

AN ACT GRANTING TO THE MANILA RAILROAD COMPANY OF THE PHILIPPINE ISLANDS A CONCESSION TO CONSTRUCT A RAILROAD IN THE ISLAND OF LUZON.

Act No. 2836, March 18, 1919

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Be it enacted by the Senate and House of Representatives of the Philippines in Legislature assembled and by the authority of the same:

SECTION 1. Authority is hereby granted and given to the Manila Railroad Company of the Philippine Islands, a corporation duly organized and existing under and by virtue of the laws of the Philippine Islands, and to its successors and assigns, to locate, construct, furnish, maintain, and operate certain railways on the Island of Luzon, in the Philippine Archipelago, on terms and conditions set out in the following concessionary grant, or contract:

This instrument, made, executed, and entered into this day of..... Anno Domini One thousand nine hundred and nineteen, by and between the Philippine Government, by the Governor-General of the Philippine Islands, of the one part, and the Manila Railroad Company of the Philippine Islands, a corporation duly organized and existing under and by virtue of the laws of the Philippine Islands, of the other part, witnesseth that:

Whereas, under and by virtue of section twenty-eight of the Act of the Congress of the United States, approved August twenty-ninth, nineteen hundred and sixteen, the Government of the Philippine Islands was authorized and empowered to grant franchises, privileges, concessions, and rights, including the authority to exercise the right of eminent domain, for the construction and operation of works of public utility and service, as by reference thereto will more fully appear; and

Whereas, the Manila Railroad Company of the Philippine Islands, a corporation organized and existing under and by virtue of the laws of the Philippine Islands, has applied for a franchise to construct and operate a railroad line in the Island of Luzon along the route hereinafter described;

In consideration thereof, it is conceded and granted by the Government of the Philippine Islands (hereinafter referred to as the Government), of the one part, and contracted and agreed by the party of the second part (hereinafter referred to as the grantee), for itself, and for its successors and assigns, of the other part, as follows:

1. The grantee, and its successors and assigns, are hereby authorized by the Government to construct, equip, maintain, and operate in perpetuity lines of railway in the Philippine Islands, generally and approximately as follows, and subject to such variations and such extensions of the main stem, not exceeding twenty-five miles each, as may be approved by the Governor-General:

On the Island of Luzon: A line from Cabanatuan, in the Province of Nueva Ecija, in a northerly direction to Pantabangan, in the Province of Nueva Ecija; thence to Ilagan, in the Province of Isabela; thence to Tuguegarao, in the Province of Cagayan; thence to Aparri, in the Province of Cagayan.

The grantee may, with the consent of the Governor-General, in addition to the lines named, construct branch lines

to reach traffic points within a reasonable distance from the main lines of the railways.

Surveys on and along the several proposed lines shall be commenced by the grantee within sixty days after written demand therefor shall be made to the grantee by the Governor-General; detailed reports of the definite plans, surveys, and specifications, accompanied by complete maps and profiles of the character and kind in respect of such construction and equipment directed by the Governor-General, showing the course, direction, length, and grade of the line in each section or district, and embodying also estimates of the costs of such construction and equipment, shall, in writing, be submitted to the Governor-General through the Director of Public Works, within six months after said demand, or at such later time as may be permitted by the Governor-General; and within two months after the submission thereof to the Governor-General the latter shall fix and determine the final route, substantially in accordance with the routes as above generally described.

2. Under and by virtue hereof, the 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 the railroad or railroads as herein authorized to the extent of one hundred feet in width where it may pass through the public domain, including all necessary ground for depots, machine shops, station buildings, workshops, water stations, warehouses, terminals, including wharves and clock fronts, switches, side tracks, and turntables, and also such extra lands beyond such one hundred feet as may be found necessary for said purposes: Provided, That the same be approved by the Governor-General as a part of the definite plans hereinbefore provided for, and the right, power, and authority shall thereunder be given to said grantee, with the written approval of the Governor-General, to open and work quarries and gravel pits, to collect earth and stone, to cut timber, to mine for materials and to build and operate kilns for lime, gypsum, and brick, upon any public lands; but the provisions of this paragraph shall only apply to public lands available for homestead settlement, lease or sale under the Public Land Act, or to timber lands of the Philippine Government, and shall not apply to lands reserved for military purposes, or to lands used and assigned for other public purposes, nor to the lands known as the "Friar Lands."

The grantee shall have the right, with the approval of the Governor-General, to cross or occupy such parts of public roads, alleys, avenues, and squares, 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 Reversion.

Lands or rights of use and occupation of lands granted under the foregoing provisions of this paragraph shall revert to the governments by which they were respectively granted upon the termination of this franchise or concession, or upon its revocation or repeal.

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 the said lines of railway or any of them.

The grantee shall have the right to acquire by condemnation the lands necessary for the right of way, for bridges, for terminals—including wharves and docks at harbor points and elsewhere—for sidings, stations, engine houses, water stations, and other appropriate buildings and structures for the proper and convenient construction, operation, and maintenance of the lines of railway herein authorized; but no land within the boundaries of any province, city, town, or municipality shall be occupied by the grantee if the same is being used for governmental, provincial, or municipal purposes, nor shall any land within the limits of any city, pueblo or municipality be occupied without the consent of the proper authorities thereof, except by permission of the Governor-General. The right of condemnation or eminent domain shall be exercised by the grantee in accordance with the laws of the

Philippine Islands at the time being in force.

The grantee shall also have the right to conduct water to the railroad for the use of the same and to cross any railway, tramway, river, stream, water course, lake, canal, and shore, and to construct, alter, substitute, and maintain for the operation of said railways any and all tracks (single, double, or more), bridges, tunnels, embankments, aqueducts, viaducts, culverts, fences, and other structures, passages, conduits, drains, abutments, arches, cuttings, and stockades; and all depots, stations, engine houses, car houses, freight houses, wood houses,' and other buildings; and all machine shops and other shops, water tanks, turntables, superstructures, erections and fixtures; and all elevators, warehouses, wharves, piers, and other facilities, terminal or otherwise, for operating said railroads, and also any hotels or restaurants at any station or terminal.

3. All tracks of all the said lines of railway shall be of the gauge of three feet six inches, so that when completed the gauge of all lines covered hereby shall be uniform, and the construction, equipment, and rolling stock shall be in every respect first class, and in accordance with the approved definite plans, and, with due regard to local conditions, shall be equal in quality to the best American practice. This specification as to gauge may be modified with the approval of the Governor-General. And the said grantee hereby agrees to construct and complete and put in operation an average of not less than one hundred kilometers of main track per annum, after the approval of the final plans for the same, such work to be commenced at the option of the grantee, at the southern or northern terminal of its proposed lines, or at each of such terminals, simultaneously or successively.

Extension of time of completion may be granted by the Governor-General, in his judgment, for good cause shown.

The said railways shall be operated as commercial railways for the transportation of passengers, freight, goods, express, and mail: Provided, That in his operation the grantee shall be bound to fulfill the duties prescribed by chapter two of Act Numbered Fourteen hundred and fifty-nine, regarding the service to be rendered and the measures to be taken for the custody and safety of the passengers and goods transported: Provided also, That on written demand of the Governor-General, preference of carriage shall be given over said lines of railway, or any part thereof, to business offered by the Government of the United States or of the Philippine Islands, or to officers and employees of the Insular and provincial governments of the Philippine Islands, or to officers, soldiers, and sailors of the Army and Navy of the United States in the Philippine Islands, and their families.

4. The motive power of said railways shall be steam, except that, with the consent of the Governor-General, any of said lines may be operated by electricity or other equivalent power.

5. The grantee, in respect of any of said railways, shall permit (and the Philippine Government shall be empowered to reserve to itself the right to grant the proper permission) any other railway now constructed or hereafter to be constructed in the Philippine Islands, to form and establish traffic connections or arrangements with it on fair and equitable terms, to be determined, in case of disagreement, by the Public Utility Commissioner, who will act on the matter as in any ordinary case before said tribunal.

6. The grantee and its contractors and subcontractors shall, so far as possible, give preference to such satisfactory laborers as may be found along the lines of railway, and the employment of labor shall be at all times under the reasonable direction of the Governor-General of the Philippine Islands: Provided, That the grantee shall not use, employ or contract for the labor of persons claimed or alleged to be held in involuntary servitude.

All material employed in the construction of the lines shall be of first class and quality, adapted to the conditions of the country, and equal to the best American practice for railroads of similar gauge. Definite specifications as regards all construction shall be approved by the Governor-General of the Philippine Islands.

7. The grantee shall have the right to construct and operate telegraph, telephone, and electrical transmission lines over said right of way for use in the construction and operation of said railways, and also, with the consent of the Governor-General, for public service and commercial purposes, but the latter privileges shall be subject to the following provisions:

In the construction of telegraph or telephone lines along the right of way, the grantee shall erect and maintain poles with sufficient space thereon to permit the Philippine Government, at its expense, to place, and itself or by the United States Government to operate and maintain, four wires for telegraph, telephone, and electrical transmission for any purpose between the termini of the lines of railway; and the Philippine Government reserves to itself the right to construct, maintain, and operate telegraph, telephone, or electrical transmission lines over the right of way of said railways for commercial, military, or governmental purposes, without unreasonably interfering with the construction, maintenance, and operation by the grantee of its railways, telegraph, telephone, and electrical transmission lines.

The grantee shall furnish suitable telegraph offices and operators at its stations for public use, when so directed by the Governor-General, on payment of reasonable compensation for the service.

In case that the grantee shall operate telegraph, telephone or electrical transmission lines for public service or commercial purposes, prior to such operation, it must file with the Public Utility Commission its rate schedule and statement showing the equipment to be used and kind of service to be rendered.

8. All material imported into the Philippine Archipelago for the construction and equipment of the railways undertaken by the grantee, pursuant to authority conferred by this contract or grant shall be admitted free of duty, under such rules and regulations as shall be prescribed by the Philippine Government: Provided, That this provision shall not extend or apply to any portion of such lines, or to any material or supplies therefor, after the same shall be constructed and equipped: Provided further, That if any material admitted free of duty shall not in fact be used for the construction and equipment of said railroads the duty shall become payable thereon whenever it is ascertained that it has been used or disposed of or is held for other purposes: And, provided further, That this exemption shall extend to port charges upon vessels whose entire cargo consists of material for the construction or equipment of the railways, and to such proportion of the prescribed port charges on other vessels as the tonnage of material for such construction or equipment may bear to the tonnage of the entire cargo of the vessel.

9. The grantee, its successors or assigns, may by consent of the stockholders holding a majority of the issued capital stock, and by compliance with any other requisite of the laws of the Philippine Islands relating to the incurrance of bonded indebtedness by railroad corporations, mortgage all corporate property, real and personal, pertaining to the grantee and used or intended for use, directly or indirectly, with its proposed railroad, and the franchise hereby granted, or execute deeds of trust thereof to trustees selected by such stockholders, to secure payment of bonds or notes issued by the grantee for the purpose of securing money for its legitimate corporate purposes, including the construction and equipment of its road: Provided, That such mortgage or deed of trust shall be subject in all respects to the terms of this concessionary grant.

10. If the grantee make breach of any of the conditions hereof, or of any of the obligations by it assumed hereunder, in respect to the construction of said railways, and shall allow the same to continue for upward of six months, after notice in writing from the Philippine Government to the grantee, then, in such case, at any time thereafter, the Philippine Government may, at its option, and at the cost and expense of the grantee, do and perform any and all acts and things which it may deem useful and necessary to insure the construction, equipment, and completion of the railways covered hereby or the fulfillment of such condition or obligation, as the case may be; and in said event such cost and expense shall thereupon thenceforth be and become a debt of the grantee

payable immediately, and a lien upon the said railways and all franchises and property relating thereto, subject only to recorded mortgages previously existing thereon, and shall be enforceable by foreclosure in the same manner as if secured by a mortgage junior only to said prior recorded mortgages. Or alternatively, and at the exclusive option of the Philippine Government, this franchise may be wholly cancelled and revoked.

11. The Government of the Philippine Islands, through the Bureau of Audits and the Bureau of Public Works, and by such other agencies as may be fixed by law hereafter, shall have the power, by monthly or other regular inspection of the books, accounts, vouchers, and other papers, and by special inspection of the works accomplished and the construction made, if in its judgment necessary, to keep itself advised of the financial condition and actual operations of the grantee to enable it to exercise the powers vested in the Philippine Government by law in respect of this franchise and concession, and especially to verify the statements in the financial reports of the railroad company as to construction, maintenance, and operation, with a view to the proper enforcement and execution of the obligations of the grantee as contained in this franchise.

12. In consideration of the premises and of the granting of this concession or franchise, there shall be paid by the grantee to the Philippine Government, annually, for the period of thirty years from the date hereof, an amount equal to one per centum of the gross earnings of the grantee in respect of the lines covered hereby for each preceding year; after said period of thirty years, and for fifty years thereafter, the amount so to be paid annually shall be an amount equal to one and one-half per centum of such gross earnings for each preceding year; and after such period of eighty years the percentage and amount so to be paid annually by the grantee shall be fixed by the Philippine Government. Such annual payments, when promptly and fully made by the grantee, shall be in lieu of all taxes of every name and nature—municipal, provincial, or central— upon its capital stock, franchises, right of way, earnings, and all other property owned or operated by the grantee under this concession.

13. The right is hereby given to the grantee to fix, charge, and collect just and reasonable individual rates, joint rates, commutation rates, mileage, tolls, fares, charges or schedule for carriage of freight and passengers, but in the exercise of this right the grantee shall be subject to the general supervision and control of the Public Utility Commission of the Philippine Islands as other public utilities operating within the Philippine Islands with regard to their rates.

14. The said railway lines, and each thereof, shall be post routes and military roads, subject to the use of the Government of the Philippine Islands and the Government of the United States of America for postal, military, naval, and other governmental service, and also subject to such reasonable regulations restricting the charges for such government transportation, as may be approved by the Secretary of Commerce and Communications, so far as the Philippine Government is concerned, and by the Commanding-General of the American Division of the Philippines, so far as the military and naval services are concerned.

The grantee binds itself to provide on its trains the necessary facilities for carrying the mails subject to terms and conditions agreed upon by the Secretary of Commerce and Communications and the grantee; and in case of failure to arrive at an agreement, the Public Utility Commissioner shall establish such terms and conditions, after hearing the grantee; but the compensation for carrying the mails shall, under all circumstances, be a reasonable amount fixed with due consideration of the conditions existing in the Philippine Islands.

A reasonable compensation shall be allowed for carrying urgent mail, troops, silver in bullion, ammunition or freight for the Government at other hours or at a greater speed than that of the ordinary passenger trains. The grantee shall provide the necessary facilities for this purpose at any hour of the day or the night.

15. The grantee shall at all times have and fix, by corporate declaration satisfactory to the Governor-General, a place where the principal office of the corporation is to be established or located, which place must be within the

Philippine Islands, and shall appoint and designate a representative or agent at all times fully qualified and empowered to treat with the Philippine Government in respect of all matters arising hereunder, and upon whom process may be served in any judicial proceeding for any object or purpose, whether arising hereunder or otherwise, and upon whom also any and all notices, demands, tenders, deliveries, and communications may be given or made to, for, or in behalf of the grantee hereunder, and its and their successors and assigns; and all processes so served and all notices, demands, tenders, delivers, and communications so made shall be legal, sufficient, and binding upon the grantee, and upon its and their successors and assigns, as if made to it or them in person: Provided, That in the absence of this representative or agent, judicial process shall be made in accordance with the provisions of the Philippine Code of Civil Procedure.

16. This franchise or concession is subject to amendment, alteration, or repeal by the Philippine Legislature or by the Congress of the United States.

The grantee shall not issue stocks or bonds except in exchange for actual cash paid to the corporation, or for property actually received by it at a fair valuation, equal to the par value of the stock or bonds so issued; and shall not make or declare any stock or bond dividends or any dividend whatever except from the surplus profits arising from its business, or divide or distribute its capital stock or property other than actual profits among its members or stockholders until after the payment of its debts and the termination of its existence by limitation or lawful dissolution.

The foregoing and all other terms and provisions of section twenty-eight of the Act of Congress of August twenty-ninth, nineteen hundred and sixteen, as well as the provisions of Act Numbered Fourteen hundred and fifty-nine relating to railroad corporations so far as not inconsistent with the provisions of this franchise and concession and with the exception of sections eighty-two, eighty-four, ninety-eight, and ninety-nine, are incorporated into and made a part hereof, with the same effect as if they were set forth herein at length.

17. The word "grantee" herein shall be held to include and apply to the successors and assigns of said grantee.

18. This franchise shall not take effect until the grantee shall have obtained from the Public Utility Commission a certificate showing the public necessity and convenience of the same, in accordance with the purpose of section twenty-three of Act Numbered Twenty-three hundred and seven, as amended, and shall have filed such certificate with the Governor-General, and said grantee shall make application for such certificate within three months from and after the date of the approval of this Act, and if this period expires without its having made such application, this franchise shall become null and void. This franchise shall also become null and void if the grantee fails to file with the Governor-General, within sixty days from and after the date on which it secured the certificate hereinbefore required, its acceptance in due form of the terms and conditions set forth in this Act, together with said certificate: Provided, That upon making such acceptance, the grantee shall also state in writing that it accepts as a necessary part of this concession the following condition, to wit:

"That the grantee states in writing that it is 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 binds itself not to engage in or aid, by means of contribution in cash or otherwise, any propaganda directed against the policy of the Government of the United States outlined in such message of the President and the aspirations of the Filipino people set forth in said reply message of the Philippine Assembly, whether under the pretext of vested interests or under any other pretext, and that said grantee further binds itself to exact a similar engagement from its administrators, agents, successors, and assigns."

By the acceptance hereof, the grantee stipulates and agrees that any railways constructed by virtue of these presents shall accord with the terms and conditions herein imposed and shall be maintained in perpetuity as commercial railways and common carriers in a manner suitable to the local conditions. necessity:

In witness whereof, by virtue of authority conferred Execution, upon him, this instrument, in triplicate, is executed by the Governor-General of the Philippine Islands on behalf of the Philippine Government.

Done the day and year first above written.

The Philippine Government.

[SEAL.] By.....

Governor-General of the Philippine Islands.

SEC. 2. The Governor-General of the Philippine Islands is hereby authorized and directed to execute, for and on behalf of the Philippine Government, the contract or grant set out in section one hereof, and to receive on said behalf one of the triplicate copies thereof, when the same are fully executed.

SEC. 3. This Act shall take effect on its approval.

Approved, March 8, 1919.

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