
LOAN NUMBER 2507-PHI

LOAN AGREEMENT
(Ordinary Operations)
(Philippine Energy Efficiency Project)

between

REPUBLIC OF THE PHILIPPINES

and

ASIAN DEVELOPMENT BANK

DATED 2 MARCH 2009

LAL:PHI 42001

**LOAN AGREEMENT
(Ordinary Operations)**

LOAN AGREEMENT dated 2 March 2009 between the REPUBLIC OF THE PHILIPPINES (hereinafter called the "Borrower") and ASIAN DEVELOPMENT BANK (hereinafter called "ADB").

WHEREAS

(A) the Borrower has applied to ADB for a loan for the purposes of the Project described in Schedule 1 to this Loan Agreement;

(B) the Borrower has also applied to the Clean Energy Fund ("CEF") under the Clean Energy Financing Partnership Facility for a grant ("CEF Grant") in the amount of one million five hundred thousand dollars (\$1,500,000) to finance a portion of the Project on a joint basis, to be administered by ADB; and

(C) ADB has agreed to make a loan to the Borrower from ADB's ordinary capital resources upon the terms and conditions hereinafter set forth;

NOW THEREFORE the parties hereto agree as follows:

ARTICLE I

Loan Regulations; Definitions

Section 1.01. All the provisions of the Ordinary Operations Loan Regulations Applicable to LIBOR-Based Loans Made from ADB's Ordinary Capital Resources, dated 1 July 2001, are hereby made applicable to this Loan Agreement with the same force and effect as if they were fully set forth herein, subject, however, to the following modifications thereof (said Ordinary Operations Loan Regulations as so modified being hereinafter called the Loan Regulations):

(a) Section 3.03 is deleted and the following is substituted therefor:

Commitment Charge; Credit. (aa) The Borrower shall pay a commitment charge on the unwithdrawn amount of the Loan at the rate and on the terms specified in the Loan Agreement.

(bb) ADB shall provide to the Borrower a credit at the rate specified in the Loan Agreement, which credit shall remain fixed for the term of the Loan. ADB shall apply the amount of the credit against the interest payable by the Borrower.

(b) Section 3.06 is deleted and the following is substituted therefor:

(aa) Following any announcement by ADB that the Fixed Spread applicable to new Loans shall be reduced, ADB shall provide a Rebate to any Borrower with an outstanding Loan on which a higher Fixed Spread is applicable. The amount of the Rebate shall be determined by multiplying (i) the difference between the Fixed Spread applicable to the outstanding Loan and the Fixed Spread that will be applied to new Loans (expressed as a percentage per annum), by (ii) the principal amount of the outstanding Loan on which the Borrower shall pay interest for all interest periods commencing on and after the effective date of the lower Fixed Spread that will be applied to new Loans.

(bb) Following any announcement by ADB that its Funding Cost Margin calculations with respect to any Loan Currency (or Approved Currency) in any Semester resulted in ADB achieving savings, ADB shall provide a Rebate to the Borrower. The amount of the Rebate shall be determined by multiplying (i) the Funding Cost Margin (expressed as a percentage per annum) by (ii) the principal amount of the Loan on which the Borrower shall pay interest for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated. ADB shall apply the amount of the Rebate against the interest payable by the Borrower for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated.

(c) Section 3.07 is deleted and the following is substituted therefor:

(aa) Following any announcement by ADB that the Fixed Spread applicable to new Loans shall be increased, any Borrower with an outstanding Loan on which a lower Fixed Spread is applicable shall pay ADB a Surcharge. The amount of the Surcharge shall be determined by multiplying (i) the difference between the Fixed Spread that will be applied to new Loans and the Fixed Spread applicable to the outstanding Loan (expressed as a percentage per annum), by (ii) the principal amount of the outstanding Loan on which the Borrower shall pay interest for all interest periods commencing on and after the effective date of the higher Fixed Spread that will be applied to new Loans.

(bb) Following any announcement by ADB that its Funding Cost Margin calculations with respect to any Loan Currency (or Approved Currency) in any Semester resulted in ADB incurring additional costs, the Borrower shall pay ADB a Surcharge. The amount of the Surcharge shall be determined by multiplying (i) the Funding Cost Margin (expressed as a

percentage per annum) by (ii) the principal amount of the Loan on which the Borrower shall pay interest for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated. ADB shall add the amount of the Surcharge to the interest payable by the Borrower for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated.

Section 1.02. Wherever used in this Loan Agreement, unless the context otherwise requires, the several terms defined in the Loan Regulations have the respective meanings therein set forth, and the following additional terms have the following meanings:

- (a) "CFL" means compact fluorescent lamp;
- (b) "Consulting Guidelines" means ADB's Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers (2007, as amended from time to time);
- (c) "Corporation Code (1980)" means the Corporation Code, 1980, of the Borrower, as may be amended from time to time;
- (d) "DOE" means the Department of Energy of the Borrower and any successor thereto;
- (e) "DOF" means the Department of Finance of the Borrower and any successor thereto;
- (f) "ECs" means electric cooperatives, which are the distribution utilities operating under the supervision of the NEA by virtue of Presidential Decree No. 269 (1973);
- (g) "EIA" means environmental impact assessment;
- (h) "ESCO" means the energy service company that engages in performance-based contract to implement energy efficiency measures;
- (i) "Goods" means equipment and materials to be financed out of the proceeds of the Loan; and including related services such as transportation, insurance, installation, commissioning, training, and initial maintenance, but excluding consulting services;
- (j) "IA" means an implementing agency, responsible for implementing the Project Components and Parts as set out in paragraph 1 of Schedule 5 to this Loan Agreement;
- (k) "NEA" means the National Electrification Administration of the Borrower and any successor thereto;
- (l) "NRLP" means the National Residential Lighting Program of the Borrower;

(m) "Part" means each of the various parts of the Project, as described in Schedule 1 to this Loan Agreement;

(n) "PhilGEPS" means the Philippine Government Electronic Procurement System of the Borrower which is the single electronic portal that serves as the primary source of information on all of the Borrower's government procurement;

(o) "PLRP" means the Public Lighting Retrofit Program of the Borrower;

(p) "PMU" means the Project Management Unit, as further described in paragraph 3 of Schedule 5 to this Loan Agreement;

(q) "PNOC" means the Philippine National Oil Company of the Borrower and any successor thereto;

(r) "Presidential Decree No. 269 (1973)" means the Borrower's Presidential Decree No. 269, 1973, on National Electrification Administration, as may be amended from time to time;

(s) "Procurement Guidelines" means ADB's Procurement Guidelines (2007, as amended from time to time);

(t) "Procurement Plan" means the procurement plan for the Project, dated 10 December 2008, and agreed between the Borrower and ADB, as updated from time to time in accordance with Procurement Guidelines, Consulting Guidelines, and other arrangements agreed with ADB;

(u) "Project Executing Agency" for purposes of, and within the meaning of, the Loan Regulations means DOE;

(v) "PSC" means the Project Steering Committee, as further described in paragraph 2 of Schedule 5 to this Loan Agreement;

(w) "Subsidiary Loan Agreement" means the agreement to be entered into between the Borrower and Super ESCO referred to in Section 3.01 of this Loan Agreement;

(x) "Super ESCO" means the corporation to be established by the Borrower as a subsidiary of PNOC and any successor thereto acceptable to ADB; and

(y) "Works" means construction or civil works to be financed out of the proceeds of the Loan, and including services such as drilling or mapping, and project related services that are provided as part of a single responsibility or turnkey contract, but excluding consulting services.

ARTICLE II

The Loan

Section 2.01. (a) ADB agrees to lend to the Borrower from ADB's ordinary capital resources an amount of thirty one million one hundred thousand dollars (\$31,100,000), as such amount may be converted from time to time through a Currency Conversion in accordance with the provisions of Section 2.06 of this Loan Agreement.

(b) The Loan has a principal repayment period of 20 (twenty) years, and a grace period as defined in paragraph (c) of this Section.

(c) The term "grace period" as used in paragraph (b) of this Section means the period prior to the first Principal Payment Date in accordance with the amortization schedule set forth in Schedule 2 to this Loan Agreement.

Section 2.02. The Borrower shall pay to ADB interest on the principal amount of the Loan withdrawn and outstanding from time to time at a rate for each Interest Period equal to the sum of LIBOR and 0.60% as provided by Section 3.02 of the Loan Regulations, less a credit of 0.40% as provided by Section 3.03 of the Loan Regulations.

Section 2.03. The Borrower shall pay a commitment charge of 0.15% per annum. Such charge shall accrue on the full amount of the Loan (less amounts withdrawn from time to time), commencing sixty (60) days after the date of this Loan Agreement.

Section 2.04. Interest and other charges on the Loan shall be payable semiannually on 15 February and 15 August in each year.

Section 2.05. The Borrower shall repay the principal amount of the Loan withdrawn from the Loan Account in accordance with the provisions of Schedule 2 to this Loan Agreement.

Section 2.06. (a) The Borrower may at any time request any of the following Conversions of the terms of the Loan in order to facilitate prudent debt management:

- (i) a change of the Loan Currency of all or any portion of the principal amount of the Loan, whether withdrawn and outstanding or unwithdrawn, to an Approved Currency;
- (ii) a change of the interest rate basis applicable to all or any portion of the principal amount of the Loan withdrawn and outstanding from a Floating Rate to a Fixed Rate, or vice versa; and
- (iii) the setting of limits on the Floating Rate applicable to all or any portion of the principal amount of the Loan withdrawn and outstanding by the establishment of an Interest Rate Cap or Interest Rate Collar on said Floating Rate.

(b) Any conversion requested pursuant to paragraph (a) of this Section that is accepted by ADB shall be considered a "Conversion", as defined in Section 2.01(6) of the Loan Regulations, and shall be effected in accordance with the provisions of Article V of the Loan Regulations and the Conversion Guidelines.

ARTICLE III

Use of Proceeds of the Loan

Section 3.01. (a) The Borrower shall cause the proceeds of the Loan to be applied to the financing of expenditures on the Project in accordance with the provisions of this Loan Agreement.

(b) The Borrower shall relend, under a Subsidiary Loan Agreement part of the proceeds of the Loan not exceeding seven million five hundred thousand dollars (\$7,500,000), on the same terms and conditions as are applicable to the Borrower plus additional charges required under the local laws and regulations, together with other funds that may be required, to the Super ESCO that shall be established by the Borrower in accordance with the relevant laws and regulations of the Borrower.

Section 3.02. The Goods, Works and consulting services and other items of expenditure to be financed out of the proceeds of the Loan and the allocation of amounts of the Loan among different categories of such Goods, Works and consulting services and other items of expenditure shall be in accordance with the provisions of Schedule 3 to this Loan Agreement, as such Schedule may be amended from time to time by agreement between the Borrower and ADB.

Section 3.03. Except as ADB may otherwise agree, all Goods, Works and consulting services to be financed out of the proceeds of the Loan shall be procured in accordance with the provisions of Schedule 4 to this Loan Agreement. ADB may refuse to finance a contract where Goods, Works or consulting services have not been procured under procedures substantially in accordance with those agreed between the Borrower and ADB or where the terms and conditions of the contract are not satisfactory to ADB.

Section 3.04. Except as ADB may otherwise agree, the Borrower shall cause all Goods, Works and consulting services financed out of the proceeds of the Loan to be used exclusively in the carrying out of the Project.

Section 3.05. The closing date for withdrawals from the Loan Account for the purposes of Section 9.02 of the Loan Regulations shall be 31 October 2011 or such other date as may from time to time be agreed between the Borrower and ADB.

ARTICLE IV

Particular Covenants

Section 4.01. (a) The Borrower shall cause the Project to be carried out with due diligence and efficiency and in conformity with sound administrative, financial, engineering, and environmental practices.

(b) In the carrying out of the Project and operation of the Project facilities, the Borrower shall perform, or cause to be performed, all obligations set forth in Schedule 5 to this Loan Agreement.

Section 4.02. The Borrower shall make available, promptly as needed, the funds, facilities, services and other resources which are required, in addition to the proceeds of the Loan, for the carrying out of the Project and for the operation and maintenance of the Project facilities.

Section 4.03. (a) In the carrying out of the Project, the Borrower shall cause competent and qualified consultants and contractors, acceptable to ADB, to be employed to an extent and upon terms and conditions satisfactory to the Borrower and ADB.

(b) The Borrower shall cause the Project to be carried out in accordance with plans, design standards, specifications, work schedules and construction methods acceptable to ADB. The Borrower shall furnish, or cause to be furnished, to ADB, promptly after their preparation, such plans, design standards, specifications and work schedules, and any material modifications subsequently made therein, in such detail as ADB shall reasonably request.

Section 4.04. The Borrower shall ensure that the activities of its departments and agencies with respect to the carrying out of the Project and operation of the Project facilities are conducted and coordinated in accordance with sound administrative policies and procedures.

Section 4.05. (a) The Borrower shall (i) maintain, or cause to be maintained, separate accounts for the Project; (ii) have such accounts and related financial statements audited annually, in accordance with appropriate auditing standards consistently applied, by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB; (iii) furnish to ADB, as soon as available but in any event not later than six (6) months after the end of each related fiscal year, certified copies of such audited accounts and financial statements and the report of the auditors relating thereto (including the auditors' opinion on the use of the Loan proceeds and compliance with the financial covenants of this Loan Agreement as well as on the use of the procedures for imprest account/statement of expenditures), all in the English language; and (iv) furnish to ADB such other information concerning such accounts and financial statements and the audit thereof as ADB shall from time to time reasonably request.

(b) The Borrower shall enable ADB, upon ADB's request, to discuss the Borrower's financial statements for the Project and its financial affairs related to the Project from time to time with the auditors appointed by the Borrower pursuant to Section 4.05(a) hereabove, and shall make necessary arrangements for any representatives of such auditors

to participate in any such discussions requested by ADB, provided that any such discussion shall be conducted only in the presence of an authorized officer of the Borrower unless the Borrower shall otherwise agree.

Section 4.06. The Borrower shall enable ADB's representatives to inspect the Project, the Goods and Works financed out of the proceeds of the Loan, and any relevant records and documents.

Section 4.07. The Borrower shall ensure that the Project facilities are operated, maintained and repaired in accordance with sound administrative, financial, engineering, environmental, and maintenance and operational practices.

ARTICLE V

Effectiveness

Section 5.01. A date ninety (90) days after the date of this Loan Agreement is specified for the effectiveness of the Loan Agreement for the purposes of Section 10.04 of the Loan Regulations.

ARTICLE VI

Miscellaneous

Section 6.01. The Secretary of Finance of the Borrower is designated as representative of the Borrower for the purposes of Section 12.02 of the Loan Regulations.

Section 6.02. The following addresses are specified for the purposes of Section 12.01 of the Loan Regulations:

For the Borrower

Department of Finance
DOF Building
Roxas Boulevard
Manila, Philippines

Facsimile Numbers:

+63 2 523-9216
+63 2 521-9495

For ADB


Asian Development Bank
P.O. Box 789
0980 Manila, Philippines

Facsimile Numbers:

(632) 636-2444
(632) 636-2336

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Loan Agreement to be signed in their respective names and to be delivered at the principal office of ADB, as of the day and year first above written.

REPUBLIC OF THE PHILIPPINES

By 
MARGARITO B. TEVES
Authorized Representative
007455

ASIAN DEVELOPMENT BANK

By 
HARUHIKO KURODA
President

SCHEDULE 1

Description of the Project

1. The Project is expected to reduce the cost of power generation, through investments in energy efficient lighting and lighting systems, appliances, adoption of energy saving measures in buildings, improved capacity of ESCOs to undertake energy efficient projects, and improvement of equipment testing facilities.

Scope of the Project

2. The scope of the Project comprises:

Part A: Efficient Lighting Initiative

- (i) retrofitting of selected government office buildings, including replacement of older style fluorescent lamps, incandescent bulbs and inefficient magnetic ballasts with new T8 fluorescent lamps, CFLs and electronic ballasts;
- (ii) distribution of approximately thirteen million (13,000,000) CFLs, free of charge, to the residential and small commercial customers of three (3) private utilities and about one hundred eight (108) ECs nationwide under the NLRP;
- (iii) replacement of incandescent bulbs and high pressure sodium lamps with mercury vapor lamps under the PLRP; and
- (iv) carrying out energy efficiency testing and lamp waste management to expand the capability of DOE's existing testing laboratory, and establishment of a new mercury waste management facility for recovery of mercury from used fluorescent lamps and for preventing the residual mercury from entering the food chain through landfill dumps leaching into ground water.

Part B: Efficiency Initiatives in Buildings and Industries

- (i) establishment of the Super ESCO to develop projects for its own implementation as well as support project development and implementation of other ESCOs through providing financial and technical advisory support; and
- (ii) carrying out the efficient building initiative to accelerate the implementation of the building rating system by streamlining existing initiatives in a single nascent building rating system.

Part C: Communication and Social Mobilization

- (i) carrying out communications campaign for efficient lighting;
and
- (ii) carrying out awareness campaign for promoting energy efficiency in everyday life.

Part D: Project Implementation Support

3. The Project is expected to be completed by 30 April 2011.

SCHEDULE 2

Amortization Schedule (Philippine Energy Efficiency Project)

1. The following table sets forth the Principal Payment Dates of the Loan and the percentage of the total principal amount of the Loan payable on each Principal Payment Date (Installment Share). If the proceeds of the Loan shall have been fully withdrawn as of the first Principal Payment Date, the principal amount of the Loan repayable by the Borrower on each Principal Payment Date shall be determined by ADB by multiplying: (a) the total principal amount of the Loan withdrawn and outstanding as of the first Principal Payment Date; by (b) the Installment Share for each Principal Payment Date, such repayment amount to be adjusted, as necessary, to deduct any amounts referred to in paragraph 4 of this Schedule, to which a Currency Conversion applies.

<u>Payment Due</u>	<u>Installment Share</u> (Expressed as a %)
15 Feb 2014	0.827816
15 Aug 2014	0.869207
15 Feb 2015	0.912667
15 Aug 2015	0.958301
15 Feb 2016	1.006216
15 Aug 2016	1.056526
15 Feb 2017	1.109353
15 Aug 2017	1.164820
15 Feb 2018	1.223061
15 Aug 2018	1.284214
15 Feb 2019	1.348425
15 Aug 2019	1.415846
15 Feb 2020	1.486639
15 Aug 2020	1.560971
15 Feb 2021	1.639019
15 Aug 2021	1.720970
15 Feb 2022	1.807019
15 Aug 2022	1.897369
15 Feb 2023	1.992238
15 Aug 2023	2.091850
15 Feb 2024	2.196442
15 Aug 2024	2.306264
15 Feb 2025	2.421578
15 Aug 2025	2.542657
15 Feb 2026	2.669789
15 Aug 2026	2.803279
15 Feb 2027	2.943443
15 Aug 2027	3.090615
15 Feb 2028	3.245146

<u>Payment Due</u>	<u>Installment Share</u> (Expressed as a %)
15 Aug 2028	3.407403
15 Feb 2029	3.577773
15 Aug 2029	3.756662
15 Feb 2030	3.944495
15 Aug 2030	4.141720
15 Feb 2031	4.348806
15 Aug 2031	4.566246
15 Feb 2032	4.794558
15 Aug 2032	5.034286
15 Feb 2033	5.286000
15 Aug 2033	5.550311
Total	100.000000

2. If the proceeds of the Loan shall not have been fully withdrawn as of the first Principal Payment Date, the principal amount of the Loan repayable by the Borrower on each Principal Payment Date shall be determined as follows:

(a) To the extent that any proceeds of the Loan shall have been withdrawn as of the first Principal Payment Date, the Borrower shall repay the amount withdrawn and outstanding as of such date in accordance with paragraph 1 of this Schedule.

(b) Any withdrawal made after the first Principal Payment Date shall be repaid on each Principal Payment Date falling after the date of such withdrawal in amounts determined by ADB by multiplying the amount of each such withdrawal by a fraction, the numerator of which shall be the original Installment Share specified in the table in paragraph 1 of this Schedule for said Principal Payment Date (the Original Installment Share) and the denominator of which shall be the sum of all remaining Original Installment Shares for Principal Payment Dates falling on or after such date, such repayment amounts to be adjusted, as necessary, to deduct any amounts referred to in paragraph 4 of this Schedule, to which a Currency Conversion applies.

3. Withdrawals made within two calendar months prior to any Principal Payment Date shall, for the purposes solely of calculating the principal amounts payable on any Principal Payment Date, be treated as withdrawn and outstanding on the second Principal Payment Date following the date of withdrawal and shall be repayable on each Principal Payment Date commencing with the second Principal Payment Date following the date of withdrawal.

4. Notwithstanding the provisions of paragraphs 1 and 2 of this Schedule, upon a Currency Conversion of all or any portion of the withdrawn principal amount of the Loan to an Approved Currency, the amount so converted in said Approved Currency that shall be repayable on any Principal Payment Date occurring during the Conversion Period, shall be determined by ADB by multiplying such amount in its currency of denomination immediately prior to said Conversion by either: (i) the exchange rate that reflects the amounts of principal in said Approved Currency payable by ADB under the Currency Hedge Transaction relating

to said Conversion; or (ii) if ADB so determines in accordance with the Conversion Guidelines, the exchange rate component of the Screen Rate.

5. If the principal amount of the Loan withdrawn and outstanding from time to time shall be denominated in more than one Loan Currency, the provisions of this Schedule shall apply separately to the amount denominated in each Loan Currency, so as to produce a separate amortization schedule for each such amount.

SCHEDULE 3

Allocation and Withdrawal of Loan Proceeds

General

1. The table attached to this Schedule sets forth the Categories of Goods, Works, consulting services and other items to be financed out of the proceeds of the Loan and the allocation of amounts of the Loan to each such Category (hereinafter called the Table). (Reference to "Category" or "Categories" in this Schedule is to a Category or Categories of the Table and reference to "Subcategory" or "Subcategories" in this Schedule is to a Subcategory or Subcategories of a Category.)

Percentages of ADB Financing

2. Except as ADB may otherwise agree, the items of the Categories and Subcategories listed in the Table shall be financed out of the proceeds of the Loan on the basis of the percentages set forth in the Table.

Interest and Commitment Charge

3. The amount allocated to Category 5 is for financing interest and commitment charge on the Loan during the implementation period of the Project. ADB shall be entitled to withdraw from the Loan Account and pay to itself, on behalf of the Borrower, the amounts required to meet payments, when due, of such interest and commitment charge.

Reallocation

4. Notwithstanding the allocation of Loan proceeds and the withdrawal percentages set forth in the Table,

(a) if the amount of the Loan allocated to any Category appears to be insufficient to finance all agreed expenditures in that Category, ADB may, by notice to the Borrower, (i) reallocate to such Category, to the extent required to meet the estimated shortfall, amounts of the Loan which have been allocated to another Category but, in the opinion of ADB, are not needed to meet other expenditures, and (ii) if such reallocation cannot fully meet the estimated shortfall, reduce the withdrawal percentage applicable to such expenditures in order that further withdrawals under such Category may continue until all expenditures thereunder shall have been made; and

(b) if the amount of the Loan then allocated to any Category appears to exceed all agreed expenditures in that Category, ADB may, by notice to the Borrower, reallocate such excess amount to any other Category.

Disbursement Procedures

5. Except as ADB may otherwise agree, the Loan proceeds for financing Goods, Works, and consulting services and other items shall be disbursed in accordance with ADB's "Loan Disbursement Handbook" dated January 2007 (ADB's Loan Disbursement Handbook), as amended from time to time.

Imprest Accounts; Statement of Expenditures

6. (a) Except as ADB may otherwise agree, the Borrower shall establish immediately after the Effective Date, two imprest accounts at Bangko Sentral ng Pilipinas. The first imprest account shall be managed by DOE to cover Project expenditures other than those expenditures related to Part B(i) and the second imprest account shall be managed by Super ESCO to cover Project expenditures related to Part B(i). The imprest accounts shall be established, managed, replenished and liquidated in accordance with ADB's Loan Disbursement Handbook, and detailed arrangements agreed upon between the Borrower and ADB. The currency of the imprest accounts shall be Dollars. The initial amount to be deposited into the imprest accounts shall not, in aggregate, exceed the lower of (i) the estimated expenditure to be financed from an imprest account for the first six (6) months of Project implementation, or (ii) the equivalent of ten (10) percent of the Loan Amount.

(b) The statement of expenditures (SOE) procedure may be used for reimbursement of eligible expenditures and to liquidate advances provided into the imprest, in accordance with ADB's Loan Disbursement Handbook and detailed arrangements agreed upon between the Borrower and ADB. Any individual payment to be reimbursed, replenished or liquidated under the SOE procedure shall not exceed the equivalent of one hundred thousand dollars (\$100,000). The payments in excess of the SOE ceiling will be reimbursed, liquidated or replenished based on full supporting documentation process.

Retroactive Financing

7. Withdrawals from the Loan Account may be made for reimbursement of reasonable expenditures incurred under the Project before the Effective Date, but not earlier than 1 August 2008 in connection with the procurement of an initial supply for CFLs, subject to a maximum amount equivalent to ten (10) percent of the Loan amount.

Conditions of Withdrawals from Loan Account

8. Notwithstanding any other provision of this Loan Agreement, no withdrawals shall be made from the Loan Account for Part B (i) until:

(a) the Super ESCO shall have been established as a subsidiary corporation of PNOC with an independent legal corporate personality under the Borrower's relevant laws and regulations, including the Corporation Code (1980);

(b) a management team shall have been appointed for the Super ESCO;

(c) the Borrower shall have caused the Super ESCO to enter into a Project Agreement with ADB on terms and conditions proposed by ADB; and

(d) the Borrower shall have entered into a Subsidiary Loan Agreement with the Super ESCO on terms and conditions satisfactory to ADB.

TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (Philippine Energy Efficiency Project)				
CATEGORY				ADB FINANCING BASIS
Number	Item	Total Amount Allocated for ADB Financing \$		Percentage of ADB Financing from the Loan Account
		Category	Subcategory	
1	Equipment	9,150,000		
1A	T8 36W fluorescent tube lights, electronic ballasts and luminaires		2,660,000	100 percent of total expenditure*
1B	CFLs		5,160,000	39 percent of total expenditure
1C	Street and traffic lights		1,330,000	100 percent of total expenditure*
2	Energy Efficiency Testing and Lamp Waste Management	3,510,000		
2A	Lamp Waste Management Facility		1,300,000	100 percent of total expenditure*
2B	Laboratory test facilities and equipment, lab accreditation, standards development, program management and capacity building		2,210,000	100 percent of total expenditure*
3	Super ESCO	7,500,000		94 percent of total expenditure
4	Consulting Services	3,000,000		
4A	Efficient Building Initiative		500,000	100 percent of total expenditure*
4B	Communication Campaigns		1,000,000	40 percent of total expenditure
4C	Project Implementation Support		1,500,000	100 percent of total expenditure*
5	Interest and Commitment Charge	3,340,000		100 percent of amounts due
6	Unallocated	4,600,000		
	Total	31,100,000		

* Exclusive of local taxes and duties

SCHEDULE 4

Procurement of Goods and Works, and Consulting Services

A. General

1. All Goods, Works and consulting services to be financed out of the proceeds of the Loan and Grant shall be subject to and governed by the Procurement Guidelines, and the Consulting Guidelines, respectively.

2. All terms used and not otherwise defined in this Loan Agreement have the meanings provided in the Procurement Guidelines and/or the Consulting Guidelines, as applicable.

B. Procurement for Goods and Works

3. Except as ADB may otherwise agree, Goods and Works shall only be procured on the basis of the methods of procurement set forth below:

International Competitive Bidding
National Competitive Bidding
Shopping

The methods of procurement are subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Borrower may only modify the methods of procurement or threshold values with the prior agreement of ADB, and modifications must be set out in updates to the Procurement Plan.

4. Domestic Preference. The Borrower may grant a margin of preference in the evaluation of bids under international competitive bidding in accordance with paragraphs 2.55(a) and 2.56 of the Procurement Guidelines for domestically manufactured Goods.

5. National Competitive Bidding. The Borrower and ADB shall ensure that, prior to the commencement of any procurement activity under national competitive bidding, the Borrower's national competitive bidding procedures are consistent with the Procurement Guidelines. Any modifications or clarifications to such procedures agreed between the Borrower and ADB shall be set out in the Procurement Plan. Any subsequent change to the agreed modifications and clarifications shall become effective only after written approval of such change by the Borrower and ADB.

C. Selection of Consulting Services

6. Quality- and Cost-Based Selection. Except as ADB may otherwise agree, the Borrower shall apply quality- and cost-based selection for selecting and engaging consulting services.

7. The Borrower shall recruit the individual consultants for developing bidding documents for CFL and waste management facility in accordance with procedures acceptable to ADB for recruiting individual consultants.

D. Industrial or Intellectual Property Rights

8. (a) The Borrower shall ensure that all Goods and Works procured (including without limitation all computer hardware, software and systems, whether separately procured or incorporated within other goods and services procured) do not violate or infringe any industrial property or intellectual property right or claim of any third party.

(b) The Borrower shall ensure that all contracts for the procurement of Goods and Works contain appropriate representations, warranties and, if appropriate, indemnities from the contractor or supplier with respect to the matters referred to in subparagraph (a) of this paragraph.

9. The Borrower shall ensure that all ADB-financed contracts with consultants contain appropriate representations, warranties and, if appropriate, indemnities from the consultants to ensure that the consulting services provided do not violate or infringe any industrial property or intellectual property right or claim of any third party.

E. ADB's Review of Procurement Decisions

10. Except as ADB shall otherwise agree, all contracts shall be subject to prior review by ADB, regardless of contract value.

SCHEDULE 5

Execution of Project and Operation of Project Facilities; Financial Matters

Project Executing and Implementing Agencies

1. As the Project Executing Agency, DOE shall be responsible for overall technical supervision and execution of the Project. The IAs shall be responsible for implementation of the following Parts of the Project:

(a) DOE for Part A (i), (ii) as they relate to private utilities, (iii), and (iv), Part B (ii), Part C, and Part D;

(b) NEA for Part A (ii) except in the franchise areas of the private utilities;
and

(c) The Super ESCO, once established in accordance with the terms of this Loan Agreement, for Part B (i).

Policy Guidance

2. Within three (3) months after the Effective Date, the Borrower through the Project Executing Agency shall establish a PSC to be chaired by the Secretary of DOE or a designated DOE representative, which shall be responsible for the overall policy guidance. The PSC shall meet at least on a quarterly basis to ensure that the objectives of the Project are being achieved.

Project Management Unit and the Project Director

3. The PMU shall have the overall responsibility for implementation of the Project and provide administrative and technical support, counterpart staff, documentation and other services that may be required. The Borrower shall ensure that the PMU is headed by a Project director acceptable to ADB and is appropriately staffed for day-to-day coordination throughout the Project implementation period.

Counterpart Funding

4. Without limiting the generality of Section 4.02 of this Loan Agreement, the Borrower shall ensure that adequate funds are made available to the Project, throughout the Project implementation period, when required and in the amounts called for to enable the Project Executing Agency and the IAs to discharge their responsibilities under the Project effectively, and to cover any shortfall of funds to ensure timely completion of the Project.

Super ESCO Management and Financial Management

5. Within twelve (12) months after the Effective Date, the Borrower shall cause the Super ESCO to (a) appoint a chief executive officer under a performance based contract, key technical staff and seven (7) Board members, at least two (2) of which shall come from the energy industry, and (b) undergo a financial management system assessment in a manner satisfactory to ADB and obtain a "satisfactory" rating.

Anticorruption

6. The Borrower shall, and shall cause the Project Executing Agency and the IAs to: (a) undertake necessary measures to create and sustain a corruption-free environment for activities under the Project; (b) comply with ADB's Anticorruption Policy (1998, as amended to date); and (c) where appropriate, ensure that relevant provisions of ADB's Anticorruption Policy (1998, as amended to date) are included in all bidding documents for the Project. The Borrower: (a) acknowledges ADB's right to investigate, directly or through its agents, any alleged corrupt, fraudulent, collusive or coercive practices relating to the Project; and (b) agrees to cooperate fully with, and to cause the Project Executing Agency and the IAs to cooperate fully with, any such investigation and to extend all necessary assistance, including providing access to all relevant books and records, as may be necessary for the satisfactory completion of any such investigation. All external costs related to such investigations shall be borne by the Project.

7. Without limiting the generality of the preceding paragraph, the Borrower shall: (a) ensure that the Project Executing Agency conducts periodic inspections on the suppliers', contractors' and consultants' activities related to Loan and Grant proceeds, fund withdrawals and settlements; and (b) ensure, and cause the Project Executing Agency to ensure, that all contracts financed by ADB in connection with the Project include provisions specifying the right of ADB to audit and examine the records and accounts of the Project Executing Agency and all suppliers, contractors, consultants and other service providers as they relate to the Project.

8. In addition to the above requirements, to ensure transparency and good governance, the Borrower shall cause the Project Executing Agency to publicly disclose in its website and in the PhilGEPS, the information on the utilization of the Loan proceeds, in particular: (a) the list of participating bidders; (b) name of the winning bidder; (c) basic details on bidding procedures adopted; (d) amount of the contract awarded; (e) list of goods and services purchased; and (f) intended and actual utilization of loan proceeds under each contract being awarded. The Borrower shall cause the Project Executing Agency to ensure that all Project staff are fully aware of ADB's procedures, including, but not limited to, procedures for: (a) implementation; (b) procurement; (c) use of consultants; (d) disbursement; (e) reporting; (f) monitoring; and (g) prevention of fraud and corruption.

Distribution of CFLs

9. The Borrower shall cause the Project Executing Agency and the NEA to closely monitor distribution of CFLs to the residential and small commercial customers under the NRLP. For that purpose, the Borrower shall cause (a) execution of implementation agreements between (i) the NEA and the ECs, with terms and conditions satisfactory to ADB, for effective implementation and monitoring of the CFL distribution, and (ii) the DOE and the private utilities, with terms and conditions satisfactory to ADB, for effective implementation and monitoring of the CFL distribution; and (b) where possible, the execution of memorandum of agreements between the ECs and qualified non-governmental organizations that are acceptable to ADB, with terms and conditions that are similar to the implementation agreements mentioned in this paragraph.

Environmental Issues

10. The Borrower, through DOE, shall ensure that the Project facilities, especially those pertaining to Part A (iv) of the Project, are designed constructed, operated and maintained in compliance with applicable environmental laws and regulations of the Borrower and ADB's Environment Policy (2002, as amended to date). The Borrower shall cause DOE to obtain all required environmental permits and clearances for the lamp waste management facility under Part A (iv) of the Project, prior to its operations.

Project Performance Monitoring System

11. The Borrower shall ensure that progress monitoring, safeguard monitoring and benefit monitoring and evaluation shall be carried out during Project implementation by the Project Executing Agency and the IAs in a manner acceptable to ADB. Post-evaluation shall be carried out three (3) years after Project completion. A Project Performance Management System shall be developed on the basis of the Project design and monitoring framework to examine the Project's technical performance, evaluate delivery of Project facilities, assess achievement of Project objectives and measure the Project's social, economic, financial and institutional impacts. Baseline and periodic surveys shall be carried out to collect data disaggregated by income group, gender, types of vulnerability and other characteristics as appropriate.

12. In addition, the Borrower shall cause the PMU to prepare quarterly progress reports and to submit these to ADB within twenty (20) days after the end of the applicable period. The reports shall be prepared in a format acceptable to ADB and shall include, among others, the following: (a) Project progress in each Project area; (b) the status of institutional development activities; (c) delays and problems encountered and actions taken to resolve them; (d) compliance with this Loan Agreement; and (e) expected progress during the next six (6) months following the submission of the progress report.

Project Review

13. The Borrower shall, jointly with ADB, conduct reviews of the Project at least twice a year. The semiannual reviews shall assess the implementation performance and achievement of Project outcomes and objectives, review the financial progress, identify issues and constraints affecting the Project, and work out a time bound action plan for their resolution.