



HOUSE OF REPRESENTATIVES

H. No. 9805

BY REPRESENTATIVES PADUANO, FERRER (J.M.), BENITEZ, GASATAYA AND TAMBUNTING

AN ACT GRANTING NEGROS ELECTRIC AND POWER CORP. A FRANCHISE TO ESTABLISH, OPERATE, AND MAINTAIN, FOR COMMERCIAL PURPOSES AND IN THE PUBLIC INTEREST, A DISTRIBUTION SYSTEM FOR THE CONVEYANCE OF ELECTRIC POWER TO THE END-USERS IN THE CITIES OF BACOLOD, SILAY, TALISAY, AND BAGO AND THE MUNICIPALITIES OF MURCIA AND DON SALVADOR BENEDICTO, ALL IN THE PROVINCE OF NEGROS OCCIDENTAL, AND ENSURING CONTINUOUS AND UNINTERRUPTED SUPPLY OF ELECTRICITY IN THE FRANCHISE AREA

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, there is hereby granted to Negros
3 Electric and Power Corp. (NEPC), hereunder referred to as the Grantee, its successors or
4 assignees, a franchise to construct, install, establish, operate, own, manage and maintain
5 in the public interest and for commercial purposes, a distribution system for the
6 conveyance of electric power to end-users in the Cities of Bacolod, Silay, Talisay, and Bago
7 and in the Municipalities of Murcia and Don Salvador Benedicto, all in the province of
8 Negros Occidental.
9

10 As used in this Act, distribution system refers to the system of wires and associated
11 facilities including sub-transmission 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

15 **SEC. 2. *Manner of Operation of Facilities.*** – All electric distribution facilities, lines
16 and systems for electric services installed, owned, operated, managed or maintained by
17 the Grantee, its successors or assignees, shall be operated and maintained at all times in a
18 superior manner. It shall be the duty of the Grantee, its successors or assignees, to
19 continuously improve its facilities and employ the latest technology and innovations that
20 promote efficiency, and which is beneficial to consumers. It shall comply with the
21 standards set by the Energy Regulatory Commission (ERC), or its legal successor, such as
22 those found in the Philippine Distribution Code, its resolutions, and other issuances. The
23 Grantee shall also implement measures required by the ERC, the Department of Energy
24 (DOE), or their legal successors, or any other government agency concerned, to modify,
25 improve, upgrade and change such facilities, systems or the management and
26 maintenance thereof.

1 Whenever practicable and for purposes of maintaining order, safety, and aesthetics
2 along highways, roads, streets, alleys, or right-of-way, the Grantee may allow the use of
3 its poles, facilities, or right-of-way by interested parties upon the payment of reasonable
4 compensation to the Grantee, considering costs incurred to accommodate and administer
5 the use of the Grantee's facilities by such parties. The ERC shall resolve cases of disputes
6 or disagreements between and among the parties concerned.
7

8 **SEC. 3. Authority of the Energy Regulatory Commission.** — The Grantee shall secure
9 from the ERC or any other government agency which has jurisdiction over the operation
10 of the herein Grantee, the necessary certificate of public convenience and necessity (CPCN)
11 and other appropriate permits and licenses for the construction and operation of its electric
12 distribution system.
13

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

34 **SEC. 5. Responsibility to the Public.** — The Grantee shall supply electricity to its
35 captive market in the urban and rural portions of its franchise area in the least costly
36 manner. In the interest of the public good and as far as feasible and whenever required by
37 the ERC, the Grantee shall modify, improve, or change its facilities, poles, lines, systems,
38 and equipment for the purpose of providing efficient and reliable service and reduced
39 electricity costs. The Grantee shall charge reasonable and just power rates for its services
40 to all types of consumers within its franchise areas in order that business and industries
41 shall be able to compete.
42

43 The Grantee is required to source and procure its power requirements in accordance
44 with the applicable rules and regulations of the ERC: *Provided,* That the Grantee,
45 immediately after the enactment of this Act, may be allowed to avail of the negotiated
46 procurement of emergency power supply under the applicable circulars, rules, or
47 regulations issued by the DOE or the ERC, or their legal successors, allowing emergency
48 procurement; *Provided, further,* That such emergency contracts shall only be for a period of
49 one (1) year and the rates must not be higher than the latest ERC-approved generation
50 tariff for the same or similar technologies in the area.
51

52 The Grantee shall have the obligation to provide open and non-discriminatory
53 access to its distribution system and services to any end user within its franchise area
54 consistent with Republic Act (RA) No. 9136, otherwise known as the "Electric Power
55 Industry Reform Act of 2001". The Grantee shall not engage in any activity that will
56 constitute an abuse of market power such as unfair trade practices, monopolistic schemes,
57 and any other activities that will hinder competitiveness of businesses and industries.

1 **SEC. 6. Rates for Service.** – The retail rates and charges for the distribution of
2 electric power by the Grantee to its end-users shall be regulated by and subject to the
3 approval of the ERC or its legal successor.
4

5 The Grantee shall identify and segregate in its electricity bill to the end-users the
6 components of the retail rate pursuant to RA No. 9136, unless otherwise amended. Such
7 rates charged by the Grantee to the end-users shall be made public and transparent.
8 The Grantee shall implement a lifeline rate to marginalized end users as mandated by
9 RA No. 9136.
10

11 The Grantee shall strictly comply with the systems loss cap prescribed by the ERC,
12 subject to the transition provisions under Section 17 of this Act.
13

14 **SEC. 7. Protection of Consumer Interests.** – The Grantee shall establish a customer
15 desk that will handle consumer complaints and ensure adequate protection of consumer
16 interests. The Grantee shall act with dispatch on all such complaints brought before it.
17

18 The Grantee shall reduce the duration and frequency of interruptions in its network
19 and in that regard shall observe the System Average Interruption Frequency Index (SAIFI)
20 and System Average Interruption Duration Index (SAIDI) imposed by the ERC.
21

22 **SEC. 8. Election of Independent Directors.** – The Board of Directors of the Grantee
23 shall have independent directors constituting at least twenty percent (20%) of its total
24 membership. These directors must be elected by a majority of the outstanding shares
25 entitled to vote.
26

27 An independent director is a person who, apart from shareholdings and fees
28 received from the corporation, is independent of management and free from any business
29 or other relationship which could or could reasonably be perceived to materially interfere
30 with the exercise of independent judgment in carrying out the responsibilities as a director.
31

32 **SEC. 9. Right of the Government.** – A special right is hereby reserved to the
33 President of the Philippines, in times of war, rebellion, public peril, calamity, emergency,
34 disaster or disturbance of peace and order; to temporarily take over and operate the
35 distribution system of the Grantee; to temporarily suspend the operation of any station or
36 facility in the interest of public safety, security and public welfare; or to authorize the
37 temporary use and operation thereof by any agency of the government, upon the payment
38 of due compensation to the Grantee, for the use of said distribution system during the
39 period when it shall be so operated.
40

41 **SEC. 10. Right of Eminent Domain.** – Subject to the limitations and procedures
42 prescribed by law, the Grantee is authorized to exercise the power of eminent domain
43 insofar as it may be reasonably necessary for the efficient establishment, improvement,
44 upgrading, rehabilitation, maintenance and operation of its services. The Grantee is
45 authorized to install and maintain its poles, wires, and other facilities over, under and
46 across public property, including streets, highways, parks, and other similar properties of
47 the Government of the Philippines, its branches, or any of its instrumentalities. The
48 Grantee may acquire such private property as is actually necessary for the realization of
49 the purposes for which this franchise is granted, including but not limited to poles, wires,
50 cables, transformers, switching equipment and stations, buildings, infrastructure,
51 machineries and equipment previously, currently or actually used, or intended to be used,
52 or have been abandoned, unused or underutilized, or which obstruct its facilities, for the
53 operation of a distribution system for the conveyance of electric power to end users in its
54 franchise area: *Provided*, That proper expropriation proceedings shall have been instituted
55 and just compensation paid: *Provided, further*, That upon the filing of the petition for
56 expropriation, or at any time thereafter, and after due notice to the owner of the property

1 to be expropriated and the deposit with the relevant court that has jurisdiction over the
2 franchise area of the full amount of the assessed value of the property or properties, the
3 Grantee shall be entitled to immediate possession, operation, control, use and disposition
4 of the properties sought to be expropriated, including the power of demolition if necessary,
5 notwithstanding the pendency of other issues before the court, including the final
6 determination of the amount of just compensation to be paid. The court may consider the
7 tax declarations, current audited financial statements and rate-setting applications of the
8 owner or owners of the property or properties being expropriated in order to determine
9 their assessed value.

10
11 **SEC. 11. *Term of the Franchise.*** – Unless sooner cancelled or revoked, this franchise
12 shall be in effect for a period of twenty-five (25) years from the effectivity of this Act. This
13 franchise shall be deemed *ipso facto* revoked in the event that the Grantee fails to operate
14 continuously for two (2) years upon issuance of the CPCN by ERC.

15
16 **SEC. 12. *Acceptance and Compliance.*** – Acceptance of this franchise shall be given
17 in writing to Congress, through the Committee on Legislative Franchises of the House of
18 Representatives and the Committee on Public Services of the Senate within sixty (60) days
19 from the effectivity of this Act. Upon acceptance, the Grantee shall exercise the privileges
20 granted under this Act. Nonacceptance shall render the franchise void.

21
22 The Grantee shall apply for the renewal or extension of its franchise five (5) years
23 before its expiration date.

24
25 **SEC. 13. *Warranty in Favor of the National and Local Governments.*** – The Grantee
26 shall hold the national, provincial, city, and municipal governments of the Philippines free
27 from all claims, liabilities, demands, or actions arising out of accidents that cause injury to
28 persons and damage to properties during the construction, installation, operation, and
29 maintenance of the distribution system of the Grantee.

30
31 **SEC. 14. *Liability for Damages.*** – The Grantee shall be liable for any injury to
32 persons and damage to property arising from or caused by any accident arising from any
33 defective construction of any infrastructure built pursuant to the operation of its
34 business under this franchise, or by any neglect or failure to keep its poles and wires
35 in safe condition.

36
37 **SEC. 15. *Sale, Lease, Transfer, Grant of Usufruct, or Assignment of the Franchise.***
38 – The Grantee shall not sell, lease, transfer, grant the usufruct of, or assign this franchise
39 or the rights and privileges acquired thereunder to any person, firm, company, corporation
40 or other commercial or legal entity, or merge with any other corporation or entity, or
41 transfer the controlling interest of the Grantee, whether as a whole or in part, and whether
42 simultaneously or contemporaneously, to any person, firm, company, corporation, or
43 entity without the prior approval of the Congress of the Philippines: *Provided, That*
44 Congress shall be informed of any sale, lease, transfer, grant of usufruct of, or assignment
45 of the franchise or the rights and privileges acquired thereunder, or of the merger, or
46 transfer of the controlling interest within sixty (60) days after the completion of said
47 transaction: *Provided, further, That* any such sale, lease, transfer or assignment is in
48 accordance with the constitutional limitations: *Provided, furthermore, That* failure to report
49 to Congress such change of ownership shall render the franchise *ipso facto* revoked:
50 *Provided, finally, That* the limitations set forth in this section shall not apply to: (a) any
51 transfer or issuance of shares of stock in the implementation of the requirement for the
52 dispersal of ownership in the Grantee pursuant to Section 16 of this Act; and (b) any sale,
53 transfer, or assignment of shares of the Grantee in favor of an affiliate whose controlling
54 interest is owned by the same parent corporation of the Grantee.

55
56 Any person or entity to which this franchise is sold, leased, transferred, or assigned,
57 shall be subject to the same conditions, terms, restrictions, and limitations of this Act.

1 **SEC. 16. Dispersal of Ownership.** – In accordance with the constitutional provision
2 to encourage public participation in public utilities, the Grantee shall offer to the public,
3 specifically Filipino citizens, at least twenty percent (20%) or a higher percentage that may
4 hereafter be provided by law of its outstanding capital stock in any securities exchange in
5 the Philippines within five (5) years from the grant of its CPCN by the ERC: *Provided*, That
6 in cases where a public offer of shares is not applicable, other methods of encouraging
7 public participation by citizens and corporations operating public utilities must be
8 implemented; *Provided, further*, That ownership by the Central Negros Electric
9 Cooperative, Inc. (CENECO), or its successor cooperative or corporation, of at least twenty
10 percent (20%) of the outstanding capital stock of the Grantee shall be deemed a compliance
11 with the dispersal of ownership requirement.
12

13 In the event the required dispersal of ownership is not implemented within five (5)
14 years from the of CPCN, the holdings of persons, natural or juridical, including directors,
15 officers, stockholders, and related interests in the Grantee and its respective holding
16 company, if any, shall not exceed twenty-five percent (25%) of the voting shares of stock,
17 unless the utility or the company holding the shares or its controlling stockholders are
18 already listed in the Philippine Stock Exchange, Inc. (PSE): *Provided*, That the ERC may,
19 upon application of the Grantee, and after notice and hearing, allow such reasonable
20 extension of the five (5)-year period within which the Grantee shall offer its shares of stock
21 to the public, if the market conditions are not suitable for such listing or in the event that
22 the Grantee cannot comply with the requirements of the Securities and Exchange
23 Commission (SEC) or the PSE for a public offering, especially the three (3)-year
24 profitability requirement.
25

26 Non-compliance with this section shall render the franchise *ipso facto* revoked.
27

28 **SEC. 17. Transition of Operations.** – In the public interest and to ensure
29 uninterrupted supply of electricity, the current operator, CENECO, shall continue to
30 operate the existing distribution system within the franchise area as well as implement its
31 existing power supply agreements with generation companies that have been
32 provisionally or finally approved by the ERC until the acquisition by the Grantee of
33 ownership of its own distribution system and its complete transition towards full
34 operations as determined by the ERC which period shall in no case exceed two (2) years
35 from the effectivity of this Act.
36

37 The Grantee shall source its initial power requirements from the existing power
38 supply contracts of CENECO at the rates duly approved by the ERC for such power supply
39 contracts, subject to applicable rules and regulations of the ERC and the DOE. The Grantee
40 shall renegotiate such power supply contracts to reduce the generation costs.
41

42 To reduce the length of the transition period, ERC and all agencies issuing the
43 requisite licenses shall prioritize all applications relevant to the transfer and operation of
44 the distribution system under this franchise.
45

46 The Grantee shall, as far as practicable and subject to required qualifications, accord
47 preference to hiring qualified former employees of CENECO upon the commencement of
48 its business operations.
49

50 An information dissemination campaign in the franchise areas regarding public
51 services and operations of the Grantee shall be made to all end-users in the franchise area.
52

53 The Grantee and CENECO shall jointly ensure that all employees terminated by
54 CENECO shall receive all separation and/or retirement benefits they are entitled to in
55 accordance with applicable laws and any valid collective bargaining agreement between
56 CENECO and its employees.

1 The DOE shall, during the transition, ensure that there will be an uninterrupted
2 supply of electricity in the existing franchise area.

3
4 The applicable systems loss cap that will apply to the Grantee during the first year
5 from the grant of its CPCN shall be the same systems loss cap prescribed by the ERC for
6 CENECO: *Provided*, That on each succeeding anniversary date of the grant of the CPCN
7 until the fourth (4th) anniversary date, the systems loss cap shall be reduced by one-half
8 of one percent (0.5%) per year: *Provided, further*, That on the fifth (5th) anniversary
9 date, the systems loss cap shall be that which is prescribed by the ERC for private
10 distribution utilities.

11
12 **SEC. 18. *Commitment to Provide and Promote the Creation of Employment***
13 ***Opportunities.*** – The Grantee shall create employment opportunities and shall allow on-
14 the-job trainings in their franchise operations: *Provided*, That priority shall be accorded to
15 the residents of the franchise area: *Provided, further*, That the Grantee shall follow the
16 applicable labor standards and allowance entitlement under existing labor laws, rules and
17 regulations and similar issuances: *Provided, finally*, That the employment opportunities or
18 jobs created shall be reflected in the General Information Sheet (GIS) to be submitted to the
19 SEC annually.

20
21 **SEC. 19. *Reportorial Requirement.*** – The Grantee shall submit an annual report to
22 the Congress of the Philippines, through the Committee on Legislative Franchises of the
23 House of Representatives and the Committee of Public Services of the Senate, on its
24 compliance with the terms and conditions of the franchise and on its operations on or
25 before April 30 of the succeeding year.

26
27 The annual report shall include an update on the rollout, development, operation
28 and/or expansion of the business; audited financial statements; latest GIS officially
29 submitted to the SEC (if available or applicable), certification from the ERC on the status
30 of its permits and operations; and an update on the dispersal of ownership undertaking,
31 if applicable.

32
33 A reportorial compliance certificate issued by Congress shall be required before any
34 application for permit or certificate is accepted by the ERC.

35
36 The ERC shall, one (1) year from the effectivity of this Act and every five (5) years
37 thereafter, conduct a comprehensive assessment on the Grantee's operations and
38 compliance with the conditions imposed hereunder and shall submit a report thereof to
39 Congress. The Grantee shall submit to the ERC all information and documents necessary
40 to complete such assessment.

41
42 **SEC. 20. *Fine.*** – Failure of the Grantee to submit the requisite annual report to
43 Congress shall be penalized by a fine of Five Hundred Pesos (Php500.00) per working day
44 of noncompliance. The fine shall be collected by the ERC from the Grantee separate from
45 the reportorial penalties imposed by the ERC and the same shall be remitted to the Bureau
46 of the Treasury.

47
48 **SEC. 21. *Equality Clause.*** – Any advantage, favor, privilege, exemption, or
49 immunity granted under existing franchises, or which may hereafter be granted to power
50 distribution franchises, upon prior review and approval of Congress, shall become part of
51 this franchise and shall be accorded immediately and unconditionally to the herein
52 Grantee: *Provided*, That the foregoing shall neither apply to nor affect provisions
53 concerning territorial coverage, the term, or the type of service authorized by the franchise.

1 SEC. 22. *Applicability of Existing Laws.* – The Grantee shall comply with and be
2 subject to the relevant provisions of Commonwealth Act No. 146, or the “Public Service
3 Act”, as amended, and RA No. 9136.
4

5 SEC. 23. *Repealability and Non-Exclusivity Clause.* – This franchise shall be subject
6 to amendment, alteration, or repeal by the Congress of the Philippines when the public
7 interest so requires and shall not be interpreted as an exclusive grant of the privileges
8 herein provided for.
9

10 SEC. 24. *Separability Clause.* – If any of the sections or provisions of this Act is held
11 invalid, all other provisions not affected thereby shall remain valid.
12

13 SEC. 25. *Repealing Clause.* – All laws, decrees, orders, resolutions, instructions and
14 rules and regulations or parts thereof, which are inconsistent with this Act, are hereby
15 repealed or modified accordingly.
16

17 SEC. 26. *Effectivity.* – This Act shall take effect fifteen (15) days after its publication
18 in the *Official Gazette* or in a newspaper of general circulation.

Approved,