KAPISANAN NG MGA KAWANI NG ENERGY REGULATORY BOARD, PETITIONER, VS. COMMISSIONER FE B. BARIN, DEPUTY COMMISSIONERS CARLOS R. ALINDADA, LETICIA V. IBAY, OLIVER B. BUTALID, AND MA...

G.R. NO. 150974. June 29, 2007

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a special civil action for certiorari and prohibition[1] of the selection and appointment of employees of the Energy Regulatory Commission (ERC) by the ERC Board of Commissioners.

Petitioner Kapisanan ng mga Kawani ng Energy Regulatory Board (KERB) seeks to declare Section 38 of Republic Act No. 9136 (RA 9136), which abolished the Energy Regulatory Board (ERB) and created the ERC, as unconstitutional and to prohibit the ERC Commissioners from filling up the ERC's plantilla.

The Facts

RA 9136, popularly known as EPIRA (for Electric Power Industry Reform Act of 2001), was enacted on 8 June 2001 and took effect on 26 June 2001. Section 38 of RA 9136 provides for the abolition of the ERB and the creation of the ERC. The pertinent portions of Section 38 read:

> Creation of the Energy Regulatory Commission. – There is hereby created an independent, quasi-judicial regulatory board to be named the Energy Regulatory Commission (ERC). For this purpose, the existing Energy Regulatory Board (ERB) created under Executive Order No. 172, as amended, is hereby abolished.
>
> The Commission shall be composed of a Chairman and four (4) members to be appointed by the President of the Philippines. x x x
>
> Within three (3) months from the creation of the ERC, the Chairman shall submit for the approval of the President of the Philippines the new organizational structure and plantilla positions necessary to carry out the powers and functions of the ERC.
>
> x x x x
>
> The Chairman and members of the Commission shall assume office at the beginning of their terms: Provided, That, if upon the effectivity of this Act, the Commission has not been constituted and the new staffing pattern and plantilla positions have not been approved and filled-up, the current Board and existing personnel of ERB shall continue to hold office.
>
> The existing personnel of the ERB, if qualified, shall be given preference in the filling up of plantilla positions created in the ERC, subject to existing civil service rules and regulations.

At the time of the filing of this petition, the ERC was composed of Commissioner Fe B. Barin and Deputy Commissioners Carlos R. Alindada, Leticia V. Ibay, Oliver B. Butalid, and Mary Anne B. Colayco (collectively, Commissioners). The Commissioners assumed office on 15 August 2001. Pursuant to Section 38 of RA 9136, the Commissioners issued the proposed Table of Organization, Staffing Pattern, and Salary Structure on 25 September 2001 which the President of the Philippines approved on 13 November 2001. Meanwhile, KERB submitted to the Commissioners its Resolution No. 2001-02 on 13 September 2001. Resolution No. 2001-02 requested the Commissioners for an opportunity to be informed on the proposed plantilla positions with their equivalent qualification standards.

On 17 October 2001, the Commissioners issued the guidelines for the selection and hiring of ERC employees. A portion of the guidelines reflects the Commissioners' view on the selection and hiring of the ERC employees vis-a-vis Civil Service rules, thus:

> Since R.A. 9136 has abolished the Energy Regulatory Board (ERB), it is the view of the Commission that the provisions of Republic Act No. 6656 (An Act to Protect the Security of [Tenure of] Civil Service Officers and Employees in the Implementation of Government Reorganization) will not directly apply to ERC's current efforts to establish a new organization. Civil Service laws, rules and regulations, however, will have suppletory application to the extent possible in regard to the selection and placement of employees in the ERC.[2] (Emphasis supplied)

On 5 November 2005, KERB sent a letter to the Commissioners stating the KERB members' objection to the Commissioners' stand that Civil Service laws, rules and regulations have suppletory application in the selection and placement of the ERC employees. KERB asserted that RA 9136 did not abolish the ERB or change the ERB's character as an economic regulator of the electric power industry. KERB insisted that RA 9136 merely changed the ERB's name to the ERC and expanded the ERB's functions and objectives. KERB sent the Commissioners yet another letter on 13 November 2001. KERB made a number of requests: (1) the issuance of a formal letter related to the date of filing of job applications, including the use of Civil Service application form no. 212; (2) the creation of a placement/recruitment committee and setting guidelines relative to its functions, without prejudice to existing Civil Service rules and regulations; and (3) copies of the plantilla positions and their corresponding qualification standards duly approved by either the President of the Philippines or the Civil Service Commission (CSC).

Commissioner Barin replied to KERB's letter on 15 November 2001. She stated that Civil Service application form no. 212 and the ERC-prescribed application format are substantially the same. Furthermore, the creation of a placement/recruitment committee is no longer necessary because there is already a prescribed set of guidelines for the recruitment of personnel. The ERC hired an independent consultant to administer the necessary tests for the technical and managerial levels. Finally, the ERC already posted the plantilla positions, which prescribe higher standards, as approved by the Department of Budget and Management. Commissioner Barin stated that positions in the ERC do not need the prior approval of the CSC, as the ERC is only required to submit the qualification standards to the CSC.

On 5 December 2001, the ERC published a classified advertisement in the Philippine Star. Two days later, the CSC received a list of vacancies and qualification standards from the ERC. The ERC formed a Selection Committee to process all applications.

KERB, fearful of the uncertainty of the employment status of its members, filed the present petition on 20 December 2001. KERB later filed an Urgent Ex Parte Motion to Enjoin Termination of Petitioner ERB Employees on 2 January 2002. However, before the ERC received KERB's pleadings, the Selection Committee already presented its list of proposed appointees to the Commissioners.

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In their Comment, the Commissioners describe the status of the ERB employees' appointment in the ERC as follows:

> As of February 1, 2002, of the two hundred twelve (212) ERB employees, one hundred thirty eighty [sic] (138) were rehired and appointed to ERC plantilla positions and sixty six (66) opted to retire or be separated from the service. Those who were rehired and those who opted to retire or be separated constituted about ninety six (96%) percent of the entire ERB employees. The list of the ERB employees appointed to new positions in the ERC is attached hereto as Annex 1. Only eight (8) ERB employees could not be appointed to new positions due to the reduction of the ERC plantilla and the absence of positions appropriate to their respective qualifications and skills. The appropriate notice was issued to each of them informing them of their separation from the service and assuring them of their entitlement to "separation pay and other benefits in accordance with existing laws."[3]

The Issues

KERB raises the following issues before this Court:

> - Whether Section 38 of RA 9136 abolishing the ERB is constitutional; and
>
> - Whether the Commissioners of the ERC were correct in disregarding and considering merely suppletory in character the protective mantle of RA 6656 as to the ERB employees or petitioner in this case.[4]

The Ruling of the Court

The petition has no merit.

We disregard the procedural defects in the petition, such as KERB's personality to file the petition on behalf of its alleged members and Elmar Agir's authority to institute the action, because of the demands of public interest.[5]

Constitutionality of the ERB's Abolition
and the ERC's Creation

All laws enjoy the presumption of constitutionality. To justify the nullification of a law, there must be a clear and unequivocal breach of the Constitution. KERB failed to show any breach of the Constitution.

A public office is created by the Constitution or by law or by an officer or tribunal to which the power to create the office has been delegated by the legislature.[6] The power to create an office carries with it the power to abolish. President Corazon C. Aquino, then exercising her legislative powers, created the ERB by issuing Executive Order No. 172 on 8 May 1987.

The question of whether a law abolishes an office is a question of legislative intent. There should not be any controversy if there is an explicit declaration of abolition in the law itself.[7] Section 38 of RA 9136 explicitly abolished the ERB. However, abolition of an office and its related positions is different from removal of an incumbent from his office. Abolition and removal are mutually exclusive concepts. From a legal standpoint, there is no occupant in an abolished office. Where there is no occupant, there is no tenure to speak of. Thus, impairment of the constitutional guarantee of security of tenure does not arise in the abolition of an office. On the other hand, removal implies that the office and its related positions subsist and that the occupants are merely separated from their positions.[8]

A valid order of abolition must not only come from a legitimate body, it must also be made in good faith. An abolition is made in good faith when it is not made for political or personal reasons, or when it does not circumvent the constitutional security of tenure of civil service employees.[9] Abolition of an office may be

brought about by reasons of economy, or to remove redundancy of functions, or a clear and explicit constitutional mandate for such termination of employment.[10] Where one office is abolished and replaced with another office vested with similar functions, the abolition is a legal nullity.[11] When there is a void abolition, the incumbent is deemed to have never ceased holding office.

KERB asserts that there was no valid abolition of the ERB but there was merely a reorganization done in bad faith. Evidences of bad faith are enumerated in Section 2 of Republic Act No. 6656 (RA 6656),[12] Section 2 of RA 6656 reads:

> No officer or employee in the career service shall be removed except for a valid cause and after due notice and hearing. A valid cause for removal exists when, pursuant to a bona fide reorganization, a position has been abolished or rendered redundant or there is a need to merge, divide, or consolidate positions in order to meet the exigencies of the service, or other lawful causes allowed by the Civil Service Law. The existence of any or some of the following circumstances may be considered as evidence of bad faith in the removals made as a result of reorganization, giving rise to a claim for reinstatement or reappointment by an aggrieved party:
>
> (a) Where there is a significant increase in the number of positions in the new staffing pattern of the department or agency concerned;
>
> (b) Where an office is abolished and another performing substantially the same functions is created;
>
> (c) Where incumbents are replaced by those less qualified in terms of status of appointment, performance and merit;
>
> (d) Where there is a reclassification of offices in the department or agency concerned and the reclassified offices perform substantially the same function as the original offices;
>
> (e) Where the removal violates the order of separation provided in Section 3 hereof

KERB claims that the present case falls under the situation described in Section 2(b) of RA 6656. We thus need to compare the provisions enumerating the powers and functions of the ERB and the ERC to see whether they have substantially the same functions. Under Executive Order No. 172, the ERB has the following powers and functions:

> SEC. 3. Jurisdiction, Powers and Functions of the Board. - When warranted and only when public necessity requires, the Board may regulate the business of importing, exporting, re-exporting, shipping, transporting, processing, refining, marketing and distributing energy resources. Energy resource means any substance or phenomenon which by itself or in combination with others, or after processing or refining or the application to it of technology, emanates, generates or causes the emanation or generation of energy, such as but not limited to, petroleum or petroleum products, coal, marsh gas, methane gas, geothermal and hydroelectric sources of energy, uranium and other similar radioactive minerals, solar energy, tidal power, as well as non-conventional existing and potential sources.
>
> The Board shall, upon proper notice and hearing, exercise the following, among other powers and functions:
>
> (a) Fix and regulate the prices of petroleum products;
>
> (b) Fix and regulate the rate schedule or prices of piped gas to be charged by duly franchised gas companies which distribute gas by means of underground pipe system;
>
> (c) Fix and regulate the rates of pipeline concessionaires under the provisions of Republic Act No. 387, as amended, otherwise known as the "Petroleum Act of 1949," as amended by Presidential Decree No. 1700;
>
> (d) Regulate the capacities of new refineries or additional capacities of existing refineries and license refineries

that may be organized after the issuance of this Executive Order, under such terms and conditions as are consistent with the national interest;

(e) Whenever the Board has determined that there is a shortage of any petroleum product, or when public interest so requires, it may take such steps as it may consider necessary, including the temporary adjustment of the levels of prices of petroleum products and the payment to the Oil Price Stabilization Fund created under Presidential Decree No. 1956 by persons or entities engaged in the petroleum industry of such amounts as may be determined by the Board, which will enable the importer to recover its cost of importation.

SEC. 4. Reorganized or Abolished Agency. (a) The Board of Energy is hereby reconstituted into the Energy Regulatory Board, and the former's powers and functions under Republic Act No. 6173, as amended by Presidential Decree No. 1208, as amended, are transferred to the latter.

(b) The regulatory and adjudicatory powers and functions exercised by the Bureau of Energy Utilization under Presidential Decree No. 1206, as amended, are transferred to the Board, the provisions of Executive Order No. 131 notwithstanding.

SEC. 5. Other Transferred Powers and Functions. The power of the Land Transportation Commission to determine, fix and/or prescribe rates or charges pertaining to the hauling of petroleum products are transferred to the Board. The power to fix and regulate the rates or charges pertinent to shipping or transporting of petroleum products shall also be exercised by the Board.

The foregoing transfer of powers and functions shall include applicable funds and appropriations, records, equipment, property and such personnel as may be necessary; Provided, That with reference to paragraph (b) of Section 4 hereof, only such amount of funds and appropriations of the Bureau of Energy Utilization, as well as only the personnel thereof who are completely or primarily involved in the exercise by said Bureau of its regulatory and adjudicatory powers and functions, shall be affected by such transfer: Provided, further, That the funds and appropriations as well as the records, equipment, property and all personnel of the reorganized Board of Energy shall be transferred to the Energy Regulatory Board.

SEC. 6. Power to Promulgate Rules and Perform Other Acts. The Board shall have the power to promulgate rules and regulations relevant to procedures governing hearings before it and enforce compliance with any rule, regulation, order or other requirements: Provided, That said rules and regulations shall take effect fifteen (15) days after publication in the Official Gazette. It shall also perform such other acts as may be necessary or conducive to the exercise of its powers and functions, and the attainment of the purposes of this Order.

On the other hand, Section 43 of RA 9136 enumerates the basic functions of the ERC.

SEC. 43. Functions of the ERC. - The ERC shall promote competition, encourage market development, ensure customer choice and discourage/penalize abuse of market power in the restructured electricity industry. In appropriate cases, the ERC is authorized to issue cease and desist order after due notice and hearing. Towards this end, it shall be responsible for the following key functions in the restructured industry:

(a) Enforce the implementing rules and regulations of this Act;

(b) Within six (6) months from the effectivity of this Act, promulgate and enforce, in accordance with law, a National Grid Code and a Distribution Code which shall include, but not limited to, the following:

(i) Performance standards for TRANSCO O & M Concessionaire, distribution utilities and suppliers: Provided, That in the establishment of the performance standards, the nature and function of the entities shall be considered; and

(ii) Financial capability standards for the generating companies, the TRANSCO, distribution utilities and suppliers: Provided, That in the formulation of the financial capability standards, the nature and function of the

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entity shall be considered: Provided, further, That such standards are set to ensure that the electric power industry participants meet the minimum financial standards to protect the public interest. Determine, fix, and approve, after due notice and public hearings the universal charge, to be imposed on all electricity end-users pursuant to Section 34 hereof;

(c) Enforce the rules and regulations governing the operations of the electricity spot market and the activities of the spot market operator and other participants in the spot market, for the purpose of ensuring a greater supply and rational pricing of electricity;

(d) Determine the level of cross subsidies in the existing retail rate until the same is removed pursuant to Section 73 hereof;

(e) Amend or revoke, after due notice and hearing, the authority to operate of any person or entity which fails to comply with the provisions hereof, the IRR or any order or resolution of the ERC. In the event a divestment is required, the ERC shall allow the affected party sufficient time to remedy the infraction or for an orderly disposal, but shall in no case exceed twelve (12) months from the issuance of the order;

(f) In the public interest, establish and enforce a methodology for setting transmission and distribution wheeling rates and retail rates for the captive market of a distribution utility, taking into account all relevant considerations, including the efficiency or inefficiency of the regulated entities. The rates must be such as to allow the recovery of just and reasonable costs and a reasonable return on rate base (RORB) to enable the entity to operate viably. The ERC may adopt alternative forms of internationally-accepted rate setting methodology as it may deem appropriate. The rate-setting methodology so adopted and applied must ensure a reasonable price of electricity. The rates prescribed shall be non-discriminatory. To achieve this objective and to ensure the complete removal of cross subsidies, the cap on the recoverable rate of system losses prescribed in Section 10 of Republic Act No. 7832, is hereby amended and shall be replaced by caps which shall be determined by the ERC based on load density, sales mix, cost of service, delivery voltage and other technical considerations it may promulgate. The ERC shall determine such form of rate-setting methodology, which shall promote efficiency. In case the rate setting methodology used is RORB, it shall be subject to the following guidelines:

(i) For purposes of determining the rate base, the TRANSCO or any distribution utility may be allowed to revalue its eligible assets not more than once every three (3) years by an independent appraisal company: Provided, however, That ERC may give an exemption in case of unusual devaluation: Provided, further, That the ERC shall exert efforts to minimize price shocks in order to protect the consumers;

(ii) Interest expenses are not allowable deductions from permissible return on rate base;

(iii) In determining eligible cost of services that will be passed on to the end-users, the ERC shall establish minimum efficiency performance standards for the TRANSCO and distribution utilities including systems losses, interruption frequency rates, and collection efficiency;

(iv) Further, in determining rate base, the TRANSCO or any distribution utility shall not be allowed to include management inefficiencies like cost of project delays not excused by force majeure, penalties and related interest during construction applicable to these unexcused delays; and

(v) Any significant operating costs or project investments of TRANSCO and distribution utilities which shall become part of the rate base shall be subject to the verification of the ERC to ensure that the contracting and procurement of the equipment, assets and services have been subjected to transparent and accepted industry procurement and purchasing practices to protect the public interest.

(g) Three (3) years after the imposition of the universal charge, ensure that the charges of the TRANSCO or any distribution utility shall bear no cross subsidies between grids, within grids, or between classes of customers, except as provided herein;

(h) Review and approve any changes on the terms and conditions of service of the TRANSCO or any distribution utility;

(i) Allow the TRANSCO to charge user fees for ancillary services to all electric power industry participants or self-generating entities connected to the grid. Such fees shall be fixed by the ERC after due notice and public hearing;

(j) Set a lifeline rate for the marginalized end-users;

(k) Monitor and take measures in accordance with this Act to penalize abuse of market power, cartelization, and anti-competitive or discriminatory behavior by any electric power industry participant;

(l) Impose fines or penalties for any non-compliance with or breach of this Act, the IRR of this Act and the rules and regulations which it promulgates or administers;

(m) Take any other action delegated to it pursuant to this Act;

(n) Before the end of April of each year, submit to the Office of the President of the Philippines and Congress, copy furnished the DOE, an annual report containing such matters or cases which have been filed before or referred to it during the preceding year, the actions and proceedings undertaken and its decision or resolution in each case. The ERC shall make copies of such reports available to any interested party upon payment of a charge which reflects the printing costs. The ERC shall publish all its decisions involving rates and anticompetitive cases in at least one (1) newspaper of general circulation, and/or post electronically and circulate to all interested electric power industry participants copies of its resolutions to ensure fair and impartial treatment;

(o) Monitor the activities of the generation and supply of the electric power industry with the end in view of promoting free market competition and ensuring that the allocation or pass through of bulk purchase cost by distributors is transparent, non-discriminatory and that any existing subsidies shall be divided pro rata among all retail suppliers;

(p) Act on applications for or modifications of certificates of public convenience and/or necessity, licenses or permits of franchised electric utilities in accordance with law and revoke, review and modify such certificates, licenses or permits in appropriate cases, such as in cases of violations of the Grid Code, Distribution Code and other rules and regulations issued by the ERC in accordance with law;

(q) Act on applications for cost recovery and return on demand side management projects;

(r) In the exercise of its investigative and quasi-judicial powers, act against any participant or player in the energy sector for violations of any law, rule and regulation governing the same, including the rules on cross ownership, anticompetitive practices, abuse of market positions and similar or related acts by any participant in the energy sector, or by any person as may be provided by law, and require any person or entity to submit any report or data relative to any investigation or hearing conducted pursuant to this Act;

(s) Inspect, on its own or through duly authorized representatives, the premises, books of accounts and records of any person or entity at any time, in the exercise of its quasi-judicial power for purposes of determining the existence of any anticompetitive behavior and/or market power abuse and any violation of rules and regulations issued by the ERC;

(t) Perform such other regulatory functions as are appropriate and necessary in order to ensure the successful restructuring and modernization of the electric power industry, such as, but not limited to, the rules and guidelines under which generation companies, distribution utilities which are not publicly listed shall offer and sell to the public a portion not less than fifteen percent (15%) of their common shares of stocks: Provided, however, That generation companies, distribution utilities or their respective holding companies that are already listed in the PSE are deemed in compliance. For existing companies, such public offering shall be

implemented not later than five (5) years from the effectivity of this Act. New companies shall implement their respective public offerings not later than five (5) years from the issuance of their certificate of compliance; and

(u) The ERC shall have the original and exclusive jurisdiction over all cases contesting rates, fees, fines and penalties imposed by the ERC in the exercise of the abovementioned powers, functions and responsibilities and over all cases involving disputes between and among participants or players in the energy sector.

All notices of hearings to be conducted by the ERC for the purpose of fixing rates or fees shall be published at least twice for two successive weeks in two (2) newspapers of nationwide circulation.

Aside from Section 43, additional functions of the ERC are scattered throughout RA 9136:

- SEC. 6. Generation Sector. - Generation of electric power, a business affected with public interest, shall be competitive and open.

Upon the effectivity of this Act, any new generation company shall, before it operates, secure from the Energy Regulatory Commission (ERC) a certificate of compliance pursuant to the standards set forth in this Act, as well as health, safety and environmental clearances from the appropriate government agencies under existing laws.

x x x x

- SEC. 8. Creation of the National Transmission Company. - x x x

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. x x x

In case of disagreement in valuation, procedures, ownership participation and other issues, the ERC shall resolve such issues.

x x x x

- SEC. 23. Functions of Distribution Utilities. x x x

Distribution utilities shall submit to the ERC a statement of their compliance with the technical specifications prescribed in the Distribution Code and the performance standards prescribed in the IRR of this Act. Distribution utilities which do not comply with any of the prescribed technical specifications and performance standards shall submit to the ERC a plan to comply, within three (3) years, with said prescribed technical specifications and performance standards. The ERC shall, within sixty (60) days upon receipt of such plan, evaluate the same and notify the distribution utility concerned of its action. Failure to submit a feasible and credible plan and/or failure to implement the same shall serve as grounds for the imposition of appropriate sanctions, fines or penalties.

x x x x

- SEC. 28. De-monopolization and Shareholding Dispersal. - In compliance with the constitutional mandate for dispersal of ownership and de-monopolization of public utilities, the holdings of persons, natural or juridical, including directors, officers, stockholders and related interests, in a distribution utility and their respective holding companies shall not exceed twenty-five (25%) percent of the voting shares of stock unless the utility or the company holding the shares or its controlling stockholders are already listed in the Philippine Stock Exchange (PSE): Provided, That controlling stockholders of small distribution utilities are hereby required to list in the PSE within five (5) years from the enactment of this Act if they already own the stocks. New controlling stockholders shall undertake such listing within five (5) years from the time they acquire ownership and control. A small distribution company is one whose peak demand is equal to Ten megawatts (10MW).

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The ERC shall, within sixty (60) days from the effectivity of this Act, promulgate the rules and regulations to implement and effect this provision.

x x x x

- SEC. 29. Supply Sector. - x x x all suppliers of electricity to the contestable market shall require a license from the ERC.

For this purpose, the ERC shall promulgate rules and regulations prescribing the qualifications of electricity suppliers which shall include, among other requirements, a demonstration of their technical capability, financial capability, and creditworthiness: Provided, That the ERC shall have authority to require electricity suppliers to furnish a bond or other evidence of the ability of a supplier to withstand market disturbances or other events that may increase the cost of providing service.

x x x x

- SEC. 30. Wholesale Electricity Spot Market. - x x x

Subject to the compliance with the membership criteria, all generating companies, distribution utilities, suppliers, bulk consumers/end-users and other similar entities authorized by the ERC shall be eligible to become members of the wholesale electricity spot market.

The ERC may authorize other similar entities to become eligible as members, either directly or indirectly, of the wholesale electricity spot market.

x x x x

- SEC. 31. Retail Competition and Open Access. - x x x

Upon the initial implementation of open access, the ERC shall allow all electricity end-users with a monthly average peak demand of at least one megawatt (1MW) for the preceding twelve (12) months to be the contestable market. xxx Subsequently and every year thereafter, the ERC shall evaluate the performance of the market. x x x

- SEC. 32. NPC Stranded Debt and Contract Cost Recovery. - x x x

The ERC shall verify the reasonable amounts and determine the manner and duration for the full recovery of stranded debt and stranded contract costs as defined herein x x x x

- SEC. 34. Universal Charge. - Within one (1) year from the effectivity of this Act, a universal charge to be determined, fixed and approved by the ERC, shall be imposed on all electricity end-users x x x x

- SEC. 35. Royalties, Returns and Tax Rates for Indigenous Energy Resources. - x x x

To ensure lower rates for end-users, the ERC shall forthwith reduce the rates of power from all indigenous sources of energy.

- SEC. 36. Unbundling of Rates and Functions. - x x x

each distribution utility shall file its revised rates for the approval by the ERC. x x x x

- SEC. 40. Enhancement of Technical Competence.- The ERC shall establish rigorous training programs for its staff for the purpose of enhancing the technical competence of the ERC in the following areas: evaluation of technical performance and monitoring of compliance with service and performance standards, performance-based rate-setting reform, environmental standards and such other areas as will enable the ERC to adequately perform its duties and functions.

- SEC. 41. Promotion of Consumer Interests. - The ERC shall handle consumer complaints and ensure the adequate promotion of consumer interests.

- SEC. 45. Cross Ownership, Market Power Abuse and Anti-Competitive Behavior. - No participant in the electricity industry may engage in any anti-competitive behavior including, but not limited to, cross-subsidization, price or market manipulation, or other unfair trade practices detrimental to the encouragement and protection of contestable markets.

x x x x

(c) x x x The ERC shall, within one (1) year from the effectivity of this Act, promulgate rules and regulations to promote competition, encourage market development and customer choice and discourage/penalize abuse of market power, cartelization and any anticompetitive or discriminatory behavior, in order to further the intent of this Act and protect the public interest. Such rules and regulations shall define the following:

(a) the relevant markets for purposes of establishing abuse or misuse of monopoly or market position;

(b) areas of isolated grids; and

(c) the periodic reportorial requirements of electric power industry participants as may be necessary to enforce the provisions of this Section.

The ERC shall, motu proprio, monitor and penalize any market power abuse or anticompetitive or discriminatory act or behavior by any participant in the electric power industry.

- SEC. 51. Powers. The PSALM Corp. shall, in the performance of its functions and for the attainment of its objective, have the following powers: x x x

(e) To liquidate the NPC stranded contract costs utilizing proceeds from sales and other property contributed to it, including the proceeds from the universal charge;

x x x x

- SEC. 60. Debts of Electric Cooperatives. - x x x The ERC shall ensure a reduction in the rates of electric cooperatives commensurate with the resulting savings due to the removal of the amortization payments of their loans. x x x x

- SEC. 62. Joint Congressional Power Commission. - x x x

x x x the Power Commission is hereby empowered to require the DOE, ERC, NEA, TRANSCO, generation companies, distribution utilities, suppliers and other electric power industry participants to submit reports and all pertinent data and information relating to the performance of their respective functions in the industry. xxx

x x x x

- SEC. 65. Environmental Protection. - Participants in the generation, distribution and transmission sub-sectors of the industry shall comply with all environmental laws, rules, regulations and standards promulgated by the Department of Environment and Natural Resources including, in appropriate cases, the establishment of an environmental guarantee fund.

- SEC. 67. NPC Offer of Transition Supply Contracts. - Within six (6) months from the effectivity of this Act, NPC shall file with the ERC for its approval a transition supply contract duly negotiated with the distribution utilities containing the terms and conditions of supply and a corresponding schedule of rates, consistent with the provisions hereof, including adjustments and/or indexation formulas which shall apply to the term of such contracts.

x x x x

- SEC. 69. Renegotiation of Power Purchase and Energy Conversion Agreements between Government Entities. - Within three (3) months from the effectivity of this Act, all power purchase and energy conversion agreements between the PNOC-Energy Development Corporation (PNOC-EDC) and NPC, including but not limited to the Palimpinon, Tongonan and Mt. Apo Geothermal complexes, shall be reviewed by the ERC and the terms thereof amended to remove any hidden costs or extraordinary mark-ups in the cost of power or steam above their true costs. All amended contracts shall be submitted to the Joint Congressional Power Commission for approval. The ERC shall ensure that all savings realized from the reduction of said mark-ups shall be passed on to all end-users.

After comparing the functions of the ERB and the ERC, we find that the ERC indeed assumed the functions of the ERB. However, the overlap in the functions of the ERB and of the ERC does not mean that there is no valid abolition of the ERB. The ERC has new and expanded functions which are intended to meet the specific needs of a deregulated power industry. Indeed, National Land Titles and Deeds Registration Administration v. Civil Service Commission stated that:

> [I]f the newly created office has substantially new, different or additional functions, duties or powers, so that it may be said in fact to create an office different from the one abolished, even though it embraces all or some of the duties of the old office it will be considered as an abolition of one office and the creation of a new or different one. The same is true if one office is abolished and its duties, for reasons of economy are given to an existing officer or office.[13]

KERB argues that "RA 9136 did not abolish the ERB nor did it alter its essential character as an economic regulator of the electric power industry. x x x RA 9136 rather changed merely ERB's name and title to that of the ERC even as it expanded its functions and objectives to keep pace with the times." To uphold KERB's argument regarding the invalidity of the ERB's abolition is to ignore the developments in the history of energy regulation.

> The regulation of public services started way back in 1902 with the enactment of Act No. 520 which created the Coastwise Rate Commission. In 1906, Act No. 1507 was passed creating the Supervising Railway Expert. The following year, Act No. 1779 was enacted creating the Board of Rate Regulation. Then, Act No 2307, which was patterned after the Public Service Law of the State of New Jersey, was approved by the Philippine Commission in 1914, creating the Board of Public Utility Commissioners, composed of three members, which absorbed all the functions of the Coastwise Rate Commission, the Supervising Railway Expert, and the Board of Rate Regulation.
>
> Thereafter, several laws were enacted on public utility regulation. On November 7, 1936, Commonwealth Act No. 146, otherwise known as the Public Service Law, was enacted by the National Assembly. The Public Service Commission (PSC) had jurisdiction, supervision, and control over all public services, including the electric power service.
>
> After almost four decades, significant developments in the energy sector changed the landscape of economic regulation in the country.
>
> - April 30, 1971 - R.A. No. 6173 was passed creating the Oil Industry Commission (OIC), which was tasked to regulate the oil industry and to ensure the adequate supply of petroleum products at reasonable prices.
>
> - September 24, 1972 - then President Ferdinand E. Marcos issued Presidential Decree No. 1 which ordered the preparation of the Integrated Reorganization Plan by the Commission on Reorganization. The Plan abolished the PSC and transferred the regulatory and adjudicatory functions pertaining to the electricity industry and water resources to then Board of Power and Waterworks (BOPW).
>
> - October 6, 1977 - the government created the Department of Energy (DOE) and consequently abolished the

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> OIC, which was replaced by the creation of the Board of Energy (BOE) through Presidential Decree No. 1206. The BOE, in addition, assumed the powers and functions of the BOPW over the electric power industry.
>
> - May 8, 1987 - the BOE was reconstituted into the Energy Regulatory Board (ERB), pursuant to Executive Order No. 172 issued by then President Corazon C. Aquino as part of her government's reorganization program. The rationale was to consolidate and entrust into a single body all the regulatory and adjudicatory functions pertaining to the energy sector. Thus, the power to regulate the power rates and services of private electric utilities was transferred to the ERB.
>
> - December 28, 1992 - Republic Act No. 7638 signed, where the power to fix the rates of the National Power Corporation (NPC) and the rural electric cooperatives (RECs) was passed on to the ERB. Non-pricing functions of the ERB with respect to the petroleum industry were transferred to the DOE, i.e., regulating the capacities of new refineries.
>
> - February 10, 1998 - enactment of Republic Act 8479: Downstream Oil Industry Deregulation Act of 1998, which prescribed a five-month transition period, before full deregulation of the oil industry, during which ERB would implement an automatic pricing mechanism (APM) for petroleum products every month.
>
> - June 12, 1998 - the Philippine oil industry was fully deregulated, thus, ERB's focus of responsibility centered on the electric industry.
>
> - June 8, 2001 - enactment of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act (EPIRA) of 2001. The Act abolished the ERB and created in its place the Energy Regulatory Commission (ERC) which is a purely independent regulatory body performing the combined quasi-judicial, quasi-legislative and administrative functions in the electric industry.[14]

Throughout the years, the scope of the regulation has gradually narrowed from that of public services in 1902 to the electricity industry and water resources in 1972 to the electric power industry and oil industry in 1977 to the electric industry alone in 1998. The ERC retains the ERB's traditional rate and service regulation functions. However, the ERC now also has to promote competitive operations in the electricity market. RA 9136 expanded the ERC's concerns to encompass both the consumers and the utility investors.

> Thus, the EPIRA provides a framework for the restructuring of the industry, including the privatization of the assets of the National Power Corporation (NPC), the transition to a competitive structure, and the delineation of the roles of various government agencies and the private entities. The law ordains the division of the industry into four (4) distinct sectors, namely: generation, transmission, distribution and supply. Corollarily, the NPC generating plants have to privatized and its transmission business spun off and privatized thereafter.
>
> In tandem with the restructuring of the industry is the establishment of "a strong and purely independent regulatory body." Thus, the law created the ERC in place of the Energy Regulatory Board (ERB).
>
> To achieve its aforestated goal, the law has reconfigured the organization of the regulatory body. x x x[15]

There is no question in our minds that, because of the expansion of the ERC's functions and concerns, there was a valid abolition of the ERB. Thus, there is no merit to KERB's allegation that there is an impairment of the security of tenure of the ERB's employees.

WHEREFORE, we DISMISS the petition. No costs.

SO ORDERED.

Carpio-Morales, Tinga, and Velasco, Jr., JJ., concur.
Quisumbing, (Chairperson) J., on offcial leave.

[1] Under Rule 65 of the 1998 Rules of Civil Procedure.

[2] Rollo, p. 22.

[3] Id. at 96-97.

[4] Id. at 8.

[5] See Buklod ng Kawaning EIIB v. Zamora, 413 Phil. 281 (2001); Dario v. Mison, G.R. No. 81954, 8 August 1989, 176 SCRA 84.

[6] R.E. AGPALO, PHILIPPINE ADMINISTRATIVE LAW 5 (2004).

[7] See National Land Titles and Deeds Registration Administration v. Civil Service Commission, G.R. No. 84301, 7 April 1993, 221 SCRA 145.

[8] Id.

[9] See Cruz v. Primicias, Jr., 132 Phil. 467 (1968).

[10] See Mayor v. Macaraig, G.R. No. 87211, 5 March 1991, 194 SCRA 672.

[11] See Canonizado v. Aguirre, G.R. No. 133132, 25 January 2000, 323 SCRA 312.

[12] An Act to Protect the Security of Tenure of Civil Service Officers and Employees in the Implementation of Government Reorganization.

[13] Supra note 7 at 150.

[14] History: Electric Power Industry Reform Act (EPIRA) of 2001, (visited 18 June 2007).

[15] Freedom from Debt Coalition v. Energy Regulatory Commission, G.R. No 161113, 15 June 2004, 432 SCRA 157, 171-172.

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