

AN ACT GRANTING A FRANCHISE TO CHARLES M. SWIFT TO CONSTRUCT, MAINTAIN, AND OPERATE A HYDROELECTRIC PLANT AND ELECTRIC LIGHTING, HEATING, AND POWER SYSTEM AND ELECTRIC TRANSMISS...

Act No. 2361, February 28, 1914

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By authority of the United States, be it enacted by the Philippine Legislature, that:

SECTION 1. A franchise is hereby granted to Charles M. Swift, as assignee of the Manila Suburban Railways Company, to use and develop the public waters of the Caliraya River and its tributaries, for the generation, development, and distribution of electrical energy; to occupy from time to time such parts of the public domain, including land necessary for the construction of storage reservoirs, or other purposes, as may be necessary for the enjoyment of this franchise, to erect, maintain, and operate hydroelectric plants, with all necessary or convenient equipment and appurtenances, and to erect, construct, maintain, and operate any and all necessary or proper buildings, poles, wires, power-transmission lines, and all other necessary or proper constructions, excavations, erections, apparatus and appurtenances of every kind and nature whatsoever, for the development of water power and for the generation, development, transmission and distribution of electrical energy for light, heat, power, and other purposes: Provided, That the general surveys and plans of the grantee shall first be submitted to and approved by the Governor-General after having heard the provinces, municipalities, and any other entities and persons interested in or affected by said surveys and plans, before the grantee shall be empowered to commence work thereunder, and that after such approval all extensions and changes in the routes or lines of the grantee, and in the construction of his works may be made with the approval of the Governor-General after having heard the provinces, municipalities, and any other entities and persons invested in or affected by said surveys and plans: And provided further, That subject to the direction of the Governor-General, the grantee shall adopt such measures as may be necessary for maintaining in navigable condition those portions of the Bumbungan and Lumbang Rivers which are at present navigable, and which might otherwise be injured by the deviation of the waters of the Caliraya River authorized in this Act.

SEC. 2. A right of way through the public lands of the Philippine Government is hereby given and granted to the grantee for the construction, operation and maintenance of lines for the transmission of electrical energy as herein authorized to the extent of one hundred feet in width where it may pass through the public domain, together with all necessary lands for power stations and other structures, reservoirs, and dams, necessary for the maintenance and operation of any hydroelectric power plant or transmission lines: Provided, That the same be approved by the Board of Public Utility Commissioners: And, provided further, That the Philippine Government shall survey and define at the expense of the grantee the public lands so occupied: And provided further, That this paragraph shall only apply to public lands available for homestead settlement or for sale under the Public Land Act, or to timber lands of the Philippine Government, and shall not apply to lands used and assigned for other public purposes, nor to lands known as friar lands. The grantee shall have the right, with the approval of the Governor-General, to cross and occupy such parts of public roads, alleys, avenues and squares, and acquire title to such other municipal or provincial lands as may be necessary, on terms to be agreed upon by the grantee and the proper provincial or

municipal authorities, as the case may be, and in case of failure to agree upon the terms thereof, such terms shall be fixed by the Governor-General.

The grantee shall also have the right to acquire from corporations or private individuals, by purchase, contract, lease, grant, or donation any lands which may be necessary or useful for the construction, maintenance and operation of any and all power plants, lines for the transmission of electrical energy, or other works incident to the exercise of the powers granted by this franchise.

The grantee shall also have the power of eminent domain -eminent domain, and may acquire by condemnation any lands, waters and easements therein, or in either thereof, or other property or rights necessary or convenient for the exercise of this franchise. In the exercise of the power of eminent domain the grantee shall be entitled to all the rights, powers and privileges of immediate entry or otherwise granted to railway corporations in the exercise of such power under any existing or future laws of the Philippine Islands: Provided, That no land or part of any land acquired under this Act shall be used for purposes other than those specified herein.

SEC. 3. Within thirty days after the passage of this Act the grantee shall be given notice thereof, in writing, and within six months after he receives such notice, the grantee shall file in writing his acceptance of this grant and all the conditions thereof: Provided, however, That in such written acceptance the grantee shall include a clause reading as follows:

"The grantee, his administrators, agents, assigns and successors state in writing that they are informed of the message of the President of the United States addressed to the Filipino people and communicated to said people by the Governor-General of the Philippine Islands on the sixth day of October, nineteen hundred and thirteen, and of the reply message of the Philippine Assembly made in the name of the Filipino people and approved and sent on October sixteenth, nineteen hundred and thirteen; that said grantee, his administrators, agents, assigns, and successors bind themselves not to do anything by means of contributions in cash or otherwise, against the policy of the Government of the United States, and the aspirations of the Filipino people set forth in said messages, whether under the pretext of vested interests or under any other pretext."

SEC. 4. The grantee shall, before the expiration of two years next following the date of filing the written acceptance of this franchise, file with the Director of Public Works plans of the work proposed by him under the terms of this franchise. The grantee shall begin work under said plans within six months after the grantee has been empowered to commence work thereunder, as provided in section one of this Act, and the grantee shall complete the construction of said works and commence the operation of the same within five years after the grantee has been empowered to commence work thereon, unless prevented by act of God, public enemy, usurped or military power, martial law, riot, civil commotion, or inevitable cause. Should said grantee, for causes other than those mentioned above, default, in the time set either for such beginning or such completion, the grant herein and hereby made shall Extension of time. Be subject to forfeiture: Provided, That the Governor-General in any event may, in his discretion, extend the time for either such beginning or such completion.

SEC. 5. Within ninety days after the acceptance by the grantee of the conditions of this franchise, as provided by section three, the grantee shall deposit in the Treasury of the Philippine Islands, in favor of the Government of the Philippine Islands, the sum of one hundred thousand pesos in securities approved by the Governor-General, or shall give a bond in a like sum to be approved by the Governor-General as security for the compliance by the grantee with this franchise: Provided, That if the grantee shall complete the construction as provided by section four, the said deposit shall be returned to the said grantee or the said bond shall be canceled, as the case may be. But if the grantee within the time mentioned shall fail to comply with his obligations under section four, the Government of the Philippine Islands may, by appropriate action recover the said sum or declare a forfeiture of the bond as liquidated damages.

If the said deposit shall be of interest bearing securities, the interest upon the same shall be collected by the Insular Treasurer and paid to the grantee, provided the said grantee complies with the conditions herein prescribed; otherwise, and in case of forfeiture, the accrued interest shall also be forfeited to the Government of the Philippine Islands.

SEC. 6. The grantee shall operate and maintain a service in the supply of electrical energy subject to the provisions of section ten of this Act, for the benefit of all persons, firms and corporations whom the grantee can reasonably serve, as in this franchise provided, without discrimination or preference, and the grantee shall have all the customary rights, powers, duties and privileges pertaining to similar public service enterprises, and shall be subject to the same supervision and regulation as similar public utilities.

SEC. 7. The grantee shall have, and is hereby expressly given, the right to charge and collect tolls, rates, and compensation for the supply of electrical energy and for other services rendered in the exercise of the powers hereby conferred: Provided, That such tolls, rates, and compensation shall be and are hereby expressly made subject to reasonable regulation and revision under the laws of the Philippine Islands.

SEC. 8. The system of water-power development and electrical transmission to be installed by the grantee shall be in conformity with the best American practice, and shall be constructed and maintained in such manner as the progress of science and improvements in the development of motive power may make reasonable and proper.

SEC. 9. The grantee shall hold the Government of the Philippine Islands harmless from all claims, accounts, demands, or actions arising out of accidents or injuries, whether to property or persons, by reason of the construction and operation of said system and lines for the supply and transmission of electrical energy.

SEC. 10. Within ninety days after the date of an application therefor, the grantee shall furnish electrical energy to any applicant therefor in the territory reached by the power transmission lines of the grantee. As between two or more of such applicants, electrical energy shall be furnished in the order of the date of the applications therefor up to the limit of the capacity of supply of said system. Should such capacity at any time be exceeded by the demand, the grantee shall within a reasonable time after demand therefor by and a hearing before the Board of Public Utility Commissioners, or any other officer or officers of the Government of the Philippine Islands to whom this duty may be assigned by law, increase such capacity up to the limit of the hydraulic power economically available at the power site: Provided, That the cost of making connection for any applicant shall be borne by the grantee and such applicant in such proportion as may be just and reasonable, and the Board of Public Utility Commissioners, or any other officer or officers of the Government of the Philippine Islands to whom this duty may be assigned by law, shall determine such proportion by an order made after reasonable notice and hearing.

SEC. 11. The grantee may, for the purposes of this franchise or any of them, take water from the Caliraya River and may, under the power of eminent domain delegated to him by this Act, and in pursuance thereof, upon payment of due compensation therefor intercept and divert the flow of waters from lands of riparian owners and from persons owning or interested in waters which are or may be necessary for said purposes, and may alter, straighten, obstruct, or increase the flow of water in streams or water channels intersecting or connecting therewith or contiguous to his works or any thereof. During the period in which this franchise shall be in force all unappropriated water of the Caliraya River shall be, and hereby is, reserved from appropriation by any other person, firm, or corporation under any general or special law relating to the appropriation of public waters.

SEC. 12. Orders by virtue of which lands, water, and Recording of orders. water rights, easements, and other property and rights shall be acquired in condemnation proceedings, and all instruments by virtue of which the grantee may acquire any such lands, water and water rights, easements, and other property and rights, may be recorded in the office of the register of deeds of the province in which said property or rights are situated, and

such records shall have the same force and effect as the records of conveyances of real estate under the laws of the Philippine Islands.

SEC. 13. The grantee shall be liable to pay the same Taxes-taxes on his real estate, buildings, plant (not including transmission lines, poles, and wires), machinery, and personal property as other persons are now or hereafter by law may be required to pay. The grantee shall further pay to the Treasury of the Philippine Islands one and one-half per centum of the gross receipts received from the sale of electric light, heat and power. Said percentage shall be due and payable monthly, and shall be in lieu of all taxes and assessments whatsoever of the Government of the Philippine Islands or any subdivision thereof upon the privileges granted herein, earnings, income, franchise, poles, wires, and power transmission lines of the grantee, from which taxes and assessments the grantee is hereby expressly exempted: Provided, That the said grantee shall be exempt from the payment of all taxes until the commencement of operations under this franchise.

SEC. 14. The grantee shall keep a record of all receipts from the sale of electrical energy, which record shall be subject to inspection in Manila by the Auditor for the Philippine Islands, who shall audit and approve the accounts of the grantee at the end of each month before the payment of the said percentage tax. The accounts audited and approved as herein provided, shall be final and conclusive evidence of the liability of the grantee in the absence of fraud or mistake.

SEC. 15. Whenever any franchise or right of way is granted to or acquired by any other person or corporation now or hereafter in existence over or across portions of the lines of the grantee herein, the terms upon which such other person or corporation shall use or cross the said lines and right of way and reasonable regulations for the use thereof, and the compensation to be paid to the grantee herein by such other person or corporation for said use, shall be determined by the Board of Public Utility Commissioners ; and whenever any existing right of way or franchise is crossed or occupied by the lines or right of way of the grantee herein, terms and compensation shall be likewise determined.

SEC. 16. The franchise herein granted shall be subject to amendment, alteration, or repeal by the Congress of the United States and any and all lands or rights of use and occupation of lands or waters herein granted, or which may hereinunder accrue to said grantee, shall revert to the Insular Government or to the respective provinces or municipalities, as the case may be, upon the termination of this franchise by forfeiture, repeal, or expiration in due course.

SEC. 17. It shall be a condition for the enjoyment of this franchise that Charles M. Swift, the grantee, shall, before six months from the date of the passage of this Act, cause a corporation to be formed under the laws of the Philippine Islands or under the laws of the United States or any State thereof, and whose charter shall comply with the laws prevailing in these Islands, to take over this franchise and perform the terms thereof to be performed by the grantee hereof, in which no stock shall be issued or bonds sold except in exchange for actual cash or for property at a fair valuation equal to the par value of the stocks or bonds so issued or sold, and in which no stock or bond dividends shall be declared.

SEC. 18. The books and accounts of such corporation shall be subject to official inspection in Manila by the Auditor of the Philippine Islands or his authorized deputy, and by the Board of Public Utility Commissioners.

SEC. 19. Any person or persons who shall wilfully or maliciously destroy, injure, or interfere with any canal, raceway, ditch, lock, pier, inlet, crib, bulkhead, dam, gate, sluice, reservoir, aqueduct, conduit, pipe, culvert, post, abutment, conductor, cable, wire, insulator or other work, machinery, building, or property of the grantee, or who shall wilfully or maliciously do any act which shall injuriously affect the water or electrical energy of the grantee, or the supply, quantity, transmission or regulation thereof, shall upon conviction thereof in any court of competent

jurisdiction be fined in a sum of not to exceed five thousand pesos, penalty, or be imprisoned for a term of not to exceed two years, or both fined and imprisoned, at the discretion of the court, and the injured party shall have the right to recover all damage suffered and costs of suit in a separate civil action in any court of competent jurisdiction.

SEC. 20. Mortgages or deeds of trust executed by said corporation upon its property, or any part thereof, for the purpose of securing bond or note issues of the corporation, may be recorded with the division of archives, patents, copyrights and trade-marks of the Executive Bureau in the manner and upon the conditions provided in Act Numbered Twenty-two hundred and forty-three providing for the record of mortgages or trust deeds issued by public service corporations to secure bonds and for other purposes.

SEC. 21. The duration of this franchise shall be for Duration of ninety-nine years from the date of the passage of this Act, unless terminated before that date by forfeiture or surrender to the Government of the Philippine Islands, and at the expiration of said ninety-nine years the property covered by and used in connection with this franchise shall become the property of the Government of the Philippine Islands.

SEC. 22. At any time after October twentieth, nineteen sale to Government, hundred and twenty-seven, if the city of Manila shall have acquired the franchises granted by Acts Numbered Four hundred and eighty-four and Fourteen hundred and forty-six, as amended, the Government of the Philippine Islands, or any political subdivision to which it may assign the right, may purchase and the grantee shall sell, all of its water, water rights, lands, buildings, lines, equipment, apparatus, rights under this franchise, and other property used by it for the generation, development, and distribution of electrical energy at a valuation based upon the net earnings of the grantee, the valuation to be determined, after hearing evidence, by the Supreme Court of the Philippine Islands, sitting as a board of arbitrators, whose decision, by a majority of the members thereof, shall be final: Provided, That in case the Government of the Philippine Islands or any political subdivision to which it may assign the right purchases the same within twenty years from and after the date when the plant began operation, such valuation shall be at least an amount equal to the actual cost plus ten per cent, and also plus such additional amount as shall assure the grantee a return in cash equal to an average of not less than ten per cent on such actual cost for each year during the period of operation: And provided further, That the grantee shall adequately provide for maintenance and depreciation of its property and the safeguarding of its investment, and that all unexpended reserves making provision for the same shall become the property of the purchaser without additional compensation.

SEC. 23. Whenever and wherever in this Act the word "grantee" is used, the said word is to be and shall be taken and understood to mean "Charles M. Swift, his representatives, successors or assigns," and whenever and wherever in this Act the word "grant" is used, the said word is to be and shall be taken and understood to mean "franchise."

SEC. 24. The corporation organized by the grantee of this franchise shall not be authorized to alienate the same without the consent of the Governor-General.

SEC. 25. The grantee of this franchise shall pay a sum equivalent to six pesos for each million of cubic feet of capacity of the reservoirs. In case of disagreement, the sum shall be determined by the Board of Public Utility Commissioners, subject to appeal to the Governor-General, whose decision shall be final.

SEC. 26. This Act shall take effect on its passage.

Enacted, February 28, 1914.

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