REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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NATIONAL POWER CORPORATION, Petitioner,	**CTA EB Case No. 1069** (CTA AC No. 94)
	Present:
- versus -	**DEL ROSARIO,** *PJ*, **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS,** and **RINGPIS-LIBAN,** *JJ.*
THE PROVINCE OF NUEVA VIZCAYA and PERFECTO B. MARTINEZ, JR., Respondents.	**Promulgated:** APR 07 2015 9:15 p.m.

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DECISION

UY, *J.*:

Before Us is a Petition for Review filed by the National Power Corporation, petitioner on October 11, 2013[1] against the Province of Nueva Vizcaya and Perfecto B. Martinez, Jr., respondents, seeking the reversal and setting aside of the Decision dated June 3, 2013[2] and Resolution dated September 11, 2013[3], both promulgated by the Special Second Division of this Court[4] (or "Court in Division") in CTA AC No. 94, entitled *"National Power Corporation, Petitioner, vs. The*

[1] EB Docket, pp. 7 to 21.

[2] EB Docket, pp. 23 to 40; Ponencia of Associate Justice Cielito N. Mindaro-Grulla, and concurred by Associate Justices Juanito C. Castañeda and Caesar A. Casanova.

[3] EB Docket, pp. 42 to 43.

[4] The Special Second Division was composed of Associate Justice Juanito C. Castañeda, Jr., as Chairperson, and Associate Justices Caesar A. Casanova and Cielito N. Mindaro-Grulla, as Members.

Province of Nueva Vizcaya and Perfecto B. Martinez, Jr., Respondents". The dispositive portions thereof respectively read:

Decision dated June 3, 2013:

"**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED**. Accordingly, the assailed Order dated May 23, 2012 of the Regional Trial Court of Bayombong, Nueva Vizcaya, Branch 27 in Civil Case No. 6887 entitled 'National Power Corporation vs. Province of Nueva Vizcaya and Perfecto Martinez' is **AFFIRMED**.

SO ORDERED."

Resolution dated September 11, 2013:

"**WHEREFORE**, premises considered, petitioner's Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED."

THE FACTS

Petitioner National Power Corporation (or NPC) is a government owned and –controlled corporation created and existing by virtue of Republic Act No. (RA) 6395, as amended, with principal office address at NPC Office Building Complex, Quezon Avenue corner BIR Road, East Triangle, Diliman, Quezon City, Philippines.

On the other hand, respondent Province of Nueva Vizcaya is a local government unit organized and existing under Philippine laws, with postal address at Provincial Capitol Compound, Bayombong, Nueva Vizcaya; while respondent Perfecto B. Martinez, Jr. is impleaded in his capacity as the Provincial Treasurer of Nueva Vizcaya.

On November 21, 2007, petitioner received an Assessment Letter dated November 8, 2007 from respondent Perfecto B. Martinez, Jr., the Provincial Treasurer of Nueva Vizcaya, demanding payment of local franchise tax for the years 2002 to 2006 in the aggregate amount of ₱8,776,271.35 pursuant to Section 2 of Article

Two of Chapter III of the Tax Ordinance No. 2003-01 of the Province of Nueva Vizcaya in relation to Local Finance Circular No. 1-07 dated June 28, 2007 issued by the Department of Finance. The demanded local franchise tax is based on the payment made by Nueva Vizcaya Electric Cooperative, Inc. (NUVELCO) to petitioner.

On January 7, 2008 petitioner filed a Protest letter with the office of respondent Martinez, assailing the assessment of local franchise tax on the ground, among others, that the power generation of petitioner is no longer considered a public utility operation for which a franchise tax is required as provided under Section 6 of RA 9136, otherwise known as the "Electric Power Industry Reform Act of 2001" (hereinafter referred to as the "EPIRA"). Petitioner emphasized that it can no longer be considered as a "business enjoying a franchise" for the purpose of collection of franchise tax under Section 137 of the Local Government Code of 1991 (LGC). Based on the foregoing premises, petitioner concluded that it is not liable to pay the assailed local franchise tax.

Respondent Province of Nueva Vizcaya failed to resolve petitioner's protest within the period of sixty (60) days, prompting petitioner to file an Appeal before Branch 27 of the Regional Trial Court of Bayombong, Nueva Vizcaya (RTC-Bayombong) on February 26, 2008, by mail, to stop the subject assessment from becoming final and executory pursuant to Section 195 of the LGC. The case was docketed as Civil Case No. 6887, entitled *"National Power Corporation vs. Province of Nueva Vizcaya and Perfecto B. Martinez".*

Petitioner maintained in its Appeal that it is not liable to pay the local franchise tax, invoking the provision of Section 137 of the LGC and the EPIRA.

In their Answer in Civil Case No. 6887, respondents assert that petitioner is clearly liable to pay the local franchise tax pursuant to law, ordinance and jurisprudence, citing rulings of the Supreme Court in *National Power Corporation vs. City of Cabanatuan*[5] ("*Cabanatuan* case") and in *National Power Corporation vs. Province of Isabela*[6] ("*Isabela* case"). Respondents also filed a counter-claim in the aggregate amount of ₱8,776,271.35 representing the purported local franchise tax liability of petitioner.

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[5] G.R. No. 149110, April 9, 2003.
[6] G.R. No. 165827, June 16, 2006.

During pre-trial conference before the RTC-Bayombong, both petitioner and respondent agreed that there are no factual issues to be resolved and the only remaining legal issue is whether or not petitioner is liable for local franchise tax to respondent.

On September 29, 2011, RTC-Bayombong issued an Order dismissing petitioner's Appeal on the ground of prescription. The said Court explained that petitioner had until February 20, 2008 within which to file its Appeal with the court of competent jurisdiction. It pointed out that petitioner filed its Appeal through mail only on February 26, 2008. Hence, petitioner's Appeal was filed beyond the mandatory periods provided under Section 195 of the LGC. On November 18, 2011, petitioner filed a Motion for Reconsideration of the Order dated September 29, 2011.

In the Order dated May 23, 2012, RTC-Bayombong reconsidered its Order dated September 29, 2011 and consequently proceeded to discuss the merits of the Appeal. In the same Order, the said Court dismissed the Appeal on the ground that petitioner is liable to pay the local franchise tax imposed by respondent. The same Court ratiocinated that even though petitioner is exempted from securing a national franchise, it is not exempted from procuring local franchise and from payment of local franchise tax. Thus, RTC-Bayombong found that petitioner is liable for local franchise taxes when it conducted operations in the province during the period from 2002 to 2006 and thereafter. On June 20, 2012, petitioner received the Order of the RTC-Bayombong.

On July 18, 2012, petitioner filed a Petition for Review before the Court in Division docketed as CTA AC No. 94, praying to nullify and set aside the assessment dated November 8, 2007 and to declare that petitioner is exempt from payment of local franchise tax. Petitioner argued that it is a power generation company, which shall not be considered a public utility operation and for this purpose shall not be required to secure a national franchise pursuant to Section 6 of RA 9136 or the EPIRA. It likewise contended that although petitioner was adjudged as liable for payment of franchise tax by the Supreme Court in its ruling in the *Cabanatuan* case; however, with the passage of the EPIRA, petitioner is again exempt from payment of franchise tax. Petitioner further asserts that it should not be held liable for franchise tax considering that it does not even have a power plant located in the province of Nueva Vizcaya.

On September 6, 2012, respondents filed their Comment to the Petition for Review in CTA AC No. 94 and prayed that the same be dismissed for lack of merit. The Court in Division issued a resolution on September 12, 2012, giving both parties a period of thirty (30) days from notice within which to file their respective memoranda. In the same resolution, the Court in Division ordered the Branch Clerk of Court or the Officer-In-Charge of the RTC-Bayombong, to elevate the entire original records of Civil Case No. 6887, within ten (10) days from notice.

Petitioner filed its Memorandum on October 15, 2012; while respondents filed their Memorandum on October 16, 2012. Hence, CTA AC No. 94 was submitted for decision on October 25, 2012.

In the assailed Decision dated June 3, 2013,[7] the Court in Division denied petitioner's Petition for Review and affirmed the RTC-Bayombong's Order dated May 23, 2012. In part, the Court in Division held that the EPIRA never repealed petitioner's corporate powers and as long as petitioner exercises rights and privileges bestowed by its Charter, aside from performing missionary electrification function, it is considered as a business enjoying a franchise that comes within the ambit of Sections 137 and 182 of the LGC. The Court in Division further ruled that even assuming that petitioner has no power plant located in the province of Nueva Vizcaya, it does not prohibit nor in anyway impede petitioner from exercising its rights and privileges given by its Charter. In this regard, the Court in Division upheld the validity of the Assessment Letter dated November 8, 2007 issued by the Provincial Treasurer of Nueva Vizcaya demanding the payment of local franchise tax for the years 2002 to 2006 in the aggregate amount of ₱8,776,271.35.

Aggrieved, petitioner filed a Motion for Reconsideration of the assailed Decision on June 18, 2014;[8] while respondents filed their Comment thereto,[9] by registered mail, on July 22, 2013 and received by the Court in Division on July 30, 2013.

On September 11, 2013, the Court in Division denied petitioner's motion in the assailed Resolution[10] of even date, for lack of merit.

Hence, on October 11, 2013, petitioner filed the instant Petition

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[7] Division Docket, pp. 101 to 118; EB Docket, pp. 23 to 40.
[8] Division Docket, pp. 119 to 125.
[9] Division Docket, pp. 135 to 137.
[10] Division Docket, pp. 133 to 134; EB Docket, pp. 42 to 43.

for Review[11] (by registered mail and received by the Court *En Banc* on October 17, 2014) praying that the Decision dated June 3, 2013 and Resolution dated September 11, 2013, be reconsidered and set aside and a new decision be rendered nullifying and setting aside the assessment issued by respondents dated November 8, 2007, and declaring petitioner exempt from payment of franchise tax.

In the Resolution dated December 2, 2013,[12] the Court *En Banc* directed respondents to file their Comment, within ten (10) days from receipt of the said Resolution.

On March 13, 2014, respondents filed their Motion to Admit Comment, attaching their Comment (To Petitioner's Petition for Review).[13] Said Motion was granted, and the Comment was admitted by the Court *En Banc* in the Resolution dated May 2, 2014.[14] In the same Resolution, both parties were directed to file their respective memoranda.

Petitioner filed its Memorandum on June 3, 2014;[15] while respondent's Memorandum was filed on June 20, 2014.[16] With the submission of the parties respective Memoranda, the instant case was submitted for decision on July 24, 2014.[17] Hence, this Decision.

THE ISSUE

Petitioner submits this sole issue for resolution of the Court *En Banc*, to wit:

> **"WHETHER OR NOT NPC IS LIABLE FOR THE PAYMENT OF FRANCHISE TAX."**[18]

Petitioner's Arguments:

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[11] EB Docket, pp. 7 to 21.
[12] EB Docket, pp. 115 to 116.
[13] EB Docket, pp. 142 to 148.
[14] EB Docket, pp. 157 to 158.
[15] EB Docket, pp. 159 to 168.
[16] EB Docket, pp. 150 to 154.
[17] Resolution dated July 24, 2014, EB Docket, pp. 171 to 172.
[18] EB Docket, pp. 12 and 163.

Petitioner contends that the Court in Division erred in affirming the trial court's order denying its appeal because petitioner is clearly exempt from the payment of franchise tax. Petitioner further claims that Section 137 of the LGC limits the imposition of franchise tax only to those businesses enjoying a franchise; all other businesses which do not enjoy a franchise cannot and should not be imposed said franchise tax.

According to petitioner, with the effectivity of the EPIRA, petitioner is now considered only as a generation company as its transmission and sub-transmission functions have been transferred to TRANSCO; thus, it is no longer required to secure a franchise and consequently, cannot be burdened with the payment of the local franchise tax.

Moreover, petitioner argues that the Supreme Court decisions in the *Isabela* case and the *Cabanatuan* case are only considered as *"law of the case"* and may not be applied to cases after the enactment of the EPIRA, and as such, petitioner should be exempt from payment of franchise tax.

Petitioner likewise asserts that, even without presenting evidence, it is very apparent that petitioner does not have a power plant in the Province of Nueva Vizcaya. As such, the source of energy/power delivered to NUVELCO cannot be specifically identified because the source may reasonably come from other power generation companies, *i.e.*, independent power producers and private power plants. Thus, according to petitioner, there is no basis for the Court in Division to uphold the validity of assessment made by respondent Provincial Treasurer.

Respondent's counter-arguments:

Respondents, on the other hand, counter-argue that pursuant to law, ordinance and jurisprudence, particularly the *Isabela* case and the *Cabanatuan* case, petitioner is clearly liable to pay franchise tax to the Province of Nueva Vizcaya. According to respondents, the Court in Division correctly ruled that the EPIRA Law never repealed petitioner's corporate powers under its franchise and as long as it exercises its rights and privileges bestowed by its charter, aside from performing missionary electrification function through SPUG, it is considered a business enjoying a franchise that comes within the ambit of Sections 137 and 192 of the LGC.

Furthermore, respondents contend that the exemption of securing a franchise for power generation companies under the EPIRA does not include local franchise; thus, petitioner is required to secure a local franchise and pay the requisite franchise tax thereto for its business operations in the Province.

Finally, anent petitioner's assertion that it has no power plant located in the Province of Nueva VIzcaya, respondents maintain that there is no cogent and convincing reason to disturb the ruling of the Court in Division dismissing petitioner's aforesaid assertion. According to respondent, in the absence of concrete evidence to substantiate its claim, petitioner's assertion has no leg to stand on, and there is allegedly no basis, in fact and in law, to reconsider said ruling.

THE COURT *EN BANC*'S RULING

We rule in favor of petitioner.

The nature of the local franchise tax in relation to petitioner is explained by the Supreme Court in the *Cabanatuan* case, to wit:

> "In its general signification, a franchise is a privilege conferred by government authority, which does not belong to citizens of the country generally as a matter of common right. In its specific sense, a franchise may refer to a general or primary franchise, or to a special or secondary franchise. The former relates to the right to exist as a corporation, by virtue of duly approved articles of incorporation, or a charter pursuant to a special law creating the corporation. The right under a primary or general franchise is vested in the individuals who compose the corporation and not in the corporation itself. On the other hand, the latter refers to the right or privileges conferred upon an existing corporation such as the right to use the streets of a municipality to lay pipes of tracks, erect poles or string wires. The rights under a secondary or special franchise are vested in the corporation and may ordinarily be conveyed or mortgaged under a general power granted to a corporation to dispose of its property, except such special or secondary franchises as are charged with a public use.

In Section 131 (m) of the LGC, Congress unmistakably defined a franchise in the sense of a secondary or special franchise. This is to avoid any confusion when the word franchise is used in the context of taxation. As commonly used, a **franchise tax** is 'a tax on the privilege of transacting business in the state and exercising corporate franchises granted by the state.' It is not levied on the corporation simply for existing as a corporation, upon its property or its income, but on its exercise of the rights or privileges granted to it by the government. Hence, a corporation need not pay franchise tax from the time it ceased to do business and exercise its franchise. It is within this context that the phrase '**tax on businesses enjoying a franchise**' in section 137 of the LGC should be interpreted and understood. Verily, to determine whether the petitioner is covered by the franchise tax in question, the following requisites should concur: (1) that petitioner has a 'franchise' in the sense of a secondary or special franchise; and (2) that it is exercising its right or privileges under this franchise within the territory of the respondent city government.

Petitioner fulfills the first requisite. Commonwealth Act No. 120, as amended by Rep. Act No. 7395[19], constitutes petitioner's primary and secondary franchises. It serves as the petitioner's charter, defining its composition, capitalization, the appointment and the specific duties of its corporate officers, and its corporate life span. As its secondary franchise, Commonwealth Act No. 120, as amended, vests the petitioner the following powers which are not available to ordinary corporations, vis:

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With these powers, petitioner eventually had the monopoly in the generation and distribution of electricity. This monopoly was strengthened with the issuance of Pres. Decree No. 40, nationalizing the electric power industry. Although Exec. Order No. 215 thereafter allowed private sector participation in the generation of electricity, the transmission of electricity remains the monopoly of the petitioner.

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[19] This should be read as "Republic Act No. 6395", otherwise known as "AN ACT REVISING THE CHARTER OF THE NATIONAL POWER CORPORATION".

> Petitioner also fulfills the second requisite. It is operating within the respondent city government's territorial jurisdiction pursuant to the powers granted to it by Commonwealth Act No. 120, as amended. From its operations in the City of Cabanatuan, petitioner realized a gross income of ₱107,814,187.96 in 1992. Fulfilling both requisites, petitioner is, and ought to be, subject of the franchise tax in question." *(Underscoring supplied)*

Thus, on the basis of the foregoing, petitioner may be held liable to the local franchise tax.

The ruling in the *Cabanatuan* case was primarily invoked by respondents in the courts *a quo* and even before this Court *En Banc*. In the Regional Trial Court, respondents stated the basis for the imposition of the subject local franchise tax against petitioner, *viz*:

> "**[Respondents] asserts** (sic) **that ... NPC is obliged to pay franchise taxes as it is a corporation engaged in a business that falls under the definitions what a franchisee is. [NPC], under its charter, was organized principally to do the business of transmission and selling of electricity. In Nueva Vizcaya, there is no other entity that does this kind of business. It is a monopoly, for it cannot be denied that it is the sole wholesaler of electricity to the Nueva Vizcaya Electric Cooperative (NUVELCO) which pays for said electricity to [NPC], and which electricity is then sold by NUVELCO directly to its consumers. [NPC's] operation is clearly affected with public interest, for, had it not been for its business, there would be no electricity in the province, thus plunging it to darkness and underdevelopment.** This is publicly known, so much so that whenever there are brownouts in the province, it is either [NPC] or the NUVELCO that is blamed. Oftentimes, [NPC] and the NUVELCO even blame each other for said unwanted outages to the consternation of the public."[20] *(Emphasis supplied)*

Based on the foregoing, simply put, the subject local franchise tax was assessed by respondents because petitioner is allegedly engaged in the business of transmission and selling electricity. NA

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[20] Appellee's Memorandum, RTC Docket, pp. 136 to 137.

Moreover, respondents even claim that petitioner has a power plant in Barangay Magsaysay, Bayombong, Nueva Vizcaya, thus:

> "The claim that [NPC] does not have a power plant in the province and that the source of power therein cannot be specifically indentified does not have any foot to stand on. <u>It is of public knowledge that there is no other power plant within the province of Nueva Vizcaya except [NPC]. And the Honorable Court could easily take judicial notice of the fact that the only source of electricity within the province of Nueva Vizcaya is the plant of the NPC in Barangay Magsaysay in Bayombong, Nueva Vizcaya</u>.
>
> <u>The NPC is the sole distributor of electricity in the province</u>. The Nueva Vizcaya Electric Cooperative (NUVELCO) gets its supply of energy solely from the NPC. Without NPC, said electric cooperative would not have anything to supply and sell to its consumers in the entire province. Had it not been for the electricity supplied by the NPC to the NUVELCO, the province would be in total darkness. It enjoys a monopoly as it is the sole entity that distributes electricity on a wholesale basis in the province. This goes without saying that, indeed, the operation of NPC in the province is imbued with public interest. Definitely, the NPC operates its plant in Nueva Vizcaya and it enjoys a franchise."[21] *(Underscoring supplied)*

However, upon the enactment of RA 9136 (hereinafter referred to as the "EPIRA"), the powers and general functions of petitioner have been modified, and thus, as will be shown momentarily, the ruling in the *Cabanatuan* case no longer holds true insofar the province of Nueva Vizcaya is concerned.

The EPIRA became effective on June 26, 2001.[22]

The following are the provisions of the EPIRA relating to the electrical transmission function and the national franchise of petitioner

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[21] Appellee's Memorandum, RTC Docket, p. 139.

[22] *Manila Electric Company, Inc. v. Lualhati*, G.R. Nos. 166769 and 166818, December 6, 2006; Gerochi, et al. vs. Department of Energy, G.R. No. 159796, July 17, 2007; and *NPC Drivers and Mechanics Association, et al. vs. National Power Corporation, et al.*, G.R. No. 156208, June 30, 2014.

as well the transfer of ownership of its assets to the PSALM Corp., to wit:

> "SEC. 5. *Organization.* – The electric power industry shall be divided into four (4) sectors, namely: generation, **transmission**, distribution and supply.
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> SEC. 6. *Generation Sector.* – Generation of electric power, a business affected with public interest, shall be competitive and open.
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> Any law to the contrary notwithstanding, power generation shall not be considered a public utility operation. For this purpose, any person or entity engaged or which shall engage in power generation and supply of electricity shall not be required to secure a national franchise.
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> SEC. 8. *Creation of the National Transmission Company.* – **There is hereby created a National Transmission Company, hereinafter referred to as TRANSCO, <u>which shall assume the electrical transmission function of the National Power Corporation (NPC)</u>, and have the power and functions hereinafter granted. <u>The TRANSCO shall assume the authority and responsibility of NPC for the planning, construction and centralized operation and maintenance of its high voltage transmission facilities, including grid interconnections and ancillary services</u>.**
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> **Within six (6) months from the effectivity of this Act, the transmission and subtransmission facilities of NPC and all other assets related to transmission operations, <u>including the nationwide franchise of NPC</u> for the operation of the transmission system and the grid, shall be transferred to the TRANSCO.** The TRANSCO shall be wholly owned by the Power Sector Assets and Liabilities Management Corporation (PSALM Corp.).
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> The subtransmission functions and assets shall be segregated from the transmission functions, assets and liabilities for transparency and disposal: *Provided,* That the subtransmission assets shall be operated and maintained by TRANSCO until their disposal to qualified distribution utilities which are in a position to take over the responsibility for operating, maintaining, upgrading, and expanding said assets. All transmission and subtransmission related liabilities of NPC shall be transferred to and assumed by the PSALM Corp.
>
> TRANSCO shall negotiate with and thereafter transfer such functions, assets, and associated liabilities to the qualified distribution utility or utilities connected to such subtransmission facilities not later that two (2) years from the effectivity of this act or the start of open access, whichever comes earlier: x x x.

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SEC. 47. *NPC Privatization*[23]. – **Except for the assets of SPUG, the generation assets, real estate, and other disposable assets as well as IPP contracts of NPC shall be privatized in accordance with this Act.** xxx.

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SEC. 49. *Creation of Power Sector Assets and Liabilities Management Corporation.* – **There is hereby created a government-owned and –controlled corporation to be known as the 'Power Sector Assets and Liabilities Management Corporation,' hereinafter referred to as the 'PSALM Corp.,' which shall take ownership of all existing NPC generation assets, liabilities, IPP contracts, real estate and all other disposable assets.** All outstanding obligations of the NPC arising from loans, issuances of bonds, securities and other instruments of indebtedness shall be transferred to and assumed by the PSALM Corp. within one hundred eighty (180) days from the approval of this Act

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SEC. 80. *Applicability and Repealing Clause.* – The applicability provisions of Commonwealth Act No. 146, as amended, otherwise known as the 'Public Services Act'; **Republic Act No. 6395, as amended, revising the charter of NPC**; xxx **shall continue to have full force and effect except insofar as they are inconsistent with this Act.**

xxx xxx xxx

Presidential Decree No. 40 and all laws, decrees, rules and regulations, or portions thereof, inconsistent with this Act **are hereby repealed or modified accordingly.**" *(Emphases and underscoring supplied)*

Based on the foregoing provisions, by operation of the EPIRA beginning from June 26, 2001, petitioner ceased to engage in power transmission, considering that all its generation assets for this function [except for the assets of the Small Power Utilities Group [SPUG])[24], including its nationwide franchise, had been transferred to the National Transmission Corporation (or TRANSCO).

Correspondingly, the requisites for petitioner to be covered by

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[23] *"Privatization"* refers to the sale, disposition, change and transfer of ownership and control of assets and IPP contracts from the Government or a government corporation to a private corporation. [Section 4 (pp), EPIRA]

[24] The *"Small Power Utilities Group"* or *"SPUG"* refers to the functional unit of NPC created to pursue Missionary Electrification function. [Rule 4 (bbbb), Rules and Regulations To Implement Republic Act No. 9136, Entitled "Electric Power Industry Reform Act of 2001" (hereinafter referred to as "IRR-RA 9136")]

the local franchise tax, *viz*: (1) that petitioner has a 'franchise' in the sense of a secondary or special franchise; and (2) that it is exercising its right or privileges under this franchise within the territory of the local government unit concerned, as enunciated in the *Cabanatuan* case, will already be lacking.

With regard to the *first requisite*, considering that petitioner's nationwide franchise has already been transferred to TRANSCO, petitioner can no longer be considered as having a monopoly in the generation and distribution of electricity; and as for the *second requisite*, it cannot be said that petitioner is able to exercise its right or privileges under its franchise within the province of Nueva Vizcaya, since in the first place, petitioner has no franchise to speak of. Plainly, petitioner can no longer be said to be a *"business enjoying a franchise"* in Nueva Vizcaya as the phrase is used under Section 137[25] of the Local Government Code of 1991.

Anent the alleged existence of a power plant of petitioner in Barangay Magsaysay, Bayombong, Nueva Vizcaya, even assuming that the same is true, such fact can no longer be attributed to petitioner, but should already pertain to TRANSCO and/or PSALM Corporation, consistent with the foregoing provisions of the EPIRA.

We cannot attribute the said power plant to the SPUG of petitioner because of Section 70 of the EPIRA, which provides as follows:

> "SEC. 70. *Missionary Electrification.* – **<u>Notwithstanding the divestment and/or privatization of NPC assets,</u> IPP contracts and spun-off corporations, <u>NPC shall remain as a National Government-owned and –controlled corporation to perform the missionary electrification function through the Small Power Utilities Group (SPUG)</u>[26] and shall be responsible for providing power generation**

[25] "SEC. 137. Franchise Tax. Notwithstanding any exemption granted by law or other special law, the province may impose a tax on **business enjoying a franchise**, at a rate not exceeding fifty percent (50%) of one percent (1%) of the gross annual receipts for the preceding calendar year based on the income receipt, or realized, within its territorial jurisdiction.

In the case of a new started business, the tax shall not exceed one-twentieth (1/20) of one percent (1%) of the capital investment. In the succeeding calendar year, regardless of when the business started to operate, the tax shall be based on the gross receipts for the preceding calendar year, or any fraction thereof, as provided herein." *(Emphasis supplied)*

[26] Refer to footnote number 24.

> **and its associated power delivery systems <u>in areas that are not connected to the transmission system</u>.** The missionary electrification function shall be funded by revenues from sales in missionary areas and from the universal charge[27] to be collected from all electricity end-users as determined by the ERC." *(Emphases and underscoring supplied)*

Parenthetically, the term *"Missionary Electrification"* refers to the provision of basic electricity service in Unviable Areas with the ultimate aim of bringing the operations in these areas to viability levels.[28] The term *"Unviable Areas"*, in turn, refers to a geographical area within the Franchise Area[29] of a Distribution Utility where immediate extension of distribution line is not feasible.[30] From the reading of the foregoing Section 70, the latter term may likewise mean as the *"areas that are not connected to the transmission system."*

In this case, there is no showing that the transmission of electricity in Nueva Vizcaya is a *"Missionary Electrification"* as understood under Section 70 of the EPIRA. In fact, there is no indication that said province is an *"unviable area"* as above defined or is an area that is not connected to the transmission system. More importantly, as earlier stated, according to respondents, the subject local franchise was imposed on petitioner on the basis of its monopoly of the business of transmission and selling electricity in Nueva Vizcaya, not because it is involved in a *"Missionary Electrification"* in the said province. Thus, petitioner cannot be held liable for the payment of the local franchise tax assessed by respondents upon the ground that it rendered *"Missionary Electrification"* under Section 70 of the EPIRA.

Considering the pertinent provisions of the EPIRA, the issue of whether petitioner is liable for local franchise tax has already been resolved by the Supreme Court in the recent case of *National Power Corporation vs. Provincial Government of Bataan, et al*[31] promulgated

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[27] *"Universal Charge"* refers to the charge, if any, imposed for the recovery of the stranded cost and other purposes pursuant to Section 34 of the EPIRA. [Section 4 (ddd), EPIRA)

[28] Rule 4 (ddd), IRR-RA 9136.

[29] *"Franchise Area"* refers to a geographical area exclusively assigned or granted to a Distribution Utility for Distribution of Electricity. [Rule 4 (mm) , IRR-RA 9136]

[30] Rule 4 (ssss), IRR-RA 9136.

[31] G.R. No. 180654.

on April 21, 2014. In the said case, the High Court made the following pronouncements, to wit:

> "**Issue**
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> The issue in this case is whether or not the CA erred in failing to rule that the NPC no longer owned or operated the business subject to local franchise tax and that the Province cannot execute on former NPC properties that had been taken from it and transferred to other government corporations.
>
> **Ruling of the Court**
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> The RTC found that the NPC failed to present evidence that it no longer owned or operated the business subject to local franchise tax and that the properties the Province levied on did not belong to it. But proving these things did not require the presentation of evidence in this case since these events took place by operation of law, particularly the EPIRA. Thus, Section 8 of the EPIRA provides:
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>> SEC. 8. *Creation of the National Transmission Company.* There is hereby created a National Transmission Company, hereinafter referred to as TRANSCO, which shall assume the electrical transmission function of the National Power Corporation (NPC), and have the power and functions hereinafter granted. The TRANSCO shall assume the authority and responsibility of NPC for the planning, construction and centralized operation and maintenance of its high voltage transmission facilities, including grid interconnections and ancillary services.
>>
>> Within six (6) months from the effectivity of this Act, the transmission and subtransmission facilities of NPC and all other assets related to transmission operations, including the nationwide franchise of NPC for the operation of the transmission system and the grid, shall be transferred to the TRANSCO. The TRANSCO shall be wholly owned by the Power Sector Assets and Liabilities Management Corporation (PSALM Corp.).
>>
>> The subtransmission functions and assets shall be segregated from the transmission functions, assets and liabilities for transparency and disposal: *Provided,* That the subtransmission assets shall be operated and maintained by TRANSCO until their

> disposal to qualified distribution utilities which are in a position to take over the responsibility for operating, maintaining, upgrading, and expanding said assets. All transmission and subtransmission related liabilities of NPC shall be transferred to and assumed by the PSALM Corp.
>
> TRANSCO shall negotiate with and thereafter transfer such functions, assets, and associated liabilities to the qualified distribution utility or utilities connected to such subtransmission facilities not later that two (2) years from the effectivity of this act or the start of open access, whichever comes earlier: x x x.
>
> x x x x

The above created the TRANSCO and transferred to it the NPC's electrical transmission function with effect on June 26, 2001. The NPC, therefore, ceased to operate that business in Bataan by operation of law. <u>Since the local franchise tax is imposed on the privilege of operating a franchise, not a tax on the ownership of the transmission facilities, it is clear that such tax is not a liability of the NPC</u>.

Nor could the Province levy on the transmission facilities to satisfy the tax assessment against the NPC since, as Section 8 above further provides, the latter ceased to own those facilities six months from the effectivity of the EPIRA. Those facilities have since belonged to TRANSCO.

The legislative emasculation of the NPC also covered its former power generation function, which was the target of the Province's effort to collect the local franchise tax for 2001, 2002, and 2003. Section 49 of the EPIRA provides:

> SEC. 49. *Creation of Power Sector Assets and Liabilities Management Corporation.*— There is hereby created a government-owned and –controlled corporation to be known as the 'Power Sector Assets and Liabilities Management Corporation,' hereinafter referred to as the 'PSALM Corp.,' which shall take ownership of all existing NPC generation assets, liabilities, IPP contracts, real estate and all other disposable assets. All outstanding obligations of the NPC arising from loans, issuances of bonds, securities and other instruments of indebtedness shall be transferred to and assumed by the PSALM Corp.

> within one hundred eighty (180) days from the approval of this Act
>
> Section 49 above created the Power Sector Assets and Liabilities Management Corporation (PSALM Corp.) and transferred to it all of the NPC's 'generation assets' which would include the Bataan Thermal Plant. <u>Clearly, the NPC had ceased running its former power transmission and distribution business in Bataan by operation of law from June 26, 2001. It is, therefore, not the proper party subject to the local franchise tax for operating that business.</u> Parenthetically, Section 49 also transferred 'all existing x x x liabilities' of the NPC to PSALM Corp., presumably including its unpaid liability for local franchise tax from January 1 to June 25, 2001. Consequently, such tax is collectible solely from PSALM Corp.
>
> An indispensable party is one who has an interest in the controversy or subject matter and in whose absence there cannot be a determination between the parties already before the court which is effective, complete or equitable. Here, since the subject properties belong to PSALM Corp. and TRANSCO, they are certainly indispensable parties to the case that must be necessarily included before it may properly go forward. For this reason, the proceedings below that held the NPC liable for the local franchise tax is a nullity. It did not matter where the RTC Decision was appealed, whether before the CA or the CTA." *(Underscoring supplied)*

On the basis of the foregoing pronouncements, there are three (3) principles which are established insofar as the imposition of the local franchise tax on petitioner is concerned vis-à-vis the instant case, to wit:

1. Proving that petitioner owned or operated the business subject to local franchise tax does not require presentation of evidence because this event took place by operation of law, particularly of the EPIRA;

2. Considering that the local franchise tax is imposed on the privilege of operating a franchise, not a tax on the ownership of the transmission facilities, it is clear that such tax is not a liability of petitioner; and

3. Petitioner had ceased running its former power transmission and distribution business, which includes that in Nueva Vizcaya, if any, by operation of law from June 26, 2001. Thus, petitioner is not the proper party subject to the local franchise tax for operating that business. Rather, the said tax is already collectible from PSALM Corp. and/or TRANSCO, on the basis of the EPIRA.

WHEREFORE, all the foregoing considered, the instant Petition for Review is hereby **GRANTED**. The assailed Decision dated June 3, 2013 and assailed Resolution dated September 11, 2013, both rendered by the Special Second Division of this Court in CTA AC No. 94 are hereby **REVERSED AND SET ASIDE**.

Accordingly, the Assessment Letter dated November 8, 2007 from respondent Perfecto B. Martinez, Jr., the Provincial Treasurer of Nueva Vizcaya, demanding payment of local franchise tax from petitioner National Power Corporation for the years 2002 to 2006 in the aggregate amount of ₱8,776,271.35 is hereby **CANCELLED AND SET ASIDE**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Leave)
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

C E R T I F I C A T I O N

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court *En Banc*.

ROMAN G. DEL ROSARIO
Presiding Justice