

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

NINETEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 4893



Introduced by Rep. Rodante D. Marcoleta and Rep. Caroline L. Tanchay

EXPLANATORY NOTE

The Electric Power Industry Reform Act of 2001 (EPIRA) mandated the privatization of the transmission facilities of the country, including grid interconnections and ancillary services either through an outright sale or concession contract. Thus in 2007, the concession agreement for the management and operation of the country's transmission facilities was opened for competitive bidding. Under the EPIRA, the concessionaire shall have a contract period of twenty-five (25) years subject to review and renewal for a maximum period of another twenty-five (25) years.

The 25-year concession agreement of the National Transmission Corporation (TransCo) with respect to the country's sole transmission business, was awarded to the consortium of Monte Oro Grid Resources, Calaca High Power Corp., and State Grid Corp. of China. The Concession Agreement among Power Sector Assets and Liabilities Management Corporation (PSALM), TransCo, and National Grid Corporation of the Philippines (NGCP) was executed on 28 February 2008. Thereafter, in December 2008 and on the basis of Republic Act No. 9511, the National Grid Corporation of the Philippines was granted a fifty (50)-year franchise to operate, manage and maintain, and in connection therewith, to engage in the business of conveying or transmitting electricity through high voltage back-bone system of interconnected transmission lines, substations and related facilities, system operations, and other activities that are necessary to support the safe and reliable operation of the 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 ("NGCP Franchise").¹

Over the years, several concerns against the NGCP Franchise were raised by energy stakeholders, more particularly:

(a) The NGCP Franchise allowed for 40% foreign ownership. Presently, the State Grid Corp. of China owns 40% of the NGCP, with a concurrent four (4) seats out of ten (10) on its board of directors. Due to technological development over the years, the grid has transitioned digitally, i.e., it can be accessed *remotely* anywhere. This means that the Chinese shareholders can potentially shut down our grid. NGCP earlier opposed this allegation and presented its supposedly stringent cyber security measures to protect the grid from remote access. However, this does not remove the threat of control of the Chinese counterparts over the sole transmission facility of our country.

¹ Republic Act No. 9511, Section 1.

(b) The Concession Agreement provided for a concession term of only twenty-five (25) years subject to review on the 20th year of NGCP's operation. This is consistent with the EPIRA's mandate that the concession shall be only for a period of twenty-five (25) years, subject to review and renewal for another period of twenty-five (25) years. However, the NGCP Franchise Term is an outright grant of a full fifty (50) year period. This deprives the State of enough room to change its framework on how to best manage the mission-critical, national security-laden electricity grid.

(c) The NGCP Franchise provides that its scope shall be in accordance with the Transmission Development Plan (TDP), subject to amendments or modifications of the said plan, as may be approved by the Department of Energy of the Republic of the Philippines.² Section 9 (f) of the EPIRA directed the TransCo to prepare the TDP and submit the same to the DOE for integration with the Power Development Plan of the Philippines.

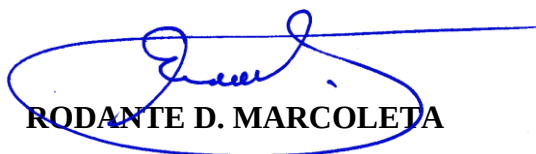
However, the Concession Agreement provides that the TDP is left to the discretion of NGCP which is contrary to the State's objective of protecting the public interest as it is affected by the rates and services of electric utilities and other providers of electric power. In the hands of the private sector, plans will always be profit-driven. But there is a bigger governance objective in the lay-out of the national transmission grid to cover reliability and maximum reach, which may not be within the consideration of NGCP.

(d) NGCP is granted unbridled power to exercise eminent domain without any guidance and/or approval requirement from the government. There should be refinement of the safeguards against potential abuse by a private entity in the exercise of one of the State's inherent powers.

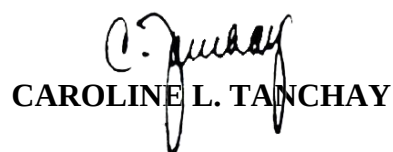
(e) The Franchise Tax of three percent (3%) in lieu of income tax and any and all taxes, duties, fees and charges of any kind should be rationalized considering the nature of the business of NGCP.

(f) The dispersal of ownership of NGCP is indirectly allowed by the current wording of RA 9511. This means that if any company with at least 30% ownership of the outstanding capital stock of NGCP is listed in the PSE, the dispersal of ownership requirement is already complied with. This is in contravention with the spirit of the law of ensuring more public participation and sharing in the fruits of the energy sector's crown jewel.

In view of the foregoing, approval of this bill is urgently recommended.



RODANTE D. MARCOLETA



CAROLINE L. TANCHAY

² Republic Act No. 9511, Section 1.

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

NINETEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 4893

Introduced by Rep. Rodante D. Marcoleta and Rep. Caroline L. Tanchay

**AN ACT AMENDING PERTINENT PROVISIONS OF RA9511, OTHERWISE
KNOWN AS THE NATIONAL GRID CORPORATION OF THE PHILIPPINES
FRANCHISE**

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

Section 1. The following provisions of RA 9511 are hereby amended and shall read as follows:

Section 1. *Nature and Scope of Franchise* - Subject to the provisions of the Constitution and applicable laws, rules and regulations, and subject to the terms and conditions of the concession agreement and other documents executed with the National Transmission Corporation (TRANSCO) and the Power Sector Assets & Liabilities Management Corporation (PSALM) pursuant to Section 21 of Republic Act No. 9136, which are not inconsistent herewith, there is hereby granted to the National Grid Corporation of the Philippines, hereunder referred to as the Grantee, its successors or assigns, a franchise to operate, manage and maintain, and in connection therewith, to engage in the business of conveying or transmitting electricity through high voltage back-bone system of interconnected transmission lines, substations and related facilities, system operations, and other activities that are necessary to support the safe and reliable operation of the 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 system which have not been disposed by TRANSCO. Likewise, the Grantee is authorized to engage in construct, install, finance, improve, expand, rehabilitate and repair the nationwide transmission system and the grid of the Republic of the Philippines and related ancillary businesses. ~~and any related business which maximizes utilization of its assets such as, but not limited to, telecommunications system, pursuant to Section 20 of Republic Act No. 9136.~~ The scope of the franchise shall be nationwide in accordance with the Transmission Development Plan, subject to amendments or modifications of the said Plan, as may be approved by the Department of Energy of the Republic of the Philippines.

Section 2. *Terms and Conditions of Franchise* - This franchise shall be for a term of twenty-five (25) years from the date of effectivity of this Act, subject to review

and renewal for a maximum period of another twenty-five (25) years. The renewal for the next twenty-five years of this franchise shall be reviewed by the Joint Congressional Energy Commission in accordance with faithful compliance with the terms and conditions of this franchise and the satisfactory performance of its obligations in the Concession Agreement with PSALM and TRANSCO. The Grantee is hereby directed to submit to the JCEC its application for the renewal of its franchise not later than 30 days after the twentieth (20th) anniversary of the Concession Agreement. This franchise is hereby granted under the condition that it shall be subject to amendment, alteration, or repeal by Congress when the common good so requires. During the period of operation of the franchise herein granted, at least sixty per centum (60%) of the capital of the Grantee shall be owned by citizens of the Philippines, subject to the full control over the operation and maintenance of the nationwide transmission system and the grid of the Republic of the Philippines and related ancillary businesses by citizens of the Philippines. The Grantee shall comply with the Constitution and applicable laws pertaining to foreign ownership and management of public utilities.

Section 3. *Manner of Operation of System* - The transmission system, grid and related facilities maintained, operated or managed by the Grantee, its successors or assigns, shall be operated and maintained at all times in accordance with industry standards, and it shall be the duty of the Grantee, its successors or assigns, whenever required to do so by the Energy Regulatory Commission (ERC) or its legal successor, to modify, improve and change such system or facilities in such manner and to such extent as the progress in science and improvements in the electric power services may reasonably require. The Grantee shall ensure compliance with the Grid Code of the Philippines providing connectivity services to power generation facilities, distribution utilities and direct customers in the most expeditious manner across all services from grid impact study to actual investment and construction of last-mile transmission facilities. The Energy Regulatory Commission shall provide guidelines on the time-bound rules at which the Grantee shall execute its responsibilities on connectivity services under the RA 9136 EPIRA Law and the Grid Code of the Philippines.

Section 4. *Right of Eminent Domain* - Subject to the limitations and procedures prescribed by law, the Grantee is authorized to exercise the right of eminent domain insofar as it may be reasonably necessary for the construction, expansion, and efficient maintenance and operation of the transmission system and grid and the efficient operation and maintenance of the sub-transmission systems which have not yet been disposed by TRANSCO. The Grantee may acquire such private property as is actually necessary and solely for the realization of the purposes for which this franchise is granted. Provided, that the Grantee shall seek prior written clearance from TRANSCO on any proposed exercise of such right. Provided further, That the applicable law on eminent domain shall be observed, particularly, the prerequisites of taking of possession and the determination and payment of just compensation.

Section 5. *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, or in other such instances when public interest so requires, to temporarily or permanently take over and operate the transmission system and/or the sub-transmission 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.

Section 8. Dispersal of Ownership. - The Grantee shall list, subject to the requirements of the Securities and Exchange Commission (SEC) and the PSE, and make a public offering of the shares representing at least twenty *per centum* (20%) of its outstanding capital stock or a higher percentage that may hereafter be provided by law within ten (10) years from the commencement of its operations: ~~*Provided, That the listing in the PSE of any company which directly or indirectly owns or controls at least thirty per centum (30%) of the outstanding shares of stock of the Grantee shall be considered full compliance of this listing requirement.*~~ In case compliance with this requirement is not reached, the ERC may, upon application of the Grantee, and after notice and hearing, allow such reasonable extension of the period within which the Grantee should list its shares of stock, if the market condition is not suitable for such listing.

Section 9. Tax Provisions. - In consideration of the franchise and rights hereby granted, the Grantee, its successors or assigns, shall pay a franchise tax equivalent to twenty percent (20%) of all gross receipts derived by the Grantee from its operation under this franchise. Said tax shall in lieu of income tax and any and all taxes, duties, fees and charges of any kind, nature or description levied, established or collected by any authority whatsoever, local or national, on its franchise, rights, privileges, receipts, revenues and profits, and on properties used in connection with its franchise, from which taxes, duties and charges, the Grantee is hereby expressly exempted: *Provided, That the Grantee, its successors or assigns, shall be liable to pay the same taxes on their real estate, buildings and personal property, exclusive of this franchise, as other corporations are now or hereby may be required by law to pay: 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).*

Section 2. Crafting of Transmission Development Plan (TDP)– the responsibility to craft, design and propose the Transmission Development Plan of the Philippines shall be a joint responsibility of the Grantee and the National Transmission Corporation of the Philippines (TRANSCO). The initial preparation of the TDP shall be the responsibility of the Grantee, which shall be subject to the review and approval of TRANSCO before it can be submitted for the approval of the Department of Energy.

Section 3. 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.

Section 4. Repealing Clause. – All laws, decrees, issuances, orders, letters of instructions, administrative orders, rules and regulations or parts thereof contrary to or inconsistent with any of the provisions of this Act are hereby repealed, amended or modified accordingly.

Section 5. *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) newspapers of general circulation in the Philippines.

Approved,