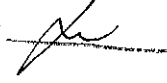


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FOURTEENTH CONGRESS OF THE)  
REPUBLIC OF THE PHILIPPINES )  
Second Regular Session )

RECEIVED BY: 

SENATE

COMMITTEE REPORT NO. 95

Submitted by the Committee on Public Services on  
AUG 27 2008

RE : H. B. No. 4358, taking into consideration S. No.  
2263.

Recommending the approval of H. B. No. 4358 with amendments.

Sponsor : Senator Enrile

MR. PRESIDENT:

The Senate Committee on Public Services to which was referred H. B. No. 4358, introduced by Representatives Nograles, Villafuerte, Biron, *et. al.*, entitled:

**"AN ACT**  
**GRANTING THE NATIONAL GRID CORPORATION OF THE**  
**PHILIPPINES A FRANCHISE TO OPERATE, MANAGE AND**  
**MAINTAIN, AND IN CONNECTION THEREWITH, TO**  
**CONSTRUCT, <sup>also</sup> INSTALL, FINANCE, IMPROVE, EXPAND,**  
**REHABILITATE AND REPAIR THE NATIONWIDE TRANSMISSION**  
**SYSTEM AND THE GRID IN THE REPUBLIC OF THE**  
**PHILIPPINES." and**

Senate Bill No.2263, introduced by Senator Enrile, entitled:

**"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 NATIONWIDE**  
**TRANSMISSION SYSTEM IN THE REPUBLIC OF THE**  
**PHILIPPINES."**



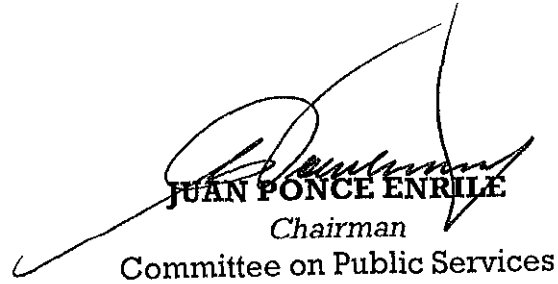
has considered the same and has the honor to report them back to the Senate with the recommendation that the attached H. B. No. 4358 be approved with amendments, taking into consideration S. No. 2263, to wit:

1. On page 1, line 9, Section 1 "Nature and Scope of Franchise", after the word "to" delete the remaining parts of the sentence until page 2, line 6 of the same Section and in lieu thereof insert the following to read as follows: **"ENGAGE IN THE BUSINESS OF CONVEYING OR TRANSMITTING ELECTRICITY THROUGH HIGH VOLTAGE BACK-BONE SYSTEM OF INTERCONNECTED TRANSMISSION LINES, SUBSTATIONS AND RELATED FACILITIES, AND OTHER ACTIVITIES THAT ARE NECESSARY TO SUPPORT THE SAFE AND RELIABLE OPERATION OF A TRANSMISSION SYSTEM AND TO CONSTRUCT, INSTALL, FINANCE, MANAGE, IMPROVE, EXPAND, OPERATE, MAINTAIN, REHABILITATE, REPAIR AND REFURBISH THE PRESENT NATIONWIDE TRANSMISSION SYSTEM OF THE REPUBLIC OF THE PHILIPPINES. THE GRANTEE SHALL CONTINUE TO OPERATE AND MAINTAIN THE SUB-TRANSMISSION SYSTEMS WHICH HAVE NOT BEEN DISPOSED BY TRANSCO."**
2. On page 2, line 15, Section 2 "Terms and Conditions of Franchise", delete the words and number "twenty five" "(25)" and replace with the word and number **"FIFTY" "(50)"**
3. On page 3, line 17, Section 5 "Right of the Government", delete the paragraph and in lieu thereof, amend to read as follows: **"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 TRANSMISSION SYSTEM, AND/OR THE SUBTRANSMISSION SYSTEMS OPERATED AND MAINTAINED BY THE GRANTEE, TO TEMPORARILY SUSPEND THE OPERATION OF ANY PORTION THEREOF, OR THE 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 THE SAID TRANSMISSION SYSTEM, AND SUB-TRANSMISSION SYSTEMS AND ANY PORTION THEREOF DURING THE PERIOD WHEN THEY SHALL BE SO OPERATED";**
4. On page 6, line 15, Section 7 "Cross-Ownership, Market Power Abuse and Anti-Competitive Behavior", after the numbers 9136, delete the phrase **"AND ITS IMPLEMENTING RULES AND REGULATIONS"**
5. On page 7, line 4, Section 9 on "Tax Provisions", after the last sentence insert a new proviso to read as follows: **"PROVIDED FURTHER, THAT PAYMENT BY GRANTEE OF THE CONCESSION FEES DUE TO PSALM UNDER THE CONCESSION AGREEMENT SHALL NOT BE SUBJECT TO INCOME TAX AND VALUE-ADDED TAX (VAT)";**
6. And finally amend the title of the bill to read as follows: **"AN ACT GRANTING THE NATIONAL GRID CORPORATION OF THE PHILIPPINES A FRANCHISE TO ENGAGE IN THE BUSINESS OF CONVEYING OR TRANSMITTING ELECTRICITY THROUGH HIGH VOLTAGE BACK-BONE SYSTEM OF INTERCONNECTED TRANSMISSION LINES, SUBSTATIONS AND RELATED FACILITIES, AND FOR OTHER PURPOSES"**.



with Senator Enrile as sponsor thereof.

Respectfully submitted:



**JUAN PONCE ENRILE**  
Chairman  
Committee on Public Services

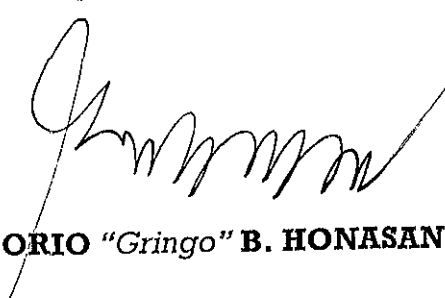
**JOKER P. ARROYO**  
Vice-Chairman  
Committee on Public Services

**MEMBERS:**


**EDGARDO J. ANGARA**



**RICHARD J. GORDON**




**GREGORIO "Gringo" B. HONASAN**



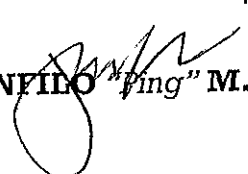
**MANUEL "Lito" M. LAPID**



**JUAN MIGUEL F. ZUBIRI**



**RODOLFO G. BIAZON**



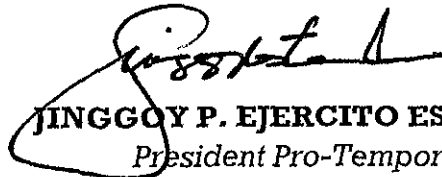
**PANFILO "Ping" M. LACSON**

**M. A. MADRIGAL**

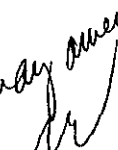
*may amend*

**ANTONIO "Sonny" F. TRILLANES**

**EX-OFFICIO MEMBERS:**

  
**JINGGOY P. EJERCITO ESTRADA**  
*President Pro-Tempore*

*w/ reservations as to the labor aspect*

*May amend.*  
  
**AQUILINO Q. PIMENTEL, JR.**  
*Minority Floor Leader*

  
**FRANCIS N. BANGILINAN**  
*Majority Floor Leader*

**MANNY VILLAR**  
*Senate President*  
*Pasay City*



HOUSE OF REPRESENTATIVES

H. No. 4358

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BY REPRESENTATIVES NOGRALES, VILLAFUERTE, BIRON, DEFENSOR (A.) AND  
GONZALES (N.), PER COMMITTEE REPORT NO. 706

---

AN ACT GRANTING THE NATIONAL GRID CORPORATION OF THE  
PHILIPPINES A FRANCHISE TO OPERATE, MANAGE AND  
MAINTAIN, AND IN CONNECTION THEREWITH, TO  
CONSTRUCT, INSTALL, FINANCE, IMPROVE, EXPAND,  
REHABILITATE AND REPAIR THE NATIONWIDE  
TRANSMISSION SYSTEM AND THE GRID IN THE REPUBLIC  
OF THE PHILIPPINES

*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 Constitution and applicable laws, rules and regulations, and  
3 subject to the terms and conditions of the concession agreement and other  
4 documents executed with the National Transmission Corporation (TRANSCO)  
5 and the Power Sector Assets & Liabilities Management Corporation (PSALM)  
6 pursuant to Section 21 of Republic Act No. 9136, which are not inconsistent  
7 herewith, there is hereby granted to the National Grid Corporation of the  
8 Philippines, hereunder referred to as the Grantee, its successors or assigns, a  
9 franchise to operate, manage and maintain, and in connection therewith, to

1 construct, install, finance, improve, expand, rehabilitate and repair the  
2 nationwide transmission system and the grid of the Republic of the Philippines,  
3 which includes the conveyance or transmission of electricity through the high  
4 voltage back-bone system of interconnected transmission lines, fiber optics,  
5 substations and related facilities, and other activities that are necessary to  
6 support the safe and reliable operation of the transmission system and the grid.  
7 Likewise, the Grantee is authorized to engage in any related business which  
8 maximizes utilization of its assets such as, but not limited to,  
9 telecommunications system, pursuant to Section 20 of Republic Act No. 9136.  
10 The scope of the franchise shall be nationwide in accordance with the  
11 Transmission Development Plan, subject to amendments or modifications of  
12 the said Plan, as may be approved by the Department of Energy of the  
13 Republic of the Philippines.

14 SEC. 2. *Terms and Conditions of Franchise.* - This franchise shall be  
15 for a term of twenty-five (25) years from the date of effectivity of this Act, and  
16 is hereby granted under the condition that it shall be subject to amendment,  
17 alteration, or repeal by Congress when the common good so requires. During  
18 the period of operation of the franchise herein granted, at least sixty per  
19 centum (60%) of the capital of the Grantee shall be owned by citizens of the  
20 Philippines. The participation of foreign investors in the governing body of  
21 the Grantee shall be limited to their proportionate share in its capital, and all  
22 the executive and managing officers of the Grantee must be citizens of the  
23 Philippines. Noncompliance by the Grantee of the Constitutional provisions  
24 limiting foreign ownership and management of public utilities shall be grounds  
25 for revocation of this franchise.

26 SEC. 3. *Manner of Operation of System or Facilities.* - The  
27 transmission system, grid and related facilities maintained, operated or  
28 managed by the Grantee, its successors or assigns, shall be operated and

1 maintained at all times in accordance with industry standards, and it shall be  
2 the duty of the Grantee, its successors or assigns, whenever required to do so  
3 by the Energy Regulatory Commission (ERC) or its legal successor, to modify,  
4 improve and change such system or facilities in such manner and to such extent  
5 as the progress in science and improvements in the electric power services may  
6 reasonably require.

7       SEC. 4. *Right of Eminent Domain.* - Subject to the limitations and  
8 procedures prescribed by law, the Grantee is authorized to exercise the right of  
9 eminent domain insofar as it may be reasonably necessary for the construction,  
10 expansion, and efficient maintenance and operation of the transmission system  
11 and grid and the efficient operation and maintenance of the sub-transmission  
12 systems which have not yet been disposed by TRANSCO. The Grantee may  
13 acquire such private property as is actually necessary for the realization of the  
14 purposes for which this franchise is granted: *Provided*, That the applicable law  
15 on eminent domain shall be observed, particularly the prerequisites of taking of  
16 possession and the determination and payment of just compensation.

17       SEC. 5. *Right of the Government.* - In times of national emergency,  
18 when the public interest so requires, the State may, during the emergency and  
19 under reasonable terms prescribed by it, temporarily take over or direct the  
20 operation of the franchise of the Grantee.

21       SEC. 6. *Sale, Lease, Transfer, Usufruct, etc.* - The Grantee shall not  
22 lease, transfer, grant the usufruct of, or sell this franchise or the rights and  
23 privileges acquired hereunder to any person, firm, company or other  
24 commercial or legal entity, nor merge with any other company or entity, nor  
25 shall the controlling interest of the Grantee be transferred, whether in whole or  
26 in part, and whether simultaneously or contemporaneously, to any person, firm,  
27 company or entity without the prior approval of the Congress of the  
28 Philippines: *Provided*, That the foregoing limitation shall not apply to any

1 transfer or issuance of shares of stock in the implementation of the requirement  
2 for the Grantee's dispersal of ownership pursuant to Section 8 of this Act; or to  
3 any issuance of shares to any foreign or local investors pursuant to or in  
4 connection with any increase in the Grantee's authorized capital stock which  
5 results in the dilution of the stockholdings of the Grantee's then existing  
6 stockholders: *Provided, moreover,* That the foregoing limitations shall not  
7 apply to any transfer, sale or issuance of shares of stock at the level of  
8 corporate stockholders of the Grantee: *Provided, furthermore,* That the  
9 foregoing limitations shall not apply in case of assignment or transfer of the  
10 (operation) of any of its related business such as, but not limited to,  
11 telecommunications business to another entity: *Provided, however,* That any  
12 such transfer, sale or issuance at the level of the corporate stockholders of the  
13 Grantee is in accordance with applicable constitutional limitations: *Provided,*  
14 *finally,* That any person or entity to which such shares are sold, transferred or  
15 assigned, under this Act shall be subject to the same conditions, terms,  
16 restrictions and limitations of this Act.

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

22 The Grantee or any of its stockholders, directors or officers thereof, or  
23 any of their relatives within the fourth civil degree of consanguinity and their  
24 respective spouses, shall not be allowed to hold any shares of stock in any  
25 Power Industry Player as defined in this Act. And a Power Industry Player or  
26 its stockholders, directors or officers thereof, or any of their relatives within  
27 the fourth civil degree of consanguinity and their respective spouses, shall not  
28 be allowed to hold any shares of stock in the Grantee: *Provided,* That the



1 cross-ownership prohibition under this provision shall not apply to a relative  
2 by blood or marriage, if such relative of any stockholder, director or officer of  
3 the Grantee has no employment, consultancy, trust agreement, contractual,  
4 commercial or other economic relationship or interest in the Grantee, or  
5 conversely, if such relative of any stockholder, director or officer of a Power  
6 Industry Player has no employment, consultancy, trust agreement, contractual,  
7 commercial or other economic relationship or interest in the Power Industry  
8 Player: *Provided, further,* That this prohibition on cross-ownership shall not  
9 apply to: (a) ownership of shares of stock in a company listed in the Philippine  
10 Stock Exchange (PSE) even if such listed company is a Power Industry Player,  
11 if such share ownership is not more than one *per centum* (1%) of the total  
12 outstanding shares of such listed Power Industry Player; or (b) ownership of  
13 shares of stock which is not more than one *per centum* (1%) in a company  
14 listed in the PSE which owns or controls shares of stock in the Grantee:  
15 *Provided, moreover,* That such owner of shares of stock in the listed corporate  
16 stockholder of the Grantee shall not own more than one *per centum* (1%) of the  
17 shares of stock or equity interest in any Power Industry Player.

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

23 The losing bidders in the bid to operate the transmission and sub-  
24 transmission facilities of TRANSCO, their principals, subsidiaries, affiliates,  
25 stockholders, directors and officers, shall not be allowed to, directly or  
26 indirectly, be transferees or beneficial owners of the Grantee's shares of stock  
27 or any ownership rights pertaining thereto, for a period of ten (10) years from  
28 the effectivity of this Act.

1 The losing bidders, their principals, subsidiaries, affiliates, stockholders,  
2 directors and officers are likewise prohibited to directly or indirectly acquire or  
3 receive any pecuniary interest in the operations by the Grantee of this franchise  
4 for a period of ten (10) years from the effectivity of this Act.

5 An "affiliate" means any person which, alone or together with any other  
6 person, directly or indirectly, through one (1) or more intermediaries, controls,  
7 is controlled by, or is under common control, with another person. As used  
8 herein, "control" shall mean the power to direct or cause the direction of the  
9 management policies of a person by contract, agency or otherwise.

10 A "Power Industry Player" for purposes of this provision means a  
11 generation company, distribution utility, or its respective subsidiary or affiliate,  
12 or other entity engaged in generating and supplying electricity specified by the  
13 ERC.

14 The provisions on cross-ownership under Section 45 of Republic Act  
15 No. 9136 and its implementing rules and regulations which are inconsistent  
16 with this provision shall be deemed modified accordingly insofar as the  
17 Grantee is concerned. The Grantee may provide ancillary services or engage  
18 in any related business which maximizes utilization of its assets.

19 SEC. 8. *Dispersal of Ownership.* - The Grantee shall list, subject to the  
20 requirements of the Securities and Exchange Commission (SEC) and the PSE,  
21 and make a public offering of the shares representing at least twenty *per*  
22 *centum* (20%) of its outstanding capital stock or a higher percentage that may  
23 hereafter be provided by law within ten (10) years from the commencement of  
24 its operations: *Provided*, That the listing in the PSE of any company which  
25 directly or indirectly owns or controls at least thirty *per centum* (30%) of the  
26 outstanding shares of stock of the Grantee shall be considered full compliance  
27 of this listing requirement. In case compliance with this requirement is not  
28 reached, the ERC may, upon application of the Grantee, and after notice and

1 hearing, allow such reasonable extension of the period within which the  
2 Grantee should list its shares of stock, if the market condition is not suitable for  
3 such listing.

4 *SEC. 9. Tax Provisions.* – In consideration of the franchise and rights  
5 hereby granted, the Grantee, its successors or assigns, shall pay a franchise tax  
6 equivalent to three percent (3%) of all gross receipts derived by the Grantee  
7 from its operation under this franchise. Said tax shall in lieu of income tax and  
8 any and all taxes, duties, fees and charges of any kind, nature or description  
9 levied, established or collected by any authority whatsoever, local or national,  
10 on its franchise, rights, privileges, receipts, revenues and profits, and on  
11 properties used in connection with its franchise, from which taxes, duties and  
12 charges, the Grantee is hereby expressly exempted: *Provided,* That the  
13 Grantee, its successors or assigns, shall be liable to pay the same taxes on their  
14 real estate, buildings and personal property, exclusive of this franchise, as  
15 other corporations are now or hereby may be required by law to pay.

16 *SEC. 10. Acceptance and Compliance.* – Acceptance of this franchise  
17 shall be given in writing by the Grantee within sixty (60) days after the  
18 effectivity of this Act.

19 *SEC. 11. Warranty in Favor of National and Local Government.* – The  
20 Grantee shall hold the national, provincial and other local governments of the  
21 Philippines harmless from all claims, accounts, demands or actions arising out  
22 of accidents or injuries, whether to property or persons, caused by the  
23 construction, installation, operation and maintenance of the transmission  
24 system and the grid.

25 *SEC. 12. Ingress and Egress.* – For the purpose of constructing and/or  
26 maintaining transmission and sub-transmission assets and other related support  
27 facilities, it shall be lawful for the Grantee, its successors and assigns, with the  
28 approval of the relevant national and local government agencies concerned and

1 the posting of bonds, as may be appropriate, to make excavations or lay  
2 conduits in any of the public places, highways, streets, lanes, alleys, avenues,  
3 sidewalks or bridges within the Philippines: *Provided, however,* That any  
4 public place, highways, street, lane, alley, avenue, sidewalk or bridge  
5 disturbed, altered or changed by reason of the construction and/or maintenance  
6 of transmission and sub-transmission assets and other related support facilities,  
7 shall be immediately repaired and properly restored at the expense of the  
8 Grantee, its successors and assigns, in accordance with the standards set by the  
9 relevant national and local government agencies concerned.

10 SEC. 13. *Applicability Clause.* – The Grantee shall comply with and be  
11 subject to the provisions of Commonwealth Act No. 146, as amended,  
12 otherwise known as the “Public Services Act”, which have not otherwise been  
13 modified or repealed by Republic Act No. 9136, otherwise known as the  
14 Electric Power Industry Reform Act of 2001.

15 SEC. 14. *Reportorial Requirement.* – The Grantee shall submit an  
16 annual report of finances and operations to the Congress of the Philippines.

17 SEC. 15. *Separability Clause.* – If, for any reason, any of the sections  
18 or provisions of this Act is declared unconstitutional or invalid, the other parts  
19 or provisions hereof which are not affected thereby shall continue to be in full  
20 force and effect.

21 SEC. 16. *Effectivity Clause.* – This Act shall take effect fifteen (15)  
22 days from the date of its publication; upon the initiative of the Grantee, in at  
23 least two (2) newspapers of general circulation in the Philippines.

Approved,