

NATIONAL STEEL CORPORATION, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, THE ENERGY REGULATORY BOARD, THE NATIONAL POWER CORPORATION AND ILIGAN LIGHT AND POWER, INC., RESPOND...

G.R. No. 134437. January 31, 2000

Ponente: VITUG, J.

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VITUG, J.:

National Steel Corporation ("NSC"), the petitioner, is engaged in steel manufacturing and operates a steel plant in Iligan City, Lanao del Norte, Mindanao. It is registered with the Board of Investments and has, since 1974, been sourcing its electric power directly from the National Power Corporation ("NAPOCOR"). Private respondent Iligan Light and Power, Inc. ("ILIGAN"), is the sole power utility firm generally servicing the area where the NSC plant is located.

The instant controversy was spawned by a decision, dated 28 February 1997, of the Energy Regulatory Board ("ERB") in ERB Case No. 95-233, the 11th March 1997 order amending the said decision, the 10th April 1997 order directing NAPOCOR to implement the decision, and the 20th May 1997 order reiterating the 10th April 1997 issuance.

The antecedents. -

On 09 June 1995, NAPOCOR filed an application with the ERB for authority to implement a new power rate structure in its "Mindanao Grid" (ERB Case No. 95-233). The application sought an increase in the Mindanao Grid's average power rate for "non-utilities" (customers who directly source their power from NAPOCOR like herein petitioner) and "utilities" (local power entities which source their power from NAPOCOR for distribution to end-users). In its application, NAPOCOR prayed for a provisional approval of its proposed rate schedule in the Mindanao Grid, pursuant to Section 8 of Executive Order No. 172, viz:

"Small utilities:

Average Rate (P/kwh) 1.3116

Demand Charge (P/kwh) 14.69

Energy Charge (P/kwh) 1.2455

"Medium (Provincial) Utilities:

Average Rate (P/kwh) 1.3157

Demand Charge (P/kwh) 128.14

Energy Charge (P/kwh) 0.9868

"Large (Urban) Utilities:

Average Rate (P/kwh) 1.3166

Demand Charge (P/kwh) 177.65

Energy Charge (P/kwh) 0.9216

"Non-Utilities

Average Rate (P/kwh) 1.3463

Demand Charge (P/kwh) 205.09

Energy Charge (P/kwh) 0.8751"[1]

The Association of Mindanao Industries ("AMI"), of which petitioner is a member, participated in the proceedings in the ERB case. AMI, on 20 October 1995, submitted a "Manifestation/Comment" showing that it was in full agreement with the proposal of NAPOCOR for a power rate restructuring in the Mindanao Grid contending that under the then prevailing power rate structure, "the efficient consumers of power (had) been subsidizing the inefficient consumers." Several oppositors to the application of NAPOCOR sought a twelve (12%) percent power rate difference between "utilities" and "non-utilities," i.e., that the utility rates would be 12% less than the non-utility rates, claiming that the minimal two (2%) percent rate difference proposed by NAPOCOR in its application discriminated against the Mindanao utilities and favored the industries directly supplied by NAPOCOR.

After due notice and hearing, the ERB issued its assailed decision, dated 28 February 1997, approving and ratiocinating a new rate structure for the Mindanao Grid, later modified by an order, dated 11 March 1997, as follows:

"Customer
Classification Demand
Charge
P/Kw Energy
Charge
P/Kwh Average
Rate
P/Kwh
D/E
Allocation

Small Utilities 19.06 1.1972 1.2602 5% 95%

Medium (Provincial) Utilities

136.29

0.9534

1.2712

25%

75%

Large (Urban) Utilities

181.12

0.8934

1.2762

30%

70%

Non-utilities 238.81 0.9291 1.4293 35% 65%

Over-all Mindanao

181.95

0.9258

1.3226

30%

70%

"Eventhough, the new rate structure is revenue neutral, most of the utilities will experience a decrease in their rates. On the average, the rate of Small Utilities will decrease by P0.0422/kwh, P0.0428/kwh for Medium (Provincial) Utilities and P0.0395/kwh for Large (Urban) Utilities, while Non-Utilities will experience an increase in rate of P0.0898/kwh.

"The impact to individual customers were, likewise, simulated in order to determine the magnitude of effect to each individual customer for all customer classification. Seventeen (17) out of twenty six (26) medium (Provincial) utilities or 65% will experience a decrease in rate ranging from P0.0829 to P0.0122 while nine (9) utilities or 35% will have a rate increase ranging from P0.0011 to P0.0764. For Large (Urban) Utilities, each will have a rate decrease ranging from P0.0645 to P0.0286. Upon the other hand, 100% of the customers under the category for Non-Utilities will experience a rate increase ranging from P0.0121 to P0.6321."[2]

Intervenors AMI and NAPOCOR filed their separate motions for reconsideration on, respectively, 21 March 1997 and 25 March 1997. In its orders, dated 10 April 1997 and 20 May 1997, the ERB directed NAPOCOR to implement its 28 February 1997 decision despite the still unresolved motions for reconsideration. The decretal portion of the 10 April 1997 order stated:

"WHEREFORE, premises considered, applicant NPC is hereby directed to implement the Decision dated February 28, 1997 including its Order dated March 11, 1997. In this connection, applicant NPC is hereby directed to show cause in writing why it should not be cited for contempt by a fine of P5,000.00, pursuant to Section 7 of Executive Order No. 172 and why it should not be penalized pursuant to Section 21 of Commonwealth Act No. 146, for its willful refusal and continuous disregard of the Board's Decision dated February 28, 1997 and Order dated March 11, 1997, within five (5) days from receipt hereof."[3]

While the motions for reconsideration aforementioned were still pending resolution, NSC, on 30 June 1997, filed a petition for certiorari and prohibition, with application for a temporary restraining order ("TRO") and writ of preliminary injunction, with the Court of Appeals (CA-G.R. SP No. 44550). In its comment on the petition, respondent NAPOCOR urged that the orders of the ERB should not be implemented pending the finality of its resolution and argued, in opposition to the application for a writ of preliminary injunction, that petitioner did not have a clear right to be protected by an injunctive writ. In a resolution, dated 07 July 1997, the appellate court resolved not to grant the prayer for a TRO. In its 10th October 1997 resolution, the same court likewise denied the application for a writ of preliminary injunction. Still later, in a resolution dated 02 December 1997, the petition for certiorari (CA-G.R. SP No. 44550) of NSC was itself denied due course and dismissed for lack of merit. A motion for the reconsideration of the aforesaid resolution was also denied.

Meanwhile, on 27 March 1998, the ERB denied the pending motions for reconsideration of AMI and NAPOCOR in ERB Case No. 95-233. It would appear that AMI interposed an appeal to the Court of Appeals, docketed

CA-G.R. No. 47533, assailing the 28th February 1997 decision and 11th March 1997 order of the ERB.

The instant appeal by certiorari filed by NSC so assails as aforesaid the various resolutions and decision of 02 July 1998 of the Court of Appeals. Asserting that public interest could be best served if it were given reliable and direct power at the lowest cost, petitioner insists that the decision in ERB Case No. 95-233 prescribing the twelve (12%) percent power rate differential is all but intended to compel petitioner and other "non-utilities" to disconnect with NAPOCOR through unjust power rate increases.

The Court sees no reversible error on the part of the appellate court.

The object of the application of NAPOCOR with the ERB, it would appear indeed, was designed to correct the deficiency of power rates in the Mindanao Grid consistent with the rate restructuring priorly also applied for in Luzon and the Visayas grids (ERB Case No. 93-111 and No. 94-119) where NAPOCOR proposed, and the ERB approved, the widened margin of, respectively, 9% and 14% differential. In approving a new rate schedule for the Mindanao Grid, the ERB explained:

"Applicant's existing power rate structure in the Mindanao Grid has been designed and implemented in 1980 with demand and energy charges consisting of multi-blocking rate schedules. Theoretically, the said demand and energy charges reflect NPC's Fixed Cost or capacity related costs and Variable costs or energy related costs, respectively. Since that time all power rate adjustments have been tucked into the Energy Charges resulting in an uneven and unbalanced increases of Demand and Energy Charges. So that there exists a serious disproportion between the two charges estimated to be 3%/97%. With this, the existing rates no longer reflect the real cost component of generating/transmitting electricity. The existing very small rate difference between the utilities and non-utilities in the Mindanao Grid, provides a little incentive for industrial customers to purchase power from the distribution utilities as it gives a strong incentive to the same customers to buy power directly from NPC.

"It can be noticed, therefore, that NPC's existing rate structure has the following deficiencies:

"1. It does not properly allocate between fixed and variable costs;

"2. It does not protect the distributing utilities as it competes with the said utilities by giving promotional rates for industries.

"3. It does not reflect the charges in the consumption profile of its customers." [4]

It found little justification to maintain a minimal margin between the utility and non-utility rates in the Mindanao Grid, which would be a little over 2%, proposed by NAPOCOR. The ERB added:

"Records will bear it out that NPC's rate structure, as designed in all the three major grids in 1980, classified its customers into utilities and non-utilities whereby the utility customers were given a 10% rate advantage over non-utilities in order to assist the former to attain viability by attracting bulk power customers into their system. But because all the rate adjustments since 1980 were tucked into the energy charge, the 10% rate difference was eroded to a little over 2% in the Mindanao Grid, thereby forgetting the thrust of assistance to the utilities. In the rate restructuring done in Luzon and Visayas Grids, (ERB Cases No. 93-111 and 94-119), NPC had proposed and the Board approved the widened margin of 9% and 14%, respectively, to correct the said deficiency in the power rates. With this, the applicant's customers will then be encouraged to maximize capacity and energy cost allocation thereby promoting efficiency in the use of scarce energy resources which will enable the applicant to provide adequate and reliable service. Hence, if the Mindanao utilities will not be afforded a reasonable rate difference over the non-utilities (as what was done in the Luzon and Visayas Grids) not to mention the 2% franchise tax and other local taxes imposed upon utilities, then NPC's thrust of assisting utilities to attract bulk power customers into their franchise area will become meaningless. The Board has noted that while this is the intention of NPC, yet the opposite is indicated in the proposed rate structures. In

fact, NPC has a different treatment to non-utilities as far as the Mindanao Grid is concerned compared to those of the Luzon and Visayas Grids. Applicant's proposal for a very minimal margin between utilities and non-utilities in the Mindanao Grid is allegedly the result of the LRMC study in 1989 conducted by the RCG/Hagler, Bailly. However, since the proposed rate structures are not based on strict LRMC as NPC itself has not used the abovementioned RCG/Hagler Report as basis for rate restructuring, then it follows, that NPC cannot use the same as a justification for the minimal rate difference."^[5]

The ERB accordingly approved a widened margin of 12% to correct the deficiency in the power rates schedule for Mindanao Grid.

The Court finds no "direct connection" issues as having been tackled by the ERB in approving the modified power rates that would render its decision vulnerable to jurisdictional challenge. Unlike the cases of NAPOCOR vs. Court of Appeals and Phividec Industrial Authority vs. Court of Appeals,^[6] that involved the determination of which of the two public utilities should have the right to supply electric power to an area, a controversy clearly dealing with the question of regulation and distribution of energy resources, the present proceedings, upon the other hand, merely relates to basically rate-fixing matters. Neither is the case at bar to be likened to the Fine Chemicals case (NAPOCOR vs. Court of Appeals^[7]) since NSC, herein petitioner, is already directly connected with the facilities of NAPOCOR, and any move by it to disconnect therefrom would essentially be a matter of choice. The appellate court has found "no element of compulsion" on petitioner to source its power through power utility firms; thus:

"The 12% rate differential thus provided is admittedly intended to protect the utility companies like ILIGAN by allowing it to charge lower rates than those charged by NAPOCOR to non-utility companies like the petitioner. Thereby, the petitioner will be encouraged to transfer its business from NAPOCOR to ILIGAN.

"But encouraging the petitioner to disconnect from NAPOCOR and connecting with ILIGAN is one thing; compelling it to do so is another. We see no element of compulsion in the assailed decision of the ERB. Petitioner is still left free to continue sourcing its power requirements from NAPOCOR.

"A decision of the public respondent approving a power rate structure, which is clearly within its jurisdiction, does not become a decision ordaining a power distribution, simply because it will have the effect of encouraging the petitioner to disconnect from NAPOCOR and connect with ILIGAN."^[8]

The ERB is vested by law with the authority and jurisdiction "to determine, fix and prescribe the rates being charged" by NAPOCOR to its customers under Section 4 of R.A. No. 6395, as amended,^[9] and in fixing the assailed new power rate schedules, it did, in the view of the Court, act well within, not in excess of, the powers conferred upon it by law.

It should be implicit enough that the remedy of appeal, not the extraordinary remedy of a petition for certiorari, would be the appropriate recourse to assail the orders of the ERB here in question. The special civil action of certiorari can be made available only when "there is no appeal, nor plain speedy and adequate remedy in the ordinary course of law."^[10]

All told, this Court finds no cogent reason for reversing the assailed decision of the appellate court.

WHEREFORE, the petition for review is DENIED for lack of merit and the resolution of the Court of Appeals, dated 02 December 1997, is AFFIRMED. No special pronouncement on costs.

SO ORDERED.

Melo, (Chairman), Panganiban, Purisima, and Gonzaga-Reyes, JJ., concur.

[1] Rollo, p. 91.

[2] Rollo, pp. 107-108.

[3] Rollo, p. 116.

[4] Rollo, p. 51.

[5] Rollo, p.52.

[6] 279 SCRA 506.

[7] 185 SCRA 169.

[8] Rollo, p. 53.

[9] See Section 18 of R.A. No. 7638.

[10] See Province of Bulacan vs. Court of Appeals, 299 SCRA 442.

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