



THIRTEENTH CONGRESS OF THE
REPUBLIC OF THE PHILIPPINES
First Regular Session

HOUSE OF REPRESENTATIVES
H.B. No. 2223

Introduced by Representative Teodoro L. Locsin, Jr.

EXPLANATORY NOTE

The Twelfth Congress passed on Third Reading H.B. No. 4882 entitled, "An Act Granting the National Transmission Corporation An Assignable Franchise To Construct, Install, Operate and Maintain A Transmission System And The Grid Throughout The Philippines." The said bill was, however, not enacted into law by reason of the inaction of our brothers in the Senate.

H.B. No. 4882 was the end product of a merger of the various bills filed on the subject, inputs by Members of the House during the plenary, and lobbying by special interest groups from the executive department and the private sector. Despite the hours of work performed on the said bill, I believe that there is still a need to further amend H.B. No. 4882, as passed, to protect the interests our people as we sell the prized jewel of this government to a private entity whose identity we do not even know.

The bill I propose is similar to last Congress' H.B. 4882 except in two aspects which I feel should be added, namely: (1) Requiring the franchisee of TRANSCO to make capital investments in the amount of P110 Billion within a ten (10) year period; and (2) creating a Joint Congressional Oversight Committee which would oversee the operation of TRANSCO. I believe that these two proposals will provide the firewalls necessary to protect the Filipino people's interest in the event that the representation made by the proponents of the TRANSCO privatization that the sale of our country's one and only national electric transmission system to an unknown entity would benefit the country, is untrue.


TEODORO L. LOCSIN, JR.

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

THIRTEENTH CONGRESS

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House Bill No. 2223

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**AN ACT
GRANTING THE NATIONAL TRANSMISSION CORPORATION A
FRANCHISE TO CONSTRUCT, INSTALL, OPERATE AND MAINTAIN A
TRANSMISSION SYSTEM AND THE GRID THROUGHOUT THE
PHILIPPINES**

*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 National Transmission Corporation (TRANSCO), hereunder referred to as the Grantee, its successors or assigns, a government owned and controlled corporation created by virtue of Republic Act No. 9136 otherwise known as the “Electric Power Industry Reform Act of 2001”, a franchise to construct, install, operate and maintain a transmission system and the grid, which includes the conveyance or transmission of electricity through the high voltage back-bone system of interconnected transmission lines, substations and related facilities, grid connection and ancillary services throughout the Philippines.

Sec. 2. *Right of the 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 transmission system and the grid of the Grantee, to temporarily suspend the operation of any portion thereof 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 the said transmission system and the grid and any portion thereof during the period when they shall be so operated. The Government shall also have the right to takeover and operate the transmission system and the grid of the Grantee on the grounds set forth in Section 6 of this Act.

Sec. 3. *Term of Franchise.* - This franchise shall be for a term of fifty (50) years from the date of effectivity of this Act, unless sooner revoked or cancelled.

Sec. 4. *Sale, Lease, Transfer, Usufruct, etc.* - Except as provided in Section 5 of this Act, the Grantee shall not lease, transfer, grant the usufruct of or sell this franchise or the rights and privileges acquired thereunder to any person, firm, company or other commercial or legal entity, nor merge with any other company or entity, nor shall the controlling interest of the Grantee be transferred whether in whole or in part, and whether simultaneously or contemporaneously, to any such person, firm, company or entity without the prior approval of the Congress of the Philippines.

Except for the privilege exclusively granted to the TRANSCO in Sections 5 and 6 of this Act, 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.

Sec. 5. *Concession Contract.* - In furtherance of Section 21 of Republic Act 9136, the TRANSCO may enter into a concession contract with a concessionaire for the construction, installation, maintenance, operation, improvement and expansion of the transmission system and the grid, for the purpose of achieving the objectives under Sec. 2 of RA 9136. Towards this end, the TRANSCO may assign its franchise, together with all the rights, privileges and obligations pertaining to or arising from this franchise, to the

concessionaire. *Provided*, That the concessionaire shall be chosen through open and competitive bidding following a pre-qualification process based on objective technical and financial criteria in compliance with the Republic Act 9136, and its implementing rules and regulations, and amendments thereto. *Provided further*, That the concessionaire shall possess the following qualifications:

(a) Concessionaire shall be financially capable to maintain, operate, improve and expand the transmission system and grid consistent with the Transmission Development Plan as approved by the appropriate government agency;

(b) In case of joint venture/consortium with one or more foreign investors that will directly or indirectly hold an ownership interest in the concessionaire, at least one foreign investor shall be technically capable, with proven international experience and expertise as a leading transmission system operator. Such experience must be in a transmission system of comparable capacity and coverage as that of the Philippines. The foreign investor possessing the technical capacity to operate the transmission system, its affiliate or subsidiary, must have contributed to the concessionaire, through equity or advances from shareholders, at least twenty (20%) of the capitalization of the concessionaire. At least seventy five percent (75%) of the funds of the foreign investor/s used to enter into the concession contract shall be inwardly remitted and registered with the Bangko Sentral ng Pilipinas.

(c) Concessionaire conforms to the Filipino ownership requirement pursuant to Article XII, Section 11 of the Constitution; and

(d) Concessionaire, any of its stockholders, or any participant/member thereof, in case of joint venture/consortium, had not participated in the valuation of the assets of TRANSCO for its privatization.

Sec. 6. *Recall, Reversion and Revocation of Franchise.* – Consistent with the national interest, the following shall, upon determination by the

Energy Regulatory Commission and approval by the Joint Congressional Power Commission (JCPC), be grounds for the recall of the franchise assigned to the concessionaire and reversion thereof to TRANSCO. Congress may revoke the franchise at any time.

(a) Failure of the concessionaire to comply with the Grid Code and the Transmission Development Plan as approved;

(b) Failure of the concessionaire to cause improvements to and expansion of the transmission system and grid in the amount of at least One Hundred Ten Billion Pesos (P110,000,000,000.00) within ten (10) years from the execution of the concession contract.

(c) Failure to comply with or violate any of the applicable provisions of the Republic Act 9136 and its implementing rules and regulations;

(d) Transfer of the controlling interest of the concessionaire, whether in whole or in part, and whether simultaneously or contemporaneously, to any person, firm, company or entity, except with prior approval of the JCPC;

(e) Bankruptcy or financial inability of concessionaire to continue operating, maintaining, and expanding the transmission system;

(f) Failure of concessionaire to maintain the qualifications provided in paragraphs (a), (b) and (c) of Section 5; and

(g) Cancellation, rescission, termination or expiration of the concession contract.

(h) Concessionaire conveys or encumbers any of the properties of TRANSCO transferred to it for its maintenance, operation, improvement and expansion.

(i) Concessionaire violates any of the provisions of Commonwealth Act No. 108, otherwise known as the "Anti-Dummy Law".

(j) Failure of concessionaire to comply with the performance and financial guarantees or covenants which the national government requires under the concession contract.

(k) Failure of concessionaire to operate, maintain, and expand sub-transmission facilities until the same have been sold to Qualified Utilities pursuant to Section 8 of the EPIRA.

(l) Failure of the concessionaire to cause the publication of the concession contract, additions and amendments thereto, and such other contracts and agreements pertaining to the assignment of this franchise to the concessionaire pursuant to Section 7 hereof.

Section 7. *Publication of Concession Contract.* The entire texts of the concession contract, additions and amendments thereto, and such other contracts and agreements pertaining to the assignment of this franchise by TRANSCO to the concessionaire shall be published once in their entirety in three newspapers of general circulation within thirty (30) days of their execution. The concession contract, additions and amendments thereto, and such other contracts and agreements not published pursuant to this Section shall have no legal effect.

Section 8. *Prohibition Against Cross-Ownership.* Concessionaire or any of its stockholders or officials or any relatives within the fourth civil degree of consanguinity or affinity, shall not be allowed to hold any interest, whether directly or indirectly, in any generation company or distribution utility.

Section 9. *Proceeds of Concession Contract.* The proceeds from the TRANSCO privatization shall be used solely to pay for outstanding obligations of NPC arising from loans, issuances of bonds, securities and other instruments of indebtedness transferred to and assumed by PSALM Corp. pursuant to Section 40 of Republic Act 9136. No part of the proceeds realized from the concession contract shall be used to liquidate the National Power Corporation stranded contract costs.

Section 10. *Encumbrance on Properties.* The concessionaire shall not encumber any of the properties of TRANSCO transferred to it for its maintenance, operation, improvement and expansion. The concessionaire shall discharge within twenty-five (25) years from the execution of the concession contract any and all encumbrances on properties concessionaire must contribute or invest within ten (10) years pursuant to the Transmission Development Plan towards the expansion and improvement of the transmission network and grid. Failure of concessionaire to discharge such encumbrances shall be grounds for the non-renewal of the concession contract and recall of this franchise.

Sec. 10. *Acceptance and Compliance.* – Acceptance of this franchise shall be given in writing by TRANSCO within sixty (60) days upon the effectivity of this Act.

Sec. 11. *Warranty in Favor of National and Local Government.* - The Grantee shall hold the national, provincial and municipal governments of the Philippines harmless from all claims, accounts, demands or actions arising out of accidents or injuries, whether to property or persons, caused by the construction, installation, operation and maintenance of the transmission system and the grid.

Sec. 12. *Reversion of National Power Corporation Franchise.* – The nationwide franchise of the National Power Corporation for the operation of the transmission system and the grid transferred to TRANSCO pursuant to Section 8 of Republic Act No. 9136 is hereby reverted to National Power Corporation upon the effectivity of this Act.

Sec. 13. *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 Services Act” and Republic Act 9136, and its implementing rules and regulations, the Grid Code, and the Distribution Code.

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

Sec. 15. *Reportorial Requirement.* - The Grantee shall submit an annual report of finances and operations to the Congress of the Philippines.

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

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

Approved,