

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Batasan Complex, Quezon City

SEVENTEENTH CONGRESS

First Regular Session
2045
House Bill No. _____

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*Introduced by Representative Jesus N. Sacdalan
First District, North Cotabato*

EXPLANATORY NOTE

The Province of (North) Cotabato is divided into three (3) legislative district and spans throughout seventeen (17) municipalities, and one (1) city.

The six (6) municipalities of Pikit, Pigcawayan, Aleosan, Libungan, Midsayap and Alamada (**PPALMA**, for brevity) are the component municipalities of the First District of the Province of (North) Cotabato that are contiguous to and in proximity with each other in terms of geographical location.

The Cotabato Electric Cooperative, Inc. (**COTELCO**, for brevity) has been supplying electric power long before then to the Second and Third Legislative Districts of the province by virtue of a Certificate of Franchise granted unto it on December 12, 1979 pursuant to the provisions of P.D. 269, as amended. To elaborate, COTELCO is specifically covering the following areas under its franchise: Kidapawan City and eleven municipalities, namely: Kabacan, Mlang, Matalam, Carmen, Banisilan, Tulunan, Makilala, Magpet, Antipas, Arakan and Pres. Roxas, except only for PPALMA area which was originally included in the franchise coverage of Maguindanao Electric Cooperation, Inc. (MAGELCO, for brevity) until the Court of Appeals ruled to include the PPALMA in COTELCO's coverage in 2008.

In its quest to establish One Province One Electric Cooperative, COTELCO submitted a petition/application with the National Electrification Commission (**NEC**, for brevity) on February 3, 2000 for the inclusion of the PPALMA area in its franchise coverage. Said application was docketed as NEC Case No. 2000-03.

In response thereto, NEC rendered an affirmative decision on September 18, 2003, thus, granting approval to said application. MAGELCO elevated said decision of the NEC to the Court of Appeals seeking legal remedy on the adverse NEC decision that has befallen unto it.

Consequently, the Court of Appeals rendered a Decision, which had attained finality, in C.A. G.R. SP 84996-MIN on January 29, 2008, upholding the ruling of NEC for COTELCO's franchise to operate in the PPALMA area, thereby, leaving no room for MAGELCO to continue conveying electricity therein.

By virtue of the final and executor Decision of the Court of Appeals, COTELCO enacted Board Resolution No. 102-2008 approving the three (3) year period transition plan for the PPALMA Area which was duly approved by the National Electrification Administration (NEA, for brevity) with the end to achieve dependable operations. Hence, COTELCO started its operations in the PPALMA area on October 2008.

Along this line, a Memorandum of Agreement (MOA) was entered into by and between the MAGELCO and COTELCO on July 16, 2009, under NEA's supervision, as to the disposition of assets of PPALMA.

With the three (3) year transition period having elapsed yielding substantial results on the administration, management, and operation of an electric cooperative, COTELCO Board of Directors deemed it necessary and appropriate for the creation of COTELCO-PPALMA as a separate business unit using the franchise of COTELCO, operating independently from that of the COTELCO-Main, granting unto the Board of Directors of the former the power to enter into Contracts / Agreements / Instruments with the PSALM, NGCP, NEA, ERC, Independent Power Producers, Financial Banking Institutions including the power to hire its own General Manager to achieve viable operations.

Accordingly, NEA approved the creation of COTELCO-PPALMA as a separate business undertaking of COTELCO granting therewith the six (6) aforementioned municipalities it seeks to embrace under its coverage as projected, namely: Pikit, Pigcawayan, Aleosan, Libungan, Midsayap, and Alamada.

For this reason, COTELCO is now composed of COTELCO-Main and COTELCO-PPALMA, thereby giving due distinction between the mother unit from which the newly established COTELCO-PPALMA derives its right to engage in the distribution of electric power, subject however, to the limitations and restrictions the former may impose upon the later.

As such, all municipalities of the Province of (North) Cotabato are totally embraced under the umbrella of COTELCO without infiltration from any other cooperative outside the province. Further, it is a cogent manifestation that the whole of the Province of (North) Cotabato seeks to attain the realization of One Province One Electric Cooperative, thereby, fusing the entire province into one with the end of fostering efficient and better delivery of services on the trade of electric commodity.

For purposes of clarity, the terminology COTELCO and COTELCO-Main used and contained in the hereunder paragraphs are one and the same, hence, eliminating possible confusion that may be encountered by the readers of this writing. To reiterate, COTELCO, distinctly termed in this writing as COTELCO-Main, is the power distributor in the areas under the Second and Third Legislative Districts of the Province of (North) Cotabato covering two-thirds (2/3) of its territorial jurisdiction, while the other one-third (1/3) part of its territory is served by COTELCO-PPALMA operating under the franchise of COTELCO-Main.

However, in the course of the COTELCO-PPALMA's operation, several problems and setbacks were encountered and continue to proliferate up to the present which are adversely detrimental to COTELCO-PPALMA's management and member-consumers. After all, it is not at all a smooth-sailing journey for COTELCO-PPALMA but rather a venture assailed with tempests at its worst. COTELCO-PPALMA though already treated as a separate business unit by COTELCO-Main still has a very limited freedom and independence from the latter. The area of coverage of COTELCO-PPALMA is unique which needs a dissimilar approach to the other areas covered by COTELCO-Main, A different management style and operational approach must be implemented in the PPALMA area.

One of the many disadvantages of not having a separate franchise is the inability of COTELCO-PPALMA to contract power supply with power producers due to lack of legal personality. It has to seek approval from the entire COTELCO Board of Directors before it

can address its power supply shortage. Another one is, COTELCO-PPALMA cannot make rate adjustments to sustain its operations because ERC will not entertain any application from a power distributor who does not have separate franchise of its own.

Moved by all these circumstances, this representation seeks to propose the creation of COTELCO-PPALMA as a separate and distinct cooperative from COTELCO-Main, thereby granting it legislative franchise to operate in PPALMA area. Hence, the proposed enactment shall render the provisions of Section 2 of Republic Act No. 9136 in force and in effect.

The enactment of this bill shall pave the way to the absolute growth and development of COTELCO-PPALMA which will redound to greater economic progress for the six (6) municipalities it caters to serve. Long hours of load curtailment will be lessened, it not totally eliminated, as it can now exercise its own distinct position on the regulation of its power sources. Further, it can now possess the freedom to contract energy sources from power producers, thus, it can address its power shortage problems effectively. Also, it can religiously distribute electricity to its consumers at the prescribed rates appropriate and proper pursuant to the existing rules and regulations. In the same vein, electrification of the remote areas that are not yet recipient of power supply can now easily be implemented, thus, obtaining full achievement to its mission to energize the PPALMA area, that is also a means of generating the synthesis of modernity, technology, and advancement even to the most far-flung places. Likewise, it would guarantee customer satisfaction since delivery of electric services is now concentrated in a smaller coverage area.

Therefore, the grant of legislative franchise to COTELCO-PPALMA will assure a big leap to the inevitable materialization of establishing a separate and distinct electric cooperative in PPALMA solely dedicated to bring forth energy development to its franchise area of coverage.

Thus, immediate approval of this bill is earnestly requested.


JESUS N. SACDALAN

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SEVENTEENTH CONGRESS

First Regular Session

HOUSE BILL NO. 2045

*Introduced by Representative Jesus N. Sacdalan
First District, North Cotabato*

AN ACT GRANTING THE SEPARATE LEGISLATIVE FRANCHISE TO COTABATO ELECTRIC COOPERATIVE, INC. (COTELCO-PALMA) TO CONSTRUCT, INSTALL, ESTABLISH, OPERATE AND MAINTAIN A DISTRIBUTION SYSTEM FOR THE CONVEYANCE OF ELECTRIC POWER TO THE ENDUSERS IN THE SIX MUNICIPALITIES OF THE PROVINCE OF COTABATO, NAMELY: PIKIT, PIGCAWAYAN, ALOESAN, LIBUNGAN, MIDSAYAP AND ALAMADA (PPALMA) AND ITS NEIGHBORING AND SUBURBS

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 COTABATO ELECTRIC COOPERATIVE, INC. -PPALMA (COTELCO-PPALMA), hereunder referred to as the GRANTEE, its successors or assigns, a franchise to construct, install, establish, operate and maintain for public interest, a distribution system for the conveyance of electric power to the end-users in the Six Municipalities of Province of Cotabato, namely: Pikit, Pigcawayan, Aleosan, Libungan, Midsayap and Alamada (PPALMA) and its neighboring suburbs.

SECTION 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, 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 the National Electrification Administration, hereinafter referred to as the NEA, 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 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 or NEA shall decide in case of dispute or disagreement between parties.

SECTION 3. Authority of the Energy Regulatory Commission (ERC) and the National Electrification Administration (NEA). The GRANTEE shall secure from the ERC or NEA, or any other government agency which has jurisdiction over the operation of the herein GRANTEE, the necessary certificate of public convenience and necessarily and other appropriate permits and licenses for the construction and operation of its electric distribution system.

SECTION 4. Ingress and Egress. – For the purpose of erecting and maintaining poles or other supports for said wires or other 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 prior approval of the Department of Public Works and Highways (DPWH) or 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, avenues, 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-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 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 good public and as far as feasible and whether 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 franchise 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, 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, but not limited to, unfair trade practices, monopolistic schemes and any other activities that will 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-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 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.

SECTION 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.

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 person, caused by the construction, installation, operation and maintenance of the 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 there under to any person, firm, company, corporation or other commercial or legal entity, nor emerge 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 of the Congress of the Philippines: Provided, That Congress shall be informed of any lease, transfer, grant of usufruct, sale or assignment of franchise or the rights or privileges acquired within sixty (60) days after the completion of the said transaction: 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.

SECTION 13. Equality Clause. – Any advantage, favor, privilege, exemption, or immunity granted under existing franchises, or may hereinafter be granted shall, upon prior review and approval of Congress, become part of previously granted power distribution franchises and shall be accorded immediately and unconditionally grantees of such franchises. 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 or usufruct or assignment of legislative franchises with prior congressional approval.

SECTION 14. Terms 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", Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001" and Republic Act No. 10531 "An Act Strengthening the National Electrification Administration, further amending for the Purpose Presidential Decree No. 269, as amended , otherwise known as the " National Electrification Administration Decree ".

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 will be fined Five Hundred (P500.00) per working day of noncompliance. The fine will be collected by the ERC from the said delinquent franchise grantee separate from the reportorial requirements 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. Repealability and Nonexclusivity Clause. – This franchise shall be subject to amendment, alteration or repeal by the Congress of the Philippines when the public interests 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 immediately following the completion of its publication either in the official gazette or in a newspaper of general circulation in the Philippines whichever comes first pursuant to Article 2 of the Civil Code of the Philippines as amended by Executive Order No. 262.

Approved.