

Republic of the Philippines
Congress of the Philippines
Metro Manila
Thirteenth Congress
First Regular Session

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

[REPUBLIC ACT NO. 9339]

AN ACT FURTHER AMENDING THE FRANCHISE OF VISAYAN ELECTRIC COMPANY, INC., GRANTED UNDER ACT NO. 3499, AS AMENDED, TO CONSTRUCT, OPERATE AND MAINTAIN A DISTRIBUTION SYSTEM FOR THE CONVEYANCE OF ELECTRIC POWER TO THE END-USERS IN THE CITIES OF CEBU, MANDAUE AND TALISAY AND THE MUNICIPALITIES OF MINGLANILLA, NAGA, SAN FERNANDO, CONSOLACION AND LILO-AN, PROVINCE OF CEBU AND RENEWING/EXTENDING THE TERM OF THE FRANCHISE TO ANOTHER TWENTY-FIVE YEARS FROM THE DATE OF APPROVAL OF THIS ACT

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

SECTION 1. The franchise granted to Visayan Electric Company, Inc. under Act No. 3499, as amended, is hereby further amended to read as follows:

"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 Visayan Electric Company, Inc. (VECO), hereunder referred to as the grantee, its successors or assigns, a franchise to construct, operate and maintain in the public interest and commercial purposes, a distribution system for the conveyance of electric power to the end-users in the cities of Cebu, Mandaue and Talisay and the municipalities of Minglanilla, Naga, San Fernando, Consolacion and Lilo-an, Province of Cebu. The herein grantee has provided the Province of Cebu electric light, heat and power supply since 1928 under Act No. 3449, as amended.

"As used in this Act, distribution system refers to the system 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."

"SEC. 2. *Manner of Operations 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, hereafter referred to as ERC, or its legal successor, or the Department of Energy, hereinafter referred to as DOE, or its legal successor, or any other government agency concerned, to modify, improve and change such facilities or systems in such manner and to such extent as the progress in science and improvements in the electric power services may render reasonable and proper.

"Whenever practicable and for purposes of maintaining order, safety and aesthetics along the 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 costs 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 the parties."

"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 and other appropriate permits and licenses for the construction and operation of its electric distribution system."

"SEC. 4. *Ingress and Egress.* – For the purpose of erecting and maintaining poles and other supports for said facilities, wires or other conductors or for the purpose of laying and maintaining said facilities, wires, cables or other conductors, it shall be lawful for the grantee, its successors or assigns, with the prior approval of the Department of Public Works and Highways (DPWH) or the local government units (LGUs) 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 provinces and/or municipalities: *Provided, however,* That any public place, highway, street, lane, alley, avenue, sidewalk or bridge disturbed, altered or changed by reason of the erection of poles or other supports, or the laying of wires, other conductors or conduits, shall be immediately repaired and properly restored at the expense of the grantee, its successors or assigns, in accordance with the standards set by the DPWH and LGUs."

"SEC. 5. *Responsibility to the Public.* – The grantee shall supply electricity to its captive market in the least cost 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 nondiscriminatory access to its distribution system and services for any end-user within its franchise area consistent with Republic Act No. 9136. 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 businesses and industries."

"SEC. 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 of the ERC or its legal successor.

"The grantee shall identify and segregate in its 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 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 take over and operate the distribution system of the grantee or to authorize the temporary use and operation thereof by any agency/department of the government upon due compensation to the grantee for the use of the said distribution system during the period when they shall be so operated."

"SEC. 9. *Tax Provisions.* – The grantee, its successors or assigns, shall be subject to the payment of all taxes, duties, fees or charges and other impositions applicable to private electric utilities under the National Internal Revenue Code (NIRC) of 1997, as amended, the Local Government Code and other applicable laws: *Provided*, That nothing herein shall be construed as repealing any specific tax exemptions, incentives or privileges granted under any relevant law: *Provided, further*, That all rights, privileges, benefits and exemptions accorded to existing and future private electric utilities by their respective franchises shall likewise be extended to the grantee.

"The grantee shall file the return with the city where its principal place of business is located and pay the taxes due thereon to the Commissioner of Internal Revenue or his duly authorized representative in accordance with the NIRC and the return shall be subject to audit by the Bureau of Internal Revenue."

"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 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. 11. *Acceptance and Compliance.* – Acceptance of this franchise shall be given in writing within sixty (60) days after the effectivity of this Act."

"SEC. 12. *Warranty in Favor of 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 property or persons, caused by 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 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 a safe condition."

"SEC. 14. *Sale, Lease, Transfer, Usufruct, etc.* – The grantee shall not lease, transfer, grant the usufruct of or sell 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 the controlling interest of the grantee be transferred whether in whole or in part, and whether simultaneously or contemporaneously, to any such person, firm, company, corporation or entity without the prior approval of the Congress of the Philippines. 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. *Equality Clause.* – In the event that any competing individual, partnership or corporation shall receive a similar permit or franchise with terms and/or provisions more favorable than those herein granted or which tend to place the herein grantee at any disadvantage, such terms and/or provisions shall be deemed part hereof and shall operate equally in favor of the herein grantee: *Provided*, That any term and/or provision herein granted which are not contained in other franchises that may hereafter be granted shall likewise be enjoyed by the future grantees: *Provided, however*, That the foregoing shall neither apply to nor affect the provisions concerning territory covered by the franchise and the life span of the franchise."

"SEC. 16. *Separability Clause.* – If, for any reason, any of the sections or provisions of this Act is declared unconstitutional or invalid, the other parts or provisions hereof which are not affected thereby shall continue to be in full force and effect."

"SEC. 17. *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 Services Act' and Republic Act No. 9136, otherwise known as the 'Electric Power Industry Reform Act of 2001.'"

"SEC. 18. *Repealability 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."

"SEC. 19. *Reportorial Requirement.* – The grantee shall submit an annual report of finances and operations to the Congress of the Philippines."

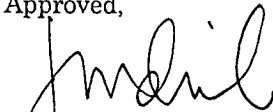
SEC. 2. *Renewal/Extension of the Term of Franchise.* – This franchise shall be for a term of twenty-five (25) years from the

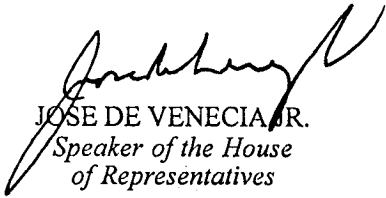
date of effectivity of this Act. This franchise shall be deemed *ipso facto* revoked in the event that the grantee fails to operate continuously for two years.

SEC. 3. *Repealing Clause.* – All laws, decrees, orders, resolutions, instructions and rules and regulations or parts thereof, which are inconsistent with this Act, are hereby deemed repealed or modified accordingly.

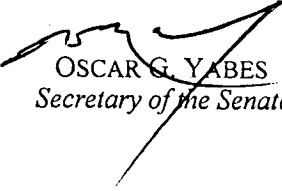
SEC. 4. *Effectivity Clause.* – This Act shall take effect fifteen (15) days from the date of its publication, upon the initiative of the grantee, in at least two newspapers of general circulation in the Philippines.

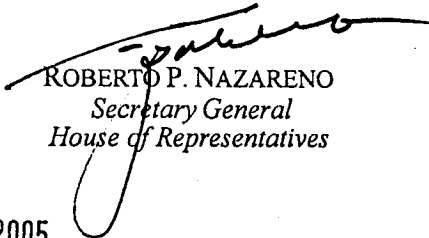
Approved,


FRANKLIN M. DRILON
President of the Senate

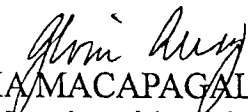

JOSE DE VENECIA, JR.
*Speaker of the House
of Representatives*

This Act which originated in the House of Representatives was finally passed by the House of Representatives and the Senate on June 7, 2005 and June 6, 2005, respectively.


OSCAR G. YABES
Secretary of the Senate


ROBERTO P. NAZARENO
*Secretary General
House of Representatives*

Approved: SEP 01 2005


GLORIA MACAPAGAL-ARROYO
President of the Philippines



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