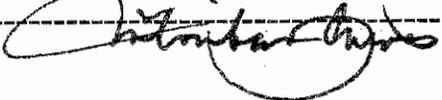


EN BANC

G.R. No. 264260 – ILOILO I ELECTRIC COOPERATIVE, INC. (ILECO I), ILOILO II ELECTRIC COOPERATIVE, INC. (ILECO II), and ILOILO III ELECTRIC COOPERATIVE, INC. (ILECO III), Petitioners, v. EXECUTIVE SECRETARY LUCAS P. BERSAMIN, ENERGY REGULATORY COMMISSION CHAIRPERSON MONALISA C. DIMALANTA, THE HOUSE OF REPRESENTATIVES AND SENATE OF THE PHILIPPINES AS COMPONENT HOUSES OF THE CONGRESS OF THE PHILIPPINES, AND MORE ELECTRIC POWER CORPORATION, Respondents.

Promulgated:

July 30, 2024

X----------X

DISSENTING OPINION

LEONEN, J.:

I dissent.

Section 1 of Republic Act No. 11918,¹ which expands More Electric and Power Corporation's (More Electric) franchise area to include those already covered by petitioners', is unconstitutional. It introduces competition in electricity distribution, a naturally monopolistic industry that should be operated by a single entity if stable prices are to be maintained. Furthermore, by implication, it amended the franchise of petitioners—the electric cooperatives who have been operating in Iloilo without satisfying the “common good” standard found in Article XII, Section 11 of the Constitution. Worse, petitioners were not even given the opportunity to be heard despite the encroachment on their franchise areas, in violation of their right to due process of law.

The expansion of More Electric's franchise area likewise impairs the obligation of contracts entered into by petitioners. As distribution utilities, petitioners enter into off-take agreements with generation companies, obliging themselves to pay for a fixed amount of electricity regardless of the actual consumption of end-users. Through the expansion of More Electric's

¹ Republic Act No. 11918 (2022), An act amending Sections 1, 15, and 21 of Republic Act No. 11212, entitled 'An Act Granting More Electric and Power Corporation a Franchise to Establish, Operate, and Maintain, for Commercial Purposes and in the Public Interest, a Distribution System for the Conveyance Of Electric Power to the End Users in the City of Iloilo, Province of Iloilo, and Ensuring the Continuous and Uninterrupted Supply of Electricity in the Franchise Area'



franchise, the electricity that petitioners purchased from generation companies and the electricity distributed and consumed by end-users becomes larger. This results in higher stranded costs for petitioners, which translates to lower revenues and higher risk of petitioners defaulting on their loan obligations.

Section 1 of Republic Act No. 11918, being a class legislation, also violates petitioners' right to equal protection and grants unwarranted benefits to More Electric. These benefits are not granted to other distribution utilities similarly situated.

Therefore, Section 1 of Republic Act No. 11918 is void and must be struck down.

I

To recall, in 2022, Congress enacted Republic Act No. 11918, Section 1 of which expanded the franchise area of More Electric for the distribution of electricity. Initially covering Iloilo City, More Electric's franchise area now additionally covers Passi City and the municipalities of Alimodian, Leganes, Leon, New Lucena, Pavia, San Miguel, Santa Barbara, Zarraga, Anilao, Banate, Barotac Nuevo, Dingle, Dueñas, Dumangas, and San Enrique in Iloilo Province.

Section 1 of Republic Act No. 11918 provides:

Section 1. Section 1 of Republic Act No. 11212 is hereby amended to read as follows:

Section 1. *Nature and Scope of Franchise.* — Subject to the provisions of the Constitution and applicable laws, rules and regulations, there is hereby granted to MORE Electric and Power Corporation, hereunder referred to as the Grantee, its successors or assignees, a franchise to establish, operate, and maintain, for commercial purposes and in the public interest, a distribution system for the conveyance of electric power to end users in the cities of Iloilo and Passi and the municipalities of Alimodian, Leganes, Leon, New Lucena, Pavia, San Miguel, Santa Barbara, Zarraga, Anilao, Banate, Barotac Nuevo, Dingle, Dueñas, Dumangas and San Enrique, in the Province of Iloilo.

As used in this Act, distribution system refers to the system of wires and associated facilities including subtransmission lines belonging to or used by a franchised distribution utility extending between the delivery point on



the national transmission system or generating facility and the metering point or facility of the end-user.

These additional areas overlap with the areas that are already covered by the subsisting franchises of petitioners Iloilo I Electric Cooperative, Inc. (ILECO I), Iloilo II Electric Cooperative, Inc. (ILECO II), and Iloilo III Electric Cooperative, Inc. (ILECO III), thus:

Petitioner / Electric Cooperative	Grant of Franchise	Expiration Date of Franchise	Overlapping Areas
ILECO I	August 22, 1978	August 22, 2053	Municipalities of Alimodian, Leganes, Leon, Pavia, San Miguel, and Santa Barbara, in the province of Iloilo
ILECO II	December 12, 1979	December 12, 2029	City of Passi and the Municipalities of Barotac Nuevo, Dingle, Dueñas, Dumangas, New Lucena, San Enrique, and Zarraga
ILECO III	August 10, 1989	August 10, 2039	Municipalities of Anilao and Banate

According to the majority, the overlap is constitutionally allowable. The *ponencia* highlights the constitutional prohibition on the grant of exclusive franchises, concluding that petitioners ILECO I, ILECO II, and ILECO III, previously the sole distributors of electricity in their respective franchise areas, cannot prevent the entry of More Electric into the electricity distribution market.²

The majority likewise holds that there was no violation of due process, citing deliberations where the Senate discussed the ramifications of expanding More Electric's franchise area and decided that More Electric's entry into the distribution market is for the common good.³ It further emphasizes that More Electric has charged lower prices than those charged by petitioners.⁴ To the majority, this justifies the expansion of More Electric's franchise so as to provide consumers the choice of their own electricity distributor and to ensure competitive pricing.⁵

In addition, the majority holds that the expansion of More Electric's franchise was made in the exercise of the police power of the State, specifically, to "promote the general welfare of the people of Iloilo."⁶ The

² *Ponencia*, pp. 7–11.

³ *Id.* at 11–12.

⁴ *Id.* at 12.

⁵ *Id.* at 15.

⁶ *Id.* at 15.

majority points out that expanding More Electric's franchise does not violate their right to non-impairment of contracts, even if it results in stranded costs to petitioners.⁷

On the issue of equal protection, the majority declares that More Electric is not similarly situated to other distribution utilities, it being a "new entrant insofar as the new covered areas or overlapping areas are concerned."⁸ The majority states that this justifies the grant of extraordinary eminent domain powers to More Electric so that the latter could "hit the ground running and ensure the uninterrupted and continuous supply of electricity to the covered areas."⁹ In *More Electric and Power Corporation v. Panay Electric Company, Inc.*,¹⁰ this Court held that the grant of franchise to More Electric, including the grant of eminent domain powers to it, is not unconstitutional, effectively holding that the 2020 case operated as *res judicata* to the present case, and that the constitutionality of the grant of eminent domain powers to More Electric is already settled.

Finally, the majority denies the Motion to Intervene filed by Philippine Rural Electric Cooperatives Association, an association composed of 121 electric cooperatives advocating for total rural electrification, and rejects the association's claim of direct interest in the outcome of the case.¹¹

II

I cannot agree with the majority. Allowing More Electric to encroach on the franchise areas of petitioners violates Article XII, Section 11 of the Constitution. The expansion of More Electric's franchise area to include those already under petitioners' is not for the common good. It is solely for the benefit of More Electric.

II(A)

Article XII, Section 11 of the Constitution, which governs the operation of public utilities, reads:

SECTION 11. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty per centum of whose capital

⁷ *Id.* at 16–19.

⁸ *Id.* at 19.

⁹ *Id.*

¹⁰ 884 Phil. 673 (2020) [Per J. J. Reyes, Jr., *En Banc*].

¹¹ *Ponencia*, pp. 20–21

is owned by such citizens, nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines.

Based on this provision, a franchise for the operation of a public utility may be amended, altered, or repealed only when the common good so requires. Anything for “the common good” is said to be that which benefits *all* members of a given community and should be beneficial to *every* citizen so as “to enable him or her to attain his or her fullest development economically, politically, culturally and spiritually.”¹² It is not simply that which is “the greatest good for the greatest number” but should be for the good of *all*.¹³

Petitioners are electric cooperatives that were granted certificates of franchise to operate an electric light and power service under Presidential Decree No. 269, otherwise known as National Electrification Administration Decree. The enactment of Republic Act No. 9136 or the Electric Power Industry Reform Act of 2001 prompted the restructuring of the electric power industry and reclassified electric cooperatives as “distribution utilities.”¹⁴ Under Republic Act No. 9136, distribution utilities have “the exclusive franchise to operate a distribution system according to this Act.”¹⁵ The Act also defines “franchise area” as “a geographical area exclusively assigned or granted to a distribution utility for distribution of electricity.”¹⁶

Under the law, therefore, the franchise areas of petitioners are to be exclusively served by them. However, with the enactment of Republic Act No. 11918, parts of petitioners’ franchise areas will likewise be served by More Electric. It follows that petitioners’ franchise areas are no longer exclusively assigned to them as envisioned by Republic Act No. 9136. Necessarily, petitioners’ franchises were amended.

There being an amendment of a franchise here, the “common good” standard in Article XII, Section 11 should apply. This standard, however, was not met in this case.

¹² JOAQUIN G. BERNAS, THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY (2003 ed.), p. 2.

¹³ *Id.*

¹⁴ Republic Act No. 9136 (2001), sec. 4(q).

¹⁵ Republic Act No. 9136 (2001), sec. 4(q).

¹⁶ Republic Act No. 9136 (2001), sec. 4(w).

The industry of electricity distribution is more economically efficient for one firm to provide the service to the entire market. It is characterized by high fixed costs due to the substantial amount of investment required to set up distribution lines, power stations, operation centers, and transformers. These high fixed costs are tremendous, but they do not increase in proportion to the electricity distributed. This means that as more electricity is distributed to more customers, the fixed costs are spread over a larger market. As a result, the cost of delivering electricity to each additional user becomes lower, leading to a lower average cost and prices overall.

It is in such industries characterized by high fixed costs and economies of scale where natural monopolies occur. Natural monopolies are the regulated monopolies allowed by the Constitution,¹⁷ as opposed to the prohibited ones formed purely from government grant. Natural monopolies are allowed, because to allow competition in a naturally monopolistic industry will result in duplication in infrastructure and, ultimately, to higher prices in the market.

The reality of distribution utilities being natural monopolies; and the need for them to be operated exclusively within a given franchise area to maintain lower electricity prices, are recognized in law and jurisprudence. As touched upon in the preceding paragraphs, Republic Act No. 9136 acknowledges the need to operate distribution systems in exclusive franchise areas:

SECTION 4. *Definition of Terms.* —

....

(n) "Distribution of Electricity" refers to the conveyance of electric power by a distribution utility through its distribution system pursuant to the provisions of this Act;

(o) "Distribution System" refers to the system of wires and associated facilities belonging to a franchised distribution utility extending between the delivery points on the transmission or subtransmission system or generator connection and the point of connection to the premises of the end-user;

....

(q) "Distribution Utility" refers to any electric cooperative, private corporation, government-owned utility or existing local government unit which has an exclusive franchise-to-operate a distribution system in accordance with this Act;

....

¹⁷ CONST., art. XII, sec. 19, provides:

SECTION 19. The State shall regulate or prohibit monopolies when the public interest so requires. No combinations in restraint of trade or unfair competition shall be allowed.

(w) “Franchise Area” refers to a geographical area exclusively assigned or granted to a distribution utility for distribution of electricity[.]

The recently enacted Republic Act No. 11659, which amended the Public Service Act to legislatively define the term “public utility,” enumerates “distribution of electricity” as a public utility. In turn, the law characterizes public utilities as commodities or services that are natural monopolies:

Section 13. . . .

. . . .

(d) Public Utility – Public Utility refers to a public service that operates, manages or controls for public use any of the following:

(1) Distribution of Electricity;

. . . .

(e) Upon the recommendation of the National Economic and Development Authority (NEDA), the President may recommend to Congress the classification of a public service as a public utility on the basis of the following criteria:

. . . .

(2) The commodity or service is a natural monopoly that needs to be regulated when the common good so requires. For this purpose, natural monopoly exists when the market demand for a commodity or service can be supplied by a single entity at a lower cost than by two or more entities[.]

In *Milwaukee Industries Corporation v. Pampanga III Electric Cooperative, Inc.*,¹⁸ this Court exhaustively discussed why distribution utilities are granted the exclusive right to sell electricity in their respective franchise areas: the huge pre-operation costs:

The distribution utility, whether an electric cooperative or a private entity, possesses the exclusive right to sell electric power to consumers within its authorized area of operation. In turn, NAPOCOR, as the sole agency authorized to generate electric power — at least before the enactment of Republic Act No. 9136 or the Electric Power Industry Reform Act of 2001 (EPIRA) — in turn may sell electric power only to duly franchised distribution utilities and electric cooperatives. It may sell electricity directly to end-users only with the consent of the distribution utility or electric cooperative operating in the area concerned.

The electric power industry is highly capital-intensive and as such operates as a natural monopoly. This is true for all the traditional sectors,

¹⁸ 474 Phil. 439 (2004) [Per J. Tinga, Second Division].

namely: generation, transmission and distribution, the latter insofar as private distribution utilities is concerned. Specifically, distribution utilities have to spend tremendous amounts to set up distribution lines, power stations, operation centers, transformers and the like, not to mention the typical operating costs, to operate and do business. In consideration of the huge pre-operation costs, generating companies in view of the exigencies of the business have to grant distribution companies the exclusive right to sell electricity within the latter's area of operation.¹⁹

In *Alyansa Para Sa Bagong Pilipinas, et al. v. Energy Regulatory Commission*,²⁰ this Court recognized the legality of barring competition among distribution utilities to “protect the consuming public from exorbitant or unconscionable charges”:

The State grants electricity distribution utilities, through legislative franchises, a regulated monopoly within their respective franchise areas. Competitors are legally barred within the franchise areas of distribution utilities. Facing no competition, distribution utilities can easily dictate the price of electricity that they charge consumers. To protect the consuming public from exorbitant or unconscionable charges by distribution utilities, the State regulates the acquisition cost of electricity that distribution utilities can pass on to consumers.²¹

More recently, this Court again acknowledged the existence of natural monopolies, explaining why it would be “economically infeasible” to introduce competition in some industries. In *New Vision Satellite Network, Inc. v. The Provincial Government of Cagayan*:²²

... [A] survey of franchises recognized in jurisprudence shows that they involve: (i) public utilities and common carriers; (ii) economic activities which are in the nature of natural monopolies, or industries where the most efficient number of operators is one or only a few; (iii) industries where the first entrants or incumbents have near-monopoly status because of prohibitive fixed costs, economies of scale, and network effects, such that the first entrants or incumbent market players have a high degree of market dominance that impose an insurmountable barrier on potential entrants to enter the market and compete; and (iv) industries that require the use of natural resources or other scarce resources (such as the airwaves), which utilization thereof necessitates the exclusion of other persons or entities.

This is why tollway operation requires a franchise, while a financing company does not. This is why the operation of a broadcast system requires a franchise, while a virtual currency platform operator does not. This is why the operation of a light railway requires a franchise, while a lending company does not. This is why the operation of a telecommunication system requires a franchise, while a pawnshop does not. Once the tollway operator constructs an expressway, it would be

¹⁹ *Id.* at 451–452.

²⁰ 852 Phil. 20 (2019) [Per J. Carpio, *En Banc*].

²¹ *Id.*

²² 906 Phil. 698 (2021) [Per J. J. Lopez, Third Division].

practically impossible, if not economically unfeasible, for a rival tollway operator to build a competing infrastructure in the same area. Once the broadcast operator utilizes a particular radio frequency in the radio spectrum, no other broadcast operator can utilize the same frequency. Once the light railway operator constructs a railroad track, it would not make economic sense for a competing railway operator to construct a similar structure in the same area. Once the telecommunication operator excavates cables in common public areas, it would confer a first incumbent status and it would impose insurmountable barriers for other competing telecommunication operators to again request the local government to allow excavations in the said common public areas.

In the case of a financing company, lending company, virtual currency exchange operator, pawnshops, and other similar regulated entities requiring a secondary license in addition to general business and local permits, there can be as many market players as are qualified and eligible under the specific laws regulating the business activity. This is because these entities are not engaged in industries which are natural monopolies, or industries where first entrants do not have monopoly or near-monopoly status. Succeeding market players are free to enter the market as long as they comply with the requirements for the issuance of the administrative license to operate these businesses. Moreover, the requirement of obtaining a prior government permit to operate in these businesses is merely within the dictates of general welfare, and not because the economic reality of the industry involves scarce resources.²³

The foregoing show that it is against the common good to introduce new entrants to compete with natural monopolies.

The *ponencia* highlights how More Electric currently charges lower electricity prices than petitioners, seemingly contradicting the above discussions on how competition will raise prices in a naturally monopolistic industry. In the May 23, 2022 Records of the Senate, Senator Sherwin Gatchalian interpellated Senator Ralph Recto (Senator Recto), the sponsor of Republic Act No. 11918, regarding the electricity prices charged by petitioners and More Electric. Senator Recto replied that “as of May 3 [2022], ILECO I charges [PHP] 1.91 [kWh]; ILECO II, as of April 20, [PHP] 1.97 [kWh]; ILECO III, as of April 23, [PHP] 1.89 [kWh]; and MORE, as of April 18 to May 14, [PHP] 1.76 [kWh].”²⁴

Based on these cited prices, the difference between the price charged by More Electric and those charged by petitioners is insignificant and minuscule, with little to no real effect on the welfare of the people of Iloilo. The only entity benefiting in the enactment of Republic Act No. 11918 is no other than More Electric, who will be receiving the profits from encroaching into the franchise area of petitioners.

²³ *Id.* at 714–716.

²⁴ *Ponencia*, p. 12.

Compared to the PHP 1.76 per kilowatt-hour charged by More Electric, petitioner ILECO I charged PHP 0.15 more, petitioner ILECO II charged PHP 0.21 more, and petitioner ILECO III charged PHP 0.13 more. If multiplied by 200 kilowatt-hours—the average monthly electricity consumption of residential customers in the Philippines²⁵—the savings of those who will transfer from ILECO I to More Electric is just PHP 30.00 per month; from ILECO II to More Electric, PHP 42.00 per month; and, from ILECO III to More Electric, PHP 26.00 per month. These are minuscule amounts considering that More Electric did not create the distribution system in Iloilo and, therefore, should have significantly lower costs to pass on to consumers. This even reveals More Electric's lack of technical expertise to significantly lower the price of electricity in Iloilo. It may even indicate that More Electric is overcharging its end-users but charging just enough to make it appear that its prices are lower than its competitors.

Worse, More Electric is conducting its business at the expense of petitioners, “riding piggy-back”²⁶ on the existing infrastructure built and developed by them. This is unfair and detrimental to petitioners who have been providing quality service to their franchise areas.²⁷

Besides, the reduced prices is only for the short term. It will not be long before electricity prices start to rise in Iloilo considering that More Electric has commenced duplicating distribution infrastructure in Iloilo.²⁸ Being a private, for-profit corporation, More Electric will necessarily pass on these investment costs to its end-users, and whatever savings the latter had in the early years of More Electric's operation will be rendered nugatory.

All told, the expansion of More Electric's franchise is not for the common good, in violation of Article XII, Section 11 of the Constitution.

II(B)

It is true that Article XII, Section 11 provides that “[n]o franchise, certificate, or any other form of authorization for the operation of a public utility shall. . . be exclusive in character”; and that, according to *Tawang*

²⁵ Christy Balita, *Typical monthly electricity bill of residential customers of Manila Electric Company*, STATISTA, August 22, 2024, available at <https://www.statista.com/statistics/1409314/meralco-average-monthly-electricity-bill-by-electricity-consumption/> (last accessed on December 20, 2024).

²⁶ See J. Cruz's Dissenting Opinion in *Philippine Long Distance Telephone Co. v. National Telecommunications Commission*, 268 Phil. 784, 807 (1990) [Per J. Melencio-Herrera, *En Banc*].

²⁷ Senate Journal Session No. 36, 121 (2022).

²⁸ Ashley Erika O. Jose, *MORE Power energizes substation in Iloilo*, BUSINESS WORLD ONLINE, March 7, 2023, available at <https://www.bworldonline.com/corporate/2023/03/07/509026/more-power-energizes-substation-in-iloilo/> (last accessed December 20, 2024).

Multi-Purpose Cooperative v. La Trinidad Water District,²⁹ “[t]his constitutional prohibition is absolute and accepts no exception.”³⁰

Tawang involved a cooperative applying for a franchise to operate and maintain a waterworks system in Barangay Tawang, La Trinidad, Benguet. The local water utility opposed the application, arguing that under Section 47 of Presidential Decree No. 198 or the Provincial Water Utilities Act of 1973, its franchise is exclusive.³¹

Despite Section 47 of the Decree, the National Water Resources Board approved the cooperative’s application, holding that the local water utility’s franchise is unconstitutional in view of the prohibition on exclusive franchises in Article XII, Section 11 of the Constitution. On appeal, the Regional Trial Court reversed the ruling, holding that the Constitution prohibits the grant of exclusive franchise that precludes the State from granting a subsequent franchise when the public interest so requires, not the grant of an exclusive franchise *per se*.³²

In reversing the trial court and affirming the ruling of the National Water Resources Board, this Court explained in *Tawang* that the words of Article XII, Section 11 of the Constitution are plain and need no further explanation.³³ Therefore, courts have no other duty but to apply the provision.³⁴ Ultimately, the cooperative was allowed to operate in Barangay Tawang, and Section 47 of Presidential Decree No. 47 was declared unconstitutional:

The President, Congress and the Court cannot create directly franchises for the operation of a public utility that are exclusive in character. The 1935, 1973 and 1987 Constitutions expressly and clearly prohibit the creation of franchises that are exclusive in character. Section 8, Article XIII of the 1935 Constitution states that:

No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or other entities organized under the laws of the Philippines, sixty per centum of the capital of which is owned by citizens of the Philippines, **nor shall such franchise, certificate or authorization be exclusive in character** or for a longer period than fifty years. (Emphasis supplied)

Section 5, Article XIV of the 1973 Constitution states that:

²⁹ 661 Phil. 395 (2011) [Per J. Carpio, *En Banc*].

³⁰ *Id.* at 403.

³¹ *Id.* at 395.

³² *Id.*

³³ *Id.* at 400.

³⁴ *Id.*

No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty per centum of the capital of which is owned by such citizens, **nor shall such franchise, certificate or authorization be exclusive in character** or for a longer period than fifty years. (Emphasis supplied)

Section 11, Article XII of the 1987 Constitution states that:

No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines, at least sixty per centum of whose capital is owned by such citizens, **nor shall such franchise, certificate or authorization be exclusive in character** or for a longer period than fifty years. (Emphasis supplied)

Plain words do not require explanation. The 1935, 1973 and 1987 Constitutions are clear — franchises for the operation of a public utility cannot be exclusive in character. The 1935, 1973 and 1987 Constitutions expressly and clearly state that, “nor shall such franchise . . . be exclusive in character.” There is no exception.

When the law is clear, there is nothing for the courts to do but to apply it. The duty of the Court is to apply the law the way it is worded. In *Security Bank and Trust Company v. Regional Trial Court of Makati, Branch 61*, the Court held that:

Basic is the rule of statutory construction that **when the law is clear and unambiguous, the court is left with no alternative but to apply the same according to its clear language**. As we have held in the case of *Quijano v. Development Bank of the Philippines*:

“. . . We cannot see any room for interpretation or construction in the clear and unambiguous language of the above-quoted provision of law. This Court had steadfastly adhered to the doctrine that its first and fundamental duty is the application of the law according to its express terms, interpretation being called for only when such literal application is impossible. No process of interpretation or construction need be resorted to where a provision of law peremptorily calls for application. Where a requirement or condition is made in explicit and unambiguous terms, no discretion is left to the judiciary. It must see to it that its mandate is obeyed.” (Emphasis supplied)

In *Republic of the Philippines v. Express Telecommunications Co., Inc.*, the Court held that, “The Constitution is quite emphatic that the operation of a public utility shall not be exclusive.” In *Pilipino Telephone*

Corporation v. National Telecommunications Commission, the Court held that, “Neither Congress nor the NTC can grant an exclusive ‘franchise, certificate, or any other form of authorization’ to operate a public utility.” In *National Power Corp. v. Court of Appeals*, the Court held that, “Exclusivity of any public franchise has not been favored by this Court such that in most, if not all, grants by the government to private corporations, the interpretation of rights, privileges or franchises is taken against the grantee.” In *Radio Communications of the Philippines, Inc. v. National Telecommunications Commission*, the Court held that, “The Constitution mandates that a franchise cannot be exclusive in nature.”³⁵ (Emphasis supplied; citations omitted)

Tawang notwithstanding, I maintain that the Constitution allows for the grant of an exclusive franchise in the case of natural monopolies.

Reading *Tawang*, it appears that this Court made its declaration *only* based on Article XII, Section 11 of the Constitution and its previous iterations in the 1935 and the 1973 Constitution. Even the cases³⁶ cited in *Tawang* to justify the supposed absolute prohibition on exclusive franchises relied only on this sole provision of the Constitution.

However, if Article XII, Section 11 of the Constitution is read in conjunction with Article XII, Section 19, an allowance for the grant of exclusive franchises may be made without offending the plain words used in Article XII, Section 11. It only means that an exception exists but is found in another provision of the Constitution.

Article XII, Section 19 provides:

SECTION 19. The State shall regulate or prohibit monopolies when the public interest so requires. No combinations in restraint of trade or unfair competition shall be allowed.

The use of “regulate” in Article XII, Section 19 means that there are instances where the Constitution allows for a monopoly, an exclusive seller of a good or service within a market, to exist when the public interest so requires. I share the view that these regulated monopolies are the natural monopolies “that actually favor the consumers because of the existence of . . . economies of scale since we do not have unnecessary duplication of resources.”³⁷ However, these regulated monopolies should be heavily regulated by the State to prevent them from taking advantage of the inelastic demand for their service to charge exorbitant prices.

³⁵ *Id.* at 399–401.

³⁶ *Pilipino Telephone Corporation v. National Telecommunications Commission*, 457 Phil. 106 (2003) [Per J. Carpio, First Division]; *Republic of the Philippines v. Express Telecommunications, Co., Inc.*, 424 Phil. 380 (2002) [Per J. Ynares-Santiago, First Division]; *Radio Communications of the Philippines, Inc. v. National Telecommunications Commission*, 234 Phil. 443 (1987) [Per J. Gutierrez, Jr., Second Division].

³⁷ III Record, Constitutional Commission 258 (1986).

During the deliberations of the 1986 Constitutional Commission, Commissioners Rama and Villegas had the following discussion. Notably, Commissioner Villegas was a Harvard-trained economist:

MR. RAMA: Section 14 states: "The State shall regulate or prohibit monopolies when the public interest so requires."

I have heard the Chairman say that this would not prohibit the State to set up monopolies for the common good.

MR. VILLEGAS: That is right.

.....

MR. RAMA: I was thinking for instance, of the procedure or the system in Japan where tobacco is the monopoly of the State and serves substantially the common good and its revenues form a substantial part of the budget of the Japanese government.

Therefore, the monopoly on tobacco is a desirable monopoly; first, it is hazardous to health; and second, the State converts this kind of industry into something that benefits the country. On the other hand, although the statement has been made by the Chairman that this would not prohibit the State from setting up monopolies, the second sentence in Section 14 seems to contradict that statement because it states: "No combinations in restraint of trade or unfair competition shall be allowed." It is addressed to both the State and the private sector. So, does the Commissioner think that there should be some kind of a phrase here that would allow the government or the State to set up monopolies that would serve the common good?

MR. VILLEGAS: The second sentence is interpreted in the context of antitrust legislation or the jurisprudence on antitrust legislation for example, in the United States, to the extent that combinations in restraint of trade or unfair competition actually prejudice the consumers and the people. Then that is where the law comes in but precisely, there are certain monopolies which actually favor the consumers because of the economies of scale since we do not have unnecessary duplication of resources. However, these types of monopolies should be regulated.³⁸

If it were true that the prohibition on the grant of exclusive franchises was absolutely prohibited by the Constitution, then Congress would not have enacted numerous laws, including Presidential Decree No. 269, Republic Act No. 9136, and the newly enacted Republic Act No. 11659, among others, that allowed for exclusive franchises. Congress is presumed to enact laws that are in accord with the Constitution.

³⁸ *Id.*

It must be remembered that the rationale behind the prohibition on exclusive franchises is to promote free competition.³⁹ Indeed, under normal circumstances, it leads to innovation, improved quality of service, and lower prices.

However, competition is not always beneficial. At times, it can be wasteful and ruinous. As discussed, it is in the case of natural monopolies where it is more economically efficient for a single entity to serve an entire market. Introducing competition in naturally monopolistic industries will only lead to higher prices to consumers, contrary to the public interest and the common good.

Given the foregoing, the general rule should be that the grant of exclusive franchise for the operation of a public utility is prohibited. The reason is that granting exclusive franchises inhibits free and healthy competition. However, in industries where competition would instead be injurious and detrimental to the public, as in the case of natural monopolies, an exclusive franchise may be granted to them subject to their regulation by the State. This holistic reading of the provisions of the Constitution, without negating the plain words used in Article XII, Section 11, gives life to the Constitution as a whole.⁴⁰

III

Not only is the expansion of More Electric's franchise not for the common good, it also impedes the equity participation in public utilities by the general public.

Article XII, Section 1 of the Constitution states that “[t]he goals of the national economy are a more equitable distribution of opportunities, income, and wealth[.]” Relatedly, Article XII, Section 6 provides that “[t]he use of property bears a social function”; and that the right of corporations, cooperatives, and similar organizations to own, establish, and operate economic enterprises is “subject to the duty of the State to promote distributive justice and to intervene when the common good so requires.”

Here, instead of promoting distributive justice, the State gives opportunities to the already powerful. It must be remembered that More Electric is controlled by the same person controlling a water utility, among others. The expanded franchise granted to More Electric concentrates wealth and power in the hands of the few, giving less opportunity for

³⁹ See *Philippine Long Distance Telephone Co. v. National Telecommunications Commission*, 268 Phil. 784, 805 (1990) [Per J. Melencio-Herrera, *En Banc*].

⁴⁰ See *Civil Liberties Union v. The Executive Secretary*, 272 Phil. 147, 162 (1991) [Per. C.J. Fernan, *En Banc*].

ordinary individuals, such as cooperative members, to invest in public utilities.

The circumstances in this case are even worse than when More Electric first took over the electricity distribution in Iloilo City. At least at that time, the first mover's franchise had already expired before More Electric began operating.

In this case, petitioners are electric cooperatives who, at the time of the grant of their franchise, was assured of support and assistance by the national government. This is in consideration of the "heavy financial burdens" they had to bear to pursue the State's objective of total electrification of the country. Section 2 of Presidential Decree No. 269, before it was amended by Republic Act No. 10531, provided:

SECTION 2. *Declaration of National Policy.* — The total electrification of the Philippines on an area coverage basis being vital to the welfare of its people and the sound development of the Nation, it is hereby declared to be the policy of the State to pursue and foster, in an orderly and vigorous manner, the attainment, of this objective. For this purpose, the State shall promote, encourage and assist all public service entities engaged in supplying electric service, particularly electric cooperatives, which are willing to pursue diligently this objective.

Because of their non-profit nature, cooperative character and the heavy financial burdens that they must sustain to become effectively established and operationally viable, electric cooperatives, particularly, shall be given every tenable support and assistance by the National Government, its instrumentalities and agencies to the fullest extent of which they are capable; and, being by their nature substantially self-regulating and Congress having, by the enactment of this Decree, substantially covered all phases of their organization and operation requiring or justifying regulation, and in order to further encourage and promote their development they should be subject to minimal regulation by other administrative agencies.

Area coverage of electrification cannot be achieved unless service to the more thinly settled areas and therefore more costly to electrify is combined with service to the most densely settled areas and therefore less costly to electrify. Every public service entity should hereafter cooperate in a national program of electrification on an area coverage basis, or else surrender its franchise in favor of those public service entities which will. It is hereby found that the total electrification of the Nation requires that the laws and administrative practices relating to franchised electric service areas be revised and made more effective, as herein provided. It is therefore hereby declared to be the policy of the State that franchises for electric services areas shall hereafter be so issued, conditioned, altered or repealed, and shall be subject to such continuing regulatory surveillance, that the same shall conduce to the most expeditious electrification of the entire Nation on an area coverage basis.



However, contrary to this assurance, the national government, through Congress, allowed More Electric to encroach on petitioners' franchise areas. The State continues to embolden a big corporation to dominate and force businesses out of business, in violation of the Constitution's mandate to encourage the general public to invest in public utilities.

IV

Petitioners' right to procedural due process was also violated.

Procedural due process consists of the right to be heard.⁴¹ Specifically with respect to cancellation or revocation of franchises, this Court has held that the party whose franchise was cancelled or revoked should be given the opportunity to explain one's side.⁴² The reason is that a franchise "involve[s] investment of a big amount of capital, both in securing the [franchise] and in maintaining the operation of the [infrastructure] covered thereby."⁴³ Therefore, the operator should at least be given "an opportunity to improve its service, if it be deficient, or to be heard and to defend in case of a complaint being filed against it for the violation of any law or of the terms of its [franchise]."⁴⁴

Based on the submissions of the parties to this Court, it appears that petitioners were not given the opportunity to be heard by Congress before it granted an expanded franchise to More Electric. Considering that the expansion will greatly affect the terms of their franchise, their market share, and the viability of their business, they should have at least been given the opportunity to explain why there is no need to introduce competition in their franchise area.

It is true that petitioners' franchise was not, in the strictest sense, cancelled or revoked. Nevertheless, this does not make petitioners less entitled to due process. They still invested tremendous amounts of capital to set up the distribution system in their respective franchise areas. At the very least, they should have been given the opportunity to be heard by Congress.

V

Apart from being contrary to the common good, expanding More Electric's franchise impaired petitioners' obligations under their respective contracts with power generation firms.

⁴¹ See *Manila International Ports Terminal, Inc. v. Philippine Ports Authority*, 918-A Phil. 144, 167 (2021) [Per J. Hernando, *En Banc*].

⁴² *Id.* at 161–166.

⁴³ See *Pangasinan Trans. Co., Inc. v. Halili*, 95 Phil. 694, 697–698 (1954) [Per J. Labrador, *En Banc*].

⁴⁴ See *Bohol Land Transportation Co. v. Jureidini*, 53 Phil. 560, 569 (1929) [Per J. Villa-Real, *En Banc*].

Article III, Section 10 of the Constitution provides that “[n]o law impairing the obligation of contracts shall be passed.” The impairment under this provision is not limited to a literal change in the terms of the contract. New conditions need not even be imposed.⁴⁵ So long as the contract is diminished in some way, the non-impairment clause is considered violated.⁴⁶

Distribution utilities such as petitioners enter into power contracts with generation firms in an offtake or take-or-pay basis. This means that they obligate themselves to pay a contracted volume of electricity at a fixed cost, regardless of the actual demand from the consumers. Distribution utilities enter into these off-take agreements with confidence and expectation their franchises will be allowed to their full term. Section 27 of Republic Act No. 9136 provides:

SECTION 27. *Franchising in the Electric Power Sector.* – The power to grant franchises to persons engaged in the transmission and distribution of electricity shall be vested exclusively in the Congress of the Philippines and all laws inconsistent with this Act particularly, but not limited to, Section 43 of PD 269, otherwise known as the “National Electrification Decree,” are hereby deemed repealed or modified accordingly: Provided, That all existing franchises shall be allowed to their full term: Provided, further, That in the case of electric cooperatives, renewals and cancellations shall remain with the National Electricity Commission under the National Electrification Administration for five (5) more years after the enactment of this Act.

However, contrary to this assurance, the State allowed More Electric to concurrently operate with petitioners in their franchise area, thus dividing the market and unprecedentedly lowering the demand for petitioners’ electricity. This lower demand, in turn, impaired petitioners’ contracts with generation companies because they remained in locked-in contracts, paying for the offtake price but with fewer customers to shoulder the costs. Worse, petitioners will have no choice but to charge higher distribution charges, resulting in an overall higher cost of electricity in Iloilo.

It is true that property rights protected by the non-impairment clause yields to the police power of the State.⁴⁷ However, there is only a valid impairment if the police power is exercised to promote the general welfare.⁴⁸

⁴⁵ *Goldenway Merchandising Corporation v. Equitable PCI Bank*, 706 Phil. 431, 438 (2013) [Per J. Villarama, Jr., First Division].

⁴⁶ *Id.*

⁴⁷ *The Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, 836 Phil. 214, 273 (2018) [Per J. Leonen, *En Banc*].

⁴⁸ *Id.* at 265, citing *Philippine Association of Service Exporters, Inc. v. Drilon*, 246 Phil. 393, 398 (1988) [Per J. Sarmiento, *En Banc*].



The discussions on how competition drives prices up in naturally monopolistic industries show that the impairment of petitioners' contracts was not intended for the general welfare. Allowing More Electric to operate in the franchise areas already served by petitioners results in the unnecessary duplication of infrastructure and the inevitable rise in the cost of electricity. Section 1 of Republic Act No. 11918 puts everyone in a position worse off than before More Electric entered the distribution industry.

In sum, Section 1 of Republic Act No. 11918 is void for being violative of the non-impairment clause.

VI

Section 1 of Republic Act No. 11918 also violates the equal protection clause because it grants More Electric benefits that are not granted to other distribution utilities similarly situated to it.

Article III, Section 1 of the Constitution provides that "no person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws." Meanwhile, under the equal protection clause, all persons or things similarly situated should be treated alike, both in the privileges conferred and the obligations imposed.⁴⁹

The equal protection guarantee still allows for classification, so long as it conforms to the traditional standard of reasonableness, which is based on substantial distinctions, relevant to the purpose of the law, applies equally to all the members of the class, and is not be limited to existing conditions only.⁵⁰

Here, More Electric and petitioners are all distribution utilities as defined in the Electric Power Industry Reform Act of 2001.⁵¹ Yet, More Electric is given extraordinary eminent domain powers.

Section 10 of Republic Act No. 11212 on More Electric's power of eminent domain provides:

SECTION 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. The grantee is

⁴⁹ *Lopez, Jr. v. Commission on Elections*, 221 Phil. 325, 331 (1985) [Per J. Fernando, *En Banc*].

⁵⁰ *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, 256 Phil. 786, 808 (1989) [Per J. Cruz, *En Banc*].

⁵¹ Republic Act No. 9136, sec. 4(q).

authorized to install and maintain its poles wires, and other facilities over, under, and across public property, including streets, highways, parks, and other similar property of the Government of the Philippines, its branches, or any of its instrumentalities. 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 to end users in its franchise area: *Provided*, That proper expropriation proceedings shall have been instituted and just compensation paid:

Provided, further, That upon the filing of the petition for expropriation, or at any time thereafter, and after due notice to the owner of the property to be expropriated and the deposit in a bank located in the franchise area of the full amount of the assessed value of the property or properties, the grantee shall be entitled to immediate possession, operation, control, use and disposition of the properties sought to be expropriated, including the power of demolition, if necessary, notwithstanding the pendency of other issues before the court, including the final determination of the amount of just compensation to be paid. The court may appoint a representative from the ERC as a trial commissioner in determining the amount of just compensation. The court may consider the tax declarations, current audited financial statements, and rate-setting applications of the owner or owners of the property or properties being expropriated in order to determine their assessed value. (Emphasis supplied)

On the other hand, the right of eminent domain of electric cooperatives is provided under Section 23 of Republic Act No. 9165:

SEC. 23. *Functions of Distribution Utilities.* –

....

Distribution utilities may exercise the power of eminent domain subject to the requirements of the Constitution and existing laws.

Furthermore, under the National Electrification Administration Decree,⁵² by virtue of which petitioners were granted their franchises, electric cooperatives are likewise granted general eminent domain powers:

Section 16. *Powers.* A cooperative is hereby vested with all powers necessary or convenient for the accomplishment of its corporate purpose and capable of being delegated by the President or the National Assembly when it comes into existence; and no enumeration of particular powers hereby granted shall be construed to impair any general grant of power herein contained, nor to limit any such grant to a power or powers

⁵² Presidential Decree No. 269 (1973), sec. 16(k).

of the same class as those so enumerated. Such powers shall include but not be limited to, the power:

.....

- (k) To exercise the power of eminent domain in the manner provided by law for the exercise of such power by other corporations constructing or operating electric generating plants and electric transmission and distribution lines or systems[.]

As for other distribution utilities, below are the eminent domain provisions in their respective franchises:

<p>Olongapo Electricity Distribution Company, Inc. [Republic Act No. 10373 (2013)]</p>	<p>SECTION 9. <i>Right of Eminent Domain.</i> — Subject to the limitations and procedures prescribed by law, the grantee is authorized to exercise the right of eminent domain insofar as it may be reasonably necessary for the efficient maintenance and operation of services. The grantee is authorized to install and maintain its poles, wires and other facilities over and across public property, including streets, highways, forest reserves and other similar property of the Government of the Philippines, its branches or any of its instrumentalities. The grantee may acquire such private property as is actually necessary for the realization of the purposes for which this franchise is granted: <i>Provided,</i> That proper condemnation proceedings shall have been instituted and just compensation paid.</p>
<p>Angeles Electric Corporation [Republic Act No. 9381 (2007)]</p>	<p>SEC. 10. <i>Right of Eminent Domain.</i> — Subject to the limitations and procedures prescribed by law, the grantee is authorized to exercise the right of eminent domain insofar as it may be reasonably necessary for the efficient maintenance and operation of services. The grantee is authorized to install and maintain its poles, wires and other facilities over and across public property, including streets, highways, forest reserves and other similar property of the Government of the Philippines, its branches or any of its instrumentalities. The grantee may acquire such private property as is actually necessary for the realization of the purposes for which this franchise is granted: <i>Provided,</i> That proper condemnation proceedings shall have been instituted and just compensation paid.</p>
	<p>SECTION 9. <i>Right of Eminent Domain.</i> — Subject to the limitations and procedures prescribed by law, the grantee is authorized to exercise the right of eminent domain insofar as it may be reasonably necessary for the efficient maintenance and operation of services. The grantee is authorized to install and maintain its</p>

<p>First Bay Power Corp. [Republic Act No. 10891 (2016)]</p>	<p>poles, wires and other facilities over and across public property, including streets, highways, forest reserves and other similar property of the Government of the Philippines, its branches or any of its instrumentalities. The grantee may acquire such private property as is actually necessary for the realization of the purposes for which this franchise is granted: <i>Provided</i>, That proper condemnation proceedings shall have been instituted and just compensation paid.</p>
<p>Cotabato Light and Power Company [Republic Act No. 10637 (2014)]</p>	<p>SECTION 9. <i>Right of Eminent Domain.</i> — Subject to the limitations and procedures prescribed by law, the grantee is authorized to exercise the right of eminent domain insofar as it may be reasonably necessary for the efficient maintenance and operation of services. The grantee is authorized to install and maintain its poles, wires and other facilities over and across public property, including streets, highways, forest reserves and other similar property of the Government of the Philippines, its branches or any of its instrumentalities. The grantee may acquire such private property as is actually necessary for the realization of the purposes for which this franchise is granted: <i>Provided</i>, That proper condemnation proceedings shall have been instituted and just compensation paid.</p>
<p>Cotabato Electric Cooperative, Inc. – PPALMA [Republic Act No. 11322 (2019)]</p>	<p>SECTION 10. <i>Right of Eminent Domain.</i> — Subject to the limitations and procedures prescribed by law, the grantee is authorized to exercise the right of eminent domain insofar as it may be reasonably necessary for the efficient maintenance and operation of services. The grantee is authorized to install and maintain its poles, wires, and other facilities over and across public property, including streets, highways, forest reserves, and other similar property of the Government of the Philippines, its branches, or any of its instrumentalities. The grantee may acquire such private property as is actually necessary for the realization of the purposes for which this franchise is granted: <i>Provided</i>, That proper condemnation proceedings shall have been instituted and just compensation paid.</p>
<p>Mactan Electric Company, Inc. [Republic Act No. 10890 (2016)]</p>	<p>SECTION 9. <i>Right of Eminent Domain.</i> — Subject to the limitations and procedures prescribed by law, the grantee is authorized to exercise the right of eminent domain insofar as it may be reasonably necessary for the efficient maintenance and operation of services. The grantee is authorized to install and maintain its poles, wires, and other facilities over and across public property, including streets, highways, forest reserves, and other similar property of the Government of the Philippines, its branches or any of its instrumentalities. The grantee may acquire such private property as is actually</p>

	necessary for the realization of the purposes for which this franchise is granted: <i>Provided</i> , That proper expropriation proceedings shall have been instituted and just compensation paid.
--	---

Comparing the eminent domain powers of More Electric, petitioners, and other distribution utilities, it can be gleaned that More Electric has extraordinary eminent domain powers despite a lack of substantial distinction between them. Unlike other distribution utilities, More Electric is specifically allowed to expropriate properties already used by other entities in the operation of a distribution system. In other words, it is allowed to conduct its operations at the expense of those who actually had the distribution system put up in Iloilo, i.e., petitioners.

Worse, expropriating properties that are already devoted to electricity distribution is not the “public use” required for the valid exercise of the power of expropriation, in violation of Article III, Section 9 of the Constitution:

Section 9. Private property shall not be taken for public use without just compensation.

If private property is taken for the same public use as to which the property was originally devoted, it is actually not for a public purpose, but for proprietary reasons. In reality, there will only be a change as to *who gets the profits*,⁵³ and any public benefit is only pretended or, at best, incidental. Therefore, should More Electric expropriate properties already used for the operation of a distribution system in Iloilo, the purpose of the taking is no longer for the benefit of the public. Rather, it will be solely for the benefit of More Electric, the new entity who will be profiting from the use of the expropriated facilities.

Contrary to respondents’ claim, there is no collateral attack on Section 10 of Republic Act No. 11212 in this case. The reason is that the object of the present Petition is to set aside Section 1 of Republic Act No. 11918, which, in turn, is operationalized by Section 10 of Republic Act No. 11212. For this reason, as petitioners argue, “[i]t is only proper that [this Court examine] Section 1 of Republic Act No. 11918, in relation to Section 10 of Republic Act No. 11212[.]”

It is true that in *More Electric and Power Corporation v. Panay Electric Company, Inc.*,⁵⁴ this Court held that Section 10 of Republic Act

⁵³ See J. Leonen, Dissenting Opinion in *More Electric and Power Corporation v. Panay Electric Co. Inc.*, 884 Phil. 673, 758 (2020) [Per J. J. Reyes, Jr., *En Banc*], citing Concurring Opinion of J. McLean in *The West River Bridge Company v. Dix, et al.* 47 U.S. 507, 537 (1848) [Per J. Daniel, Supreme Court of the United States].

⁵⁴ 884 Phil. 673 (2020) [Per J. J. Reyes, Jr., *En Banc*].

No. 11212 does not violate the equal protection clause. However, it must be remembered that the circumstances when *More Electric* was decided are different from the circumstances in this case. The cited case was decided when More Electric's franchise area only covered Iloilo City, while in this case, More Electric has an expanded franchise area which encroached on the respective franchise areas of petitioners. The respondent in *More Electric*, Panay Electric Company, Inc., had an expired franchise, while the petitioners in this case have subsisting franchises. Therefore, the constitutionality of Section 10 of Republic Act No. 11212, in relation to its operationalization under the current circumstances, can be revisited.

Perhaps the most striking of the unwarranted benefits given to More Electric is the expansion of its franchise area despite the prior operators' subsisting franchise. As pointed out by petitioners, Section 27 of the Electric Power Industry Reform Act of 2001⁵⁵ mandates the Congress to allow existing franchises to their full term. To add, it was even the basis for President Marcos's veto of House Bill No. 10554, which would have expanded the franchise of another distribution utility, Davao Light and Power Company, Inc., to cover the franchise area of Northern Davao Electric Cooperative. Still, Republic Act No. 11918 was allowed to lapse into law despite the existing franchise of petitioners. There is no other conclusion that Section 1 of Republic Act No. 11918 constitutes class legislation to give unwarranted benefits to More Electric.

All told, Section 1 of Republic Act No. 11918 is void for being violative of the equal protection clause.

VII

The Philippine Rural Electric Cooperatives Association should have been allowed to intervene in this case. Rule 19, Section 1 of the Rules of Court on intervention provides:

SECTION 1. *Who may intervene.* — A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action. The court shall consider whether or not intervention will

⁵⁵ Republic Act No. 9136, sec. 27 provides:

SECTION 27. *Franchising Power in the Electric Power Sector.* — The power to grant franchises to persons engaged in the transmission and distribution of electricity shall be vested exclusively in the Congress of the Philippines and all laws inconsistent with this Act particularly, but not limited to, Section 43 of PD 269, otherwise known as the "National Electrification Decree", are hereby deemed repealed or modified accordingly: *Provided*, That all existing franchises shall be allowed to their full term: *Provided, further*, That in the case of electric cooperatives, renewals and cancellations shall remain with the National Electrification Commission under the National Electrification Administration for five (5) more years after the enactment of this Act.

unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenors' rights may be fully protected in a separate proceeding.

This provision requires an intervenor to have a legal interest in the matter in litigation that may either be in the success of the parties, or against the success of both. The intervenor may also be so situated as to be adversely affected by a distribution or other distribution of property in custody of the court or its officer.

Further, the interest must be actual, material, direct, and immediate character, such that the intervenor will either gain or lose by the direct legal operation of the judgment.⁵⁶ It cannot be merely contingent or expectant. And even if interest exists, admission as an intervenor is still subject to the discretion of court. A motion for intervention may also be denied if it will unduly delay or prejudice the adjudication of the rights of the original parties, or if the rights of the person wanting to intervene may be fully protected in a separate proceeding.⁵⁷

I do not see why, as the *ponencia* found, Philippine Rural Electric Cooperatives Association's interest "is not of a direct and immediate character." Associations have long been allowed to sue and intervene on behalf of their members, especially when "the results of the case will affect [the associations'] vital interests."⁵⁸ To add, direct interest of associations is not even required. So long as their members are affected by the action, the association can represent its members in suits.⁵⁹

Here, the Philippine Rural Electric Cooperatives Association is composed of rural electric cooperatives for their mutual cooperation, development, and the protection of their rights and interests.⁶⁰ Considering that the enactment of Republic Act No. 11918 negatively affected the welfare and interests of petitioners, which are members of the Philippine Rural Electric Cooperatives Association, the latter should be allowed to intervene on behalf of petitioners.

ACCORDINGLY, I vote to **GRANT** the Petition for Certiorari and Prohibition. Section 1 of Republic Act No. 11918 must be declared **UNCONSTITUTIONAL**, and a **WRIT OF PROHIBITION** must be **ISSUED** to permanent enjoin and prohibit respondent More Electric and Power Corporation and all other persons acting on its behalf from implementing Section 1 of Republic Act No. 11918.

⁵⁶ *Firestone Ceramics, Inc. v. Court of Appeals*, 372 Phil. 407 (1999) [Per J. Gonzaga-Reyes, Third Division].

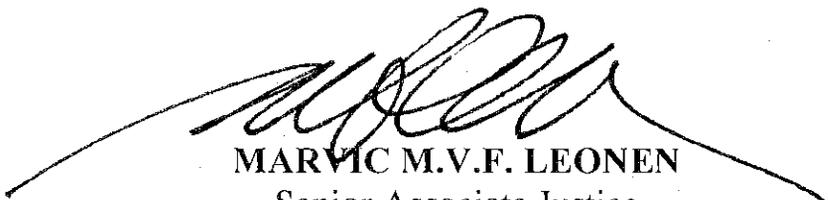
⁵⁷ RULES OF COURT, rule 19, sec. 1.

⁵⁸ *Pharmaceutical and Health Care Association of the Philippines v. Secretary of Health*, 561 Phil. 392, 396 (2007) [Per J. Austria-Martinez, *En Banc*].

⁵⁹ *Id.* at 395.

⁶⁰ Urgent Motion for Leave to Intervene and to Admit the Attached Petition-in-Intervention, p. 3.

The Urgent Motion for Leave to Intervene and the Petition-in-Intervention must likewise be **GRANTED**.



MARVIC M.V.F. LEONEN
Senior Associate Justice