



Republic of the Philippines
DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS
CENTRAL OFFICE
Manila



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DEPARTMENT MEMORANDUM)

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FOR / TO : **SENIOR UNDERSECRETARY**
UNDERSECRETARIES
ASSISTANT SECRETARIES
REGIONAL DIRECTORS
BUREAU DIRECTORS
SERVICE DIRECTORS
HEADS OF UPMOs
DISTRICT ENGINEERS
HEADS OF ATTACHED AGENCIES
OTHERS CONCERNED
This Department

For information and guidance, attached is a copy of **Republic Act No. 12011** which was approved on July 26, 2024, entitled: **"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"**.

A copy of the said Republic Act may also be downloaded from the DPWH website: <http://dpwhweb>. If an office cannot access the DPWH website, a hard copy may be obtained from the Records Management Division, HRAS, upon request.

For dissemination to all concerned.


Atty. MICHAEL S. VILAFRANCA, CESO III
Officer-in-Charge, Office of the Assistant Secretary for Support Services

Encl: As stated

cc: Office of the Secretary

10.1.4 FJED/CDP/GME

Website: <https://www.dpwh.gov.ph>
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Republic of the Philippines
Congress of the Philippines
Metro Manila
Nineteenth Congress
Second Regular Session

Begun and held in Metro Manila, on Monday, the twenty-fourth day of July, two thousand twenty-three.

[REPUBLIC ACT NO. 12011]

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:

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 Negros Electric and Power Corp. (NEPC), hereunder referred to as the Grantee, its successors or assignees, a franchise to construct, install, establish, operate, own, manage and maintain in the public interest and

for commercial purposes, 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 sub-transmission 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 installed, owned, operated, managed or maintained by the Grantee, its successors or assignees, shall be operated and maintained at all times in a superior 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), or its legal successor, 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.

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 its poles, facilities, or right-of-way by interested parties upon the payment of reasonable compensation to the Grantee, considering costs incurred to accommodate and administer the use of the Grantee's facilities by such parties. The ERC shall resolve cases of disputes or disagreements between and among the parties concerned.

SEC. 3. Authority of the Energy Regulatory Commission. – The Grantee shall secure from the ERC or any other government agency which has jurisdiction over the operation of the herein Grantee, the necessary certificate of public convenience and necessity (CPCN) 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, maintaining poles and other supports for wires or other conductors, or for the purpose of laying and maintaining underground wires, cables, pipes or other conductors, the Grantee, its successors or assignees, are authorized to make excavations or lay conduits in any of the public places, roads, highways, streets, lanes, alleys, avenues, sidewalks, or bridges of said province, cities and/or municipalities, subject to prior approval of the Department of Public Works and Highways (DPWH) or the relevant local government unit (LGU) concerned: *Provided, however,* That any public place, road, highway, street, lane, alley, avenue, sidewalk, or bridge disturbed, altered, or changed by reason of the erection of poles or other supports or the underground laying of wires, other conductors or conduits shall be repaired or replaced in a workmanlike manner at the expense of the Grantee, its successors or assignees, in accordance with the standards set by the DPWH or the LGU concerned. Should the Grantee, its successors or assignees, after the ten (10)-day notice from the said authority, fail, refuse or neglect to repair or replace any part of a public place, road, highway, street, lane, alley, avenue, sidewalk, or bridge that has been disturbed, altered, or changed by the said Grantee, its successors or assignees, the DPWH or the LGU concerned shall have the right to have the same repaired or replaced in good order and condition and charge the Grantee, its successors or assignees, at double the amount of the costs and expenses incurred for such repair or replacement.

SEC. 5. *Responsibility to the Public.* - The Grantee shall supply electricity to its captive market in the urban and rural portions of its franchise area in the least cost manner pursuant to Republic Act (RA) No. 9136. 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 only incur reasonable and just costs for its services to all types of consumers within its franchise areas in order that businesses and industries shall be able to compete.

The Grantee is required to source and procure its power requirements in accordance with the applicable rules and regulations of the DOE and ERC: *Provided,* That the Grantee, immediately

after the enactment of this Act, may be allowed to avail of negotiated procurement of emergency power supply under the applicable circulars, rules, or regulations issued by the DOE or the ERC, or their legal successors, allowing emergency procurement: *Provided, further,* That such emergency contracts shall only be for a period of one (1) year and are non-extendible and the rates must not be higher than the latest ERC-approved generation tariff for the same or similar technologies in the area.

The Grantee shall have the obligation to provide open and non-discriminatory access to its distribution system and services to any end-user within its franchise area consistent with RA No. 9136, otherwise known as the "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 unfair trade practices, monopolistic schemes, and any other activities that will hinder competitiveness of businesses and industries.

SEC. 6. Rates for Service. – The retail rates and charges for the distribution of electric power by the Grantee to its end-users 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 RA No. 9136, unless otherwise amended. Such rates charged by the Grantee to the end-users shall be made public and transparent. The Grantee shall implement a lifeline rate for marginalized end-users as mandated by RA No. 9136.

The Grantee shall strictly comply with the systems loss cap prescribed by the ERC, subject to the transition provisions under Section 16 of this Act.

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

The Grantee shall reduce the duration and frequency of interruptions in its network and in that regard shall observe the

System Average Interruption Frequency Index (SAIFI) and System Average Interruption Duration Index (SAIDI) imposed by the ERC.

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

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

SEC. 9. *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 distribution system 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 the payment of due compensation to the Grantee, for the use of said distribution system during the period when it shall be so operated.

SEC. 10. *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 establishment, improvement, upgrading, rehabilitation, maintenance and operation of its services. The Grantee is authorized to install and maintain its poles, wires, and other facilities over, under and across public property, including streets, highways, parks, and other similar properties 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 expropriation proceedings shall have been instituted and just compensation paid.

SEC. 11. *Term of the Franchise.* - Unless sooner cancelled or revoked, this franchise shall be in effect for a period of twenty-five (25)

years from the 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 upon issuance of the CPCN by the ERC.

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

SEC. 13. *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. 14. *Sale, Lease, Transfer, Grant of Usufruct, or Assignment of the Franchise.* – 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 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: *Provided*, That the Grantee shall seek the prior approval of Congress of any sale, lease, transfer, grant of usufruct of, or assignment of the franchise or the rights and privileges acquired thereunder, or of the merger, or transfer of the controlling interest within sixty (60) days before the completion of said transaction: *Provided, further*, That any such sale, lease, transfer or assignment is in accordance with the constitutional limitations: *Provided, furthermore*, That failure to seek prior approval from Congress of such change of ownership shall render the franchise *ipso facto* revoked: *Provided, finally*, 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 15 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.

Any person or entity to which this franchise is sold, leased, 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 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, further*, That ownership by the 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 compliance with the dispersal of ownership requirement.

In the event the required dispersal of ownership is not implemented within five (5) years from the issuance of CPCN, the holdings of persons, natural or juridical, including directors, officers, stockholders, and related interests in the Grantee and its respective holding companies, 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, Inc. (PSE): *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 shall 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 PSE for a public offering, especially the three (3)-year profitability requirement.

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

SEC. 16. 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 effectivity of this Act.

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, hire qualified former employees of CENECO upon the commencement of its business operations.

An information dissemination campaign in the franchise areas regarding public services and operations of the Grantee shall be made available 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 Grantee shall comply with the system loss cap prescribed for private distribution utilities within the transition period determined by the ERC: *Provided*, That such transition period shall not exceed five (5) years from the grant of the Grantee's CPCN: *Provided, further*, That within six (6) months from the issuance of the CPCN, the Grantee shall submit to the ERC a proposed implementation strategy including the estimated rate impact on consumers to achieve the prescribed system loss cap within such transition period.

SEC. 17. *Commitment to Provide and Promote the Creation of Employment Opportunities.* - The Grantee shall create employment opportunities and shall allow on-the-job training 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. 18. *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 a permit or certificate is accepted by the ERC.

The ERC shall, one (1) year from the effectivity of this Act 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. 19. *Fine.* – Failure of the Grantee to submit the requisite annual report to Congress shall be penalized by a fine of Five hundred pesos (P500.00) per working day of non-compliance. 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 Bureau of the Treasury.

SEC. 20. *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. 21. *Applicability of Existing Laws.* – The Grantee shall comply with and be subject to the relevant provisions of Commonwealth Act No. 146, or the "Public Service Act", as amended, and RA No. 9136.


SEC. 22. *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.

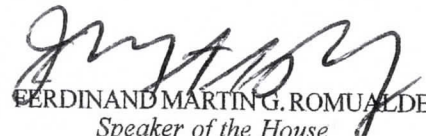
SEC. 23. *Separability Clause.* – If any of the sections or provisions of this Act is held invalid, all other provisions not affected thereby shall remain valid.

SEC. 24. *Repealing Clause.* – All laws, decrees, orders, resolutions, instructions, and rules and regulations or parts thereof, which are inconsistent with this Act, are hereby repealed or modified accordingly.

SEC. 25. *Effectivity.* – This Act shall take effect fifteen (15) days after its publication in the *Official Gazette* or in a newspaper of general circulation.

Approved,


FRANCIS "CHIZ" G. ESCUDERO
President of the Senate



FERDINAND MARTIN G. ROMUALDEZ
Speaker of the House of Representatives

This Act, which originated in the House of Representatives, was passed by the House of Representatives on February 21, 2024, amended by the Senate of the Philippines on May 20, 2024, and which amendments were concurred in by the House of Representatives on May 22, 2024.


RENATO N. BANTUG JR.
Secretary of the Senate


REGINALD S. VELASCO
Secretary General House of Representatives

Approved: JUL 26 2024


FERDINAND ROMUALDEZ MARCOS JR.
President of the Philippines

