

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

THIRTEENTH CONGRESS
Third Regular Session

HOUSE BILL NO. 6011



Introduced by Honorables ALIPIO "TIKBONG" V. BADELLES, EDGAR L. VALDEZ and
MA. AMELITA C. VILLAROSA

EXPLANATORY NOTE

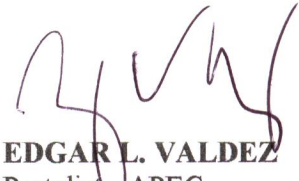
This bill seeks to give the National Transmission Corporation (TRANSCO) a nationwide franchise to operate the transmission system and the grid and revert back to the National Power Corporation (NPC) the franchise transferred to TRANSCO under Section 8 of Republic Act No. 9136. This would enable TRANSCO or its buyer or concessionaire to expand, operate and maintain the national electric power transmission system and the NPC to fulfill its missionary electrification functions through the Small Power Utilities Group (SPUG), pursuant to Section 70 of RA 9136.

Under RA 9136, NPC's nationwide franchise for the operation of the transmission system and the grid was transferred to TRANSCO. Pursuant thereto, TRANSCO assumed the electric power transmission functions of the NPC. However, the transferred franchise has a remaining life of only thirty (30) years up to the Year 2036. Under the law, TRANSCO shall be privatized by way of either an outright sale or a concession contract for a period of twenty-five (25) years, renewable for a maximum period of another twenty-five (25) years.

This bill also seeks to grant the TRANSCO buyer or concessionaire the privilege to exercise the power of eminent domain, subject to the requirements of the Constitution and existing laws. This would enhance the ability of the TRANSCO buyer or concessionaire in fulfilling its mandate to provide a reliable electric power transmission service in the country. The bill would also give full life to the privatization objectives of improving the transmission system and optimizing privatization returns to the Government.

In view of the foregoing considerations, the early approval of this bill is earnestly requested.


ALIPIO "TIKBONG" V. BADELLES
1st District – Lanao del Norte


EDGAR L. VALDEZ
Partylist - APEC


MA. AMELITA C. VILLAROSA
Lone District – Occidental Mindoro

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AN ACT
GRANTING THE NATIONAL TRANSMISSION CORPORATION A
FRANCHISE TO CONSTRUCT, INSTALL, OPERATE AND MAINTAIN AN
ELECTRIC POWER TRANSMISSION SYSTEM AND THE GRID
THROUGHOUT THE PHILIPPINES

1 *Be it enacted by the senate and the House of Representatives of the*
2 *Philippines in Congress assembled:*

3 SECTION 1. *Nature and Scope of Franchise.* – Subject to the provisions of the
4 constitution and applicable laws, rules and regulations, there is hereby granted to the National
5 Transmission Corporation (TRANSCO), a government-owned and controlled corporation
6 created by virtue of republic act No. 9136, otherwise known as the “Electric Power Industry
7 reform Act of 2001”, hereinafter referred to as the grantee, its successors or assigns, a
8 franchise to construct, install, operate and maintain an electric power transmission system and
9 the grid, which includes the conveyance of electricity through the high voltage backbone
10 system of interconnected transmission lines, substations and related facilities, grid connection
11 and ancillary services throughout the Philippines.

12 SEC. 2. *Right of the Government.* – A special right is hereby reserved to the President
13 of the Republic of the Philippines, in times of war, rebellion, public peril, calamity,
14 emergency, disaster, or disturbance of peace and order, to temporarily take over and operate
15 the transmission system and the grid of the Grantee, suspend the operation of any portion
16 thereof in the interest of public safety, security and public welfare, or authorize the use and
17 operation thereof by any agency of the Government upon due compensation to the Grantee
18 for the use of the said transmission system and the grid or any portion thereof during the
19 period when they so operated. The Government shall also have the right to take over and

1 operate the transmission system and the grid of the Grantee on the grounds set forth in
2 Section 6 of this Act.

3 SEC. 3. *Term of Franchise.* – This franchise shall be for a term of fifty (50) years
4 from the date of effectivity of this Act, unless otherwise sooner revoked or cancelled.

5 SEC. 4. *Sale, Lease, Transfer, Usufruct, etc.* – Except as provided in Section 5 of this
6 Act, the Grantee shall not lease, transfer, grant the usufruct of or sell this franchise or the
7 rights and privileges acquired thereunder to any person, firm, company or other commercial
8 or legal entity, nor merge with any other company or entity, nor shall the controlling interest
9 of the Grantee be transferred, whether in whole or in part, and whether simultaneously or
10 contemporaneously, to any such person, firm, company or entity without the prior approval of
11 the Congress of the Philippines.

12 Except for the privilege exclusively granted to the TRANSCO in Sections 5 and 6 of
13 this Act, any person or entity to which this franchise is sold, transferred or assigned, shall be
14 subject to the same conditions, terms, restrictions and limitations of this Act.

15 SEC. 5. *Concession Contract.* – In furtherance of Section 21 of Republic Act No.
16 9136, the TRANSCO may enter into a concession contract with a concessionaire for the
17 construction, installation, maintenance, operation, improvement and expansion of the
18 transmission system and the grid. Towards this end, the TRANSCO may assign its franchise,
19 together with all the rights, privileges and obligations pertaining thereto, to the
20 concessionaire: *Provided*, That the concessionaire shall be chosen through open and
21 competitive bidding following a pre-qualification process based on objective technical and
22 financial criteria in compliance with the provisions of Republic Act No. 9136, its
23 implementing rules and regulations, and amendments thereto: *Provided, further*, That the
24 concessionaire shall possess the following qualifications:

25 (a) The concessionaire shall be financially and technically capable to maintain,
26 operate, improve and expand the transmission system and grid consistent with the
27 Transmission Development Plan as approved by the appropriate government agency;

28 (b) In case of joint venture or consortium with one or more foreign investors that
29 will directly or indirectly hold an ownership interest in the concessionaire, at least one (1)
30 foreign investor shall be technically capable, with proven international experience and
31 expertise as a leading transmission system operator. Such experience must be in a
32 transmission system of comparable capacity and coverage as that of the Philippines. Such
33 foreign investor must have contributed to the concessionaire, directly or indirectly, through

equity or advances from shareholders, at least twenty percent (20%) of the capitalization of the concessionaire.

(c) The concessionaire conforms to the Filipino ownership requirement pursuant to Article XII, Section 11, of the Constitution; and

(d) The concessionaire, any of its stockholders, or any participant or member thereof, in case of joint venture or consortium, had not participated in the valuation of assets of the TRANSCO for its privatization.

SEC. 6. *Revocation and Reversion of Franchise.* – Consistent with the national interest, the following shall, upon the determination by the Energy Regulatory Commission (ERC) and approval by the Joint Congressional Power Commission (JCPC), be grounds for the revocation of the franchise assigned to the concessionaire and reversion thereof to the TRANSCO.

(a) Failure of the concessionaire to comply with the Grid Code and the Transmission Development Plan as approved;

(b) Failure to comply with or violation of any of the applicable provisions of Republic Act No. 9136 and its implementing rules and regulations;

(c) Transfer of the controlling interest of the concessionaire, whether in whole or in part, and whether simultaneously or contemporaneously, to any person, firm, company or entity, except with prior approval of the JCPC;

(d) Bankruptcy or financial inability of the concessionaire to continue operating, maintaining, and expanding the transmission system and the grid;

(e) Failure of the concessionaire to maintain compliance to the qualifications provided in Paragraphs (a), (b) and (c) of Section 5 of this Act; and

(f) Cancellation, rescission, termination or expiration of the concession contract.

SEC. 7. *Acceptance and Compliance.* – Acceptance of this franchise shall be given in writing by the TRANSCO within sixty (60) days from the effectivity of this Act.

SEC. 8. *Warranty in Favor of the National and Local Governments.* – The Grantee shall hold the national, provincial and municipal governments of the Philippines harmless from all claims, accounts, demands or actions arising out of accidents or injuries, whether to persons or property, caused by the construction, installation, operation and maintenance of the transmission system and the grid.

SEC. 9. *Reversion of the National Power Corporation Franchise.* – The nationwide franchise of the National Power Corporation for the operation of the transmission system and

1 the grid transferred to the TRANSCO pursuant to Section 8 of Republic Act No. 9136 is
2 hereby reverted to the National Power Corporation upon the effectivity of this Act.

3 SEC. 10. *Applicability Clause.* – The Grantee shall comply with and be subject to the
4 provisions of Commonwealth Act No. 146, as amended, otherwise known as the “Public
5 Service Act” and Republic Act No. 9136, and its implementing rules and regulations, the
6 Grid Code, and the Distribution Code.

7 SEC. 11. *Repealing and Non-exclusivity Clause.* – This franchise shall be subject to
8 amendment, alteration or repeal by the Congress of the Philippines when the public interest
9 so requires and shall not be interpreted as an exclusive grant of the privileges herein
10 provided.

11 SEC. 12. *Reportorial Requirement.* – The Grantee shall submit an annual report of
12 finances and operations to the Congress of the Philippines.

13 SEC. 13. *Separability Clause.* – If, for any reason, any section or provision of this Act
14 is declared unconstitutional or invalid, the other parts or provisions hereof which are not
15 affected thereby shall continue to be in full force and effect.

16 SEC. 14. *Effectivity Clause.* – This Act shall take effect fifteen (15) days from the
17 date of its publication, upon the initiative of the Grantee, in at least two (2) newspapers of
18 general circulation in the Philippines.

19 Approved,