enterprises under R.A. No. 6977, otherwise known as the Magna Carta for Micro, Small and Medium Enterprises (MSMEs), as amended.

SECTION 49. PERFORMANCE AUDIT. – Administrative Agencies must ensure the annual conduct of performance audit by an independent evaluation team to monitor cost, the quality of services provided to the public, and the ability of the public service provider to immediately and adequately respond to emergency cases: Provided, That in the case of critical infrastructure and public utilities, the performance audit shall include risk assessment, emergency response, and cybersecurity, among others. Metrics for various types of services must be established to sustain reliability, security, and safety of the public. Such metrics shall be published and updated regularly by the relevant Administrative Agencies and shall be supported by sufficient bases through studies and/or other reasonable methods recognized by the industry.

RULE X. OTHER DUTIES OF NEDA

SECTION 50. ISSUANCE OF PERIODIC ADVICE. – Pursuant to Section 4 of the Act, NEDA shall provide periodic advice to Administrative Agencies on the proper application of the constitutional and other legal restrictions to local and foreign-owned subcontractors, without putting operational resiliency at risk.

SECTION 51. CONDUCT OF REGULAR STUDIES AND COMPREHENSIVE BASELINE SURVEY. – NEDA shall conduct regular studies on whether regulatory reform is warranted in a public service sector to improve consumer welfare, and submit its recommendation to Congress. NEDA, on its own or in coordination with relevant

government instrumentalities, may conduct such studies at least once every three (3) years.

Within six (6) months from the effectivity of the Act, NEDA, in coordination with the relevant government agencies and local government units, shall conduct a comprehensive baseline survey of public services governance. NEDA shall provide copies of the results of the said survey to Congress and PCC.

RULE XI. FINAL PROVISIONS

SECTION 52. CONGRESSIONAL OVERSIGHT AND PERIODIC REVIEW. – A Congressional Oversight Committee shall be created that will monitor and evaluate the implementation of the Act every five (5) years commencing from effectivity of the Act. The Congressional Oversight Committee shall be composed of the Chairperson of the Senate Committee on Public Services, the Chairperson of the House of Representatives Committee on Economic Affairs, and representatives of other relevant congressional committees.

SECTION 53. INTERPRETATION. – The Act and these Rules shall be subject to and consistent with the regulatory powers of the State to promote public interest in Section 4 of Article IX-C and Section 17 of Article XII of the Constitution.

No franchise, certificate, concession, or authorization granted by the appropriate Administrative Agencies pursuant to the Act and these Rules shall be:

- a. Exclusive in character;
- b. For a longer period than fifty (50) years; Provided, That if a public service has maintained an exemplary record in the delivery of services (based on, among others, the results of the annual performance audit, consumer complaints and actions thereon, service interruptions, and compliance with performance standards and specifications prescribed by law or contract), and has made substantial investments on infrastructure, technology or equipment for its operations, such performance and size of investment shall be taken into consideration, and the application for renewal of the franchise, certificate, concession, or authorization of the public service shall be given priority by the appropriate Administrative Agencies, and the application resolved prior to entertaining a new application or unsolicited proposal, or before offering the public service through public bidding; and

- c. Granted except under the condition that it shall be subject to amendment, alteration, or repeal by Congress when the public interest so requires.

Should there be any inconsistency between the provisions of these Rules and the specific rules issued by covered Administrative Agencies, the provisions of these Rules shall govern.

SECTION 54. NON-IMPAIRMENT OF EXISTING AGREEMENTS. – The application and implementation of the pertinent provisions of the Act and these Rules shall not impair vested rights or obligations of contracts. Current and subsisting concession agreements and other similar contracts of juridical persons with government agencies or government-owned and-controlled corporations covering activities hereunder classified as public services shall remain valid and in force in accordance with the existing terms and conditions the parties agreed to thereunder until the expiration or termination thereof.

This provision shall not be interpreted to impair the application of Treaties entered into by the Republic of the Philippines prior to the effectivity of the Act, pursuant to the principle of *pacta sunt servanda*.

SECTION 55. IMPLEMENTING RULES AND REGULATIONS. – Administrative Agencies under Section 3 of the Act may coordinate with NEDA to revise, amend and supplement these Rules.

Administrative Agencies may issue guidelines and circulars as may be deemed necessary for the effective implementation of the various provisions of the Act and these Rules, provided that the same are consistent with C.A. No. 146, as amended, the Act, and these Rules.

NEDA may issue guidelines and circulars related to the implementation of Sections 4, 23, 24, and 25 of the Act.

SECTION 56. TRANSITORY PROVISIONS. – All relevant Administrative Agencies shall revise their respective rules, guidelines and other issuances, within six (6) months upon effectivity of these Rules, provided that the same are consistent with C.A. No. 146, as amended, the Act, and these Rules.

SECTION 57. SEPARABILITY CLAUSE. – Should any portion or provision herein be declared unconstitutional, the same shall not affect the validity of the other provisions of these Rules.

SECTION 58. REPEALING CLAUSE. – All laws, decrees, orders, rules and regulations, or other issuances or parts thereof, inconsistent with the provisions of the Act are hereby repealed or modified accordingly.

The provisions on limitation on foreign ownership in the following laws are hereby amended or modified:

- a. R.A. No. 6957, entitled, An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector, and for Other Purposes, as amended;
- b. R.A. No. 9295, otherwise known as the Domestic Shipping Development Act of 2004, as amended;
- c. R.A. No. 9497, otherwise known as the Civil Aviation Authority Act of 2008, as amended;
- d. R.A. No. 776, otherwise known as the Civil Aeronautics Act of the Philippines, as amended;
- e. P.D. No. 1112, otherwise known as the Toll Operation Decree, as amended;
- f. DOTr Department Order No. 2018-13, as amended, on the classification of the Transport Network Companies and Transportation Network Vehicles Service as public utilities; and
- g. R.A. No. 7925, otherwise known as the Public Telecommunications Policy Act of the Philippines, as amended, on the classification of all telecommunications entities as public utilities.

Nothing herein shall be construed as amending or repealing laws and administrative regulations deregulating or delisting services, industries and/or rates.

SECTION 59. EFFECTIVITY CLAUSE. – These Rules shall take effect fifteen (15) calendar days after publication in the Official Gazette or in a newspaper of general circulation in the Philippines.


ARSENIO M. BALISACAN 
Secretary
National Economic and Development
Authority

RAPHAEL PERPETUO M. LOTILLA
Secretary
Department of Energy

MA. ANTONIA YULO-LOYZAGA
Secretary
Department of Environment and
Natural Resources

IVAN JOHN E. UY
Secretary
Department of Information and
Communications Technology

JAIME J. BAUTISTA
Secretary
Department of Transportation

CARMELO L. ARCILLA
Executive Director
Civil Aeronautics Board

MANUEL ANTONIO L. TAMAYO
Acting Director-General
Civil Aviation Authority of the
Philippines

MONALISA C. DIMALANTA
Chairperson
Energy Regulatory Commission

RIZA MARIE T. PACHES
Officer-in-Charge
Land Transportation Franchising and
Regulatory Board

TEOFILO E. GUADIZ III
Assistant Secretary
Land Transportation Office

EILEEN L. DELA VEGA
Officer-in-Charge
Local Water Utilities Administration

HERNANI N. FABIA
Administrator
Maritime Industry Authority

LEONOR C. CLEOFAS
Administrator
Metropolitan Waterworks and
Sewerage System

ELLA B. LOPEZ
Officer-in-Charge
National Telecommunications
Commission

SEVILLO D. DAVID JR.
Executive Director
National Water Resources Board

JEREMY S. REGINO
General Manager
Philippine National Railways

JAY DANIEL R. SANTIAGO
General Manager
Philippine Ports Authority

JOSEPHINE T. TURBOLENCIA
Officer-in-Charge
Toll Regulatory Board

CONFORME :

ALFREDO E. PASCUAL

Secretary

Department of Trade and Industry and
Chairperson of the IIPCC

BIENVENIDO E. LAGUESMA

Secretary

Department of Labor and Employment

EMILIO B. AQUINO

Chairperson

Securities and Exchange Commission

JOHANNES BENJAMIN R. BERNABE

Officer-in-Charge

Philippine Competition Commission