

FURTHER AMENDING CERTAIN SECTIONS OF REPUBLIC ACT NUMBERED SIXTY-THREE HUNDRED NINETY-FIVE ENTITLED “AN ACT REVISING THE CHARTER OF THE NATIONAL POWER CORPORATION”; AS AMENDED B...

PRESIDENTIAL DECREE NO. 938, May 27, 1976

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WHEREAS, in view of the accelerated expansion program for generation and transmission facilities which includes nuclear power generation, the present capitalization of National Power Corporation (NPC) and the ceilings for domestic and foreign borrowings are deemed insufficient;

WHEREAS, in the implementation of the power expansion program, NPC is encountering difficulties in the acquisition of land and land rights which unnecessarily stall and delay the prosecution of the works to the prejudice of the projects;

WHEREAS, corollary to such right-of-way problems, a definitive declaration of the just compensation for the land and land rights acquired by NPC for its projects should be effected;

WHEREAS, in the application of the tax exemption provisions of the Revised Charter, the non-profit character of NPC has not been fully utilized because of restrictive interpretations of the taxing agencies of the government on said provisions;

WHEREAS, in view of the changing economic condition obtaining in the country, the ceilings provided for in the award of contracts for construction and furnishing of supplies, materials and equipment have been rendered inadequate;

WHEREAS, in order to effect the accelerated expansion program and attain the declared objective of total electrification of the country, further amendments of certain sections of Republic Act No. 6395, as amended by Presidential Decrees Nos. 380, 395 and 758, have become imperative;

WHEREAS, the substantial expansion of the power development program to be implemented by NPC requires revitalization of the organization and flexibility in responding to the dynamic changes in its program;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order and decree as follows: SECTION 1. Section 3 (h) of Republic Act No. 6395 as amended, is hereby deleted. The new section shall read as follows:

"(h) To acquire, promote, hold, transfer, sell, lease, rent, mortgage, encumber and otherwise dispose of property incident to or necessary, convenient or proper to carry out the purposes for which the Corporation was created."

SEC. 2. Section 3 (i) of the same Act is further amended by deleting paragraphs (a), (b) and (c) thereof. A new section is hereby inserted to read as follows:

"(i) To construct works across, or otherwise, any stream, water-course, canal, ditch, flume, street, avenue,

highway, or railway of private and public ownership, as the location of said works may require; Provided, that said works be constructed in such a manner as not to endanger life or property; And Provided, further, that the stream watercourse, canal, ditch, flume, street, avenue highway or railway so crossed or intersected be restored as near as possible to their former state or in a manner not to impair unnecessarily their usefulness. Every person or entity whose right-of-way or property is lawfully crossed or intersected by said works shall not any such crossings or intersections and shall grant the Corporation or its representatives, the pro-per authority for the execution of such work. The Corporation is hereby given the right-of-way to locate, construct, and maintain such works over and throughout the lands owned by the Republic of the Philippines or any of its branches and political subdivisions. The Corporation or its representatives may also enter upon private property in the lawful performance or prosecution of its business or purposes, including the construction of the transmission lines thereon; Provided, that the owner of such private property shall be paid the just compensation therefor in accordance with the provisions hereinafter provided; Provided, further, that any action by any person claiming compensation and/or damages shall be filed within five (5) years after the right-of-way, transmission lines, sub-stations, plants or other facilities shall have been established; Provided, finally, that after the said period no suit shall be brought to question the said rights-of-way, transmission lines, substations, plants or other facilities nor the amounts of compensation and, or damages involved."

SEC. 3. Section 3 (j) of the same Act is hereby amended to read as follows:

"(j) To exercise the right of eminent domain for the purpose of this Act in the manner provided by law for instituting condemnation proceedings by the national, provincial, and municipal government as modified or amended by Presidential Decree No. 42."

SEC. 4. A new section shall be inserted to be known as Section 3-A of the same Act to read as follows:

"SEC. 3-A. In acquiring private property or private property rights through expropriation proceedings where the land or portion thereof will be traversed by the transmission lines, only a right-of-way easement thereon shall be acquired when the principal purpose for which such land is actually devoted will not be impaired, and where the land itself or portion thereof will be needed for the projects or works, such land or portion thereof as necessary shall be acquired.

In determining the just compensation of the property or property sought to be acquired through expropriation proceedings, the same shall—

"(a) With respect to the acquired land or portion thereof, not exceed the market value declared by the owner or administrator or anyone having legal interest in the property, or such market value as determined by the assessor, whichever is lower.

"(b) With respect to the acquired right-of-way easement over the land or portion thereof, not exceed ten per cent (10%) of the market value declared by the owner or administrator or anyone having legal interest in the property, or such market value as determined by the assessor, whichever is lower.

"In addition to the just compensation for easement of right-of-way, the owner of the land or owner of the improvement, as the case may be, shall be compensated for the improvements actually damaged by the construction and maintenance of the transmission lines, in an amount not exceeding the market value thereof as declared by the owner or administrator, or anyone having legal interest in the property, or such market value as determined by the assessor whichever is lower; Provided, that in cases any buildings, houses and similar structures are actually affected by the right-of-way for the transmission lines, their transfer, if feasible, shall be effected at the expense of the Corporation: Provided, further, that such market value prevailing at the time the Corporation gives notice to the landowner or administrator or anyone having legal interest in the property, to the effect that his land or portion thereof is needed for its projects or works shall be used as basis to determine the just compensation therefor."

SEC. 5. Section 5 of the same Act is hereby amended with first and second paragraphs thereof to read as follows:

"The authorized capital stock of the Corporation is Eight Billion Pesos (8,000,000,000.00) divided into eighty million (80,000,000) shares having a par value of one hundred pesos each, which shares are not to be transferred, negotiated, pledged, mortgaged or otherwise given as security for the payment of any obligation. The sum of Three Hundred Million Pesos of said capital stock has been subscribed and paid wholly by the Government of the Philippines in accordance with the provisions of Republic Act Numbered Four Thousand Eight Hundred Ninety-Seven.

The remaining Seven Billion Seven Hundred Million Pesos shall be subscribed by the Government of the Republic of the Philippines and shall be paid as follows:

* * * * *

SEC. 6. The first paragraph of Section 7 of the same Act is hereby further amended to read as follows:

"The Management of the Corporation shall be vested in the General Manager, assisted by such number of Assistant General Managers, officials, officers and employees as may be deemed necessary by the Board of Directors of the Corporation to meet the management and technical manpower requirements of its expanding power development projects, which reorganization shall be subject to the approval of the President."

SEC. 7. Section 8 (a), last paragraph of the same Act is hereby further amended to lead as follows:

"The total principal indebtedness of the Corporation under this subsection, exclusive of interest, shall not at any time exceed Twelve Billion Pesos (P12,000,000,000.00)."

SEC. 8. The first paragraph of Section 8 (b) of the same Act is hereby further amended and a new paragraph shall be inserted between the third and fourth paragraph of said section which shall both read as follows:

"(b) Foreign Loans—The Corporation is hereby authorized to contract loans, credit any convertible foreign currency or capital goods, and indebtedness from time to time from foreign governments, or any international financial institutions or fund sources, or to issue bonds, the total outstanding amount of which, exclusive of interests, shall not exceed Four Billion United States Dollars (US \$4,000,000,000.00) or the equivalent thereof in other currencies, on such terms and conditions as it shall deem appropriate for the accomplishment of its purposes and to enter into and execute agreements and other documents specifying such terms and conditions.

* * * * *

In the contracting of any loan, credit or indebtedness under this Act, the President of the Philippines, may, when necessary, agree to waive or modify the application of any law granting preferences or imposing restrictions on international competitive bidding, including among others, Act Numbered Four Thousand Two Hundred Thirty-Nine, Commonwealth Act Numbered One Hundred Thirty-Eight, the provisions of Commonwealth Act Numbered Five Hundred Forty-One, Republic Act Numbered Five Thousand One Hundred Eight-Three, insofar as such provisions do not pertain to constructions primarily for national defense or security purposes; Provided, however, that as far as practicable, utilization of the services of qualified domestic firms in the prosecution of projects financed under this Act shall be encouraged; Provided, further, that in case where international competitive bidding shall be conducted preference of at least fifteen per centum shall be granted in favor of articles, materials or supplies of the growth, production or manufacture of the Philippines; Provided, finally, that the method and procedure in the comparison of bids shall be the subject of agreement between the Philippine Government and the lending institution.

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SEC. 9. Section 10 of the same Act is hereby amended to read as follows:

"SEC. 10. Construction, Repair Works, or Contracts for Services and Furnishing of Supplies, Materials and Equipment Awarded Upon Public Bidding: Exceptions.—All works of construction or repair of the Corporation as well as contracts for the services and furnishing of supplies, materials and equipment shall be awarded by the Corporation in accordance with ceilings and rules imposed by the Board; Provided, however, that these do not conflict with existing Executive Orders and/or presidential issuance on awards of contracts."

SEC. 10. Section 13 of the same Act is hereby further amended to read as follows:

"SEC. 13. Non-profit Character of the Corporation: Exemption from All Taxes, Duties Fees, Imports and Other Charges by the Government and Government Instrumentalities. The Corporation shall be non-profit shall devote all its returns from its capital investment as well as excess revenues from its operation, for expansion. To enable the Corporation to pay its indebtedness and obligations and in furtherance and effective implementation of the policy enunciated in Section One of this Act, the Corporation, including its subsidiaries, is hereby declared exempt from the payment of all forms of taxes, duties, fees, imposts as well as costs and service fess including filing fees, appeal bonds, supersedes bonds, in any court or administrative proceedings."

SEC. 11. This Decree is hereby made part of the law of the land, and all provisions of existing laws, executive and administrative orders, or parts thereof in conflict with this Decree are hereby modified and repealed.

SEC. 12. This Decree shall take effect immediately.

Done in the City of Manila, this 27th day of May, in the year of Our Lord, nineteen hundred and seventy-six.

(Sgd.)

FERDINAND E. MARCOS

President

Republic of the Philippines

By the President:

(Sgd.)

JACOBO C. CLAVE

Presidential Executive Assistant

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