

MANILA ELECTRIC COMPANY, INC., PETITIONER, VS. GENARO LUALHATI, BAGONG ALYANSANG MAKABAYAN (BAYAN), KILUSANG MAYO UNO (KMU), GABRIELA, KALIPUNAN NG DAMAYANG MAHIHIRAP (KADAMAY),...

G.R. NO. 166769. December 06, 2006

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

These consolidated Petitions for Review under Rule 45 of the Rules of Court, filed by Manila Electric Company, Inc. (MERALCO) and the Energy Regulatory Commission (ERC), seek to nullify and set aside the 22 July 2004 Decision[1] and 24 January 2005 Resolution of the Court of Appeals in CA-G.R. SP No. 77559 which annulled and set aside the ERC Decision dated 20 March 2003 and its Order dated 30 May 2003 in ERC Case Nos. 2001-646 and 2001-900.

The relevant facts of the cases are as follows:

On 14 April 2000, MERALCO filed before the former Energy Regulatory Board (ERB), now the ERC, an "Application for Approval of Revision of Rate Schedules and Appraisal of Properties with Prayer for Provisional Authority" which would result in an increase in its basic charge by about thirty centavos per kilowatt hour (Php 0.30/kwh). The application was docketed as ERB Case No. 2000-57 (later re-docketed as ERC Case No. 2001-646).

The following individuals and organizations opposed the application of MERALCO: Mr. Cesar Escosa and Mr. Genaro Lualhati; the Lawyers Against Monopoly and Poverty; the Alliance of Consumers Against Monopolies (ACAM); the Retired Judges Association of the Philippines; and the National Association of Electricity Consumers for Reforms, Inc. (NASECORE).

The ERB conducted twenty-five hearings on the merits of the application. MERALCO presented seven witnesses, who were cross-examined by the oppositors.

The issues to be resolved by the ERB were the following:

A. MERALCO

- Whether or not the present rates are reasonable vis-à-vis;
 - a) the existing laws and jurisprudence
 - b) the international credit requirements;
- Whether or not its present Return on Rate Base [RORB] adversely affects its cash flow;
- Whether or not its negative cash flow or deficit affects [its] capability to provide reliable, safe and efficient electric service to its customers;

- Whether or not its proposed rate schedules are reasonable; and
- Whether or not it is entitled to a provisional increase in rates.

B. NASECORE

- What is MERALCO's rate base and what are its components;
- What is the income of MERALCO in relation to its RORB;
- Whether or not there is a negative cash flow; and
- What is MERALCO's present RORB.

C. ACAM

- Whether or not the reversal of the decision of the Court of Appeals by the Supreme Court [in G.R. No. 141314] will affect the present application.

D. OFFICE OF THE SOLICITOR GENERAL

- Whether or not MERALCO's rate base is correctly computed; and
- Whether or not MERALCO's depreciation/operating expenses are correctly computed.[2]

While the aforesaid application was still pending, Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001 (EPIRA)," took effect on 26 June 2001. It abolished the ERB and created ERC to succeed the former. Section 36 of EPIRA required all electric distribution utilities to file their application for the unbundling of their rates for the approval of the ERC.

On 30 October 2001, pursuant to Section 36 of EPIRA, the ERC issued an order requiring all electric distribution utilities to file their application for unbundled rates. In compliance thereof, MERALCO filed its application with the ERC for the approval of its unbundled rates[3] and appraisal of its properties. This application also proposed an increase of P1.1228/kwh in MERALCO's electricity rates. Said application was docketed as ERC Case No. 2001-900.

Acting on MERALCO's application for unbundling of rates, the ERC issued an Order and a Notice of Public Hearing setting the case for initial hearing on 11 and 12 March 2002. In the same order, MERALCO was directed to cause the publication of the notice of public hearing at its own expense twice for two successive weeks in two newspapers of nationwide circulation, the last date of publication to be made not later than two weeks before the scheduled date of initial hearing. Furnished with copies of the order and the notice of public hearing were the Office of the Solicitor General (OSG), the Commission on Audit, the Committees on Energy of both Houses of Congress and the Offices of the Municipal/City Mayors within MERALCO's franchise area.

Several oppositors objected to the said application, including Mr. Genaro Lualhati, Bagong Alyansang Makabayan (BAYAN), Kilusang Mayo Uno (KMU), Gabriela, Kalipunan ng Damayang Mahihirap (KADAMAY), and BAYAN MUNA.

On 17 June 2002, the ERC issued an Order consolidating the earlier petition for increase of rate filed by MERALCO in ERC Case No. 2001-646 with the application for rate unbundling, ERC Case No. 2001-900.

After conducting several public hearings with the oppositors having been given opportunity to participate therein, ERC rendered its consolidated Decision which made the following dispositions:

WHEREFORE, the foregoing premises considered, it is hereby decided as follows;

- To approve the unbundled schedule of rates of MERALCO as provided in Annex A of this Decision, to be effective on the next billing cycle after the date of this Decision;

- To approve MERALCO's net utility plant in service at sound value as of December 31, 2000 amounting to P61,649,407,957;

- To order MERALCO:

- a) To discontinue charging the PPA upon effectivity of the approved unbundled rates; any change in the cost of power purchased shall be reflected as deferred charges or credits which shall be recovered through the Generation Rate Adjustment Mechanism (GRAM) approved by the Commission for implementation per ERC Order effective February 24, 2003;

- b) To recover over a three (3) year period an amount equivalent of P0.0875 per kwh and to set up a separate account for facility of monitoring the collection of the total under recovered purchased power costs. A report should be submitted on or before the 20th day of each month on the actual collection of the P5.8B deferred purchased power cost to its customers/consumers and collection will be discontinued immediately upon full recovery thereof;

- c) To bill its respective end-users using a billing format which contains at least the rate elements provided in annex B of this Decision upon effectivity of the approved unbundled rates;

- d) To set the CERA at 12.41% upon effectivity of this Decision until such time that the Commission issues a notice for the implementation of a new CERA;

- e) To submit within six (6) months from date of this Decision;

- i.) A new CERA formula that would be consistent with the new unbundled rate structure to be filed within six (6) months from the effectivity of this Decision;

- ii.) Detailed components of the foreign debt service payments falling due in 2003;

- iii.) Time when such loans were contracted and approved by ERB, if any, for these loan contracts; and

- iv.) Loan details of each contract including utilization of proceeds.

- f) To set up a depreciation fund each year corresponding to the whole amount of depreciation that it has recorded on its books. The setting up of this fund should be done on a monthly basis corresponding to the monthly depreciation. MERALCO is required to strictly account for the expenditures out of this fund which should be used strictly for investment in electric plant and all withdrawals from this fund should be reported to the Commission within thirty (30) days from withdrawal;

- g.) To bill P0.0168/kwh representing the missionary electrification portion of the Universal Charge in accordance with the Decision of the Commission in ERC Case No. 2001-165 (In the Matter of the Petition for the Availments from the Universal Charge the Share for Missionary Electrification, NPC-SPUG, Applicant);

- h) To submit within thirty (30) days from receipt of this Decision detailed and updated information on its affiliates as it affects its electric power business consistent with the requirements of Schedule "G" of the UFR;

- i) To adequately inform the end-users within its franchise area of the approved unbundled rates not later than thirty (30) days after receipt of this Decision;

- j) To submit detailed schedule on discounts granted to MERALCO's officers and employees for their electric bills from 2000 to 2002, and latest approved Collective Bargaining Agreement (CBA);

- k) To submit on or before the 15[th] day of October 2003 a report on policies and procedures for cost cutting measures to be adopted by it.
- l) To submit on or before the 30[th] day of June 2003 and quarterly thereafter, a status report on the results of their negotiations with their IPPs in its effort to bring down its generation costs;
- m) To submit for verification and confirmation purposes on or before the twentieth (20[th]) day of the month following the effectivity of the approved unbundled rates and every month thereafter; a) copy of bills from the generation and transmission companies; and b) M001 and M002 with all related schedules; and
- n) To make a formal application to establish the rate of Reconnection Fees and Other Charges within one (1) year from date of this Decision using a format to be prescribed by the Commission;
- o) To provide reasonable access to ERC for verification of sample bills for each customer class.[4]

The oppositors and MERALCO filed separate motions for reconsideration of the ERC decision.

In an Order dated 30 May 2003, the ERC modified its decision as follows:

WHEREFORE, the foregoing premises considered, the challenged Decision dated March 20, 2003 is hereby modified as follows:

- 1) MERALCO's "Summary Schedule of Unbundled Rates" as provided in Annex "A" of this Order is hereby APPROVED to be effective on the next billing cycle after the date of this Order;
- 2) MERALCO's "Schedule of Unbundled Rates Per Customer Class" as provided in Annex "B" of this Order is hereby APPROVED to be effective on the next billing cycle after the date of this Order;
- 3) MERALCO's adjusted rate base as of December 31, 2000 from PhP 74,475,910,302 to PhP76,838,084,457 as shown in Annex "C" of this Order is hereby APPROVED; and

Relative thereto, MERALCO is directed to:

- a) Discontinue charging the PPA upon affectivity of the approved unbundled rates; any change in the cost of power purchased shall be reflected as deferred charges or credits that shall be recovered through the Generation Rate Adjustment Mechanism (GRAM) approved by the Commission for implementation per its Order dated February 24, 2003;
- b) Bill its respective end-users using a billing format that contains at least the rate elements provided in Annex "D" of this Order upon affectivity of the approved unbundled rates, including the refund scheme by the ERC;
- c) Set the CERA at 11.87% applied on the Distribution revenue only upon effectivity of this Order until such time that the Commission issues a notice for the implementation of a new CERA;
- d) Submit within six (6) months from date of this Order;
 - i.) A new CERA formula that would be consistent with the new unbundled rate structure to be filled within six (6) months from the effectivity of this order.
 - ii.) Detailed components of the foreign debt service payments due in 2003;
 - iii.) time when such loans were contracted and approved by ERB, if any, for these loan contracts; and
 - iv.) Loan details of each contract including utilization of proceeds;
- e) Set up a depreciation fund each year corresponding to the whole amount of depreciation that it has recorded in its books. The setting up of this fund should be done on a monthly basis corresponding to the monthly

depreciation. MERALCO is required to strictly account for the expenditures out of this fund, which should be used strictly for investment in electric plant. All withdrawals from this fund should be reported to the Commission within thirty (30) days from such withdrawal;

f) Submit within thirty (30) days from receipt of this Order detailed and updated information on its affiliates as it affects its electric power business consistent with the requirements of Schedule "G" of the UFR;

g) Adequately inform the end-users within its franchise area of the approved unbundled rates not later than thirty (30) days after receipt of this Order;

h) Submit a detailed schedule on discounts granted to its officers and employees for their electric bills from 2000 to 2002, and the latest approved Collective Bargaining Agreement (CBA);

i) Submit on or before the fifteenth (15th) day of October 2003 a report on policies and procedures for cost cutting measures to be adopted by it.

j) Submit on or before the thirtieth (30th) day of June 2003 and quarterly thereafter, a status report on the results of their negotiations with their IPPs in its effort to bring down its generation costs;

k) Submit the following data/information for verification and confirmation purposes on or before the twentieth (20th) day of the month following the effectivity of the approved unbundled rates and every month thereafter;

i.) Copy of bills from the generation and transmission companies; and

ii.) Reports M001 and M002 with all related schedules

l) Make a formal application to establish the rate of Reconnection Fees and Other Charges within one (1) year from date of this Order using a format to be prescribed by the Commission; and

m) Provide reasonable access to the Commission for verification of sample bills for each customer class.

The findings and conclusions reached in our March 20, 2003 Decision shall continue to have force and effect except as herein modified.[5]

Respondents filed a petition for review before the Court of Appeals. Thereupon, the Court of Appeals directed the OSG to file a comment on the petition for review, which the former complied with.

The Court of Appeals in a decision dated 22 July 2004 annulled the decision and order of the ERC mainly on the ground that COA should first conduct an audit of the books, records and accounts of MERALCO before ERC can fix rates.

On 13 August 2004, the ERC filed a motion to: (1) intervene; (2) to plead not through the OSG; (3) to admit attached motion for reconsideration; and (4) to be heard orally upon said motion for reconsideration.

MERALCO filed a motion for reconsideration dated 17 August 2004. In support thereof, MERALCO argued that a COA audit is not a pre-requisite to rate-fixing as enunciated in the case of *Municipality of Daet v. Hidalgo Enterprises, Inc.* [6]

In a resolution dated 24 January 2005, the Court of Appeals denied MERALCO's motion for reconsideration reasoning that the Section 22, Chapter 4, Subtitle B, Title I, Book V of the Administrative Code of 1987 specifically provides that COA has a mandatory duty to "audit financial operations of public utilities and franchise grantee for rate determination and franchise tax purposes". It likewise held that the case of *Municipality of Daet* is not controlling since it was decided prior to the promulgation of the Administrative Code of 1987. In the same resolution, the appellate court denied the ERC's motion to (1) intervene; (2) to plead not through the OSG; (3) to admit attached motion for reconsideration; and (4) to be heard orally upon said motion for reconsideration on the

ground that said motion has no justification.

Hence, the instant petitions filed by MERALCO and the ERC.

MERALCO once again contends that a COA audit is not a prerequisite to an adjustment in rates; otherwise, it would be a case of the COA effectively taking over a primary function and responsibility of rate-fixing vested in the ERC. It also claims that the EPIRA has no provision which requires the conduct of a COA audit prior to the approval of any rate unbundling application.

The ERC maintains that there is nothing in Section 22, Chapter 4, Subtitle B, Title I, Book V of the Administrative Code of 1987 which suggests that the regulators tasked to fix rates are bound by the results of the COA audit, neither does it say that the regulators are barred from conducting their own audit. Said provision, according to the ERC, merely extends COA's authority to conduct audit to non-government entities and paves the way for the imposition of appropriate penalties upon these entities for their refusal to submit to such audit. Hence, said provision does not make the COA audit compulsory in rate cases and a prerequisite before regulatory agencies can even begin to exercise their discretion in rate applications. Making COA audit mandatory in rate-fixing applications and binding the regulatory agencies of the results of such audit, flouts the discretionary nature of the power granted to these agencies by law.

Respondents, on the other hand, aver that the Court of Appeals, in ordering for the conduct of a COA audit, did not categorically declare that an audit is a prerequisite to, or as a procedural requirement in, any rate unbundling application. Rather, a COA audit is mandated by the Court of Appeals in its assailed decision as a necessary means to verify the documents, records and accounts submitted by MERALCO in support of its applications for rate unbundling and rate increase, considering the serious allegations of respondents disputing such records and accounts presented by MERALCO as false, misleading and doctored. Respondents also state that COA did not conduct an audit on MERALCO, contrary to the mandate of the Administrative Code of 1987.

The OSG posits that under the law, the COA has the mandate to conduct an audit of public utilities in connection with the fixing of the rates that may be collected from the public which use their services or goods. This mandate was not removed from the COA with the enactment of the EPIRA. The fact that the EPIRA did not expressly provide the audit services provided by the COA does not warrant the inference that such COA audit may now be altogether dispensed with. It stresses that the remand of the case to the ERC and for the COA to conduct the examination and audit of the books, records, and accounts of MERALCO is made imperative by the fact that the instant case involves highly factual and technical issues being raised by the parties.

The OSG further insists that the case of Municipality of Daet is not applicable to the case under consideration because of the very significant differences obtaining therein and in the instant case. First, Municipality of Daet case was decided before the ratification of the 1987 Constitution and the passage of the Administrative Code of 1987. Second, in the said case, the coverage of the franchise was limited to seven municipalities in Camarines Norte, while in the instant case, the franchise of MERALCO covers the entire Metro Manila and several adjoining provinces approximately covering 50% of the country's entire population. Thus, any power rate increase would have an immense impact on the country.

According to the OSG, even assuming that the Municipality of Daet case has persuasive effect on the present case, it urges the Court to revisit the ruling in the aforesaid case, in light of the changes that had occurred since the same was rendered in the milieu of the instant controversy.

The Court of Appeals, in annulling the ERC ruling, ratiocinated in this manner:

Given the State policies enshrined in the EPIRA, the ERC should have appropriately addressed the concerns of

the oppositors and granted their common plea for a COA audit of MERALCO's books and accounts.

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In view of all the foregoing, this Court is of the opinion that a COA audit before approval by the ERC of both applications for rate increase and rate unbundling filed by MERALCO is necessary being an essential aspect of due process.

In the dispositive part of the questioned decision, the appellate court ordered the remand of the case to the ERC and directed the COA to audit MERALCO's books, records and accounts.

From the foregoing disquisitions of the Court of Appeals, it is clear and unmistakable that its posture in disposing of the instant case is that the COA audit is a pre-requisite and an indispensable procedure before the ERC can approve rate increase and act on the unbundling application of MERALCO.

The Court of Appeals is wrong.

In the case of Municipality of Daet,[7] the then Board of Power and Waterworks rendered a decision approving the rate increase application of Hidalgo Enterprises, Inc., which is an electric utility. Even as the Board requested the Government Auditing Office (GAO), now the COA, to cause the audit of the books and records of the utility, and submit a report thereon, said Board nonetheless decided on Hidalgo's application without waiting for the GAO report. Believing that a GAO audit is a condition sine qua non before the Board can act on the application of Hidalgo, petitioner therein sought the nullification of the decision of the Board and cited Section 2[8] of Commonwealth Act No. 325. The Court was not convinced. It ruled that the GAO audit was not a prerequisite in the fixing of rates. The Court emphasized:

Without discounting the fact that public interest may be better served with a GAO audit of the applicant's valuation of its properties and equipment, we nevertheless find nothing in the phraseology of the above-quoted provision that makes such audit mandatory or obligatory. A GAO valuation is merely advisory. It is neither final nor binding, as illustrated in *MERALCO v. Public Service Commission*, where this Court upheld the decision of the Public Service Commission to fix rates on the basis of Meralco's own valuation of its properties, rather than on the assessment made by the GAO. Upon this premise, the appraisal made by respondent Hidalgo, which the respondent Board found to be fair and reasonable, can serve as proper basis for fixing the allowable rate of return and the corresponding increase in its charges.[9]

The Court of Appeals ruled that the Municipality of Daet case was inapplicable to the case under consideration as it was rendered before the promulgation of the Administrative Code of 1987. The Court of Appeals, however, did not bother to explain how Section 22, Chapter 4, Subtitle B, Book V of the Administrative Code could have repealed Section 2 of Commonwealth Act No. 325. Perusal of the relevant provisions of these two statutes, viz -

Commonwealth Act No. 325

Sec. 2. In acting upon any proceedings, regarding the approval of basic rates of amendments of existing rates of any public service, the Auditor General shall assign auditors to assist the Public Service Commission and shall furnish such financial data as may be required by the Public Service Commission.

The Administrative Code of 1987

Sec.22. Authority to Examine Accounts of Public Utilities. – (1) The Commission shall examine and audit the books, records and accounts of public utilities in connection with the fixing of rates of every nature, or in relation to the proceedings of the proper regulatory agencies, for purposes of determining franchise taxes.

readily shows that there is nothing in the cited provision of the Administrative Code which indicates that it bars

the regulatory body from approving rates without prior COA audit, neither does it give a hint that it effectively repeals the pertinent provision of Commonwealth Act No. 325.

Championing the position of the appellate court on the inapplicability of the ruling in the Municipality of Daet case, the OSG contends that said case could not be applicable to the instant case since the former was decided before the effectivity of the 1987 Constitution.

Lamentably, the OSG's recourse to the fundamental law does not at all aid its cause as it fails to show any provision of the Constitution which mandates that a prior COA audit is mandatory in rate-fixing.

Under the doctrine of stare decisis et not quieta movere^[10]— follow the past precedents and do not disturb what has been settled -- it is the solemn duty of the Court to apply its previous ruling in the Municipality of Daet to the case under consideration. Once a case has been decided one way, any other case involving exactly the same point at issue, as in this case, should be decided in the same manner.

Going to the merits of the instant controversy, the Court of Appeals merely echoed the position of respondents alleging that MERALCO's data in support of both applications for rate increase and rate unbundling, particularly its rate base^[11], was unsubstantiated and misrepresented. Among the items in MERALCO's rate base which are contested include: Leased Property on Customer Premises; Construction Work in Progress; Plants for Future Use; Utility Plant Appraisal and Two-month Cash Working Capital. Taking into consideration the data presented by MERALCO on the questioned items in the rate base, as well as the objections to said data, the ERC held:

II. c. 1.b.3. Utility Plant

II.C.1.b.3.a. Asset Appraisal

Inasmuch as the Commission ruled to strike out from the records of AACI's Appraisal Report, as well as the testimony of Ms. F. L. Tuazon on the revaluation of fixed assets (presented during the April 17, 2002 hearing for ERC Case No., 2001-900), the appraisal report considered in this case was the one submitted for approval by MERALCO in ERC Case No. 2001-646 (ERB Case No. 2000-57).

As per said AACI's report, the total cost of reproduction new and the sound value of MERALCO's existing assets as of December 31, 1998 were Php 85,734,410,000 and Php 60,169,011,000, respectively, to wit:

Cost of Reproduction, new

Sound Value

Transmission Plant

PhP 6,402,193,000

3,355,882,000

Distribution Plant

68,764,595,000

47,995,051,000

General Plant

10,567,622,000

8,818,078,000

GRAND TOTAL

PhP85,734,410,000

PhP60,169,011,000

MERALCO's utility plant was last appraised in December of 1998. Utility plant net additions subsequent to the said appraisal amounted to PhP 4,096,386,580.

II.C.1.b.3.b. ERC Disallowed Utility Plant

The Commission found that MERALCO's utility plant in service as listed and appearing in the AACI's Appraisal Report dated January 25, 2000 at a sound value amounting to PhP 60,169,011,000 (excluding land) were actually existing, owned by MERALCO, and being utilized in its power distribution. The Commission disallowed MERALCO's utility plant with a sound value of PhP394,009,693 found to be either not directly related in MERALCO's business operation, retired, or not used/useful in service. Out of the said amount, P50,412,948, represents the disallowance resulting from the inspection conducted.

Likewise, the Commission ordered MERALCO to provide detailed information on its meter count. On January 30, 2003, MERALCO submitted a Reconciliation of Meter Count to account for the decrease of 747,425 in the total number of meters from the previously reported total of 4,881,832 as of December 31, 2000. Based on the same document, the decrease was due to the sizeable number of retired meters still appearing in their books. The corresponding net book value of said retired meters amounted to PhP9,512,399.

The Commission noted an average increase of 0.4% in the number of customer per month. However, said increase in the number of customers does not justify the increase in the number of meters in MERALCO's inventory. Even taking into consideration said increase and adopting the two (2) month inventory allowed for utilities, MERALCO still has an excess meter inventory of 176,771 which is equivalent to PhP 334,144,092. Thus, the sound value of meters was adjusted downward by PhP343,656,491 representing the total sound value of retired and excess meter inventory.

Table 17 below shows the summary of such disallowance:

TABLE 17

DISALLOWED UTILITY PLANT Sound Value

Per inspection PhP 50,412,948

Retired/excess meter inventory 343,656,491

Total PhP 394,009,693

II.C.1.b.3.c. Meralco's Additional Excluded Utility Plant

Of the PhP 588,610,673 sound value of its utility plant submitted for exclusion in its rate base, the Commission found that some of its utility plant had already been accounted for and excluded in the ERC inspection report. As such, the Commission excluded from the rate base the remaining utility plant with a sound value amounting to PhP560,797,947.

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II.C.1.b.3.d. 5% Allowance for Over valuation

After considering the above deductions, MERALCO's sound value of its utility plant in service as of December 31, 2000 amounted to PhP62,536,326,777. The past practice of the former ERB was to reduce the adjusted (net

of disallowances) plant, property, and equipment in service by 5% of the appraisal increase considering that appraisals are, by their very nature, estimates. Said 5% serves as an allowance for overstatement of values.

II.C.2 Plant Held for Future Use

MERALCO reported a total amount of PhP 575,697,192 as plant held for future use contained in schedule "B-5" (UFR filing dated December 26, 2001). Most of these plants or land pertain to real estate disallowed by per ERB Case No. 93-118. Out of this amount, PhP 106,901,000 pertains to the Rockwell Substation & Makati Branch Office. Said property had been consistently excluded from MERALCO's rate base considering that the same is not being used in its electric operations. In addition, the inspection team discovered that plant for future use in the amount of PhP 304,642,425 is now being used by MERALCO in providing electric service. As such, the Commission reclassified this amount as part of plant in service. The remaining plant held for future use has been excluded from rate base.

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II.C.4. Allowance for Cash Working Capital

MERALCO included an amount equivalent to two(2) months cash operating and maintenance expenses including purchased power costs as allowance for cash working capital. The cash working capital allowance included in the rate base should approximate the actual cash requirements of MERALCO based on the estimated net lag in its cash flow. This is not an issue related to the actual timing of the recovery of a particular cost. The relevant factors to consider is a lead-lag analysis for purposes of determining cash working capital requirements are the following:

- The time MERALCO pays for the energy (kWh) sold to its customers; and
- The time MERALCO requires its customers to pay for the same energy (kWh).

In order to refine the application of the formula approach used in past proceedings, a more detailed review of the actual lag in cash flow associated with the payments for purchased power and the inflow of cash from MERALCO's customers was undertaken. With respect to outflow of cash associated with the payments for purchased power, it was determined that the time from the provision of service to the outflow of cash can be calculated as follows:

15 days One-half of the billing cycle

5 days Meter reading and bill preparation

30 days Approximate time before payment is due

50 days Total

Therefore, MERALCO waits on the average, thirty (30) days before it receives payment for the services provided.

Based on MERALCO's current billings and collection practices, there appears to be no cash working capital requirement associated with purchase power. The only potential finance costs associated with purchased power would be costs by customers who do not pay their bills in accordance with MERALCO's collection policies. MERALCO's customers who do pay on time should not be penalized because other customers failed to comply with MERALCO's payment schedule. If additional finance costs are incurred because of late payment of bills, these costs should be recovered in the form of penalties for late payment. Therefore, the formula for the calculation of the cash working capital allowance is modified by excluding purchases powers costs. This modification would reduce the cash working capital allowance for MERALCO by PhP 92,363,390 as shown below.

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II.C.6. Construction Work in Progress (CWIP)

MERALCO's CWIP per book amounts to PhP 7,125,421,127 as of December 31, 2000. However submitted supplemental documents show that as of June 30, 2002, a total amount of PhP 3,234,296,000 were placed in service. As such, the Commission excluded the amount of PhP 3,891,125,127 from the rate base.

Respondents also alleged that MERALCO's Operations and Maintenance Costs were inflated. The ERC, upon evaluating the documents presented by the parties, reduced MERALCO's recoverable Operation and Maintenance Expenses, thus:

Upon review of the components of the expenses included in the revenue requirement, the Commission reduced MERALCO's recoverable Operation and Maintenance (O&M) Expenses by the following amounts:

PARTICULARS

AMOUNT

Undocumented expenditures

(PCIB Special Accounts)

PhP 62,528,661

Non-utility expenditures 154,512,578

Over amortization of cost 139,492,707

TOTAL PhP 356,533,946

Meralco is responsible for providing documentation to prove the reasonableness and prudence of all its expenditures. MERALCO was unable to provide adequate documentation for certain expenditures identified as PCIB Special Accounts amounting to PhP 62,528,661. As such, the proposed O&M expenses were reduced by this amount. MERALCO should ensure that procedures are put into place to ensure that in future filings, all expenditures that are included in the determination of revenue requirements are adequately documented and that such documentation is reasonably accessible to ERC.

The Commission also disallows the recovery of PhP 154,512,578 representing expenditures that the Commission believes are not required and relevant to the provision of electric power service. These types of expenditures include items classified as gifts and services commissioned for institutional or goodwill purposes.

Records showed that during the test year, MERALCO charged as expense, amounts pertaining to the use of company vehicles, i.e. maintenance of company vehicle which exceeded the actual costs incurred for the said expenditures by PhP 139,492,707. The Commission therefore excluded this excess amount from the calculation of MERALCO's revenue requirement.

Contrary to the Court of Appeals' insinuation that the ERC did not perform its legal mandate to protect the public, the foregoing disquisitions of the ERC speak otherwise. MERALCO's proposed revenue requirement and rate base for purposes of fixing its rates were, after having been assumed to be carefully considered, adjusted downwards. MERALCO did not get what it prayed for, which was a rate higher than that approved by the ERC.

The established rule in this jurisdiction is that findings of administrative or regulatory agencies on matters within their technical area of expertise are generally accorded not only respect but finality if such findings are supported by substantial evidence.[12] Rate-fixing calls 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.[13] Thus, this Court finds no reversible error on the part of ERC in rendering its assailed decision and order.

However, while ruling in said manner, this Court is cognizant that such ruling has far-reaching effects and is of utmost significance to the public, especially to the poor, who face the threat of deeper wallowing in the quagmire of financial distress once the burden of electricity rate increases is passed on to them. Better judgment, therefore, calls for this Court to temper the rigidity of its decision.

Although affirming the decision and the order of the ERC approving the rate increases for electricity, this Court is not closing its eyes to the fundamental principle of social justice so emphatically expressed by the late President Magsaysay in his statement: "He who has less in life should have more in law."

The concern for the poor is recognized as a public duty, and the protection of the rights of those marginalized members of society have always dutifully been pursued by the Court as a sacred mission. Consistent with this duty and mission, the Court deems it proper to approve the rate increases applied for by MERALCO provisionally, i.e., MERALCO to impose provisional rate increases while directing the ERC, at the same time, to seek the assistance of COA in conducting a complete audit on the books, records and accounts of MERALCO to see to it that the rate increases that MERALCO has asked for are reasonable and justified. Stated otherwise, the provisional rate increases will continue to be subject to its being reasonable and just until after the ERC has taken the appropriate action on the COA Report.

WHEREFORE, the petition is GRANTED. The 22 July 2004 Decision and 24 January 2005 Resolution of the Court of Appeals in CA-G.R. SP No. 77559 are hereby SET ASIDE. The ERC Decision dated 20 March 2003 and its Order dated 30 May 2003 in ERC Case Nos. 2001-646 and 2001-900 are REINSTATED subject to the above disquisitions.

The Energy Regulatory Commission is, thus, directed to request the COA to undertake a complete audit on the books, records and accounts of MERALCO relative to its provisionally-approved rate increases and unbundled rates.

SO ORDERED.

Panganiban, C.J., (Chairperson), Puno, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., Tinga, Garcia, and Velasco, Jr., JJ., concur.

Azuna, J., I take no part - former law firm was a counsel of a party.

[1] Penned by Associate Justice Martin S. Villarama, Jr. with Associate Justices Edgardo F. Sundiam and Japar B. Dimaampao, concurring; rollo of G.R. No. 166769, pp. 56-88.

[2] Id. at 58.

[3] Unbundled rate refers to the modified structure where the different components of the power rates are made transparent to power users (Sec. 3 (r), Guidelines Implementing Executive Order No. 473 for the Segregation and Unbundling of the Power Tariffs of the National Power Corporation and the Electric Distribution Utilities).

[4] Rollo of G.R. No. 166769, pp. 1062-1068.

[5] Rollo of G.R. No. 166769, pp. 1111-1115.

[6] 138 SCRA 265.

[7]Id.

[8] In acting upon any proceedings, regarding the approval of basic rates of amendments of existing rates of any public service, the Auditor General shall assign auditors to assist the Public Service Commission and shall furnish such financial data as may be required by the Public Service Commission.

[9] Supra note 5 at 272.

[10] Commissioner of Internal Revenue v. Trustworthy Pawnshop, Inc., G.R. No. 149834, 2 May 2006, 488 SCRA 538, 545.

[11] Rate base refers to the total amount of invested capital or of property "values" on which the public utility is entitled to a reasonable rate of compensation. It includes an allowance for working capital in addition to the net valuation of the utility's tangible property. The valuation of a public utility's assets is an integral portion of the rate base. (Principles of Public Utility Rates, James C. Bonbright, p. 150.)

[12]Radio Communications of the Philippines v. NTC, 184 SCRA 517, 524.

[13] Republic of the Philippines v. Medina, 41 SCRA 643, 666.

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