

(AS AMENDED BY THE SENATE)

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First Regular Session

}

HOUSE OF REPRESENTATIVES

H. No. 6836

BY REPRESENTATIVES DUTERTE, UNGAB, GARCIA (V.), GONZALEZ AND ALVAREZ (F.), PER
COMMITTEE REPORT NO. 319

AN ACT

EXTENDING FOR ANOTHER TWENTY-FIVE (25) YEARS THE FRANCHISE GRANTED TO THE DAVAO LIGHT AND POWER COMPANY, INC., UNDER REPUBLIC ACT NO. 8960, ENTITLED “AN ACT FURTHER EXTENDING THE TERM OF THE FRANCHISE GRANTED TO DAVAO LIGHT AND POWER COMPANY, INC. TO CONSTRUCT, OPERATE AND MAINTAIN AN ELECTRIC LIGHT, HEAT AND POWER SYSTEM IN DAVAO CITY AND THE MUNICIPALITIES OF CARMEN, PANABO, DUJALI, AND SANTO TOMAS, PROVINCE OF DAVAO DEL NORTE, FOR A PERIOD OF TWENTY-FIVE (25) YEARS AND FOR OTHER PURPOSES”

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

1 **SECTION 1. *Nature and Scope of Franchise.*** – Subject to the provisions of the
2 Constitution and applicable laws, rules and regulations, the franchise granted to the Davao
3 Light and Power Company, Inc., hereunder referred to as the grantee, its successors or
4 assignees, under Republic Act No. 8960, to construct, install, establish, operate and maintain
5 for commercial purposes and in the public interest, an electric, light, heat and power system
6 for the conveyance, distribution and sale of electric power to the end users in Davao City,
7 Panabo City, and the Municipalities of Carmen, Dujali, and Santo Tomas in the Province of
8 Davao del Norte is hereby extended for another twenty-five (25) years after the expiration
9 date of the franchise under RA 8960.

10 As used in this Act, distribution system refers to the system of wires and associated
11 facilities, including subtransmission lines belonging to or used by a franchised distribution
12 utility, extending between the delivery point on the national transmission system or
13 generating facility and the metering point or facility of the end user.

14 **SEC. 2. *Manner of Operation of Facilities.*** – All electric distribution facilities, lines,
15 and systems for electric services owned, maintained, operated, or managed by the grantee, its

1 successors or assignees, shall be operated and maintained at all times in the best manner, and
 2 it shall be the duty of the grantee, its successors or assignees, whenever required to do so by
 3 the Energy Regulatory Commission (ERC) or its legal successor, or the Department of
 4 Energy (DOE) or its legal successor, or any other government agency concerned, to modify,
 5 improve and change such facilities or systems in such a manner and to such extent as the
 6 progress in science and improvements in the electric power service industry may render
 7 reasonable and proper.

8 Whenever practicable and for purposes of maintaining order, safety and aesthetics
 9 along highways, roads, streets, alleys, or easements, the grantee may allow the use of its
 10 poles, facilities, or easements by interested parties upon reasonable compensation. The ERC
 11 shall resolve cases of dispute or disagreement between parties.

12 **SEC. 3. Authority of the Energy Regulatory Commission.** – The grantee shall secure
 13 from the ERC, or any other government agency which has jurisdiction over the operation of
 14 the herein grantee, the necessary certificate of public convenience and necessity and other
 15 appropriate permits and licenses for the construction and operation of its electric distribution
 16 system.

17 **SEC. 4. Excavation and Restoration Works.** – For the purpose of erecting and
 18 maintaining poles and other supports for wires or other conductors for the laying and
 19 maintaining of underground wires, cables, pipes or other conductors, the grantee, its
 20 successors or assignees, is authorized to make excavations or lay conduits in any of the
 21 public places, roads, high-ways, streets, lanes, alleys, avenues, sidewalks, or bridges of said
 22 province, cities and/or municipalities, subject to prior approval of the Department of Public
 23 Works and Highways (DPWH) or the Local Government Units (LGUs) concerned: *Provided,*
 24 *however,* That any public place, road, highway, street, lane, alley, avenue, sidewalk, or bridge
 25 disturbed, altered, or changed by reason of erection of poles or other supports or the
 26 underground laying of wires, other conductors or conduits, shall be repaired or replaced in
 27 workmanlike manner at the expense of the grantee, its successors or assignees, in accordance
 28 with the standards set by the DPWH or the LGU concerned. Should the grantee, its
 29 successors or assignees, after the ten(10)-day notice from the said authority, fail, refuse or
 30 neglect to repair or replace any part of public place, road, highway, street, lane, alley, avenue,
 31 sidewalk or bridge that has been disturbed, altered, or changed by the said grantee, its
 32 successors or assignees, then the DPWH or LGU concerned shall have the right to have the
 33 same repaired or replaced in good order and condition and charge the grantee, its successor or
 34 assignees at double the amount of the costs and expenses for such repair or replacement.

35 **SEC. 5. Responsibility to the Public.** – The grantee shall supply electricity to its
 36 captive market in the urban and rural portions of its franchise area in the least [~~costly~~] COST
 37 manner. In the interest of the public good and as far as feasible and whenever required by the
 38 ERC, the grantee shall modify, improve or change its facilities, poles, lines, systems, and
 39 equipment for the purpose of providing efficient and reliable service and reduced electricity
 40 costs. The grantee shall charge [~~reasonable and just~~] power rates IN A LEAST COST
 41 MANNER for its services to all types of consumers within its franchised areas.

42 The grantee shall have the obligation to provide open and nondiscriminatory access to its
 43 distribution system and services for any end user within its franchise area consistent with
 44 Republic Act No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001”.
 45 The grantee shall not engage in any activity that will constitute an abuse of market power such

1 as unfair trade practices, monopolistic schemes, and any other activities that will hinder
2 competitiveness of business and industries.

3 The exercise of the rights granted herein shall not result to stranded assets and
4 stranded contract costs of existing and operating distribution utilities nor to unreasonable
5 increases in costs to consumers.

6 **SEC. 6. Rates for Services.** – The retail rates and charges for the distribution of
7 electric power by the grantee to its end user shall be regulated by and subject to the approval
8 of the ERC or its legal successor.

9 The grantee shall identify and itemize in the statement of account it issues to end
10 users the components of the retail rate pursuant to Republic Act No. 9136. Such rates charged
11 by the grantee shall be made public and transparent. The grantee shall implement a lifeline
12 rate to marginalized end users FOR AS LONG AS IT IS IN EFFECT as mandated under
13 Republic Act No. 9136, AS AMENDED.

14 **SEC. 7. Protection of Consumer Interests.** – The herein grantee shall establish a
15 consumer desk that will handle consumer complaints and ensure adequate protection of
16 consumer interests. The grantee shall act with dispatch on all complaints brought before it.

17 **SEC. 8. Right of the Government.** - A special right is hereby reserved to the President of
18 the Philippines in times of war, rebellion, public peril, calamity, emergency, disaster or
19 disturbance of peace and order: to temporarily take over and operate the distribution system of
20 the grantee, to temporarily suspend the operation of any station or facility in the interest of public
21 safety, security and public welfare, or to authorize the temporary use and operation thereof by
22 any agency of the government, upon due compensation to the grantee, for the use of said
23 distribution system during the period when this shall be so operated.

24 **SEC. 9. Right of Eminent Domain.** - Subject to the limitations and procedures
25 prescribed by law, the grantee is authorized to exercise the right of eminent domain insofar as
26 it may be reasonably necessary for the efficient maintenance and operation of services. The
27 grantee is authorized to install and maintain its poles, wires, and other facilities over and
28 across public property, including streets, highways, forest reserves, and other similar property
29 of the Government of the Philippines, its branches, or any of its instrumentalities. The grantee
30 may acquire such private property as is actually necessary for the realization of the purposes
31 for which this franchise is granted: *Provided*, That proper condemnation proceedings shall
32 have been instituted and just compensation paid.

33 **SEC. 10. Term of Franchise.** – This franchise shall be for a term of twenty-five (25)
34 years from the expiration date of the term granted under Republic Act No. 8960, unless
35 sooner cancelled or revoked. This franchise shall be deemed *ipso facto* revoked in the event
36 that the grantee fails to operate continuously for two (2) years.

37 **SEC. 11. Warranty in Favor of the National and Local Governments.** – The grantee
38 shall hold the national, provincial, city, and municipal governments of the Philippines free
39 from all claims, liabilities, demands, or actions arising out of accidents that cause injury to
40 persons or damage to properties, during the construction, installation, operation, and
41 maintenance of the distribution system of the grantee.

1 **SEC. 12. Liability to Damages.** - The grantee shall be liable for any injury to persons
 2 or damage to property arising from or caused by any accident by reason of any defective
 3 construction of any infrastructure built pursuant to the operation of its business under this
 4 franchise, or of any neglect or failure to keep its poles and wires in safe condition.

5 **SEC. 13. Commitment to Provide and Promote the Creation of Employment**
 6 **Opportunities.** – The grantee shall create employment opportunities and shall allow on-the-
 7 job trainings in their franchise operation: *Provided*, That priority shall be accorded to the
 8 residents of the place where their principal office is located: *Provided further*, That the
 9 grantee shall follow the applicable labor standards and allowance entitlement under existing
 10 labor laws, rules and regulations and similar issuances: *Provided, finally*, That the
 11 employment opportunities or jobs created shall be reflected in the General Information Sheet
 12 (GIS) to be submitted to Securities and Exchange Commission (SEC) annually.

13 **SEC. 14. Sale, Lease, Transfer, Grant of Usufruct, or Assignment of Franchise.** –
 14 The grantee shall not sell, lease, transfer, grant the usufruct of, nor assign this franchise or the
 15 rights and privileges acquired thereunder to any person, firm, company, corporation or other
 16 commercial or legal entity, nor merge with any other corporation or entity, nor the controlling
 17 interest of the grantee be transferred, simultaneously or contemporaneously, to any such
 18 person, firm, company, corporation, or entity without the prior approval of the Congress of
 19 the Philippines. Congress shall be informed of any sale, lease, transfer, grant of usufruct, or
 20 assignment of franchise or the rights and privileges acquired thereunder, or of the merger or
 21 transfer of the controlling interest of the grantee, within sixty (60) days after the completion
 22 of the said transaction. Failure to report to Congress such change of ownership shall render
 23 the franchise *ipso facto* revoked. Any person or entity to which this franchise is sold,
 24 transferred, or assigned shall be subject to the same conditions, terms, restrictions, and
 25 limitations of this Act.

26 **SEC. 15. Dispersal of Ownership.** - In accordance with the constitutional provision to
 27 encourage public participation in public utilities, the grantee shall offer to Filipino citizens at
 28 least thirty percent (30%) or a higher percentage that may hereafter be provided by law of its
 29 outstanding capital stock in any securities exchange in the Philippines within five (5) years
 30 from the commencement of its operations: *Provided*, That in cases where public offer of
 31 shares is not applicable, the grantee shall apply other methods of encouraging public
 32 participation by citizens and corporations operating public utilities as allowed by law[=
 33 ~~*Provided, further*, That the dispersal of ownership by a parent company of the grantee shall~~
 34 ~~be considered as compliance by the grantee with this provision]. Noncompliance therewith~~
 35 shall render the franchise *ipso facto* revoked.

36 **SEC. 16. Renewal, Extension, or Revocation of Franchise.** - The grantee shall apply
 37 for the renewal or extension of its franchise before its expiration date, which shall be
 38 reckoned fifteen (15) days after the publication of the franchise in the Official Gazette or in a
 39 newspaper of general circulation.

40 Upon reasonable notice and hearing, this franchise may be revoked by Congress when
 41 the public interest so requires or when the grantee fails to reasonably comply with regulatory
 42 standards.

43 **SEC. 17. Equality Clause.** – Any advantage, favor, privilege, exemption, or immunity
 44 granted under existing franchises, or which may hereinafter be granted to power distribution
 45 franchises, upon prior review and approval of Congress, shall become part of this franchise and

1 shall be accorded immediately and unconditionally to the herein grantee: *Provided*, That the
2 foregoing shall neither apply to nor affect provisions concerning territorial coverage, the
3 term, or the type of service authorized by the franchise.

4 **SEC. 18. Reportorial Requirement.** – The grantee shall submit an annual report to
5 the Congress of the Philippines, through the Committee on Legislative Franchises of the
6 House of Representatives and the Committee of Public Services of the Senate, on its
7 compliance with the terms and conditions of the franchise and on its operations on nor before
8 April 30 of the succeeding year.

9 The annual report shall include an update on the roll-out, development, operation
10 and/or expansion of business; audited financial statements; latest GIS; certification of the
11 ERC on the status of its permits and operations; and an update on the dispersal of ownership
12 undertaking, if applicable.

13 A reportorial compliance certificate issued by Congress shall be required before any
14 application for permit or certificate is accepted by the ERC.

15 **SEC. 19. Fine.** – Failure of the grantee to submit the requisite annual report to
16 Congress shall be penalized by a fine of Five hundred pesos (P500.00) per working day of
17 noncompliance. The fine shall be collected by the ERC from the delinquent franchise grantee
18 separate from the reportorial penalties imposed by the ERC and the same shall be remitted to
19 the National Treasury.

20 **SEC. 20. Applicability of Existing Laws.** – The grantee shall comply with and be
21 subject to the provisions of Commonwealth Act No. 146, or the “Public Service Act” as
22 amended [and], Republic Act No. 9136, AS AMENDED, REPUBLIC ACT NO. 9513, OR THE
23 “RENEWABLE ENERGY ACT OF 2008”, REPUBLIC ACT NO. 11361 OR THE “ANTI-
24 OBSTRUCTION OF POWER LINES ACT”, AND OTHER APPLICABLE LAWS.

25 **SEC. 21. Repealability and Nonexclusivity Clause.** – This franchise shall be subject
26 to amendment, alteration, or repeal by the Congress of the Philippines when the public
27 interest so requires and shall not be interpreted as an exclusive grant of the privileges herein
28 provided for.

29 **SEC. 22. Separability Clause.** – If any of the sections or provisions of this Act is held
30 invalid, all other provisions not affected thereby shall remain valid.

31 **SEC. 23. Repealing Clause.** – All laws, decrees, orders, resolutions, instructions and
32 rules and regulations or parts thereof, which are inconsistent with this Act, are hereby
33 deemed repealed or modified accordingly.

34 **SEC. 24. Effectivity.** – This Act shall take effect fifteen (15) days after its publication
35 in the *Official Gazette* or in a newspaper of general circulation.

Approved,