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**Republic of the Philippines  
Supreme Court  
Manila**

**EN BANC**

**MORE ELECTRIC AND POWER  
CORPORATION,**

Petitioner,

**G.R. No. 248061**

**Present:**

- versus -

PERALTA, *C.J.*,  
PERLAS-BERNABE,  
LEONEN,  
CAGUIOA,  
GESMUNDO,  
REYES, J. JR.,  
HERNANDO,  
CARANDANG,  
LAZARO-JAVIER,  
INTING,  
ZALAMEDA,  
LOPEZ,  
DELOS SANTOS,  
GAERLAN, and  
BALTAZAR-PADILLA, \* *JJ.*

**PANAY ELECTRIC COMPANY, INC.,**

Respondent.

X ----- X

**REPUBLIC OF THE PHILIPPINES,**

Petitioner-Oppositor,

**G.R. No. 249406**

**MORE ELECTRIC AND POWER  
CORPORATION,**

Petitioner,

- versus -

**PANAY ELECTRIC COMPANY, INC.,**

Respondent.

**Promulgated:**

September 15, 2020

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\* On sick leave.

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**DECISION****REYES, J. JR., J.:**

The constitutional question before the Court is whether Sections 10 and 17 of Republic Act (R.A.) No. 11212<sup>1</sup> violate the constitutional guarantee of due process and equal protection by providing that the power and electricity distribution system in Iloilo City which is owned by the previous franchise holder Panay Electric Company, Inc. (PECO) may be acquired by the current franchise holder MORE Electric and Power Corporation (MORE), through the exercise of the right of eminent domain, and applied to the same public purpose of power distribution in Iloilo City.

This constitutional question is raised in the Petition for Review on *Certiorari*, docketed as G.R. No. 248061, filed by MORE against PECO from the July 1, 2019 Judgment<sup>2</sup> of the Regional Trial Court of Mandaluyong City, Branch 209 (RTC) in Civil Case No. R-MND-19-00571-S, declaring that Sections 10 and 17 of R.A. No. 11212 are unconstitutional legislated corporate takeover of the private assets of respondent PECO by petitioner MORE. The same question is raised in a separate Petition for Review on *Certiorari*, docketed as G.R. No. 249406, filed by the Republic of the Philippines through the Office of the Solicitor General (OSG) from the same judgment and proceedings and involving the same facts and parties.

PECO filed a Motion for Consolidation of G.R. No. 248061 and G.R. No. 249406.<sup>3</sup> Thereafter, PECO filed an Urgent Omnibus Motion<sup>4</sup> urging the Court to consolidate the petitions and to resolve the same without further delay on the ground that the continuing dispute over possession of the distribution system twice plunged Iloilo City into darkness just when the city is struggling to deal with the current extreme public health emergency. Moreover, if the dispute will continue, electricity and power interruptions will recur to the prejudice of the health and safety of the residents of the city.

In view of the highest necessity to resolve the constitutional issue, the Court allows the consolidation of the two petitions and proceeds to resolve the same.

<sup>1</sup> 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 OF THE CITY OF ILOILO, PROVINCE OF ILOILO, AND ENSURING THE CONTINUOUS AND UNINTERRUPTED SUPPLY OF ELECTRICITY IN THE FRANCHISE AREA, approved on February 14, 2019.

<sup>2</sup> Penned by Judge Monique A. Quisumbing-Ignacio; *rollo* (G.R. No. 248061), pp. 39-46.

<sup>3</sup> *Rollo* (G.R. No. 249406), pp. 11-15.

<sup>4</sup> Filed on May 27, 2020 *via* electronic mail pursuant to Section 3(d) and Section 9, Rule 13 of the 2019 Amendments to the 1997 Rules on Civil Procedure (A.M. No. 19-10-20-SC), paragraph 8 of Supreme Court Administrative Circular No. 39-2020, due to the travel restrictions on account of COVID-19.

### Antecedent Facts and Proceedings

R.A. No. 11212 grants to MORE a franchise to establish, operate and maintain an electric power distribution system in Iloilo City.<sup>5</sup> Under Section 10, MORE may “exercise the power of eminent domain” when necessary for the efficient establishment of its service. In particular, it may acquire a distribution system consisting of poles, wires, cables, transformers, switching equipment and stations, buildings, infrastructure, machineries and equipment previously, currently or actually used x x x for the conveyance of electric power to end-users in its franchise area.<sup>6</sup>

The distribution system which is currently and actually being used in Iloilo City consists of “5 sub-transmission line substations, 450 kilometers of electrical lines, 20,000 poles, 1,300 transformers and 64,000 electrical meters.”<sup>7</sup> It is owned by PECO, the holder of the franchise since 1922.<sup>8</sup> PECO’s franchise expired on January 18, 2019,<sup>9</sup> and no new franchise has been issued to it since.<sup>10</sup> However, as MORE has yet to set up its service, Section 17 of R.A. No. 11212 allows PECO to operate the existing distribution system in the *interim*. PECO presently operates the system under a Provisional Certificate of Public Convenience and Necessity (CPCN) issued by the Energy Regulatory Commission (ERC) on May 21, 2019.<sup>11</sup>

At the same time, Section 17 of R.A. No. 11212 expressly provides that, even as PECO is operating the distribution system, this *interim* arrangement shall not prevent MORE from acquiring the system through the exercise of the right of eminent domain. Thus, after R.A. No. 11212 took effect on March 9, 2019, MORE filed on March 11, 2019 a Complaint for Expropriation with the RTC of Iloilo City, Branch 37, over the distribution system of PECO in Iloilo City.<sup>12</sup>

Earlier, PECO filed on March 6, 2019 with the RTC a Petition<sup>13</sup> for Declaratory Relief assailing the constitutionality of Sections 10 and 17 of R.A. No. 11212, on the ground that these provisions violate the constitutional guarantees of due process and equal protection. The RTC issued a Temporary Restraining Order<sup>14</sup> (TRO) on March 14, 2019 enjoining

<sup>5</sup> Republic Act No. 11212 (2018), Sec. 1 and Sec. 11.

<sup>6</sup> Id. at Sec. 1.

<sup>7</sup> Comment, *rollo* (G.R. No. 248061), p. 439.

<sup>8</sup> Act No. 3035 (1922), Sec. 2.

<sup>9</sup> Petition, *rollo* (G.R. No. 248061), p. 7. It is noted that in ERC Order dated May 21, 2019, it stated that the PECO’s franchise expired on January 19, 2019 (id. at 278).

<sup>10</sup> House Bill No. 6023, July 22, 2017 and House Bill No. 4101, August 22, 2019, favored the grant of a new franchise to PECO, but these bills were not acted upon.

<sup>11</sup> *Rollo* (G.R. No. 248061), p. 288. It is noted that in its Urgent Omnibus Motion, PECO alleged that MORE has obtained a writ of possession by the Iloilo City court and a provisional franchise by the ERC, and that on the bases of these issuances MORE has taken possession of the distribution system.

<sup>12</sup> Id. at 334.

<sup>13</sup> Petition for Declaratory Relief, id. at 60-95.

<sup>14</sup> Id. at 155-156.

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eminent domain as may be reasonably necessary for the efficient “maintenance and operation of [their] services.”<sup>19</sup>

The issues and arguments revolving around the foregoing ruling and reasoning of the RTC are both substantive and procedural.

### Issues and Arguments

As defined in **G.R. No. 248061**, the substantive issues are:

- (1) THE COURT *A QUO* HAS DECIDED A QUESTION OF SUBSTANCE, NOT THERETOFORE DETERMINED BY THE SUPREME COURT WHEN IT HELD THAT THERE IS NO “PUBLIC USE” IN THE EXPROPRIATION BY MORE OF THE DISTRIBUTION ASSETS IN ILOILO FROM PECO AS AUTHORIZED UNDER SECTIONS 10 AND 17 OF R.A. [No.] 11212.
- (2) THE COURT *A QUO* HAS DECIDED QUESTIONS OF SUBSTANCE NOT IN ACCORD WITH LAW AND THE APPLICABLE DECISIONS OF THE HONORABLE COURT AND/OR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS WHEN IT DECLARED THAT THE DISTRIBUTION ASSETS IN ILOILO CITY CANNOT BE SUBJECT OF EXPRORPIATION BY MORE AS THE NEW FRANCHISE HOLDER BECAUSE IT IS “ALREADY BEING DEVOTED TO PUBLIC USE.”
- (3) THE COURT *A QUO* HAS DECIDED QUESTIONS OF SUBSTANCE NOT IN ACCORD WITH LAW AND THE APPLICABLE DECISIONS OF THE HONORABLE COURT AND/OR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS WHEN IT DECLARED UNCONSTITUTIONAL THE PROVISIONS OF R.A. [No.] 11212 ALLOWING THE TRANSFER OF THE “DISTRIBUTION ASSETS IN THE FRANCHISE AREA” TO MORE BY EXPROPRIATION.
- (4) THE COURT *A QUO* HAS DECIDED QUESTIONS OF SUBSTANCE NOT IN ACCORD WITH LAW AND THE APPLICABLE DECISIONS OF THE HONORABLE COURT AND/OR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS WHEN IT HELD THAT THE IMPLEMENTATION OR ENFORCEMENT OF SECTIONS 10 AND 17 OF R.A. [No.] 11212 VIOLATES PECO’S RIGHT TO EQUAL PROTECTION UNDER THE LAW, DUE PROCESS, AND IS DISCRIMINATORY AND CONFISCATORY.<sup>20</sup>

<sup>19</sup> Id. at 45, citing Republic Act Nos. 10890; 10795 and 9381; see Petition for Declaratory Relief, id. at 73-78.

<sup>20</sup> Petition, id. at 13-14.

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commencement of expropriation proceedings and takeover by MORE of PECO's distribution system in Iloilo City, as well as the issuance of a CPCN to MORE by the Department of Energy (DOE) and Energy Regulatory Commission (ERC). The RTC then rendered the assailed judgment on the pleadings, the dispositive portion of which reads:

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

Finally, the Temporary Restraining Order dated 14 March 2019 insofar as it enjoins respondent MORE and/or any of its representatives from enforcing, implementing and exercising any of the rights and obligations set forth under [R.A. No.] 11212, including but not limited to commencing or pursuing the expropriation proceedings against petitioner PECO under the assailed provisions; and takeover by respondent MORE of petitioner PECO's distribution assets in the franchise area is hereby made permanent.

SO ORDERED.<sup>15</sup>

The RTC agreed with PECO that, by virtue of its provisional CPCN, PECO's distribution system is currently being devoted to the public use of electricity distribution; and that, as Sections 10 and 17 of R.A. No. 11212 provide that said distribution system will be expropriated by MORE and devoted to the very same public use, said law amounts to an unconstitutional legislated corporate takeover by MORE of the private property of PECO.<sup>16</sup> In effect, the expropriation will be nothing but a "corporate [takeover]" impelled by corporate greed rather than by public necessity.<sup>17</sup> Sections 10 and 17 violate the constitutional guarantees of due process by authorizing expropriation proceedings that do not serve a genuine public necessity.<sup>18</sup>

The RTC further relied on PECO's argument that Sections 10 and 17 of R.A. No. 11212 violate the constitutional guarantee of equal protection in that under these provisions MORE may exercise the power of eminent domain even at the stage of establishing its service. In contrast, other legislative franchises grant electric distribution utilities merely the right of

<sup>15</sup> Id. at 146.

<sup>16</sup> Id. at 44.

<sup>17</sup> Id., citing *Cary Library v. Bliss*, 151 Mass. 364 (1890) <<http://law.justia.com/cases/massachusetts/supreme-court/volumes/151/151mass364.html>> (visited August 10, 2020) and *West River Company v. Dix*, 47 U.S. 507 (1848) <<http://supreme.justia.com/cases/federal/us/47/507/>> (visited August 10, 2020).

<sup>18</sup> See Petition for Declaratory Relief, *rollo* (G.R. No. 248061), pp. 79-82.

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The foregoing issues in **G.R. No. 248061** are clearly related. MORE argues that, contrary to the views of the RTC and respondent PECO, expropriation under Sections 10 and 17 of R.A. No. 11212 serves the distinct emergency public purpose of ensuring the continuous and uninterrupted supply of electricity to Iloilo City, as the city transitions from the old franchise holder to the new franchise holder. There is no prohibition to the application of PECO's distribution system to such distinct emergency public purpose, even as the property is already devoted to a related, but ordinary public purpose, which is the provision of power and electricity to the city.<sup>21</sup>

Moreover, Sections 10 and 17 of R.A. No. 11212 recognize that MORE is differently situated from other distribution utilities. For one, within the franchise area of MORE, there is an existing distribution system that continues to burden public space — that is, this distribution continues to occupy streets, lands and properties owned by the government.

Finally, "Iloilo end-users have paid for" charges to enable PECO to recover its investments in said distribution system; thus, these end-users are entitled to have the system continuously applied to a public use.<sup>22</sup> However, the system is owned by PECO which no longer holds a franchise and is therefore unable to apply the system to the public purpose for which it is intended. Ideally, MORE should dismantle the system to unburden public space and make way for a new distribution system; however, as acknowledged by R.A. No. 11212, the ensuing transition will spell extreme inconvenience to the end-users and ruinous disruption to the local economy. Thus, R.A. No. 11212 devised a means whereby MORE, as the new franchise holder, is authorized to take over the distribution system and apply the same to the service of the public, after expropriation and payment of just compensation to PECO.

As defined in **G.R. No. 249406** the substantive issues are:

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III.

THE COURT *A QUO* GRAVELY ERRED WHEN IT DECLARED SECTIONS 10 AND 17 OF R.A. NO. 11212 UNCONSTITUTIONAL.

- A. THE POWER OF EMINENT DOMAIN WAS VALIDLY DELEGATED BY THE LEGISLATURE TO DISTRIBUTION UTILITIES, INCLUDING MORE.
- B. SECTIONS 10 AND 17 OF [R.A. NO.] 11212 SATISFY THE REQUISITES FOR VALID EXERCISE OF THE POWER OF EMINENT DOMAIN.

<sup>21</sup>

Id. at 17-21. *See also*, Complaint for Expropriation, id. at 343.

<sup>22</sup>

Id. at 4, 21-23.

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1. THERE IS GENUINE NECESSITY FOR THE TAKING OF PRIVATE PROPERTY UNDER SECTIONS 10 AND 17 OF [R.A. NO.] 11212, AS REASONABLY AND ACTUALLY NECESSARY FOR THE REALIZATION OF THE PURPOSES FOR WHICH MORE'S FRANCHISE WAS GRANTED.
2. THE TAKING OF PROPERTY AUTHORIZED UNDER SECTIONS 10 AND 17 OF [R.A. NO.] 11212 IS FOR PUBLIC USE.
3. THE REQUIREMENTS OF DUE PROCESS AND EQUAL PROTECTION ARE COMPLIED WITH UNDER SECTIONS 10 AND 17 OF [R.A. NO.] 11212.

## IV

THE COURT *A QUO* GRAVELY ERRED WHEN IT ENJOINED THE ENFORCEMENT, IMPLEMENTATION AND EXERCISE OF ANY OF THE RIGHTS AND OBLIGATIONS SET FORTH UNDER [R.A. NO.] 11212, DESPITE RULING VOID AND UNCONSTITUTIONAL ONLY SECTIONS 10 AND 17 THEREOF.<sup>23</sup>

The OSG argues that R.A. No. 9136<sup>24</sup> delegated to public utilities like MORE the power of eminent domain to enable them to exercise their public function.<sup>25</sup> Section 17 of R.A. No. 11212 highlighted a specific public need, which is to ease the transition of operations from PECO to MORE by expressly providing that the right of MORE to expropriate the distribution system of PECO for the public purpose of electricity and power distribution system, will not be prejudiced or hampered by the *interim* authority given to PECO to continue to operate the said system for the very same purpose of power distribution.<sup>26</sup>

To summarize, the common substantive issues raised by MORE and the OSG boil down to whether the RTC erred in ruling that Sections 10 and 17 of R.A. No. 11212 are unconstitutional in that these provisions authorize MORE to expropriate the existing distribution system of PECO and apply it to the very same public use for which it is already devoted.<sup>27</sup>

In its Comment in **G.R. No. 248061**, PECO argues that the lack of franchise does not diminish its constitutional right to due process and equal protection against an illegal expropriation of its distribution system.<sup>28</sup> It reiterates that "property of a private corporation that is already devoted to public use cannot be taken for the same use, because no public use or

<sup>23</sup> Petition, *rollo* (G.R. No. 249406), pp. 33-34.

<sup>24</sup> AN ACT ORDAINING REFORMS IN THE ELECTRIC POWER INDUSTRY, AMENDING FOR THE PURPOSE CERTAIN LAWS AND FOR OTHER PURPOSES, also known as the "ELECTRIC POWER INDUSTRY REFORM ACT OF 2001."

<sup>25</sup> *Id.* at Sec. 23.

<sup>26</sup> *Rollo* (G.R. No. 249406), pp. 43-50.

<sup>27</sup> *Rollo* (G.R. No. 248061), p. 5.

<sup>28</sup> Comment, *id.* at 589-591.

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necessity can be served by such a taking”; rather, such taking would be nothing but a corporate takeover for private greed.<sup>29</sup> Concretely, the expropriation of its distribution system by MORE could only be intended to advance the latter’s corporate interest rather than the public welfare.<sup>30</sup>

PECO further assails Sections 10 and 17 of R.A. No. 11212 for allowing MORE to exercise the power of eminent domain even at the stage of establishing its distribution system. Such authority is unprecedented in legislative franchises, and gives MORE an undue advantage in violation of the equal protection clause. What is more, the law even provides for immediate effect of the expropriation upon mere deposit of the assessed value, notwithstanding that issues about the legality of the expropriation might still be pending.<sup>31</sup>

To summarize, as defined by PECO, the substantive issue is whether the RTC correctly held that expropriation under Sections 10 and 17 of R.A. No. 11212 is nothing but an unconstitutional legislated takeover of the assets of PECO by MORE.<sup>32</sup>

Procedural issues also have been raised by the parties, and the Court addresses them here, but briefly.

MORE questions the decision of the RTC making permanent the “[TRO] dated 14 March 2019,” even though this had long expired on April 4, 2019.<sup>33</sup> Respondent PECO clarified that this part of the judgment is meant to enjoin the very same acts that were restrained under the TRO.<sup>34</sup>

Indeed, it was careless of the RTC to describe the acts to be restrained by reference to a defunct TRO, when the RTC could just as easily have enumerated these acts. A TRO expires on its 20<sup>th</sup> day by sheer force of law.<sup>35</sup> There can be no extension of its life beyond 20 days by a mere order of the court granting a new TRO or even a decision declaring the old TRO permanent.<sup>36</sup>

The OSG also questioned the RTC’s judgment on the pleadings without giving the OSG the opportunity to comment on the issue of the constitutionality of R.A. No. 11212.<sup>37</sup> Judgment on the pleadings was likewise improper as MORE’s answer had tendered several legitimate issues.<sup>38</sup>

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<sup>29</sup> Id. at 593, 595-596, 597-598.

<sup>30</sup> Id. at 597-599.

<sup>31</sup> Id. at 597-609.

<sup>32</sup> Id. at 445-447.

<sup>33</sup> Petition, id. at 26.

<sup>34</sup> Comment, id. at 609-610; Opposition, id. at 661-662.

<sup>35</sup> *Spouses Carbungco v. Court of Appeals*, 260 Phil. 331, 333 (1990).

<sup>36</sup> *Beso v. Aballe*, 382 Phil. 862, 871 (2000).

<sup>37</sup> *Rollo* (G.R. No. 249406), pp. 34-36.

<sup>38</sup> Id. at 37-43.



The Court considers the present petition of the OSG, G.R. No. 249406, as sufficient opportunity to be heard on the constitutional issue. Moreover, the issue on the propriety of the judgment on the pleadings can be resolved along with the merits of the petition.

On the part of respondent PECO, it sought the dismissal of the Petition, G.R. No. 248061, on the ground that MORE engaged in forum shopping by pursuing, simultaneously, a Petition before the Court, an expropriation proceeding in Iloilo City and a Motion for Reconsideration (through the OSG) before the RTC.<sup>39</sup>

The Court finds that this procedural point has been rendered moot by the Order<sup>40</sup> dated September 10, 2019 of the RTC denying the motion for reconsideration of the OSG, and the Order<sup>41</sup> dated November 18, 2019 of the court in Iloilo City suspending the expropriation proceedings.

The foregoing disposition of the procedural issues clears the way for the resolution of the substantive issues in these consolidated petitions. In the light of the foregoing arguments of the parties, the Court identifies the following underlying legal issues that must be resolved in order for the constitutional question to be addressed:

1. Whether or not the distribution system of PECO in Iloilo City can be subjected to expropriation for the same public purpose.
2. Whether or not expropriation of the distribution system under Sections 10 and 17 of R.A. No. 11212 is in accordance with the constitutional requirements of due process and equal protection.

### **The Court's Ruling**

The Petitions are granted. The Decision dated July 1, 2019 of the RTC is reversed and set aside. Sections 10 and 17 of R.A. No. 11212 are declared constitutional.

### **Brief restatement of the general principle of law on the valid exercise of the right of eminent domain**

The *Heirs of Suguitan v. City of Mandaluyong*<sup>42</sup> provides the most precise formulation of the general principle of law on the valid exercise of the power or right of eminent domain. The power is inherent in a sovereign State whose mandate is to promote public welfare, and to which end private

<sup>39</sup> *Rollo* (G.R. No. 248061), pp. 585-588. Petitioner MORE did not file a motion for reconsideration.  
<sup>40</sup> *Id.* at 530-532.

<sup>41</sup> *Manifestation*, *id.* at 896-899.

<sup>42</sup> 384 Phil. 676 (2000).

<sup>43</sup> *Republic v. Jose Gamir-Consuelo Diaz Heirs Association, Inc.*, G.R. No. 218732, November 12, 2018.

property might be condemned to serve. Though inherent, the power is not absolute, but subject to limitations set out in the Constitution, notably in Section 3, Article III, that no person shall be deprived of property without due process of law, and Section 9, that private property shall not be taken for public use without just compensation.<sup>43</sup>

These constitutional limitations have been strictly interpreted by the Court, given the risk of impairment to the right of the individual to private property that might result from the exercise by the State of the power of eminent domain.<sup>44</sup> Strict interpretation is warranted even more when a mere agent of the State, such as a public utility, exercises a delegated right of eminent domain.<sup>45</sup>

When the power of eminent domain is exercised by an agent of the State and by means of expropriation of real property,<sup>46</sup> further limitations are imposed by law,<sup>47</sup> the rules of court<sup>48</sup> and jurisprudence.<sup>49</sup> In essence, these requirements are:

1. A valid delegation to a public utility to exercise the power of eminent domain or pursue expropriation proceedings over a particular private property;
2. An identified public use, purpose or welfare for which eminent domain or expropriation is exercised;
3. Previous tender of a valid and definite offer to the owner of the property sought to be expropriated, but which offer is not accepted; and
4. Payment of just compensation.<sup>50</sup>

The resolution of the present petition turns on the first and second requirements. The third and fourth requirements are not at issue.

The general rule is that private property which is already devoted to a public use can be burdened by expropriation with a different public

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<sup>44</sup>

Id.

<sup>45</sup>*Estate or Heirs of Ex-Justice Jose B. L. Reyes v. City of Manila*, 467 Phil. 165, 188-189 (2004); *Jesus is Lord Christian School Foundation Inc. v. Municipality (now City) of Pasig*, 503 Phil. 845, 862-863 (2005).<sup>46</sup>Other forms of the exercise of eminent domain include state infringement of intellectual property, such as on a pharmaceutical product, for a public purpose. See 28 U.S. Code § 1498. Patent and copyright cases *Florida Prepaid Postsecondary Education Expense Board v. College Savings Bank*, 527 U.S. 627, 644 (1999) <<http://supreme.justia.com/cases/federal/us/527/627/#tab-opinion-1960553>> (visited August 10, 2020).<sup>47</sup>

See Republic Act No. 8974 (2000), Sec. 8, which requires an ecological impact assessment prior to expropriation.

<sup>48</sup>

RULES OF COURT, Rule 67.

<sup>49</sup>*National Power Corporation v. Posada*, 755 Phil. 613, 623 (2015).<sup>50</sup>*City of Manila v. Prieto*, G.R. No. 221366, July 8, 2019.

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purpose,<sup>51</sup> provided it is expressly authorized by law<sup>52</sup> or necessarily implied in the law.<sup>53</sup> The underlying reason for this is that the power of eminent domain is an attribute of sovereignty which is not exhausted by use; otherwise, the promotion of the public good, which is the purpose of sovereignty, would be frustrated.<sup>54</sup>

Although public use or necessity is defined by legislation, the courts have the power to review whether such use or necessity is of a genuine and public character.<sup>55</sup> For this purpose, the court applies as standards of review the constitutional requirements of due process and equal protection.<sup>56</sup>

Applying the principles to the issues at hand, the Court holds that:

1. The legislative franchises of PECO declare its distribution system in Iloilo City as susceptible to expropriation for the same public purpose of power and electricity distribution.
2. The expropriation by MORE of the distribution system of PECO pursuant to Sections 10 and 17 of R.A. No. 11212 is in accordance with the constitutional requirements of due process and equal protection.

**Distribution system of PECO can be subjected to expropriation for the same public purpose**

To recall, the first legal issue is whether the distribution system of PECO can be subjected to expropriation for the same public purpose of power distribution. To address this issue, it is necessary to ascertain the nature of the distribution system of PECO in Iloilo City. To this end, the history of the legislative franchises governing the distribution system is examined below.

In 1921, Act No. 2983 granted a 50-year franchise to Esteban dela Rama to “install, lay, and maintain on all the streets, public thoroughfares, bridges, and public places within said limits, poles, conductors, interrupters, transformers, cables, wires, and other overhead appliances, and all other necessary apparatus and appurtenances” for the operation of an electric, light, heat and power generation and distribution system (distribution system) in the municipalities of Iloilo, La Paz, Jaro and Arevalo, Province of Iloilo, for a period of 20 years.<sup>57</sup>

<sup>51</sup> *City of Manila v. Chinese Community of Manila*, 40 Phil. 349, 373 (1919).

<sup>52</sup> *Chavez v. Public Estates Authority*, 451 Phil. 1, 50 (2003).

<sup>53</sup> See Republic Act No. 3003 (1960), which states under Sec. 9 that the electricity distribution system of Rafael Consing may also be used for police telephone and alarm system.

<sup>54</sup> *Heirs of Suguitan v. City of Mandaluyong*, supra note 42, at 687.

<sup>55</sup> *Lagcao v. Labra*, 483 Phil. 303, 312 (2004).

<sup>56</sup> *Id.* at 310.

<sup>57</sup> Act No. 2983 (1921), Sec. 1 and Sec. 17.

As the text indicates, the rights that are dependent on the franchise include not just maintenance and operation, but the very establishment and installation of the distribution system. In effect, the distribution system co-exists with the franchise. This explains why under Section 11 of Act No. 2983, upon termination of the franchise, "all property of the grantee used in connection with this franchise shall become the property of the Insular Government." This particular text in Section 11 can be found in various other legislative franchises in electricity distribution issued from 1914 through 1929.<sup>58</sup> An analogous provision can be found in public market franchises, which provides that upon expiration of the franchise, the market building constructed by the franchise holder automatically becomes property of the government.<sup>59</sup> The toll facilities franchise of Construction and Development Corporation of the Philippines also provides that toll facilities and equipment built to carry out the franchise become government property upon expiration of the franchise.<sup>60</sup>

Moreover, Section 17 of Act No. 2983 provides that at any time after 20 years, the national government or a political subdivision "to which the right may be assigned, may purchase, and the grantee shall sell thereto all of his plant, poles, wires, buildings, real estate, and all other property used in the enjoyment of this franchise, at a valuation." This particular text on the government's right of expropriation during the life of the franchise (but after 20 years thereof) can be found in various other franchises from 1914 through 1953.<sup>61</sup>

In 1922, Act No. 3035 authorized Esteban dela Rama (Dela Rama) to "transfer all rights and privileges to install, maintain, and operate an electric light, heat, and power plant" to PECO, subject to the terms and conditions of Act No. 2983, including Sections 11 and 17 thereof.<sup>62</sup> These terms and conditions were later amended by Act No. 3665, in that the franchise area was expanded to other areas beyond Iloilo, and the franchise period was extended to 50 years.<sup>63</sup> Act No. 3665 deleted the provision in Section 11 of Act No. 2983 on the transfer of the distribution system of PECO to the government upon termination of the franchise.<sup>64</sup> However, Act No. 3665 retained Section 17 of Act No. 2983 on the government's right to expropriate the distribution system, should it decide to take over the franchise.

<sup>58</sup> Act No. 2392 (1914), Sec. 11; Act No. 3643 (1929), Sec. 10.

<sup>59</sup> *Pardo v. Municipality of Guinobatan*, 56 Phil. 574, 583 (1932).

<sup>60</sup> Presidential Decree No. 1113 (1977), Sec. 2(e); Presidential Decree No. 1894 (1983), Sec. 4(b).

<sup>61</sup> Act No. 2393 (1914), Sec. 17; Republic Act No. 971 (1953), Sec. 15.

<sup>62</sup> Act No. 3035 (1922), Sec. 2. This was amended by Act No. 3061 (1963), to clarify that the franchise area covers the municipalities of Iloilo, La Paz, Jaro, and Arevalo, Province of Iloilo.

<sup>63</sup> Act No. 3665 (1929), Sec. 1.

<sup>64</sup> *Id.* at Sec. 5.

Act No. 3665 also incorporated Act No. 3636,<sup>65</sup> which prescribes a template for legislative franchises in electric, light, heat and power generation and distribution.<sup>66</sup> Under Section 13 of Act No. 3636, upon termination or revocation of the franchise, all lands or right of use or occupation of lands and rights obtained by the grantee pursuant to the franchise shall revert to the national or local government that originally owned them. It is notable that Section 13 does not contain a provision similar to Section 11 of Act No. 2983 on the automatic transfer to the government of all properties of the franchise upon its expiration.

R.A. No. 5360 granted to PECO a franchise over Iloilo City and the municipalities of Santa Barbara and Pavia, Province of Iloilo, for a period of 25 years from the date of the law.<sup>67</sup> While R.A. No. 5360 expressly repealed Act No. 2983 and Act No. 3665<sup>68</sup> it retained the government's right of expropriation:

SEC. 4. It is expressly provided that in the event the Government should desire to operate and maintain for itself the system and enterprise herein authorized, the grantee shall surrender its franchise and will turn over to the government all equipment therein at fair market value.<sup>69</sup>

The foregoing text in Section 4 can be found in various other franchises issued from 1939 through 2000,<sup>70</sup> such as that of Davao Light and Power Company, Inc., which is valid up to 2025.<sup>71</sup>

Going back to the history of legislative franchises governing the distribution system in Iloilo City, the franchise of PECO under R.A. No. 5360 was extended for 25 years by virtue of a Decision dated January 19, 1994 of the National Electrification Commission.<sup>72</sup> No copy of this decision is available in the records. There is no evidence that the National Electrification Administration (NEA) Decision modified Section 4 of R.A. No. 5360.

While the particular provision in Act No. 2983, on outright government takeover of the distribution system, is no longer found in subsequent legislative franchises, there remained a provision on the right of the government to exercise eminent domain for the very same public purpose of electricity distribution. Under Section 17 of Act No. 2983, Act No. 3035 and Act No. 3665, the distribution system is susceptible to

<sup>65</sup> Id. at Sec. 6.

<sup>66</sup> Act No. 3636 (1929), Sec. 1. Previously, Act No. 667 (1903), prescribed the provisions to be included in a legislative franchise.

<sup>67</sup> Id.

<sup>68</sup> Republic Act No. 5360 (1968), Sec. 6.

<sup>69</sup> Id. at Sec. 4.

<sup>70</sup> Commonwealth Act No. 487 (1939), Sec. 3; Republic Act No. 3245 (1961), Sec. 3; Republic Act No. 7606 (1992), Sec. 2.

<sup>71</sup> Republic Act No. 8960 (2000), Sec. 3.

<sup>72</sup> *Rollo* (G.R. No. 248061), p. 63. No copy of this NEA Decision is available in the records.

expropriation subject to the conditions that it is exercised 1) after the 20<sup>th</sup> year of the franchise; 2) by the national government or the local government to which the right has been assigned; and 3) upon payment of compensation. Section 4 of R.A. No. 5360 retained remnants of Section 17 of Act No. 2983 by providing that the government may exercise the right of expropriation should it “desire to operate and maintain” the system. In other words, under the foregoing legislative franchises, the distribution system of PECO in Iloilo City is susceptible to expropriation by the government for the very same public purpose of electricity distribution. There is no specific public necessity that can precipitate the exercise of eminent domain; mere desire to operate by the government or mere assignment of the right to operate to a local government or agency is sufficient. It is notable that, while these provisions can be found in PECO’s own legislative franchises, PECO never questioned their constitutionality.

The foregoing history of the legislative franchise of PECO establishes that its distribution system in Iloilo City is no ordinary private property. To begin with, the very installation of the distribution system depends on a franchise. Section 1, Act No. 2983, Section 2, Act No. 3035, Section 1, Act No. 3665 and Section 1 of R.A. No. 5360 all provide that the right to construct, install and establish a distribution system on public space in Iloilo City must be based on a franchise. Ownership was co-existent with the franchise. Moreover, the distribution system is burdened with public use even after the termination of the franchise either by expiration or decision of the government. This is evident in the original franchise under Section 11 of Act No. 2983 and Act No. 3035, which provides that upon expiration of the franchise, the distribution system automatically becomes the property of the government, without mention of payment of compensation to Dela Rama or PECO. Moreover, even before expiration of the franchise of PECO, its distribution system may be taken over by the government and put to the very same public use.

**Expropriation by MORE of the distribution system of PECO is for a genuine public purpose**

The next legal issue is whether expropriation by MORE of PECO’s distribution asset under Sections 10 and 17 of R.A. No. 11212 is for a genuine public purpose. To reiterate, while it is the Congress that defines public necessity or purpose, the Court has the power to review whether such necessity is genuine and public in character, by applying as standards the constitutional requirements of due process and equal protection.<sup>73</sup>

In its assailed Decision, the RTC held that while R.A. No. 11212 authorizes MORE to expropriate the private property of PECO and to apply the same to the public purpose of power distribution, such identified public

<sup>73</sup>

*Lagcao v. Labra*, supra note 55.

purpose is not genuine for ultimately it is the private interest of MORE that will be served by the expropriation. In other words, the expropriation is an ill-disguised corporate takeover.

The RTC relied on American jurisprudence, namely *Cary Library v. Bliss*<sup>74</sup> and *West River Company v. Dix*,<sup>75</sup> to hold that no genuine and public necessity will be served when private property that is already devoted to public use is expropriated for the very same public use, as such expropriation will amount to taking private property from A and giving it to B without due process.<sup>76</sup>

These American cases law, however, has since been qualified, for at present, taking for the same public purpose in favor of a local government<sup>77</sup> and taking for a similar, but not identical public use<sup>78</sup> are valid. The most relevant development in the jurisprudence of that jurisdiction is *Kelo v. City of New London*<sup>79</sup> and *Berman v. Parker*<sup>80</sup> which upheld the expropriation of private property to pave the way for economic development, even when ultimately such development will benefit private business. Other jurisdictions have upheld expropriation of private property for redevelopment and subsequent transfer to private developers.<sup>81</sup>

Even without these developments in Western jurisprudence, the genuineness of the public purpose of the expropriation of the distribution system of PECO can be determined from R.A. No. 11212 itself.

Expropriation under Sections 10 and 17 of R.A. No. 11212 is not only for the general purpose of electricity distribution. A more distinct public purpose is emphasized: the protection of the public interest by ensuring the uninterrupted supply of electricity in the city during the transition from the old franchise to the new franchise. This distinct purpose has arisen because MORE is the new franchise holder in a city whose public space is already burdened by an existing distribution system, and that distribution system cannot continue to serve a public use for it is owned by the old franchise holder.

<sup>74</sup> 151 Mass. 364 (1890) <<http://law.justia.com/cases/massachusetts/supreme-court/volumes/151/151mass364.html>> (visited August 10, 2020).

<sup>75</sup> 47 U.S. 507 (1848) <<http://supreme.justia.com/cases/federal/us/47/507/>> (visited August 10, 2020).

<sup>76</sup> *Proprietors of Charles River Bridge v. Proprietors of Warren Bridge*, 36 U.S. 420 (1837) <<http://supreme.justia.com/cases/federal/us/36/420/#tab-opinion-1942465/>> (visited August 10, 2020).

<sup>77</sup> *Long Island Water Supply Co. v. Brooklyn*, 166 U.S. 685 (1897) <<http://supreme.justia.com/cases/federal/us/166/685/>> (visited August 10, 2020).

<sup>78</sup> *Eastern R. Co. v. Boston, R.*, 111 Mass. 125, 15 Am. Rep. 13.

<sup>79</sup> 545 U.S. 469 (2005), <<http://supreme.justia.com/cases/federal/us/545/469/>> (visited August 10, 2020).

<sup>80</sup> 348 U.S. 26 (1954), <<http://supreme.justia.com/cases/federal/us/348/26/>> (visited August 10, 2020).

<sup>81</sup> *(U.K.) Alliance Spring Co Ltd. & Ors v. The First Secretary of State* (2005) EWHC 18; (Singapore) Amendments to the Land Titles Act.

For purposes of clarity, the relevant portions of Sections 10 and 17 of R.A. No. 11212 are reproduced below:

SEC. 10. *Right of Eminent Domain.* — Subject to the limitations and procedures prescribed by law, the grantee is authorized to exercise the power of eminent domain insofar as it may be reasonably necessary for the efficient establishment, improvement, upgrading, rehabilitation, maintenance and operation of its services x x x The grantee may acquire such private property as is actually necessary for the realization of the purposes for which this franchise is granted, including, but not limited to poles, wires, cables, transformers, switching equipment and stations, buildings, infrastructure, machineries and equipment previously, currently or actually used, or intended to be used, or have been abandoned, unused or underutilized, or which obstructs its facilities, for the operation of a distribution system for the conveyance of electric power.

x x x x

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

x x x x

This provisional authority to operate during the transition period shall not be construed as extending the franchise of PECO after its expiration on January 18, 2019, and it shall not prevent the grantee from exercising the right of eminent domain over the distribution assets existing at the franchise area as provided in Section 10 of this Act.

The public necessity of ensuring uninterrupted electricity is implicit in Section 10 of R.A. No. 11212, which authorizes MORE to expropriate the existing distribution system to enable itself to efficiently establish its service. This distinct public necessity is reiterated in Section 17 of R.A. No. 11212 under which MORE may initiate expropriation proceedings even as PECO is provisionally operating the distribution system. In fact, this distinct public necessity of ensuring uninterrupted electricity is the very rationale of the ERC in granting PECO a provisional CPCN.<sup>82</sup> The provisional CPCN is the legal basis of PECO's continued operation of the distribution system. PECO cannot deny that such distinct necessity to ensure uninterrupted electricity supply is public and genuine.

<sup>82</sup>

Rollo (G.R. No. 248061), p. 288.

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Moreover, under R.A. No. 9136, one recognized public purpose is the protection of “public interest as it is affected by the rates and services of electric utilities and other providers of electric power.”<sup>83</sup> The Court has sustained the taking of private property to ensure uninterrupted supply of electricity in *National Electrification Administration v. Maguindanao Electric Cooperative, Inc.*<sup>84</sup> It recognized this authority in NEA which, under Presidential Decree No. 269, may order the transfer of the distribution assets of Maguindanao Electric Cooperative, Inc. as the old franchise holder to Cotabato Electric Cooperative, Inc. as the new franchise holder.<sup>85</sup>

Furthermore, R.A. No. 11361<sup>86</sup> recently took effect declaring that the uninterrupted conveyance of electricity from generating plants to end-users is not just a matter of public interest, but already an elevated “matter of national security and is essential to sustaining the country’s economic development.”<sup>87</sup> Without a doubt, the provision of uninterrupted supply of electricity is a public purpose which is distinct from the general purpose of electricity distribution. Such distinct purpose is both public and genuine.

Finally, MORE points out that the end-users in Iloilo have a stake in the uninterrupted operation of the distribution system, for the charges they have been paying PECO include the cost of recovery of its investment. While it is unfortunate that MORE did not substantiate this important point with data on the structure of the distribution charges and the extent to which payment of these charges by the end-users in Iloilo City have allowed PECO to recover its investment in the distribution system, it remains a valid expectation on the part of the end-users that they will enjoy uninterrupted supply of power and electricity during the transition from the old franchise holder to the new franchise holder. In sum, expropriation by MORE of the distribution system of PECO under Sections 10 and 17 of R.A. No. 11212 serves both the general public interest of conveying power and electricity in Iloilo City and the peculiar public interest and security of ensuring the uninterrupted supply of electricity. The RTC erred in declaring these provisions unconstitutional.

<sup>83</sup> Republic Act No. 9136 (2001), Sec. 2(f).

<sup>84</sup> G.R. Nos. 192595-96, April 11, 2018, 861 SCRA 1.

<sup>85</sup> Presidential Decree No. 269 (1973). The pertinent provision reads:

Sec. 4. *NEA Authorities, Powers and Directives.* [The NEA is specifically authorized:]

(m) To acquire, by purchase or otherwise (including the right of eminent domain, which is hereby granted to the NEA) x x x real and physical properties x x x whether or not the same be already devoted to the public use of generating, transmitting or distributing electric power and energy, upon NEA’s determination that such acquisition is necessary to accomplish the purposes of this Decree and, if such properties be already devoted to the public use described in the foregoing, that such use will be better served and accomplished by such acquisition; Provided, That the power herein granted shall be exercised by the NEA solely as agent for and on behalf of one or more public service entities which shall timely receive, own and utilize or replace such properties for the purpose of furnishing adequate and dependable service on an area coverage basis, which entity or entities shall then be, or in connection with the acquisition shall become, borrowers from the NEA  
x x x

<sup>86</sup> Approved on August 8, 2019.

<sup>87</sup> Id. at Sec. 2.

Justice Leonen dissents on two grounds. First, Section 10 of R.A. No. 11212 is unconstitutional for it simultaneously favors MORE with unwarranted benefits that are not enjoyed by other public utilities that are similarly situated, and discriminates against PECO by allowing expropriation of its assets upon payment of the assessed value rather than the fair market value.<sup>88</sup>

The Dissenting Opinion reiterates the argument of PECO that, unlike other public utilities, MORE is accorded by law the privilege of expropriating the existing distribution system in the franchise area and immediately taking over the same upon deposit of the full amount of the assessed value. Other public utilities that are similarly situated, namely Mactan Electric Company, Inc. (MECO), Tarlac Electric, Inc. and Angeles Electric Corporation, have the power of expropriation, but not the power of immediate takeover.<sup>89</sup>

The conceptual premise of the argument is flawed, for which reason the conclusion is faulty. While all are public utilities, MORE is not similarly situated as MECO, Tarlac Electric, Inc. and Angeles Electric Corporation. The latter public utilities are existing franchise holders with existing and functioning distribution systems. MORE is a new franchise holder that is virtually deprived of the option to set up a new distribution system, not only because the existing public space is burdened with the distribution system of the old franchise holder, but also because it must hit the ground running and ensure the uninterrupted and continuous supply of electricity to the city. MORE is therefore peculiarly and doubly burdened. It must not only supply electricity, it must also prevent any disruption that might arise from its takeover of the franchise.

The Dissenting Opinion adds that MORE is unusually favored with a monopolistic franchise even as it has no track record in the business of power distribution. The dismal performance of PECO as the old monopolistic franchise will not be undone by inflicting a novice public utility like MORE upon the residents of Iloilo City.<sup>90</sup> Unfortunately, the competence of this Court is limited to the determination of the constitutionality of R.A. No. 11212, and does not extend to the assessment of the expertise of MORE or any franchise holder. The ineptitude of the holder does not translate to the unconstitutionality of its franchise. The remedy for that is non-renewal or cancellation, not judicial review.

As compared to other franchise holders, PECO is not inordinately prejudiced. Its distribution system is no ordinary private property for it has been historically burdened with the public interest of electricity distribution. The distribution system was built on public spaces pursuant to the original

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<sup>88</sup> Dissenting Opinion, Associate Justice Marvic M. V. F. Leonen, p.1.

<sup>89</sup> Id. at 4-5.

<sup>90</sup> Id. at 6.

franchise of Dela Rama, specifically Section 1 of Act 2983, as well as the transfer and continuation franchise of PECO, specifically Section 1 of R.A. No. 5360. Contrary to the Dissenting Opinion, the termination of the franchise of PECO did not mean that the public purpose for which the distribution system (including the public lands and spaces to which it is attached) was installed automatically ceased. Section 1 of R.A. No. 5360 granted to PECO “the right and privilege to install, lay and maintain on all streets, public thoroughfares, bridges and public places within said limits, poles, wires, transformers, capacitors, overhead protective devices, and pole line hardware, and other equipment necessary for the sale distribution of electric current to the public.” Even maintaining possession of the distribution system must be for the original public purpose for which the privilege of installing it was granted.

In her Dissenting Opinion, Justice Lazaro-Javier extends the concept of bill of attainder to cover Sections 10 and 17 of R.A. No. 11212 in that these legislations purportedly single out PECO and subject the latter to punishment without the benefit of trial.<sup>91</sup> This conception that bills of attainder is problematic for, as correctly pointed out by Justice Leonen in his dissent, a legislative franchise is not a right, but a special privilege the grant, amendment, repeal or termination of which is granted to Congress by no less than the Constitution.<sup>92</sup> Consequently, the termination of a franchise by its expiration is not a deprivation of a right or property that amounts to punishment.<sup>93</sup> There is no question that the franchise of PECO was allowed to lapse because of its failure to render competent public service. No prior judicial trial of the performance of PECO is required before the Congress may decide not to renew PECO’s franchise. The power of this Court to subject to judicial review the constitutionality of a franchise legislation does not include the power to choose the franchise holder. That is not our place in the constitutional scheme of things.

The grant to MORE of the authority to initiate expropriation of the distribution assets of PECO is within the power of Congress to make, subject to the requirements of a valid expropriation. That the assets of PECO will be the subject of expropriation does not signify that it is being singled out. Only PECO has had a franchise over the same area. There is no other previous franchise holder. Only its assets continue to burden public space in the franchise area. If and when other distribution assets are allowed to be installed and to operate in the same franchise area, their expropriation by MORE is not precluded by Sections 10 and 17 of R.A. No. 11212.

Going back to the Dissenting Opinion of Justice Leonen, it is correct that the government could have availed of Section 4 to expropriate the

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<sup>91</sup> Dissenting Opinion, Associate Justice Amy C. Lazaro-Javier.

<sup>92</sup> *Senator Jaworski v. Philippine Amusement and Gaming Corp.*, 464 Phil. 375, 385 (2004).

<sup>93</sup> See Anthony Dick, “The Substance of Punishment under the Bill of Attainder Clause,” 63 *Stanford Law Review* 1177.

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distribution system during the term of the franchise. That the government let the franchise lapse without initiating expropriation directly or through an agent does not mean that it is no longer able to do so. There is no shelf-life to the power to expropriate. There is no prohibition against the government initiating expropriation of the distribution system for as long as all the requirements of a valid expropriation are met. In fact, a month after the expiration of the franchise of PECO, the government, through R.A. No. 11212, set into motion the expropriation of the distribution asset by authorizing MORE as its agent.

The Dissenting Opinion echoes the respondent that the authorization given to MORE to take over the distribution system upon deposit of the assessed value is discriminatory. Both fail to see that Section 17 of R.A. No. 11212 still requires payment of just compensation, even as, for the purpose of immediate takeover, it allows mere deposit of the assessed value. Deposit of the assessed value is without prejudice of the determination of just compensation by the RTC in the expropriation case. To reiterate, immediate takeover is warranted by the public necessity for and heightened security interest in the continued and uninterrupted supply of electricity.

In sum, being peculiarly situated, MORE was validly granted by Section 10 with a unique power of expropriation. Moreover, given that its distribution system is imbued with public interest, PECO was not unusually prejudiced by the reservation in Section 10 of R.A. No. 11212 to expropriate the property. Section 10 is no class legislation. It is constitutional.

The second ground cited in the Dissenting Opinion of Justice Leonen is that Section 17 of R.A. No. 11212 is unconstitutional for it authorizes an expropriation that serve no distinct public purpose and, as such, amounts to a taking without due process.<sup>94</sup>

The Dissenting Opinion overlooks that there are two distinct public purposes to be served by the expropriation clause in R.A. No. 11212. One public purpose is power distribution as ordinarily carried out by public electric utility on a day-to-day basis. Another is the public purpose and security interest of preventing any disruption in the supply of electricity during the period of takeover by the new franchise holder from the old franchise holder. No less than PECO invoked this second distinct public purpose when it applied for and operated the distribution system under a provisional CPCN following the expiration of its franchise. To emphasize, when PECO operated the distribution system under the provisional CPCN it did so, not for the ordinary public purpose of power distribution (which it could no longer fulfill), but for the distinct public purpose of forestalling a power interruption during the transition. It is this second distinct public

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<sup>94</sup> Dissenting Opinion, Associate Justice Marvic M. V. F. Leonen, *supra* note 88.

purpose which impels immediate expropriation and takeover of the distribution asset of PECO pursuant to Section 17 of R.A. No. 11212.

It is true that ultimately MORE will benefit from the expropriation, just as PECO benefited from the grant of the privilege to install the distribution system on public space. However, the benefit to MORE does not detract from the distinct public necessity to be served by the expropriation, as such step would prevent massive and prolonged economic disruption in the city, not to mention oppressive discomfort by its residents.

Justice Lazaro-Javier argues that Sections 10 and 17 of R.A. No. 11212 virtually enable MORE to piggyback on PECO in order to establish and operate its franchise. Every legislative franchise enables the franchise holder to expropriate with the view of building its distribution system. Even PECO obtained the franchise from Dela Rama along with the authority to use public spaces for the installation of its distribution system. MORE is authorized to acquire the assets of PECO and any other assets of any other entity that might be available as these are necessary for the discharge of its public franchise.

Finally, the Dissenting Opinion of Justice Leonen misunderstood the import of the discussion on *Kelo v. City of London*. It is to demonstrate that the RTC's reliance on *Cary Library v. Bliss* and *West River Company v. Dix* is misplaced for the jurisprudence in that foreign jurisdiction is still evolving. As summarized by the Court, the current state of that jurisprudence is that taking for the same public purpose, but in favor of a local government or for a similar, but not identical public purpose is valid. The Court need not borrow from this jurisprudence, as there is more than sufficient basis in the facts and law of this to uphold the constitutionality of Sections 10 and 17 of R.A. No. 11212.

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

**SO ORDERED.**

**WE CONCUR:**

  
**DIOSDADO M. PERALTA**  
*Chief Justice*

  
**JOSE C. REYES, JR.**  
*Associate Justice*

*Please see separate opinion*

*[Signature]*  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

*I dissent. see separate opinion.*

*[Signature]*  
**MARVIC M.V. F. LEONEN**  
Associate Justice

*See separate opinion*

*[Signature]*  
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

*[Signature]*  
**ALEXANDER G. GESMUNDO**  
Associate Justice

*[Signature]*  
**RAMON PAUL L. HERNANDO**  
Associate Justice

*[Signature]*  
**ROSARI D. CARANDANG**  
Associate Justice

*Pls. see Dissenting Opinion*

*[Signature]*  
**AMY C. LAZARO-JAVIER**  
Associate Justice

*I join the dissent of Justice Leonen*

*[Signature]*  
**HENRI JEAN PAUL B. INTING**  
Associate Justice.

*I join the dissent of J. Leonen*  
*[Signature]*  
**RODIL V. ZALAMEDA**  
Associate Justice

*I join the dissent of Justice Leonen*

*[Signature]*  
**MARIO V. LOPEZ**  
Associate Justice

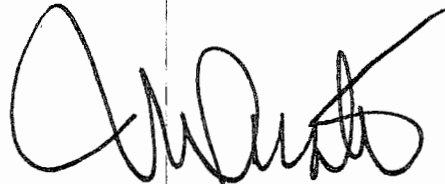
*[Signature]*  
**EDGARDO L. DELOS SANTOS**  
Associate Justice

*I join the dissent of J. Leonen*  
*[Signature]*  
**SAMUEL H. GAERLAN**  
Associate Justice

(ON SICK LEAVE)  
**PRISCILLA J. BALTAZAR PADILLA**  
Associate Justice

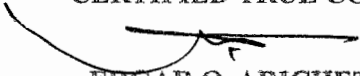
**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified 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.



**DIOSDADO M. PERALTA**  
*Chief Justice*

**CERTIFIED TRUE COPY**



**EDGAR O. ARICHETA**  
Clerk of Court En Banc  
Supreme Court