

Republic of the Philippines
House of Representatives
Quezon City

NINETEENTH CONGRESS
Second Regular Session

HOUSE BILL NO. 9310



Introduced by:
HON. JOSEPH STEPHEN S. PADUANO, HON. JULIET MARIE DE LEON FERRER and
HON. FRANCISCO B. BENITEZ

EXPLANATORY NOTE

This bill seeks to grant NEGROS ELECTRIC AND POWER CORP. (NEPC) a franchise to acquire, establish, operate, and maintain, for commercial purposes and in the public interest, a distribution system for the conveyance of electric power to end users in the Cities of Bacolod, Silay, Talisay, and Bago and in the Municipalities of Murcia and Don Salvador Benedicto, all in the province of Negros Occidental.

The electrical distribution in these cities and municipalities is presently handled by Central Negros Electric Cooperative Inc. (CENECO). CENECO has enjoyed this privilege for more than forty-seven (47) years, since 1976 when it started operating in Silay City.

The quality of the service that CENECO has been providing has been wanting. Among the complaints against CENECO are: power outages, voltage fluctuations, poorly-maintained lines, inadequate investment in distribution facilities, inordinate delay in the restoration of power services, overbilling/overcharging, and poor customer relations, among others.

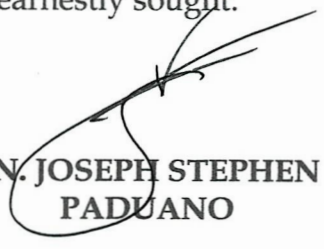
Bacolod and its adjacent cities and municipalities is one of the most progressive regions in the Philippines and its growth is being hindered by the poor service of CENECO. Understandably, CENECO is subject to certain limitations being an electric cooperative. It is reliant on funding from limited resources from the government. It lacks access to modern technology and does not have the entrepreneurial drive to address managerial, operational and service problems. Unless the steadily increasing power demand is fully addressed by a reliable, reasonable and efficient power distributor, the economic growth in the region will be delayed and hindered.

Accepting its own limitations CENECO has agreed to the offer of the Prime Strategic Group for a joint venture to acquire, rehabilitate, expand and operate the distribution system in the franchise area. A joint venture agreement (JVA) was agreed and NEPC

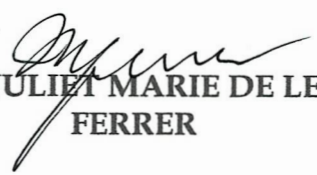
NEPC is the sister company of MORE Electric and Power Corporation (MORE Power) which is the distribution utility in Iloilo City. NEPC was established to engage in the distribution of electric power to consumers, businesses, institutions, and other users in the community within its franchise area. NEPC will also be managed and led by the same management group and technical team behind MORE Power. It is backed up by the financial resources of the same Group that owns or controls several publicly listed companies: Bloomberry Resorts Corporation (BLOOM), Manila Water Company, Inc. (MWC), and Apex Mining Company Inc. (APX). This Group has demonstrated the amazing capability to turn around the decrepit and neglected distribution system in Iloilo City and was able to quickly stabilize, rehabilitate, upgrade and expand the operating capacity and service. Systems loss has been reduced, more than 20,000 new customers have been added to the consumer base, and the power cost has been brought down in that area within only two (2) years from its takeover of the decrepit and neglected distribution facilities. The local government officials in Iloilo City and adjacent city and municipalities have attested to and endorsed the good deeds and accomplishments of this Group.

Considering that Negros Electric and Power Corp. possesses the required capability, it is apt for the Congress to grant Negros Electric and Power Corp. the franchise to acquire, establish, operate, and maintain, for commercial purposes and in the public interest, a distribution system for the conveyance of electric power to end users in the Cities of Bacolod, Silay, Talisay, and Bago and in the Municipalities of Murcia and Don Salvador Benedicto, all in the province of Negros Occidental.

The Support of the Members of Congress for the prompt and timely passage of this measure is earnestly sought.



HON. JOSEPH STEPHEN S.
PADUANO



HON. JULIET MARIE DE LEON
FERRER



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HON. JOSEPH STEPHEN S. PADUANO, HON. JULIET MARIE DE LEON FERRER
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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 the House of Representatives of the Philippines in Congress assembled:

SEC. 1. *Nature and Scope of Franchise.* - Subject to the provisions of the Constitution and applicable laws, rules and regulations, there is hereby granted to Negros Electric and Power Corp., hereunder referred to as the Grantee, its successors or assignees, 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 end users in the Cities of Bacolod, Silay, Talisay, and Bago and in the Municipalities of Murcia and Don Salvador Benedicto, all in the province of Negros Occidental.

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

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 shall be operated and maintained at all times in the best manner. It shall be the duty of the Grantee, its successors or assignees, to continuously improve its facilities and employ the latest technology and innovations that promote efficiency, and which is beneficial to consumers. It shall comply with the standards set by the Energy Regulatory Commission (ERC) such as those found in the Philippine Distribution Code, its resolutions, and other issuances. The Grantee shall also implement measures required by the ERC, the Department of Energy (DOE), or their legal successors, or any other government agency concerned, to modify, improve, upgrade and change such facilities, systems or the management and maintenance thereof.

30 Whenever practicable and for purposes of maintaining order, safety, and aesthetics along
31 highways, roads, streets, alleys, or easements, the Grantee may allow the use of its poles,
32 facilities, or easements by interested parties upon the payment of reasonable compensation
33 to the Grantee, considering costs incurred to accommodate and administer the use of the
34 Grantee's facilities by such parties. The ERC shall resolve cases of disputes or
35 disagreements between and among the parties concerned.

36
37 SEC. 3. *Authority of the Energy Regulatory Commission.* – The Grantee shall secure from the
38 ERC or any other government agency which has jurisdiction over the operation of the
39 herein Grantee, the necessary certificate of public convenience and necessity (CPCN) and
40 other appropriate permits and licenses for the construction and operation of its electric
41 distribution system.

42
43 SEC. 4. *Excavation and Restoration Works.* – For the purpose of erecting, maintaining poles
44 and other supports for wires or other conductors for the laying and maintaining of
45 underground wires, cable, pipes or other conductors, the Grantee, its successors or
46 assignees, is authorized to make excavations or lay conduits in any of the public places,
47 roads, highways, streets, lanes, alleys, avenues, sidewalks, or bridges of said province,
48 cities and/or municipalities, subject to prior approval of the Department of Public Works
49 and Highways (DPWH) or the relevant local government unit (LGU) concerned, *Provided,*
50 however, That any public place, road, highway, street, lane, alley, avenue, sidewalk, or
51 bridge disturbed, altered, or changed by reason of the erection of poles or other supports
52 or the underground laying of wires, other conductors or conduits, shall be repaired or
53 replaced in a workmanlike manner at the expense of the Grantee, its successors or
54 assignees, in accordance with the standards set by the DPWH or the relevant LGU
55 concerned. Should the Grantee, its successors or assignees, after the ten- (10) day notice
56 from the said authority, fail, refuse or neglect to repair or replace any part of a public place,
57 road, highway, street, lane, alley, avenue, sidewalk, or bridge that has been disturbed,
58 altered, or changed by the said Grantee, its successors or assignees, then the DPWH or the
59 relevant LGU concerned shall have the right to have the same repaired or replaced in good
60 order and condition and charge the Grantee, its successors or assignees, at double the
61 amount of the costs and expenses incurred for such repair or replacement.

62
63 SEC. 5. *Responsibility to the Public.* – The Grantee shall supply electricity to its captive
64 market in the urban and rural portions of its franchise area in the least costly manner. In
65 the interest of the public good and as far as feasible and whenever required by the ERC,
66 the Grantee shall modify, improve, or change its facilities, poles, lines, systems, and
67 equipment for the purpose of providing efficient and reliable service and reduced
68 electricity costs. The Grantee shall charge reasonable and just power rates for its services
69 to all types of consumers within its franchise area.

70
71 The Grantee is required to source and procure its power requirements in accordance with
72 the applicable rules and resolutions of the ERC: *Provided, That,* the Grantee, immediately
73 after the enactment of this Act, may be allowed to avail of the negotiated procurement of
74 emergency power supply under the applicable circulars, rules, or regulations issued by the
75 DOE or the ERC, or their legal successors, allowing emergency procurement: *Provided*
76 *further,* That, such emergency contracts, shall only be for a period of one (1) year and the
77 rates must not be higher than the latest ERC-approved generation tariff for the same or
78 similar technologies in the area.

79
80 The Grantee shall have the obligation to provide open and non-discriminatory access to its
81 distribution system and services to any end user within its franchise area consistent with
82 Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of
83 2001." The Grantee shall not engage in any activity that will constitute an abuse of market
84 power such as unfair trade practices, monopolistic schemes, and any other activities that
85 will hinder competitiveness of businesses and industries.

87 SEC. 6. *Rates for Service.* — The retail rates and charges for the distribution of electric power
88 by the Grantee to its end users shall be regulated by and subject to the approval of the ERC
89 or its legal successor.
90

91 The Grantee shall identify and itemize the components of its retail rate, pursuant to RA No
92 9136, in the statements of account it issues to its end users. Such rates charged by the
93 Grantee shall be made public and transparent. The Grantee shall implement a lifeline rate
94 to marginalized end users, as mandated by RA No. 9136.
95

96 The Grantee shall strictly comply with the systems loss cap prescribed by the ERC, subject
97 to the transition provisions under Section 17 of this Franchise.
98

99 SEC. 7. *Protection of Consumer Interests.* — The Grantee shall establish a customer desk that
100 will handle consumer complaints and ensure adequate protection of consumer interests.
101 The Grantee shall act with dispatch on all such complaints brought before it.
102

103 The Grantee shall reduce the duration and frequency of interruptions in its network and
104 in that regard shall observe the System Average Interruption Frequency Index (SAIFI) and
105 System Average Interruption Duration Index (SAIDI) imposed by the ERC.
106

107 SEC. 8. *Election of Independent Directors.* — The Board of the Grantee shall have independent
108 directors constituting at least twenty percent (20%) of its total membership. These directors
109 must be elected by a majority of the outstanding shares entitled to vote.
110

111 An independent director is a person who, apart from shareholdings and fees received from
112 the corporation, is independent of management and free from any business or other
113 relationship which could or could reasonably be perceived to materially interfere with the
114 exercise of independent judgment in carrying out the responsibilities as a director.
115

116 SEC. 9. *Right of the Government.* — A special right is hereby reserved to the President of the
117 Philippines, in times of war, rebellion, public peril, calamity, emergency, disaster or
118 disturbance of peace and order, to temporarily take over and operate the distribution
119 system of the Grantee, to temporarily suspend the operation of any station or facility in the
120 interest of public safety, security and public welfare, or to authorize the temporary use and
121 operation thereof by any agency of the government, upon the payment of due
122 compensation to the Grantee for the use of said distribution system during the period
123 when it shall be so operated.
124

125 SEC. 10. *Right of Eminent Domain.* — Subject to the limitations and procedures prescribed
126 by law, the Grantee is authorized to exercise the power of eminent domain insofar as it
127 may be reasonably necessary for the efficient establishment, improvement, upgrading,
128 rehabilitation, maintenance and operation of its services. The Grantee is authorized to
129 install and maintain its poles, wires, and other facilities over, under and across public
130 property, including streets, highways, parks, and other similar properties of the
131 Government of the Philippines, its branches, or any of its instrumentalities. The Grantee
132 may acquire such private property as is actually necessary for the realization of the
133 purposes for which this franchise is granted, including but not limited to poles, wires,
134 cables, transformers, switching equipment and stations, buildings, infrastructure,
135 machineries and equipment previously, currently or actually used, or intended to be used,
136 or have been abandoned, unused or underutilized, or which obstruct its facilities, for the
137 operation of a distribution system for the conveyance of electric power to end users in its
138 franchise area; *Provided*, That proper expropriation proceedings shall have been instituted
139 and just compensation paid.
140

141 *Provided, Further*, That upon the filing of the petition for expropriation, or at any time
142 thereafter, and after due notice to the owner of the property to be expropriated and the
143 deposit with the relevant court that has jurisdiction over the franchise area of the full

amount of the assessed value of the property or properties, the Grantee shall be entitled to immediate possession, operation, control, use and disposition of the properties sought to be expropriated, including the power of demolition if necessary, notwithstanding the pendency of other issues before the court, including the final determination of the amount of just compensation to be paid. The court may consider the tax declarations, current audited financial statements and rate-setting applications of the owner or owners of the property or properties being expropriated in order to determine their assessed value.

SEC. 11. *Term of the Franchise.* — This franchise shall be for a term of twenty-five (25) years from the effectivity of this Act, unless sooner canceled or revoked. This franchise shall be deemed *ipso facto* revoked in the event that the Grantee fails to operate continuously for two (2) years from approval of the CPCN.

SEC. 12. *Renewal, Extension or Revocation of Franchise.* - The Grantee shall apply for the renewal or extension of its franchise five (5) years before its expiration date which shall be reckoned fifteen (15) days after the publication of the franchise in the Official Gazette or in a newspaper of general circulation, whichever comes earlier.

This franchise may be revoked by Congress when the public interest so requires or when the Grantee fails to reasonably comply with regulatory standards.

SEC. 13. *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, liabilities, demands, or actions arising out of accidents that cause injury to persons and damage to properties, during the construction, installation, operation, and maintenance of the distribution system of the Grantee.

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

SEC. 15. *Sale, Lease, Transfer, Grant of Usufruct, or Assignment of the Franchise.* — The Grantee shall not sell, lease, transfer, grant the usufruct of, nor assign this franchise or the rights and privileges acquired thereunder to any person, firm, company, corporation or other commercial or legal entity, nor merge with any other corporation or entity, nor shall transfer the controlling interest of the Grantee, whether as a whole or in part, and whether simultaneously or contemporaneously, to any person, firm, company, corporation, or entity without the prior approval of the Congress of the Philippines and in compliance with legal requirements stipulated in other statutes; *Provided, That*, during the period before the dispersal of its ownership under Section 16, the Grantee shall notify Congress in writing of any sale, or transfer of its shares that is less than the controlling interest; *Provided, Further*, That the failure to report to Congress such change of ownership shall be a ground for revocation of this franchise; *Provided, Furthermore*, That the limitations set forth in this section shall not apply to: (a) any transfer or issuance of shares of stock in the implementation of the requirement for the dispersal of ownership in the Grantee pursuant to Section 16 of this Act; and (b) any sale, transfer, or assignment of shares of the Grantee in favor of an affiliate whose controlling interest is owned by the same parent corporation of the Grantee: *Provided, Finally*, That any such transfer, sale, or issuance is in accordance with any applicable constitutional limitations.

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

SEC. 16. *Dispersal of Ownership.* - In accordance with the constitutional provision to encourage public participation in public utilities, the grantee shall offer to the public, specifically Filipino citizens, at least twenty percent (20%) or a higher percentage that may

hereafter be provided by law of its outstanding capital stock in any securities exchange in the Philippines within five (5) years from the grant of its CPCN by the ERC; *Provided*, That in cases where a public offer of shares is not applicable, other methods of encouraging public participation by citizens and corporations operating public utilities must be implemented; *Provided that* ownership by Central Negros Electric Cooperative, Inc. ("CENECO") or its successor cooperative or corporation of at least twenty percent (20%) of the outstanding capital stock of the Grantee shall be deemed a compliance with the dispersal of ownership requirement.

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

Non-compliance therewith shall render the franchise *ipso facto* revoked.

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

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

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

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

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

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

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

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

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

SEC. 19. *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 of 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.

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

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

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

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

SEC. 21. *Equality Clause.* – Any advantage, favor, privilege, exemption, or immunity granted under existing franchises, or which may hereafter be granted to power distribution franchises, 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*, That the foregoing shall neither apply to nor affect provisions concerning territorial coverage, the term, or the type of service authorized by the franchise.

SEC 22. *Applicability of Existing Laws.* - The Grantee shall comply with and be subject to the relevant provisions of Commonwealth Act No. 146, or the "313 Public Service Act" as amended, and Republic Act No. 9136.

SEC. 23. *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.

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317 SEC. 24. *Separability Clause.* – If any of the sections or provisions of this Act is held invalid,
318 all other provisions not affected thereby shall remain valid.
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320 SEC. 25. *Repealing Clause* – All laws, decrees, orders, resolutions, instructions and rules
321 and regulations or parts thereof, which are inconsistent with this Act, are hereby deemed
322 repealed or modified accordingly.
323
324 SEC. 26. *Effectivity.* – This Act shall take effect fifteen (15) days after its publication in the
325 *Official Gazette* or in a newspaper of general circulation.
326
327 Approved