Republic of the Philippines
Supreme Court
Manila

EN BANC

ILOILO I ELECTRIC COOPERATIVE, INC. (ILECO I), ILOILO II ELECTRIC COOPERATIVE, INC. (ILECO II), AND ILOILO III ELECTRIC COOPERATIVE, INC. (ILECO III),	**G.R. No. 264260**
	Present:
Petitioners,	GESMUNDO, *C.J.*, LEONEN, CAGUIOA, HERNANDO, LAZARO-JAVIER, INTING, ZALAMEDA, LOPEZ, M. V., GAERLAN, ROSARIO, LOPEZ, J. Y., DIMAAMPAO, MARQUEZ, KHO, JR., and SINGH, *JJ.*
-versus-	
EXECUTIVE SECRETARY LUCAS P. BERSAMIN, ENERGY REGULATORY COMMISSION CHAIRPERSON HON. MONALISA C. DIMALANTA, THE HOUSE OF REPRESENTATIVES AND SENATE OF THE REPUBLIC OF THE PHILIPPINES AS COMPONENT HOUSES OF THE CONGRESS OF THE PHILIPPINES, AND THE MORE ELECTRIC AND POWER CORPORATION,	**Promulgated:**
Respondents.	July 30, 2024

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DECISION

ZALAMEDA, *J.*:

Under the Constitution, the crucial role of determining the existence of common good that would warrant the amendment, alteration, or repeal of a franchise lies with the legislature. Pursuant to this mandate, our legislature breathed flesh and blood through the enactment of a law that would promote competition in the electricity sector. Thus, the Court must tread with deliberate care in striking down this law since any misstep may unravel the people's will through their elected representatives. In the same vein, to undo an act of legislature, there needs to be a compelling reason, which is lacking in this case.

The Case

This is a Petition for *Certiorari* and Prohibition with Prayer for the Issuance of Temporary Restraining Order and Writ of Preliminary Injunction[1] under Rule 65 that seeks to assail the constitutionality of Section 1 of Republic Act No. 11918[2] for violation of exclusive franchises, non-impairment of contracts, due process, and equal protection.

Factual Antecedents

Petitioners Iloilo I Electric Cooperative, Inc. (ILECO I), Iloilo II Electric Cooperative, Inc. (ILECO II), and Iloilo III Electric Cooperative, Inc. (ILECO III) are grantees of separate certificates of franchise to operate electric light and power services in various municipalities in the province of Iloilo and the city of Passi. ILECO I, ILECO II, and ILECO III's certificate of franchise will expire on August 22, 2053, December 12, 2029, and August 10, 2039, respectively.[3]

On March 9, 2019, Republic Act No. 11212 took effect, which granted MORE Electric and Power Corporation (MORE) a franchise to establish, operate, and maintain an electric power distribution system in Iloilo City. However, on August 30, 2022, Republic Act No. 11918 amended and expanded MORE's franchise area to include 15 municipalities and one city that were previously within the exclusive franchise area of petitioners. This prompted petitioners to challenge Section 1 of Republic Act No. 11918, which reads:

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1 *Rollo*, pp. 3–83.

2 Republic Act No. 11918 (2022), An Act Amending Sections 1, 15, And 21 Of Republic Act No. 11212, Entitled '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.

3 *Rollo*, pp. 3–10.

> SEC. 1. *Nature and Scope of Franchise.* — Subject to the provisions of the Constitution and applicable laws, rules, and regulations, there is hereby granted to MORE Electric and Power Corporation, hereunder referred to as the Grantee, its successors or assignees, 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 cities of Iloilo and Passi and the municipalities of Alimodian, Leganes, Leon, New Lucena, Pavia, San Miguel, Santa Barbara, Zarraga, Anilao, Banate, Barotac Nuevo, Dingle, Duenas, Dumangas, and San Enrique, in the Province of Iloilo.
>
> As used in thus Act, distribution system refers to the system of the wires and associated facilities including subtransmission lines belonging to or used by a franchised distribution utility extending between the delivery point on the national transmission system or generating facility and the metering point or facility of the end-user.[4]

Petitioners assert that MORE's expanded areas overlapped with their franchise areas. Specifically, for ILECO I, the overlapping areas are the municipalities of Alimodian, Leganes, Leon, Pavia, San Miguel, and Santa Barbara; for ILECO II, these are the city of Passi and municipalities of Barotac Nuevo, Dingle, Duenas, Dumangas, New Lucena, San Enrique, and Zarraga; and for ILECO III, these are the municipalities of Anilao and Banate.[5]

Issues

Petitioners raise the following grounds:

I. Section 1 of [Republic Act No.] 11918 violates Section 11, Article XII of the Constitution, since there is no common good that justifies the effective alteration of petitioners' respective franchises.

II. Section 1 of [Republic Act No.] 11918 violates petitioners' right to due process enshrined under Section 1, Article III of the Constitution.

III. Section 1 of [Republic Act No.] 11918 violates petitioners' constitutional right to non-impairment of obligation of contracts enshrined under Section 10, Article III of the Constitution.

IV. Section 1, [Republic Act No.] 11918 violates petitioners' right to equal protection of the laws enshrined under Section 1, Article III of the Constitution.

V. Section 1, [Republic Act No.] 11918 infringes upon petitioners' exclusive franchises, in violation of the National Electrification Administration (NEA) Decree and the Electric Power Industry Reform Act of 2001 (EPIRA).

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4 *Id.* at 10–11.
5 *Id.* at 11–12.

VI. Section 1, [Republic Act No.] 11918 violates Section 41(c) of the NEA Act.[6]

Simply put, the issues in this case are: (1) whether petitioners have exclusive franchise over its coverage areas; (2) whether petitioners' right to due process was violated; and (3) whether there was no infringement of non-impairment of contracts.

Petitioners argue that in expanding MORE's franchise area to include the overlapping areas effectively amends petitioners' respective franchises and will result in wasteful competition and increase in electricity prices to the damage and prejudice of consumers.[7]

In the Amicus Curiae Brief for the US case of *Otter Tail Power Co. v. US*,[8] it was explained that the economic characteristics of the electric utility industry bar application of traditional anti-monopoly concepts. *First,* electric utilities inevitably must invest in huge quantities of capital in long-lived and inflexible facilities directly connected to consumers. Thus, to have direct competition for the patronage of given consumers would require costly facility duplication and therefore impose on society excessive and unnecessary capital costs. *Second,* electric utility operations are characterized by the existence of substantial economies of scale – that is, by declining costs as the scale of operation increases. Thus, direct competition among electric utilities has long been considered economically wasteful and hence, undesirable.[9]

Further, as expressed by several lawmakers during the deliberations of House Bill No. 10306, which later became Republic Act No. 11918, the potential increase in the rates of petitioners that will be absorbed by the consumers will reach as high as 83%, based on the data of the Energy Regulatory Commission (ERC).[10]

On the issue of right to due process, petitioners raise that the substantive due process requirement of legitimate government purpose or compelling government purpose was not met since there is no common good served by Republic Act No. 11918. There is also no necessity for the expansion of MORE's franchise areas as petitioners are already providing impeccable service in said areas.[11]

As regards their right to non-impairment of contracts, they explained that following industry standards, petitioners have supply contracts with

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6 *Id.* at 20–21.
7 *Id.* at 21–43.
8 410 US 366, 93 S. Ct. 1022, 35 L. Ed.2d 359 (1973).
9 *Rollo*, pp. 21–43.
10 *Id.* at 21–32.
11 *Id.* at 32–43.

generation companies, which have standard provisions on the take-or-pay principle. Under these contracts, petitioners (as buyers of electricity) have respective contracted capacities that they are obliged to pay to the generation companies (as sellers of electricity), regardless of whether these capacities are used. Granting only for the sake of argument that MORE will be able to reduce electricity prices or resort to marketing promotions to encourage switching to it, this would lead to the reduction of petitioners' consumers. Accordingly, petitioners' energy sales will be reduced, leading to decreased revenues. Nonetheless, petitioners will still be obliged to pay their minimum contracted capacities, by virtue of the take-or-pay provisions under the power supply contracts and electric service contracts. This will lead to stranded contract costs. Thus, petitioners are at an imminent risk of defaulting on their contracts.[12]

With respect to their right to equal protection of laws, petitioners discussed that in expanding MORE's franchise, it was granted certain powers and benefits not normally found in other legislative franchisees. Petitioners allege that MORE is given the unfair advantage of having the power to expropriate, at the onset, assets, buildings, and equipment necessary for the establishment of its distribution services. MORE was also given specific powers to expropriate poles, wires, cables, transformers, switching equipment and stations, buildings, infrastructure, machineries, and equipment previously, currently, or used by other entities in the operation of a distribution system. This enumeration consists of assets normally owned by electric distribution utilities, such as petitioners. Further, petitioners claim that they are subject to higher requirements of the NEA, such as stringent key performance indicators and more procurement requirements than MORE.[13]

Moreover, under EPIRA, a franchise area is exclusively assigned or granted to a distribution utility. As such, the same franchise area cannot be assigned or granted to any other entity. Here, in expanding MORE's franchise to include the overlapping areas, Section 1 or Republic Act No. 11918 infringes upon petitioners' exclusive franchises.[14] Relatedly, under Section 41(c) of Republic Act No. 6038, or the NEA Act, no franchise shall be granted to any other person within any area in which a cooperative holds a franchise. While there are exceptions to this rule, none apply in this case.[15]

In the Comment filed by respondents through the Office of Solicitor General (OSG), they argue that the petition should be dismissed for raising a political question and violating the hierarchy of courts. They explain that Congress has plenary power to issue franchises under Section 11, Article XII of the Constitution and the legislative franchise for operation of a public utility is not exclusive in character. Further, there was no violation of petitioners'

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[12] *Id.* at 43–49.
[13] *Id.* at 49–60.
[14] *Id.* at 60–66.
[15] *Id.* at 66–69.

arguments on impairment of contract and equal protection of laws.[16]

During the pendency of this case, the Philippine Rural Electric Cooperatives Association (PHILRECA), an association composed of 121 electric cooperatives (including petitioners), moved to intervene and admit its Petition-in-Intervention. PHILRECA contends that it has direct interest in the outcome of the case considering that the continued effectivity of Republic Act No. 11918 will encroach upon the existing franchise of a rural electric cooperative. It will also adversely affect its advocacy for total rural electrification and its financial position since its funds are mostly sourced from the annual membership dues of the members-electric cooperatives.[17] PHILRECA further claims that its intervention will not unduly delay the adjudication of rights of the original parties since the issue will be examined in one forum only[18] and its rights will not be protected in a separate proceeding.[19]

In its Petition-in-Intervention, PHILRECA argues that Republic Act No. 11918 results in the overlapping of the franchise areas of petitioners and MORE, thereby violating the exclusive rights of an electric cooperative to sell or convey electricity within its franchise areas. PHILRECA further insists that said law impairs the ability of petitioners to carry out their obligations under the NEA Act and EPIRA, as well as poses existential threat to the operations of the electric cooperatives and severely impairs the ability of the NEA to carry out its mandate, powers, and functions. By allowing the expansion of MORE's franchise, there will ultimately be a rise of stranded contract costs and massive impairment of obligations of contracts.[20]

Ruling of the Court

The petition is **DISMISSED** and PHILRECA's motion to intervene is **DENIED**.

Preliminarily, it bears pointing out that the instant petition falls under the exceptions to the doctrine of hierarchy of courts. Under this doctrine, a direct invocation of the Supreme Court's original jurisdiction to issue extraordinary writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition. This is an established policy that is necessary to prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, and to prevent further over-crowding of the Court's

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16 *Id.* at 1121–1122.
17 *Petition-in-Intervention* dated April 14, 2023, pp. 13–18.
18 *Rollo*, pp. 18–19.
19 *Id.* at 19–20.
20 *Id.* at 28–29.

docket.[21]

Here, petitioners deemed the following exceptions as applicable to their case, namely: (a) when there are genuine issues of constitutionality that must be addressed at the most immediate time, such as assailing the constitutionality of actions of both legislative and executive branches of the government; (b) when the issues involved are of transcendental importance; (c) cases of first impression; (d) the constitutional issues raised are better decided by this Court; (e) the time element; and (f) the petition includes questions that are dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice.[22]

We agree with petitioners that this Court may take cognizance of the case at the first instance, considering that the foregoing reasons were clearly laid down in the petition, as well as the presence of genuine issues of constitutionality and involvement of questions on public welfare, advancement of public policy, and broader interest of justice. Nonetheless, as will be discussed at length below, the petition must be dismissed.

I. Petitioners do not enjoy any Constitutional right to exclusive franchise over its coverage areas

We deem it necessary to state at the outset that exclusive franchises are not sanctioned by the Constitution. Moreover, franchises are subject to amendment, alteration, or repeal by the Congress when the common good so requires. Section 11, Article XII of the 1987 Constitution provides:

> Section 11. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines, at least sixty per centum of whose capital is owned by such citizens; **nor shall such franchise, certificate, or authorization be exclusive in character** or for a longer period than fifty years. **Neither shall any such franchise or right 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.** The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines.

The language of the Constitution is clear. Franchises granted by the

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[21] *People v. Cuaresma*, 254 Phil. 418 (1989) [Per J. Narvasa, First Division].
[22] *Rollo*, pp. 18–20.

government cannot be exclusive in character. In the Court's *En Banc* ruling in *Tawang Multi-Purpose Cooperative v. La Trinidad Water District*,[23] We had occasion to exhaustively explain said provision of the Constitution. The 1935, 1973 and 1987 Constitutions all expressly prohibit exclusivity of franchise, *viz:*

> The President, Congress and the Court cannot create directly franchises for the operation of a public utility that are exclusive in character. The 1935, 1973 and 1987 Constitutions expressly and clearly prohibit the creation of franchises that are exclusive in character. Section 8, Article XIII of the 1935 Constitution states that:
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> > No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or other entities organized under the laws of the Philippines, sixty per centum of the capital of which is owned by citizens of the Philippines, **nor shall such franchise**, certificate or authorization **be exclusive in character** or for a longer period than fifty years. *(Emphasis supplied)*
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> Section 5, Article XIV of the 1973 Constitution states that:
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> > No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty per centum of the capital of which is owned by such citizens, **nor shall such franchise**, certificate or authorization **be exclusive in character** or for a longer period than fifty years. *(Emphasis supplied)*
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> Section 11, Article XII of the 1987 Constitution states that:
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> > No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines, at least sixty per centum of whose capital is owned by such citizens, **nor shall such franchise**, certificate or authorization **be exclusive in character** or for a longer period than fifty years. *(Emphasis supplied)*
>
> Plain words do not require explanation. The 1935, 1973 and 1987 Constitutions are clear -- franchises for the operation of a public utility cannot be exclusive in character. The 1935, 1973 and 1987 Constitutions expressly and clearly state that, **"nor shall such franchise [. . .] be exclusive in character."** There is no exception.
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> When the law is clear, there is nothing for the courts to

[23] 661 Phil. 390 (2011) [Per J. Carpio, *En Banc*].

> do but to apply it. The duty of the Court is to apply the law the way it is worded. In *Security Bank and Trust Company v. Regional Trial Court of Makati, Branch 61*, the Court held that:
>
> Basic is the rule of statutory construction that **when the law is clear and unambiguous, the court is left with no alternative but to apply the same according to its clear language**. As we have held in the case of *Quijano v. Development Bank of the Philippines*:
>
> > "[. . .]We cannot see any room for interpretation or construction in the clear and unambiguous language of the above-quoted provision of law. **This Court had steadfastly adhered to the doctrine that its first and fundamental duty is the application of the law according to its express terms**, interpretation being called for only when such literal application is impossible. No process of interpretation or construction need be resorted to where a provision of law peremptorily calls for application. **Where a requirement or condition is made in explicit and unambiguous terms, no discretion is left to the judiciary. It must see to it that its mandate is obeyed**." *(Emphasis supplied)*
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> In *Republic of the Philippines v. Express Telecommunications Co., Inc.*, the Court held that, "The Constitution is quite emphatic that the operation of a public utility shall not be exclusive." In *Pilipino Telephone Corporation v. National Telecommunications Commission*, the Court held that, "Neither Congress nor the NTC can grant an exclusive 'franchise, certificate, or any other form of authorization' to operate a public utility." In *National Power Corp. v. Court of Appeals*, the Court held that, "Exclusivity of any public franchise has not been favored by this Court such that in most, if not all, grants by the government to private corporations, the interpretation of rights, privileges or franchises is taken against the grantee." In *Radio Communications of the Philippines, Inc. v. National Telecommunications Commission*, the Court held that, "The Constitution mandates that a franchise cannot be exclusive in nature."[24]

We are mindful of our ruling in *Alyansa Para sa Bagong Pilipinas v. Energy Regulatory Commission*[25] where we characterized MERALCO's franchise as in the nature of a monopoly because it currently does not have any competitor in its coverage areas. However, MERALCO's status as a monopoly does not preclude Congress from awarding other franchises to accommodate future competition that may lead to better public service and

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[24] *Id.* at 399–401.

[25] 825 Phil. 1 (2019) [Per J. Carpio, *En Banc*].

public good.[26] Thus, we pronounced:

> Republic Act No. 9209 granted Meralco a congressional franchise to construct, operate, and maintain a distribution system for the conveyance of electric power to the end-users in the cities and municipalities of Metro Manila, Bulacan, Cavite, and Rizal, and certain cities, municipalities, and barangays in Batangas, Laguna, Quezon, and Pampanga. **Meralco's franchise is in the nature of a monopoly because it does not have any competitor in its designated areas.** The actual monopolistic nature of Meralco's franchise was recognized and addressed by the framers of our Constitution, thus:
>
> MR. DAVIDE: [. . .]
>
> Under Section 15 on franchise, certificate, or any other form of authorization for the operation of a public utility, we notice that the restriction, provided in the 1973 Constitution that it should not be exclusive in character, is no longer provided. Therefore, a franchise, certificate or any form of authorization for the operation of a public utility may be exclusive in character.
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> MR. VILLEGAS: I think, yes.
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> MR. DAVIDE: It may be "yes." **But would it not violate precisely the thrust against monopolies?**
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> MR. VILLEGAS: The question is, we do not include the provision about the franchise being exclusive in character.
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> MR. SUAREZ: This matter was taken up during the Committee meetings. The example of the public utility given was the MERALCO. If there is a proliferation of public utilities engaged in the servicing of the needs of the public for electric current, this may lead to more problems for the nation. That is why the Commissioner is correct in saying that that will constitute an exemption to the general rule that there must be no monopoly of any kind, but it could be operative in the case of public utilities.
>
> MR. DAVIDE: **Does not the Commissioner believe that the other side of the coin may also be conducive to more keen competition and better public service?**
>
> MR. SUAREZ: **The Commissioner may be right.**
>
> MR. DAVIDE: Does not the Commissioner believe that we should restore the qualification that it should not be exclusive in character?
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> MR. SUAREZ: In other words, under the Commissioner's proposal, Metro Manila, for example, could be serviced by two

[26] *Id.*

> or more public utilities similar to or identical with what MERALCO is giving to the public?
>
> MR. DAVIDE: That is correct.
>
> MR. SUAREZ: The Commissioner feels that that may create or generate improvement in the services?
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> MR. DAVIDE: Yes, because **if we now allow an exclusive grant of a franchise, that might not be conducive to public service.**
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> MR. SUAREZ: We will consider that in the committee level.
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> MR. MONSOD: With the Commissioner's permission, may I just amplify this.
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> MR. VILLEGAS: Commissioner Monsod would like to make a clarification.
>
> MR. MONSOD: I believe the Commissioner is addressing himself to a situation where it lends itself to more than one franchise. **For example, electric power, it is possible that within a single grid, we may have different distribution companies. So the Commissioner is right in that sense that perhaps in some situations, non-exclusivity may be good for the public.** But in the case of power generation, this may be a natural activity that can only be generated by one company, in which case, prohibiting exclusive franchise may not be in the public interest.[27]

As cited by petitioners, Section 41 (c) of the NEA Act prohibits the grant of franchise to any other person within any area or portion for which a cooperative holds a franchise unless and except to the extent that (1) the cooperative's board consents thereto by resolution duly adopted or (2) the Public Service Commission determines that the cooperative is unable within a reasonable time, or is unwilling, to supply service therein in accordance with the provisions of section 37. However, the Constitution must always prevail.

In *Tawang Multi-Purpose Cooperative v. La Trinidad Water District*, a local water utility invoked against an applicant for a certificate of public convenience Section 47 of Presidential Decree (PD) No. 198, which states:

> SEC. 47. *Exclusive Franchise.* — No franchise shall be granted to any other person or agency for domestic, industrial or commercial water service within the district or any portion thereof unless and except to the extent that the board of directors of said district consents thereto by resolution duly adopted, such resolution, however, shall be subject to review by the Administration.

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[27] *Id.*

We underscored in said case that the Constitution prohibits the exclusivity of franchise. Thus, in case of any conflict between the Constitution and a statute, the latter yields to the former because the Constitution is the basic law to which all other laws must conform to.[28]

II. There was no violation of petitioners' right to due process

The Constitution mandates that a franchise cannot be exclusive in nature nor can a franchise be granted except that it must be subject to amendment, alteration, or even repeal by the legislature when the common good so requires. Petitioners anchor their argument on infringement of due process rights on the alleged absence of common good with the enactment of Republic Act No. 11918. However, this contention is not meritorious.

A perusal of the deliberations reveals that Congress exhaustively discussed the issues relevant to their determination of common good. Our legislators weighed in on the possible consequences to the remaining consumers of petitioners who will bear the brunt of the capital expenditures, as well as possible solutions to these perceived problems. In the final analysis, however, MORE was awarded a franchise in the areas that overlap with the coverage of petitioners' to promote a healthy competitive environment in the Province of Iloilo, especially considering the former's capability of offering lower rates than petitioners, *viz:*

> **Senator Gatchalian.** Thank you, Mr. President.
>
> Mr. President, let me reiterate and commend the good sponsor for looking for ways to improve services and lower down rates. And I join her in this quest and in this goal.
>
> It has always been my goal in the Committee on Energy to also look for bills and proposals to lower down electricity rates in our country.
>
> So, with that, Mr. President, I just want to continue our discussion earlier on. I think I was asking on the distribution rates or the DSM rates and I would like to ask the good sponsor, what is the latest distribution rate being charged by MORE, ILECO I, ILECO II, and ILECO III?
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> **Senator Recto.** Mr. President, based on the data available to the committee, as of May 3, ILECO I charges P1.91; ILECO II, as of April 20, P.1.97; ILECO III, as of April 23, P1.89; and MORE, as of April 18 to May 14, P.1.76.
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> [. . . .]

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[28] *Tawang Multi-Purpose Cooperative v. La Trinidad Water District*, 661 Phil. 390 (2011) [Per J. Carpio, *En Banc*].

Senator Recto. Those rates, as I mentioned earlier, ILECO I, May 3, 2022 – so these are current – ILECO II is April 20, 2022; ILECO III is April 23, 2022; and MORE is from April 18, 2022 to May 14, 2022.

Senator Gatchalian. [. . .] My next question, Mr. President, is on the number of households because I understand from this proposal that a huge portion of ILECO I, ILECO II will be occupied by MORE in the proposal. I just want to ask how many households will transfer to MORE from ILECO I, ILECO II, and ILECO III – the three cooperatives – if ever this proposal will be enacted.

Senator Recto. That would all depend, Mr. President. It will be hard to tell but the population of ILECO I is 134,000; the captive customer connection is roughly about 123,000. For ILECO II, the population is 141,000; the captive customer connection is 104,000. And ILECO III, there is a population of 462,000 but the captive customer connection is 67,000.

Senator Gatchalian. So, Mr. President, we ran some simulation – again, this is from NEA, 2021 data – and I just want to show this slide, slide 16. Based in the current setup, we can see that the households are quite distributed from different utilities. If Iloilo Province is 100% of the total number of connections, ILECO I will be 34%, ILECO II will be 28%, ILECO III will be 23%, and MORE right now will be 19% in terms of connections. But after looking at the proposal, and assuming that everyone will transfer to MORE because of the apparent low rates, we can see that there will be a surge in terms of connections. We can see that from a 13% market share of MORE, it will jump to about 45% market share. And I would just like to ask, with this sudden jump in terms of connection, will competition be stifled in this trend?

Senator Recto. Mr. President, I do not think that in one year, all of these households would immediately connect to MORE; maybe after a period of time. Nevertheless, we are introducing competition here that the consumers now can elect or choose between their service provider today, which is the electric cooperative, or MORE, for that matter. And so, this bill promotes competition.

Senator Gatchalian. [. . .] Mr. President, I am just putting this on record that with the proposal, we are actually creating a new giant in the Province of Iloilo, which is MORE, because right now, from 13% connection, it will now command to about 45%. So, we are actually creating a new utility giant in the Province of Iloilo as opposed to the present setup. If we see the present setup, it is quite equally distributed.

Senator Recto. Yes. Again, let me reiterate, nothing here mandates customers to go to MORE. *Wala tayong pinipilit dito.* What this bill provides is for consumers to have an option – either to go to the electric cooperative, the distribution utility, or to go to MORE, if they wish to, if MORE can provide better services at lower rates, and so on and so forth [. . .]

Senator Gatchalian. [. . .] Mr. President, another topic that came out during the hearing are the leftover customers because, apparently, MORE will be allowed to operate in areas included in the franchise of ILECO I, ILECO II, and some of ILECO III. And one of the gravest

concerns is what will happen to the leftover customers because [they] will now absorb the existing generation contracts, will have to absorb also the distribution cost and other costs. We inquired with the ERC on the effect of those that will be left behind after MORE goes into those franchise areas.

[. . . .]

[. . .] Assuming that all of the customers will move to MORE because of their apparent low rates, the rates of ILECO I will increase by P4.4, which is about 58%; ILECO II by P5.7, which is about 83%; and ILECO III, about P0.26, which is about 4.16%. ILECO III has the least because there is only one LGU that will be covered by the franchise.

[. . . .]

Mr. President, have the sponsor and the committee addressed this issue of spiking generation rates and spiking retail rates if ever [MORE] will be allowed to enter the various areas of the three ILECOs?

[. . . .]

Senator Recto. [. . .] [E]very time customers transfer to MORE Power, especially if it provides better service and lower rates, it means that there will be smaller consumer base for ILECO. So, that is correct. Given the level of investment that ILECO was already sunk in with decrease of consumers, the rate of ILECO may go up. But there are ways for their ILECO to minimize their cost, going forward, to minimize generation rates to their remaining customers. And they can sell or lease their distribution assets and the expansion area to MORE Power. The proceeds of that sale or lease can be used for the cost of their operation. ILECO can enter into a joint venture or technical service agreement and let MORE Power help them reduce their operating cost so that the cost of electricity of the power rates for their remaining customers will not increase.

[. . . .]

Senator Gatchalian. [. . .] So, Mr. President, I am quite concerned about that because, in effect, we are giving a few customers a chance to choose but the leftover customers will not have any chance to choose and, in effect, they will be absorbing the cost of the leftover contracts. xxx

[. . . .]

Senator Recto. [. . .] [T]here are two ways of going about it: 1) to even expand the franchise area of MORE; 2) [. . .] for ILECO to minimize their cost, going forward [. . .]

[. . .]

Senator Gatchalian. [. . .] [W]e have to somehow give certainty to the leftover customers because those proposals are still proposals, and we do not know if those proposals will, indeed, lower down electricity cost. [. . .] But what is certain is that in the computation or the simulation of ERC, ILECO I rates will increase by P4; ILECO II rates will increase by P5; and ILECO III by P2.6.

> **Senator Recto.** That is correct if ILECO does not do anything about it. [. . .] There are ways moving forward [. . .]. But it also cannot be denied that those customers who would choose MORE in the franchise area, there will be a reduction in electricity rates by roughly about P3.50.[29]

It also bears repeating that petitioners ILECO I, ILECO II, and ILECO III's franchise will expire on August 22, 2053, December 12, 2029, and August 10, 2039, respectively. Until then, without competition, petitioners can easily dictate the price of electricity on a take-it-or-leave-it basis, and consumers have no other choice.

Ultimately, a franchise is a privilege granted by the State. It is *not* an exclusive private property of the franchisee and must yield to serve the common good, as may be determined by Congress as the people's elected representatives. In the first place, the very essence of a franchise is to serve public welfare. Here, Congress decided that a healthy competition will improve public welfare in the Province of Iloilo.

III. The principle of non-impairment of contracts cannot prevail over the exercise of police power

As to what constitutes impairment of contracts under Section 10, Article III of the 1987 Constitution, we explained that there is an impairment if a subsequent law changes the terms of a contract between the parties, imposes new conditions, dispenses with those agreed upon or withdraws remedies for the enforcement of the rights of the parties.[30]

In the instant case, petitioners failed to prove how the enactment of Republic Act No. 11918 changed the terms of their contracts with their respective suppliers. That they are still obligated to pay their minimum contracted capacities (by virtue of a take-or-pay provision), verily, does not support the conclusion that there is any change in the terms of the contracts. Neither does the enactment of Republic Act No. 11918 impose new conditions, dispense with those agreed upon, or withdraw remedies for the enforcement of the rights of the parties in their power supply contracts and/or electric service agreements. On the contrary, that petitioners are still bound by their alleged take-or-pay provisions, in fact, shows that their power supply contracts and electric service agreements have not been impaired and that they remain as valid and efficacious notwithstanding the passage of Republic Act No. 11918.

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[29] Records of the Senate (May 23, 2022), pp. 19-24.

[30] *Siska Development Corp. v. Office of the President*, 301 Phil. 678 (1994) [Per J. Quiason, *En Banc*].

At this juncture, it is well to remember that under Section 23 of Republic Act No. 9136, or the EPIRA, distribution utilities (DUs), such as petitioners ILECO I, ILECO II, and ILECO III are mandated to supply electricity to their captive market in the least cost manner. Said section provides in part:

> SEC. 23. *Functions of Distribution Utilities.* — A distribution utility shall have the obligation to provide distribution services and connections to its system for any end-user within its franchise area consistent with the distribution code. Any entity engaged therein shall provide open and non-discriminatory access to its distribution system to all users.
>
> [. . .]
>
> A distribution utility shall have the obligation to supply electricity in the least cost manner to its captive market, subject to the collection of retail rate duly approved by the ERC.
>
> [. . .]

The foregoing provision now begs the question as to why petitioners ILECO I, ILECO II, and ILECO III, in contracting their power requirements, entered into take-or-pay provisions, which are onerous to the interests of the consumers. This, notwithstanding, petitioners are not without any recourse. If the issue of petitioners lies in the take-or-pay provisions, Rule 11, Section 7(d) of the Implementing Rules and Regulations of the EPIRA empowers the Energy Regulatory Commission (ERC), after due hearing, to stop and redress any unfair trade practice that harms the interests of the consumers, *viz:*

> SEC. 7. *ERC Responsibilities.* —
>
> [. . .]
>
> (d) ERC shall, *motu proprio*, monitor and penalize any market power abuse or anti-competitive or unduly discriminatory act or behavior, or any unfair trade practice that distorts competition or harms consumers, by any Electric Power Industry Participant. Upon finding of a *prima facie* case that an Electric Power Industry Participant has engaged in such act or behavior, the ERC shall after due notice and hearing, stop and redress the same. Such remedies shall, without limitation, include the separation of the business activities of an Electric Power Industry Participant into different juridical entities, the imposition of bid or price controls, issuance of injunctions in accordance with the Rules of Court, divestment or disgorgement of excess profits, and imposition of fines and penalties pursuant to Section 46 of the Act[.]

Even assuming arguendo that the subject law, indeed, changed the terms of their respective contracts, or that it unduly enlarged, abridged, or in any manner changed the intention of the contracting parties, it is well-settled that the State, in the exercise of its police power, like any other inherent power, may validly limit the non-impairment clause. This is so because in every contract, there is an implied reservation that it is subject to police power. This

is especially true in cases of a franchise, which partakes of the nature of a grant, which, in turn, is beyond the purview of the non-impairment clause of the Constitution.[31]

It must be also emphasized that police power is superior to property rights, including non-impairment of contracts. In *Carlos Superdrug Corp v. Department of Social Welfare and Development*,[32] we declared that when the conditions so demand, as determined by legislature, property rights must bow to the primacy of police power because property rights must yield to general welfare. Police power as an attribute to promote the common good would be diluted considerably if on the mere plea of petitioners that they will suffer loss of earnings and capital, the questioned provision is invalidated.[33]

In this case, as explained above, the Constitution is explicit that petitioners' franchise is subject to amendment, alteration, or repeal by the Congress. Hence, petitioners' respective certificates of franchise all contain conditions to the grant. For ILECO I, its "franchise is hereby granted subject to the decision, and to the conditionalities prescribed by this Commission in NEC Case No. 2005-03 and subject further to amendment, alteration, or repeal by the Congress of the Philippines when the common good so requires."[34] Meanwhile, for both ILECO II and ILECO III, their respective "franchise is hereby granted subject to existing laws, the rules and regulations of the Commission and the conditions prescribed in the decision of the Commission."[35] Thus, as between petitioners' existing contracts and police power, the latter must prevail. In other words, petitioner cannot validly prevent Congress from amending its franchise on account of its existing contracts.

IV. PHILRECA's motion to intervene must be denied

Intervention is not a matter of absolute right but may be permitted by the court only when the applicant shows facts which satisfy the requirements of the statute authorizing intervention. Under the Rules of Court, what qualifies a person to intervene is his possession of a legal interest in the matter in litigation or in the success of either of the parties, or an interest against both; or when he is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or an officer thereof. The legal interest must be of a direct and immediate character so that the intervenor will either gain or lose by the direct legal operation of the judgment. The interest must be actual and material, a concern which is more than mere

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31 *PAGCOR v. BIR*, 660 Phil. 636 (2011) [Per J. Peralta, *En Banc*].
32 553 Phil. 120 (2007) [Per J. Azcuna, *En Banc*]
33 *Id.*
34 *Id.* at 113.
35 *Id.* at 114–115.

curiosity, or academic or sentimental desire; it must not be indirect and contingent, indirect and remote, conjectural, consequential or collateral. However, notwithstanding the presence of a legal interest, permission to intervene is subject to the sound discretion of the court, the exercise of which is limited by considering whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties and whether the intervenor's rights may be fully protected in a separate proceeding.[36]

Guided by these principles, We find that PHILRECA's interest is not of a direct and immediate character because it is merely hinged on the rights of its members, ILECO I, ILECO II, and ILECO III, who are already petitioners in this case. Tellingly, PHILRECA merely reiterated the arguments raised by petitioners. Thus, allowing its intervention will serve no other purpose but delay the resolution of this case.

All told, petitioners cannot take refuge in the due process and non-impairment clauses, much less their constituting charters and/or franchises, to nullify the assailed law. Indeed, the enactment of Republic Act No. 11918 is founded on the promotion of the common good, that is to promote a healthy competitive environment in the Province of Iloilo, and their remedy, if any at all, does not lie in the Court, but in the ERC, which has been duly empowered by Congress to regulate power supply agreements.

ACCORDINGLY, in view of the foregoing, the instant Petition is hereby **DISMISSED.**

SO ORDERED.

RODIL V. ZALAMEDA
Associate Justice

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[36] *Virra Mall Tenants Association, Inc. v. Virra Mall Greenhills Association, Inc.*, 674 Phil. 517 (2011) [Per J. Sereno, Second Division].

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice

I dissent. See separate opinion

MARVIC M. V. F. LEONEN
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
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RICARDO R. ROSARIO
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JAPAR B. DIMAAMPAO
Associate Justice

JOSE MIDAS P. MARQUEZ
Associate Justice

ANTONIO T. KHO, JR.
Associate Justice

MARIA FILOMENA D. SINGH
Associate Justice

CERTIFICATION

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

ALEXANDER G. GESMUNDO
Chief Justice