

[Act No. 1497, May 28, 1906]

AN ACT GRANTING TO THE PHILIPPINE RAILWAY COMPANY A CONCESSION TO CONSTRUCT RAILWAYS IN THE ISLANDS OF PANAY, NEGROS, AND CEBU, AND GUARANTEEING INTEREST ON THE FIRST MORTGAGE BONDS THEREOF, UNDER AUTHORITY OF THE ACT OF CONGRESS APPROVED FEBRUARY SIXTH, NINETEEN HUNDRED AND FIVE.

By authority of the United States, be it enacted by the Philippine Commission, that:

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

This instrument, made, executed, and entered into this day of, anno Domini one thousand nine hundred and six, by and between the Philippine Government, by the Governor-General of the Philippine Islands, of the one part, and The Philippine Railway Company, a corporation duly organized and existing under and by virtue of the laws of the State of Connecticut, of the other part, witnesseth that:

Whereas, under and by virtue of section seventy-four of the Act of the Congress of the United States, approved July first, nineteen hundred and two, the Government of the Philippine Islands was authorized and empowered, among other things, to grant franchises, privileges, and concessions for the construction and operation of works of public utility and Service, as by reference thereto will more fully appear; and

Whereas, under and by virtue of sections four and five of the Act of the Congress of the United States, approved February sixth, nineteen hundred and five, the Government of the Philippine Islands was empowered, among other things, to enter into a contract of guaranty with any railroad company organized pursuant to the laws of said Government or of the United States or of any State thereof undertaking to construct, equip, operate, and maintain any railroad in said Islands which should be specifically authorized by said Government under terms, conditions, and restrictions therein fully recited, as by reference thereto will appear; and

Whereas, pursuant to said power and authority so conferred, the Philippine Government, by William H. Taft, as Secretary of War of the United States, did, upon June twelfth, nineteen hundred and five, issue an invitation for proposals or bids for concessionary contracts or grants in aid of the construction, equipment, maintenance, and operation of certain lines of railway in said Philippine Islands, therein designated and specified, and among which were the lines of railway hereinafter set forth, which said invitation for proposals or bids, as above, was modified and amended by the circular of the Secretary of War dated December twenty-second, nineteen hundred and five; and

Whereas, under the provisions and conditions of said invitation, as amended, William Salomon and Company (a partnership), Cornelius Vanderbilt, J. G. White and Company,

Incorporated, and Charles M. Swift, with whom were associated The International Banking Corporation, H. R. Wilson, and Heidelbach, Ickelheimer and Company, upon January twentieth, nineteen hundred and six, made a proposal and bid for a concessionary contract or grant in aid of the construction, equipment, maintenance, and operation of certain of the lines of railway proposed in said, invitation, to wit: Number seven—a line in the Island of Panay, of the approximate length of one hundred miles; number eight—a line in the Island of Negros, of the approximate length of one hundred miles; and number nine—a line in the Island of Cebu, of the approximate length of ninety-five miles (as will be hereinafter particularly set forth), which said proposal was, by proper authority, on the twenty-fourth day of January, nineteen hundred and six, accepted on behalf of the Philippine Government, and an award made to said bidders; and

Whereas said invitation for proposals did, among other things, provide that, if the award thereunder be to any individual or co-partnership, he or it should within thirty days thereafter duly assign and transfer the same to a corporation of the character and qualifications therein specified, namely, a railroad corporation duly organized and existing under the laws of a State of the United States, or the United States or the Philippine Islands, and legally competent in every respect to enter into and to perform all the terms, conditions, and obligations of such proposal or bid, and the concessionary contract or grant, and the time within which said award should be so assigned was thereafter and on or about February nineteenth, nineteen hundred and six, extended, on behalf of the Philippine Government, to March ninth, nineteen hundred and six; and

Whereas said grantee is a corporation of the character and qualifications in said invitation specified, and pursuant to the provisions of said invitation, the bidders, to whom said award was made, did on March eighth, nineteen hundred and six, duly assign said award to the grantee, and cause the same to be by the grantee duly accepted and assumed to the satisfaction of the Philippine Government;

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

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

On the Island of Panay: (a) A line from Iloilo, in the Province of Iloilo and Island of Panay, in a northerly direction, forking to the town of Capiz and to a terminal on the Bay of Capiz and to the town of Bataan, on the north coast of the Island of Panay, in the Province of Capiz, a distance, approximately, of one hundred miles;

On the Island of Negros: (b) A line in the Island of Negros, from the harbor of Escalante, on the northeast coast of said island, westerly, following the coast line to Himamailan, a distance, approximately, of one hundred miles;

On the Island of Cebu: (c) A line in the Island of Cebu, running north from the city of Cebu to Danao, on the east coast, and south from Cebu to Argao, on the east coast,

with the option to the grantee of a line across the Island from Carcar or Sibonga to the west coast, and thence along the coast between Dumanjug and Barili, a distance, approximately, of ninety-five miles.

The grantee may, with the consent of the Governor-General, in addition to the lines named, construct branch lines to reach traffic points within a reasonable distance from the main lines of the railways : Provided, however, That the cost of construction of such branch lines shall not be included in the cost of construction as defined in paragraph nine hereof.

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

2. Under and by virtue hereof the right of way through the, public lands of the Philippine Government is hereby given and granted to the grantee for the construction, operation, and maintenance of the railroad or railroads as herein authorized to the extent of one hundred feet in width where it may pass through the public domain, including all necessary ground for depots, machine shops, station buildings, workshops, water stations, warehouses, terminals, including wharves and dock fronts, switches, side tracks, and turntables, and also such extra lands beyond such one hundred feet as may be found necessary for said purposes: *Provided*, That the same be approved by the Governor-General as a part of the definite plans herein before provided for, and the right, power, and authority shall thereunder be given to said grantee, with the written approval of the Governor-General, to open and work quarries and gravel pits upon any public lands and take from such lands earth, stone, timber, and other materials for the construction of such railway; but the provisions of this paragraph shall only apply to public lands available for homestead settlement or for sale under the Public Land Act, or to timber lands of the Philippine Government, and shall not apply to lands used and assigned for other public purposes, nor to the lands known as the "friars' lands."

The grantee shall have the right, with the approval of the Governor-General, to cross or occupy such parts of public roads, alleys, avenues, and squares, acquire title to such other municipal or provincial lands, as may be necessary, on terms to be agreed upon by the grantee and the proper provincial or municipal authorities, as the case may be; and in case of failure to agree upon the terms thereof, such terms shall be fixed by the Governor-General.

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

The grantee shall also have the right to acquire from corporations, or private individuals, by purchase, contract, lease, grant, or donation, any lands which may be

necessary or useful for the construction, maintenance, and operation of the said lines of railway or any of them.

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

The grantee shall have the right to construct and maintain for the operation of said railways any and all tracks (single, double, or more), bridges, viaducts, culverts, fences, and other structures; and all depots, station houses, engine houses, car houses, freight houses, wood houses, and other buildings; and all machine shops and other shops, water tanks, turntables, superstructures, erections, and fixtures; and all elevators, warehouses, wharves, piers, and other facilities, terminal or otherwise, for operating said railroads, and also any hotels or restaurants at any station or terminal.

3. All tracks of all the said lines of railway shall be of the gauge of three feet six inches, so that when completed the gauge of all lines covered hereby shall be uniform, and the construction, equipment, and rolling stock shall be in every respect first class, and in accordance with the approved definite plans, and, with due regard to local conditions, shall be equal in quality to the best American practice. This specification as to gauge may be modified with the approval of the Governor-General. And the said grantee hereby agrees to construct and complete and put in operation an average of not less than one hundred miles of main track per annum, after the approval of the final plans for the same, such mileage to be distributed between the three islands herein above named, covering such portions of the approved routes of the same as will, in the opinion of the Governor-General of the Philippine Islands, afford the most immediate profitable traffic for the railways, and at the same time develop to the greatest degree the resources of the respective islands. Extension of time of completion may be granted by the Governor-General, in his judgment, for good cause shown.

The said railways shall be operated as commercial railways for the transportation of freight, passengers, express, and mail, and, on demand of the Governor-General, preference of carriage shall be given over said lines of railway, or any part thereof, to business offered by the Government of the United States or of the Philippine Islands.

4. The motive power of said railways shall be steam, except that, with the consent of the Governor-General, any of said lines may be operated by electricity or other equivalent power.
5. The grantee, in respect of any of said railways, shall permit (and the right is reserved the Philippine Government to grant permission to) any other railway now constructed or hereafter to be constructed in the Philippine Islands to form and establish traffic connections or arrangements with it on fair and equitable terms, to be determined, in case of disagreement, by the Governor-General of

the Philippine Islands upon petition of either party, and, upon appeal, by the Secretary of War.

6. The grantee and its contractors and subcontractors shall, so far as possible, give preference to such satisfactory laborers as may be found along the lines of railway, and the employment of labor shall be at all times under the reasonable direction of the Governor-General of the Philippine Islands. All material employed in the construction of the lines shall be of first class and quality, adapted to the conditions of the country, and equal to the best American practice for railroads of similar gauge. Definite specifications as regards all construction shall be approved by the Governor-General of the Philippine Islands.
7. Until the construction and completion of the railways covered , hereby, and if the grantee shall not then be in default hereunder, the Philippine Government undertakes to protect the grantee in the use and enjoyment of the railways and property covered hereby against the acts of ladrones, insurgents, rebels, and outlaws.
8. The grantee shall have the right to construct and operate telegraph, telephone, and electrical transmission lines over said right of way for use in the construction and operation of said railways, and also, with the consent of the Governor-General, for public service and commercial purposes, but the latter privileges shall be subject to the following provisions:

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

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

9. For all purposes hereunder and for the determination of the amount of first-lien bonds in respect of which interest will be guaranteed as hereinafter provided, the actual total cost of construction and equipment of the railways herein referred to shall be deemed to be the actual cost, first, of all necessary land for buildings, right of way, and other railway purposes; .second, of all materials and labor, including transportation of employees, tools, implements, plant, and animals used in such construction and equipment, marine and fire insurance upon any such material, machinery, and so forth, used in and expended upon or in aid of. the construction of the roadbeds, tracks, and bridges, and in and about the building of telegraph, telephone, and electrical transmission lines, sidings and switches, depots, terminals, roundhouses, turntables, water stations, repair and machine shops, freight, houses, docks, wharves, warehouses, waiting rooms, dining rooms, hotels, and employee boarding houses, and all other appropriate buildings and structures necessary for the construction, maintenance, and operation of the railway lines, on plans approved by the Governor-General; third of all expenses of