



# PHILRECA

PHILIPPINE RURAL ELECTRIC COOPERATIVES ASSOCIATION, INC.  
— The Philippines' Electric Cooperatives —

10 November 2023  
COMMS-2023-253

**HON. GUS S. TAMBUNTING**

*Chairperson*

House Committee on Legislative Franchises  
Batasan Hills, Quezon City

Dear *Hon. Tambunting*:

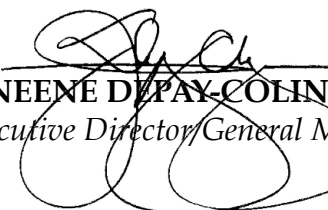
*Greetings of Peace from PHILRECA!*


We would like to respectfully submit our organization's **OPPOSITION** to **House Bill No. 9310** or An Act Granting Negros Electric and Power Corp. a Franchise.

Attached herewith is our position paper against House Bill No. 9310. We sincerely hope that our side will be given the chance to be heard as this proposed measure will not only affect the CENECO, but the entire electric cooperatives and its member-consumer-owners as well.

The Association would also like to reserve the opportunity to submit a supplemental position paper. Thank you and we fervently pray for your kind considerations and positive response.

Respectfully yours,

  
**JANEENE DEPAY-COLINGAN**  
*Executive Director/General Manager*

  
**JOSELITO R. YAP**  
*President*

Attachment: PHILRECA's Position Paper on House Bill No. 9310

***"United We Stand, We Stand United."***

2<sup>nd</sup> Floor, PNB Building, No. 92 West Avenue, Quezon City, Philippines  
Telephone Nos.: 8967-1580/0917-850-6830/0939-905-2206  
Website: [www.philreca.org](http://www.philreca.org); e-mail address: [core@philreca.org](mailto:core@philreca.org)



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## POSITION PAPER

### OPPOSITION TO HOUSE BILL NO. 9310 OR THE NEGROS ELECTRIC AND POWER CORPORATION APPLICATION

PHILRECA, the association of all electric cooperatives operating nationwide, expresses its **strong opposition against the passage of House Bill No. 9310** or 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.

The bill seeks to grant Negros Electric and Power Corp. (NEPC) a franchise over areas presently being served by Central Negros Electric Cooperative, Inc. (CENECO). While CENECO through its Board of Directors interposes no opposition to the House Bill and that the EC have signed a Joint Venture Agreement (JVA) with NEPC, the Association would like to lay down first, why we oppose a takeover of any private for-profit corporation to any electric cooperatives, and second, the faults in JVA, the uncertainties in the legal standing of CENECO, and the ambiguity in the dissolution of assets of the cooperative.

#### PART 1: OPPOSITION TO PRIVATE FOR-PROFIT TAKEOVER

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**Any corporate take-over of non-profit, service-oriented electric cooperatives by private-capitalists and for-profit corporations is inconsistent and against national policy**

The corporate take-over of CENECO by NEPC is inconsistent and goes against the Government's Policy enshrined in Section 2 of the Presidential Decree No. 269 as amended, which states:

*Because of their NON-PROFIT nature, cooperative character and the heavy financial burdens that they must sustain to become effectively established and operationally viable, electric cooperatives, particularly, SHALL BE GIVEN EVERY TENABLE SUPPORT AND ASSISTANCE by the National Government, ITS INSTRUMENTALITIES and AGENCIES to the FULLEST EXTENT of which they are capable...*

Moreover, the filed House Bill No. 9310 seeking to grant NEPC a franchise over areas presently being served by CENECO will be a clear violation of Section 27 of the Republic Act No. 9136 or the Electric Power Industry Reform Act (EPIRA) of 2001 which provides that "all existing franchises shall be allowed to their full term."

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CENECO was granted a fifty (50) year franchise last April 16, 1980 which will be expiring by 2030. Killing CENECO's franchise will run counter to the provisions of EPIRA.

It should also be remembered that a bill similar to NEPC's application was filed before the Congress. House Bill No. 10554 or An Act Expanding the Franchise Area of Davao Light and Power Company, Inc. was filed last November 2021 which sought to take over areas already being served by Northern Davao Electric Cooperative, Inc. (NORDECO).

While the bill was passed by both the Lower and Upper House, it was **vetoed** by President Ferdinand Romualdez Marcos, Jr. due to the "susceptibility of the proposed expansion of the franchise area of Davao Light and Power Company, Inc. to legal and/or constitutional challenge due to the apparent overlap and possible infringement into the subsisting franchise, permits, and contracts previously granted to North Davao Electric Cooperative Inc." The President acknowledged that NORDECO's franchise will only end in 2033 and that the resulting repeal of NORDECO's franchise over the expanded franchise will violate the non-impairment clause as provided in Section 10, Article III of the 1987 Constitution.

Any calls for corporate take-over of non-profit, service-oriented electric cooperatives like CENECO by private capitalist corporations is anti-people as it discourages EMPOWERING the people to have a society that satiates equitability, social justice, and empowerment. The concept of having electric cooperatives is the only way to democratize the ownership of public utilities. There is no need to give the ownership, and hence the control, of a basic utility to one person or family only. Besides, where are they when the unviable areas need electricity?

Instead of disenfranchising the distribution utility, the government and its representations SHOULD IN FACT GIVE tenable support to the electric cooperatives like CENECO to the FULLEST EXTENT as mandated by the State. Allowing CENECO, or any electric cooperative for that matter, to be a victim of a corporate take-over or privatization that sacrifices service over profitability is contrary to the State's national policy.

**As partners of the government, electric cooperatives has the noble mandate of total electrification of the country**

Presidential Decree no. 269, as amended by RA no. 10531 also known as the "National Electrification Administration Reform Act" provides, among others, that the obligation of electric cooperatives is not only to supply, promote, and encourage the fullest use of electric distribution service on an area coverage basis but also to pursue the noble mandate, as partners of the government, of total electrification of the country.

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For almost 50 years, we relied on electric cooperatives as they risked their lives to energize the countryside, especially the far-flung areas which big, for-profit corporations neglected because there is no potential of profit. The electric cooperatives do not intend to profit or be rewarded for their sacrifices; but allowing them to continue being the government's partner for electrification is not only going to be beneficial to the member-consumer-owners, but more importantly, this is the right thing to do.

The Electric Cooperatives should be for the people it serves and not for the for-profit private-capitalists. Let the people be empowered by letting them own the electric service through electric cooperativism!

## PART 2: THE FAULTS IN JVA, THE UNCERTAINTIES IN LEGAL STANDING OF CENECO, AND THE ALLEGED IRREGULARITIES IN PROXY VOTING

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### On faults in the processes and conduct of JVA, plebiscite, and proxy voting

1. CENECO is not an ailing electric cooperative
  - a. Pursuant to Section 7 of R.A. 10531 otherwise known as the "National Electrification Administration Reform Act of 2013" the National Electrification Administration (NEA) can exercise its step-in rights over an ailing electric cooperative (EC). Further, ailing ECs may enter into a partnership with qualified private sector investors under several frameworks which includes Joint Venture as provided in the Implementing Rules and Regulations of R.A. 10531. However, CENECO is **NOT an ailing electric cooperative**.
  - b. Under the NEA 2022 EC Overall Performance Assessment, CENECO is classified as a "AA" electric cooperative, the second-highest rating an EC can receive based on NEA's assessment of the EC's financial, institutional, and technical performance.
  - c. CENECO was also classified as a "Green EC" as published in NEA's compliance report on ECs for the 2nd quarter of 2023. An EC classified as "Green" means the EC has met the seven (7) performance standards set by the 2020 NEA guidelines on classification of ECs.
2. Conduct of referendum is violative of the provisions under IRR of R.A. No. 10531
  - a. Signing of the JVA involves converting CENECO from non-stock to stock for-profit company. However, based on Section 23d (v) of the Implementing Rules and Regulations of R.A. 10531, "*a referendum may only be conducted ten (10) years from the last conducted referendum.*" CENECO conducted a

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referendum last 2017. With only six (6) years after its last, CENECO conducted a plebiscite on June 25, 25, July 1, and 2, 2023.

- b. The conduct of **plebiscite** and the use of its term instead of referendum is an outright circumvention of the aforementioned Section 23d (v) of the Implementing Rules and Regulations of R.A. 10531.
3. Conduct of proxy voting is a violation of the provisions in IRR of R.A. 10531  
Granting that plebiscite will be considered valid, the manner of how the plebiscite was conducted through proxy voting is still an outright violation of Section 23d (iv) of the Implementing Rules and Regulations of R.A. 10531 which states that:  
*Each bona fide member-consumer shall be entitled to one (1) vote. The voting shall be done through secret balloting, and no proxy voting shall be allowed*
4. Non-conduct of Competitive Selection Process (CSP)  
Granting that all processes undertaken are valid, CENECO should have undergone CSP before signing a joint venture with NEPC. Considering that the joint venture will involve complete change in the ownership of the cooperative and involves the public's interest, a more exhaustive approach should have been taken by enlisting all possible partners with the best proposal that would best meet the conditions of the EC.
5. During the latest conduct of CENECO's 45th AGMA last May 28, 2023, several issues were raised including the illegal and violative provisions of JVA. The AGMA was adjourned without getting the approval of the MCOs and yet the JVA was signed on June 3, 2023 by the CENECO Board of Directors.
6. Should all processes and conduct of JVA, plebiscite, and proxy voting be proven erroneous and illegal upon investigation, then the conduct of JVA and result of plebiscite should be considered **invalid and unenforceable**.

#### **On uncertainties in the legal standing and future of CENECO as an electric cooperative**

1. Granted that House Bill No. 9310 be approved despite its violations on several energy laws as aforementioned, the existing franchise of CENECO will cease as there can be no two or more distribution utilities with separate franchises over the same franchise area/s. As provided under EPIRA Chapter 1, Section 4 – Definition of Terms:
  3. **Franchise Area** refers to a geographical area **EXCLUSIVELY ASSIGNED OR GRANTED** to a distribution utility for distribution of electricity *[emphasis supplied]*

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4. **Distribution Utility** refers to any electric cooperative, private corporation, government owned utility or existing local government unit which has an **EXCLUSIVE FRANCHISE-TO-OPERATE distribution** system in accordance with this Act. *[emphasis supplied]*

This “exclusive franchise-to-operate a distribution system” granted to a distribution utility stems from the physical fact that the distribution of electricity is a natural monopoly. In an article published in Electricity Policy website and Electricity Daily newsletter, the benefits of having a natural monopoly are provided:

*[I]n a given a natural monopoly, policy makers can provide lower cost power to consumers by awarding a legal monopoly to such a single firm, while **regulating its prices** to only recover its costs. This combination of an **exclusive right to serve** together with **cost-based regulation** allowed the utility to achieve the low cost made possible by its economies of scale and scope, but prevented it from charging the above-cost prices that result from an unfettered monopoly.<sup>2</sup>*  
*[emphasis supplied]*

2. Even if CENECO registers under the CDA as a stock cooperative, following this agreement, CENECO will still have no legal standing to operate as an electric cooperative since it no longer has a franchise to operate, assuming that House Bill No. 9310 will be approved. Per stipulated in the JVA, CENECO shall surrender its distribution assets to pave way for NEPC. With that, the existence of CENECO will now be limited to only distributing dividends to its MCOs.
3. Granted that the House Bill No. 9310 poses good intentions in providing efficient and affordable electricity to end consumers, it does not guarantee a comprehensive understanding of the function of CENECO as a party involved in this agreement. This indicates the inability of CENECO as an electric cooperative, with a mandate to uphold total electrification of the country.

Moreover, the Association would like to emphasize the following threats that are observed upon granting the NEPC franchise:

- a. Threat to CENECO's existence

As stipulated in the execution copy, CENECO will be classified and remain as a cooperative or corporate entity and shall cease as the franchise electric distribution utility, as NEPC will be the entity to operate the said function after the transfer date. Clearly, this invokes an inconsistency with the State's national policy, which states:

*SECTION 23. The State shall encourage non-governmental, community-based, or sectoral organizations that promote the welfare of the nation.*

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b. Threat to the implementation of total electrification

If it is right to view that CENECO shall cease upon transferring its operations to NEPC as to accord with the applicable rules in JVAs, will there be an assurance in serving the 41,014 unserved households granting that these areas are not profitable and the NEPC classified as for-profit in nature?

c. Threat to the MCO's representation

In the event that the shares of CENECO decrease and are diluted to below twenty percent (20), this equates to entitlement to only two (2) nominated directors with no independent director. With this setup, it is clear that the CENECO is at a great disadvantage. This poses a constant threat to the representation of MCOs in the board.

The directors of CENECO in this agreement are clearly outnumbered and the welfare and the interests of the MCOs is at risk. As the ratio of directorship of NEPC increases, it signals the limits of scope of powers and jurisdiction that CENECO can impose.

### **On alleged anomalies and irregularities in proxy voting**

1. The Association received several information on the alleged anomalies and irregularities in the conduct of proxy voting. It is our recommendation that before proceeding to deliberations on the filed house bill, proper regulatory agencies should first review the following alleged anomalies and irregularities as raised by the Responsible Supervisory and Confidential Union of Employees (RESCUE) and CENECO Union of Rational Employees (CURE):

- Alleged vote-buying through payment of Php 200.00 per MCO voting YES for CENECO to enter into JVA with NEPC.
- Voluminous claims of falsification of proxy forms where bona fide MCOs found out that someone already voted on their behalf.
- Rampant distribution of proxy forms in public places where MCOs are encouraged to assign proxy by filling up proxy forms without appearing before any lawyer.

The initiatives of ECs and MCOs in providing light and electricity in areas where private corporations ignore because of incapacity to yield profit should not be forgotten. In these dire times, where gaps in laws are taken advantage of should also be the time where stakeholders from the governments and ECs should extend their help more to one another.

In this light, the Association respectfully urges the Committee to review the submitted position. We also recommend that the proper regulatory agencies establish proper guidelines, not only in joint ventures, but also in other frameworks when entering into

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partnership with qualified private sector investors as provided in the IRR of the Republic Act No. 10531.

We are raising these issues and concerns to ensure that upon reaching any decision, due process and strict adherence to law is observed since this will also affect not only CENECO but also other electric cooperatives.

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