

**SIXTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
Third Regular Session)**



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SENATE

RECEIVED BY: 

COMMITTEE REPORT NO. 458

Submitted by the Committee on Public Services on FEB 01 2016

RE : H. B. No. 2185

Recommending its approval without amendment.

Sponsor : Senator Osmeña III

MR. PRESIDENT:


The Senate Committee on Public Services to which was referred H. B. No. 2185, introduced by Representatives Abu, Mendoza and *et.al.*, entitled:

**"AN ACT GRANTING THE FIRST
BAY POWER CORP. (FBPC) A FRANCHISE TO
CONSTRUCT, INSTALL, ESTABLISH, OPERATE AND
MAINTAIN A DISTRIBUTION SYSTEM FOR THE
CONVEYANCE OF ELECTRIC POWER TO THE END USERS
IN THE MUNICIPALITY OF BAUAN, PROVINCE OF
BATANGAS."**

has considered the same and has the honor to report it back to the Senate with the recommendation that the attached H. B. No. 2185 be approved without amendment.

Respectfully submitted:

RAMON BONG REVILLA JR.
Chairperson
Committee on Public Services


SERGIO R. OSMEÑA III
Acting Chairperson
Committee on Public Services

MEMBERS:

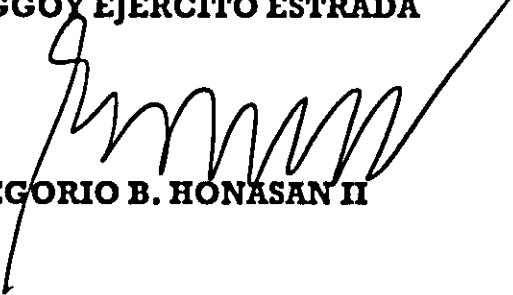


SONNY ANGARA



PIA S. CAYETANO

JINGGOY EJERCITO ESTRADA

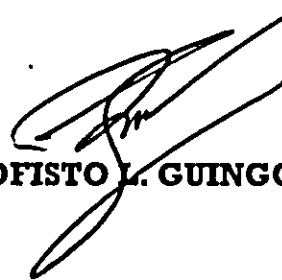


GREGORIO B. HONASAN II

JOSEPH VICTOR G. EJERCITO



TEOFISTO L. GUINGONA III



GRACE POE



ANTONIO "SONNY" F. TRILLANES IV

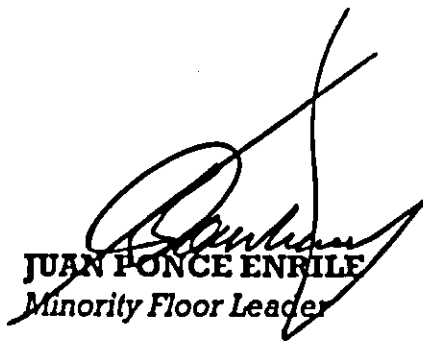


CYNTHIA A. VILLAR

EX-OFFICIO MEMBERS:

RALPH G. RECTO
President Pro-Tempore

JUAN PONCE ENRILE
Minority Floor Leader



ALAN PETER S. CAYETANO
Majority Floor Leader

FRANKLIN M. DRILON
Senate President
Pasay City



HOUSE OF REPRESENTATIVES

II. No. 2185

BY REPRESENTATIVES ABU, MENDOZA (M.), COLLANTES AND TEODORO

AN ACT GRANTING THE FIRST BAY POWER CORP. (FBPC) A FRANCHISE TO CONSTRUCT, INSTALL, ESTABLISH, OPERATE AND MAINTAIN A DISTRIBUTION SYSTEM FOR THE CONVEYANCE OF ELECTRIC POWER TO THE END USERS IN THE MUNICIPALITY OF DAUAN, PROVINCE OF BATANGAS

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

1 **SECTION 1. *Nature and Scope of Franchise.*** - Subject to the
2 provisions of the 1987 Philippine Constitution and applicable laws, rules and
3 regulations, there is hereby granted to First Bay Power Corp. (FBPC),
4 hereunder referred to as the grantee, its successors or assigns, a franchise to
5 construct, install, establish, operate and maintain for commercial purposes and
6 in the public interest, a distribution system for the conveyance of electric
7 power to the end users in the Municipality of Dauan, Province of Batangas.

8 As used in this Act, distribution system refers to the systems of wires
9 and associated facilities including subtransmission lines belonging to a
10 franchised distribution utility extending between the delivery point on the
11 national transmission system or generating facility and the metering
12 point/facility of the end users.

1 **SEC. 2. Manner of Operation of Facilities.** — All electric distribution
2 facilities, lines and systems for electric services owned, maintained, operated,
3 or managed by the grantee, its successors or assigns, shall be operated and
4 maintained at all times in a superior manner, and it shall be the duty of the
5 grantee, its successors or assigns, whenever required to do so by the Energy
6 Regulatory Commission, hereinafter referred to as the ERC, or its legal
7 successor, or the Department of Energy, hereinafter referred to as the DOE, or
8 its legal successor, or any other government agency concerned, to modify,
9 improve, and change such facilities or systems in such a manner and to such
10 extent as the progress in science and improvements in the electric power
11 services may render reasonable and proper.

12 Whenever practicable and for purposes of maintaining order, safety and
13 aesthetics along highways, roads, streets, alleys or right-of-way, the grantee
14 may allow the use of free spaces in its poles, facilities, or right-of-way by
15 interested parties upon reasonable compensation to the grantee, considering the
16 cost incurred to accommodate and administer the use of the grantee's facilities
17 by such parties. The ERC shall decide in case of dispute or disagreement
18 between parties.

19 **SEC. 3. Authority of the ERC/DOE.** — The grantee shall secure from
20 the ERC/DOE or any other government agency which has jurisdiction over the
21 operation of the herein grantee, the necessary certificate of public convenience
22 and necessity and other appropriate permits and licenses for the construction
23 and operation of its electric distribution system.

24 **SEC. 4. Excavation and Restoration Works.** — For the purpose of
25 erecting and maintaining poles, pipes and other supports for wires or other
26 conductors for the purpose of laying and maintaining said facilities, wires,
27 cables, pipes, or other conductors, it shall be lawful for the grantee, its
28 successors or assigns, with the prior approval of the Department of Public

1 Works and Highways (DPWH) or the local government unit (LGU) concerned,
2 as may be appropriate, to make excavations or lay conduits in any of the public
3 places, road, highways, streets, lanes, alleys, avenues, sidewalks or bridges of
4 said province, cities and/or municipalities: *Provided, however,* That a public
5 place, road, highway, street, lane, alley, avenue, sidewalk or bridge disturbed,
6 altered or changed by reason of erection of poles or other supports or the
7 underground laying of wires, other conductors or conduits, shall be repaired
8 and replaced in workmanlike manner at the expense of the grantee, its
9 successors or assigns, in accordance with the standards set by the DPWH or
10 the LGU concerned. Should the grantee, its successors or assigns, after the ten
11 (10)-day notice from the said authority, fail, refuse or neglect to repair or
12 replace any part of the public place, road, highway, street, lane, alley, avenue,
13 sidewalk or bridge altered, changed, or disturbed by the said grantee, its
14 successors or assigns, then the DPWH or the LGU concerned shall have the
15 right to have the same repaired and placed in good order and condition at
16 double expense to be charged against the grantee, its successors or assigns.

17 *SEC. 5. Responsibility to the Public.* - The grantee shall supply
18 electricity to its captive market in the least costly manner. In the interest of the
19 public good and as far as feasible and whenever required by the ERC, the
20 grantee shall modify, improve or change its facilities, poles, lines, systems and
21 equipment for the purpose of providing efficient and reliable service and
22 reduced electricity costs. The grantee shall charge reasonable and just power
23 rates for its services to all types of consumers within its franchise areas in order
24 that business and industries shall be able to compete.

25 The grantee shall have the obligation to provide open and
26 nondiscriminatory access to its distribution system and services for any
27 end user within its franchise area consistent with Republic Act No. 9136,
28 otherwise known as the "Electric Power Industry Reform Act of 2001". The

1 grantee shall not engage in any activity that will constitute an abuse of market
2 power such as, but not limited to, unfair trade practices, monopolistic schemes
3 and any other activities that will hinder competitiveness of business and
4 industries.

5 **SEC. 6. Rates for Services.** — The retail rates and charges for the
6 distribution of electric power by the grantee to its end users shall be regulated
7 by and subject to the approval of the ERC or its legal successor.

8 The grantee shall identify and segregate in its electricity bill to the
9 end users the components of the retail rate pursuant to Republic Act No. 9136,
10 unless otherwise amended. Such rates charged by the grantee to the end users
11 shall be made public and transparent. The grantee shall implement lifeline rate
12 to marginalized end users as mandated under Republic Act No. 9136.

13 **SEC. 7. Promotion of Consumer Interests.** — The herein grantee shall
14 establish a consumer desk that will handle consumer complaints and ensure
15 adequate promotion of consumer interests. The grantee shall act with dispatch
16 on all complaints brought before it.

17 **SEC. 8. Right of Government.** — A special right is hereby reserved to
18 the President of the Philippines, in times of war, rebellion, public peril,
19 calamity, emergency, disaster or disturbance of peace and order, to temporarily
20 take over and operate the stations or facilities of the grantee; to temporarily
21 suspend the operation of any station or facility in the interest of public safety,
22 security and public welfare; or to authorize the temporary use and operation
23 thereof by any agency of the government, upon due compensation to the
24 grantee, for the use of said stations or facilities during the period when they
25 shall be so operated.

26 **SEC. 9. Right of Eminent Domain.** — Subject to the limitations and
27 procedures prescribed by law, the grantee is authorized to exercise the right of
28 eminent domain insofar as it may be reasonably necessary for the efficient

1 maintenance and operation of services. The grantee is authorized to install and
2 maintain its poles, wires and other facilities over and across public property,
3 including streets, highways, forest reserves and other similar property of the
4 Government of the Philippines, its branches or any of its instrumentalities. The
5 grantee may acquire such private property as is actually necessary for the
6 realization of the purposes for which this franchise is granted: *Provided*, That
7 proper condemnation proceedings shall have been instituted and just
8 compensation paid.

9 **SEC. 10. Term of Franchise.** — This franchise shall be in effect for a
10 period of twenty-five (25) years from the date of effectivity of this Act, unless
11 sooner cancelled. This franchise shall be deemed *ipso facto* revoked in the
12 event the grantee fails to operate continuously for two (2) years.

13 **SEC. 11. Acceptance and Compliance.** — Acceptance of this franchise
14 shall be given in writing to the Congress of the Philippines, through the
15 Committee on Legislative Franchises of the House of Representatives and the
16 Committee on Public Services of the Senate, within sixty (60) days from the
17 effectivity of this Act. Upon giving such acceptance, the grantee shall exercise
18 the privileges granted under this Act. Nonacceptance shall render the franchise
19 void.

20 **SEC. 12. Warranty in Favor of the National and Local Governments.**
21 — The grantee shall hold the national, provincial, city and municipal
22 governments of the Philippines free from all claims, accounts, demands or
23 actions arising out of accidents or injuries, whether to property or to persons,
24 caused by the construction, installation, operation and maintenance of the
25 distribution system of the grantee.

26 **SEC. 13. Liability to Damages.** — The grantee shall be liable for any
27 injury and damage arising from or caused by accident to persons and property

1 by reason of any defective construction under this franchise or of any neglect
2 or omission to keep its poles and wires in safe condition.

3 **SEC. 14. Sale, Lease, Transfer, Usufruct, Etc.** — The grantee shall not
4 sell, lease, transfer, grant the usufruct of, nor assign this franchise or the rights
5 and privileges acquired thereunder to any person, firm, company, corporation,
6 or other commercial or legal entity, nor merge with any other corporation or
7 entity, nor shall transfer the controlling interest of the grantee, whether as a
8 whole or in parts, and whether simultaneously or contemporaneously, to any
9 such person, firm, company, corporation or entity without the prior approval of
10 the Congress of the Philippines: *Provided*, That Congress shall be informed of
11 any lease, transfer, grant of usufruct of, sale or assignment of franchise or the
12 rights and privileges acquired thereunder within sixty (60) days after the
13 completion of said transaction: *Provided, further*, That any such transfer, sale,
14 or assignment is in accordance with the constitutional limitations: *Provided*,
15 *furthermore*, That failure to report to Congress such change of ownership shall
16 render the franchise *ipso facto* revoked: *Provided, finally*, That any person or
17 entity to which this franchise is sold, transferred, or assigned, shall be subject
18 to the same conditions, terms, restrictions, and limitations of this Act.

19 **SEC. 15. Dispersal of Ownership.** — In accordance with the
20 constitutional provision to encourage public participation in public utilities, the
21 grantee shall offer to Filipino citizens at least thirty percent (30%) of its
22 outstanding capital stock or a higher percentage that may hereafter be provided
23 by law in any securities exchange in the Philippines within five (5) years from
24 the commencement of its operations: *Provided*, That in cases where public
25 offer of shares is not applicable, establishment of cooperatives and other
26 methods of encouraging public participation by citizens and corporations
27 operating public utilities must be implemented. Noncompliance therewith shall
28 render the franchise *ipso facto* revoked.

1 **SEC. 16. Reportorial Requirement.** — The grantee shall submit an
2 annual report to the Congress of the Philippines, through the Committee on
3 Legislative Franchises of the House of Representatives and the Committee on
4 Public Services of the Senate, on its compliance with the terms and conditions
5 of the franchise and on its operations on or before April 30 of the succeeding
6 year.

7 **SEC. 17. Penalty Clause.** — Any grantee who fails to submit the
8 requisite annual report to Congress shall be penalized by a fine of five hundred
9 pesos (P500.00) per working day of noncompliance. The fine shall be collected
10 by the ERC from said delinquent franchise grantee separate from the
11 reportorial penalties imposed by the ERC. All proceeds from the fines or
12 penalties shall accrue to the monitoring fund of the ERC in line with its
13 supervisory and regulatory functions. The reportorial compliance certificate
14 issued by Congress shall be required before any application for permit or
15 certificate is accepted by the ERC.

16 **SEC. 18. Equality Clause.** — Any advantage, favor, privilege,
17 exemption, or immunity granted under existing franchises, or which may
18 hereafter be granted, upon prior review and approval of Congress, shall
19 become part of this franchise and shall be accorded immediately and
20 unconditionally to the herein grantee: *Provided, however,* That the foregoing
21 shall neither apply to nor affect provisions concerning territory covered by the
22 franchise, the life span of the franchise or the type of service authorized by the
23 franchise: *Provided, further,* That the foregoing shall not apply to the sale,
24 lease, transfer, grant of usufruct, or assignment of legislative franchises with
25 prior congressional approval.

26 **SEC. 19. Applicability Clause.** — The grantee shall comply with and be
27 subject to the provisions of Commonwealth Act No. 146, as amended,

1 otherwise known as the "Public Service Act" and Republic Act No. 9136,
2 otherwise known as the "Electric Power Industry Reform Act of 2001".

3 **SEC. 20. Separability Clause.** — If any of the sections or provisions of
4 this Act is held invalid, all other provisions not affected thereby shall remain
5 valid.

6 **SEC. 21. Repealability and Nonexclusivity Clause.** — This franchise
7 shall be subject to amendment, alteration, or repeal by the Congress of the
8 Philippines when the public interest so requires and shall not be interpreted as
9 an exclusive grant of the privileges herein provided for.

10 **SEC. 22. Publication.** — This Act shall be published, through the
11 initiative of the grantee, fifteen (15) days after it has been signed by the
12 President of the Philippines or has lapsed into law.

13 **SEC. 23. Effectivity.** — This Act shall take effect fifteen (15) days after
14 its publication in at least two (2) newspapers of general circulation.

Approved,