

**FREEDOM FROM DEBT COALITION, ANA MARIA NEMENZO, AS
PRESIDENT OF FREEDOM FROM DEBT COALITION, MA. TERESA I.
DIOKNO-PASCUAL, REP. LORETTA ANN ROSALES (PARTY-LIST
AKBAYAN), REP. JO...**

G.R. No. 161113. June 15, 2004

Ponente: TINGA, J.

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TINGA, J.:

The privately-owned public utility “is the substitute for the State in the performance of . . . (a) public service, thus becoming a public servant,”[1] so wrote Justice Louis Brandeis more than eighty years ago. As in the United States, the provision of public utility services in the Philippine setting is a combination of private ownership and public control. Such an amalgam of clashing interests is a formula for inevitable conflicts. At bar here is one such conflict, in fact the current high point of a raging controversy where the public, on one side, is pitted against the regulatory body and the country’s leading power utility, on the other.

Before the Court is a Petition for Certiorari, Prohibition and Injunction with Prayer for the Issuance of a Temporary Restraining Order or a Status Quo Order. The Petition assails the Order dated November 27, 2003 of respondent Energy Regulatory Commission (ERC), provisionally authorizing respondent Manila Electric Company (MERALCO) to increase its rates by an average amount of twelve centavos (P0.12) per kilowatt hour.

On October 10, 2003, MERALCO filed with the ERC an Application for an increase in rates. MERALCO also prayed ex parte for the grant of a provisional authority to implement the increase according to the schedule attached to its Application. The case was docketed as ERC Case No. 2003-480.[2]

On October 14, 2003, the National Association of Electricity Consumers for Reforms, Inc. (NASECORE), in a Letter addressed to then ERC Chairman Manuel R. Sanchez (Sanchez), informed him of its intention to file an Opposition to MERALCO’s Application.[3]

On October 24, 2003, Mr. Genaro Lualhati (Lualhati) sent a Letter to Sanchez seeking the dismissal of MERALCO’s Application.[4]

On October 29, 2003, petitioner Freedom from Debt Coalition (FDC) also expressed its intention to file an opposition to MERALCO’s Application.[5]

On November 3, 2003, the ERC directed FDC, NASECORE and Lualhati to file their respective comments on the Application within fifteen (15) days from their receipt thereof. [6]

On November 11, 2003, NASECORE filed a Motion for Production of Documents to enable it to evaluate MERALCO’s Application. [7]

In an Order dated November 13, 2003, the ERC directed MERALCO to file its comment on NASECORE’s Motion for Production of Documents.[8]

On November 19, 2003, the ERC issued an Order directing MERALCO to submit certain documents in connection with the evaluation of its Application.[9]

On November 21, Lualhati filed his Opposition[10] to MERALCO's Application.

The FDC likewise filed a Motion for Production of Documents on November 27, 2003, adopting NASECORE's list in its Motion, and requesting for other documents in addition thereto.[11]

However, on November 27, 2003, the ERC, without first resolving the Motions for Production of Documents of NASECORE and FDC and apparently without considering Lualhati's Opposition, issued an Order provisionally approving MERALCO's ex parte application for rate increases. The dispositive portion of the Order states:

WHEREFORE, considering all the foregoing, this Commission, pursuant to Section 8 of Executive Order No. 172 and Section 4 (e) of the Implementing Rules and Regulations of the EPIRA (R.A. 9136), hereby provisionally authorizes applicant Manila Electric Company (MERALCO) to adopt and implement the attached rate schedules embodying a rate adjustment in the average amount of TWELVE (12) CENTAVOS per kwh, effective with respect to its billing cycles beginning January 2004. The impact of this approved rate adjustment will vary from one customer class to another depending on the load cycles.

The rate adjustment authorized herein shall be subject to refund in the event that this Commission finds, after completion of the hearings of this case, that the same is unjust and unreasonable.

The hearing of this case is hereby set on December 22, 2003 at nine o' clock in the morning (9:00 A.M.) at the ERC Hearing Room, 15th Floor, Pacific Center Building, San Miguel Avenue, Ortigas Center, Pasig City. In this connection, MERALCO is hereby directed to publish, at its own expenses, the attached Notice of Public Hearing at least twice (2) for two (2) successive weeks in two (2) newspapers of nationwide circulation in the country, the last date of publication to be made not later than two (2) weeks before the scheduled date of initial hearing.

Let copies of this Order and the attached Notice of Public Hearing be furnished all the Municipal/City mayors within the MERALCO's franchise area for appropriate posting thereof on their respective bulletin boards....[12]

Thereafter, the following were filed with the ERC after its issuance of the November 27, 2003 Order:

- (1) Urgent Motion to Resolve Motion for Production of Documents & Opposition to the Provisional Authority filed by NASECORE on December 8, 2003;
- (2) Manifestation Joining the National Association of Electricity Consumers for Reforms, Inc. in its Opposition to the Provisional Authority and Motion for Production of Documents filed by the Philippine Consumers Watch on December 11, 2003;
- (3) Opposition filed by the Philippine Consumers Welfare Union (PCWU) on December 15, 2003;
- (4) Urgent Motion to Suspend Implementation and Motion for Reconsideration filed by the Napocor Industrial Consumers Association, Inc. (NICAI) on December 12, 2003;
- (5) Letter requesting for reconsideration of the November 27, 2003 Order of the ERC, sent by the National Consumer Affairs Council on December 9, 2003;
- (6) Letter objecting to the November 27, 2003 Order of the ERC, sent by the Federation of Philippine Industries, Inc. on December 11, 2003; and
- (7) Motion for Production of Documents and Motion for Production of Documents (Supplemental) filed by Atty. Ruperto J. Estrada on December 15, 2003 and December 16, 2003, respectively.

On December 19, 2003, MERALCO filed its Comment.[13] It refused to produce the documents requested by the oppositors on the ground that such documents are immaterial and irrelevant to its application.

On December 22, 2003, the scheduled date of hearing, the ERC did not revoke the provisional authority granted to MERALCO per its November 27, 2003 Order.

FDC did not move for reconsideration of the Order but on December 23, 2003, it filed the instant Petition.

FDC argues that the November 27, 2003 Order of the ERC is void for having been issued without legal or statutory authority. It also contends that Rule 3, Section 4(e) of the Implementing Rules of the EPIRA is unconstitutional for being an undue delegation of legislative power. FDC further asserts that the November 27, 2003 Order is void for having been issued by the ERC with grave abuse of discretion and manifest bias. In support of its prayer for the issuance of injunctive relief, FDC claims that the implementation by MERALCO of the provisional rate increase will result in irreparable prejudice to FDC and others similarly situated unless the Court restrains such implementation.[14]

On December 29, 2003, FDC filed with the Court an Urgent Motion to Grant Restraining or Status Quo Order.

On January 9, 2004, The ERC issued an Order clarifying that the provisional rate increase granted to MERALCO in its November 27, 2003 Order should be applied beginning January 1, 2004.

The Court En Banc issued on January 13, 2004, a Resolution ordering ERC and MERALCO to file their respective Comments on the Petition. The Court also enjoined ERC and MERALCO to observe the status quo prevailing before the filing of the Petition and set the case for oral arguments on January 27, 2004.

On January 26, 2004, ERC, MERALCO and the Office of the Solicitor General (OSG) filed their respective Comments on the Petition.

In its Comment, the ERC concurred with the arguments of the OSG and insists that it is authorized to issue provisional orders under the law. ERC argues that it must not have been the intention of Congress to expand the functions of the ERC, as the successor of the Energy Regulatory Board (ERB), and clip its powers at the same time.[15]

The ERC further asserts that it is authorized to issue provisional rate increases ex parte, and that it may base its provisional order on the verified application and supporting documents submitted by the application, and it is not required to wait for the comments of consumers or local government units (LGUs) concerned before issuing a provisional order.[16]

The ERC likewise denies that the November 27, 2003 Order was issued with grave abuse of discretion. On the contrary, it claims that the Order is supported by substantial evidence.[17]

Finally, ERC asseverates that the filing of the instant Petition is premature because it was denied the opportunity to have a full determination of the Application after trial on the merits, and is violative of the doctrine of primary jurisdiction.[18]

For its part, MERALCO asserts that the November 27, 2003 Order is valid, because it was issued by the ERC pursuant to Section 44 of the EPIRA which allows the transfer of powers (not inconsistent with the EPIRA) of the old ERB to the ERC.[19] It also denies that the assailed Order was issued by the ERC with grave abuse of discretion, asserting that on the contrary, the issuance thereof was based on the Application, affidavits and other supporting documents which it submitted earlier.[20]

Bayan Muna, Bayan, KMU, Gabriela, Kadamay, Agham, Gabriela Women's Party and the Anak Pawis

(petitioners-in-intervention) filed their Motion to Intervene, and attached thereto their Petition-in-Intervention. The Court granted the Motion and admitted the Petition-in-Intervention in its Resolution dated January 27, 2004.[21]

In their Petition-in-Intervention, petitioners-in-intervention argue that the November 27, 2003 Order is void for having been issued by ERC with manifest bias in favor of MERALCO and without due regard for the rights of consumers. They assert further that the ERC committed grave abuse of discretion in considering the appraisal of MERALCO's assets as of the year 2002, in violation of Section 43(f)(i) of the EPIRA. Lastly, they claim that the assailed Order is void for unjustifiably imposing upon the consumers increased rates to fund the 42 major capital projects of MERALCO for the year 2004.[22]

During the oral arguments, the Court defined the issues as follows:

- (1) Whether the ERC has legal authority to grant provisional rate adjustments under Republic Act (R.A.) No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001" (EPIRA); and
- (2) Assuming that the ERC has the authority to grant provisional orders, whether the grant by the ERC of the provisional rate adjustment in question was committed with grave abuse of discretion amounting to lack or excess of jurisdiction.[23]

The Court thereafter required the parties to submit their respective Memoranda within a non-extendible period of twenty days from January 27, 2004. The ERC was likewise ordered to produce certain documents pertinent to the resolution of the case.[24]

We rule in the affirmative on both issues.

Overview of the EPIRA

One of the landmark pieces of legislation enacted by Congress in recent years is the EPIRA.[25] It established a new policy, legal structure and regulatory framework for the electric power industry.

The new thrust is to tap private capital for the expansion and improvement of the industry as the large government debt and the highly capital-intensive character of the industry itself have long been acknowledged as the critical constraints to the program. To attract private investment, largely foreign, the jaded structure of the industry had to be addressed. While the generation and transmission sectors were centralized and monopolistic, the distribution side was fragmented with over 130 utilities, mostly small and uneconomic. The pervasive flaws have caused a low utilization of existing generation capacity; extremely high and uncompetitive power rates; poor quality of service to consumers; dismal to forgettable performance of the government power sector; high system losses; and an inability to develop a clear strategy for overcoming these shortcomings.

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.[26] The law ordains the division of the industry into four (4) distinct sectors, namely: generation, transmission, distribution and supply.[27] Corollarily, the NPC generating plants have to be privatized[28] and its transmission business spun off and privatized thereafter.[29]

In tandem with the restructuring of the industry is the establishment of "a strong and purely independent regulatory body." [30] Thus, the law created the ERC in place of the Energy Regulatory Board (ERB).[31]

To achieve its aforesaid goal, the law has reconfigured the organization of the regulatory body. It requires the Chairman and four (4) members of the ERC to be equipped with "at least three (3) years of active and distinguished experience" in the fields of energy, law, economics, finance, commerce or engineering, and at least

one of them with ten (10) years or more of experience in the active practice of law and another one with similar experience as a certified public accountant.[32] Their terms of office were increased to seven (7) years from the four (4) provided in Executive Order No. 172 (E.O. No. 172) and their security of tenure assured.[33] The Chairman and members were given the same salaries, allowances, benefits and retirement pay as the Chief Justice and Associate Justices of the Supreme Court,[34] a lot higher than the salary and benefits accorded the Chairman and members of the ERB which were equivalent only to those of a Department Undersecretary and the official next in rank, and those of the Chairman and members of the Commission on Elections, respectively.[35]

Statutory Authority To Grant Provisional Increase

FDC posits that the ERC has no power to issue provisional orders because the EPIRA repealed Commonwealth Act No. 146 (The Public Service Act) and E.O. No. 172 (creating the ERB), which laws expressly conferred upon the precursors of ERC the power to grant provisional orders. It argues further that while Section 44 of the EPIRA provides for the transfer of the powers and functions of the ERB to the ERC, such transfer cannot be deemed to include the power to issue provisional orders because such power is inconsistent with the policies ordained in Section 2 of the EPIRA to protect the public interest insofar as it is affected by the rates and services of electric utilities and other providers of electric power and to ensure transparency and full accountability in rate-fixing.[36] Considering that the EPIRA itself does not confer upon the ERC the power to issue provisional orders, Section 4(e), Rule 3 of the law's Implementing Rules, which refers to the grant of provisional authority by the ERC, constitutes an undue delegation of legislative power.[37]

The petitioners-in-intervention agree with and adopt the aforementioned arguments of FDC.[38]

MERALCO, on the other hand, claims that the power of the ERB to issue provisional orders under Section 16(c) of the Public Service Act and Section 8 of E.O. No. 172 was not repealed by the EPIRA. On the contrary, Section 80 of the EPIRA expressly mentions that the applicable provisions of the Public Service Act and E.O. No. 172 that are not inconsistent therewith shall continue to have full force and effect.[39] It adds that the power of the ERC to approve reasonable rates would be rendered meaningless if it can only do so after a full hearing, and in the meantime the insufficiency of the applicant's rates would result in its inability to supply quality, reliable and secure electric power.[40]

The OSG contends that ERC has statutory authority to issue provisional orders, including provisional rate increases. It points out that the EPIRA expressly states that the powers of the Energy Regulatory Board (ERB) under E.O. No. 172 shall be exercised by the ERC.[41]

For its part, the ERC maintains that it possesses the authority to grant provisional orders under Section 16 (c) of the Public Service Act and Section 8 of E.O. No. 172 in relation to Sections 44 and 80 of the EPIRA.[42] Thus, it claims that Section 4(e), Rule 3 of the Rules and Regulations To Implement Republic Act No. 9031, Entitled "Electric Power Industry Reform Act of 2001" (IRR) is valid. It further argues that its duty to protect the public interest necessarily requires it to balance the interests of the consumers and the utilities — that is, to maintain reasonable rates while ensuring that the utilities will be able to remain financially sound and operationally viable.[43]

The Court agrees with the respondents and the OSG.

ERC authority is found in
Secs. 44 and 80 of the EPIRA

The ERC is endowed with the statutory authority to approve provisional rate adjustments under the aegis of

Sections 44 and 80 of the EPIRA. The sections read, thus:

SEC. 44. Transfer of Powers and Functions. — The powers and functions of the Energy Regulatory Board not inconsistent with the provisions of this Act are hereby transferred to the ERC. The foregoing transfer of powers and functions shall include all applicable funds and appropriations, records, equipment, property and personnel as may be necessary.

Sec. 80. Applicability and Repealing Clause. — The applicability provisions of Commonwealth Act No. 146, as amended, otherwise known as the “Public Services Act;” Republic Act 6395, as amended, revising the charter of NPC; Presidential Decree 269, as amended, referred to as the National Electrification Decree; Republic Act 7638, otherwise known as the “Department of Energy Act of 1992;” Executive Order 172, as amended, creating the ERB; Republic 7832 otherwise known as the “Anti-Electricity and Electric Transmission Lines/Materials Pilferage Act of 1994;” shall continue to have full force and effect except insofar as they are inconsistent with this Act.

The provisions with respect to electric power of Section 11(c) of Republic Act 7916, as amended, and Section 5(f) of Republic Act 7227 are hereby repealed or modified accordingly.

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

The principal powers of the ERB relative to electric public utilities transferred to the ERC are the following:

- To regulate and fix the power rates to be charged by elective companies;[44]
- To issue certificates of public convenience for the operation of electric power utilities;[45]
- To grant or approve provisional electric rates.[46]

It bears stressing that the conferment upon the ERC of the power to grant provisional rate adjustments is not inconsistent with any provision of the EPIRA. The powers of the ERB transferred to the ERC under Section 44 are in addition to the new powers conferred upon the ERC under Section 43.

Section 80 of the EPIRA complements Section 44, as it mandates the continued efficacy of the applicable provisions of the laws referred to therein. The material provisions of the Public Service Act which continue to be in full force and effect are contained in Section 16(c), which states thus:

Section 16. Proceedings of the Commission, upon notice and hearing. — The Commission shall have power, upon proper notice and hearing in accordance with the rules and provisions of this Act, subject to the limitations and exceptions mentioned and saving provisions to the contrary:

...

(c) To fix and determine individual or joint rates, toll, charges, classifications, or schedules thereof, as well as commutation, mileage, kilometrage, and other special rates which shall be imposed, observed, and followed thereafter by any public service: Provided, That the Commission may, in its discretion, approve rates proposed by public services provisionally and without necessity of any hearing; but it shall call a hearing thereon within thirty days thereafter, upon publication and notice to the concerned parties operating in the territory affected: Provided, further, That in case the public service equipment of an operator is used principally or secondarily for the promotion of a private business, the net profits of said private business shall be considered in relation with the public service of such operator for the purposes of fixing the rates.

Similarly, Sections 8 and 14 of E.O. No. 172 or the ERB Charter continue to be in full force by virtue of Sections 44 and 80 of the EPIRA. Said provisions of the ERB charter read:

SEC. 8. Authority to Grant Provisional Relief. - The Board may, upon the filing of an application, petition or

complaint or at any stage thereafter and without prior hearing, on the basis of the supporting papers duly verified or authenticated, grant provisional relief on motion of a party in the case or on its own initiative, without prejudice to a final decision after hearing, should the Board find that the pleadings, together with such affidavits, documents and other evidence which may be submitted in support of the motion, substantially support of the provisional order; Provided, That the Board shall immediately schedule and conduct a hearing thereon within thirty (30) days thereafter, upon publication and notice to all affected parties.

SEC. 14. Applicability Clause.— The applicability (applicable) provisions of Commonwealth Act No. 146, as amended, otherwise known as the “Public Service Act;” Republic Act No. 6173, as amended, otherwise known as the “Oil Industry Commission Act;” Republic Act No. 6395, as amended, revising the charter of the National Power Corporation under C.A. 120; Presidential Decree No. 269, as amended, also referred to as the “National Electrification Administration Decree;” and Presidential Decree No. 1206, as amended, creating the Department of Energy, shall continue to have full force and effect, except insofar as inconsistent with this Order. (Word in parenthesis supplied)

The above-quoted applicability clause is quite clear. It cannot be argued that the clause could not have referred to the provisions of the prior laws empowering the Public Service Commission (PSC) and the ERB to grant provisional rate adjustments on the premise that the lawmakers deliberately deleted the provisions in the crafting of the EPIRA. Such an argument begs the question. What is clear from Sections 80 and 44 is that the legislators saw the superfluity or needlessness of carrying over in the EPIRA the same provision found in the previous laws. The power to approve provisional rate increases is included among the powers transferred to the ERC by virtue of Section 44 since the grant of that authority is not inconsistent with the EPIRA; rather, it is in full harmony with the thrust of the law which is to strengthen the ERC as the new regulatory body.

Furthermore, under Section 80, only three (3) specific laws were expressly repealed or modified. These are Section 11(c) of Republic Act No. 7916,[47] as amended, Section 5(f) of Republic Act No. 7227[48] and Presidential Decree No. 40.[49] Section 8 of E.O. No. 172 and Section 16(c) of C.A. No. 146 which both grant the regulatory body concerned the authority to approve provisional rate increases are not among the provisions expressly repealed or modified. This clearly indicates the law’s intent to transfer the power to the ERC.

Indeed, nary a hint in the EPIRA intimates that the powers of ERC’s predecessors not mentioned therein are revoked or repealed. Be it noted that implied repeals are not favored in our jurisdiction.[50] The legislature is presumed to know the existing laws; if it intended a repeal of the earlier law, it should have so expressed that intention in the subsequent statute.[51]

Thus, a statute will not be deemed to have been impliedly repealed by another enacted subsequent thereto unless there is a showing that a plain, unavoidable and irreconcilable repugnancy exists between the two.[52]

Likewise, it may not be asserted with success that the power to grant provisional rate adjustments runs counter to the statutory construction guide provided in Section 75[53] of the law. The section ordains that the EPIRA shall be construed in favor of market competition and people power empowerment, thereby ensuring the widest participation of the people.

To the Court, the goals of market competition and people empowerment are not negated by the ERC’s exercise of the authority to approve provisional rate adjustments. The concerns are taken care of by Section 43 of the EPIRA and its IRR. While Section 43 lays down the publication requirement as regards the rate application, Section 4(e), Rule 3 of the IRR fleshes out the requirement.[54]

Neither is the notion of provisional rate adjustment incompatible with the policy to protect public interest, as enunciated in Section 2(f)[55] of the law. The common weal is not relegated to the back-burner simply by

upholding the grant to the ERC of the authority to approve provisional rate adjustments. Again for one, even if there is a ground to grant the provisional rate increase, the ERC may do so only after the publication requirement is met and the consumers affected are given the opportunity to present their side. For another, the rate increase is provisional in character and therefore may be modified or even recalled anytime. Still for another, the ERC is mandated to prescribe a rate-setting methodology “in the public interest”[56] and “to promote efficiency.”[57]

For that matter, there is a plethora of provisions in Section 43 and related sections which seek to promote public interest, market competition and consumer protection.[58]

Sec. 43 of the EPIRA, being a list of ERC’s new powers, is not inconsistent with Sec. 44

Although the power to grant provisional rate adjustments is not one of the powers mentioned in Section 43, this provision itself characterizes the listed powers as the “key functions in the restructured industry.” They are not the typical or traditional prerogatives or functions of regulatory bodies. Reproducing the initial paragraph of the section is illuminating, viz:

The ERC shall promote competition, encourage market development, ensure customer choice and 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: (Emphasis supplied).

....

Significantly, the fundamental power to fix rates is also not one of the functions enumerated under Section 43. Thus, to deny the power to grant provisional rate increase to ERC simply because it is not mentioned in Section 43 is also to deny the power to fix rates to the Commission by the same token. Clearly, the proposition is absurd.

Moreover, as the OSG correctly pointed out, to interpret the EPIRA as not retaining the ERC’s power to issue provisional orders will wreak havoc on the regulatory environment, which has been painstakingly built and enhanced since the enactment of the EPIRA.[59]

To repeat, the EPIRA grants unto the ERC both old and new powers. The old powers are referred to in Section 44 while the new ones are listed in Section 43 of the law.

The powers enumerated in Section 43 have a common thread. Characterized as the “key functions,” they are the new powers granted to the ERC in relation to the reform and modernization of the electric power industry sought to be achieved by the law. They are also invariably mentioned with particularity in other provisions of the law. In other words, Section 43 merely repeats what is found in the other sections. It is a compendium of powers provided in other provisions of the same law but were not enjoyed by the previous regulatory bodies. It is a statutory tool to achieve clarity and convenience, at least with respect to the new powers.

The powers provided in Section 43 and the corresponding related provisions in the EPIRA are:

- Section 43(a) on the power to implement the rules and regulations of the Act, also provided in Section 177;
- Section 43(b) on the power to promulgate and enforce the National Grid Code and Distribution Code, also provided in Sections 9, 11, 19, 20, 21, 22, 23 and 24.
- Section 43(c) on the power to enforce the rules and regulations on the operation of the electricity spot market and on the participants in the spot market, also provided in Sections 30 and 31.
- Section 43(d) on the power to determine the level of cross-subsidies in the retail rate until its removal, also

provided in Section 74;

- Section 43(e) on the power to amend or revoke the authority to operate of any person or entity for failure to comply with the IRR or an order or resolution of the ERC, also provided in Sections 6, 7, 20, 22, 26, 28, 29 and 30;
- Section 43(g) on the power to ensure that the charges of the TRANSCO and distribution utilities do not bear cross-subsidies, also provided in Section 74;
- Section 43(l) on the power to review and approve changes on the terms and conditions of service of the TRANSCO and any distribution utility, also provided in Sections 9, 22 and 23;
- Section 43(h) on the power to allow the TRANSCO to charge user fees, also provided in Section 9 (b);
- Section 43(j) on the power to set a lifeline rate for marginalized end-users, also provided in Section 73;
- Section 43(k) on the power to penalize abuse of market power, cartelization and anti-competitive or discriminatory behavior, also provided in Section 45.
- Section 43(l) on the power to impose fines and penalties, also provided in Section 46.
- Section 43(o) on the power to monitor activities in the generation and supply of the electric power industry, also provided in Sections 6 and 29;
- Section 43(p) on the power to act on application for/ or modifications of certificates of public convenience and/ or necessity, etc., also provided in Sections 22 and 23;
- Section 43(r) on the power to act against any participant or player in the energy sector for violations of law, rule or regulation, also provided in Sections 46 and 74.

Notably, under Section 43(u) the ERC is granted “original and exclusive jurisdiction over all cases contesting rates, fees, fines and penalties” imposed thereby in the exercise of its functions and responsibilities in Section 43.

In determining the extent of powers possessed by the ERC, the provisions of the EPIRA must not be read in separate parts. Rather, the law must be read in its entirety, because a statute is passed as a whole, and is animated by one general purpose and intent. Its meaning cannot be extracted from any single part thereof but from a general consideration of the statute as a whole.[60]

Considering the intent of Congress in enacting the EPIRA and reading the statute in its entirety, it is plain to see that the law has expanded the jurisdiction of the regulatory body, the ERC in this case, to enable the latter to implement the reforms sought to be accomplished by the EPIRA. When the legislators decided to broaden the jurisdiction of the ERC, they did not intend to abolish or reduce the powers already conferred upon ERC’s predecessors. To sustain the view that the ERC possesses only the powers and functions listed under Section 43 of the EPIRA is to frustrate the objectives of the law.

All the foregoing undeniably lead to the conclusion that the ERC, under Sections 43(u), 44 and 80 of the EPIRA, in relation to Section 16 (c) of the Public Service Act and Section 8 of E.O. No. 172, possesses the power to grant provisional rate adjustments subject to the procedure laid down in these laws as well as in the IRR.

Legislative history supports
ERC’s power to grant
provisional rate adjustments

A brief review of the legislative history of the regulatory bodies which preceded the ERC is instructive.

The first regulatory body was the Board of Rate Regulation (BRR) which came into existence in 1907.[61] It had the power, after a full hearing, to fix, revise, regulate, reduce or increase the rates charged by public service corporations from time to time.[62] In 1913, the Board of Public Utility Commissioners (BPUC) was created to take over the functions of the BRR.[63] The BPUC was empowered, after conducting a hearing, to fix rates imposed by any public utility.[64] In addition, it had the power to hear and determine, upon a written complaint or motu proprio, whether any increase or changes in classification of rates proposed by a public utility is just and reasonable. Pending such hearing and determination, the BPUC had the power to order the suspension of the increase or change in classification for a period not exceeding three (3) months.[65]

The BPUC was shortly replaced by the PSC. Under its Charter,[66] the PSC was authorized to fix rates and approve provisional rate adjustments.[67]

With the advent of Martial Law, on September 24, 1972, then President Marcos through Presidential Decree No. 1 reorganized the executive branch of the National Government and implemented the Integrated Reorganization Plan. Under the Plan, the Board of Power and Waterworks (BOPW) was created in place of the PSC, taking over the “pertinent regulatory and adjudicatory functions” of the latter.[68]

Later, President Marcos created the Board of Energy (BOE) through Presidential Decree No. 1206, transferring to it the powers and functions of the BOPW relative to power utilities.[69]

The Board of Energy had the authority to grant provisional rate adjustments on the basis of the last paragraph of Section 11 of P.D. No. 1206, which reads:

....

Likewise, the foregoing transfers of powers and functions of the abolished agencies shall be to the extent that they are not modified by any specific provision of this Decree.

This Court, in *Bautista v. Board of Energy*,[70] held that the Board of Energy derived its prerogative to grant provisional relief not only from Section 11 of P.D. No. 1128, amending Section 12 of R.A. No. 6173, but also from Section 16(c) of the Public Service Act.[71]

The BOE in turn was replaced by the ERB pursuant to E.O. No. 172. Sections 8[72] and 14[73] of the E.O. empowered the ERB to grant provisional rate adjustments.

Historically, therefore, in this jurisdiction, at least beginning with the Public Service Act in 1936, the regulatory bodies concerned have exercised the power to grant provisional rate adjustments only because there was a statutory grant of such power.

The foregoing recital establishes the following salient points: (1) Section 16(c) of the Public Service Act authorizing the approval of provisional rate increases has never been repealed and as such continues to be in full force and effect up to the present; (2) The BOPW had the power to grant provisional rate increases on the basis of the provision of the Integrated Reorganization Plan that the pertinent powers of the PSC were transferred to it; (3) The applicability clause found in Section 44 of the EPIRA is the same as or similar to the applicability clauses contained in Sections 11 and 21 of P.D. No. 1206 and Section 14 of E.O. No. 172; and, (4) The applicability clause or transfer of power provision is sufficient to effect the transfer of powers from a regulatory agency to its successor.

All told, the provisions of the Public Service Act[74] and E.O. No. 172[75] which relate to the power of the regulatory body to approve provisional rates continue to have full force and effect, and the power was transferred to the ERC by virtue of Section 80 in relation to Section 44 of the EPIRA. Said provisions are not inconsistent

with the EPIRA except the directives therein dispensing with the need for prior hearing. They are deemed modified to the extent that the EPIRA imposes a publication requirement[76] and, through the IRR, assures the customers affected the opportunity to oppose or comment on the application for provisional rate adjustment before it is acted upon by the ERC.[77]

Indeed, both the letter and spirit of the law require that the authority of the ERC to grant provisional power rate adjustments should be upheld. The law is so clear that it cannot be misread.

Grave Abuse of Discretion

The FDC contends that the issuance of the November 27, 2003 Order provisionally approving MERALCO's application for rate increase is void because, among others, the affected sectors were not afforded the opportunity to be heard. Since the issuance of provisional orders is quasi-judicial in character, the ERC cannot dispense with the requirements of notice and hearing.[78] It likewise claims that the ERC based the provisional increase only on MERALCO's bare allegation that it was in dire financial straits, as there was no proof of MERALCO's actual financial condition.[79]

Petitioners-in-intervention, for their part, argue that the ERC issued the assailed Order in haste, thereby virtually ignoring the opposition expressed by the oppositors in their pleadings submitted to the Commission. They point out that the issuance by the ERC of the Order notwithstanding the failure of MERALCO to comply with the publication requirement under Section 4(e), Rule 3 of the IRR manifests the Commission's partiality for MERALCO.[80]

Significantly, the OSG is also of the view that the proceedings before the ERC relative to MERALCO's Application is defective. Among the defects, according to the OSG, are MERALCO's failure to publish its Application or at least a summary of the reasons for its application, as required by Section 4(e), Rule 3 of the IRR; the ERC's failure to consider the serious objections raised by the oppositors to the application and the ERC's failure to resolve the motions for production of documents filed by several oppositors.[81]

Maintaining that FDC and the petitioners-in-intervention have failed to show any grave abuse of discretion on its part, the ERC stresses that it is authorized under the law to issue provisional rate adjustments without conducting a prior hearing and that such issuance may be made permanent, modified or denied in the course of the main proceeding.[82]

The ERC also argues that Section 4(e) of the IRR does not require the publication of the Application itself, citing in support of its contention the ruling of the Court in *Beautifont, Inc. v. Court of Appeals*[83] that Section 7 of the Permissible Investments Law requires the publication of the summary or abstract of the application, not the application itself.[84] The ERC further asserts that it is premature for the Court to rule on the issue of whether it acted with grave abuse of discretion in issuing the November 27, 2003 Order considering that MERALCO's main petition is pending hearing before it.[85]

In its Memorandum, MERALCO maintains that the ERC acted not with grave abuse of discretion but rather in accordance with its duty under Section 43(f) of the EPIRA to fix rates that will allow the recovery of just and reasonable costs and a reasonable return on rate base (RORB) to operate viably. MERALCO insists that the ERC had substantial basis for issuing the assailed Order.[86]

The Court is convinced of the meritoriousness of FDC's position which is the same stance taken by the petitioners-in-intervention and the OSG.

Under Section 16(c), C.A. No. 146 and Section 8, E.O. No. 172 in relation to Sections 43 and 80 of the EPIRA,

the ERC may grant provisional rate adjustments without first conducting a hearing prior to such grant. However, it is required to conduct a hearing on the propriety of the grant of provisional rate adjustments within 30 days from the issuance of the provisional order.[87]

Section 4(e), Rule 3 of the IRR requires the ERC to resolve the motion for issuance of a provisional order within seventy five (75) calendar days from the filing of the application or petition. If, within 30 days from the publication of the application or receipt of a copy thereof, an affected consumer or the Local Government Unit (LGU) concerned files with the ERC a comment on the prayed for provisional rate adjustment and/or the application itself, the ERC is mandated to consider such comment in its action on the prayer for provisional rate adjustment. Section 4(e), Rule 3 reads in full:

Any application or petition for rate adjustment or for any relief affecting the consumers must be verified and accompanied with an acknowledgement of receipt of a copy thereof by the LGU Legislative body of the locality where the applicant or petitioner principally operates together with the certification of the notice of publication thereof in a newspaper of general circulation in the same locality.

The ERC may grant provisionally or deny the relief prayed for not later than seventy five (75) calendar days from the filing of the application or petition, based on the same or supporting documents attached thereto and such comments or pleadings the customers or the LGU concerned may have filed within thirty (30) calendar days from receipt of a copy of the application or petition or from the publication thereof as the case may be.

Thereafter, the ERC shall conduct a formal hearing on the application or petition, giving proper notices to all parties concerned, with at least one public hearing in the affected locality, and shall decide the matter on the merits not later than twelve (12) months from the issuance of the aforementioned provisional order.

... (Emphasis supplied)

Two postulates evidently flow from a reading of Section 4(e), Rule 3. First, the publication of the application itself is required, not merely the notice of hearing issued by the ERC. Second, in granting a provisional authority, the ERC must consider not only the evidence submitted by the applicant in support thereof, but also the comments of the consumers and the Local Government Units (LGUs) concerned.

It is suggested that the IRR provision in point should be construed as granting the ERC the power to issue provisional rate adjustments *ex parte*.^[88] Such power, partaking as it does the nature of the police power of the State, is conferred on administrative agencies like the ERC to enable them to pursue temporary measures to address problems that cannot wait until the completion of formal proceedings. Thus, the ERC may grant provisional rate adjustments on the basis of the public utility's application and supporting documents, and the pleadings submitted by other parties may have filed at that time. Thereafter, it is mandated to hold a full-blown hearing to resolve the case on the merits.^[89]

Concededly, like Section 16(c), C.A. No. 146 and Section 8, E.O. No. 172, Section 4(e), Rule 3 of the IRR does not require the conduct of a hearing prior to the issuance of a provisional order. However, reading the aforementioned provisions of the Public Service Act, the ERB Charter and the IRR in relation to one another, as they should be read, the inexorable conclusion is that the provisional order cannot be issued under the circumstances based exclusively on the application and supporting documents thereof. The IRR explicitly requires, as a prerequisite to such issuance, that the ERC consider also the comments of the consumers and the LGUs concerned on the application which were filed within thirty (30) days from their receipt of a copy of the application or the publication thereof.

In other words, the ERC must wait for thirty (30) days from service of copies of the application for rate adjustments on interested parties or from the publication of such application before it can issue a provisional

order. If after the 30th day, no comments are filed by concerned parties, then and only then may the ERC, if it deems proper under the circumstances, issue a provisional order on the basis of the application and its supporting documents.

To synthesize, the new order on rate adjustments is as follows:

- (1) The applicant must file with the ERC a verified application/petition for rate adjustment. It must indicate that a copy thereof was received by the legislative body of the LGU concerned. It must also include a certification of the notice of publication thereof in a newspaper of general circulation in the same locality.
- (2) Within 30 days from receipt of the application/petition or the publication thereof, any consumer affected by the proposed rate adjustment or the LGU concerned may file its comment on the application/petition, as well as on the motion for provisional rate adjustment.
- (3) If such comment is filed, the ERC must consider it in its action on the motion for provisional rate adjustment, together with the documents submitted by the applicant in support of its application/petition. If no such comment is filed within the 30-day period, then and only then may the ERC resolve the motion for provisional rate adjustment on the basis of the documents submitted by the applicant.
- (4) However, the ERC need not conduct a hearing on the motion for provisional rate adjustment. It is sufficient that it consider the written comment, if there is any.
- (5) The ERC must resolve the motion for provisional rate adjustment within 75 days from the filing of the application/petition.
- (6) Thereafter, the ERC must conduct a full-blown hearing on the application/petition not later than 30 days from the date of issuance of the provisional order and must resolve the application/petition not later than 12 months from the issuance of the provisional order.^[90] Effectively, this provision limits the lifetime of the provisional order to only 12 months.

Section 4(e), Rule 3 of the IRR, outlining as it does the approval process for an application or petition for provisional rate adjustment, enforces not only Section 43(u) thereof but also Sections 44 and 80 which, as earlier stated, refer to the powers of the ERB passed on to the ERC and found in other prevailing laws, such as Section 16(c) of the Public Service Act.

The validity of the IRR, including Section 4(e) under Rule 3 thereof, is not in dispute.

The IRR was crafted by the Department of Energy (DOE) in consultation with relevant government agencies in accordance with its mandate under the EPIRA.^[91] It was promulgated on the same day that it was approved by the Joint Congressional Power Commission on February 27, 2002.^[92] This Commission is composed of fourteen (14) members of the Senate and the House.^[93]

It is settled that an administrative agency possesses the power to issue rules and regulations to implement the statute which it is tasked to enforce, unless another agency is the one so authorized by the law as in the case of the EPIRA. This is so because it is impracticable, if not impossible, for the legislature to anticipate and provide for the multifarious and complex situations that may be encountered in enforcing the law. So long as the rules and regulations are germane to the objects and purposes of the law and conforms to the standards prescribed thereby, they are deemed to have the force and effect of law.^[94]

In *Victoria's Milling Co., Inc. v. Social Security Commission*,^[95] the Court explained:

When an administrative agency promulgates rules and regulations, it “makes” a new law with the force and

effect of a valid law, ...Rules and regulations when promulgated in pursuance of the procedure or authority conferred upon the administrative agency by law, partake of the nature of a statute ...This is so because statutes are usually couched in general terms, after expressing the policy, purposes, objectives, remedies and sanctions intended by the legislature. The details and the manner of carrying out the law are often times (sic) left to the administrative agency entrusted with its enforcement. In this sense, it has been said that rules and regulations are the product of a delegated power to create new or additional legal provisions that have the effect of law....[96]

The challenged provisional rate increase transgresses Section 4(e), Rule 3 of the IRR in two major respects. The violations involve a couple of new requirements prescribed by the IRR. These are, first, the need to publish the application in a newspaper of general circulation in the locality where the applicant operates; and second, the need for ERC to consider the comments or pleadings of the customers and LGU concerned in its action on the application or motion for provisional rate adjustment.

Obviously, the new requirements are aimed at protecting the consumers and diminishing the disparity or imbalance between the utility and the consumers. The publication requirement gives them enhanced opportunity to consciously weigh the application in terms of the additional financial burden which the proposed rate increase entails and the basis for the application. With the publication of the application itself, the consumers would right from the start be equipped with the needed information to determine for themselves whether to contest the application or not and if they so decide, to take the needed further steps to repulse the application. On the other hand, the imposition on the ERC to consider the comments of the customers and the LGUs concerned extends the comforting assurance that their interest will be taken into account. Indeed, the requirements address the right of the consuming public to due process and at the same advance the cause of people empowerment which is also a policy goal of the EPIRA along with consumer protection.

Corollarily, the requirements seek to temper the lack of fairness implicit in the kind of ex parte modality theretofore followed in regard to applications for provisional rate increases. Before the adoption of the IRR provision, to secure a provisional rate adjustment all that a public utility needed to do was to file the corresponding application with the supporting documents. Without the burden of a hearing and in total disregard of the opposition, the applicant could press the regulatory body to grant the application. With the new protocol under the IRR, the ERC is tasked to pass upon the comments or opposition of the consumers and the LGUs in its resolution of the application for provisional rate adjustment. Consequently, for the ERC to be true to its mission and to prevent evisceration of the new requirements, it should mention in the provisional order the points and arguments of the oppositors which it adopts or give its reasons if it does not uphold them. In other words, the proof of its compliance with the requirements should appear in the provisional order itself.

While the system of interim rates cannot be dispensed with since it helps ensure the financial viability of a public utility which it needs to be able to deliver adequate service to the consumers, the system may be abused to the detriment of the consumers if not enough safeguards are put in place. It happened many times before that after the provisional rate increase had been granted, no action on the main petition was taken, or if one was taken it was made only after the lapse of a considerable period of time. The ultimate effect of the inaction or delay was virtually to make the provisional rate permanent. Thus, the consumers were made to pay what effectively evolved to be the permanent rate without the benefit of a hearing. In the meantime, the collections on the provisional rate were spent by the utility.

In a recent decision,[97] this Court ordered MERALCO to make a refund which remains uncomplied with up to the present, to the prejudice of the consumers. The consumers will similarly suffer if MERALCO, or any power utility for that matter, is allowed to collect on a provisional rate increase, the application for which they

effectively have no knowledge of.

The new requirements address the dismal scenario by ensuring dissemination of information on the application for rate increase and consideration by the ERC of the written position taken by consumers in its action on the motion for provisional rate increase.

The publication and comment requirements, like the 30-day period also imposed in Section 4(e), Rule 3 of the IRR, are in keeping with some of the avowed policies of the EPIRA. These are to protect the public interest vis-à-vis the rates and services of electric utilities and other providers of electric power,[98] to ensure transparent and reasonable prices of electricity in a regime of free and fair competition and full public accountability for greater operational and economic efficiency, to enhance the competitiveness of Philippine products in the global market,[99] and to balance the interests of the consumers and the public utilities providing electric power through the fair and non-discriminatory treatment of the two sectors.[100]

Clearly, therefore, although the new requirements are procedural in character, they represent significant reforms in public utility regulation as they engender substantial benefits to the consumers. It is in this light that the new requirements should be appreciated and their observance enforced.

The record shows that MERALCO failed to comply with the publication requirement prescribed by the IRR. What the IRR requires to be published is the application itself. In fact, it even requires the applicant to submit the “certification of the notice of publication” of the “application or petition for rate adjustment”[101] together with the application/petition to the ERC. The Notice, quoted in full hereunder, which MERALCO caused to be published on October 10, 2003 in the Manila Times, does not comply with the requirement, thus:

MANILA ELECTRIC COMPANY

Pasig City

NOTICE OF APPLICATION

Pursuant to paragraph (e), Section 4, Rule 3 of the Implementing Rules and Regulations of R.A. 9136, notice is hereby given that an Application dated October 8, 2003, for the approval of revised rate schedules and provisional authority, will be filed by the MANILA ELECTRIC COMPANY with address at Meralco Center, Ortigas Avenue, Pasig City, before the Energy Regulatory Commission.

Issued this 9th day of October 2003.

(Sgd). GIL S. SAN DIEGO

Vice President and Head

Legal Services[102] (Emphasis supplied)

ERC invokes the case of *Beautifont, Inc. v. Court of Appeals*,[103] involving the deciphering of the publication requirement in the Permissible Investments Law, R.A. No. 5455, where this Court held that the law did not require the publication of the subject application itself with the Board of Investments.[104] The case, however, is not apropos. For one thing, despite some imprecision in a segment of the provision involved, other parts thereof clearly signify that only the notice of the application is meant to be published. Here, the IRR provision clearly refers to the application itself which is required to be published. For another, in *Beautifont* the Court was quite explicit that under the provision involved not just the notice of application “but an abstract or summary thereof, comprehending the items mentioned”[105] had to be published and it intimated that the item actually published complied with the law. Here, what was actually published is a mere notice of the intent to file an application. Nothing more, nothing less.

For its part, MERALCO alleges that it relied on the ERC's interpretation that what had to be published "is simply a notice of the intent to file an application"[106] So, it "caused the publication of such notice before it filed the application." [107] As it is feeble and self-defeating, the claim is also incongruent with the position actually presented by the ERC in this case.[108]

In this regard, the stance taken by the OSG as the People's Tribune deserves to be quoted, thus:

The first paragraph of Section 4(e) of Rule 3 of the EPIRA IRR provides that a "petition for rate adjustment x x x must be x x x accompanied with x x x the certification of the notice of publication thereof in a newspaper of general circulation in the x x x locality." It is very clear from the above-cited rule that the application for rate adjustment must be published in a newspaper of general circulation.

In the case of MERALCO in ERC Case No. 2003-480, it appears that only a notice of hearing has been published. The notice that was published did not cite the essential allegations or contain a summary of the reasons in support of the application for rate increase.

The purpose of the publication of the application or the essential allegations or summary of the reasons given for the relief sought in the application for rate adjustment contained in the notice of hearing in a newspaper of general circulation is to inform and enable the consumers in the applicant's franchise area to understand as much as possible the application as well as the reasons therefore. This is more so because the relief sought will have an immediate and great impact on the consumers.[109]

The November 27, 2003 Order reveals that the ERC did not consider the opposition to MERALCO's Application and other pleadings filed by several concerned parties in determining whether the rate increase applied for by MERALCO should be approved provisionally.

The ERC's provisional approval of MERALCO's application for rate increase was based on MERALCO's say-so alone, including the purported value of its assets as of the year 2002 and its claimed financial difficulties, resulting according to it in its deferral of forty-two (42) major capital projects and failure to meet its maturing debt obligations. In the assailed Order, the Commission held that MERALCO's inability to construct its capital projects to meet the growing demand of its customers and to ensure the reliability and efficiency of its existing system would ultimately be to the prejudice of the consumers.[110]

The provisional authority to impose increased rates was approved notwithstanding the fact that soon after MERALCO filed its Application on October 10, 2003, FDC and NASECORE expressed their intention to file their respective oppositions to the Application,[111] and later their respective Motions for Production of Documents.[112] Neither did the ERC consider the Letter dated October 24, 2003 of Lualhati (a consumer), seeking the dismissal of the Application.

Although on November 13, 2003, the ERC issued an Order requiring MERALCO to comment on NASECORE's Motion for Production of Documents,[113] it failed to resolve the same, as well as FDC's similar Motion, before issuing its November 27, 2003 Order. The motions filed by NASECORE and FDC should have been acted upon by the ERC prior to resolving MERALCO's prayer for provisional rate increase, because NASECORE and FDC would be able to express their agreement or opposition to MERALCO's Application only after perusing the documents presented, if their Motions were granted; or in case the Motions were denied, they could at least make known their respective positions on the Application on the basis of the documents submitted by MERALCO. Certainly, the spirit if not the language of the IRR provision should have led ERC to treat the motions which are preludes to active opposition to the application in a more favorable light and in a less cavalier fashion. Without even mentioning the motions in its Order, ERC granted the motion for provisional rate increase.

The foregoing clearly establish that ERC failed to comply with the requirements of Rule 4(e), Rule 3 of the IRR

publication and comment requirements of Rule 4(e), Rule 3 of the IRR.

In *Benito v. Commission on Elections*,^[114] we held that:

Grave abuse of discretion means “such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or, in other words where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.” It is not sufficient that a tribunal, in the exercise of its power, abused its discretion; such abuse must be grave. (Citations omitted)^[115]

It is settled that there is grave abuse of discretion when an act is done contrary to the Constitution, the law or jurisprudence,^[116] or when executed whimsically, capriciously or arbitrarily out of malice, ill will or personal bias.^[117]

What makes the challenged Order particularly repugnant is that it involves a blatant and inexcusable breach of the very rules which the ERC is mandated to observe and implement. The violated provision which is Section 4(e), Rule 3 of the IRR specifies how the ERC should exercise its power to issue provisional orders pursuant to Section 44 in relation to Section 80 of the EPIRA. Since the IRR was issued pursuant to the EPIRA, Section 4(e) of Rule 3 as part of the IRR has the force and effect of law^[118] and thus should have been complied with.

In view of the infirmities which attended the issuance of the November 27, 2003 Order, particularly: (1) the failure of MERALCO to publish its Application or at least a summary thereof; (2) the failure of the ERC to resolve the Motions for Production of Documents filed by the oppositors to MERALCO’s Application before acting on the motion for provisional rate adjustment; and (3) the failure of the ERC to consider the arguments raised by the oppositors in their respective pleadings prior to the issuance of the assailed Order; the Court declares void the November 27, 2003 Order of the ERC for having been issued with grave abuse of discretion.

One final word. The character of the infirmities which taint the challenged Order is such that it precludes the remand of the case to the ERC without invalidating the Order. The defect of the notice as published is deemed of so serious a nature as to negate the notice altogether and forestall the ERC’s assumption of jurisdiction over MERALCO’s Application and its prayer for provisional rate increase. Similarly, the ERC’s failure to consider the oppositions and motions already on record in issuing the challenged Order and to act upon other relevant motions has such grave due process implications that render the Order void, independently of its breach of its own rules. Thus, should the case be simply remanded to the ERC without further action by the Court, the defects would not be cleansed and they would retain their potency and still serve as solid basis to nullify the challenged Order and all other issuances of the ERC which would be infected by the infirmities. Indeed, such a denouement would be inescapable once the application is elevated again to this Court in connection with the infirm issuances. Clearly then, a remand is not in the best interest of MERALCO and the ERC. Rather, it is to their advantage, same as with the consumers, that they begin again on a clean slate.

WHEREFORE, the Petition and the Petition-in-Intervention are GRANTED, and the November 27, 2003 Order of the respondent Energy Regulatory Commission in ERC Case No. 2003-480, granting provisional rate increases to the respondent MERALCO, is DECLARED VOID and accordingly SET ASIDE.

Respondent Commission is DIRECTED to comply with Section 4(e), Rule 3 of the Implementing Rules and Regulations of Republic Act No. 9136, particularly the publication and comment requirements therein, in conformity with this Decision, in acting upon and resolving respondent MERALCO’s prayer for provisional rate increase in its Application dated October 8, 2003 in ERC Case No. 2003-480.

SO ORDERED.

Davide, Jr., C.J., Panganiban, and Carpio-Morales, JJ., concur.

Puno, J., see concurring and dissenting opinion.

Vitug, J., on official leave.

Quisumbing, J., concurred with the dissenting opinion of J. Puno.

Ynares-Santiago, J., on leave.

Sandoval-Gutierrez, J., see separate opinion, joins J. Puno in his concurring and dissenting opinion.

Carpio, J., concurred with the dissenting opinion of J. Puno.

Austria-Martinez, J., please see concurring and dissenting opinion.

Corona, J., on official leave.

Callejo, Sr., J., concurs with the dissenting opinion of J. Puno.

Azcuna, J., no part, former counsel of Meralco.

[1] *Southwestern Bell Tel. Co. v. Public Service Commission*, 262 U.S. 291 (1923).

[2] Application, Rollo, pp. 131-150.

[3] See *Ibid.* at 693.

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] *Id.* at 444-447.

NASECORE prayed for the production by MERALCO of the following:

- Relative to Personal Services
- Alphabetical list of Salaries and Wages of all Directors, Officers, Staffs and Employees of Meralco;
- Fees of its Consultants and Retainers;
- Alphabetical list of all contractual workers with expanded withholding tax;
- Total compensation and benefit packages of key officers and senior management, from Assistant Vice Presidents to the Chief Executive Officer, including members of the Board of Directors.
- Relative to Operating Expenses
- Alphabetical list of all purchases subject to expanded withholding tax;
- List of all Meralco imported equipment, machineries, and materials purchased from 1994-2002 and the copies of the corresponding official receipts of purchases, including all motor vehicles acquired.
- Relative to Recovery on Investments
- Meralco's computation of its Rate of Return on Rate Base from 1994-2002;
- Relative to Related Investments
- Total amount of Meralco's investment in each of its subsidiaries and other companies, including but not limited to generation and real estate;

- The individual yearly return on Meralco's investments on these subsidiaries and other companies;
- Relative [to] Loans
- List of Meralco's outstanding loans from both local and foreign banks, as well as from multilateral funding agencies (Id. at 445-446).

[8] Id. at 694.

[9] Id. at 448.

[10] In his Opposition, Lualhati stated his reasons for opposing the Application, to wit:

There is no doubt that this application is prejudicial to Court of Appeals Case No. 77559. Whereas, in Case No. 77559 Meralco's excessively inflated distribution and Delivery rates after unbundling that increased to 49% compared to its Operations and Maintenance Expenses, this instant application still prays for additional rate increase of P0.1358/kwh allegedly to recover underrecoveries from 2000 to 2002.

Moreover, this application will prejudice the review and correction of the baseless and unreasonable increase of rate base from P30.1 billion in 1994 per COA audit to P76.8 billion in 2000...

The application is prejudicial as it is intended to contradict and pre-empt the exposure of the approved rates that exceed Revenue Requirements including its newly inflated RORB of 15.5%

.... (Id. at 84-87.)

[11] FDC also asked for the production of the following:

4.1 Financial status

4.1.1 Updated Financial Statement as of 31 December 2002, taking into account the Supreme Court decision disallowing income tax as deductible operating expense

4.2 Rate Base

All assets that Meralco acquired as of 31 December 2002, broken down to costs of each asset and their respective appraised market value as of 31 December 2002.

Such other documents as may be added in the abovementioned list (Id. at 54-55).

[12] Id. at 25-27.

[13] Id. at 503-511.

[14] Id. at 7-14.

[15] ERC's Comment, Id. at 368-370.

[16] Id. at 370-373.

[17] Id. at 373-374.

[18] Id. at 376-378.

[19] MERALCO's Comment, Id. at 107-118.

[20] Id. at 118-125.

[21] Id. at 621-622.

[22] Id. at 69-78.

[23] TSN, Oral Arguments, January 27, 2004, p. 3.

[24] Id. at 365.

[25] This writer, as Chairman of the House Energy Committee in the 10th Congress, made the studies for the restructuring of the electric power industry which culminated in his introduction of House Bill No. 1991. He was greatly assisted in the project by Engr. Dennis Carpio who was connected then with the World Bank. The bill served as the model for House Bill No. 8457 and the 4 Senate Bills introduced, consolidated and enacted into law in the 11th Congress as R.A. No. 9136. Although many of the provisions on consumer protection and transparency in rate-fixing, and anti-trust safeguards in House Bill No. 1991 were not carried over in R.A. No. 9136, still said law deserves praise and support for being the first and most significant enactment passed to address the problems of high electricity prices, consumer protection and inadequate power supply.

[26] Sec. 3, R.A. No. 9136.

[27] Sec. 5, R.A. No. 9136.

[28] Sec. 47, R.A. No. 9136.

[29] Secs. 3 and 21, R.A. No. 9136.

[30] Sec. 2(j), R.A. No. 9136.

[31] Sec. 38, R.A. No. 9136.

[32] Ibid.

[33] Id.

[34] Sec. 39, R.A. No. 9136.

[35] Sec. 1, E.O. No. 172.

[36] Memorandum for FDC, Rollo, pp. 964-965.

[37] Id. at 965-967.

[38] Memorandum for Petitioners-in-Intervention, Id. at 628-629.

[39] Memorandum for MERALCO, Id. at 658-667.

[40] Id. at 666.

[41] Memorandum of the OSG, Id. at 893-913.

[42] Memorandum of the ERC, Id. at 701-714.

[43] Id. at 718.

[44] Sec. 9(c), P.D. No. 1206. See also Sec. 16(c), Commonwealth Act (C.A.) No. 146.

[45] Sec. 9(e), P.D. No. 1206. See also Sec. 15(a), C.A. No. 146.

[46] Sec. 8, E.O. No. 172; Sec. 16(c), C.A. No. 146.

[47] An Act Creating the Philippine Economic Zone Authority (PEZA).

[48] An Act Creating the Bases Conversion and Development Authority (BCDA).

[49] Establishing Basic Policies for the Electric Power Industry, including making NPC a monopoly and monopsony by vesting it with sole authority to generate and sell electricity.

[50] *Jalandoni v. Endaya*, G.R. No. L-23894, 24 January 1974, 55 SCRA 262; *Villegas v. Subido*, G.R. No. L-31711, 30 September 1971, 41 SCRA 190; *Iloilo Palay and Corn Planters Association, Inc. v. Feliciano*, G.R. No. L-24022, 03 March 1965, 13 SCRA 377; *United States v. Reyes*, 10 Phil. 423 (1908).

[51] *Iloilo Palay and Corn Planters Association, Inc. v. Feliciano*, *supra* at 381.

[52] *Villegas v. Subido*, *supra* note 50; *Lichauco & Co. v. Apostol and Corpus*, 44 Phil 138 (1922).

[53] SEC. 75. Statutory Construction. — This Act shall, unless the context indicates otherwise, be construed in favor of the establishment, promotion, preservation of competition and people empowerment so that the widest participation of the people, whether directly or indirectly, is ensured. With respect to NPC's debts and IPP and related contracts, nothing in this Act shall be construed as: (1) an implied waiver of any right, action or claim, against any person or entity, of NPC or the Philippine Government arising from or relating to any such contracts; (2) a conferment of new or better rights to creditors and IPP contractors in addition to subsisting rights granted by the NPC or the Philippine Government under existing contracts.

[54] The IRR requires that the petition for rate adjustment or for any relief must be accompanied by an acknowledgment of receipt of a copy by the legislative bodies of the Local Government Units (LGUs) concerned, together with a certification of the publication of the notice of hearing as required by law. It also provides that the ERC may provisionally grant or deny the relief sought not later than 75 calendar days from the filing of the petition, based thereon and the documents attached thereto, as well as the comments or pleadings of the consumers affected that may have been filed within 30 calendar days from receipt of a copy of the petition or the publication thereof, as the case may be.

[55] Sec. 2. It is hereby declared the policy of the State.

....

(b) To protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power.

[56] Sec. 43(f), R.A. No. 9136.

[57] *Ibid*.

[58] The National Grid Code and the Distribution Code are required to include performance and financial capability standards for the players in all the sectors of the industry "to protect the public interest." (Sec. 43(f)). The ERC is tasked to enforce the rules and regulations for the operation of the electricity spot market and the activities of the participants therein to ensure "a greater supply and rational pricing of electricity." (Sec. 43 (i)). In order that the ERC may retain the Return-on-Rate Basis (RORB) as the rate-setting methodology, it is required to observe certain guidelines "to protect the public interest." (Sec. 43(k)). See also Sec. 43 (o), (r), (s) and (t)).

The ERC may allow the TRANSCO to charge user fees only "after due notice and hearing." (Sec. 43(n)).

The ERC is empowered to punish abuse of market power, cartelization and anti-competitive behavior. (Sec. 43(o)).

It is required to publish all its decisions involving rates and anti-competitive cases "to ensure fair and impartial

treatment.” (Sec. 43(q)).

The promotion of “free market competition” is at the core of the ERC’s task to monitor activities in the generation and supply sub-sectors. (Sec. 43(u)). The ERC is commanded to act on applications for cost recovery and return on demand side information projects, (Sec. 73) obviously to spur energy savings and reduction of power rates. The ERC is given original and exclusive jurisdiction over all cases contesting power rates and fees or involving intra-industry disputes. (Sec. 69).

It is the ERC’s task to set up a socialized pricing mechanism called a lifeline rate for the marginalized end-users. (Sec. 69). It may extend the cross-subsidies for one (1) year upon a finding that its removal would have “a material adverse effect upon the public interest.” In reviewing power purchase and energy conversion agreements between the Philippine National Oil Company-Energy Development Corporation (PNOC-EDC) and the NPC concerning geothermal power plants for the purpose of removing hidden costs or extraordinary mark-ups in the cost of power or steam above their true costs, the ERC shall ensure that all savings realized from the reduction of the mark-ups shall be shared by all end-users. (Sec. 69).

[59] Memorandum for the OSG, Rollo, p. 906.

[60] *Aisporna v. Court of Appeals*, G.R. No. L-39419, April 12, 1982, 113 SCRA 459.

[61] Act No. 1779 (1907).

[62] Section 5 in relation to Section 16, *Id.* The provisions read:

Sec. 5. The said Board shall exercise a watchful and careful supervision over the rates of every public service corporation, and the said Board shall have the power and it shall be its duty to fix, revise, regulate, reduce, or increase the said rates from time to time as justice to the public and the corporation may require. The Board shall have the power, and it shall be its duty to examine into and keep informed as to the compliance of public service corporations with the orders of the Board and with all provisions of law and their charters and franchises as to rates.

Sec. 16. The said Board is authorized and empowered and it shall be its duty whenever, after full hearing, it shall be of the opinion that any of the rates charged by any public-service corporation subject to the provisions of this Act for any service rendered or to be rendered, or that any regulations or practices whatever of such public-service corporation affecting such rates, are unjust or unreasonable or unduly discriminative, or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this Act, the Board shall determine what should be the just and reasonable rate or rates to be thereafter observed in such case, and what regulations or practices in respect to such service are just, fair, and reasonable to be thereafter followed; and to make an order that the said public-service corporation shall cease and desist from such violation, to the extent to which the Board finds the same to exist, and shall not thereafter publish, demand, or collect any rate for such service rendered or to be rendered in excess of the rate so prescribed and shall conform to the regulation or practice so prescribed. (Emphasis supplied)

[63] SEC. 42 of Act No. 2307 provides:

All the powers and duties of the Board of Rate Regulation created by Act Numbered Seventeen Hundred and Seventy-Nine, and all subsequent amendments and additions thereto are hereby transferred to, and become a part of the duties and powers of, the Board of Public Utility Commissioners, who shall hereafter discharge all the duties that have heretofore been required of the Board of Rate Regulation; and any Act or part of Act inconsistent with the provisions of such transfer and the provisions of this Act is hereby repealed.

[64] Section 15(c), Act 2307 provides:

The Board shall have the power:

...

(c) After hearing, upon notice by order in writing, to fix just and reasonable individual rates, joint rates, tolls, charges, or schedules thereof, as well as commutation, mileage, and other special rates which shall be imposed, observed and followed thereafter by any public utility as herein defined, whenever the Board shall determine any existing individual rate, joint rate, toll, charge or schedule thereof or commutation, mileage, or other special rate to be unjust, unreasonable, insufficient, or unjustly discriminatory or preferential. (Emphasis supplied)

[65] Section 16(h), Act No. 2307 provides:

When any public utility as herein defined shall increase any existing individual rates, joint rates, tolls, charges, or schedules thereof, as well as commutation, mileage, and other special rates, or change or alter any existing classification, the Board shall have the power, either upon written complaint or upon its own initiative to hear and determine whether the said increase, change or alteration is just and reasonable. The burden of proof to show that the said increase, change, or alteration is just and reasonable shall be upon the public utility making the same. The Board shall have the power pending such hearing and determination to order the suspension of the said increase, change, or alteration, not exceeding three months. It shall be the duty of the said Board to approve any such increase, change, or alteration upon being satisfied that the same is just and reasonable. (Emphasis supplied)

[66] C.A. No. 146 (1936).

[67] See p. 21, *supra*..

[68] Integrated Reorganization Plan, Art. III, pars. 1 and 6.

[69] Sec. 11(e), P.D. No. 1206. "The Board of Power and Waterworks is abolished and its powers and functions are transferred to the Board of Energy, while its powers and functions relative to waterworks are transferred to the National Water Resources Council." Sec. 9 provides in part:

"The Board shall, after due notice and hearing, exercise the following powers and functions, among others:

....

c. Regulate and fix the power rates to be charged by electric companies except (1) electric cooperatives which shall continue to be governed by Presidential Decree No. 269, as amended, and (2) the National Power Corporation which shall continue to be governed by Republic Act No. 6395, as amended.

....

[70] G.R. No. 75016, January 13, 1989, 169 SCRA 167.

[71] *Id.* at 172-173.

[72] *Supra*, pp. 21-22.

[73] *Supra*, p. 22.

[74] *Supra*, p. 21.

[75] *Supra*, pp. 21-22.

[76] Sec. 43, R.A. No. 9136.

[77] Sec. 4(e), Rule 3, IRR.

[78] Memorandum for the FDC, Rollo, pp. 967-970.

[79] Id. at 970-972.

[80] Memorandum for Petitioners-in-Intervention, Id. at 629-633.

[81] Memorandum for the OSG, Id. at 1015-1027.

[82] Memorandum for the ERC, Id. at 724-732.

[83] G.R. No. L-50141, January 29, 1988, 157 SCRA 481.

[84] Memorandum for the ERC, Rollo, pp. 738-740.

[85] Id. at 748-750.

[86] Memorandum for MERALCO, Id. at 669-675.

[87] Sec. 4(e), Rule 3, IRR.

[88] Dissenting Opinion of J. Puno, p. 39.

[89] Id. at 39-48.

[90] Section 4(e), Rule 3, IRR.

[91] The Department of Energy is tasked with the duty of formulating the implementing rules of the EPIRA under Section 37(p) in relation to Section 77 of the law. Sections 37(p) and 77 read:

Section 37. Powers and Functions of the DOE.—In addition to its existing powers and functions, the DOE is hereby mandated to supervise the restructuring of the electricity industry, In pursuance thereof, Section 5 of RA 7638 otherwise known as “The Department of Energy Act of 1992” is hereby amended to read as follows:

...

(p) formulate such rules and regulations as may be necessary to implement the objectives of this Act;

....

Section 77. Implementing Rules and Regulations. –The DOE shall, in consultation with relevant government agencies, the electric power participants, non-government organizations and end-users, promulgate the Implementing Rules and Regulations (IRR) of this Act within six months from the effectivity of this Act subject to the approval by the [Joint Congressional] Power Commission.

[92] See Sec. 77, R.A. No. 9136; supra note 91.

[93] See Sec. 62, R.A. No. 9136.

[94] *People v. Maceren*, G.R. No. L-32166, October 18, 1977, 79 SCRA 450, citing *People v. Exconde*, 101 Phil 1125; *Director of Forestry v. Muñoz*, G.R. No. L-24786, June 28, 1966, 23 SCRA 1183; and *Geukeko v. Araneta*, 102 Phil. 706; *Rizal Empire Insurance Group, et al. v. National Labor Relations Commission*, G.R. No. L-73140, May 29, 1987, 150 SCRA 565; *Español v. Chairman, Philippine Veterans Association*, G.R. No. L-44616, June 28, 1985, 137 SCRA 314; *Antique Sawmill, Inc. v. Zayco, et al.*, G.R. No. L-250051, May 30, 1966, 17 SCRA 316; *Valerio v. Secretary of Agriculture and Natural Resources*, G.R. No. L-18587, April 23, 1963, 7 SCRA 719; *Pascual v. Commissioner of Customs*, G.R. No. L-12219, April 25, 1962, 4 SCRA 1020.

[95] 114 Phil. 555 (1962).

[96] Ibid at 558.

[97] Republic of the Philippines, represented by Energy Regulatory Board v. Manila Electric Company, G.R. No. 141369, November 15, 2000; 391 SCRA 700. In ruling that income tax as operating expense cannot be allowed for rate-determination purposes which MERALCO did, this Court opened its decision with a memorable pro-people statement: "In third world countries like the Philippines, equal justice will have a synthetic ring unless the economic rights of the people, especially the poor, are protected with the same resoluteness as their right to liberty. The cases at bar are of utmost significance for they concern the right of our people to electricity and to be reasonably charged for their consumption." Ibid., at 704.

[98] Sec. 2(f), R.A. No. 9136.

[99] Sec. 2(c), R.A. No. 9136.

[100] Sec. 2(e), R.A. No. 9136.

[101] Sec. 4(e), Rule 3, IRR.

[102] Rollo, pp. 753-754.

[103] Supra, note 83.

[104] Rollo, pp. 738-739.

[105] Ibid.

[106] Memorandum for MERALCO, Id. at 680.

[107] Id.

[108] See Memorandum for the ERC, Id. at 734-740.

[109] Id. at 914-915.

[110] Order, Ibid at 23-25.

[111] NASECORE sent its letter to the ERC expressing its intention on October 14, 2003. FDC expressed the same intention in its October 29, 2003 letter to the ERC. See Memorandum for the ERC, Id. at 693.

[112] Id. at 444-447, 54-55.

[113] Id. at 450.

[114] G.R. No. 134913, January 19, 2001, 349 SCRA 705.

[115] Id. at 713-714.

[116] Republic v. Cocofed, G.R. Nos. 147062-64, December 14, 2001, 372 SCRA 462.

[117] Tañada v. Angara, G.R. No. 118295, May 2, 1997, 272 SCRA 18.

[118] Rizal Empire Insurance Group, et al. v. National Labor Relations Commission, supra, note 94; Español v. Chairman, Philippine Veterans Association, supra, note 94; Antique Sawmill, Inc. v. Zayco, et al., supra, note 94; Valerio v. Secretary of Agriculture and Natural Resources, supra, note 94; Pascual v. Commissioner of Customs, supra, note 94.

SEPARATE OPINION

SANDOVAL-GUTIERREZ, J.:

Electricity as the purest form of energy is now the most pervasive energy source propelling the engines of growth in both developed and developing economies, such as ours. Its role has been increasingly important as major technology development in all sectors of the economy has its basis on electric power.

Towards this end, past and present administrations have been exerting efforts to reform the economy and the power sector is a priority area. The Philippine government, given the limited resources and the economy's growth and development objectives, has been paving the way for greater private sector capital investment and participation in the power sector.

Initially, the enactment of the Build-Operate-Transfer (BOT) Law in 1987 marked the beginning of the private sector's participation in major power projects, thus, resulting to a substantial amount of independent power producers' (IPPs) power capacity coming on-stream. This was followed by the enactment of the Foreign Investment Act allowing 100% foreign ownership in power generation projects.

In fact, government encouragement of immediate entry of IPPs in the early 1990s to end the severe power shortages, has resulted in higher tariffs composed of demand and energy charges as well as foreign currency adjustments.

Now, with the ratification of Republic Act No. 9136, otherwise known as "The Electric Power Industry Reform Act (EPIRA) of 2001," the most impressive economic reform in the Philippine energy sector, foreign investors and foreign governments are "guardedly optimistic."^[1] Their concern, and so should ours is, if such structural reform fails, then electricity prices would not start to moderate through the pressure of market forces, and most importantly, the country would not have a reliable, good supply of electricity, thus, once more the re-surfacing of severe power shortages or "blackouts."

Verily, the essential nature of the service that electricity provides to all sectors of the economy requires that electricity prices are set prudently and efficiently.

While this Court concedes the primacy of the public interest in an adequate and efficient service, the same is not necessarily to be equated with non-compensatory electricity rates or prices. Reasonableness in the rates assumes that the same is fair to both the public utility and the consumer.

Indeed, we held in *Philippine Communications Satellite Corporation vs. Alcuaz*^[2] that:

"The power of the State to regulate the conduct and business of public utilities is limited by the consideration that it is not the owner of the property of the utility, or clothed with the general power of management incident to ownership, since the private right of ownership to such property remains and is not to be destroyed by the regulatory power. The power to regulate is not the power to destroy useful and harmless enterprises, but is the power to protect, preserve, and control with due regard for the interest, first and foremost, of the public then of the utility and of its patrons."

But how do we strike a balance between ensuring consumer protection, on the one hand, and enhancing the competitive operation of the electricity market, on the other? This is the underlying issue raised in the instant petition.

The ERC has legal and statutory authority to issue a provisional

order of rate adjustment.

Historically, the “Energy Regulatory Board” (ERB) was created under Executive Order No. 172 to regulate, among others, the distribution of energy resources and to fix rates to be charged by public utilities involved in the distribution of electricity.[3] Among the key powers of this regulatory body is provisional rate-fixing, thus:

“SECTION 8. Authority to Grant Provisional Relief. – The Board may, upon the filing of an application, petition or complaint or at any stage thereafter and without prior hearing, on the basis of supporting papers duly verified or authenticated, grant provincial relief on motion of a party in the case or on its own initiative, without prejudice to a final decision after hearing, should the Board find that the pleadings, together with such affidavits, documents and other evidence which may be submitted in support of the motion, substantially support the provisional order: Provided, That the Board shall immediately schedule and conduct a hearing thereon within thirty (30) days thereafter, upon publication and notice to all affected parties.”

Later, Republic Act No. 9136 or the “EPIRA” amended Executive Order No. 172 and gave impetus to the creation of the “Energy Regulatory Commission” (ERC). Thus, Section 38 of the same law provides:

“SECTION 38. Creation of the Energy Regulatory Commission. – There is hereby created an independent, quasi-judicial regulatory body 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.”

Despite ERB’s abolition, its powers and functions were transferred to the ERC under Section 44, thus:

“SECTION 44. Transfer of Powers and Functions. – The powers and functions of the Energy Regulatory Board not inconsistent with the provisions of this Act are hereby transferred to the ERC. The foregoing transfer of powers and functions shall include all applicable funds and appropriations, records, equipment, property and personnel as may be necessary.”

Although the EPIRA does not contain an express provision empowering the ERC to grant provisional orders of rate adjustments, such silence of the law should not ipso facto be interpreted as an amendment by deletion of such a key function.

To begin with, pursuant to the rules on statutory construction, the general rule on amendment by deletion is not applicable when the intent of the legislature to make such change in the meaning of the previous law is not clear.[4]

In *In Re: R. McCulloch Dick*,^[5] we held that: “where the question is whether a statute should be interpreted as having impliedly created a power not given in express words, the preamble may be consulted for the purpose of ascertaining the legislative intent.”

The legislative intent for the ERC to retain the authority to issue provisional rate adjustments is gleaned from the express reasons for enacting the law which, under Section 2 of Republic Act No. 9136, are the following:

“SECTION 2. Declaration of Policy. – It is hereby declared the policy of the State:

- (a) To ensure and accelerate the total electrification of the country;
- (b) To ensure the quality, reliability, security and affordability of the supply of electric power;
- (c) To ensure transparent and reasonable prices of electricity in a regime of free and fair competition and full public accountability to achieve greater operational and economic efficiency and enhance the competitiveness of Philippine products in the global market;

- (d) To enhance the inflow of private capital and broaden the ownership base of the power generation, transmission and distribution sectors;
- (e) To ensure fair and non-discriminatory treatment of public and private sector entities in the process of restructuring the electric power industry;
- (f) To protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power;
- (g) To assure socially and environmentally compatible energy sources and infrastructure;
- (h) To promote the utilization of indigenous and new and renewable energy resources in power generation in order to reduce dependence on imported energy;
- (i) To provide for an orderly and transparent privatization of the assets and liabilities of the National Power Corporation (NPC);
- (j) To establish a strong and purely independent regulatory body and system to ensure consumer protection and enhance the competitive operation of the electricity market; and
- (k) To encourage the efficient use of energy and other modalities of demand side management.”

To exclude such key function would certainly emasculate the law itself. A law should not be so interpreted as to afford an opportunity to defeat compliance with its terms.

Thus, considering the reasons behind the establishment of the ERC, there is every indication that the legislative intent is for the ERC to retain its authority to issue provisional rate adjustments in order to accomplish its role.

The records of the deliberation of the Committee on Energy (House Panel of the Power Commission) support this position. As early as the deliberation stage in the Power Commission, the intention to retain the ERC’s power to issue provisional rate adjustments was discussed, thus:

“THE CHAIRMAN. Thank you and good morning to all. The meeting of the Members of the House contingent of the Power Commission is resumed.

x x x

MR. FRANCISCO. Chairman Badelles, Honorable Members of the House Panel of the Joint Congressional Power Commission, friends and colleagues from the power industry, good morning.

x x x

The EPIRA is the product of a long, and sometimes impassioned debate on countless contentious issues. The result law, therefore, embodies a careful balancing of interests, with the end view of providing all Filipinos, from the smallest household to the largest industrial user, the benefits of quality power at a competitive price.

x x x

First is the ERC’s Power to Grant Provisional Approvals and Fix Rates.

At first glance, we find that Rule 4, Section 4 (e) of the new draft finally gives the ERC the power to provisionally approve urgent petitions, without prejudicing the promulgation of a final order following the usual hearings and arguments ...

x x x

This provision was largely taken from Section 8 of Executive Order 172, creating the ERB, the now defunct ERB. However, we find that certain phrases and requirements were added that defeat the purpose of giving ERC the power to act on urgent petitions. We would recommend that the language found on Section 8 of EO 172 be retained, as follows:

‘The ERC may, upon the filing of an application, petition or complaint or at any stage thereafter and without prior hearing on the basis of supporting papers duly verified or authenticated, grant provisional relief on motion of a party without prejudice to a final decision after hearing, should the Board find that the pleadings together with such affidavits, documents and other evidence which may be submitted in support of the motion.’ Adopting this is provided for by Section 80 of RA 9136, which stipulates that the EO 172 shall continue to have full force and effect except insofar as it is inconsistent with the Act.

x x x

REP. CONSTANTINO G. JARAULA. Mr. Chairman. I think the first concern refers to the provisional grant vested on the ERC. I am interested in this as this was the subject that we went into yesterday.

x x x

MR. FRANCISCO. x x x.

We never used to be worried that the granting of a provisional authority would be as delayed as we are now currently experiencing and, therefore, we are very happy that Congressman Jaraula seems to agree with us that there should be a time limit as to the response of the regulatory body to a petition. Because if there were a time limit, then the need for a provisional relief will not be as big, but we still think that it would tie the hands of the regulatory commission if its authority to grant provisional relief in the instances where it is really very urgent that they would be tied by the requirement to conduct public hearings. x x x.

x x x

REP. JARAULA. x x x.

The other thing is that, I would agree with you also that it would tie up or it would hamper your operations if it is delayed in the public hearing. May only interest is that, when ERC appreciates and evaluates the petition, the side of the consumers should already be available, if they prefer to have. In other words, by the process of discussion in the local level knowing that a petition will be filed, they can already draft their position in effect without having to go through a public hearing.

And so, as you file, they can also immediately comment without being asked to comment. They can also say, you are going to file today, they will learn of that, they will also immediately file, so that, in the appreciation, it is not one-sided. We give the authority to ERC, but ERC will have the opportunity now to see both sides before conducting a public hearing so that they can determine which is really.

My point here is that – rates, I am primarily interested in rates. It is not on management level although I am not an expert in management. On management level, it is only very seldom that 1973 oil crisis would happen, so that management should be able to already forecast what is to come and, therefore, there is not shocking incident that may trigger an immediate petition. These are things that are studied through the months or through the years and, therefore, a petition for a rate increase is not something that is sudden unless there are, as I said, like ’73 oil crisis, there are unusual incidents.

x x x.”[6]

The clear intent and design of the legislature to confer to the ERC the authority to issue provisional orders is manifest. The cardinal rule in the interpretation of all laws is to ascertain and give effect to the intent of the law.[7] In *Philippine National Bank vs. Office of the President*,[8] we ruled:

“The intent of a statute is the law. If a statute is valid it is to have effect according to the purpose and intent of the lawmaker. The intent is the vital part, the essence of the law, and the primary rule of construction is to ascertain and give effect to the intent. The intention of the legislature in enacting a law is the law itself, and must be enforced when ascertained, although it may not be consistent with the strict letter of the statute. Courts will not follow the letter of a statute when it leads away from the true intent and purpose of the legislature and

to conclusions inconsistent with the general purpose of the act. Intent is the spirit which gives life to a legislative enactment. In construing statutes, the proper course is to start out and follow the true intent of the legislature and to adopt that sense which harmonizes best with the context and promotes in the fullest manner the apparent policy and objects of the legislature."

Furthermore, a cardinal rule in statutory construction is that legislative intent must be ascertained from a consideration of the statute as a whole and not merely of a particular provision.[9]

Courts must give effect to the general legislative intent that can be discovered from the four corners of the statute, and in order to ascertain such intent, the whole statute, and not only a particular provision thereof, should be considered.

In resolving the instant case, it is necessary that we consider not only Section 43 of Republic Act No. 9136 but also its other provisions, particularly Section 44 on Transfers of Powers and Functions (earlier quoted) and Section 80[10] on Applicability and Repealing Clause, in order to unravel the legislative intent. All these provisions should be harmonized with each other.

In *Gordon vs. Veridiano*,[11] we emphasized the courts' duty to reconcile and harmonize laws:

"Courts of justice, when confronted with apparently conflicting statutes, should endeavor to reconcile the same instead of declaring outright the invalidity of one as against the other. Such alacrity should be avoided. The wise policy is for the judge to harmonize them if this is possible, bearing in mind that they are equally the handiwork of the same legislature, and so give effect to both while at the same time also according due respect to a coordinate department of the government."

In fine, the pertinent provisions of the EPIRA can well go together with full and unhampered effect to the other provisions, without doing violence to the law, thereby giving spirit to the maxim, *interpretare et concordare legibus est optimus interpretandi* or every statute must be so construed and harmonized with other statutes as to form a uniform system of jurisprudence.

Petitioner failed to resort to the primary administrative jurisdiction and to exhaust administrative remedies before the ERC.

At the outset, it bears stressing that only petitioner FDC failed to file a motion for reconsideration with the ERC.[12]

Section 43 (u) of Republic Act No. 9136 explicitly provides:

"(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."

A similar provision is also incorporated in the Implementing Rules and Regulations of Republic Act No. 9136, particularly in Section 4 (n)[13] thereof.

Obviously, the authority conferred upon the ERC is intended to be full, clear and complete. In fact, the use of the word original and exclusive is synonymous to "sole" that emphasizes the unimpaired character of the jurisdiction reposed.

The rationale behind the need for a prior resort to the ERC is highlighted in *Lawyers against Monopoly and*

Poverty (LAMP) vs. MERALCO,[14] thus:

“Rate fixing call for a technical examination and a specialized review of specific details which the courts are ill-equipped to enter, hence, such matters are primarily entrusted to the administrative or regulating authority.”

A careful perusal of the petition reveals that the main thrust of petitioner’s argument is that the provisional rate adjustment of 12 centavos per kwh was granted by the ERC with palpable and manifest bias considering that “the only basis is that respondent MERALCO is in dire economic straits.” Definitely, this intricate question of fact requires technical and specialized knowledge that is within the province of the ERC alone.

On this score, the Solicitor General correctly observed and recommended that:

“The oppositors raised serious grounds in opposition to the application for rate case. The same grounds were interposed as reasons for the reconsideration of the provisional authority. Considering the gravity of these grounds, they should be considered by the ERC not only in the main case but also on the issue of the provisional increase. x x x:

x x x

“The Office of the Solicitor General, however, hastens to add that these grounds raise factual issues which the ERC should be allowed to resolve. x x x.

x x x

“There were several oppositors who filed motions for production of certain documents. Although the ERC directed MERALCO to comment on these motions, the ERC has yet to rule on said motions. These motions should be resolved as it is intimately related to the issue of the propriety of the provisional increase.

x x x

“The motions for reconsideration of the provisional increase are properly addressed to the ERC which should be allowed to issue the proper resolution discussing the grounds in support of and in opposition of the provisional increase x x x ‘based on the [application] and supporting documents attached thereto and such comments or pleadings the consumers or the LGU concerned may have filed within thirty (30) calendar days from receipt of a copy of the application or petition or from publication thereof as the case may be.’

x x x

RECOMMENDATION

“WHEREFORE, it is respectfully prayed that the petition be denied. It is further prayed that the ERC be allowed to expeditiously proceed and hear MERALCO and the oppositors a quo on their arguments and counterarguments on the ERC Order dated November 27, 2003 and to resolve the issue on the propriety of the provisional increase as well as the application on the merits.

x x x.”

We take cognizance of the wealth of jurisprudence on the doctrine of primary administrative jurisdiction and exhaustion of administrative remedies. In this era of clogged court dockets, the need for specialized administrative boards or commissions with the special knowledge, experience and capability to hear and determine promptly disputes on technical matters or intricate questions of facts, subject to judicial review in case of grave abuse of discretion, is indispensable. Between the power lodged in an administrative body and a court, the unmistakable trend is to refer it to the former.[15] In Padua vs. Ranada,[16] this Court held:

“x x x, if the case is such that its determination requires the expertise, specialized skills and knowledge of the proper administrative bodies because technical matters or intricate questions of facts are involved, then relief must first be obtained in an administrative proceeding before a remedy will be supplied by the courts even though the matter is within the proper jurisdiction of a court.”

The ERC committed no grave abuse
of discretion in granting the
provisional rate of increase

Even granting that petitioner's recourse to the instant remedies is in order, still, we cannot rule in its favor.

Although this Court, under Section 4 (p) of the Implementing Rules and Regulations of R.A. No. 9136, has been given jurisdiction, so to speak, to review all actions taken by the ERC, yet, in the exercise thereof, the Court is to merely check whether or not the ERC has gone beyond the limits of its jurisdiction, not that it erred or has a different view. In the absence of a showing that the ERC has committed grave abuse of discretion amounting to lack of jurisdiction, there is no occasion for the court to exercise its corrective power. Indeed, we should not decide a matter which by its nature is for the ERC alone to decide.

In the case at bar, we find no improvident use of power on the part of the ERC which will necessitate the exercise of the court's power of judicial review.

First, the provisional order issued by the ERC did not violate its own Implementing Rules and Regulations, particularly Section 4 (e), Rule 3 thereof.

To be closer to the truth, Section 4(e), Rule 3 of the Implementing Rules and Regulations is reproduced hereunder:

“(e) Any application or petition for rate adjustment or for any relief affecting the consumers must be verified, and accompanied with an acknowledgement of receipt of a copy thereof by the LGU Legislative Body of the locality where the applicant or petitioner principally operates together with the certification of the notice of publication thereof in a newspaper of general circulation in the same locality.

The ERC may grant provisionally or deny the relief prayed for not later than seventy-five (75) calendar days from the filing of the application or petition, based on the same and the supporting documents attached thereto and such comments or pleadings the consumers or the LGU concerned may have filed within thirty (30) calendar days from receipt of a copy of the application or petition or from the publication thereof as the case may be.

Thereafter, the ERC shall conduct a formal hearing on the application or petition, giving proper notices to all parties concerned, with at least one public hearing in the affected locality, and shall decide the matter on the merits not later than twelve (12) months from the issuance of the aforementioned provisional order.

x x x.”

Records show that the Sangguniang Panlungsod of Pasig City was furnished a copy of the verified application of MERALCO on October 9, 2003 and then, prior to its filing with the ERC, a notice (of its filing) was published on October 10, 2003 in a newspaper of general circulation, particularly the Manila Times.

Petitioner however insists that “a provisional order may only be issued after comments submitted by any oppositor within thirty (30) days from notice.” Petitioner's interpretation is far from persuasive.

On this score, we find the following discussion of the ERC in its Comment[17] impressed with merit, thus:

“The procedure in Section 4(e), Rule 3 of the Implementing Rules for the issuance of provisional orders does not require the filing of any comments or pleadings by the consumers or the LGU concerned before respondent ERC may grant provisionally or deny the relief prayed for. x x x. In arriving at a decision to provisionally grant or deny the relief prayed for, respondent ERC is authorized to base its decision on the verified application and the supporting documents attached thereto. Within thirty (30) calendar days from receipt of a copy of the

application or petition or from the publication thereof as the case may be, the consumers or the LGU concerned may file their comments on the application or petition. Should they do so before the issuance of any provisional order, respondent ERC may likewise base its decision thereof. x x x.

The foregoing provision, x x x, merely echoes what is expressly provided for in Section 8 of E.O. No. 172 – that provisional orders may be issued ex parte. Under said provision, the only requirements for its issuance are that the pleadings, affidavits, documents and other evidence must substantially support the provisional order and that a formal hearing must forthwith conducted within thirty days from issuance of the order.”

Indeed, after the filing of MERALCO’s verified application on October 10, 2003, the ERC, in its Order dated November 3, 2003, directed the oppositors NASECORE, Genario Lualhati, and FDC to file their comments thereon. However, only Lualhati filed his comment on November 21, 2003 or barely one month after manifesting in a letter dated October 24, 2003 his intent to file an opposition to the application. On November 27, 2003 or after forty-eight (48) days from the filing of the application and six (6) days from receipt of Lualhati’s comment, the ERC issued the assailed provisional order. This provisional order was issued well-within the reglementary seventy-five (75) day period.

Second, petitioner argues that “the ERC has effectively granted MERALCO’s application on the merits without full-blown hearings on the matter, in violation of substantive and procedural due process.” This argument is totally misplaced.

It bears stressing that the issue raised by petitioner is not novel. We have ruled in a catena of cases that “an administrative agency may be empowered to approve provisionally, when demanded by urgent public need, rates of public utilities without a hearing. The reason is easily discerned from the fact that provisional rates are by their nature temporary and subject to adjustment in conformity with the definitive rates approved after final hearing.”[18]

It may be recalled that Section 16 (c) of the Public Service Law authorizes the Public Service Commission to “approve rates proposed by public services provisionally and without necessity of any hearing, x x x.”

To clarify the intent as well as the extent of the Commission’s power, our ruling in *Republic vs. Medina*[19] is in point, thus:

“x x x. The Public Service Commission practice, moreover, is to hear and approve revised rates without published notices or hearing. The reason is easily discerned: The provisional rates are by their nature temporary and subject to adjustment in conformity with the definitive rates approved, and in the case at bar, the Public Service Commission order of 20 May 1970 expressly so provided.”

Subsequently, in *Padua vs. Ranada*,[20] citing *Maceda vs. Energy Regulatory Board*, we ruled that “while the ERB is not precluded from conducting a hearing on the grant of provisional authority – which is of course, the better procedure – however, it can not be stigmatized if it failed to conduct one.”

In *Citizens’ Alliance for Consumer Protection vs. Energy Regulatory Board*,[21] we also held:

“In the light of Section 8 quoted above, public respondent Board need not even have conducted formal hearings in these cases prior to issuance of its Order of 14 August 1987 granting a provisional increase of prices. The Board, upon its own discretion and on the basis of documents and evidence submitted by private respondents, could have issued an order granting provisional relief immediately upon filing by private respondents of their respective applications. In this respect, the Court considers the evidence presented by private respondents in support of their applications —i.e., evidence showing that importation costs of petroleum products had gone up; that the peso had depreciated in value; and that the Oil Price Stabilization Fund (OPSF) had been depleted – as substantial and hence constitutive of at least prima facie basis for issuance

by the Board of a provisional relief order granting an increase in the prices of petroleum products.”

Later, the ERC promulgated, as part of its Implementing Rules, the following provision:

“x x x x x

“The ERC may grant provisionally or deny the relief prayed for not later than seventy-five (75) calendar days from the filing of the application or petition, based on the same and the supporting documents attached thereto and such comments or pleadings the consumers or the LGU concerned may have filed within thirty (30) calendar days from receipt of a copy of the application or petition or from the publication thereof as the case may be.

“Thereafter, the ERC shall conduct a formal hearing on the application or petition, giving proper notices to all parties concerned, with at least one public hearing in the affected locality, and shall decide the matter on the merits not later than twelve (12) months from the issuance of the aforementioned provisional order.

”x x x.

At this point, it bears reiterating that the reasonableness of the provisional rate adjustment is best addressed to the ERC.

Petitioner claims that the ERC’s unilateral issuance of a provisional rate adjustment is repugnant to the policy declaration set forth in the EPIRA “to protect the public interest as it is affected by the rates and services of the electric utilities and other providers of electric power.”

We however note that respondent may likely suffer a severe drawback, with the consequent detriment to the public service, should the assailed Order of the ERC turn out to be improvident.

At present, respondent claims that it is engaged in 42 major capital projects aimed at addressing its system overloads. These projects were undertaken on the premise that its provisional application for rate adjustment would be approved. Consequently, a declaration of nullity of the assailed provisional Order of the ERC would definitely deter such projects and ultimately impair respondent’s ability to provide safe, adequate and reliable service to the consuming public, thus, depriving its patrons and the consumers of a vital and essential service.

WHEREFORE, I join Mr. Senior Justice Reynato S. Puno in his Dissenting Opinion that the Energy Regulatory Commission (ERC) has the authority to grant provisional rate adjustments ex-parte and vote to DISMISS the petition.

[1] Transcript of Ambassador Francis Ricciardone’s Interview with Business World Newspaper, U.S. Supports Privatization, other Reforms in Philippine Energy Sector, December 5, 2002.

[2] G.R. No. 84818, December 18, 1989, 180 SCRA 218, 231, citing 73 C.J.S. 1005.

[3] Republic vs. Manila Electric Company, G.R. No. 141314, November 15, 2002, 391 SCRA 700, 708.

[4] See Dissenting Opinion of Justice A. Panganiban in Gloria vs. Court of Appeals, G.R. No. 131012, April 21, 1999, 306 SCRA 287, 313, citing Agpalo, Statutory Construction, 76-77 (1990).

[5] G.R. No. 1384, April 15, 1918, 38 Phil. 224.

[6] Transcripts of the Committee on Energy (House Panel of the Power Commission), November 28, 2001, IV-4 to VIII-2.

[7] David vs. COMELEC, G.R. Nos. 127116 & 12809, April 8, 1997, 271 SCRA 90, 100-101, citing Collector of

Internal Revenue vs. Manila Lodge No. 761, 105 Phil. 983; Agpalo, Statutory Construction, 1990 Ed., 36; Francisco, Statutory Construction, Third Ed., 5 and 106; Martin, Statutory Construction, 1979 Ed., 40.

[8] G.R. No. 104528, January 18, 1996, 252 SCRA 5, 11, citing Ongsiako vs. Gamboa, 86 Phil. 50 (1950); Vol. II, Sutherland, Statutory Construction, 693-695.

[9] Philippine Long Distance Telephone Co., Inc. vs. City of Davao, G.R. No. 143867, August 22, 2001, 363 SCRA 522, 531.

[10] Sec.80. Applicability and Repealing Clause. – The applicability provisions of Commonwealth Act No. 146, as amended, otherwise known as the “Public Services Act”; Republic Act 6395, as amended, revising the charter of NPC; Presidential Decree 269, as amended, referred to as the National Electrification Decree; Republic Act 7638, otherwise known as the “Department of Energy Act of 1992”; Executive Order 172, as amended, creating the ERB; Republic Act 7832 otherwise known as the “Anti-Electricity and Electric Transmission Lines/Materials Pilferage Act of 1994”, shall continue to have full force and effect except insofar as they are inconsistent with this Act.

The provisions with respect to electric power of Section 11 (c) of Republic Act 7916, as amended, and Section 5 (f) of Republic Act 7227, are hereby repealed or modified accordingly.

[11] 167 SCRA 51, 58-59 (1988), cited in Republic vs. Asuncion, G.R. No. 108208, March 11, 1994, 231 SCRA 211, 230-231.

[12] Records reveal that NASECORE, Lualhati, and other oppositors before the ERC filed their motion for reconsideration of the challenged Order.

[13] (n) The ERC shall have the original and exclusive jurisdiction over all cases contesting rates, fees, fines and penalties imposed in the exercise of its powers, functions and responsibilities and over all cases involving disputes between and among participants or players in the energy sector relating to the foregoing powers, functions and responsibilities.

[14] G.R. No. 141369, April 9, 2003, citing Republic vs. Medina, 41 SCRA 643 (1971).

[15] Padua vs. Ranada, G.R. No. 141949, October 14, 2002, 390- SCRA 663, 677, citing Abejo vs. Dela Cruz, 149 SCRA 654 (1987).

[16] Ibid., citing Industrial Enterprises, Inc. vs. Court of Appeals, 184 SCRA 426 (1990)

[17] Comment at 13-14.

[18] Padua vs. Ranada, supra at 683, citing Radio Communications of the Philippines vs. National Telecommunications Commission, 184 SCRA 517 (1990).

[19] G.R. No. L-32068, October 4, 1971, 41 SCRA 643, 654.

[20] Supra, citing Maceda vs. Energy Regulatory Board, 192 SCRA 363 (1990).

[21] Ibid., 162 SCRA 521 (1988).

CONCURRING AND DISSENTING OPINION

PUNO, J.:

The case at bar involves two purely legal issues, one substantive and the other procedural. The substantive issue is

whether the Energy Regulatory Commission (ERC) has legal authority to grant provisional rate adjustments under the Electric Power Industry Reform Act of 2001 (EPIRA); the procedural issue is whether the grant by the ERC of the provisional rate adjustment to the Manila Electric Company (Meralco) was done in accord with section 4 (e), Rule 3 of the Implementing Rules and Regulations of the EPIRA law. The reasonability of the rate increase applied for by Meralco and provisionally granted by the ERC is not an issue before the Court and should not shade our decision. On the substantive issue, I join the majority without any hesitation. On the procedural issue, I beg to dissent.

I. Facts

First, the facts without the fat.

On October 10, 2003, Meralco applied for a rate hike with the ERC and sought the ex-parte grant of provisional authority to increase such rates in accordance with a schedule attached to its application.[1] On the same date, Meralco published a notice of the filing of the application for a rate hike in the Manila Times.[2] A day before filing its application with the ERC, Meralco furnished the Sangguniang Panglungsod of Pasig City with a copy of the application.[3]

With the public given such notice, the National Association of Electricity Consumers for Reform (NASECORE), on October 14, 2003, manifested its intent with the ERC to file an opposition to Meralco's application.[4]

Other oppositors followed suit. Mr. Genaro Lualhati filed a letter with the ERC on October 24, 2003 demanding for the dismissal of Meralco's application.[5]

On October 29, 2003, no less than petitioner Freedom from Debt Coalition (FDC) filed a letter with the ERC expressing its intent to file an opposition to Meralco's application.[6] The ERC then directed FDC, Mr. Lualhati and NASECORE to file their comments on the application.[7]

On November 11, 2003, NASECORE moved for the production of material documents by Meralco.[8] On November 13, 2003, ERC ordered Meralco to comment on NASECORE's motion.[9] On November 19, 2003, it directed Meralco to submit certain documents.[10]

On November 21, 2003, Mr. Lualhati filed his Opposition to Meralco's application.[11]

On November 25, 2003, NASECORE, manifested that it still could not file its opposition until the documents it had requested from Meralco had been produced.[12] On the same date, petitioner FDC filed a Motion for Production of Documents with the ERC to enable it to submit a comment on Meralco's application and reserved its right to oppose the same.[13]

In an Order dated November 27, 2003 (the Questioned Order) issued ex-parte, the ERC granted Meralco provisional authority to increase its rates by 12 centavos/kWh effective January 2004,[14] the dispositive portion of which states as follows:

WHEREFORE, considering all the foregoing, this Commission, pursuant to Section 8 of Executive Order No. 172 and Section 4 (e) of the Implementing Rules and Regulations of the EPIRA (R.A. 9136), hereby provisionally authorizes applicant Manila Electric Company (MERALCO) to adopt and implement the attached rate schedules embodying a rate adjustment in the average amount of TWELVE (12) CENTAVOS per kWh, effective with respect to its billing cycles beginning January 2004. The impact of this approved rate adjustment will vary from one customer class to another depending on the load factors.

The rate adjustment authorized herein shall be subject to refund in the event that this Commission finds, after completion of the hearings of this case, that the same is unjust and unreasonable.

The hearing of this case is hereby set on December 22, 2003 at nine o' clock in the morning (9:00 A.M.) at the ERC Hearing Room, 15th Floor, Pacific Center Building, San Miguel Avenue, Ortigas Center, Pasig City. In this connection, MERALCO is hereby directed to publish, at its own expense, the attached Notice of Public Hearing at least twice (2) (sic) for two (2) successive weeks in two (2) newspapers of nationwide circulation in the country, the last date of publication to be made not later than two (2) weeks before the scheduled date of initial hearing.

Let copies of this Order and the attached Notice of Public Hearing be furnished all the Municipal/City Mayors within the MERALCO's franchise area for the appropriate posting thereof on their respective bulletin boards.

Likewise, let copies of this Order and the attached Notice of Public Hearing be furnished the Office of the Solicitor General (OSG), the Commission on Audit (COA) and the Committees on Energy of both Houses of Congress who are hereby requested to have their respective duly authorized representatives present at the aforesaid initial hearing...[15] (emphasis supplied)

On December 2, 2003, Meralco filed a Motion for Extension of Time to submit the documents indicated in the ERC's Order of November 19, 2003.[16]

On December 3, 2003, Mr. Zosimo Yeban, filed a letter with the ERC objecting to the rate increase granted to Meralco.[17]

On December 8, 2003, NASECORE filed with the ERC an Urgent Motion to Resolve Motion for Production of Documents and Opposition to the Provisional Authority, while the National Consumer Affairs Council filed a letter seeking reconsideration of the ERC's Questioned Order. [18]

On December 9, 2003, the Federation of Philippine Industries, Inc. likewise filed a letter with the ERC seeking reconsideration of the Questioned Order.[19]

On December 11, 2003, Mr. Lualhati and the Philippine Consumers Watch (Bantay Mamamayan) Foundation filed with the ERC a Motion to Resolve Opposition and Manifestation Joining NASECORE in its Opposition and Motion for Production of Documents, respectively.[20] A day later, Napocor Industrial Consumers Association, Inc. (NICAI) filed an Urgent Motion to Suspend Implementation and Motion for Reconsideration.[21]

On December 15, 2003, the Philippine Consumers Welfare Union, Atty. Ruperto Estrada, Martsa ng Bayan Contra Meralco, Corazon Villa and Daday Tupay filed oppositions asking ERC to reconsider the Questioned Order while Atty. Estrada filed a motion for production of documents.[22]

On December 19, 2003, Meralco opposed the motion for production of material documents on the ground that the documents sought by the petitioners were immaterial and irrelevant to its application.[23]

On December 21, 2003, Mr. Arnulfo Paca also raised his objections and comments on the provisional increase via e-mail sent to the ERC .[24]

On December 22, 2003, Mr. Lualhati filed a Motion for Reconsideration of the Questioned Order.[25] On the same date, Bagong Alyansang Makabayan (BAYAN), Kilusang Mayo Uno (KMU), Gabriela Women's Partylist (GABRIELA), Anakpawis Partylist, Kalipunan ng Damayang Mahihirap (KADAMAY), and Samahan ng Nagtataguyod ng Agham at Teknolohiya Para sa Sambayanan (AGHAM) filed an Opposition with Motion for Reconsideration.[26]

In the public hearing held on December 22, 2003, several oppositors, asked the ERC to reconsider its Questioned Order. The ERC refused insisting it has the power to issue provisional orders.[27] Instead of seeking reconsideration, FDC filed with this Court on December 23, 2003, a petition for certiorari, prohibition and

injunction with prayer for the issuance of a temporary restraining order or a status quo order. Six days later, FDC reiterated its prayer for a temporary restraining or status quo order.[28]

On December 30, 2003, Meralco filed a Consolidated Comment to the various oppositions with the ERC.[29]

On January 13, 2004, this Court ordered the ERC and Meralco to comment on FDC's petition and enjoined them to observe the status quo prevailing before the filing of the petition. The case was set for oral arguments on January 27, 2004.[30]

Prior to and shortly after the January 13, 2004 status quo order of this Court, several parties had, in the meantime, filed other pleadings with the ERC. The Philippine Chamber of Commerce and Industry filed a letter on January 5, 2004 requesting for a public hearing before the grant of the provisional increase.[31] On January 6, 2004, Mr. Lualhati filed a Rejoinder with Motion for Reconsideration, while Mr. Juan Paqueo III filed a Petition to Suspend the Granting of Electric Power Increase Against Meralco Company.[32] BAYAN, Bayan Muna Partylist, KMU, GABRIELA, Anakpawis Partylist, KADAMAY, and AGHAM filed a Manifestation with Motion to Immediately Resolve Motion for Reconsideration and to Suspend Provisional Authority on January 9, 2004.[33] They also filed their Rejoinder to Meralco's Consolidated Comment on January 13, 2004.[34] In the meantime, NICA and Mr. Yeban filed their respective Rejoinders to Meralco's Consolidated Comment on January 12, 2004.[35] On January 15, 2004, NASECORE filed its Rejoinder.[36] The OSG filed an Urgent Motion to Resolve Pending Motions filed by the Oppositors on January 29, 2004.[37] It sent a letter to the Commission on Audit (COA) requesting assistance with regard to Meralco's application on February 4, 2004[38] and filed a motion with the ERC on February 16, 2004 seeking to direct the COA to conduct a rate audit.[39]

Meralco, ERC and the OSG filed their respective comments with this Court on January 26, 2004.

The petitioners-in-intervention[40] filed a motion to intervene attaching thereto their petition-in-intervention which this Court admitted in a Resolution dated January 27, 2004.[41]

During the oral arguments on January 27, 2004, the parties were required to file their respective memoranda within a non-extendible period of twenty days. Counsel for ERC was ordered in open court to produce certain documents.

The parties (except for petitioner FDC) submitted their respective Memoranda dated February 16, 2004.[42]

It will be noted that several motions assailing the Questioned Order remain pending before the ERC for resolution as shown by the OSG's Urgent Motion to Resolve Pending Motions Filed by the Oppositors filed with the ERC on January 29, 2004.[43] These pending motions are the following: a letter-complaint of Zosimo Yeban, Jr. filed on December 3, 2003 objecting to the rate increase granted to Meralco;[44] an Urgent Motion to Resolve Motion for Production of Documents and Opposition to the Provisional Authority of the NASECORE approved by its President, Pete L. Ilagan, filed on December 8, 2003;[45] a letter of the National Consumers Affairs Council filed on December 8, 2003 seeking reconsideration of the provisional authority;[46] a letter of the Federation of Philippine Industries, Inc. filed on December 9, 2003 asking reconsideration of the ERC Order granting the provisional increase;[47] a Manifestation of the Philippine Consumers Watch (Bantay Mamamayan) Foundation, represented by its Chairman, Juan Ponce Enrile, filed on December 11, 2003, joining the NASECORE in its opposition to the provisional authority and Motion for Production of Documents;[48] an Urgent Motion to Suspend Implementation and Motion for Reconsideration of the Napocor Industrial Consumers Association, Inc. (NICA) filed on December 12, 2003;[49] an Opposition of the Philippine Consumers Welfare Union (PCWU), Martsa ng Bayan Kontra Meralco, Corazon Villa and Daday Tupas filed on December 15, 2003 asking the ERC to reconsider its order granting the provisional increase;[50] an electronic mail message of Michael Paca dated

December 21, 2003 (and stamped received by the ERC on January 8, 2004) with an attached write-up containing comments on the rate increase;[51] a Motion for Reconsideration of Mr. Genaro C. Lualhati filed on December 22, 2003;[52] a letter of the Philippine Chamber of Commerce and Industry filed on January 5, 2004 asking the ERC to conduct public hearings prior to the grant of provisional increase;[53] a Petition of Juan B. Paqueo III filed on January 6, 2004 to suspend the grant of rate increase to Meralco;[54] and a Manifestation (with motions to immediately resolve motion for reconsideration and to suspend provisional authority) of BAYAN, KMU, GABRIELA, KADAMAY and AGHAM filed on January 9, 2004.[55]

II. Issues

The issues are strictly legal.

First, whether the ERC has legal authority to grant provisional rate adjustments under the new EPIRA law.

Second, whether the grant by the ERC of the provisional rate adjustment to Meralco violates the Implementing Rules and Regulations of the EPIRA law and hence constitutes grave abuse of discretion amounting to lack or excess of jurisdiction.

Let me start with an overview of the . . .

III.

Statutory History of Electric Power Regulation in the Philippines

Commonwealth Act No. 146 or the Public Service Act was passed into law on November 7, 1936 creating the Public Service Commission (PSC) with jurisdiction, supervision and control over public services such as those for electric light, heat and power.[56] Under the Act, the PSC had authority to fix rates charged by a public service. By express provision of law, the PSC could approve provisional rates ex-parte.[57]

Under the reorganization plan effected by Presidential Decree No. 1, as amended by Presidential Decree No. 458 issued on May 16, 1974, jurisdiction, supervision and control over public services related to electric light, power and waterworks vested in the PSC were transferred to the Board of Power and Waterworks.

The Board of Power and Waterworks was abolished under Presidential Decree No. 1206 enacted on October 6, 1977. Its powers and functions relative to power utilities, including its authority to grant provisional relief,[58] were transferred to the Board of Energy.[59]

On May 8, 1972, institutional reforms were made in the energy sector under Executive Order No. 172 which created the Energy Regulatory Board (ERB). Under the law, the Board of Energy (BOE) was reconstituted into the ERB and the powers and functions of the BOE under Republic Act No. 6173, as amended by Presidential Decree No. 1206, were transferred to the ERB.[60] The law expressly authorizes the ERB to grant provisional relief.[61]

Most recently, Republic Act No. 9136, known as the Electric Power Industry Reform Act of 2001 (EPIRA), was enacted on June 8, 2001 to provide a framework for restructuring the electric power industry.[62] One of the purposes of the EPIRA is to establish a strong and purely independent regulatory body.[63] The ERB was abolished[64] and its powers and functions not inconsistent with the provisions of the EPIRA were expressly transferred to the Energy Regulatory Commission (ERC).[65]

With due respect to the majority, I submit that . . .

IV.

ERC complied with the rules and did not act with grave abuse of discretion in issuing the Questioned Order.

This is the spearhead of my disagreement with the majority and I wish to address it first. I respectfully make the following submissions: (a) there is no violation of the procedure set forth in the EPIRA's Implementing Rules and Regulations when ERC issued its Questioned Order; indeed, the oppositors had full opportunity to assail its legality and propriety in a public hearing before its effectivity; (b) ex-parte orders issued to protect the interest of the public are universally recognized as legitimate exercise of the police power of the State; and (c) it is premature for the Court to strike down the Questioned Order at this time since it is merely provisional and is pending reconsideration before the ERC; in fine, there is an effective and available administrative remedy before the ERC which no party should shortcircuit and which this Court should allow to flow unimpeded.

The Questioned Order did not violate the Implementing Rules and Regulations of the EPIRA; there is no denial of procedural due process.

The majority based its holding that the ERC committed grave abuse of discretion in issuing the Questioned Order on the following ratiocination:

- Meralco failed to comply with the publication requirement provided in Section 4 (e), Rule 3 of the Implementing Rules and Regulations. It notes that the Notice of Application, quoted in full below, which was published on October 10, 2003 in the Manila Times does not contain the text of Meralco's application, or at least a summary thereof:

MANILA ELECTRIC COMPANY

Pasig City

NOTICE OF APPLICATION

Pursuant to paragraph (e), Section 4, Rule 3 of the Implementing Rules and Regulations of R.A. 9136, notice is hereby given that an Application dated October 8, 2003, for the approval of revised rate schedules and provisional authority, will be filed by the MANILA ELECTRIC COMPANY with address at Meralco Center, Ortigas Avenue, Pasig City, before the Energy Regulatory Commission.

Issued this 9th day of October 2003.

(Sgd.) GIL S. SAN DIEGO
Vice-President and Head
Legal Services[66]

- The Questioned Order failed to consider the pleadings filed by parties who opposed Meralco's application, as required by Section 4 (e), Rule 3 of the Implementing Rules and Regulations, and was based solely on Meralco's application and its supporting documents.
- The ERC issued the Questioned Order despite the pendency of several Motions for Production of Documents filed by various oppositors and despite their manifestation that they would oppose Meralco's application.

These grounds relied upon by the majority cannot stand close scrutiny. Sections 4 (e) and (r), Rule 3 of the EPIRA's Implementing Rules and Regulations set forth the procedure in rate adjustment cases, viz:

(e) Any application or petition for rate adjustment or for any relief affecting the consumers must be verified; and accompanied with an acknowledgment of receipt of a copy thereof by the LGU Legislative Body of the locality where the applicant or petitioner principally operates together with the certification of the notice of publication thereof in a newspaper of general circulation in the same locality.

The ERC may grant provisionally or deny the relief prayed for not later than seventy five (75) calendar days

from the filing of the application or petition, based on the same and the supporting documents attached thereto and such comments or pleadings the consumers or the LGU concerned may have filed within thirty (30) calendar days from receipt of a copy of the application or petition or from the publication thereof as the case may be.

Thereafter, the ERC shall conduct a formal hearing on the application or petition, giving proper notices to all parties concerned, with at least one public hearing in the affected locality, and shall decide the matter on the merits not later than twelve (12) months from the issuance of the aforementioned provisional order.

This Section 4(e) shall not apply to those applications or petitions already filed as of 26 December 2001 in compliance with Section 36 of the Act.

xxx xxx xxx

(r) 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 (2) successive weeks in two (2) newspapers of nationwide circulation.

There are two publication requirements in the afore-cited rule. The first is the notice of publication of the petition or application in a newspaper of general circulation in the locality where the petitioner principally operates. The certification to this effect must accompany the petition or application when filed. The second refers to the publication of all notices of hearing to be conducted by the ERC for the purpose of fixing rates or fees. The notices shall be published at least twice for two (2) successive weeks in two (2) newspapers of nationwide circulation.

The majority assails Meralco's failure to comply with the first publication requirement. It stresses that Meralco did not cause the publication of its petition or application in its entirety. It merely published a notice of the filing of application. I respectfully submit that the published notice sufficiently complies with the requirements of the rules. The application and its 17 annexes are hundreds of pages long and almost an inch thick. It would be absurd to require Meralco to publish the entirety of its application. As postulated by the ERC, the rules should not be given an unreasonable construction, viz:

Given that rate cases usually entail the filing of applications consisting of hundreds of pages including all the attachments in support thereof, which often enough are made integral parts thereof by reference, it is absurd to expect all the applicants to be able to comply with the publication requirement if it were construed that the entirety of their application must be the one published and not just the notice of the filing thereof. With a one-whole page advertisement in a newspaper of general circulation easily costing hundreds of thousands of pesos, and with one application eating up more than ten pages of newspaper space even with the smallest of fonts, it is simply too onerous and inconvenient for the applicants, including the smallest debt-ridden and barely surviving electric cooperative, to be required to shell out millions of pesos just so that they could apply for some relief with respondent ERC.

This must not have been the intention of those luminaries that drafted and approved the EPIRA Implementing Rules. When the legislative intent of informing the public of the filing of the application with respondent ERC is duly served by mere notice, as this is in fact what due process requires, it must not have entered the minds of the drafters of the Implementing Rules to expand such requirement by asking for something close to impossibility (sic).[67] (emphases supplied)

The rationale for the first rule on publication is to ensure that the people in the locality where the petitioner principally operates is informed of the notice of application. Once they receive the notice, they can then proceed to obtain copies of the entire application in order to prepare their opposition or comments thereto. In the case at bar, it is undeniable that Meralco published its Notice of Application for provisional rate increase. It is also undeniable that various parties, including the petitioners in the case at bar, secured copies of Meralco's

application after publication of its Notice of Application. It is also undeniable that various parties were able to oppose Meralco's application for provisional rate increase. It cannot be gainsaid therefore that the rationale for the rule has been satisfied.

The majority opines that at least a summary of the application should have been published.[68] With due respect, the rules do not require the publication of a summary of the application. The rules require that a certification of the notice of publication should accompany the application. Indeed, a summary would not enable anyone to prepare an intelligent opposition to the application. Rate cases are, by nature, highly technical and dependent on scientific data which do not easily lend themselves to summarization. Anyone seriously intending to comment or oppose the application needs to secure a copy of the application and its annexes.

I respectfully reject the majority holding that the ERC failed to consider the pleadings and comments of oppositors as required by the Implementing Rules and Regulations before it issued its Questioned Order. In the first place, there is no showing that the ERC did not consider the oppositions filed by various parties to Meralco's application. In the second place, the Rules do not expressly require any person to file a comment or pleading on an application for provisional rate increase. Section 4 (e), Rule 3 of the Implementing Rules and Regulations simply provides that the ERC should act on the provisional relief (1) not later than seventy-five calendar days from the filing of the application; (2) based on the application or petition; (3) based on documents supporting the application or petition; and (4) based on comments or pleadings the consumers or the LGU concerned may have filed within thirty (30) calendar days from receipt of a copy of the application or petition or from the publication thereof as the case may be. In fine, the application for provisional rate increase can be acted upon by the ERC if there are no comments or pleadings filed by the consumers or LGUs concerned.

We now determine whether the ERC ignored the comments of the consumers or the LGUs concerned before it issued its Questioned Order. The records will show that the comments or pleadings pending before the ERC before it issued the Questioned Order on November 27, 2003 are the following:

- NASECORE's letter filed on October 14, 2003 placing it on record that it would oppose Meralco's application, its Motion for Production of Documents filed on November 11, 2003, and Compliance filed on November 25, 2003 manifesting that it could not file its opposition until the documents it requested were made available;
- Mr. Genaro Lualhati's letter filed on October 24, 2003 asking for the dismissal of the application and his Opposition filed on November 21, 2003;
- FDC's letter filed on October 29, 2003 expressing its intent to oppose the application and Motion for Production of Documents filed on November 27, 2003, the day the Questioned Order was issued.

It will be noted that the only substantive opposition or comment filed with the ERC from the time of the filing of Meralco's petition on October 10 until the issuance of the Questioned Order on November 27, 2003, is that filed by Mr. Genaro Lualhati. I respectfully submit that the ERC correctly gave Mr. Lualhati's Opposition the significance of a cipher. To begin with, his opposition was filed way beyond the 30-day period for opposing Meralco's application. And as pointed out by Meralco, Mr. Lualhati's arguments are mere reiterations of his arguments in ERC Case Nos. 2001-900 and 2001-646, which the ERC had already rejected.[69] There is therefore nothing tectonic about the arguments of Mr. Lualhati which would defeat the issuance of the Questioned Order.

The majority also holds that the ERC failed to consider other pleadings such as Motions for Production of Documents or letters of intent to file oppositions before it issued its Questioned Order. I respectfully reiterate that there is nothing in the rules requiring the ERC to hold its provisional order in abeyance pending the resolution of such motions as a Motion for Production of Documents. As aforestressed, the ERC is allowed by the Rules to

grant or deny the relief prayed for based on the application and its supporting documents, “and such comments or pleadings the consumers or the LGU concerned may have filed within thirty (30) calendar days from receipt of a copy of the application or petition or from the publication thereof as the case may be.”[70] The ERC is mandated to consider only pleadings filed within 30 days counted from the LGU or consumer’s receipt of the application or publication thereof, as the case may be. That is all. It is not required to wait until all pleadings are submitted nor is its power to issue provisional orders stayed by pending matters such as motions for production of documents. To rule otherwise as the majority did is to hold ERC hostage by the simple expedient of filing such motions as motions for production of documents or letters of intent to file oppositions or comments.

It is beyond debate that the standard for interim orders is different from those used for final orders. The standards for interim orders are less stringent because such temporary orders are “determined expeditiously, without such investigation as might be deemed necessary to a determination of permanent cases.”[71] If the standards for interim orders are as strict as those for final orders, then interim orders could not be issued summarily. For this reason, the ERC, under the Implementing Rules and Regulations, has only seventy-five days to provide provisional relief. It is in this context, that the full ventilation and resolution of a motion for production of documents should be viewed. A motion for production of documents is a mode of discovery utilized by one in order to be fully apprised of the relevant details of a case. Its use is more relevant in opposing a final rate increase order which must be based on substantial evidence. Consequently, a motion for production of documents need not hinder the issuance of an order granting a provisional rate increase.

Under the Rules, the application and its supporting documents, if sufficient, can provide the basis for the ERC to issue an Order for a provisional rate increase. It should not be overlooked that the ERC is a special agency with a database of reliable information which it has accumulated thru experience and its expertise. It is free to resort to these data without offending procedural due process.

I respectfully submit that the administrative process of rate making should not be overly judicialized, otherwise, its very reason for existing will be subverted. It will not be able to address the needs for which it was created and for which the judicial process was found lacking.

There is another reason why the majority cannot hold that ERC violated procedural due process when it issued its Questioned Order. It is familiar knowledge that due process only demands opportunity to be heard. The Questioned Order was issued on November 27, 2003 but the provisional rate increase was to be effective beginning January 2004. The public hearing on the provisional rate was set on December 22, 2003. The oppositors were given all the opportunity to assail Meralco’s application in the hearing of December 22, 2003. It cannot therefore be maintained that the oppositors were denied the opportunity to be heard before the provisional rate increase order became effective in January 2004. The majority cannot close its eyes to this reality.

Administrative agencies are allowed to issue ex-parte orders when required by public interest and as an exercise of police power.

Further, the rationale behind the creation of administrative agencies and the State’s police power explain the need for allowing them to issue ex-parte orders to protect public interest.

History tells us that the rise of the administrative process, combining legislative and judicial powers, was caused by the following:

- the development of an industrialized and complex society requiring economic regulation;

- the need for specialization to develop the necessary expertise, flexible regulation to parallel the changing needs of the regulated field, and continuity of public policy; and
- the evident inability of the judicial process to perform the necessary adjudication with regard to the vastly expanded scope of governmental activity.[72]

With the complexity of modern life, government functions have to multiply as the areas subject to regulations increased.[73] Different bodies were created to address these various needs – agencies dealing with public health, transportation, commerce and even the practice of professions were thus established. In the different areas addressed by these administrative bodies, subject specialists with expertise in their respective fields have to be developed for effective regulation. The demands of modern society likewise exposed the inefficiency of traditional judicial processes to deal with the day-to-day requirements of government. Administrative processes stepped in as a more flexible means of speedily and expeditiously dealing with various affairs that the stricter and more cumbersome judicial processes cannot manage. The advantage of specialized administrative bodies is their expertise in regulatory adjudication in a narrowly defined area.[74] For all these reasons, the administrative process has evolved into a more informal procedure characterized by correspondence, conference and investigation.[75] As stated by President Roosevelt,

The administrative tribunal or agency has been evolved in order to handle controversies arising under particular statutes. It is characteristic of these tribunals that simple and non-technical hearings take the place of court trials, and informal proceedings supersede rigid and formal pleadings and processes...[76]

Corrollarily, administrative agencies have also been conceded the power to grant temporary measures ex-parte which are recognized as essential to take care of problems that cannot be allowed to wait for the completion of formal proceedings.[77] As explained by Davis:

If the contagion is spreading, or the unfit pilot is about to jeopardize the passengers, or the harmful medicinal preparation is being sold to the public, summary administrative action in advance of hearing is appropriate.[78] (emphasis supplied)

It is therefore clear that administrative bodies were created to be able to address the multifarious concerns of society with speed and efficiency. Thus, if poisoned meat has entered our docks or a disease-carrying traveler has landed on our shores, it cannot be doubted that the proper administrative authorities have sufficient power to swiftly address these problems. If these administrators were hamstrung from taking temporary measures, if they have to conduct hearings before they could take measures to protect the public, the result would be tragedy to our people. The power to enact these interim measures is essential for the daily self-preservation of society. The power is indispensable to administrative bodies if we expect them to deal with unseen emergencies and exigencies with effectiveness.

It bears emphasis that the regulatory power of administrative bodies should not be niggardly given for it is rooted in the State's police power. Police power was originally limited in scope.[79] It was "anchored in the limitations that the courts had imposed upon individual rights...as embodied in the common law maxim, *sic utere tuo ut alienum non laedas*," meaning, use your own property in such a manner as not to injure that of another. [80] Over the years, however, the range of police power was no longer limited to the preservation of public health, safety and morals, which used to be the primary social interests in earlier times.[81] Police power now requires the State to "assume an affirmative duty to eliminate the excesses and injustices that are the concomitants of an unrestrained industrial economy." [82] Police power is now exerted "to further the public welfare – a concept as vast as the good of society itself." [83] Hence, "police power is but another name for the governmental authority to further the welfare of society that is the basic end of all government." [84] When police power is delegated to administrative bodies with regulatory functions, its exercise should be given a wide latitude. Police power takes

on an even broader dimension in developing countries such as ours, where the State must take a more active role in balancing the many conflicting interests in society. The Questioned Order was issued by the ERC, acting as an agent of the State in the exercise of police power. We should have exceptionally good grounds to curtail its exercise. This approach is more compelling in the field of rate-regulation of electric power rates. Electric power generation and distribution is a traditional instrument of economic growth that affects not only a few but the entire nation. It is an important factor in encouraging investment and promoting business. The engines of progress may come to a screeching halt if the delivery of electric power is impaired. Billions of pesos would be lost as a result of power outages or unreliable electric power services. The State thru the ERC should be able to exercise its police power with great flexibility, when the need arises. The power of the ERC to issue rate orders ex-parte, pending the conduct of full-blown hearings for the issuance of final rates, should not be denied except for the strongest reasons. There is none in the case at bar except its imagined perception that the Questioned Order denied oppositors procedural due process.

It is Premature for the Court to
Interfere With the ERC's Ruling at This Time since the Questioned
Order is Merely Provisional and can
be Corrected.

It should be emphasized that the ERC issued merely a provisional order, one that it could modify or correct at any time. The said Order is the subject of various motions for reconsideration. ERC is far from issuing decision on the merits of Meralco's application. It is too early to fear that the Questioned Order will cause irreparable injury to the consumers whose interest should be balanced with the interest of MERALCO. In the balancing of interest, it should be the public interest that should prevail. It should be noted that there are numerous motions opposing the Questioned Order currently pending before the ERC. I respectfully submit that the ERC should first be given the chance to consider the arguments raised by the oppositors in these motions. A cursory examination of the pleadings and oppositions to the Questioned Order which are still pending resolution by the ERC shows that the expertise and specialized knowledge of the ERC is necessary in order to deal with the various grounds that were raised. These grounds include the following:

- It is the obligation of Meralco's stockholders, not the consumers, to finance Meralco's expansion projects and pay its financial obligations.[85]
- When Meralco was experiencing difficulties in raising funds for capital projects, it should have divested its interests in businesses not directly connected to their primary business as an electric power distribution utility.[86]
- The absence of a public hearing before the issuance of the Questioned Order shows lack of transparency in the grant of the provisional authority.[87]
- Widespread opposition to the rate increase by the consuming public shows that they believe that the increase has no legal basis.[88]
- President Gloria Macapagal-Arroyo, herself, has requested the ERC to reconsider its decision in light of public outrage.[89]
- Any expansion project should be supported by a feasibility study showing the projected additional revenues which would justify the cost of expansion.[90]
- Increased power rates would make industries and businesses located in Meralco's franchise area less competitive, resulting in their closure and termination of employment for their employees.[91]

- Any capital expenditure by Meralco goes into the computation of its rate base, thereafter, the legal return-on-rate-base (RORB) must be determined after proper valuation and appraisal. To make its customers advance the needed capital for Meralco's projects would be doubly injurious to its consumers as they are bound to subsequently pay for the cost of these projects through their monthly billings despite the fact that they financed the same in the first place.[92]
- Meralco failed to show proof of the urgent need for the issuance of the provisional authority, viz:
 - With regard to Meralco's pending application before the ERC (Case No. 2003-389) to increase capacity in its substations and to redesign/revamp and/or extend its distribution, it was shown that financial difficulties did not hinder the timely implementation of such projects. The delay was caused by other factors, such as coordinating with government agencies in the obtention of construction permits.[93]
 - Though Meralco's financial statements as audited for the year 2002 indicated a net loss of P2.015 billion, it was recently granted a rate increase by the ERC in Case Nos. 2001-646 and 2001-900 resulting in the unbundling of rates. Meralco did not present any interim audited financial statements to the ERC showing losses in its utility operations while taking into account the effects of the rate increase as an aftermath of the unbundling of rates. Further, the use of the year 2002 as a test year is questionable as the effects of the most recent rate increase adjustments granted to Meralco are not reflected in the year 2002 audited financial statements.[94]
 - The provisional authority was granted by the ERC based on the asset appraisal report of Meralco dated September 12, 2003, which has not yet been reviewed and approved on the merits by the ERC. This is a deviation from the accepted practice of evaluating rate increases on the basis of approved asset appraisal reports.[95]
 - The Questioned Order granting the provisional authority failed to present any computation of Meralco's most recent RORB, which is a basic presentation before any rate adjustment of a regulated utility is granted.[96]
 - The provisional authority is based on most of Meralco's rate figures in its Rate Design 1, which may not be the best rate format to reflect cost. There is no reason to believe that transmission charges should differ for customer classes when Meralco is actually paying for the same charge to Transco for whatever class of customer it serves.[97]
 - The ERC's issuance of a provisional authority to Meralco on the basis of the latter's failure to meet its maturing debt obligations indicated a cash-flow approach which veers away from the RORB methodology for rate adjustments. The ERC should look into the cash flows to and from the books of Meralco and its sister companies to make this approach more objective.[98]
 - Meralco does not have a sincere desire to lower operating costs. In the ERC's order dated May 30, 2003 approving the unbundling of rates in ERC Case Nos. 2001-646 and 2001-900, the ERC ordered Meralco to exert its best efforts to renegotiate with its Independent Power Producers in order to mitigate the impact of increase rates. However, instead of complying with this directive, Meralco withdrew its application for approval of contract amendments of its Power Purchase Agreement with Quezon Power (Phils.) Ltd. which could have resulted in lower purchase power costs. In fact, Meralco is even now applying for upward adjustments of its power purchase rates with DURACOM in ERC Case No. 2003-434.[99]
 - If, as Meralco contends, its financial difficulties are due to the devaluation of the peso, this can be mitigated by temporary adjustments using the ICERA[100] mechanism which has been approved by the ERC.[101]
 - Meralco is unfit to operate a power utility service due to its inability to meet its financial obligations to its creditors; gross mismanagement of the utility despite its having a monopoly in the power distribution industry for around 50 years and providing services to 70% of the country; losses due to pilferages for failure to have adequate support services; failure to maintain its infrastructure; and having poor customer relations.[102]

- Visayas Electric Company (VECO) charges its customers significantly less than Meralco despite the inherent advantages of the Napocor-Transco-Meralco system with its technologically more cost-effective power generation process. VECO sources its power mainly from thermal generating plants which generate more expensive electricity compared to Meralco which sources cheaper electricity from hydroelectric and geothermal plants. It is possible that Meralco-serviced customers are being overcharged or that within the generation/transmission/distribution system of Napocor, Transco and Meralco there is wastage, inefficiency or unnecessary overheads which are being passed on to customers.[103]
- Despite Meralco's claim that it has not had a rate increase since 1994, its billings have increased after the unbundling of its rates.[104]
- Even without any increase, the current rates as approved on May 30, 2003 already exceed Meralco's adjusted revenue requirement for the year 2002 of P27,474,325,672 by no less than P13,941,541,193 – even using the lower sales volume of P21,880,741,000 kWh for the year 2002.[105]
- There is a prejudicial question in Case No. 77559, a petition for review of the ERC's order approving an allegedly excessive increase in Meralco's rates, which is pending before the Court of Appeals.[106]
- A hearing should be held prior to the issuance of a provisional authority as there are issues which should be resolved, to wit:
 - the audit, verification and approval of the value of Meralco's assets for the year 2002;
 - the basis of the rate increase, i.e., should this be based on actual operating investments or on the value of investments needed for expansion prior to any actual investment (in effect, would consumers be funding the expansion);
 - the implementation of Meralco's renegotiation with its Independent Power Producers to remove or significantly reduce the P3.50 per kWh generation bill, among which is Meralco's application to implement the Generation Rate Adjustment Mechanism or GRAM in ERC Case No. 2003-566, which would reduce the generation charge by P0.1843 per kWh;
- Meralco's refunds due to the industrial and commercial sectors; and
- the review of Meralco's application of a higher rate of systems loss (16.5%) to residential users compared to the legally allowed 9.5% to all customers across the board.[107]

It is obvious to the eye that all the possible serious objections to the Questioned Order have been raised by the consumers. Nobody has raised the argument that he has been denied the opportunity to oppose MERALCO's application due to its non publication in toto. It is therefore purposeless for the majority to annul the Questioned Order and require the republication of MERALCO's application. The better course of action is to remand the case to the ERC so that it can review its provisional order in light of the opposition to it.

I agree, however, with the majority that - - -

V.

The ERC Has Authority To Issue Provisional Orders under the new EPIRA Law.

The Nature of Rate-Regulation

This Court discussed the nature of rate-regulation in Republic of the Philippines, represented by the Energy Regulatory Board v. Manila Electric Company, G.R. Nos. 141314 and 141369, promulgated on November 15, 2002, viz:

The regulation of rates to be charged by public utilities is founded upon the police powers of the State and statutes prescribing rules for the control and regulation of public utilities are a valid exercise thereof. When private property is used for a public purpose and is affected with public interest, it ceases to be *juris privati* only and becomes subject to regulation. The regulation is to promote the common good. Submission to regulation may be withdrawn by the owner by discontinuing use; but as long as use of the property is continued, the same is subject to public regulation.

In regulating rates charged by public utilities, the State protects the public against arbitrary and excessive rates while maintaining the efficiency and quality of services rendered. However, the power to regulate rates does not give the State the right to prescribe rates which are so low as to deprive the public utility of a reasonable return on investment. Thus, the rates prescribed by the State must be one that yields a fair return on the public utility upon the value of the property performing the service and one that is reasonable to the public for the services rendered. The fixing of just and reasonable rates involves a balancing of the investor and the consumer interests. (emphases supplied and footnotes omitted)

It is evident that rate-regulation is one of the more important aspects of public utility regulation. It allows the regulator sufficient power to protect consumers from unreasonable charges while ensuring that the utility is able to maintain a viable business. As explained in *Potomac Electric Power Company v. Public Service Commission of the District of Columbia*, “(t)his zone is bounded on the one side by the interests of utility customers in not paying exorbitant rates... On the other side are the interests of utility investors in achieving a rate of return sufficient to maintain the utility’s financial integrity, to permit the utility to attract necessary capital at a reasonable cost, and fairly to compensate themselves for the risks they have assumed.”[108]

Interim Rate-Regulation

Interim rate-regulation is a well-entrenched concept in utility regulation. Interim rates are defined as “rates charged by the utility for services or products pending the establishment of a permanent rate, in emergency situations, or where a bond is posted that guarantees a refund to consumers for any excess paid by them prior to the Commission’s final determination.”[109] It should be emphasized that interim rates are not limited to emergency situations. In one case, interim rates were allowed pending the imposition of final rates when the previous rates were considered so low as to be confiscatory.[110] It has also been allowed to “alleviate financial problems whose correction cannot safely await a decision on the proper level of permanent rates.”[111]

Interim rate-regulation has also been viewed as a solution to the so-called “regulatory lag” associated with full-blown hearings.[112] Regulatory lag is defined as “the loss of proper earnings claimed by a utility between the time a petition for rate increase is filed and the rate relief actually becomes effective by administrative or judicial determination.”[113]

In the United States, numerous state public utilities commissions have generally recognized and sanctioned “temporary rates” to meet emergencies or determine by experiment or trial what rates would be just.[114] This has been applied to various types of utilities such as those providing services for sanitation,[115] telephone,[116] and electric power.[117]

To emphasize the importance of a regulator’s power to grant interim relief, many states have even taken the position that interim rate-regulation is implied from the power to fix final rates even in the absence of specific statutory authority.[118]

In the case of *Far North Sanitation, Inc. v. Alaska Public Utilities, Inc.*,[119] a company engaged in garbage collection challenged the interim order of the Public Utilities Commission declaring a rate refund. The Supreme Court of Alaska held that the broad powers of the Public Utilities Commission to establish fair and just rates

implied its authority to declare rates interim and refundable so long as the Commission provided protection for the interests of both the utility and public. While the Alaska Supreme Court acknowledged the existence of conflicting case law on this question citing *Electric Dist. No. 1* which held that the plain language of the relevant law requiring the commission to fix rates meant that it could only fix final rates, it was persuaded by the weight of jurisprudence upholding the implied power of regulators to exercise interim rate-regulation:

We think the better view is that the APUC has implied authority to set interim rates. See *Pueblo Del Sol Water Co. v. Arizona Corp. Comm'n*, 160 Ariz. 285, 772 P.2d 1138, 1140 (App.1988) (although no express authority exists, it is only "logical" that commission can impose interim rates subject to a decrease); *United Tel. Co. of Florida v. Mann*, 403 So.2d 962 (Fla.1981); *Grindstone Butte Mut. Canal Co. v. Idaho Power Co.*, 98 Idaho 860, 574 P.2d 902, 906 (1978) (implied in an on-going investigation is the power to set temporary rates); see also *Potomac Elec. Power Co. v. Public Serv. Comm'n of Dist. of Columbia*, 457 A.2d 776, 780 n. 1 (D.C.App.1983) (Commission's power to grant interim rate increases is "implied from Commission's specifically granted statutory powers"). AS 42.05.141(a)(1)...[120] (emphases supplied)

In the 1977 case of *Public Utility Commission of Texas et al. v. City of Corpus Christi*, a public utility commission and a power company appealed the decision of a lower court enjoining the commission from enforcing an interim rate order and enjoining the power company from imposing the rates arising from such order.[121] The appellate court ruled in favor of the commission and the power company, holding that the power of the commission to set interim rates "is a power necessarily inferred from or incidental to the express power to fix a permanent rate." [122] The court stressed that this position has been consistently upheld in other states.[123]

In the case of *State ex rel. Laclede Gas Co. v. Public Service Commission of Missouri*, the issue before the Missouri Court of Appeals was whether the Laclede Gas Company should have been granted an interim rate increase by the Public Service Commission of Missouri pending the latter's determination of whether a permanent rate increase should be allowed. The Court noted that the question presented was a recurring one of great public concern requiring its consideration even though the Commission subsequently granted a permanent increase. The Court explained the well-established doctrine of implied interim rate-making powers, viz:

The very real necessity of recognizing such a power in the regulatory agency has long been recognized by courts throughout the country. Not a single case has been cited by Jackson County nor found by independent research which has ever denied such a power to a regulatory agency such as the Missouri Public Service Commission. On the other hand, numerous cases from diverse jurisdictions have recognized and given effect to such an implied power even in the absence of specific statutory authority: *Omaha & C.B. St. Ry. Co. v. Nebraska State Railway Commission*, 103 Neb. 695, 173 N.W. 690 (1919) (decided prior to the present Nebraska statute expressly authorizing temporary increases in an emergency); *Muskogee Gas & Electric Co. v. State*, 81 Okl. 176, 186 P. 730 (1920), *City of Bartlesville v. Corporation Commission*, 82 Okl. 160, 199 P. 396 (1921), and *Oklahoma Gas & Electric Co. v. State Corporation Commission*, 83 Okl. 281, 201 P. 505 (1921) (decided in the absence of any statute granting express power to make interim increases); *State ex rel. Puget Sound Navigation Co. v. Department of Transportation of Washington*, 33 Wash.2d 448, 206 P.2d 456 (banc 1949) (without reliance upon any specific statutory power); *Chesapeake & Potomac Tel. Co. v. Public Service Commission*, 330 A.2d 236 (D.C.App.1974) (authority found solely by implication); *City of New York v. New York Telephone Co.*, 115 Misc. 262, 189 N.Y.S. 701 (1921) (decided before the adoption of the present New York statute specifically authorizing temporary increases); *State ex rel. Utilities Commission v. Morgan*, 16 N.C.App. 445, 192 S.E.2d 842 (1972) and *State ex rel. Utilities Commission v. Edmisten*, 26 N.C.App. 662, 217 S.E.2d 201 (1975) (decided under a file and suspend statute substantially similar to that of Missouri and with no provision expressly permitting temporary rates); *Southern Bell Telephone & Telegraph Co. v. Bevis*, 279 So.2d 285 (Fla.1973) (decided before adoption of the present Florida statute specifically authorizing interim increases); *Federal Power Commission v. Tennessee Gas Transmission Co.*, 371 U.S. 145, 150, 83 S.Ct. 211, 9 L.Ed.2d 199 (1962). [124] (emphases supplied)

The rationale for this position is best explained in the case of *Muskogee Gas and Electric Company v. State*, viz:

The power lodged in the commission to promulgate rates is a legislative power, and its exercise by the commission involves legislative discretion and policy. Any rule that would require the commission, before it promulgates any order fixing a rate, to have before it evidence that would establish to a mathematical certainty the reasonableness of the proposed rate, would greatly hinder, if not almost entirely prevent, the commission from exercising that power.[125] (emphases supplied)

In *Muskogee*, the temporary rate schedules for electric service for Muskogee and Ft. Gibson issued by the Corporation Commission was challenged as it was temporary and experimental and was put into effect only until such time as the commission could secure data upon which to make a valuation of the property of the company and prescribe a permanent rate schedule. In ruling for the public utility, the Court described the danger arising from a situation where a “defanged” regulator has no power to grant provisional relief:

The first contention strikes at the very foundation of the fundamental law creating the commission and defining its duties, and, if sustained, must work a result quite as surprising and disastrous to the appellant as to the patrons of the company and the general public, for, if the commission were limited to prescribing rates to instances where it had made a complete inventory and valuation, there could be little or no relief from rapidly fluctuating prices brought about by war conditions and incident to the reconstruction period.

This contention of the appellant fails to take into consideration the purpose for which the commission was created and the powers conferred upon it through the Constitution and the laws enacted by the Legislature. [126] (emphases supplied)

In the Philippines, interim rate-regulation has been consistently recognized. The statutory history of Philippine electric power regulation discussed earlier shows that public utility regulators have always had statutory authority to grant provisional relief. As early as 1926, in the case of *Madrigal y Compania et al. v. Cui*, G.R. No. 19829, November 28, 1922, the Court recognized the power of the Public Utility Commission to grant temporary rate increases to ship owners transporting freight and passengers. The power of public utility regulators to grant interim rate increases has also been shown in various regulated industries such as those relating to electric power distribution,[127] petroleum products,[128] telecommunication services,[129] and toll rates.[130] In terms of provisional relief not related to rate-setting, the Court has upheld the power of the public utility regulators to grant temporary permits in favor of ice plant operators,[131] auto-truck operators,[132] and public utility vehicle operations.[133]

As shown by the foregoing discussions, the power to fix interim rates is necessarily implied from the power to fix permanent rates, hence, the absence of an express statutory provision in the EPIRA does not negate the ERC’s power to fix interim rates.

It is given that the ERC has the power to fix rates of distribution utilities, such as Meralco, under the EPIRA by virtue of the following provisions:

Sec. 25. Retail Rate. – The retail rates charged by distribution utilities for the supply of electricity in their captive market shall be subject to regulation by the ERC based on the principle of full recovery of prudent and reasonable economic costs incurred, or such other principles that will promote efficiency as may be determined by the ERC...(emphasis supplied)

Sec. 43. Functions of the ERC. — The ERC shall promote competition, encourage market development, ensure customer choice and 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:

xxx xxx xxx

(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 rate 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...

xxx xxx xxx

(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. (emphases supplied)

In fact, Section 25, *supra*, does not even distinguish between final and temporary rates. Hence, this provision can be read as a broad grant of power to the ERC to fix final and interim rates.

But even granting *arguendo* that the above-cited provisions of the EPIRA only contemplate the fixing of permanent rates, the unbending doctrine set forth in the cases discussed earlier (*Far North Sanitation, Inc. v. Alaska Public Utilities*,^[134] *Public Utility Commission of Texas v. City of Corpus Christi*,^[135] *State ex. Rel. Laclede Gas Co. v. Public Service Commission of Missouri* and *AFC Industries, Inc.*,^[136] and *Muskogee Gas and Elec. Co. v. State*^[137]) holds that a Commission's authority to grant interim rates is necessarily implied from the express authority to regulate rates and supervise public utilities.^[138]

There is no reason to move away from the principle that when the legislature delegates express powers to an administrative body, all incidental powers necessary to implement such express powers are also deemed delegated. As well stated in *Matienzo v. Abellera*, *viz*:

It is a settled principle of law that in determining whether a board or commission has a certain power, the authority given should be liberally construed in the light of the purposes for which it was created, and that which is incidentally necessary to a full implementation of the legislative intent should be upheld as being germane to the law. Necessarily, too, where the end is required, the appropriate means are deemed given...^[139] (emphasis supplied)

Effective utility regulation requires that a responsive regulator should be able to swiftly and flexibly respond to the exigencies of the times. As explained in *Ft. S. & W. Ry. Co. v. State*:

Any rule that would require the commission, before it promulgates any order fixing a rate, to have before it evidence that would establish to a mathematical certainty the reasonableness of the proposed rate, would greatly hinder, if not almost entirely prevent, the commission from exercising that power. ^[140] (emphasis supplied)

The dangers emanating from a regulatory environment with a toothless regulator is illustrated by the Court of Appeals of Missouri in *State ex. rel. Laclede Gas Co. v. Public Service Commission of Missouri* and *AFC*

Industries, Inc., to wit:

The ravaging inflation of the past few years has demonstrated the practical need for this power.[141] A striking example of the necessity for granting this type of emergency relief to a utility was demonstrated in Sho-Me Power Corp., Case No. 17,381 (1972), in which the Commission allowed an interim rate increase where the applicant was operating at a loss of over \$70,000 per month and where it had paid no dividends for a period of five years. So also in the Missouri Power & Light Co. case, No. 17,815 (1973), the Commission found it appropriate to grant an interim rate increase to halt a deteriorating financial situation which constituted a threat to the company's ability to render adequate service. [142] (footnote supplied)

These clear dangers also stare at us in our own regulatory environment. Our economic history teaches us that the Philippines is vulnerable to the rapid fluctuations in the exchange rate. In recent years, we saw how numerous industries failed to survive the Asian financial crisis fueled by the uncertainties of exchange rates. All these have had adverse financial impact on public utilities such as Meralco in terms of skyrocketing costs of debt servicing, and maintenance and operating expenses. A regulator such as the ERC should have sufficient power to respond in real time to changes wrought by the multifarious factors affecting public utilities.

This is not all. The transferability clause of the EPIRA can lead to no other conclusion that the powers of the ERB, the predecessor of the ERC, have been transferred to the ERC.

SECTION 44. Transfer of Powers and Functions. - The powers and functions of the Energy Regulatory Board not inconsistent with the provisions of this Act are hereby transferred to the ERC. The foregoing transfer of powers and functions shall include all applicable funds and appropriations, records, equipment, property and personnel as may be necessary. [143] (emphasis supplied)

It is undisputed that the ERB had the power to grant provisional relief:

SECTION 8. Authority to Grant Provisional Relief. - The Board may, upon the filing of an application, petition or complaint or at any stage thereafter and without prior hearing, on the basis of supporting papers duly verified or authenticated, grant provisional relief on motion of a party in the case or on its own initiative, without prejudice to a final decision after hearing, should the Board find that the pleadings, together with such affidavits, documents and other evidence which may be submitted in support of the motion, substantially support the provisional order: Provided, That the Board shall immediately schedule and conduct a hearing thereon within thirty (30) days thereafter, upon publication and notice to all affected parties.[144]

The next question is whether such power to grant provisional relief is inconsistent with the other provisions of the EPIRA. The petitioners argue that the power to grant provisional rate adjustments is inconsistent with the EPIRA.[145] They contend that the inconsistency lies in the declaration of policy of the EPIRA “to protect the public interest as it is affected by the rates and services of electric and other providers of electric power” and Section 75 of the law requiring a statutory construction in favor of “people empowerment so that the widest participation of the people, whether directly or indirectly, is ensured” vis-à-vis an interpretation to the effect that the powers transferred to the ERC include the power to issue provisional orders.[146] They submit that the power to issue provisional orders would defeat the policy of the law to protect and empower the public as such power would limit the public’s right to due process and would be in derogation of the ERC’s responsibility of protecting public interest regarding utility rates. This reveals an unjustified mindset against interim rate-making. It would appear that interim rate-making is viewed as undesirable per se. I respectfully submit, however, that the protection of public interest in utility rate-regulation and the public’s right to due process are not mutually exclusive with the regulatory body’s power to grant interim rates. Exercised properly, interim rate-making can ensure that the public utility remains viable yet its service to the consuming public is unimpaired. Interim rate-making is no hobgoblin which will gobble up unwary consumers. In the context of proper public utility regulation, this power is meant to

allow the regulator sufficient leeway to act under exigent circumstances.

Further, an examination of the intent of the law supports the thesis that the legislators did not intend to clip the powers of the ERC. One of the EPIRA's policies is to establish a strong and purely independent regulatory body and system to ensure consumer protection.[147] Hence it is illogical to deny the ERC's power to conduct interim rate-regulation because the inability of the ERC to respond to the needs of public utility services would subvert the policy of the law to protect public interest under any and all circumstances.

Accordingly, since the ERC has authority to grant interim rates under EPIRA, then Section 4 (e), Rule 3 of the EPIRA's Implementing Rules and Regulations on the ERC's power to provisionally grant applications for rate adjustment is valid. This provision in the Implementing Rules and Regulations is pursuant to the Department of Energy's mandate to formulate such rules and regulations as may be necessary to implement the objectives of the EPIRA.[148] This is also consistent with the doctrine of subordinate legislation as explained in the case of *Free Telephone Workers' Union v. Minister of Labor*:

Accordingly, with the growing complexity of modern life, the multiplication of the subjects of governmental regulation, and the increased difficulty of administering the laws, there is a constantly growing tendency toward the delegation of greater powers by the legislature and toward the approval of the practice by the courts. Consistency with the conceptual approach requires the reminder that what is delegated is authority non-legislative in character, the completeness of the statute when it leaves the hands of Congress being assumed...Thus from Justice J.B.L. Reyes in *People v. Exconde*: It is well established in this jurisdiction that, while the making of laws is a non-delegable activity that corresponds exclusively to Congress, nevertheless the latter may constitutionally delegate authority to promulgate rules and regulations to implement a given legislation and effectuate its policies, for the reason that the legislature often finds it impracticable (if not impossible) to anticipate and provide for the multifarious and complex situations that may be met in carrying the law into effect. All that is required is that the regulation should be germane to the objects and purposes of the law; that the regulation be not in contradiction with it; but conform to the standards that the law prescribes. [149] (emphasis supplied)

VI. Summation

On the issue of whether the ERC has legal authority to grant provisional rate adjustments under the EPIRA law, I concur with the majority. The ERC has authority to grant provisional adjustments by virtue of the express transfer from the ERB to the ERC of the former's power to grant provisional relief, the doctrine that interim rate-regulation is implied from or incidental to the express power to fix a permanent rate, the broad provisions of the EPIRA which make no distinction between interim or permanent rate-regulation, and the intent of the EPIRA and rate-regulation. Further, the provisional relief may be granted even prior to a full hearing without violating the requirements of due process.

On the issue of whether the grant by the ERC of the provisional rate adjustment to Meralco was done with grave abuse of discretion amounting to lack or excess of jurisdiction, I respectfully dissent from the majority. First, there was no violation of the procedure set forth in the EPIRA's Implementing Rules and Regulation when ERC issued its Questioned Order. The public was duly notified of Meralco's application and was able to assail its legality and propriety in a public hearing before the effectivity of the Questioned Order. Second, the issuance of ex-parte orders is universally recognized as a legitimate exercise of the police power of the State and should not be niggardly construed. Third, it is premature for the Court to strike down the Questioned Order since it is merely provisional and pending reconsideration before the ERC. The Court should allow the unimpeded flow of the effective and available administrative remedy before the ERC. Hence, the case at bar should be remanded to the ERC, which should be allowed to resolve the pending motions assailing the propriety of the provisional rate increase in favor of Meralco, especially its factual bases.

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- [1] Application of Meralco dated October 8, 2003; Rollo, p. 33.
- [2] Comment of the ERC dated January 26, 2004, p. 15; Rollo, p. 372; and Memorandum of Meralco dated February 16, 2004, p. 29; Rollo, p. 680.
- [3] Comment of the ERC dated January 26, 2004, p. 15; Rollo, p. 372.
- [4] Comment of the Office of the Solicitor General (OSG) dated January 23, 2004, p. 7; Rollo, p. 388.
- [5] Id.
- [6] Id.
- [7] Id.
- [8] Id., Annex 1.
- [9] Id. at 8.
- [10] Id., Annex 2.
- [11] Id., Annex 3.
- [12] Id.
- [13] Motion for Production of Documents of FDC, et al., filed with the ERC on November 25, 2003 and stamped received by the ERC's Legal Service Department on November 27, 2003; Rollo, p. 54.
- [14] The ERC subsequently issued another Order on January 9, 2004 clarifying that the provisional rate increase granted in the Questioned Order should apply to consumptions beginning January 1, 2004.
- [15] Order of the ERC dated November 27, 2003, pp. 8-9; Rollo, pp. 25-26.
- [16] Comment of the OSG, dated January 23, 2004, p. 14, Annex 6; Rollo, p. 395.
- [17] Id. at 15, Annex 7.
- [18] Id., Annexes 8 and 9.
- [19] Id., Annex 10.
- [20] Id. at 16, Annexes 11 and 12.
- [21] Id., Annex 13.
- [22] Id. at 16 and 17, Annexes 14 and 15. Atty. Estrada filed a Supplemental Motion for Production of Documents on December 16, 2003, Annex 16.
- [23] Comment of Meralco dated December 17, 2003; Rollo, p. 503.
- [24] Id. at 17, Annex 18.
- [25] Id. at 17, Annex 19.
- [26] Memorandum of BAYAN, KMU, GABRIELA, KADAMAY and AGHAM dated November 27, 2003, p. 3; Rollo, p. 626.
- [27] Petition of FDC, et al., dated December 23, 2003, p. 4; Rollo, p. 6.

- [28] Urgent Motion to Grant Restraining or Status Quo Order of FDC, et al., dated December 29, 2003; Rollo, p. 57.
- [29] Comment of the OSG dated January 23, 2004, p. 18, Annex 20; Rollo, p. 399.
- [30] Resolution of the Supreme Court En Banc dated January 13, 2004; Rollo, unnumbered.
- [31] Comment of the OSG dated January 23, 2004, p. 19, Annex 21; Rollo, p. 401.
- [32] Id. at 19, Annexes 22 and 23.
- [33] Id., Annex 24.
- [34] Id. at 20, Annex 27.
- [35] Id. at 19 and 20, Annexes 25 and 26.
- [36] Id. at 20, Annex 28.
- [37] Memorandum of the OSG dated February 16, 2003, p. 12; Rollo, p. 885.
- [38] Id.
- [39] Id. at 13.
- [40] Bagong Alyansang Makabayan (BAYAN), Bayan Muna Partylist, Kilusang Mayo Uno (KMU), Gabriela Women's Partylist, Anakpawis Partylist, Kalipunan ng Damayang Mahihirap (KADAMAY), and Samahan ng Nagtataguyod ng Agham at Teknolohiya Para sa Sambayanan (AGHAM).
- [41] Rollo, pp. 621-622.
- [42] The Memorandum of petitioners FDC, Ana Maria Nemenzo as President of FDC, Ma. Teresa I. Diokno-Pascual, Rep. Loretta Ann Rosales (Partylist Akbayan), Rep. Jose Virgilio Bautista (Partylist Sanlakas), and Rep. Renato Magtubo (Partylist Manggagawa), was filed on February 24, 2004 after two Motions for Extension of Time to File Memorandum were filed with the Court on February 17, 2004 and February 20, 2004.
- [43] The Urgent Motion to Resolve Pending Motions of the Office of the Solicitor General dated January 28, 2004, attached as Annex A of the Memorandum of the Office of the Solicitor General dated February 16, 2004 enumerates these pending motions; Rollo, p. 928. Note that Atty. Ruperto J. Estrada's Motion for Production of Documents dated December 15, 2003 has been resolved by the ERC in an Order dated January 26, 2004. A copy of this order is attached as Annex 2 of the Manifestation of Meralco dated February 25, 2004; Rollo (temporary), unnumbered.
- [44] Comment of the Office of the Solicitor General dated January 23, 2004, Annex 7.
- [45] Id., Annex 8. Note that the various Motions for Production of Documents filed by NASECORE, FDC, Atty. Ruperto Estrada and The Philippine Consumers Welfare Union have been resolved by the ERC in an Order dated January 26, 2004. A copy of this order is attached as Annex 2 of the Manifestation of Meralco dated February 25, 2004; Rollo (temporary), unnumbered.
- [46] Comment of the Office of the Solicitor General dated January 23, 2004, Annex 9.
- [47] Id., Annex 10.
- [48] Id., Annex 12.

- [49] Id., Annex 13.
- [50] Id., Annex 14.
- [51] Id., Annex 18.
- [52] Id., Annex 19.
- [53] Id., Annex 21.
- [54] Id., Annex 23.
- [55] Id., Annex 24.
- [56] Commonwealth Act No. 146, as amended, Section 13.
- [57] Id., Section 16 (c).
- [58] Presidential Decree No. 1206, Section 9.
- [59] Id., Section 11 (e).
- [60] Executive Order No. 172, Section 4 (a).
- [61] Id., Section 8.
- [62] EPIRA, Section 3.
- [63] Id., Section 2 (j).
- [64] Id., Section 38.
- [65] Id., Section 44.
- [66] Rollo, pp. 753-754.
- [67] Memorandum of the ERC dated February 14, 2004, p. 49; Rollo, p. 740.
- [68] Memorandum of the OSG dated February 16, 2004, p. 42; Rollo, p. 915.
- [69] Id. at 32; Rollo, p. 683.
- [70] Section 4 (e), Rule 3, EPIRA Implementing Rules and Regulations.
- [71] Appeal of the Office of the Consumer Advocate (New Hampshire Public Utilities Commission), 597 A. 2d 528 (1991).
- [72] Woll, Peter, Administrative Law: The Informal Process (1963), pp. 7-8.
- [73] De Leon, Hector, Administrative Law, 2nd edition (1993), p. 12.
- [74] Woll, Peter, Administrative Law: The Informal Process (1963), p. 5.
- [75] Id. at 29.
- [76] Id. at 25.
- [77] Davis, Kenneth Culp, Handbook on Administrative Law (1951), p. 260.
- [78] Id.

[79] Schwartz, Bernard, *Constitutional Law: A Textbook* (1972), p. 43.

[80] *Id.*

[81] *Id.* citing *Miller v. Board of Public Works*, 234 Pac. 381 (1925).

[82] *Id.* at 44.

[83] *Id.* citing *Noble State Bank v. Haskell*, 219 U.S. 104 (1911).

[84] *Id.* at 45, citing *People v. Willi*, 179 N.Y. Supp. 542 (1919).

[85] Urgent Motion to Resolve Motion for Production of Documents and Opposition to the Provisional Authority of NASECORE, attached as Annex 8 of the Comment of the Office of the Solicitor General dated January 23, 2004, pp. 2-3; Rollo, pp. 473-474; Letter of the National Consumers Affairs Council dated December 5, 2003 seeking reconsideration of the provisional authority, p. 1; Rollo, p. 478; Manifestation Joining the National Association of Electricity Consumers for Reforms, Inc. in its Opposition to the Provisional Authority and Motion for Production of Documents of Philippine Consumers Watch (Bantay Mamamayan) Foundation dated December 12, 2003, attached as Annex 12 of the Comment of the Office of the Solicitor General dated January 23, 2004, p. 2; Rollo, p. 484.

[86] Urgent Motion to Resolve Motion for Production of Documents and Opposition to the Provisional Authority of NASECORE, attached as Annex 8 of the Comment of the Office of the Solicitor General dated January 23, 2004, pp. 3; Rollo, p. 474; Letter of the National Consumers Affairs Council dated December 5, 2003 seeking reconsideration of the provisional authority, p. 1; Rollo, p. 478.

[87] Urgent Motion to Resolve Motion for Production of Documents and Opposition to the Provisional Authority of NASECORE, attached as Annex 8 of the Comment of the Office of the Solicitor General dated January 23, 2004, p. 4; Rollo, p. 475; Letter of the Federation of Philippine Industries, Inc. dated December 4, 2003, p. 1; Rollo, p. 480. *Id.* at 4; Rollo, p. 475.

[88] Urgent Motion to Resolve Motion for Production of Documents and Opposition to the Provisional Authority of NASECORE, attached as Annex 8 of the Comment of the Office of the Solicitor General dated January 23, 2004, p. 4; Rollo, p. 475.

[89] *Id.*

[90] *Id.*

[91] Letter of the Federation of Philippine Industries, Inc. dated December 4, 2003, attached as Annex 10 of the Comment of the Office of the Solicitor General dated January 23, 2004; Rollo, p. 480; and Petition to Suspend the Granting of Electric Power Increase Against Meralco Company of Juan B. Paqueo III dated December 22, 2003, p. 3; Rollo, p. 551.

[92] Manifestation Joining NASECORE in its Opposition to the Provisional Authority and Motion for Production of Documents of Philippine Consumers Watch (Bantay Mamamayan) Foundation dated December 12, 2003, attached as Annex 12 of the Comment of the Office of the Solicitor General dated January 23, 2004, p. 2; Rollo, p. 484.

[93] Urgent Motion to Suspend Implementation and Motion for Reconsideration of Napocor Industrial Consumers Association (NICAI) dated December 11, 2003, attached as Annex 13 of the Comment of the Office of the Solicitor General dated January 23, 2004, p. 2; Rollo, p. 488.

[94] Id.

[95] Id. at 3; Rollo, p. 489.

[96] Id.

[97] Id.

[98] Id.

[99] Id. at 4; Rollo, p. 490.

[100] Incremental Currency Exchange Rate Adjustment.

[101] Urgent Motion to Suspend Implementation and Motion for Reconsideration of Napocor Industrial Consumers Association (NICAI) dated December 11, 2003, attached as Annex 13 of the Comment of the Office of the Solicitor General dated January 23, 2004, p. 4; Rollo, p. 490.

[102] Opposition of Philippine Consumers Welfare Union dated December 9, 2003, attached as Annex 14 of the Comment of the Office of the Solicitor General dated January 23, 2004, p. 2; Rollo, p. 494.

[103] Electronic mail message of Michael Paca dated December 21, 2003 (and stamped received by the ERC on January 8, 2004) with an attached write-up containing comments on the rate increase, attached as Annex 18 of the Comment of the Office of the Solicitor General dated January 23, 2004, p. 2; Rollo, p. 514.

[104] Id.

[105] Motion for Reconsideration of Genaro C. Lualhati dated December 22, 2003, attached as Annex 19 of the Comment of the Office of the Solicitor General dated January 23, 2004, p. 1; Rollo, p. 516.

[106] Id. at 2; Rollo, p. 517.

[107] Letter of the Philippine Chamber of Commerce and Industry dated December 12, 2003, attached as Annex 21 of the Comment of the Office of the Solicitor General dated January 23, 2004; Rollo, p. 545.

[108] 425 So. 2d 543 (1982).

[109] *Pueblo del Sol Water Company v. Arizona Corporation Commission*, 772 P. 2d 1138 (1988).

[110] Id., citing *Arizona State Corporation Commission v. Mountain States Tel. & Tel. Co.*, 228 P. 2d 749 (1951).

[111] *Potomac Electric Power Company v. Public Service Commission of the District of Columbia*, 457 A. 2d 776 (1983).

[112] *Citizens of the State of Florida v. Public Service Commission and Florida Power Corporation*, 425 So. 2d 534 (1982) and *Florida Power Corporation v. Hawkins*, 367 So. 2d 1011 (1979).

[113] *Louisiana Power and Light Company v. Louisiana Public Service Commission*, 523 So. 2d 850 (1988).

[114] *Muskogee Gas and Electric Company v. State*, 186 P. 730 (1920).

[115] *Far North Sanitation, Inc. v. Alaska Public Utilities, Inc.*, 825 P. 2d 867 (1992).

[116] *Chesapeake and Potomac Telephone Co. v. Public Service Commission of the District of Columbia*, 330 A. 2d 236 (1974).

[117] *Application of Kauai Electric. Division of Citizens Utilities Co.*, 590 P. 2d 524 (1978).

[118] State ex. rel. Laclede Gas Co., v. Public Service Commission of Missouri & AFC Industries, Inc., 535 S. W. 2d 561 (1976).

[119] 825 P. 2d 867 (1992).

[120] Id.

[121] 555 S.W.2d 509 (1977).

[122] Id.

[123] The decision cited the following cases: State ex rel. Laclede Gas Co. v. Public Service Commission of Missouri, Mo.App., 535 S.W.2d 561; Muskogee Gas & Elec. Co. v. State, 81 Okl. 176, 186 P. 730, 732; Chicago Rys. Co. v. City of Chicago, 292 Ill. 190, 126 N.E. 585, 590; Omaha & C. B. St. Ry. Co. v. Nebraska State Railway Comm., 103 Neb. 695, 173 N.W. 690; State ex rel. Puget Sound Navigation Co. v. Department of Transportation of Washington, 33 Wash.2d 448, 206 P.2d 456; and Elliott v. Empire Natural Gas Co., 123 Kan. 558, 256 P. 114.

[124] 535 S.W.2d 561 (1976).

[125] 186 P. 730 (1920).

[126] Id.

[127] Republic v. Medina, L-32068, October 4, 1971; and Bautista v. Board of Energy and Meralco, G.R. No. 75016, January 13, 1989.

[128] Citizens' Alliance for Consumer Protection v. Energy Regulatory Board, G.R. Nos. 78888-90, 79501-03, 79590-92, June 23, 1988; Maceda v. Energy Regulatory Board, et al., G.R. Nos. 95203-05 and 95119-21, December 18, 1990.

[129] Radio Communications of the Philippines, et al. v. National Telecommunications Commission and Philippine Long Distance Telephone Company, G.R. No. 66683, April 23, 1990.

[130] Padua v. Rañada, et al., G.R. No. 141949, October 14, 2002.

[131] Javellana v. La Paz Ice Plant Co., G.R. No. 45577, October 30, 1937.

[132] Halili v. De la Cruz, L-3321, May 16, 1951.

[133] Matienzo v. Abellera, L-45839, June 1, 1988.

[134] 858 P.2d. 867 (1992).

[135] 555 S.W.2d 509 (1977).

[136] 535 S.W.2d 561 (1976).

[137] 186 P. 730 (1920).

[138] See Potomac Electric Power Company v. Public Service Commission of the District of Columbia, 457 A.2d 776 (1983); City of Pittsburgh v. Pennsylvania Public Utility Commission, 423 A.2d 424 (1980); Grindstone Butte Mutual Canal Co. v. Idaho Power Co., 574 P.2d 902 (1978); Chesapeake and Potomac Telephone Co. v. Public Service Commission, 330 A.2d 236 (1974); Pueblo del Sol Water Company v. Arizona Corporation Commission, 772 P.2d 1138 (1988); Application of Kauia Elec. Division of Citizens Utilities Co., 590 P.2d 524

(1978); *Kansas-Nebraska Natural Gas Company, Inc. v. The State Corporate Commission of the State of Kansas*, 538 P.2d 702 (1975); and *Oklahoma Gas and Electric Co. v. State Corporation Commission*, 201 P. 505 (1921).

[139] G.R. No. L-45839, June 1, 1988.

[140] 108 P. 407 (1910).

[141] Referring to the power to grant interim rate increases.

[142] 535 S.W.2d 561 (1976).

[143] EPIRA.

[144] Executive Order No. 172 (1987).

[145] *Petition of FDC, et al.*, dated December 23, 2003, p. 6; *Rollo*, p. 8.

[146] *Id.* at 21.

[147] Section 2 (j), EPIRA.

[148] Section 37 (p), EPIRA.

[149] G.R. No. 58184, October 30, 1981.

CONCURRING AND DISSENTING OPINION

AUSTRIA-MARTINEZ, J.:

I concur with the majority opinion insofar as it rules that the petition should be granted, as the provisional order of November 27, 2003 was issued by the ERC with grave abuse of discretion. I do not agree, however, with its position that the ERC has the inherent power to provisionally grant an application for rate adjustment.

FIRST ISSUE

WHETHER OR NOT THE ERC HAS THE LEGAL AUTHORITY TO GRANT PROVISIONAL RATE ADJUSTMENTS UNDER THE EPIRA

The ERC's authority to fix rates is a non-issue in this case. The power to fix temporary rates, however, is.

The thrust of the majority opinion is that the provisional ratemaking power of the ERC is necessarily implied from its power to fix permanent rates, hence the absence of an express provision in the EPIRA does not negate the existence of such power.

With all due respect, however, I believe that whatever provisional ratemaking power the ERC possess must emanate from the law that created it, the EPIRA.

The Energy Regulatory Commission (ERC), the Public Service Commission (PSC), the Energy Regulatory Board (ERB), and all other regulatory bodies for that matter, are mere creatures of the legislature. As such, the nature and extent of their powers are derived from the respective statutes that created them. Thus, it is stated:

Being creatures of the legislature, administrative agencies have no general, inherent or common-law powers, but only those powers conferred upon them by the legislature. Apart from the instances in which an administrative agency is created and empowered by a provision of a state constitution or an executive order, the source of powers of administrative agencies lies in statutes, and administrative agencies must find within statutes warrant for the exercise of any authority which they claim. Absent a constitutional provision,

administrative agencies derive their authority from (1) the enabling legislation that mandates the particular agency's function and grants powers, and (2) from general laws affecting administrative bodies.[1] (Emphasis supplied)

In the same wise, it is said that:

Public Service Commissions are administrative agencies generally empowered to regulate public utilities, which are business organizations which regularly supply the public with some commodity or service, such as electricity, water, gas, and telephone service. Public Service Commissions have no inherent power; all of their power and jurisdiction must be found within the statutory or constitutional provisions creating them. The essence of the power of Public Service Commissions is regulatory. Among the typical powers are setting rates, promulgating regulations, collecting information, and processing complaints.[2] (Emphasis supplied)

The ERC "has no life except as life is given by the Legislature." [3]

The EPIRA lays down the multifaceted role of the ERC in the regulation of the electric power industry. Particularly, Section 43 thereof, which exhaustively enumerates the functions of the ERC, is explicit in setting forth the various key functions of the ERC in relation to its administrative, regulatory and quasi-judicial responsibilities. It is the legislature's unequivocal expression of its intent to limit the powers of the ERC to those specified in said section. With regard to its ratemaking power, the last paragraph of Section 43 demonstrates the legislature's intent for the ERC to exercise its delegated power of setting just and reasonable rates, provided it conforms with the procedural mandates of publication, notice and hearing. There is no proviso, or even a whisper, in Section 43 or in any other provisions of the EPIRA which indicates the legislature's intent to endow the ERC with authority to issue provisional orders for rate adjustments.

Expressio unius est exclusio alterius, the express inclusion of one implies the exclusion of all others.[4]

The rule of expressio unius est exclusio alterius is formulated in a number of ways. One variation of the rule is the principle that what is expressed puts an end to that which is implied. Expressum facit cessare tacitum. Thus, where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to other matters.

...

The rule of expressio unius est exclusio alterius and its variations are canons of restrictive interpretation. They are based on the rules of logic and the natural workings of the human mind. They are predicated upon one's own voluntary act and not upon that of others. They proceed from the premise that the legislature would not have made specified enumeration in a statute had the intention been not to restrict its meaning and confine its terms to those expressly mentioned.[5] (Emphasis supplied)

In *South Central Bell Telephone Company vs. Tennessee Public Service Commission*, [6] the Tennessee appellate court used the same principle of statutory construction when it reversed the Tennessee Public Service Commission's order requiring the plaintiff telephone company to refund to its customers certain sums collected by them pursuant to the commission's prior order granting a temporary increase of rates conditioned on a refund. The Tennessee court ruled:

Upon a study of the applicable statutes, especially TCA §65-5-203, this Court concludes that the Legislature never intended to extend retroactive rate-making power (ordering refunds) beyond that expressly

stated in §65-5-203. This is supported by the maxim of *Inclusio Unius est Exclusio Alterius*. The express inclusion of one (person or thing) (implies) the exclusion of all others. The cited statute provides for a narrowly circumscribed power to grant tentative rates under bond for a limited time under emergency circumstances which were not found by the Commission and are not shown in this case. It must therefore be

presumed that:

(1)

the Legislature considered that the Commission had no general or inherent power to set tentative rates subject to refund, else the special grant of power would have been unnecessary;

(2)

if the Legislature had intended that the Commission have broader powers than those conferred, the statute would have been composed in broader terms. (Emphasis supplied)

Clearly, therefore, the authority to issue provisional orders of rate adjustments cannot be considered as one of the powers that the legislature intended the ERC to possess, for if it were intention of the lawmakers, there would not have been a black hole in the law, so to speak.

Corollary to this is the doctrine of *casus omisus pro omisso habendus est*, or that a person, object or thing omitted from an enumeration must be held to have been omitted intentionally.[7] Simply put, the absence of such statutory power shows that the legislature undeniably intended the withdrawal of such authority from the ERC. To declare otherwise would be supplanting what the legislature intentionally omitted. The Court should not tread the perilous waters of judicial legislation and arrogate unto itself the duty of supplying what has been omitted by the legislature.[8]

The ERC's predecessors -- the Public Service Commission (PSC), the Board of Energy (BOE) and the Energy Regulatory Board (ERB), and the laws that created them -- C.A. No. 146, P.D. No. 1206 and E.O. No. 172, explicitly provided for the regulatory body's provisional ratemaking authority.

Thus, Section 16 (c) of C.A. No. 146 expressly vested the PSC with the power to fix rates and issue provisional orders. When, by virtue of P.D. No. 1206, the BOE replaced the PSC and the Oil Industry Commission (OIC) in the regulation of the power and energy industry, it was likewise expressly given the same provisional authority. The last paragraph of Section 9 of P.D. No. 1206, provided that Sections 11 and 12 of R.A. No. 6173,[9] as amended by P.D. No. 1128, shall govern the proceedings before the board, including the authority to grant provisional relief.[10] While Section 11 expressly provided for the transfer of powers of the abolished agencies to the Board of Energy,[11] yet the legislature in Section 12 still provided for a specific authority to grant provisional relief items.

In like manner, when the ERB replaced the BOE, the authority to grant provisional relief by the ERB was again specifically stated in Section 8 of E.O. No. 172, notwithstanding the fact that E.O. No. 172 also expressly provided for the transfer of powers of the BOE to the ERB.[12]

On the other hand, the EPIRA is devoid of any indication, express or otherwise, of the legislature's intent to endow the ERC with authority to issue provisional orders for rate adjustments. We cannot simply ignore this omission and assume that such provisional ratemaking power is inherent in the ERC's functions. The power to fix prices and make rates cannot be conferred by implication, but must be conferred under statutory or constitutional language that is free from doubt, and admits of no other reasonable construction.[13]

Neither could it be implied that Section 44 of the EPIRA, which provides for the transfer of powers of the former ERB to the ERC, includes the power to issue provisional orders. Said section is not enough to provide sufficient basis by way of implication that the ERC has a provisional rate-making power. As clearly provided by Section 44 itself, the powers and functions of the ERB that are transferred to the ERC are only those that conform with the provisions of the EPIRA. Considering that the EPIRA does not contain the authority to grant provisional rates, it

follows then that to insist that the ERC has such authority, would be to grant ERC an authority that would be inconsistent with the EPIRA. As clearly discussed earlier, administrative agencies, like the ERC, have no general or inherent powers except those expressly granted to them by law.

Moreover, under Section 2 (f) of the EPIRA, one of the declared policies of the law is “to protect the public interest as it is affected by the rates and services of electric and other providers of electric power.” Another significant provision of the EPIRA is Section 75, which circumscribes a statutory interpretation in favor of people empowerment and participation.

In light of the rule that statutes in the derogation of common or general rights are strictly construed and rigidly confined to cases clearly within their scope and purpose,[14] an interpretation to the effect that the powers transferred to the ERC include the power to issue provisional orders inevitably defeats the policy of the law to protect and empower the public. Any grant of authority to the ERC to issue provisional orders of rate adjustments is a limitation on the public’s right to due process and in derogation of the ERC’s general responsibility of protecting the public interest regarding utility rates. Hence, it must be strictly construed against the grant of such authority. This is bolstered by the fact that the statutes governing ERC’s forebears – the PSC, the BOE and the ERB – all contain a specific provision on the authority of the regulatory body to grant provisional rates, in addition to the transfer of powers to the successor while the EPIRA does not contain a provision authorizing the ERC to grant provisional rates.

In stark contrast, there is nothing in EPIRA that confers upon the ERC any authority to grant provisional rate adjustments although it provides for the transfer of powers of the ERB to the ERC.

If the provisional ratemaking authority of the ERC is so crucial for the accomplishment of the goals of utility regulation and supervision, then the question that begs to be answered is: why did the legislature omit such allegedly indispensable provisional ratemaking authority? The legislature could have easily crafted the EPIRA to include that authority, but it did not do so; and neither did they include any other provision or section to express the granting of said authority, as were conspicuously done in C.A. No. 146, P.D. No. 1206 and E.O. No. 172.

In enacting a statute, the legislature is presumed to have been aware of, and have taken into account, prior laws on the subject of legislation.[15] This being so, the 11th Congress is presumed to be aware of the existence of the expressed provisional ratemaking power as well as the specific enumeration of other powers of the regulatory bodies under the previous laws. The marked difference in which the legislature treated the rate-making authority of the PSC under C.A. No. 146, the BOE under P.D. No. 1206, the ERB under E.O. No. 172, on the one hand and the ERC under the EPIRA, on the other, in that the latter law does not expressly provide for such authority in favor of the ERC, demonstrates with absolute certainty that, indeed, the legislature did not intend to give such power, nor did it intend that it should be automatically covered by the powers that are transferred from the ERB to the ERC.

MERALCO’s illation on the cases of *Citizens’ Alliance for Consumer Protection vs. ERB, et al.*, *Valmonte vs. ERB*, *KMU Labor Center vs. ERB, et al.*, *Maceda vs. ERB, et al.*, and *Lozano vs. ERB, et al.*, where the Court upheld the power of the ERB to provisionally grant rate adjustments, is misplaced. In all these cases, the Court recognized the power of the ERC to grant provisional relief because it is so expressly provided in Section 8 of E.O. No. 172. Said cases are not applicable to the case at bar for the simple reason that the decisions therein were rendered by the Court at the time when the applicable laws had expressly authorized the ERB to grant provisional rate adjustments. At pain of being repetitious, there is nothing in the EPIRA that bestows upon the ERC any express statutory authority to grant provisional rate adjustments.

Moreover, the EPIRA created a new regulatory body, the ERC, with an entirely new set of powers and functions

necessary to accomplish the regulatory scheme of the law. The EPIRA was enacted by the legislature as a framework for the restructuring of the electric power industry.[16] It divided the electric industry into four sectors, mainly: generation, transmission, distribution and supply.[17] Hence, the EPIRA had the effect of revising the whole statutory system on the electric power industry and substituted a new one in its place. Consequently, except for those that may not be inconsistent with the EPIRA, the previous laws had been considered repealed, and the EPIRA, from then on governs the industry.

The discourse of Agpalo in his book, *Statutory Construction*, is noteworthy, viz.:

The legislative intent to repeal a prior law is also shown by the enactment of a statute revising or codifying the former laws on the whole subject matter. The revised statute or code is in effect a legislative declaration that whatever is embraced in the new statute shall prevail and whatever is excluded therefrom shall be discarded. The revised statute or code, as disclosed by its framework and substance, must be intended to cover the whole subject to be a complete and perfect system in itself in order that the prior statutes or parts thereof which are not repeated in the new statute will be deemed impliedly repealed. Thus, where a statute is revised, or a series of legislative acts on the same subject are revised and consolidated into one, covering the entire field of subject matter, all parts and provisions of the former act or acts that are omitted from the revised act are deemed repealed. The fact that the revised statute or code is all-comprehensive and covers the whole field of a particular subject matter, specially if it provides that all acts inconsistent therewith are repealed, reveals the intent to establish a uniform system of rules and to nullify existing laws on the subject.

It has also been held that where a new statute is intended to furnish the exclusive rule on a certain subject, it repeals by implication the old law on the same subject, or where a new statute covers the whole subject matter of an old law and adds new provisions and make changes, and where such law, whether it be in the form of an amendment or otherwise, is evidently intended to be a revision of the old act, it repeals the old act

by implication. The complete enactment on a subject matter, intended as a substitute for the old statute, may be regarded as the expression of the whole law thereon, and operates as a repeal of the prior statute, although the two statutes are not repugnant.[18] (Emphasis supplied)

In *People vs. Almuete*,[19] aptly cited by petitioner FDC, the Court ruled that a subsequent statute, revising the whole subject matter of a former statute, and evidently intended as a substitute for it, operates to repeal the former statute.[20] The revising statute is in effect a legislative declaration that whatever is embraced in the new statute shall prevail, and whatever is excluded therefrom shall be discarded.[21]

Such doctrine was adopted by the Court in *Alunan III vs. Asuncion*,[22] when it ruled that R.A. No. 6975, creating the Philippine National Police (PNP) superseded R.A. No. 5750, the law governing CIS agents. It was held therein:

Urged by the Constitutional mandate for the establishment and maintenance of one police force, R.A. No. 6975 was promulgated creating the Philippine National Police. The new police force absorbed the members of the former National Police Commission, Philippine Constabulary and Integrated National Police, all three of which were accordingly abolished.

R.A. No. 6975, therefore, had the effect of revising the whole police force system and substituting a new unified one in its place. This, alone, proves that R.A. No. 5750 has already been repealed because a subsequent statute revising the whole subject matter of a former statute, and evidently intended as a substitute for it, operates to repeal the earlier statute. The revising statute is in effect a legislative declaration that whatever is embraced in the new statute shall prevail, and whatever is excluded therefrom is discarded.[23] (Emphasis supplied)

Even Section 80 (Applicability and Repealing Clause) of the EPIRA do not indicate that the provisions of C.A.

No. 146 and E.O. No. 172 continue to have full force and effect insofar as they are not inconsistent with the EPIRA.

As provided by Section 80 itself, the provisions of the pertinent laws that are not inconsistent with the EPIRA shall continue to have full force and effect. It does not necessarily follow that the power to grant provisional rate adjustments is included in such catch-all proviso. These “applicability provisions” could not have referred to the particular provisions giving the PSC and the ERB the statutory authority to grant provisional rate adjustments considering that the lawmakers deliberately deleted said provision in the enactment of the EPIRA. There exists no valid justification why the legislature should make a general reference to what is not inconsistent with EPIRA when the legislature could have provided for the authority to grant provisional rates as what has been done in previous laws creating the predecessors of ERC.

There is no doubt as to the prerogative of the legislature to delegate and confer on administrative bodies particular quasi-judicial powers, as an incident to the performance of regulatory functions. But in so doing, the legislature must state its intention in express terms that is free from ambiguity and leaves no room for interpretation.

P.D. No. 1206, as amended, and E.O. No. 172 likewise contain applicability clauses similar to Section 80 of the EPIRA. But these laws, unlike the EPIRA also expressly provided for the authority of the regulatory bodies to grant provisional rate adjustments. The legislature knew that the ERC’s predecessors all possess provisional ratemaking powers. The existence of these provisions is certainly not lost on the framers of the EPIRA. The fact that P.D. No. 1206 and E.O. No. 172 both expressly granted the BOE and the ERB, respectively, a provisional ratemaking authority, yet not reproduced in the EPIRA is an evident manifestation of the intention of the legislature to limit the ERC’s powers to those enumerated in Section 43 of the EPIRA to the exclusion of all others. To construe Section 80 as including such provisional authority would be extending an authority beyond the ERC’s powers, which the Court does not have the liberty to do as it is evidently not the legislature’s intent.

If the EPIRA is clear in its terms in clothing the ERC with specific administrative, regulatory and quasi-judicial functions, then certainly a conferment of its provisional ratemaking power can not be implied from a mere applicability clause stated in general terms.

Hence, absent an express provision in the EPIRA stating that the ERC has the authority to grant provisional rate adjustments, I believe that the Court cannot uphold the questioned grant of provisional rate adjustment by the ERC. A legislative lacuna cannot be filled by judicial fiat.[24]

Even if we assume that the ERC, indeed, possesses such provisional ratemaking authority, how provisional is provisional? Attention must be brought to the case of *Republic vs. Manila Electric Company*.^[25] In this case, MERALCO’s application for the revision of rate schedules was provisionally granted by the then ERB on January 28, 1994. On February 16, 1998, or more than four (4) years after the provisional grant of the revised rate schedules, the ERB rendered its decision modifying its order of January 28, 1994. The decision of the ERC was brought to the Court of Appeals, and eventually to this Court, which affirmed the ERB’s decision on November 15, 2002. By then, eight years had already elapsed from the time the rate schedule was provisionally granted by the ERB. It need not be belabored that MERALCO is now facing a tight situation wherein it cannot fully implement the order of the Court to refund to the public the billions of pesos it has already collected under such provisional order.

SECOND ISSUE

WHETHER THE GRANT BY THE ERC OF THE PROVISIONAL RATE ADJUSTMENT WAS COMMITTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF

JURISDICTION

Even if we assume for the sake of argument, that the ERC has such legal authority, nevertheless, I concur with the position of the majority that the issuance by the ERC of the questioned Order dated November 27, 2003 is tainted with grave abuse of discretion such that it should be annulled and set aside just the same. Said Order was issued by the ERC in disregard of the due process requirements laid down in the second paragraph, Section 4 (e), Rule 3, of the EPIRA's Implementing Rules and Regulations (IRR).

Since the fixing of rates is essentially legislative in nature, due process of law does not require that interested parties be given notice or an opportunity for a hearing, unless it is expressly so provided by law.[26] But where the fixing of rates is delegated to officers or commissions, the persons or entities affected must be afforded procedural due process appropriate to the nature of the case and consistent with statutory requirements, including, ordinarily, a notice which is adequate and timely under the circumstances, and a hearing which is fair and open, and which comports with due process safeguards.[27]

Section 4 (e), Rule 3 of the IRR provides for the procedure how the ERC may grant provisionally rate adjustment or deny the relief prayed for not later than seventy-five calendar days from the filing of the application, based on the application and the supporting documents attached thereto and such comments or pleadings the consumers or the LGU concerned may have filed within thirty calendar days from receipt of a copy of the application or petition or from the publication thereof as the case may be.

Section 4 (e), Rule 3 of the IRR plainly states that: (1) the ERC has the discretion to provisionally deny or grant the relief prayed for; (2) in assessing the merits of an application for provisional rate adjustment, the ERC is required to consider the application and its supporting documents and such comments or pleadings the consumers or the LGU concerned may have filed; (3) the comments or pleadings must be filed by the interested parties or the LGU concerned within thirty calendar days from receipt of a copy of the application or petition, or from publication of the application or petition, as the case may be; and (4) the ERC has seventy-five days from the filing of the application within which to decide the provisional relief prayed for.

When a statute is clear, it must be taken to mean exactly what it says, and courts have no choice but to see to it that the mandate is obeyed.[28] The rule precludes the ERC from resolving a prayer for a provisional rate adjustment in any other manner than that provided in the implementing rules. This is not an issue of discretion but of duty.

The ERC's discussion in the assailed Order dated November 27, 2003, shows that it solely relied on respondent MERALCO's claims and failed to take into account the oppositors' respective contentions. In fact, as admitted by the ERC during the oral arguments, it did not wait for the comments of the oppositors since it was of the impression that it had the authority to act on MERALCO's application *ex parte*, and there was already a *prima facie* showing that MERALCO was entitled to the relief prayed for.[29] The ERC had seventy-five days from October 10, 2003, or until December 24, 2003, within which to resolve the prayer for provisional relief. It had more than ample time to resolve FDC's motion for production of documents, and await the parties' respective comments on MERALCO's application. The undue haste in which it granted MERALCO's prayer for provisional relief does not speak well of the procedure followed by the ERC. The ERC's failure to accord the oppositors a reasonable opportunity to obtain relevant evidence and present their oppositions or comments on the application, clearly denied them due process of law.[30]

The requirement of due process is not some favor or grace that the ERC may dole out on a bout of whim or on occasion of charity. Rather, it is a statutory right to which the consuming public is entitled.

The ERC should have ruled on petitioner FDC's motion for production of documents, and if it found that the

documents to be produced were not material for the filing of an opposition, then ERC should have declared it to be so categorically. The parties should not have been left in the dark and determine for themselves by inference whether the contentions have been disposed of or not. Considering further the time constraint in the filing of the comments and pleadings, a prompt disposition of the motion for production of documents would have given FDC enough period within which to file its comment or opposition for the ERC to consider in resolving MERALCO's application for a provisional rate adjustment.

It is conceded that the ERC is confronted with the difficult task of balancing the interest of the affected parties. On one hand, it has to promote and encourage market development, and maintain MERALCO's financial integrity, and on the other, it also has to protect public interests. As in the procedure provided by the second paragraph of Rule 3, Section 4 (e) of the IRR, the filing of comments and oppositions to the application are deemed sufficient. In no event is due process to be sacrificed.[31]

Moreover, respondent ERC, through its counsel, admitted during the oral arguments that MERALCO failed to fully comply with the publication requirement of Rule 3, Section 4 (e) of the IRR.[32] It only caused the publication of a mere notice that an application has been filed, and not of the application itself, contrary to the express provisions of said rule.

The requirement of publication in applications for rate adjustments is not without reason or purpose. It is ancillary to the due process requirement of notice and hearing. Its purpose is not merely to inform the consumers that an application for rate adjustment has been filed by the public utility. It is to adequately inform them that an application has been made for the adjustment of the rates being implemented by the public utility in order to afford them the opportunity to be heard and submit their stand as to the propriety and reasonableness of the rates within the period allowed by the Rule. Without the publication of the application, the consumers are left to second-guess the substance and merits of the application.

The publication by respondent MERALCO of a notice that an application for the approval of revised rate schedules and provisional authority will be filed by it falls short of the requirement. The Rule requires the publication of the application or petition for rate adjustment itself. The publication made by MERALCO, obviously, does not sufficiently inform the public of the nature and substance of the application, as intended by the law. If the application or petition were too long and expensive to be published, then, as suggested by the OSG, the material allegations or reasons for the proposed increase and the proposed effective date of increase would have sufficed which MERALCO likewise failed to do.

The ruling in the case of *Beautifont, Inc. vs. Court of Appeals*,[33] cited by the ERC is not applicable in the case at bar. In said case, the questioned provision of R.A. No. 5455 reads:

SEC. 7. Publication and Posting of Notices. — Immediately after the filing of any application under this Act, the Secretary of the Board of Investments shall publish the same at the expense of the applicant once a week for three consecutive weeks in the Official Gazette and in one of the newspapers of general circulation in the province or city where the applicant has its principal office and post copies of said application in conspicuous places, in the office of the Board of Investments or in the building where said office is located, setting forth in such copies the name of the applicant, the business in which it is engaged or proposes to engage or invest, and such other data and information as may be required by the Board of Investments. No approval or certificate shall be valid without the publication and posting of notices as herein provided.

In interpreting this provision, the Court ruled that what must be published and posted by the applicant is an abstract or summary of the application and not the application itself. The Court concluded that other parts of the provision shows that it is the notice of application that is meant to be published and posted, and in fact, the provision itself prescribes the matters to be published, i.e., the name of the applicant, the business in which it is

engaged or proposes to engage or invest, and such other data and information as may be required by the Board of Investments. “There would be no need to itemize these few particulars if it were the application itself that was meant to be published and posted,”[34] the Court stressed.

In contrast, there is no ambiguity in the first paragraph of Rule 3, Section 4 (e) of the EPIRA’s IRR. It clearly states that: “(A)ny application or petition for rate adjustment or for any relief affecting the consumers must be ... accompanied with an acknowledgment of receipt of a copy thereof ... together with the certification of the notice of publication thereof in a newspaper of general circulation in the same locality.” What the Rule requires is a certification of the “notice of publication” of the application or petition and not a certification of the “publication of notice,” as employed in the *Beautifont* case. The term “thereof” as used in the phrase “notice of publication thereof” refers to the application or petition itself for rate adjustment or for any relief, and unlike in the *Beautifont* case, there is nothing in the provision that shows that publication is restricted to a notice that an application has been filed. If the Court were to adopt the ERC’s conclusion, then the purpose of the IRR to adequately inform the consumers would be defeated.

Having failed to conform to the IRR on the publication requirement, the proceedings before the ERC is *ultra vires*. Hence, for this reason, I agree with the majority that the provisional order of rate adjustment is null and void.

[1] Constantino, Hinck, McCarthy and Stull, J.D.s, *Administrative Law*, 2 Am. Jur. 2d *Administrative Law* §55.

[2] *Topliff*, Mary L., J.D., *Public Service Commission’s Implied Authority to Order Refund of Public Utility Revenues*, 41 A.L.R. 5th 783.

[3] *New England Telephone and Telegraph Company vs. Public Utilities Commission et al.*, 362 A.2d 741 (1976).

[4] *Commissioner of Internal Revenue vs. Michael J. Lhuillier Pawnshop, Inc.*, G.R. No. 150947, July 15, 2003; *South Central Bell Tel. Co. vs. Tennessee Public Service Com.* (1984, Tenn App) 675 SW2d 718.

[5] *Malinias vs. Commission on Elections*, G.R. No. 146943, October 4, 2002, 390 SCRA 480, 491.

[6] 675 S.W.2d 718 (1984).

[7] *Commission on Audit of the Province of Cebu vs. Province of Cebu*, G.R. No. 141386, November 29, 2001, 371 SCRA 196, 202.

[8] *Agpalo*, Ruben E., *Statutory Construction* (1995 edition), p. 111, citing *People vs. Garcia*, 85 Phil. 657, 662, 663 (1950); *Morales vs. Subido*, 26 SCRA 150 (1968).

[9] The Oil Industry Commission Act enacted on April 25, 1977.

[10] *Id.*, Section 9, last paragraph.

[11] Section 11, P.D. No. 1206.

[12] Section 4, E.O. No. 172.

[13] *Lemming and Dietz*, J.D.s, 64 Am. Jur. 2d *Public Utilities* § 167, citing *City Public Service Bd. of San Antonio vs. Public Utility Commission of Texas*, 9 S.W. 3d 868 (Tex. App. Austin 2000).

[14] *Republic vs. Sandiganbayan*, G.R. No. 119292, July 31, 1998, 293 SCRA 440, 455-456.

[15] *Miller vs. Mardo and Gonzales*, G.R. No. L-15138, July 31, 1961, 112 Phil. 792, 803, citing *Corominas, et al. vs. Labor Standards Commission, et al.*, 112 Phil. 551.

[16] Rep. Act No. 9136, Section 3.

[17] Id., Section 5.

[18] Third edition (1995), pp. 318-319.

[19] G.R. No. L-26551, February 27, 1976, 69 SCRA 410, 414.

[20] Id., citing 82 C.J.S. 499.

[21] Id., citing 82 C.J.S. 500.

[22] 323 SCRA 623, 627-628 (2000).

[23] Id., citing People vs. Almuete.

[24] Davao Gulf Lumber Corporation vs. Commissioner of Internal Revenue, 293 SCRA 76, 88 (1998).

[25] G.R. No. 141314, November 15, 2002, 391 SCRA 700.

[26] Ibid.

[27] 16D C.J.S. Constitutional Law §1348.

[28] Quisumbing vs. Manila Electric Company, G.R. No. 142943, April 3, 2002, 380 SCRA 195, 206.

[29] TSN, January 27, 2004, p. 308.

[30] Utility Consumer Action Group vs. Public Service Commission, 583 P.2d 605 (1978).

[31] Friends of the Earth vs. Public Service Commission, 254 N.W.2d 299, 78 Wis.2d 388, 21 P.U.R.4th 201 (1977).

[32] TSN, January 27, 2004, p. 300.

[33] G.R. No. L-50141. January 29, 1988, 157 SCRA 491.

[34] Ibid.

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