

MILWAUKEE INDUSTRIES CORPORATION, PETITIONER, VS. PAMPANGA III ELECTRIC COOPERATIVE, INC., RESPONDENT.

G.R. No. 152569. May 31, 2004

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TINGA, J.:

The case at bar is simple in the sense that its adjudication calls for nothing but the enforcement of the plain terms of the contract involved. The simplicity of the decisive issue notwithstanding, the case pays off a dividend. It puts in focus the structure of the electric power industry which underlies the prestation established in the contract.

Before the Court is a Petition for Review on Certiorari assailing the Decision[1] of the Court of Appeals dated September 7, 2001 in CA-G.R. No. 62131[2] and its Resolution dated March 6, 2002, denying the Motion for Reconsideration filed by petitioner Milwaukee Industries Corporation.

Respondent Pampanga III Electric Cooperative, Inc. is the grantee of a franchise to provide electric light and power supply in the municipalities of Apalit, Macabebe, Masantol, Minalin, San Simon and Sto. Tomas, Pampanga.

Petitioner, a private corporation operating a steel plant in Apalit, Pampanga, wanted to purchase electricity for its operations directly from the National Power Corporation (NAPOCOR). To be able to purchase directly from NAPOCOR, petitioner needed to secure a waiver from respondent, as the municipality of Apalit was within its franchise area.

On February 17, 1995, petitioner and respondent executed a Waiver Agreement for Sale of Electricity (Waiver Agreement). Under the contract, petitioner promised to pay respondent a waiver or royalty fee equivalent to two and a half percent (2.5%) of its monthly power bill from NAPOCOR not later than the 15th day of each month, plus a surcharge of 2% per month in case of delay.[3]

On March 24, 1998, respondent filed a Complaint for collection of sum of money in the Regional Trial Court of Macabebe, Pampanga. Respondent alleged that pursuant to the Waiver Agreement, it billed petitioner for unpaid royalties and surcharges in the amount of P3,145,291.10 and P263,042.59, respectively, for the period April 1997 to January 1998. Despite repeated demands for payment, petitioner refused to pay respondent.

In its Answer, petitioner denied that it was liable to pay respondent royalty fees and surcharges. Petitioner claimed that respondent induced it to execute the Waiver Agreement through fraud and misrepresentation. Respondent allegedly misrepresented that it had an existing agreement with another corporation, and its agreement therewith contained the same terms and conditions as the Waiver Agreement between petitioner and respondent. However, petitioner discovered that the other corporation only paid a one-time fee for a similar waiver/royalty, while petitioner was required to pay royalties every month.[4]

At the pre-trial of the case, both parties agreed to limit the issue to the validity of the Waiver Agreement. Corollary thereto, the parties prayed that the trial court determine whether under the terms of the Waiver Agreement, petitioner's obligation to pay 2.5% of its monthly bill from NAPOCOR arises only when its monthly

consumption exceeds 32 megawatts.[5]

The parties agreed that the bone of contention was the interpretation of Item 1 of the Waiver Agreement, which states that petitioner shall pay respondent a waiver/royalty fee of 2.5% of its monthly power bill not later than the 15th day of the month, and that any delay in the payment shall be levied a surcharge 2% per month, computed from the date when payment is due.[6]

At the trial, respondent's Board President, Cesar Sigua (Sigua), testified that petitioner failed to pay respondent royalties, in violation of the Waiver Agreement. In support of his testimony, respondent offered the following documentary evidence:

(1) Demand letter dated March 15, 1997, from respondent to petitioner, requesting that the latter comply with Item 1 of the Waiver Agreement;[7]

(2) Letter dated September 11, 1997, from petitioner's Plant Manager, Philip Go, to respondent, requesting that petitioner be allowed to make payments pursuant to Item 1 of the Waiver Agreement beginning April 1997 and appealing that it be allowed to pay its arrears in installments;[8]

(3) Resolution of respondent's Board of Directors approving petitioner's request that their royalty payments be computed beginning April 1997;[9] and

(4) Statement of account as of July 31, 1998, indicating that from April 1997 to July 1998 petitioner's obligation already amounted to Five Million Nine Hundred Fifty Three Thousand Three Hundred Five Pesos and 67/100 (P5,953,305.67).[10]

For its part, petitioner presented as witness Edwin Dizon (Dizon), the Industrial Relations Manager of SKK Steel Corporation (SKK), a company operating within respondent's franchise area. SKK also purchased electricity directly from NAPOCOR. Dizon averred that unlike petitioner, SKK does not pay royalties to respondent.[11]

Philip Go, petitioner's Plant manager, testified that what petitioner and respondent actually agreed upon was that petitioner would be liable to pay royalty fees only if its monthly electric power consumption exceeds 32 megawatts.[12]

In support of its contention that it is only liable to pay royalties if it consumes more than 32 megawatts of electricity in a month, petitioner offered in evidence a Letter dated November 28, 1995,[13] sent by respondent to the Director of the EIAB of the Department of Energy, stating that respondent was no longer objecting to the renewal of the contract between SKK and NAPOCOR, provided that if SKK's monthly electric power consumption exceeds 30 megawatts, it shall enter into a waiver agreement with respondent, which agreement would have the same terms and conditions as the Waiver Agreement between petitioner and respondent.

On November 24, 1998, the RTC rendered its Decision in favor of petitioner. The trial court ruled that petitioner was not liable to pay royalty fees to respondent. It held that although the wording of the contract makes it appear that petitioner is obligated to pay royalty fees to respondent every month, there is proof that such was not the real intention of the parties. According to the RTC, the November 28, 1995 letter sent by respondent to the EIAB, Department of Energy, shows that petitioner had to pay royalties only when its electric power consumption in a month exceeds 32 megawatts. The trial court also cited Sigua's testimony that like SKK, petitioner would only be obligated to pay royalties when its electric power consumption in a month exceeds 32 megawatts.[14]

Respondent appealed the Decision of the RTC to the Court of Appeals.

In its Decision dated September 7, 2001, the Court of Appeals reversed the trial court and held that petitioner is liable for payment of royalty fees to respondent under the terms of the Waiver Agreement. The appellate court

characterized as unnecessary the trial court's resort to extrinsic aids to ascertain the intention of the parties because the terms of the Waiver Agreement are clear and leave no room for interpretation.[15]

Petitioner filed a Motion for Reconsideration of the appellate court's Decision, but the Motion was denied by the Court of Appeals in a Resolution dated March 6, 2002.

On May 20, 2002, petitioner filed the present Petition, assailing the ruling of the Court of Appeals.

After respondent filed its Comment[16] on October 2, 2002, and petitioner filed its Reply[17] thereto on March 14, 2003, the Court, in a Resolution dated July 28, 2003 gave due course to the petition and required the parties to submit their respective memoranda.[18]

Petitioner claims that the Court of Appeals erred in holding that it is liable to pay royalty fees to the respondent under the terms of the Waiver Agreement. It argues that the appellate court should not have disregarded the admission by Sigua in his testimony that respondent would only be entitled to royalty fees if petitioner consumes more than 32 megawatts of electric power in a month. Petitioner contends that Sigua's admission is relevant for the purpose of determining the real intent of the parties because it was he who signed the Waiver Agreement for and in behalf of the respondent.[19]

Petitioner further claims that the appellate court's pronouncement that petitioner cannot invoke the terms of the contract between respondent and SKK in its favor because Article 1311 of the Civil Code provides that contracts take effect only between the parties thereto and their assigns and heirs, is misplaced. It avers that contrary to the findings of the Court of Appeals, no contract exists between respondent and SKK. In fact, SKK does not pay royalties to respondent even though like petitioner, SKK purchases electricity directly from NAPOCOR.[20]

Respondent, on the other hand, insists that the Court of Appeals was correct in relying only upon the terms of the Waiver Agreement in determining whether petitioner is liable to pay royalty fees. It asseverates that Sigua's statement in open court—that royalty fees would only be due to respondent if petitioner consumes more than 32 megawatts per month—cannot change the terms of the Waiver Agreement, especially considering that Sigua's statement was a mere supposition, having been preceded by the words, "I think...".[21]

The Court is now tasked to resolve the issue of whether petitioner is liable to pay royalty fees to respondent.

There is no merit in the Petition.

Item 1 of the Waiver expressly provides:

1. A waiver/royalty fee of two and a half percent (2.5%) based on the monthly power bill of the CONSUMER [petitioner] shall be paid to the cooperative [respondent] not later than the 15th day of every month. Any delay in the payment shall be levied a surcharge of two percent (2%) per month computed from the date the payment is due.[22]

In resolving an issue based upon contract, the Court must first examine the contract itself, especially the provisions thereof which are relevant to the controversy. The general rule is that when the terms of an agreement are clear and leave no doubt as to the intention of the contracting parties, the literal meaning of its stipulations shall prevail.[23] It is further required that the stipulations of a contract be interpreted as a whole, attributing to the questionable stipulations the sense which may result from all of them taken jointly.[24]

Bearing in mind the aforementioned guidelines, and after a thorough study of the contract in question, the Court finds that the Court of Appeals committed no reversible error in ruling that petitioner is indeed liable to pay respondent royalty fees and surcharges pursuant to Item 1 of the Waiver Agreement.

Petitioner's obligation under Item 1 and the extent of such obligation are not difficult to divine. The said provision in no uncertain terms obligates petitioner to pay royalty fees in the amount of 2.5% of its electric power consumption appearing in its bill from NAPOCOR not later than the 15th of every month. Its failure to pay the royalty fee on the 15th shall result in its payment of a 2% surcharge.

Item 1, as worded, provides no qualification to petitioner's obligation. However, petitioner claims that royalty fees would only be due to respondent if petitioner's electric power consumption for the month exceeds 32 megawatts. Petitioner anchors its claim on the second Whereas clause of the Waiver Agreement which states:

WHEREAS, the CONSUMER has a steel plant located along McArthur Highway, Paligui, Apalit, Pampanga with a projected load of Thirty-Two (32) megawatts;[25]

According to petitioner, this clause qualifies its obligation under Item 1. Thus, its obligation to pay royalty fees is not absolute, but arises only when it consumes more than 32 megawatts of electricity in a month.

The Court is not persuaded. There is nothing in aforementioned clause which supports petitioner's claim that the clause limits its obligation under Item 1. Evidently, the clause is merely descriptive of petitioner's electric power supply requirements. This interpretation is also supported by a reading of the contract in its entirety.[26]

There being no ambiguity in the wording of Item 1 of the Waiver Agreement, its literal meaning is controlling. To give effect to Item 1 as worded is likewise consistent with the rule that when the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon by the parties and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement.[27]

Even assuming arguendo that the Waiver Agreement failed to express the real intent of the parties, and renders necessary a resort to evidence other than the Waiver Agreement, an examination of the parties' contemporaneous acts fails to support petitioner's contention that it is liable to pay royalty fees only when its electric power consumption in a month exceeds 32 megawatts.

The testimony of Mr. Sigua, respondent's President, does not confirm petitioner's claim that its obligation to pay royalties arises only when its monthly consumption exceeds 32 megawatts. It bears noting that when he testified before the trial court on September 2, 1998, he could not vividly remember the terms of respondent's agreement with SKK:

ATTY. SOTTO

Questioning

Mr. Witness, upon perusal of the letter, under this letter, which reads among others: "However, conformably with the offer of SKK Steel Corporation that in the event its electrical power demand contract with the National Power Corporation exceeds Thirty Megawatts (30), SKK Steel Corporation shall enter into a new agreement similar to that of Milwaukee Industrial Corporation and Pampanga Electric Corporation III. What do you mean by that similar agreement as that of Milwaukee and Pelco?

WITNESS (Mr. Sigua)

....

ATTY. DAVID

We will object, Your Honor, the similarity does not bind the plaintiff....

ATTY. SOTTO

I am just asking what he meant by that....?

COURT

Overruled.

WITNESS

I think, the proceedings in that case because this agreement is a product of investigation conducted by the Department of Energy particularly brought about by our operation with the SKK Steel Corporation, but if my memory served me right, our understanding between the Milwaukee and SKK after consuming the thirty-two (32) megawatts, because we made mention that Milwaukee will consume the aforesaid megawatts, and meaning they will be paying the royalty fee.[28]

The letter referred to by Sigua in his testimony was the November 28, 1995 letter of respondent to the EIAB, Department of Energy, which states that respondent was withdrawing its objection to the renewal of the contract between SKK and NAPOCOR in consideration of SKK's offer that "in the event its electrical power demand exceeds THIRTY MEGAWATTS (30MW), SKK Steel Corp. shall enter into a new agreement similar to that of the agreement of Milwaukee Industrial Corp and Pampanga Electric Coop., Inc." [29]

The Court of Appeals correctly held that any agreement between the respondent and SKK has no relevance to the Waiver Agreement between respondent and petitioner, since the latter is a contract separate and distinct from that of the respondent and SKK. The agreement cited in the November 28, 1995 letter does not and cannot modify the terms of the Waiver Agreement because it involves a different set of parties and a different object. It does not touch upon the contract between respondent and petitioner. It is elementary that contracts take effect only between the parties thereto and their successors-in-interest.[30]

Moreover, in his letter dated September 11, 1997, petitioner's Plant Manager, Philip Go, effectively admitted petitioner's obligation under the Waiver Agreement when on behalf of the company, he requested that the latter's arrears be computed only beginning April 1997, and that petitioner be given "more liberal installment terms for our arrears." [31] Noteworthy is petitioner's acknowledgment in said letter of its obligation to pay respondent for royalty fees and surcharges without any qualification. Had it been the true intention of the parties to limit petitioner's liability to instances when its monthly electric power consumption exceeds 32 megawatts, such limitation should have been mentioned in the letter.

The facts of the present case reveal that the parties really intended to oblige petitioner to pay royalty fees to respondent every month under the terms of the Waiver Agreement in exchange for respondent's waiver of its right to object to the direct purchase by petitioner of electric power supply from NAPOCOR.

The Waiver Agreement between the parties must be understood in the context of the dynamics of the distribution and generation sectors of the electric power industry at the time the contract was executed.

Presidential Decree No. 269,[32] otherwise known as the "National Electrification Decree" (PD No. 269), the law in effect at the time the parties executed the Waiver Agreement, aimed to achieve electrification nationwide.[33] PD No. 269 expressed the State's policy of promoting, encouraging and assisting all public service entities engaged in supplying electricity, particularly electric cooperatives, in furtherance of the law's objectives. Electric cooperatives are granted franchises. PD No. 269 defines "franchise" as "the privilege extended to a person to operate an electric system for service to the public at retail within a described geographic area, whether such privilege had been granted by the Congress, by a municipal, city or provincial government, or as herein provided, by the NEA [National Electrification Administration]." [34]

In areas where electric cooperatives do not operate, the distribution of electric power is done by private utilities. To be able to operate, a private distribution utility has to secure the corresponding franchise, just like an electric cooperative.

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

The electric power industry is highly capital-intensive and as such operates as a natural monopoly. This is true for all the traditional sectors, namely: generation, transmission and distribution, the latter insofar as private distribution utilities is concerned. Specifically, distribution utilities have to spend tremendous amounts to set up distribution lines, power stations, operation centers, transformers and the like, not to mention the typical operating costs, to operate and do business. In consideration of the huge pre-operation costs, generating companies in view of the exigencies of the business have to grant distribution companies the exclusive right to sell electricity within the latter's area of operation.[35]

Thus, respondent, as the grantee of a franchise to provide electric power supply to all consumers within its franchise area of Apalit, Macabebe, Masantol, Minalin, San Simon and Sto. Tomas, Pampanga, had the exclusive right to sell electricity at retail to all consumers within that area. Understandably, NAPOCOR would refuse to sell electricity to any consumer within respondent's franchise area unless respondent gives its consent to such sale. Should NAPOCOR act otherwise, it would infringe the rights of the respondent under its franchise and the latter would have a cause to action to prevent the direct sale of electricity by NAPOCOR to the end-user.

The contract between petitioner and NAPOCOR is not in the records of the case. One of the conditions of the said contract should be that petitioner must obtain the consent of respondent, as franchise holder for the area of Apalit, Pampanga, to allow NAPOCOR to sell electricity directly to petitioner. This is so because Section 39 (b) thereof provides that:

The National Power Corporation shall, except with respect to the National Government, give preference in the sale of its power and energy to cooperatives, and shall otherwise provide the maximum support of and assistance to cooperatives of which it is capable, including assistance in developing dependable and reliable arrangements for their supplies of bulk power, either from itself, or from other sources. In pursuance of the foregoing policy, the National Power Corporation shall not, except upon prior written agreement approved by the cooperative's board, compete in the sale of power and energy which without regard to the location of the point of delivery thereof, will be utilized and consumed within any area franchised to a cooperative. (Emphasis supplied.)

Even if the condition that petitioner must obtain respondent's prior consent to the contract between petitioner and NAPOCOR is not expressly stated in said contract, Section 39 (b) is deemed written into their agreement.[36]

It was for all the foregoing that the parties executed the Waiver Agreement and agreed that petitioner pay respondent royalty fees at 2.5% of petitioner's monthly electric power consumption.

Indeed, if the purpose of paying royalty fees to respondent under the Waiver Agreement is to compensate respondent for loss of income resulting from petitioner's direct purchase from NAPOCOR of electricity, for petitioner's operations within respondent's franchise area, specifically, the municipality of Apalit, it is not surprising that the parties agreed on royalty fees of 2.5% percent of petitioner's monthly consumption, regardless

of the number of megawatts consumed by petitioner in a month.

Since the terms of the Waiver Agreement are clear, and are not contrary to law, morals, good customs, public order or public policy,[37] the contract is considered as the law between petitioner and respondent. Thus, petitioner must comply with its obligations thereunder in good faith.[38]

WHEREFORE, the Petition is DENIED for lack of merit.

SO ORDERED.

Puno, (Chairman), Quisumbing, Austria-Martinez, and Callejo, Sr., JJ., concur.

[1] Penned by Justice Conrado Vasquez, Jr., concurred in by Justices Martin S. Villarama, Jr. and Eliezer R. De Los Santos.

[2] Pampanga III Electric Cooperative, Inc., represented by its Board President, Cesar Sigua v. Milwaukee Industries Corporation.

[3] RTC Records, p. 43.

[4] Id. at 12.

[5] Pre-Trial Order, Id. at 32-33.

[6] Exhibit "A-1", Id. at 43.

[7] Exhibit "B", Id. at 45.

[8] Exhibit "C", Id. at 46.

[9] Exhibit "D", Id. at 47.

[10] Exhibit "F", Id. at 50.

[11] TSN, October 12, 1998, pp. 4-5

[12] TSN, October 5, 1998, pp. 3-4.

[13] Exhibit "2", RTC Records, p. 66.

[14] RTC Decision, CA Records, pp. 23-27.

[15] Rollo, pp. 25-27.

[16] Id. at 33-35.

[17] Id. at 41-45.

[18] Id. at 48.

[19] Memorandum for Petitioner. Id. at 67-69.

[20] Id. at 72-73.

[21] Memorandum for Respondent. Id. at 58-59.

[22] Exhibit "A-1", RTC Records, p. 43.

[23] Article 1370, paragraph 1, Civil Code; See also *Leaño v. Court of Appeals*, G.R. No. 129018, November 15, 2001, 369 SCRA 36; *Roble v. Arbasa*, G.R. No. 130707, July 31, 2001,, 362 SCRA 69; *German Marine Agencies, Inc. v. NLRC*, G.R. No. 142049, January 30, 2001, 350 SCRA 629.

[24] Article 1374, Civil Code.

[25] Exhibit "A-6," RTC Records, p. 43.

[26] The recitals and stipulations of the Waiver Agreements are as follows:

WHEREAS, the COOPERATIVE (PELCO III) is the exclusive holder of Certificate of Franchise No. 145 granted by the National Electrification Administration (NEA) to operate electric light and power service within the areas presently comprised by the following municipalities:

APALIT MACABEBE MASANTOL

MINALIN SAN SIMON STO. TOMAS

WHEREAS, the CONSUMER has a steel plant located along McArthur Highway, Paligui, Apalit, Pampanga, with the projected load of Thirty-Two (32MW) megawatts;

WHEREAS, the National Power Corporation (NPC) would make available the power needs of CONSUMER provided the COOPERATIVE would authorize and allow the National Power Corporation (NPC) to serve the power needs of the CONSUMER;

WHEREAS, the National Power Corporation (NPC) is legally inhibited from directly serving the power needs of CONSUMER without the WAIVER from the cooperative;

WHEREAS, the CONSUMER had applied and requested for a WAIVER from the COOPERATIVE and the COOPERATIVE hereby grants the said WAIVER under the following terms and conditions to wit:

- A waiver/loyalty fee of two and one half percent (25% based on the monthly power bill of the CONSUMER shall be paid to the cooperative not later than the 15th day of the month. Any delay in the payment shall be levied a surcharge of two percent (2%) per month computed from the date the payment is due.
- Payment of waiver/royalty fee shall commence upon the approval of CONSUMER's application with NPC for a direct connection or upon the National Electrification Administration's (NEA) approval of COOPERATIVE's resolution which ever comes first.
- That a representative of the COOPERATIVE duly designated by its General Manager will be allowed to witness the monthly NPC reading of CONSUMER's meter.
- That CONSUMER shall use the facilities for the direct connection for its exclusive use and no other commercial or industrial consumers will be allowed to use the same without the prior consent and written approval of the COOPERATIVE.
- That during the lifetime of this Waiver, COOPERATIVE will not impose new or additional charges in whatever form irrespective of the change in the composition of the membership of the Board and renounces whatever rights to claim for any royalty against CONSUMER before the effectivity of this Waiver as set forth in paragraph 2 hereof.
- That this Waiver is binding for both parties for a period of twenty (20) years reckoned from the date of its approval subject to renewal upon mutual agreement.

- That should CONSUMER fail to comply with any of the terms and conditions of this Waiver, the COOPERATIVE reserves its rights to cancel this agreement and demand for damages that it may incur by reason of such failure.
- Any dispute or suit arising out of this agreement shall be filed with the Courts of the Province of Pampanga having the proper jurisdiction.
- That this Waiver rescinds and supersedes any agreement or contract entered into before relating to the same subject matter.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures on the place, day and year first above-written.

[27] Section 9, Rule 130, Revised Rules of Court; see also *Llana v. Court of Appeals*, G.R. No. 104802, July 11, 2001, 361 SCRA 27; *Manufacturer's Building, Inc. v. Court of Appeals*, G.R. No. 116847, March 16, 2001, 354 SCRA 521.

[28] TSN, September 2, 1998, pp. 7-8.

[29] Exhibit "2", RTC Records, p. 66.

[30] Article 1311, paragraph 2, Civil Code; *Visayan Surety & Insurance Corporation v. Court of Appeals*, G.R. No. 127261, September 7, 2001, 364 SCRA 631.

[31] Exhibit "C", RTC Records, p. 46.

[32] Creating the "National Electrification Administration" as a Corporation, Prescribing its Powers and Activities, Appropriating the Necessary Funds Therefor and Declaring a National Policy Objective for the Total Electrification of the Philippines on an Area Coverage Service Basis, the Organizational, Promotion and Development of Electric Cooperatives to Attain the Said Objective, Prescribing Terms and Conditions for Their Operations, the Repeal of Republic Act No. 6038, and For Other Purposes.

[33] Chapter I (Policy and Definitions), Section 2 of PD No. 269 provides:

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

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

Area coverage electrification cannot be achieved unless service to the more thinly settled areas and therefore more costly to electrify is combined with service to the most densely settled areas and therefore less costly to electrify. Every public service entity should hereafter cooperate in a national program of electrification on an area coverage basis, or else surrender its franchise in favor of those public service entities which will. It is hereby found that the total electrification of the Nation requires that the laws and administrative practices relating to franchised electric service areas be revised and made more effective, as herein provided. It is

therefore hereby declared to be the policy of the State that franchises for electric service areas shall hereafter be so issued, conditioned, altered or repealed, and shall be subject to such continuing regulatory surveillance, that the same shall conduce to the most expeditious electrification of the entire Nation on an area coverage basis.

[34] Section 3(m).

[35] Even under the restructured electric power industry established by R.A. No. 2001 (EPIRA), generating companies may sell electricity directly to consumers only after paying wheeling charges to the distribution utility concerned. See Sec. 24.

[36] See *Heirs of San Miguel v. Court of Appeals*, G.R. No. 136054, September 5, 2001, 364 SCRA 523; *National Steel Corporation v. RTC of Lanao del Norte*, G.R. No. 127004, March 11, 1999, 304 SCRA 595.

[37] Article 1306, Civil Code; See also *Development Bank of the Philippines v. Court of Appeals*, G.R. No. 137557, 30 October 2000, 344 SCRA 492; *Roman Catholic Archbishop of Manila v. Court of Appeals*, G.R. Nos. 77425 and 77450, 19 June 1991, 198 SCRA 300; *De Luna v. Abrigo*, G.R. No. 57455, 18 January 1990, 181 SCRA 150; *Rocamora, et al. v. RTC- Cebu (Branch VIII), et al.*, G.R. No. L-65037, 23 November 1988, 167 SCRA 615; *Community Savings & Loan Association*, G.R. No. 75786, 31 August 1987, 153 SCRA 564.

[38] Article 1159, Civil Code; See also *National Sugar Trading and/or the Sugar Regulatory Administration v. Philippine National Bank*, G.R. No. 151218, 28 January 2003; *Pilipinas Hino, Inc. v. Court of Appeals*, G.R. No. 126570, 18 August 2000, 338 SCRA 355.

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