

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SIXTEENTH CONGRESS
Second Regular Session

HOUSE BILL NO. 5340



Introduced by: Representatives
AILEEN C. RADAZA, GABRIEL LUIS R. QUISUMBING and RAUL V. DEL MAR

EXPLANATORY NOTE

Even in this age of advanced technology and sophisticated instruments of convenience, the value and importance of electric light and power remains primary and undiminished. This is so because, whether viewed as commodities or services, they "form part of the regular family budget and affect almost every member of the population."

In this context, the attached Bill seeks to extend for another twenty five (25) years the franchise of Mactan Electric Company, Inc. (MECO) to operate and provide electric light and power service in the City of Lapu-Lapu and Municipality of Cordova, Province of Cebu.

MECO was originally granted a municipal/city franchise and the corresponding certificates of public convenience and necessity issued for the purpose, by the then Public Service Commission. It was likewise first granted a Provisional Franchise by National Electrification Commission (NEC) to operate an electric light and power service in the Municipality of Cordova also in the Province of Cebu.

On October 10, 1991, MECO was issued a Certificate of Franchise, a so-called "permanent franchise," by the NEC to operate an electric light and power service for a period of 25 years in Lapu-Lapu City and Municipality of Cordova, in accordance with Presidential Decree No. 269 dated August 6, 1973. The 25-year franchise term is thus set to expire in October 2016.

Even a cursory perusal of history of MECO's franchise shows a record of efficient, adequate and reliable light and power operations and service in its franchised areas. As MECO records and documents will show, it can very well speak of a level of technical capability and sound financial management that can sustain its operations over the longer term. Through the years, with acceptable power rates approved by proper government regulatory authorities and operating under their watchful eyes, MECO enjoyed, and still continues to enjoy, the encouraging support of the communities, in general, and the consumers, in particular, in Lapu-Lapu City and the Municipality of Cordova, even in the face of several power crises that hit the Visayas region in the past years.

Indeed, true to the declared policy of government in granting electric power franchises, MECO made significant contributions to helping mobilize communities and private resources and enterprises to promote local and regional growth and development. In simpler terms, MECO did its job in promoting local livelihood and employment and enhancing economic activities that help reduce poverty in the energized areas of Lapu-Lapu City and town of Cordova and nearby localities.

To enable MECO to continue the good work, the extension of the franchise of MECO, as herein provided, is necessary. Approval of this Bill is, therefore, earnestly sought.

AILEEN C. RADAZA
Lone District, Lapu-Lapu City


GABRIEL LUIS R. QUISUMBING
6th District, Cebu


RAUL V. DEL MAR
1st District, Cebu City

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SIXTEENTH CONGRESS
Second Regular Session

HOUSE BILL NO. **5340**

Introduced by: Representatives
AILEEN C. RADAZA, GABRIEL LUIS R. QUISUMBING and RAUL V. DEL MAR

AN ACT
GRANTING MACTAN ELECTRIC COMPANY, INC. (MECO) A FRANCHISE TO
CONSTRUCT, INSTALL, ESTABLISH, OPERATE AND MAINTAIN A
DISTRIBUTION SYSTEM FOR THE CONVEYANCE OF ELECTRIC POWER TO
THE END-USERS IN THE CITY OF LAPU-LAPU AND MUNICIPALITY OF
CORDOVA, PROVINCE OF CEBU.

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

SECTION 1. ***Nature and Scope of Franchise.*** - Subject to the provisions of the 1987 Philippine Constitution and applicable laws, rules and regulations, there is hereby granted to Mactan Electric Company, Inc. (MECO), hereunder referred to as the grantee, its successors or assigns, a franchise to construct, install, establish, operate and maintain for commercial purposes and in the public interest, a distribution system for the supply and conveyance of electric power to the end-users in the City of Lapu-Lapu and Municipality of Cordova, Province of Cebu.

As used in this Act, distribution system refers to the systems of wires and associated facilities including sub-transmission lines belonging to a franchised distribution utility extending between the delivery point on the national transmission system or generating facility and the metering point/facility of the end-user and supply refers to the sale of electric energy by the grantee to its consumers under its franchise.

underground laying of wires, other conductors or conduits, shall be repaired and replaced in workmanlike manner at the expense of the grantee, its successors or assigns, in accordance with the standards set by DPWH or the local government unit concerned. Should the grantee, its successors assigns, after the ten (10) day notice from the said authority, fail, refuse or neglect to repair or replace any part of public place, road, highway, street, lane, alley, avenue, sidewalk or bridge altered, changed or disturbed by the said grantee, its successors or assigns, then the DPWH or the local government unit concerned shall have the right to have the same repaired and placed in good order and condition at double expense to be charged against the grantee, its successors or assigns.

SEC. 5. *Responsibility to the Public.* - The grantee shall supply electricity to its captive and contestable market in the least costly manner. In the interest of the public good and as far as feasible and whenever required by the ERC, the grantee shall modify, improve or change its facilities, poles, lines systems and equipment for the purpose of providing efficient and reliable service and reduced electricity costs. The grantee shall charge reasonable and just power rates for its services to all types of consumers within its franchised areas in order that business and industries shall be able to compete.

The grantee shall have the obligation to provide open and non-discriminatory access to its distribution system and services for any end-user within its franchise area consistent with Republic Act No. 9136, otherwise known as 'Electric Power Industry Reform Act of 2001'. The grantee shall not engage in any activity that will constitute an abuse of market power such as, but not limited to, unfair trade practices, monopolistic schemes and any other activities that will hinder competitiveness of business and industries.

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

The grantee shall identify and segregate in its electricity bill to the end-users the components of the retail rate pursuant to Republic Act No. 9136, unless

SEC. 2. ***Manner of Operation of Facilities.*** - All electric distribution facilities, lines and systems for electric services owned, maintained, operated or managed by the grantee, its successors or assigns, shall be operated and maintained at all times in a superior manner, and it shall be the duty of the grantee, its successors or assigns, whenever required to do so by the Energy Regulatory Commission, hereinafter referred to as the ERC, or its legal successors, or the Department of Energy, hereinafter to as DOE, or its legal successor, or any other government agency concerned, to modify, improve and change such facilities or systems in such a manner and to such extent as the progress in science and improvements in the electric power services may render reasonable, applicable and proper.

Whenever practicable and for purposes of maintaining order, safety and aesthetics along highways, roads, streets, alleys or right-of-way, the grantee may allow the use of free spaces in its poles, facilities or right-of-way by interested parties upon reasonable compensation to the grantee considering cost incurred to accommodate and administer the use of the grantee's facilities by such parties. The ERC shall decide in case of dispute or disagreement between parties.

SEC. 3. ***Authority of the ERC/DOE.*** - The grantee shall secure from the ERC/DOE or any government agency which has jurisdiction over the operation of the herein grantee, the necessary certificate of public convenience and necessity and other appropriate permits and licenses for the construction and operation of its electric distribution system.

SEC. 4. ***Excavation and Restoration Works.*** - For the purpose of erecting and maintaining poles, pipes and other supports for said wires or other conductors for the purpose of laying and maintaining said facilities, wires, cables, pipes or other conductors, it shall be lawful for the grantee, its successors or assigns, as may be appropriate, may seek approval from the Department of Public Works and Highways (DPWH) or the local government unit concerned, to make excavations or lay conduits in any of the public places, highways, streets, lanes, alleys, avenues, sidewalks or bridges of said province, cities and/or municipalities: *Provided however,* That a public place, highway, street, lane, alley, avenue, sidewalk or bridge disturbed, altered or changed by reason of erection of poles or other supports or the

otherwise amended. Such rates charged by the grantee to the end-users shall be made public and transparent. The grantee shall implement lifeline rate to marginalized end-users as mandated under Republic Act No. 9136.

SEC. 7. **Promotion of Consumer Interests.** - The herein grantee shall establish a consumer desk that will handle consumer complaints and ensure adequate promotion of consumer interests. The grantee shall act with dispatch on all complaints brought before it.

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

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

SEC. 10. **Term of Franchise.** - This franchise shall be in effect for a period of twenty five (25) years from the date of effectivity of this Act, unless sooner canceled. This franchise shall be deemed *ipso facto* revoked in the event the grantee fails to operate continuously for two (2) years.

SEC. 11. **Acceptance and Compliance.** - Acceptance of this franchise shall be given in writing to the Congress of the Philippines, through the Committee on Legislative Franchises of the House of Representatives and the Committee on Public Services of the Senate within sixty (60) days from the effectivity of this Act. Upon giving such acceptance, the grantee shall exercise the privileges granted under this Act. Non-acceptance shall render the franchise void.

SEC.12. **Warranty in Favor of the National and Local Governments.** - The grantee shall hold the national, provincial, city and municipal governments of the Philippines free from all claims, accounts, demands or actions arising out of accidents or injuries, whether to property or to persons, caused by the construction, installation, operation and maintenance of the distribution system of the grantee.

SEC. 13. **Liability to Damages.** - The grantee shall be liable for any injury and damage arising from or caused by accident to persons and property by reason of any defective construction under this franchise or of any neglected or omission to keep its pole and wires in safe condition.

SEC. 14. **Sale, Lease, Transfer, Usufruct, or Assignment.** - The grantee shall not sell, lease, transfer, grant the usufruct of, or assign this franchise or the rights and privileges acquired thereunder to any person, firm, company, corporation or other commercial or legal entity, or merge with any other corporation or entity, or shall transfer the controlling interest of the grantee, whether as a whole or in parts and whether simultaneously or contemporaneously, to any such person, firm, company, corporation or entity without the prior approval of the Congress of the Philippines: *Provided*, That Congress shall be informed of any lease, transfer granting the usufruct of, sale or assignment of franchise or the rights or privileges acquired within sixty (60) days after the completion of said transaction: *Provided also*, That any such transfer, sale or assignment is in accordance with the constitutional limitations: *Provided further*, That failure to report to Congress such change of ownership shall render the franchise *ipso facto* revoked: *Provided finally*, That any person or entity to which this franchise is sold, transferred or assigned, shall be subject to the same conditions, terms, restrictions and limitations of this Act.

SEC. 15. **Dispersal of Ownership.** - In accordance with the provision of R.A. 9136, Distribution Utilities which are not publicly listed, shall offer and sell to the public a portion not less than fifteen (15%) percent of their common shares of stocks *Provided, however,* That Grantee or their respective holding companies that are already listed in the Philippine Stock Exchange (PSE) are deemed in compliance. *Provided,* That in cases where public offer of shares is not applicable, establishment of cooperatives and other methods of encouraging public participation by citizens and corporations operating public utilities must be implemented. Non-compliance therewith shall render the franchise *ipso facto* revoked.

SEC. 16. **Reportorial Requirement.** - The grantee shall submit an annual report to the Congress of the Philippines, through the Committee on Legislative Franchises of the House of Representatives and the Committee on Public Services of the Senate, on its compliance with the terms and conditions of the franchise and on its operations on or before April 30 of the succeeding year.

SEC. 17. **Penalty Clause.** - Any grantee who fails to submit the requisite Annual Report to Congress shall be fined Five Hundred Pesos (P500.00) per working day of non-compliance. The fine shall be collected by the ERC from said delinquent franchise grantee separate from the reportorial penalties imposed by ERC. All proceeds from said fines or penalties shall accrue to the monitoring fund of the ERC in line with its supervisory and regulatory functions. The reportorial compliance certificate issued by Congress shall be required before any application for permit or certificate is accepted by ERC.

SEC. 18. **Equality Clause.** - Any advantage, favor, privilege, exemption, or immunity granted under existing franchise, or which may hereafter be granted, upon prior review and approval of Congress, shall become part of this franchise and shall be accorded immediately and unconditionally to the herein grantee: *Provided, however,* That the foregoing shall neither apply to nor affect provisions concerning territory covered by the franchise, the life span of the franchise or the type of service authorized by the franchise. *Provided, further,* That the foregoing shall not apply to the sale, lease, transfer, grant of usufruct or assignment of legislative franchises with prior congressional approval.

SEC. 19. **Applicability Clause.** - The grantee shall comply with and be subject to the provisions of Commonwealth Act No. 146, as amended, otherwise known as the 'Public Service Act' and Republic Act No. 9136, otherwise known as the 'Electric Power Industry Reform Act of 2001.'

SEC. 20. **Separability Clause.** - If any of the sections or provisions of this Act is held invalid, all other provisions not affected thereby shall remain valid.

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

SEC. 22. **Publication.** - This Act shall be published, through the initiative of the grantee, fifteen (15) days after this Act is signed by the President of the Philippines or has lapsed into law.

SEC. 23. **Effectivity Clause.** - This Act shall take effect fifteen (15) days from the date of its publication in at least two (2) newspapers of general circulation in the Philippines.

Approved,