

FOURTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)

8 MAY -7 P4:39

SENATE BILL NO. 2263

RECEIVED BY: _____

Introduced by Sen. Juan Ponce Enrile

EXPLANATORY NOTE

The enactment of Republic Act No. 9136, entitled *An Act Ordaining Reforms in the Electric Power Industry and for other purposes*, in 2001 signified the government's promise to ensure the quality, reliability and sustainability of the supply of electricity that would translate to lower consumption costs for the benefit of the end-users. The law provided for the privatization of the assets and liabilities of the National Power Corporation (NPC) with the end in view of achieving a high level of efficiency specifically in the transmission sub-sector of the energy industry. All transmission and sub-transmission facilities of NPC, therefore, were transferred to the National Transmission Corporation (TRANSCO).

Recently, the Securities and Exchange Commission has approved the incorporation of the National Grid Corporation of the Philippines, a consortium of Monte Oro Grid Resources Corp., Calaca High Power Corp. and State Grid Hong Kong Ltd., which won the 25-year concession of TRANSCO to operate and maintain the power grid. Since TRANSCO is a public utility, a congressional franchise has first to be passed to allow the National Grid Corporation to construct, install, finance, manage, improve, expand, operate, maintain, rehabilitate, repair and refurbish the nationwide transmission system owned by TRANSCO. Hence, this bill.

It is envisioned that once the National Grid Corporation commences its operation of the transmission grid, the facilities of the sub-sector shall then be upgraded and modernized to be able to ensure sustainability of our power supply and, at the same time, help achieve genuine reforms in the energy sector which will redound to the benefit of the consumers and end-users.

In view of the foregoing, the immediate passage of the bill is earnestly sought.


JUAN PONCE ENRILE
Senator

SENATE
OFFICE OF THE SECRETARY

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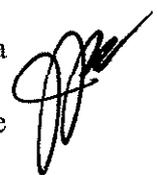
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AN ACT

GRANTING THE NATIONAL GRID CORPORATION OF THE PHILIPPINES A FRANCHISE TO CONSTRUCT, INSTALL, FINANCE, MANAGE, IMPROVE, EXPAND, OPERATE, MAINTAIN, REHABILITATE, REPAIR AND REFURBISH THE NATION WIDE TRANSMISSION SYSTEM IN THE REPUBLIC OF THE PHILIPPINES

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

1 **SECTION 1. *Nature and Scope of Franchise.*** - Subject to the *provisions* of the
2 Constitution and applicable laws and pursuant to the terms and conditions of the concession
3 agreement and other pertinent documents executed by the National Grid Corporation of the
4 Philippines with the National Transmission Corporation (TRANSCO) and the Power Sector
5 Assets & Liabilities Management Corporation (PSALM) by virtue of Section 21 of Republic Act
6 No. 9136 which are not inconsistent herewith, there is hereby granted to the National Grid
7 Corporation of the Philippines, herein referred to as the Grantee, its successors or assigns a
8 franchise to engage in the business of conveying or transmitting electricity through high voltage
9 back-bone system of interconnected transmission lines, substations, and related facilities, and
10 other activities that are necessary to support the safe and reliable operation of a transmission
11 system and to construct, install, finance, manage, improve, expand, operate, maintain,
12 rehabilitate, repair and refurbish the present nationwide transmission system of the Republic of
13 the Philippines. The Grantee shall likewise continue to operate and maintain the subtransmission
14 systems which have not yet been disposed by TRANSCO.



15
16 **SEC. 2. *Terms of Franchise.*** - This franchise shall be for a term of fifty (50) years from
17 the date of effectivity of this Act, unless sooner revoked or cancelled by Congress for any
18 violation of the terms and/or provisions of the franchise herein granted.

19

1 **SEC. 3. Manner of Operation of System or Facilities.** – The transmission system, grid
 2 and related facilities maintained, operated or managed by the Grantee, its successors or assigns ^{4,}
 3 shall be operated and maintained at all times in accordance with industry standards, and it shall ^{Dr}
 4 be the duty of the Grantee, its successors or assigns, whenever required to do so by the Energy
 5 Regulatory Commission (ERC), or its legal successor or any other government agency
 6 concerned, to modify, improve and change such system or facilities in such manner and to such
 7 extent as the progress in science and improvements in the electric power services may reasonably
 8 require. ^{Dr}

9

10 **SEC. 4. Right of Eminent Domain.** – Subject to the limitations and procedures
 11 prescribed by law, the Grantee is authorized to exercise the right of eminent domain insofar as it
 12 may be reasonably necessary for the construction, expansion, and efficient maintenance and
 13 operation of the transmission system and the efficient operation and maintenance of the sub-
 14 transmission systems which have not yet been disposed by the National Transmission
 15 Commission. The Grantee may acquire such private property as is actually necessary for the
 16 realization of the purposes for which this franchise is granted: *Provided*, That proper
 17 condemnation proceedings shall have been instituted and just compensation paid.

18

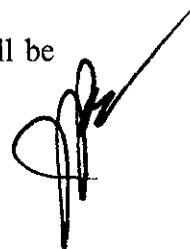
19 **SEC. 5. Right of the Government.** – A special right is hereby reserved to the President
 20 of the Philippines, in times of war, rebellion, public peril, calamity, emergency, disaster, or
 21 disturbance of peace and order, to temporarily take over and operate the transmission system
 22 and/or the sub-transmission systems operated and maintained by the Grantee, to temporarily
 23 suspend the operation of any portion thereof or the facility in the interest of public safety,
 24 security and public welfare, or to authorize the temporary use and operation thereof by any
 25 agency of the government upon due compensation to the Grantee for the use of the said
 26 transmission system and sub-transmission systems and any portion thereof during the period
 27 when they shall be so operated.

28

1 **SEC. 6. *Sale, Lease, Transfer, Usufruct, etc.*** – The Grantee shall not lease, transfer,
2 grant the usufruct of or sell this franchise or the rights and privileges acquired hereunder to any
3 person, firm, company or other commercial or legal entity, nor merge with any other company,
4 nor shall the controlling interest of the Grantee be transferred whether in whole or in part, and
5 whether simultaneously or contemporaneously, to any such person, firm, company or entity
6 without the prior approval of the Congress of the Philippines: *Provided*, That the foregoing
7 limitation shall not apply to: (1) any transfer or issuance of shares of stock in the
8 implementation of the requirement for the Grantee's dispersal of ownership pursuant to Section 8
9 of this Act; (2) any transfer or sale of shares of stock to a foreign investor or investors; (3) any
10 issuance of shares to any foreign or local investors pursuant to or in connection with any increase
11 in the Grantee's authorized capital stock which results in the dilution of the stockholdings of the
12 Grantee's then existing stockholders; (4) any combination thereof where such transfer, sale or
13 issuance is effected in order to enable the Grantee to raise the necessary capital or financing for
14 the provision of the services for which the Grantee has been incorporated or organized:
15 *Provided, moreover*, That the foregoing limitations shall not apply to any transfer, sale or
16 issuance of shares of stock at the level of corporate stockholders of the Grantee: *Provided*,
17 *however*, That any such transfer, sale or issuance at the level of the corporate stockholders of the
18 Grantee is in accordance with applicable constitutional limitations: *Provided, finally*, that any
19 person or entity to which this franchise is sold, transferred or assigned, under this Act shall be
20 subject to the same conditions, terms, restrictions and limitations of this Act.

21
22 **SEC. 7. *Cross Ownership; Market Power Abuse and Anti-Competitive Behavior.*** – The
23 Grantee shall not engage in any anti-competitive behavior including, but not limited to, cross-
24 subsidization, price or market manipulation, or other unfair trade practices detrimental to the
25 encouragement and protection of contestable markets.
26

27 No generation company, distribution utility, or other entity engaged in generating and
28 supplying electricity, its respective subsidiary or affiliate; or director, or officer, or stockholder
29 owning more than 1% of the outstanding capital stock, of a generation company, distribution



1 utility, or other entity engaged in generating and supplying electricity, or any of their ascendants,
2 descendants, brothers and sisters, whether of full or half blood, and their respective spouses, shall
3 own or hold any shares of stock or equity interest in Grantee. Likewise, Grantee, or any of its
4 directors, or officers, or stockholders owning more than 1% of the outstanding capital stock of
5 Grantee, their ascendants, descendants, brothers and sisters, whether of full or half blood, and
6 their respective spouses shall not hold any shares of stock or equity interest in any generation
7 company, distribution utility or other entity engaged in generating and supplying electricity:
8 *Provided*, That this prohibition on cross-ownership applies to direct ownership of shares of stock
9 of Grantee and to ownership of shares of stock of a corporate stockholder of the Grantee, or to
10 ownership of shares of stock or equity interest in a company which has controlling shareholdings
11 or equity interest in a corporate stockholder of the Grantee. But it shall not apply to ownership
12 of shares of stock in a company listed in the Philippine Stock Exchange which owns or controls
13 shares of stock in Grantee: *Provided, further*, That such owner of shares of stock in the listed
14 corporate stockholder of the Grantee shall not own more than 1% of the shares of stock or equity
15 interest in generation company, distribution utility or other entity engaged in generating and
16 supplying electricity.

17

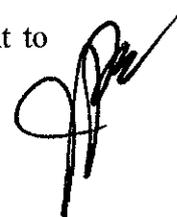
18 No shares of stock issued or acquired in violation hereof shall be allowed to vote or be
19 entitled to representation at any stockholders' meeting of the Grantee, nor shall the holder
20 thereof be entitled to any of the rights of a stockholder of the Grantee, including the right to
21 dividends, during the existence of such prohibited cross ownership.

22

23 An "affiliate" means a person which, alone or together with any other person, directly or
24 indirectly, through one or more intermediaries, controls, is controlled by, or is under common
25 control; with another person. As used herein, "control" shall mean the power to direct or cause
26 the direction of the management policies of a person by contact, agency, or otherwise.

27

28 The provisions on cross-ownership under Republic Act No. 9136 which are inconsistent
29 with this provision shall be deemed modified accordingly.



1
2 **SEC. 8. *Dispersal of Ownership.*** – The Grantee shall list, subject to the requirements of
3 the Securities and Exchange Commission (SEC) and the Philippine Stock Exchange (PSE), and
4 make a public offering of the shares representing at least twenty per centum (20%) of its
5 outstanding capital stock or a higher percentage that may hereafter be provided by law within
6 five (5) years from the commencement of its operations: *Provided that* the listing in the PSE of
7 any company which directly or indirectly owns or controls at least thirty per centum (30%) of the
8 outstanding shares of stock of the Grantee shall be considered a full compliance of this listing
9 requirement. Noncompliance therewith shall render the franchise *ipso facto* revoked: *Provided*
10 *that* the ERC may upon application of the Grantee, and after notice and hearing allow such
11 reasonable extension of the period within which the Grantee should list its shares of stock, if the
12 market condition is not suitable for such listing.

13
14 **SEC. 9. *Tax Provisions.*** – The Grantee, its successors or assigns, shall be subject to all
15 relevant taxes, duties, fees or changes and other impositions under the National Internal
16 Revenue Code (NIRC) of 1997, as amended, and other applicable laws: *Provided,* That payment
17 by Grantee of the concession fees due to PSLAM under the concession agreement shall not be
18 subject to income tax and value-added-tax (VAT): *Provided, further,* That nothing herein shall
19 be construed as repealing any specific tax exemptions, incentives or privileges granted, or to
20 which Grantee may be entitled, under any relevant law.

21
22 The Grantee shall file the return with, and pay the taxes due thereon to, the
23 Commissioner on Internal Revenue or his duly authorized representatives in accordance with the
24 NIRC of 1997, as amended.

25
26 **SEC. 10. *Acceptance and Compliance.*** - Acceptance of this franchise shall be given in
27 writing by Grantee within sixty (60) days after the effectivity of this Act.

28

1 **SEC. 11. *Warranty in Favor of National and Local Government.*** – The Grantee shall
2 hold the national, provincial and other local governments of the Philippines harmless from all
3 claims, accounts, demands or actions arising out of accidents or injuries, whether to property or
4 persons, caused by the construction, installation, operations and maintenance of the transmission
5 system and the grid.

6
7 **SEC. 12. *Ingress and Egress.*** – For the purpose of constructing and/or maintaining
8 transmission and sub-transmission assets and other related support facilities, it shall be lawful for
9 the Grantee, its successors and assigns, with the approval of the relevant national and local
10 government agencies concerned, as may be appropriate, to make excavations or lay conduits in
11 any of the public places, highways, streets, lanes, alleys, avenues, sidewalk or bridges within the
12 Philippines: *Provided, however,* That any public place, highways, street, lane, avenue, sidewalk
13 or bridge disturbed, altered or changed by reason of the construction and/or maintenance of
14 transmission and sub-transmission assets and other related support facilities, shall be
15 immediately repaired and properly restored at the expense of the Grantee, its successors and
16 assigns, in accordance with the standards set by the relevant national and local government
17 agencies concerned.

18
19 **SEC. 13. *Applicability Clause.*** – The Grantee shall comply with and be subject to the
20 provisions of Commonwealth Act No. 146, as amended, otherwise known as the “Public
21 Services Act,” Republic Act 9135 and its implementing rules and regulations, and such other
22 applicable laws, rules and regulations.

23
24 **SEC. 14. *Repealing and Non-exclusivity Clause.*** – This franchise shall be subject to
25 amendment, alteration or repeal by the Congress of the Philippines when the public interest so
26 requires and shall not be interpreted as an exclusive grant of the privileges herein provided for.

27
28 **SEC. 15. *Reportorial Requirement.*** – The Grantee shall submit an annual report of
29 finances and operations to the Congress of the Philippines.

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1
2 **SEC. 16. *Separability Clause.*** – If for any reason, any of the sections or provisions of
3 this Act is declared unconstitutional or invalid, the other parts or provisions hereof which are not
4 affected thereby shall continue to be in full force and effect.

5
6 **SEC. 17. *Effectivity Clause.*** – This Act shall take effect fifteen (15) days from the date
7 of its publication, upon the initiative of the Grantee, in at least two (2) papers of general
8 circulation in the Philippines.

9
10 *Approved,*

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