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Republic of the Philippines
Supreme Court
Manila

EN BANC

MORE ELECTRIC AND POWER CORPORATION, G.R. No. 248061

Petitioner,

- versus -

PANAY ELECTRIC COMPANY, INC.,

Respondent.

X-----X

REPUBLIC OF THE PHILIPPINES,

Petitioner-Oppositor,

G.R. No. 249406

Present:

- PERALTA, C.J.,
- PERLAS-BERNABE,
- LEONEN,
- CAGUIOA,
- GESMUNDO,
- HERNANDO,
- CARANDANG,
- LAZARO-JAVIER,
- INTING,
- ZALAMEDA,
- M. LOPEZ,
- DELOS SANTOS,
- GAERLAN,
- ROSARIO,
- J. LOPEZ, JJ.

MORE ELECTRIC AND POWER CORPORATION,

Petitioner,

- versus -

PANAY ELECTRIC COMPANY, INC.,

Respondent.

Promulgated:

March 9, 2021

Jose L. A. Lopez, Jr.

X-----X

RESOLUTION**CARANDANG, J.:**

For resolution is the Motion for Reconsideration¹ filed by respondent Panay Electric Company, Inc. (PECO) of the Court's Decision² dated September 15, 2020 of this Court, the dispositive portion of which reads:

WHEREFORE, the instant Petitions are **GRANTED**. The assailed Judgment dated July 1, 2019 is **REVERSED** and **SET ASIDE**. Section 10 and 17 of Republic Act No. 11212 are **DECLARED CONSTITUTIONAL**.

SO ORDERED.³ (Emphasis in the original)

Antecedents

On July 23, 2018, Republic Act (R.A.) No. 11212⁴ was enacted granting petitioner More Electric and Power Corporation (MORE) a franchise to establish, operate, and maintain an electric power distribution system in Iloilo City. Section 10 of R.A. No. 11212⁵ confers on MORE the authority to exercise the right of eminent domain.

The distribution system, which is presently being used in Iloilo City, comprises of "five 5 sub-transmission line substations, 450 kilometers of

¹ Temporary *rollo*, pp. 1-37.

² *Rollo* (G.R. No. 248061), pp. 1226-1247.


³ *Id.* at 1246.

⁴ An Act Granting More Electric And Power Corporation a Franchise to Establish, Operate, and Maintain, for Commercial Purposes and in the Public Interest, a Distribution System for the Conveyance of Electric Power to the End Users in the City of Iloilo, Province of Iloilo, and Ensuring the Continuous and Uninterrupted Supply of Electricity in the Franchise Area.

⁵ Section 10, R.A. No. 11212 states:

Section 10. *Right of Eminent Domain*. – Subject to the limitations and procedures prescribed by law, the grantee is authorized to exercise the power of eminent domain insofar as it may be reasonably necessary for the efficient establishment, improvement, upgrading, rehabilitation, maintenance and operation of its services. The grantee is authorized to install and maintain its poles wires, and other facilities over, under, and across public property, including streets, highways, parks, and other similar property of the Government of the Philippines, its branches, or any of its instrumentalities. The grantee may acquire such private property as is actually necessary for the realization of the purposes for which this franchise is granted, including, but not limited to poles, wires, cables, transformers, switching equipment and stations, buildings, infrastructure, machineries and equipment previously, currently or actually used, or intended to be used, or have been abandoned, unused or underutilized, or which obstructs its facilities, for the operation of a distribution system for the conveyance of electric power to end users in its franchise area: *Provided*, That proper expropriation proceedings shall have been instituted and just compensation paid:

Provided, farther, That upon the filing of the petition for expropriation, or at any time thereafter, and after due notice to the owner of the property to be expropriated and the deposit in a bank located in the franchise area of the full amount of the assessed value of the property or properties, the grantee shall be entitled to immediate possession, operation, control, use and disposition of the properties sought to be expropriated, including the power of demolition, if necessary, notwithstanding the pendency of other issues before the court, including the final determination of the amount of just compensation to be paid. The court may appoint a representative from the ERC as a trial commissioner in determining the amount of just compensation. The court may consider the tax declarations, current audited financial statements, and rate-setting applications of the owner or owners of the property or properties being expropriated in order to determine their assessed value.



electrical lines, 20,000 poles, 1,300 transformers and 64,000 electrical meters”⁶ owned by PECO, a holder of the franchise since 1922.⁷ The franchise of PECO expired on January 18, 2019 and no new franchise had been issued in its favor.

Nonetheless, since MORE has not established its service yet, Section 17 of R.A. No. 11212 permits PECO to continue operating the existing distribution system during the interim period.⁸ Accordingly, through a Provisional Certificate of Public Convenience and Necessity (CPCN) that the Energy Regulatory Commission (ERC) on May 21, 2019 issued, PECO continues to operate its existing distribution system.⁹ The same provision also states that even if PECO is operating the distribution system, the interim arrangement shall not prevent MORE from acquiring the system through the exercise of the right of eminent domain.

Incidentally, on March 6, 2019, PECO filed a Petition for Declaratory Relief¹⁰ docketed as Civil Case No. R-MND-19-00571 assailing the constitutionality of Sections 10 and 17 of R.A. No. 11212, arguing that these provisions encroach on its constitutional right to due process¹¹ and equal protection.¹² PECO alleged that the authority granted to MORE to takeover PECO’s business by seizing its assets under the veil of expropriation cannot be done without violating its right to substantive due process.¹³ PECO also pointed out provisions in R.A. No. 11212 that are not present in other

⁶ *Rollo* (G.R. No. 248061), p. 63.

⁷ Act No. 3035, Section 2.

⁸ Section 17, R.A. No. 11212 states:

Section 17. *Transition of Operations.* – In the public interest and to ensure uninterrupted supply of electricity, the current operator, Panay Electric Company, Inc. (PECO), shall in the interim be authorized to operate the existing distribution system within the franchise area, as well as implement its existing power supply agreements with generation companies that had been provisionally or finally approved by the ERC until the establishment or acquisition by the grantee of its own distribution system and its complete transition towards full operations as determined by the ERC, which period shall in no case exceed two (2) years from the grant of this legislative franchise.

Upon compliance with its rules, the ERC shall grant PECO the necessary provisional certificate of public convenience and necessity (CPCN) covering such interim period. The applicable generation rate shall be the provisional or final rate approved by the ERC.

This provisional authority to operate during the transition period shall not be construed as extending the franchise of PECO after its expiration on January 18, 2019, and it shall not prevent the grantee from exercising the right of eminent domain over the distribution assets existing at the franchise area as provided in Section 10 of this Act. During such interim period, the ERC shall require PECO to settle the full amount which the ERC has directed to refund to its customers in connection with all the cases filed against it.

To reduce the length of the transition period, the ERC and all agencies issuing the requisite licenses shall prioritize all applications relevant to the establishment and operation of the distribution system under its franchise.

The grantee shall, as far as practicable and subject to required qualifications, accord preference to hiring former employees of PECO upon commencement of business operations.

An information dissemination campaign regarding public services and operations of the grantee shall be made to all end-users in the franchise area.

The grantee and PECO shall jointly ensure that employees not hired by the grantee shall receive all separation and/or retirement benefits they are entitled to in accordance with applicable laws.

The DOE shall, during the transition, ensure that there will be uninterrupted supply of electricity in the existing franchise area.

⁹ *Rollo* (G.R. No. 248061), p. 288.

¹⁰ *Id.* at 60-95.

¹¹ *Id.* at 70-72.

¹² *Id.* at 82-85.

¹³ *Id.* at 73.

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legislative franchises granted to distribution utilities and that MORE is given more leeway in its exercise of the right of eminent domain as compared to other distribution utilities.¹⁴ For PECO, the grant of authority to expropriate all of its assets is arbitrary and unduly oppressive.¹⁵ PECO also claimed that R.A. No. 11212 authorized taking that is not for public use.¹⁶

Meanwhile, on March 11, 2019, MORE filed a Complaint for Expropriation with the Regional Trial Court (RTC) of Iloilo City over the distribution system of PECO in the same city.¹⁷

On March 14, 2019, the RTC issued a Temporary Restraining Order enjoining the commencement of expropriation proceedings, the takeover by MORE of the distribution system in Iloilo City, and the issuance of a CPCN by the ERC in favor of MORE.¹⁸

On July 1, 2019, upon motion by PECO for judgment on the pleadings, the RTC rendered its Judgment,¹⁹ the dispositive portion of which states:

WHEREFORE, premises considered, judgment is hereby rendered declaring Section 10 and 17 of RA No. 11212 void and unconstitutional for infringing on PECO's rights to due process and equal protection of the law. Consequently, PECO has no obligation to sell and respondent has no right to expropriate PECO's assets under Sections 10 and 17 of RA No. 11212; and, PECO's rights to its properties are protected against arbitrary and confiscatory taking under the relevant portions of Sections 10 and 17 of RA No. 11212.

Finally, the Temporary Restraining Order dated 14 March 2019 insofar as it enjoins respondent MORE and/ or any of its representatives from enforcing, implementing and exercising any of the rights and obligations set forth under RA 11212, including but not limited to commencing or pursuing the expropriation proceedings against petitioner PECO under the assailed provisions; and takeover by respondent MORE of petitioner PECO's distribution assets in the franchise area is hereby made permanent.

SO ORDERED.²⁰

The RTC found the element of public use wanting in the present case. The RTC explained that PECO's properties, including the distribution assets, are already being devoted to public use and that the only tangible effect of the exercise of eminent domain is to replace PECO with MORE as the owner of the existing electric power distribution system in Iloilo City. For the RTC, the

¹⁴ Id. at 73-76.

¹⁵ Id. at 78-79.

¹⁶ Id. at 79.

¹⁷ Id. at 334.

¹⁸ Id. at 155-156.

¹⁹ Penned by Presiding Judge Monique A. Quisumbing-Ignacio; Id. 39-46.

²⁰ Id. at 46.

State should not intervene in this corporate take-over.²¹ The RTC also held that there is no substantial distinction between MORE, on the one hand, and all other distribution utilities, on the other, to warrant the unwarranted benefits granted to MORE.²²

MORE filed a petition for review on *certiorari* under Rule 45 before this Court, docketed as G.R. No. 248061, raising the constitutional question of whether Sections 10 and 17 of R.A. No. 11212 violate the constitutional guarantee of due process and equal protection of laws. It posed the legal question in this wise: “[m]ay the distribution assets of a power distribution company whose franchise has expired, be acquired by a new power distribution utility with the new franchise, through expropriation, to ensure the continuous and uninterrupted service in the franchise area?”²³

MORE argued that expropriation under Sections 10 and 17 of R.A. No. 11212 serves the distinct emergency public purpose of ensuring the continuous and uninterrupted supply of electricity in Iloilo City, as the city transitions from the old franchise holder to the new franchise holder. Sections 10 and 17 recognize that MORE is differently situated from other distribution utilities. For one, there is already an existing distribution system in Iloilo City that continues to burden public space. This distribution system occupies streets, land, and properties owned by the government. MORE further averred that the clear legislative intent under R.A. No. 11212 is for MORE, as the new franchisee, to take over the operation of the distribution system in Iloilo City and to pay just compensation to PECO.

A separate petition for review on *certiorari* was filed by the Republic of the Philippines, through the Office of the Solicitor General (OSG), docketed as G.R. No. 249406. The OSG argued that R.A. No. 9136,²⁴ otherwise known as the “Electric Power Industry Reform Act of 2001” (EPIRA) delegated to public utilities like MORE the power of eminent domain to enable them to exercise their public function. Section 17 of R.A. No. 11212 emphasized a specific public need, which is to ease the transition of operations from PECO to MORE by expressly providing that the right of MORE to expropriate the distribution system of PECO for the public purpose of electricity and power distribution system, will not be prejudiced by the *interim* authority given to PECO to continue to operate the said system for the very same purpose of power distribution.

On motion²⁵ of PECO, G.R. Nos. 248061 and 249406 were consolidated.

²¹ Id. at 44.

²² Id. at 45.

²³ Id. at 3.

²⁴ An Act Ordaining Reforms in the Electric Power Industry, Amending for the Purpose Certain Laws and for Other Purposes.

²⁵ *Rollo* (G.R. No. 249406), pp. 11-15.

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Decision dated September 15, 2020 of this Court

On September 15, 2020, this Court rendered its Decision reversing and setting aside the Decision dated July 1, 2019 of the RTC. The Court declared Sections 10 and 17 of R.A. No. 11212 constitutional. The Court held that: (1) the legislative franchise of PECO authorizing it to operate a distribution system in Iloilo City is susceptible to expropriation for the same public purpose of power and electricity distribution; and (2) the expropriation by MORE of the distribution system of PECO pursuant to Sections 10 and 17 of R.A. No. 11212 is in accordance with the constitutional requirements of due process and equal protection of laws. The Court took into account the history of the legislative franchises governing the distribution system in Iloilo City which established that the distribution system of PECO can be subjected to expropriation for the same public purpose. Further, the Court ruled that the expropriation of the distribution system of PECO under Sections 10 and 17 of R.A. No. 11212 serves both the general public interest of conveying power and electricity in Iloilo City and the peculiar public interest and security of ensuring the uninterrupted supply of electricity.

PECO'S Motion for Reconsideration

In its Motion for Reconsideration,²⁶ PECO asks the Court to take a second hard look at the facts surrounding the case and the alleged far-reaching legal implications of the Decision dated September 15, 2020. PECO faults the Court in allowing the expropriation of its distribution system for the same public purpose it was already devoted to.²⁷ While PECO concedes that its previous legislative franchise allows expropriation of its assets and distribution system upon the termination of its franchise, this power may be exercised only by the government and its political subdivisions, should it desire to operate and maintain the system by itself, and not by private entities such as MORE.²⁸ Additionally, PECO disagrees with the conclusion of the Court that its ownership of the distribution system is co-existent with its franchise. PECO insists that franchise merely pertains to the privilege granted by the government and not synonymous to ownership of the facilities used thereof.²⁹

Further, PECO insists that there is no genuine public purpose served by the transfer of its distribution system to MORE. PECO alleges that the inexperience and incompetence of MORE in the business of electric distribution adversely affects the public.³⁰ PECO claims that the Court erroneously held that the expropriation is needed to prevent any disruption in the supply of electricity. According to PECO, as the distribution system is not burdened with public use and is privately owned by PECO, it can devote the same to private use; such as by disposing the system or by using it in another

²⁶ Temporary *rollo*, pp. 1-37.

²⁷ *Id.* at 4.

²⁸ *Id.* at 5.

²⁹ *Id.* at 8-11

³⁰ *Id.* at 17.

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business. PECO proposes that MORE should establish, operate, and maintain its own distribution system.³¹

PECO maintains that the expropriation of its distribution system violates its right to due process of law. According to PECO, to successfully invoke the exercise of eminent domain, it is required that there is a compelling state interest and that the means employed to effect it should be least restrictive.³²

Lastly, PECO insists that Sections 10 and 17 of R.A. No. 11212 violate its constitutional right to equal protection of laws because MORE was given undue and unwarranted benefits³³ and for having been singled out as the only entity against whom expropriation may be directed.³⁴

MORE's Opposition

MORE counters that PECO's distribution assets are not sacrosanct private property that PECO has absolute discretion on how and when to dispose. The distribution system assets are regulated assets established for the sole purpose of supplying electricity to end-users in Iloilo City. MORE avers that PECO had no more right to occupy public streets and skyline when its franchise expired, thus, PECO had the obligation to uproot, dismantle and remove its posts, wires, transformers, and electric meters from the streets and skyline of Iloilo City. The public space that they occupy are now under easement for use of MORE under its franchise. MORE posits that the cost of regulated assets have been charged to and paid for by the consumers in Iloilo City. The consumers of Iloilo City have the right to the continued use of these regulated assets to serve their basic need for electricity, as provided for under the EPIRA.

Further, MORE contends that to require it to build a new distribution system is anti-consumer and would deny the consumers of Iloilo City their right to continued service. The determination of MORE's technical competence and capability to operate the distribution system in Iloilo City is a matter within the primary jurisdiction of the ERC. Also, the matter of just compensation is an issue which must be resolved in the expropriation court.

Issue

The primary issue to be resolved is whether Sections 10 and 17 of R.A. No. 11212 are constitutional.

³¹ Id. at 19.

³² Id. at 25.

³³ Id. at 27.

³⁴ Id. at 29.



Ruling of the Court

After a careful review of the arguments raised by PECO, the Court finds no reason to depart from its Decision dated September 15, 2020.

The issues raised in the Motion for Reconsideration have been squarely and extensively discussed in the Court's Decision dated September 15, 2020. Nonetheless, the Court deems it prudent to clarify and discuss further the matters raised in the Motion.

A franchise emanates from the constitutional power of the Legislature to grant concessions and privileges to private entities.

A franchise started out as a “royal privilege or (a) branch of the King's prerogative, subsisting in the hands of a subject.”³⁵ This definition was given by Finch, adopted by Blackstone, and accepted by every authority since.³⁶ Further, “a franchise is defined to be a special privilege to, do certain things conferred by government on an individual or corporation, and which does not belong to citizens generally of common right.”³⁷ Insofar as the great powers of government are concerned, “[a] franchise is basically a legislative grant of a special privilege to a person.”³⁸ Section 11, Article XII of the 1987 Constitution further states that “x x x for the operation of a public utility,” no “such franchise or right [shall] be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. x x x”

Pursuant to this prerogative of the State, Section 27 of the EPIRA vests on Congress the power to grant franchises to persons engaged in the transmission and distribution of electricity, to wit:

Section 27. Franchising Power in the Electric Power Sector. – The power to grant franchises to persons engaged in the transmission and distribution of electricity shall be vested exclusively in the Congress of the Philippines and all laws inconsistent with this Act particularly, but not limited to, Section 43 of PD 269, otherwise known as the "National Electrification Decree", are hereby deemed repealed or modified accordingly: Provided, That all existing franchises shall be allowed to their full term: Provided, further, That in the case of electric cooperatives, renewals and cancellations shall remain with the National Electrification Commission under the National Electrification Administration for five (5) more years after the enactment of this Act.

³⁵ *Radio Communications of the Philippines, Inc. v. National Telecommunications Commission*, 234 Phil. 443, 449 (1987).

³⁶ *Id.*, citing *State v. Twin Village Water Co.*, 98 Me 214, 56 A 763 (1903).

³⁷ *ABS-CBN Corp. v. National Telecommunications Commission*, G.R. No. 252119, August 25, 2020, citing *Land Transportation Office v. City of Butuan*, 379 Phil. 887, 896 (2000).

³⁸ *Id.*, citing *Francisco, Jr. v. Toll Regulatory Board*, 648 Phil. 54, 91 (2010).

Since 1923 until January 18, 2019, PECO was the holder of a franchise to “establish, operate, and maintain, for commercial purposes and in the public interest, a distribution system for the conveyance of electric power to end users in the City of Iloilo.”³⁹ However, upon the expiration of PECO’s franchise in 2019, Congress, exercising its constitutionally-mandated and plenary power to grant franchises, did not renew the privilege given to PECO. Instead, it awarded the franchise to MORE, as embodied in R.A. No. 11212.

The power of Congress to award the franchise to MORE is broad and plenary, subject only to limitations given by the Constitution and the fundamental principle of due process. It is beyond the power of the Court to question the wisdom of Congress in granting the franchise to MORE. The Court cannot venture into this because that would mean violating the deep-rooted principle of separation of powers. Thus, Sections 10 and 17 of R.A. No. 11212, giving MORE the power to expropriate the distribution system of PECO, are but integral parts of the grant of the franchise by Congress. Since the exercise of eminent domain is necessary to carry out the franchise, it is prudent that the Court accords respect to the legislative will.

The authority granted to MORE under its franchise to expropriate the existing distribution system of PECO is a valid delegation of power.

In its motion for reconsideration, PECO faults the Court in allowing the expropriation of its distribution system for the same public purpose it was already devoted to. While PECO concedes that its previous legislative franchise allows expropriation of its assets and distribution system upon the termination of its franchise, it also asserts that this power may be exercised only by the government and its political subdivisions, and not by private entities such as MORE.

PECO’s argument fails to convince the Court.

The power of eminent domain is exercised by the Legislature. However, it may be delegated by Congress to the President, administrative bodies, local government units, and even to **private enterprises performing public services**.⁴⁰

The exercise of the right to expropriate given to MORE under its franchise is a **delegated** authority granted by Congress. The restrictive view that expropriation may be exercised by the State alone, without any consideration for the State’s authority to delegate its powers, cannot be upheld. Being a private enterprise allowed by the Congress to operate a public

³⁹ *Rollo* (G.R. No. 249406), p. 106.

⁴⁰ *Manapat v. Court of Appeals*, 562 Phil. 31 (2007).

utility for public interest, the delegation by Congress of the power to expropriate PECO's distribution system is valid.

The requisites for a valid exercise of the power of eminent domain are present.

Over the years and in a plethora of cases, this Court has recognized the following requisites for the valid exercise of the power of eminent domain: (1) the property taken must be private property; (2) there must be genuine necessity to take the private property; (3) the taking must be for public use; (4) there must be payment of just compensation; and (5) the taking must comply with due process of law.⁴¹

It is settled that a property already devoted to public use can still be subject to expropriation, provided this is done directly by the national legislature or under a specific grant of authority to a delegate,⁴² as in the case of MORE.

In this case, PECO insists that there is no genuine public purpose served by the transfer through expropriation of its distribution system to MORE. PECO claims that the Court erroneously held that the expropriation is needed to prevent any disruption in the supply of electricity. According to PECO, as the distribution system is not burdened with public use, it can devote the same to private use, such as by disposing the system or by using it in another business. In other words, PECO zeroes in on the alleged absence of the second and third requisites for a valid exercise of the power of eminent domain.

It is established that the foundation of the right to exercise eminent domain is genuine necessity, and that necessity must be of a public character. As a rule, the determination of whether there is genuine necessity for the exercise is a justiciable question. However, when the power is exercised by the Legislature, the question of necessity is essentially a matter that the Legislature can decide and determine. Thus, in *City of Manila v. Chinese Community*,⁴³ the Court held:

The legislature, in providing for the exercise of the power of eminent domain, may directly determine the necessity for appropriating private property for a particular improvement for public use, and it may select the exact location of the improvement. In such a case, it is well-settled that the utility of the proposed improvement, the extent of the public necessity for its construction, the expediency of constructing it, the suitability of the location selected and the consequent necessity of taking the land selected for its site, are all questions exclusively for the legislature to determine, and the courts have no power to interfere, or to

⁴¹ Id.

⁴² Cruz, Isagani, A. and Cruz, Carlo, L., *Constitutional Law*, Central Book Supply, Inc., 2015 Edition, p. 137.

⁴³ 40 Phil. 349 (1919).

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substitute their own views for those of the representatives of the people.⁴⁴

As in this case, the express authority of MORE to expropriate is embodied in R.A. No. 11212. The expropriation of the distribution system of PECO was directed by legislation.

To validly exercise the power of eminent domain, it is also required that taking should be for public use. The meaning of the term “public use” has evolved over time in response to changing public needs and exigencies. Public use, which was traditionally understood as strictly limited to actual “use by the public,” has developed an expansive meaning. “Public use” is now synonymous with “public interest,” “public benefit,” and “public convenience.”⁴⁵ At present, it may not be amiss to state that whatever is beneficially employed for the general welfare satisfies the requirement of public use.⁴⁶

In this case, expropriation under Sections 10 and 17 of R.A. No. 11212 is for the general purpose of electricity distribution. Electricity distribution no doubt affects the public welfare. The assailed provisions ensure uninterrupted supply of electricity in the city during the transition from the old to the new franchisee. Iloilo City’s public space is already burdened by PECO’s existing distribution system. Yet, the distribution system cannot continue to operate under PECO’s franchise as this has not been renewed by Congress.

The public necessity of ensuring uninterrupted electricity is clear in Section 10 of R.A. No. 11212 when it authorized MORE to expropriate the existing distribution system. The provision reads:

Section 10. *Right of Eminent Domain.* – Subject to the limitations and procedures prescribed by law, the grantee is authorized to exercise the power of eminent domain insofar as it may be reasonably necessary for the efficient establishment, improvement, upgrading, rehabilitation, maintenance and operation of its services. The grantee is authorized to install and maintain its poles wires, and other facilities over, under, and across public property, including streets, highways, parks, and other similar property of the Government of the Philippines, its branches, or any of its instrumentalities. The grantee may acquire such private property as is actually necessary for the realization of the purposes for which this franchise is granted, including, but not limited to poles, wires, cables, transformers, switching equipment and stations, buildings, infrastructure, machineries and equipment previously, currently or actually used, or intended to be used, or have been abandoned, unused or underutilized, or which obstructs its facilities, for the operation of a distribution system for the conveyance of

⁴⁴ Id. at 359-360.

⁴⁵ Republic of the Philippines v. Heirs of Borbon, G.R. No. 165354, January 12, 2015.

⁴⁶ Manapat v. Court of Appeals, supra note 40 at 53.

electric power to end users in its franchise area: *Provided*, That proper expropriation proceedings shall have been instituted and just compensation paid:

Provided, further, That upon the filing of the petition for expropriation, or at any time thereafter, and after due notice to the owner of the property to be expropriated and the deposit in a bank located in the franchise area of the full amount of the assessed value of the property or properties, the grantee shall be entitled to immediate possession, operation, control, use and disposition of the properties sought to be expropriated, including the power of demolition, if necessary, notwithstanding the pendency of other issues before the court, including the final determination of the amount of just compensation to be paid. The court may appoint a representative from the ERC as a trial commissioner in determining the amount of just compensation. The court may consider the tax declarations, current audited financial statements, and rate-setting applications of the owner or owners of the property or properties being expropriated in order to determine their assessed value.

The distinct genuine public necessity is reiterated in Section 17 thereof which allowed MORE to initiate expropriation proceedings even if PECO is provisionally operating the distribution system. Section 17 of R.A. No. 11212 states:

Section 17. *Transition of Operations.* – In the public interest and to ensure uninterrupted supply of electricity, the current operator, Panay Electric Company, Inc. (PECO), shall in the interim be authorized to operate the existing distribution system within the franchise area, as well as implement its existing power supply agreements with generation companies that had been provisionally or finally approved by the ERC until the establishment or acquisition by the grantee of its own distribution system and its complete transition towards full operations as determined by the ERC, which period shall in no case exceed two (2) years from the grant of this legislative franchise.

Upon compliance with its rules, the ERC shall grant PECO the necessary provisional certificate of public convenience and necessity (CPCN) covering such interim period. The applicable generation rate shall be the provisional or final rate approved by the ERC.

This provisional authority to operate during the transition period shall not be construed as extending the franchise of PECO after its expiration on January 18, 2019, and it shall not prevent the grantee from exercising the right of eminent domain over the distribution assets existing at the franchise area as provided in Section 10 of this Act. During such interim period, the ERC shall require PECO to settle the full amount which the ERC has directed to refund to its customers in connection with all the cases filed against it.

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To reduce the length of the transition period, the ERC and all agencies issuing the requisite licenses shall prioritize all applications relevant to the establishment and operation of the distribution system under its franchise.

The grantee shall, as far as practicable and subject to required qualifications, accord preference to hiring former employees of PECO upon commencement of business operations.

An information dissemination campaign regarding public services and operations of the grantee shall be made to all end-users in the franchise area.

The grantee and PECO shall jointly ensure that employees not hired by the grantee shall receive all separation and/or retirement benefits they are entitled to in accordance with applicable laws. The DOE shall, during the transition, ensure that there will be uninterrupted supply of electricity in the existing franchise area.

It must be highlighted that in carrying out the obligations of MORE in its legislative franchise, time is of the essence. MORE is only given two years from the grant of the legislative franchise, or from July 23, 2018, to either establish its own distribution system or acquire the existing distribution system through the exercise of eminent domain. This is consistent with the State's objective of ensuring uninterrupted supply of electricity in the city. MORE considered it practical to exercise the power of eminent domain as there are already existing structures which would facilitate unimpeded transition from PECO to MORE.

In *National Electrification Administration v. Maguindanao Electric Cooperative, Inc.*,⁴⁷ the Court recognized the authority of National Electrification Administration (NEA) under Presidential Decree (PD) No. 269, to order the transfer of the distribution assets of Maguindanao Electric Cooperative, Inc. to Cotabato Electric Cooperative, Inc. the new franchise holder. Under PD No. 269, NEA had the power to acquire assets which includes the exercise of the right to eminent domain. The Court upheld NEA's right of eminent domain necessary in the pursuit of the declared policy of nationwide electrification. Notably in the said case, the transfer of distribution assets involves two private entities pursuant to the enforcement of the right to exercise eminent domain.

Recently approved on August 8, 2019 is R.A. No. 11361,⁴⁸ otherwise known as the "Anti-Obstruction of Power Lines Act," which recognized the policy of the State to ensure uninterrupted conveyance of electricity from generating plants to end-users. It further acknowledged that the uninterrupted

⁴⁷ G.R. Nos. 192595-96 & 192676-77, April 11, 2018.

⁴⁸ An Act Ensuring the Continuous and Uninterrupted Transmission and Distribution of Electricity and the Protection of the Integrity and Reliability of Power Lines, and Providing Penalties for Violations Thereof.

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conveyance of electricity is a matter of national security and is essential to sustaining the country's economic development. Section 13 of the same Act provides for the right of eminent domain granted to any person with a franchise to operate, manage, or maintain the electric power line as governed by the pertinent provisions of the Rules of Court.


In sum, expropriation by MORE of the distribution system of PECO under Sections 10 and 17 of R.A. No. 11212 serves **both** the general public interest of conveying power and electricity in Iloilo City and the peculiar public interest and security of ensuring the uninterrupted supply of electricity.

The allegation of PECO that it was singled-out and the perceived incidental benefit enjoyed by MORE do not render Sections 10 and 17 of R.A. No. 11212 unconstitutional.

Contrary to the claim of PECO, it was not singled-out. There was also no undue benefit given to MORE to justify the invalidation of Sections 10 and 17 of its legislative franchise. The right to exercise eminent domain conferred by Section 10 of R.A. No. 11212 remains valid, regardless of any perceived incidental benefit to be gained or enjoyed by MORE, for as long as the requisites for the exercise of a valid expropriation was complied with.

There is no basis to support the claim of PECO that it has been "singled-out" by the approval of the franchise of MORE. There is only one franchise holder in the subject area prior to the enactment of R.A. No. 11212. It is but natural and expected that PECO, as the lone previous franchise holder which failed to secure the renewal of its franchise, will be averse to any and all subsequent franchise holder exercising the right of eminent domain. Nonetheless, this does not mean that PECO can simply ask the nullification of the legislative franchise awarded to MORE for being "singled-out."

It must be emphasized that a legislative franchise is merely a privilege and not a right that may be demanded by any individual or entity. The Court cannot substitute the judgment of the Congress with its own with respect to the determination of which entity it deems most qualified to carry out the distribution of electricity in Iloilo City. It must be remembered that the Constitution has delineated separate and quite distinct roles that each branch of government must fill. In the exercise of judicial review, the Court is limited to the determination of the constitutionality of R.A. No. 11212. The Court does not possess the technical knowledge required in the field of power distribution to competently evaluate the capacity of MORE to carry out its functions under R.A. No. 11212. Resolving whether PECO deserves to be granted an extension or renewal of its franchise and whether MORE is qualified as a new franchisee are matters clearly beyond the ambit of the Court's authority to review as these are purely matters left to the wisdom of Congress.



Likewise, the incidental benefit enjoyed by MORE does not render its legislative franchise unconstitutional. As fittingly explained by Associate Justice Alfredo Benjamin S. Caguioa in his Separate Opinion,⁴⁹

x x x [W]hile the exercise of the power of eminent domain over the electric power distribution facilities of PECO may garner benefits in favor of MORE, this would be but incidental. Notably, its duties as a public utility would nonetheless remain regulated by the government. At the end of the day, at the proper expropriation proceedings instituted for the purpose, the abiding reality would be for the court to be satisfied with evidence proffered by MORE – that its intended taking would invariably be for the good of the public, is actually necessary, and that there is just compensation therefor.⁵⁰

It is important to highlight that the incidental private benefit MORE enjoys does not override the paramount public interest on which the right of eminent domain is hinged. It would be unfair for the public to be deprived of access to uninterrupted supply of electricity, an important tool to economic growth, simply because of some incidental benefit MORE may gain from its legislative franchise.

Moreover, as aptly pointed out by Senior Associate Justice Estela Perlas-Bernabe in her Separate Opinion,⁵¹ MORE is not the only entity engaged in the business of distribution utilities accorded with a similar authority to exercise eminent domain embedded in a legislative franchise. The respective legislative franchises of the following entities contain a similar provision: (1) Cotabato Electric Cooperative, Inc.–PPALMA (under R.A. No. 11322); (2) Cotabato Light and Power Company (under R.A. No. 10637); (3) First Bay Power Corp. (under R.A. No. 10891); (4) Angeles Electric Corporation (under R.A. No. 9381); and (5) Olongapo Electricity Distribution Company, Inc. (under R.A. No. 10373).⁵²

It is erroneous for PECO to argue that only the State and its subdivisions or the local government units may exercise the power of eminent domain. Noticeably, these franchise holders are cooperatives and private corporations. Therefore, it cannot simply be concluded that the Congress, in enacting R.A. No. 11212, extended favorable concessions to MORE to the exclusion of all other distribution utilities because other private entities such as the cooperatives and private corporations mentioned enjoy similar privileges.

It is also worthy to point out that MORE is under a unique circumstance and is faced with an unusual obstacle. It is mandated to assume the operations of PECO, whose facilities are already existing and occupied by its employees, while simultaneously ensuring that the distribution of electricity to various

⁴⁹ *Rollo* (G.R. No 248061), pp. 1284-1296.

⁵⁰ *Id.* at 1292.

⁵¹ *Id.* at 1249-1262.

⁵² *Id.* at 1256-1259.

areas in Iloilo City remain uninterrupted during the interim period. Though not impossible to accomplish, the Congress deemed it prudent to confer the power provided in Sections 10 and 17 of R.A. No. 11212 to guaranty that the transition phase will not hamper the duty of the franchisee to supply electric power, an essential necessity in the lives of people residing in Iloilo City. The Court, speaking through the *ponencia* of Associate Justice Jose C. Reyes, Jr., explained that:

MORE is a new franchise holder that is virtually deprived of the option to set up a new distribution system, not only because the existing public space is burdened with the distribution system of the old franchise holder, but also because it must hit the ground running and ensure the uninterrupted and continuous supply of electricity to the city. MORE is therefore peculiarly and doubly burdened. It must not only supply electricity, it must also prevent any disruption that might arise from its takeover of the franchise.⁵³

Clearly, in granting MORE the right to exercise eminent domain, the primordial concern of the Congress is the welfare of the residents of Iloilo City who rely on the distribution system of PECO. There is no question that PECO's franchise was not renewed, thus, it can no longer operate the distribution system in Iloilo City. MORE, as the new franchisee, is mandated under Section 2 of R.A. No. 11212 to operate and maintain the distribution system in the best manner possible. To be able to do so, its right to expropriate the distribution system in Iloilo City to ensure uninterrupted supply of electricity should not be hampered by unfounded allegations of undue benefit and corporate takeover. In the end, the net public benefit generated from the exercise of the right of eminent domain outweighs any and all incidental and secondary benefit any private entity, including MORE, may acquire. In view of the foregoing, the constitutionality of Sections 10 and 17 of R.A. No. 11212 must be upheld.

WHEREFORE, the Motion for Reconsideration is **DENIED**.

SO ORDERED.


ROSMARI D. CARANDANG
Associate Justice

⁵³

Id. at 1243.

WE CONCUR:

DIOSDADO M. PERALTA
Chief Justice

I dissent. See separate opinion

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

U.S. Kerr

ESTELA M. PERLAS-BERNABE
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

I concur.

RAMON PAUL L. HERNANDO
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

I dissent. See Separate Opinion

AMY C. LAZARO-JAVIER
Associate Justice

With concurring opinion

HENRI JEAN PAUL B. INTING
Associate Justice

I join the dissent of J. Leonen

RODIL V. ZALAMEDA
Associate Justice

I join the dissent

MARIA V. LOPEZ
Associate Justice

Please see dissenting opinion

EDGARDO L. DELOS SANTOS
Associate Justice

I join the dissent of Leonen

SAMUEL H. GAERLAN
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JHOSEP T. LOPEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court.



DIOSDADO M. PERALTA
Chief Justice

Certified True Copy
Anna-Li R. Papa-Gombio
ANNA-LI R. PAPA-GOMBIO
Deputy Clerk of Court En Banc
OCC En Banc, Supreme Court