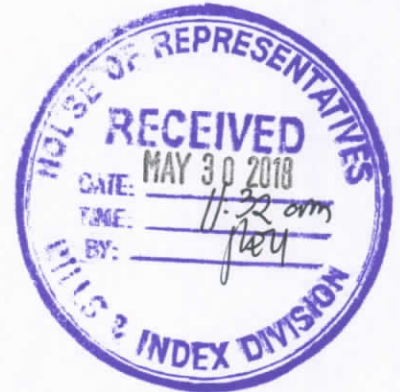


Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

17th Congress

3rd Regular Session



7809

HOUSE BILL NO. _____

EXPLANATORY NOTE

This house bill seeks to grant the Bases Conversion and Development Authority (BCDA), a government entity created pursuant to Republic Act No. 7227, otherwise known as the Bases Conversion Development Act of 1992, as amended by RA 7917 (1995) and RA 9400 (2007), a franchise for the distribution of electricity in the areas covered by BCDA and as enumerated in RA 7227, which may be exercised by the BCDA through a wholly-owned operating subsidiary or in a joint venture with a qualified entity.

RA 7227 mandated the BCDA to develop and convert to productive civilian uses of the Clark and Subic military reservations and their extensions and the lands covered under the 1947 Military Bases Agreement between the Republic of the Philippines and the United States of America in order to promote the economic and social development of Central Luzon in particular and the country in general. The measure proposed under this bill is consistent with this mandate and is integral to the BCDA's function and authority to administer the military reservations and implement the sound and balanced conversion of the Clark and Subic military reservations and their extensions.

It may be recalled that when BCDA was created under RA 7227, it was given the power "(t)o construct, own, lease, operate and maintain public utilities as well as infrastructure facilities." (Sec. 5(f), RA 7227). However, the second paragraph of Section 80 of Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001" (EPIRA) expressly repealed or modified Section 5(f) of RA 7227 with respect to electrical power. Thereafter, RA 9400 (2007) further expressly repealed the provisions on electric power and telecommunications services.

It is respectfully submitted that the operation of this public utility by BCDA is critical to the development of the areas administered or under the supervision of BCDA as self-sustaining and economically viable communities. In order to encourage the flow of investments in these underdeveloped areas, investors need to be ensured of the stability of power supply therein.

Approval of this bill becomes urgent because BCDA intends to develop the New Clark City, a new metropolis that will rise within the Clark Special Economic Zone, in Capas and Bamban, Tarlac, and BCDA's most ambitious project to date. It is envisioned to be the country's first and only smart and green city, which will feature mixed-use real estate developments, an agro-industrial park, and a food processing terminal. Note that the New Clark City will also house the National Government Administrative Center (NGAC), which will be executed pursuant to a joint venture agreement and an engineering, procurement and construction contract, each dated February 21, 2018 and has a budget of P13.16B. MTD Capital Berhad had won the bid to build the government hub in Tarlac, after submitting its proposal to the BCDA and undergoing a Competitive Challenge pursuant to the Guidelines on the Privatization and Disposition of BCDA Properties - Procedures for Entering into Joint Venture (JV) Arrangements with Private Entities.

BCDA urgently needs this franchise for the distribution of electricity in order to ensure the development of its covered areas into modern communities.

Approval of this bill is, thus, earnestly sought

HON. NOEL L. VILLANUEVA

3rd District, Tarlac

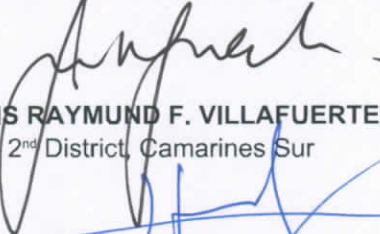


HON. DAKILA CARLO E. CUA

Lone District, Quirino

HON. LORD ALLAN JAY Q. VELASCO

Lone District, Marinduque

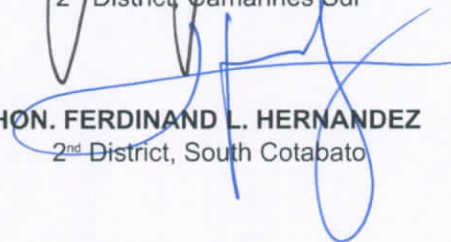


HON. LUIS RAYMUND F. VILLAFUERTE, JR.

2nd District, Camarines Sur

HON. FERDINAND L. HERNANDEZ

2nd District, South Cotabato



Republic of the Philippines
HOUSE OF REPRESENTATIVES
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17th Congress

3rd Regular Session

7809

HOUSE BILL NO. _____

Introduced by **HON. NOEL L. VILLANUEVA**, 3rd District, Tarlac; **HON. DAKILA CARLO E. CUA**, Lone District, Quirino; **HON. LORD ALLAN JAY Q. VELASCO**, Lone District District, Marinduque; **HON. LUIS RAYMUND F. VILLAFUERTE, JR.**, 2nd District, Camarines Sur; and **HON. FERDINAND L. HERNANDEZ**, 2nd District, South Cotabato

AN ACT GRANTING THE BASES CONVERSION AND DEVELOPMENT AUTHORITY A FRANCHISE TO CONSTRUCT, INSTALL, ESTABLISH, OPERATE, OWN, MANAGE AND MAINTAIN DISTRIBUTION SYSTEMS FOR THE CONVEYANCE OF ELECTRIC POWER TO THE END-USERS ANYWHERE IN ALL AREAS COVERED UNDER REPUBLIC ACT NO. 7227, AS AMENDED, OTHERWISE KNOWN AS THE BASES CONVERSION AND DEVELOPMENT ACT OF 1992.

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 Constitution and applicable laws, rules and regulations, there is hereby granted to the Bases Conversion and Development Authority (BCDA, a government entity created pursuant to Republic Act No. 7227, as amended, otherwise known as the Bases Conversion and Development Act of 2001, hereunder referred to as the grantee, its successors or assigns, a franchise to construct, install, establish, operate, lease, own, manage and maintain for commercial purposes and in the public interest, distribution systems for the conveyance of electric power to the end-users in all areas covered by the grantee, pursuant to the said RA 7227, as amended, including but not limited to the Subic and Clark military reservations and their extensions (John Hay Station, Wallace Air Station, O'Donnell Transmitter Station, San Miguel Naval Communications Station, Capas Relay Station, Mt. Sta. Rita Station (Hermosa, Bataan), portions of Metro Manila military camps, and their surrounding communities.

Section 2. *Manner of Operation of Facilities.* All electric distribution facilities, lines and systems for electric services installed, established, operated, leased, owned, 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 successor, or the Department of Energy, hereinafter referred to as the 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 technology, including the installation of smart grids, capable of accessing the internet, and all other improvements in the electric power distribution services may render reasonable and proper.

Whenever practicable and for purposes of maintaining order, safety and aesthetics along highways, roads, streets, alleys or rights-of-way, the grantee may allow the use of

and transparent. The grantee shall implement lifeline rate to marginalized end-users as mandated under Republic Act No. 9136.

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

Section 8. *Right of 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 station or facility 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.

Section 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.

Section 10. *Warranty in Favor of 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 electric power distribution system of the grantee.

Section 11. *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 neglect or omission to keep its poles and wires in safe condition.

Section 12. *Sale, Lease, Transfer, Usufruct, etc.* The grantee shall not lease, transfer, grant the usufruct of, sell nor assign this franchise or the rights and privileges acquired hereunder to any person, firm, company, corporation or other commercial or legal entity, nor merge with any other corporation or entity, nor shall the controlling interest of the grantee be transferred, 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 by the Congress of the Philippines: *Provided*, That the foregoing limitation shall not apply if the grantee shall transfer or assign this franchise or the rights and privileges acquired hereunder to its wholly-owned operating subsidiaries, and as contribution to joint ventures, of whatever nature and kind, with any entity, in accordance with applicable laws, rules and regulations: *Provided, further*, That any person or entity to which this franchise is validly sold, transferred or assigned, shall be subject to the same conditions, terms, restrictions and limitations of this Act.

Section 13. *Equality Clause.* Any advantage, favor, privilege, exemption, or immunity granted under existing franchises, or which may hereafter be granted shall *ipso facto* 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.

free spaces in its poles, facilities or rights-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.

Section 3. *Authority of the Energy Regulatory Commission (ERC).* The grantee shall secure from the ERC, or any other government agency which has jurisdiction over the operation of the herein grantee, the necessary certificates of public convenience and necessity and other appropriate permits and licenses for the construction and operation of its electric power distribution system. The ERC, or any government agency having jurisdiction over the grantee's operation, may allow the grantee to expand to surrounding areas, not covered by its franchise area, whenever public interests so requires.

Section 4. *Ingress and Egress.* For the purpose of erecting and maintaining poles or other supports for said wires or other power conductors for the purpose of laying and maintaining underground wires, cables or other conductors, it shall be lawful for the grantee, its successors or assigns, with the prior approval by the Department of Public Works and Highways (DPWH) or by the local government unit (LGU) concerned, as may be appropriate, 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 underground laying of wires, other conductors or conduits, shall be repaired and replaced in workmanlike manner by said grantee, its successors or assigns, in accordance with the standards set by the DPWH or the LGU concerned. Should the grantee, its successors or 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 LGU 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.

Section 5. *Responsibility to the Public.* The grantee shall supply electricity to its captive 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 electric 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 nondiscriminatory access to its electric power distribution system and services for any end-user within its franchise area consistent with Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001". The grantee shall not engage in any activity that would constitute an abuse of market power such as, but not limited to, unfair trade practices, monopolistic schemes, and any other activities that would hinder competitiveness of business and industries.

Section 6. *Rates for Services.* The retail rates to its captive market and charges for the distribution of electric power by the grantee to its end-user shall be regulated by and subject to the approval by 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 otherwise amended. Such rates charged by the grantee to the end-users shall be made public

Section 14. *Term of Franchise.* This franchise shall be for a term of twenty-five (25) years from the date of effectivity of this Act. This franchise shall be deemed *ipso facto* revoked in the event that the grantee fails to operate continuously for two (2) years.

Section 15. *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".

Section 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.

Section 17. *Penalty Clause.* Any grantee who fails to submit the annual report to Congress would be fined five hundred pesos (PhP 500.00) per working day of noncompliance. The fine would be collected by the ERC from the said delinquent franchise grantee separate from the reportorial penalties imposed by the ERC. The collected funds 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 the ERC.

Section 18. *Separability Clause.* If any of the sections or provisions of this Act is held invalid, all other provisions not affected thereby shall remain valid.

Section 19. *Repeatability and Nonexclusivity 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.

Section 20. *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.

Section 21. *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: _____.