

TOLEDO TRANSPORTATION CO., INC., OPPOSITOR AND APPELLANT, VS. EULALIO POSAS, PETITIONER AND APPELLEE.

G. R. No. 38553. November 23, 1932

Ponente: BUTTE, J.

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BUTTE, J.:

This is a petition for review under section 35 of Act No. 3108 of an order of the Public Service Commission. No copy of the order complained of is attached. The petition itself is not verified. The petition states that the order complained of was promulgated on October 31, 1932, and a copy thereof received by the petitioner on November 1, 1932. No copy of the motion for reconsideration nor the decision thereon is attached to the petition. The assignments of error are in general terms and nothing is contained within or attached to the petition which will enable us to determine if "the petitioner has made out a prima facie case that would entitle it to the order of suspension which is prayed for. Hence, the suspension must be denied

The petition names Eulalio Posas as appellee and recites that "the appellee is a deceased persons". We have held that it is not necessary to make the Public Service Commission respondent in a petition for review under section 35 of Act No. 3108 but that the Attorney-General, as the law officer of the commission, has the right to intervene in appropriate cases. (*Manila Railroad Company vs. A. L. Ammen Transportation Co.*, 48 Phil., 266, 268.) When, however, a proceeding before the commission was initiated by the petition of one party and opposed by a formal answer or other pleading of a party having an adverse interest in the subject matter so that the commission is confronted with a case or controversy calling for a decision, directly or incidentally, upon conflicting interests, it is incumbent upon a petitioner for review in this court to make the party oppositor before the commission a respondent in the review proceedings in this court. This rule is not only manifestly just but also helpful to the court in obtaining an orderly presentation of both sides of the case or controversy; and it has been generally observed in actual practice.

In the present case the alleged respondent is a deceased person. For lack of a proper party respondent, the petition for review is dismissed at the cost of the petitioner, without prejudice, however, to the filing of another petition naming a proper party respondent within the time limited under section 35 of Act No. 3108. So ordered.

Avanceña, C. J., Street, Malcolm, Villamor, Ostrand, Villa-Real, Abad Santos, Hull, Vickers, and Impdrial, JJ., concur.

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