

**NATIONAL POWER CORPORATION, PETITIONER, VS. HON.
LEONARDO B. CAÑARES, IN HIS CAPACITY AS PRESIDING JUDGE,
COURT OF FIRST INSTANCE OF CEBU, BRANCH X, AND VISAYAN
ELECTRIC COMPANY...**

G.R. No. 61637. December 03, 1985

Ponente: DE LA FUENTE, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-61637/>

DE LA FUENTE, J.:

Petitions for certiorari, prohibition and mandamus, with prayer for a writ of preliminary injunction and/or restraining order. One was filed by the National Power Corporation (NPC) and the other, by the Apo Cement Corporation (APOCEMCO). Both seek the nullification of certain orders issued by the then Court of First Instance of Cebu, in Civil Case No. R-21331, entitled "Visayan Electric Co., Inc. versus National Power Corporation and Apo Cement Corporation" on the ground that the respondent judge, in issuing the said orders, acted without jurisdiction and/or with grave abuse of discretion.

Petitioner Apo Cement Corporation (APOCEMCO) is a BOI-registered enterprise engaged in the manufacture of portland cement at Tina-an, Naga, Cebu. Private respondent Visayan Electric Co., Inc. (VECO) is the grantee of a legislative franchise, Act No. 3499, as amended by R. A. No. 6454, for the generation, transmission, distribution and sale of electric light, heat and power in the cities of Cebu and Mandaue, and in the municipalities of Talisay, Minglanilla, Naga, San Fernando, Consolation and Lilo-an, all in the Province of Cebu. VECO has continued and remained to be the exclusive distributor of electric energy within its franchise area even after the promulgation of P. D. No. 395[1] on February 26, 1974.

APOCEMCO had expressed to NPC even prior to the implementation stage of its initial development of the Cebu Electric Power Grid, the intention to purchase power from NPC. The possible allocation and delivery of a 4-megawatt power from the NPC's Naga Diesel Power Station to APOCEMCO's cement plant compound was later on confirmed by the NPC. Then, APOCEMCO was informed by the NPC by letter dated July 27, 1977, that pursuant to the Power Development Council Resolution No. 77-01-02 APOCEMCO should secure a waiver of VECO's priority right to supply power requirements of an industrial enterprise operating within its franchise area. APOCEMCO argued that such waiver is not a condition sine qua non to the approval of its application for direct connection and that the said resolution should not be given retroactive application, having been issued after APOCEMCO's agreement with NPC for the supply of electric power and since VECO, allegedly, cannot supply APOCEMCO's power requirements. While the NPC would like to honor its previous commitment to APOCEMCO, the latter's application for direct connection was, however, denied by the NPC on the basis of PDC Resolution No. 77-01-02, in a letter dated November 8, 1977. And this was followed on December 12, 1977, by the denial by the then Secretary of Energy of NPC's request for Department approval of such direct NPC power supply to APOCEMCO, as it would "run counter" to the aforementioned resolution of the defunct PDC.[2]

Early in 1978, APOCEMCO requested VECO to waive its priority right. VECO refused and claimed that it was in

a position to match NPC's applicable industrial rate. Thereafter, APOCEMCO asked VECO to supply power needs. Negotiations resulted in the signing of a formal contract by virtue of which VECO began supplying APOCEMCO's power requirements in 1978.

However, a controversy regarding the agreed power rate surfaced when APOCEMCO requested for a revision thereof on the ground that said rate exceeded the 10% maximum-allowable margin over the corresponding NPC rates for utilities. VECO contended that the rate be in accordance with their contract, while APOCEMCO insisted on those prescribed by PDC Resolution No. 77-01-02. The dispute reached the Board of Energy (BOE), docketed as BOE Case No. 80-59. At this juncture, APOCEMCO reasserted its claim that the NPC was committed to grant its application for direct power connection. In a letter submitted in compliance with an order of BOE, the NPC manifested its willingness to fulfill said commitment "in the event appropriate authorities decide in its favor." [3]

During the pendency of BOE Case No. 80-59, in order to facilitate the approval of applications of BOI-registered enterprises for "direct connection to NPC" even without the prior written agreement of the Boards of electric power cooperatives and private electric utilities holding the franchise in the locational area of the enterprise," [4] the Board of Investments (BOI) and the NPC entered into a Memorandum of Agreement on January 12, 1981. It was provided therein, inter alia, "that all BOI-registered enterprises with electrical loads of 2,000 kilowatts and more, at transmission voltage of 69 kilovolts and above, shall, without restriction except on the economic and financial viability on the part of NPC, be directly connected with NPC." [5]

Relying on this memorandum BOE issued in the pending case an Order [6] holding that APOCEMCO can be supplied its electric power requirements directly by NPC even without the consent of VECO. VECO's motion for reconsideration thereof was futile. NPC and APOCEMCO then entered into a contract for the supply of electricity. VECO was subsequently apprised of the said contract and requested to disconnect its power lines to APOCEMCO. VECO forthwith sued NPC APOCEMCO filing a complaint seeking injunction and damages. Pending hearing on the prayer for the issuance of a writ of preliminary injunction, the then Court of First Instance of Cebu, Hon. Judge Leonardo B. Cañares presiding, issued a restraining order temporarily enjoining NPC from proceeding with the direct power connection to APOCEMCO until further orders. APOCEMCO and NPC argued in vain for the lifting or dissolution of the restraining order. And, after hearing and submission by the parties of their respective memoranda, the respondent Judge issued a writ of preliminary injunction.

Their respective motions for reconsideration having been denied, NPC and APOCEMCO filed the separate petitions at bar.

We find no merit in both petitions. Respondent Judge did not act in excess of jurisdiction nor commit any grave abuse of discretion.

In response to the "evident need to issue policy guidelines regarding direct power connection with NPC, due to the increasing demands of the industrial sector" and to the "apprehension expressed by authorized franchise holders and cooperatives" with respect thereto, the defunct Power Development Council sought to "give operational meaning to the concepts of a franchise and service area coverage ... and to protect the economic growth of the franchise utility and the electric cooperatives," [7] by issuing Resolution No. 77-01-02. It provides, amongst others: "At any given service area, priority should be given to the authorized cooperative or franchise holder in the right to supply the power requirement of existing or prospective industrial enterprises (whether BOI-registered or not) that are located or plan to locate within the franchise area or coop service area as shall be determined by the Board of Power or National Electrification Administration whichever the case may be," etc. [8]

Said resolution was promulgated by the PDC pursuant to Section 2 of P.D. No. 948, which vested in said Council the powers and functions to "formulate and approve policies and programs for the power industry." It was also

provided in Section 3 of the said Decree that all acts and decisions of the Council in the exercise of such powers and functions are final and conclusive, unless otherwise specifically directed by the President.

Upon the creation in 1977 of the Department of Energy[9] it inherited "the powers and functions of the abolished ... Power Development Council,"[10] the same being specifically "vested in a Secretary of Energy." [11] Among the declared policies in the endeavor to achieve self-reliance in the country's energy requirements, we find that due "consideration [of] the significant and continuing participation of the private sector in the various areas of energy resource development" was underscored.[12] Thus, instead of repealing or revising PDC Resolution No. 77-01-02, the then Secretary of Energy manifested adherence thereto. This is explicit in his decision dated December 12, 1977, which insofar as pertinent reads:

"APOCEMCO apparently has not attempted to comply with said resolution, although they were informed about the PDC Resolution as early as July 27, 1977 by Manager Luchuga of the NPC Visayas Regional Office.

"While the Department is cognizant of the preparations that APOCEMCO has undertaken for direct NPC service and the fact that cement entities are power intensive, it is still the intent of the PDC Resolution to accord priority to the local franchise holder in serving the power requirement of any industrial enterprise within its franchise area.

"As you know, the PDC Resolution was formulated for the express purpose of improving the load of the local electric utilities, which include cooperatives, and to relieve NPC of collection burdens covering small directly connected loads. In any case, NPC's positive indication to APOCEMCO re direct connections at least assures them of a rate that is no more than 10% of the NPC rate to utilize in that grid, should they be connected with VECO subsequently.

"In summary, this Office therefore prefers that the PDC Resolution rules be recognized. VECO must first be notified and a waiver secured as a precondition to direct connection, especially since the initial load available from NPC would be only around 400 KW, a level which, it seems, a 60-MW utility system like VECO should be able to service without too much difficulty." [13]

As earlier pointed out, that act or decision of the Secretary (now Minister) of Energy was "final and conclusive, unless otherwise specifically directed by the President" (section 3, PD No. 948, in relation to section 21, PD No. 1206). The view taken by the BOE that BOI registered enterprises could secure direct connection to the NPC without first notifying the franchise holder in the area concerned and/or asking for the latter's waiver of priority, in line with the BOI-NPC memorandum of understanding, cannot operate to supplant or reverse or modify the aforementioned act or decision of the Minister Of Energy in the discharge of the functions and responsibilities devolving upon his Ministry or office. Such revisory power, is lodged by the law only in the President.[14] Furthermore, we find nothing in the provisions of P.D. No. 395 (amending P.D. No. 380) which expressly or impliedly allowed or sanctioned the sale in bulk by the NPC of energy direct to BOI-registered enterprises even if it would be violative of the rights of existing franchise holders. In *National Power Corp. vs. Jacinto*, [15] this Court had occasion to stress the following:

"Presidential Decree No. 380, as amended, PDC Resolution No. 77-01-02 and NPC's own operational guidelines for the implementation of the BOI-NPC Memorandum of Understanding on direct connection establish the state policy that NPC is statutorily empowered to directly service all the requirements of a BOI-registered enterprise provided that, first, any affected private franchise holder is afforded an opportunity to be heard on the on the application therefor, and second, from such a hearing, it is established that said private franchise holder is incapable or unwilling to match the reliability and rates NPC for directly serving the latter. But even without the aforementioned statutory or administrative bases, still said franchise operators' right to due process or priority to be heard on such direct contracts cannot be denied. Like certificates of public conveyance, legislative or municipal franchises for the operation of a public utility are properties (Raymundo

vs. Luneta Motor Co., 58 Phil. 889) and therefore guaranteed the due process protection of the Constitution."^[16]

Another decision was rendered by this Court recently in *Alger Electric, Inc. vs. Court of Appeals*^[17] where we observed that the exclusive nature of a franchise is not favored and exclusivity is given by law with the understanding that the grantee is self-sufficient and capable of supplying the needed service at moderate or reasonable prices. In the instant case, the denial by the NPC and the Secretary of Energy of APOCEMCO's application for direct connection additionally took into consideration the national policy formulated in PDC Resolution No. 77-01-02, which was reiterated and reaffirmed by the Secretary (now Minister) of Energy after the abolition of the PDC. After the negotiations, it bears emphasis, APOCEMCO and VECO had already entered into and signed a formal contract and implemented the same until a dispute arose as to the rate being charged for APOCEMCO's energy consumption. It is conceded that VECO was in a position not only to supply APOCEMCO's power requirements but also to match NPC rates for industrial users. The situation here, therefore, is quite different from that in the case of *Alger Electric, Inc.*, the said franchise holder not being in a position to supply the energy requirements of Northern Cement Corp. Northern "had never purchased" electricity from Alger and the latter admitted being but "a small and struggling corporation." Parenthetically, it may also be noted that the controversy there arose in 1968 before the changes or policies brought about thereafter by P. D. Nos. 40, 380 and 395.

WHEREFORE, the petitions should be, as they are hereby, **DISMISSED** for lack of merit. The temporary restraining order issued in this case¹⁸ is lifted immediately. If, as a re-sult of the said restraining order, the direct service contract between NPC and APOCEMCO had been implemented, further implementation thereof is hereby ordered discontinued. And APOCEMCO is also ordered to reconnect its power lined to VECO which, in turn, must supply the former's energy requirements, charging a rate not to exceed that which would otherwise be paid by the said user in case of a direct connection of its power lines to the NPC. No pronouncement as to costs.

SO ORDERED.

Teehankee, (Chairman), Plana, Gutierrez, Jr., and Patajo, JJ., concur.

Melencio-Herrera and Relova, JJ., on leave.

[1] Further amending Republic Act Numbered 6395, entitled "An Act Revising the Charter of the National Power Corporation," as amended. (Amending Presidential Decree No. 380.)

[2] Rollo in G.R. No. 61637, pp. 233-234 (also Annex "A-h", APOCEMCO's Memorandum, Rollo in G.R. No. 61739, p. 265).

[3] Rollo in G.R. No. 61637, p. 54 (also Rollo in G.R. No. 61739, p. 143).

[4] BOI-NPC Memorandum of Understanding, "Whereas Clauses," Rollo in G.R. No. 61637, p. 28.

[5] *Ibid.*, par. 1, underscoring supplied.

[6] Order dated April 22, 1981 in BOE Case No. 80-59, Rollo in G.R. No. 61637, pp. 65-66.

[7] PDC Resolution No. 77-01-02, "Whereas Clause," Rollo in G.R. No. 61637, pp. 46-47.

[8] *Idem.*

[9] Presidential Decree No. 1206.

[10] Ibid., Section 4.

[11] Ibid., Section 3.

[12] Ibid., Section 1.

[13] Rollo, in G.R. No. 61637, pp. 233-234; underscoring supplied.

[14] See P.D. No. 1206, Section 9, as to its powers and functions.

[15] G.R. No. 6143, prom. January 31, 1985 by this Court's Second Division, 134 SCRA 431.

[16] Underscoring supplied.

[17] Ibid.

[18] Pages 179-181, Rollo in G.R. No. 61637.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.