

MANILA ELECTRIC COMPANY, PETITIONER, VS. PUBLIC SERVICE COMMISSION, RESPONDENT.*G. R. Nos. 24762, 24841, 24854 and 24872. November 14, 1966*

Ponente: CONCEPCION, C.J.

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These are four (4) different appeals from a decision and an order of the Public Service Commission, dated March 15, and July 16, 1965, respectively.

The Manila Electric Company - hereinafter referred to as the MERALCO - is a domestic corporation, operating electric light, heat and power system in the City of Manila, and several cities and municipalities in the Island of Luzon. On March 10, 1955, it filed with the Public Service Commission - hereinafter referred to as the PSC - two (2) applications, namely, one for the reduction of rates for non-residential customers and commercial customers (PSC Case No. 85889), and another for the reduction of rates for residential customers (PSC Case No. 85890). On August 24, 1955, the MERALCO filed a third application, this time for the reduction of general power rates (PSC Case No. 89893). The last application was provisionally approved on August 31, 1955, whereas the first two (2) were granted on September 24, 1955.

Prior thereto, or on June 9, 1954, Dr. Pedro Gil had applied for the examination of the books of account of the MERALCO, which was eventually undertaken by the General Auditing Office - hereinafter referred to as the GAO - early in May, 1956. The GAO having submitted its report late in May, 1956, the three (3) cases were set for hearing on June 22 of the same year. On the date last mentioned the parties appeared before an officer of the PSC and an "informal hearing," for the alleged purpose of defining the issues, was held. Thereupon, Dr. Gil submitted the cases, relying upon the GAO report and his letter to the PSC, dated Jun 7, 1956, suggesting an 8% return on the invested capital. On July 31, 1956, the MERALCO objected to said report. Similarly, the Solicitor General submitted the cases upon the aforementioned GAO report and said letter of Dr. Gil and upon another letter-report of the GAO to the PSC, dated November 21, 1955. Other parties made common cause with Dr. Gil.

On December 27, 1957, the PSC rendered a decision directing the MERALCO to reduce its rates as follows:

"Residential and domestic customers.....

16%

"Commercial customers, including government agencies and street lighting (except the street lights for the City of Manila, the rates for which are fixed by contract.....

8%

"Industrial customers, including non-associated electric utilities.....

6%

On appeal taken by the MERALCO, said decision of the PSC was, on June 30, 1964, set aside by the Supreme Court^[1] and the cases remanded to the lower court, for further proceedings and rendition of the corresponding judgment. Soon later, or on October 8, 1964, the PSC caused the three (3) cases to be set for hearing on November 16, 1964. Earlier, or on October 15, 1964, the MERALCO had, however, moved to withdraw its aforementioned petitions for revision of rates. After due hearing, this motion was granted on November 10, 1964.

About two (2) weeks before, or on October 22, 1964, the MERALCO had, moreover, filed another petition^[2] seeking approval of a revised (increased) rate schedule, and of the "Terms and Conditions of Service" and the "Standard Rules and Regulations" appended to the application, for the purpose of providing a fair return on the present value of its property now devoted to public service and of attracting foreign capital with which to expand its facilities in order to meet the requirements of its present and future customers.

Said petition was opposed by the Republic of the Philippines, the City of Manila, Ricardo Rosal and a number of other entities and Individuals. After due hearing, in the course of which testimonial and documentary evidence were introduced, the parties filed their respective memoranda. Subsequently, or on March 15, 1965, the PSC rendered its decision, the dispositive part of which reads:

"WHEREFORE, the Public Service Commission disapproves the proposed rate schedule submitted by the MERALCO dated October 22, 1964 and in lieu thereof, hereby authorizes and approves a modified rate increase as follows:

For Residential Service, instead of 32.5% (increase as proposed) the Commission authorizes an increase of 23% which is hereby approved;

For General Services, instead of 30.99% (increase as proposed) the Commission authorizes an increase of 24.99%;

For General Power, instead of 25.90% (increase as proposed) the Commission authorizes an increase of 24.90%.

The corresponding schedules for the rates authorized herein are hereto attached as Annexes 'A', 'A-1' and 'A-2' and are made part of this decision. The above increase of rates is herein authorized and approved subject to the condition, that a substantial portion of the increased revenues resulting from the revision of rates allowed herein, shall be devoted exclusively to the acquisition of equipment to meet the demands of public service, to avoid a deterioration of the service.

"The Commission believes that the 'Terms and Conditions of Service' attached to MERALCO's application of October 22, 1964 (Annex 'C' and 'Standard Rules and Regulations' attached to said application (Annex 'D') should be the subject of a separate application and, therefore, no action is taken thereon in this decision.

"The increases hereinabove APPROVED and AUTHORIZED shall be effective from the date of this decision, and Annexes A, A-1 and A-2 cancel and supersede all previously authorized rate schedules, including the wholesale power rate."

What transpired immediately thereafter is set forth in our decision in *Manila Electric Co. vs. PSC et al.*, L-24406 (June 29, 1965), from which we quote:

"After promulgation and publication of the decision,^[3] which expressly provided that the increases 'shall be effective from the date of this decision', the Solicitor General filed, on March 18, 1965, a petition for reconsideration, and on March 19, 1965, moved ex parte to suspend the effectivity of the decision authorizing the rate increases. On the same day, and without notice to, or hearing of, the applicant, the Commission issued an order suspending the effectivity of the decision (Annex B, Petition). Applicant MERALCO (Petitioner

herein) moved for a hearing to enable it to oppose the order of suspension, but no action was taken on its motion. In the meantime, other motions seeking reconsideration of the decision were filed, and petitioner MERALCO filed its opposition to the same on March 23. On the same date, respondent Medina issued an order requiring applicant to answer the motions for reconsideration within 20 days and the movants 20 days to reply (Annex 'C'). By telegram of March 29, respondent Commissioner Enrique Medina, ordered that the motions for reconsideration be not calendared until his arrival, and that oppositors 'be notified and given legal period for the reconsideration and also to reply' (Annex 'D'). On March 31, said Commissioner (Medina) issued an order expressing the desire that all motions for reconsideration and oppositions thereto 'be heard and argued simultaneously, to save time and effort', and directed the Secretary of the Commission to call his attention as soon as the reglementary period to file motions for reconsideration expired, 'with the end in view of setting all motions for reconsideration and all oppositions thereto in one setting' (Annex 'E', Petition). In view thereof, MERALCO resorted to this Court, claiming the aforementioned orders to be invalid and without, or in excess of, jurisdiction and charging the respondents, particularly Medina, with a scheme to delay the hearing and resolution of the motions for reconsideration.

"Respondent Commissioners and the Republic of the Philippines answered, alleging that the orders complained of were legal, valid and within the jurisdiction of the Commission; that the orders of Commissioner Medina alone, Annexes 'C' and 'E1', were interlocutory and lawfully issued by him as presiding officer of the Commission. Such is also the City of Manila's answer."

On June 29, 1965, we rendered the aforementioned decision in L-24406, granting the writs therein prayed for, annulling the PSC order of March 19, 1965,[4] and directing the PSC to immediately hear and promptly resolve the motions for reconsideration of its decision of March 15, 1965.

On July 16, 1965, two (2) orders were registered in the Office of the Secretary of the PSC. One, filed at about 2:52 p.m., was signed by five (5) members of the PSC,[5] the dispositive part of which reads:

"Finding some of the reasons of the Solicitor General and even that of Mayor Viliegas to be acceptable, it is our considered opinion that the average rate increase of 23.7% as contained in the decision of March 15, 1965, should be, as it is hereby rejected, reconsidered and reduced with respect to residential customers only, in the following manner:

- a. All residential Flat Rate Customers are exempt from any increase;
- b. All hospitals, public and private are also exempt from any increase;
- c. All metered residential customers who consume from 1 to 30 kwh (30,000 watt-hours) are likewise exempt from any increase;
- d. All metered residential customers with consumption of:
 1. 31 to 40 kwh-gradual increase up to.....
5%
 2. 41 to 50 kwh-gradual increase up to.....
8%
 3. 51 to 60 kwh-gradual increase up to.....
10.71%
 4. 61 to 70 kwh-gradual increase up to.....
12.67%

5. 71 to 80 kwh-gradual increase up to.....

14.38%

6. 81 to 90 kwh-gradual increase up to.....

15.88%

7. 91 to 100 kwh-gradual increase up to.....

17.22%

"These percentages are based on our newly approved schedule, which the Rate and Finance Division of the Commission should use as guide, as follows:

RATE

(Per month)

First

14 KWH

P2.00

per KWH

Next

46 KWH

P0.125

per KWH

Next

130 KWH

P0.07

per KWH

Excess

KWH

P0.06

per KWH

"The rates prescribed in the decision dated March 15, 1965 for commercial, industrial and general services shall remain unchanged.

"All other matters in the decision of March 15, 1965, there being no reason to disturb the same, are hereby affirmed."

The other order, filed on July 16, 1965, at about 4:01 p.m., although dated June 14, 1965, was signed by PSC Commissioner Medina and concurred in by Associate Commissioner Panganiban,[6] and favored the granting of the motions for reconsideration above mentioned. Appeals were taken from said order of July 16, 1965, and the aforementioned decision of March 15, 1965, by the Meralco (G. R. No. L-24762), Ricardo Rosal (G. R. No. L-24841), the Republic of the Philippines (G. R. No. L-24854), and the City of Manila (G. R. No. L-24872).

The MERALCO, has, however, questioned the timeliness of the appeals taken by the Republic of the Philippines and the City of Manila-hereinafter referred to as the Republic and the City-upon the ground that said appeals had been interposed beyond the period of 15 days-after notice of the order denying the motions for reconsideration-prescribed in Section 36 of the Public Service Act (Commonwealth Act No. 146).[7]

The MERALCO has, also filed a motion for dismissal of the appeal of Ricardo Rosal, alleging that his motion for reconsideration of the decision of March 15, 1965, was filed on April 12, 1965, or more than 15 days after March 25, 1965, when he received notice of said decision, in violation, allegedly, of Section 34 of Commonwealth Act No. 146.[8]

It should be noted, however, that said 15 days expired on April 9, 1965, which was a holiday, it being Bataan Day; that April 10, 1965, was Saturday, on which day the offices of the PSC are closed; and that April 11, 1965 was Sunday. In other words, the first working day immediately following the date of expiration of said period - which date happened to be a holiday - was April 12, 1965. Accordingly, said motion for reconsideration of Rosal was filed within the reglementary period, and his appeal has been seasonably perfected.

Let us now take up the appeals of the Republic and the City. As above indicated, the MERALCO maintains that said appellants had only 15 days from notice of the order of the PSC dated July 16, 1965, within which to perfect their appeal, pursuant to Section 36 of Commonwealth Act No. 146, which, the MERALCO maintains, is controlling. Upon the other hand, the Republic and the City allege that they had, for purposes of appeal, the period of 30 days prescribed in Rule 44, Section 1, of the Rules of Court,[9] which should prevail over that prescribed in Section 36 of Commonwealth Act No. 146, said Rule being subsequent, in point of time, to this statute. Replying thereto, the MERALCO insists that Commonwealth Act No. 146 must prevail over the Rules of Court, not only because the former has, constitutionally, a higher status than the latter, but, also, because the former is a special legislation, enacted exclusively for the PSC.

The last part of MERALCO's argument is, however, weakened by the fact that Rule 44, Section 1, of the Rules of Court, refers specifically to appeals "from a final award, order or decision of the Public Service Commission x x x," among others. At any rate, the 15-day period provided in the last part of the first sentence of Section 36 of Commonwealth Act No. 146, governs only when the motion for reconsideration has been denied. It has no application when the motion is granted, because, then, there results, in contemplation of law, a new decision, which may be reviewed on application filed with the Supreme Court within thirty (30) days from notice of said decision or of the order granting the motion for new trial, pursuant to both, the first part of the first sentence of said Section 36 of Commonwealth Act No. 146, and Rule 44, Section 1, of the Rules of Court.

In the cases under consideration, the motions for reconsideration of the Republic and the City were, in effect, granted, although not to the full extent sought by the movants. In fact, the order of the majority of the PSC, dated July 16, 1965, explicitly declares that the average rate increase of 23.7% sanctioned in the decision of March 15, 1965, was thereby "rejected, reconsidered and reduced with respect to residential customers only," in the manner already adverted to. It is not disputed that the appeals of the Republic and the City have been taken within thirty

(30) days from notice of said order of July 16, 1965. Consequently, MERALCO's objection to the timeliness of said appeals, as well as to that of Ricardo Rosal, should be, as it is hereby overruled.

Referring now to the merits of the rate increases authorized in the appealed decision of March 15, 1965, as amended by the order of July 16, 1965, the issues raised may be summarized as follows, namely: (1) Are rate increases proper considering the circumstances obtaining in these cases? (2) What rate of earnings should be allowed? (3) What shall be the basis for the computation of said earnings? (4) Is the reduction of rates directed in the order of July 16, 1965, legally justifiable?

On the first issue, the Republic, the City and Ricardo Rosal submit a negative answer, upon the ground that, from 1956 to 1964, the MERALCO has consistently made net profits ranging from over P14,000,000.00 to over P28,000,000.00 a year, which, it is claimed, constitute a fair and reasonable return for the capital invested in said enterprise. The bulk of their arguments refers, however, to the manner or method of determining the amount of said capital and/or the value of the assets of the MERALCO. Indeed, the question whether or not the net profits in previous years constitute a fair return depends upon the amount of the investment made and/or the appraisal of the assets of the institution, which are the subject matter of the issues hereinafter to be taken up. For the time being, it will suffice to quote the following passage of the decision of March 15, 1965, which has not been sought to be refuted by any of the parties herein.

"In approving as we hereby do, a slight increase of rates in favor of Meralco, we desire to make it clear that except for minor blackouts, the service of Meralco has been and is considered by the PSC and by the public in general as adequate and satisfactory up to the present, but unless proper precautions are taken, few years from now the service may be different, the wear and tear, the rust, the passing of time, the increase of population and the ever growing needs of industry and commerce, are inevitable, and so the service of Meralco will deteriorate to the prejudice of the public service unless proper measures are taken to meet such situation. The Commission would like to avoid a repetition of the state of affairs of PLDT; the unpleasant deterioration of the PLDT's public service, its apparent failure to cope with the situation and to satisfy the demands of the public since 1959 or earlier, should not be repeated. The situation was so alarming, that in 1963, the PSC had no other alternative but to accede to and approve a 47% rate increase for commercial and 40% increase for residential telephones, over and above the rates already increased by 50% since 1950 (PSC Case No. 16533) for the purpose of enabling the PLDT to obtain a large foreign loan which it could not obtain locally in order to prosecute an urgently needed reconstruction and expansion program to improve the service and to meet demands of the public. The same thing will happen to Meralco's service a few years from now, unless some bold step is taken to meet the demands of public service; it is therefore our considered opinion that it is better to approve now a modest increase (23% for residential service and approximately 25% for General Services and General Powers) than to have to approve later on a 50% increase plus another 40% and 47% increase, as it happened with the PLDT, with the added advantage that the satisfactory and adequate service rendered by Meralco today will not be interrupted. It is therefore the considered opinion of the undersigned that a modest increase may be approved, with the express condition that a substantial portion of the increased revenues resulting from the revision of rates authorized herein shall be devoted exclusively to the acquisition of equipment, accessories and supplies to meet the demands of public service in the future, to avoid a possible deterioration of the present adequate and satisfactory service". (Underscoring ours.)

In short, the exigencies of the present and the future-viewed in the light of recent developments and the experience gained in connection with the operation of another public utility analogously situated - imperatively require, not only that measures be taken to offset the effects of the wear and tear upon MERALCO's lines, equipment and other facilities (already strained by the needs of the unprecedented increase of population and the rapid expansion of trade, commerce and industry in the City of Manila and its environs, and the impact of modern electric appliances) and to avoid a deterioration of the adequate and satisfactory services it has heretofore

rendered, but, also, that additional and improved equipment and facilities be acquired, installed and used to meet the ever growing demands for electricity in all fields of endeavor.

These measures, in turn, represent a financial outlay of such magnitude [10] that - it seems conceded - the MERALCO is incapable of making with its present resources. Although it may raise the funds necessary therefor, either by increasing its capitalization or through loans, the first alternative is fraught with the danger - which is clear and present, owing to the scarcity and timidity of local capital - that foreigners may eventually, if not surely, control an industry so vital to our economy and national security. Hence, the only alternative left, consistently with the policy of nationalism and independence underlying our political and legal system, is to secure foreign loans.

It is obvious, however, that foreign capitalists would not extend their credit facilities without a reasonable assurance that the borrower is financially able to comply with its obligations under the corresponding contract of loan. This simply means that the revenues of the borrower must be such as to justify the expectation that it could and would seasonably meet said obligations. Such revenues, in the case of the MERALCO, depend upon its rate schedules. Hence, the need of revising the same.[11]

This brings us to the main question in this case, namely: What is the fair rate of return or profit upon which the schedule of rates chargeable by the MERALCO should be based? The PSC has fixed it at 12% of the present value of the MERALCO assets devoted to public service. The Republic, the City and Ricardo Rosal assail this conclusion of the PSC on several counts. They maintain that: (1) 12% is too high a rate of earning, and should be lowered; (2) the basis for the computation should be other than the present value of said assets; and (3) the assessment of said present value is excessive, and should be reduced.

With respect to the return allowable to the MERALCO it is urged that the rate authorized by the PSC is higher than that prevailing in the United States. It is well settled, however, that the rate of return permissible depends upon existing conditions.[12] In the Philippines, our decisions have consistently adopted the 12% rate for public utilities and the PSC has done no more than adhere to the established jurisprudence thereon. Indeed, the GAO report concedes that 12% is the fair rate of return for the MERALCO. This is not the proper occasion to inquire into the wisdom of such jurisprudence, although it is a matter of common knowledge that the prevailing rates of interest on loans in the Philippines are generally higher than those charged in the United States. The fact is that, in view of this circumstance, nobody would lend the necessary funds to the MERALCO, if its returns were fixed at a lower rate. The reason is obvious: capitalists would prefer to lend their resources to other public utilities, because the latter would, generally, be in a better position to pay a higher rate of interest and offer a greater assurance of stability and capacity to meet its obligations, all other things being equal.[13]

Then, also, the interest due to the lenders would have to be paid by the MERALCO out of its net earnings. As a consequence, the same would have to be somewhat higher than otherwise, in order that the borrower could reasonably warrant to the lender it's (borrower's) ability to pay the debt, and still retain a margin of earnings sufficient to encourage or justify it's (borrower's) investment in the enterprise. Otherwise, the stockholders of the public utility would prefer, either to withdraw their investment and shift the same to another more profitable venture, or to refrain, at least, for the time being, from embarking on a program of replacement of its old lines, installations, equipment and other facilities-, as well as of expansion and improvement of his services. In either case, the public would suffer thereby.

For this reason, the decision appealed from, as amended, provides that the increase therein sanctioned is subject to

"x x x the express condition that a substantial portion of the increased revenues resulting from the revision of rates authorized herein shall be devoted exclusively to the acquisition of equipment, accessories and supplies to

meet the demands of public service in the future, to avoid a possible deterioration of the present adequate and satisfactory service."

If the MERALCO were not constrained to borrow for the purpose of financing the undertakings it proposes and is required by the circumstances to pursue, the rate of return for its investment could, in all probability, be reduced. Indeed, before it had decided to initiate said undertakings, MERALCO had, not only never increased its rates - despite the fact that almost all other enterprises[14] have raised their rates - but, also, volunteered to reduce the same.

It goes without saying that the rates of return are understandably lower in the United States where there is a comparative abundance of capital and it is, therefore, relatively easier to raise funds locally, either by increasing the capitalization - without the danger adverted to above - or through loans, under conditions less onerous than those usually obtaining in the Philippines.

The next question for determination is the basis upon which the rate of earnings allowable to the MERALCO shall be computed, in order to fix the schedule of rates chargeable by said enterprise. MERALCO maintains that said schedule should be premised upon the present value of its assets as of the year 1963. The Republic and the City have, in effect, accepted this theory, in principle, although they do not agree with the method used in the assessment of MERALCO's assets. Upon the other hand, Ricardo Rosal urges that the rates should be founded upon the amount of the investment made by MERALCO's stockholders or the "historical cost" formula. The PSC has adopted the present or market value theory, as the basis for the computation of the earnings allowable to and the rate schedule chargeable by the MERALCO, as well as the method of valuation used and the appraisal made by the same, after making therefrom some deductions recommended by GAO.

With respect to the "historical cost" formula urged by Rosal, it should be noted that the present or market value theory adopted by the PSC is in consonance with the practice consistently adhered to in this jurisdiction and upheld in an uninterrupted line of decisions of this Court.[15]

And said decisions are borne out by the weight of authority in other jurisdictions. [16]

Rosal argues that the market value theory may be acceptable under normal conditions, but not when the same are abnormal - as, he claims, they are now in the Philippines - when the prices are high, because of the present rate of exchange of the American dollar in relation to our peso. Although, during the operation of our foreign exchange control law, the official rate of exchange was two pesos to a dollar, such was not, however, the true rate of exchange in actual practice. In fact, one of the most potent factors in favor of the removal of said control was the artificiality of the effects thereof. Then too, there is nothing to indicate that the prevailing rate of exchange will, in the foreseeable future, vary materially in our favor. Again, if and when there should be a substantial change for the better, insofar as we are concerned, the PSC could take such measures as may be meet and proper under the new conditions then existing.

The revised schedule of rates of the MERALCO was determined by the PSC as follows:

A. Utility plant net value.....

P415,427.353.00

1. Average according to MERALCO.....P438,024.00

B. Plus working capital (according to GAO).....

	10,739,132.00
C. Average base rate.....	
	P426,166,485.00
D. Multiplied by percentage of fair return.....	
	12%
E. Fair return on present value.....	
	P51,131,978.20
F. Plus Franchise Tax.....	
	1,438,216.00
G. Plus Operating Expenses.....	
	80,555,436.00
H. Plus depreciation.....	
	5,562,527.00
I. Allowable revenue.....	
	P138,696,157.00
1. PSC computation is.....	P138,366,702
J. Deduct Actual Operating revenue.....	111,850,743
K. This represents.....	P26,515,959
1. 23.71% of actual revenue rates	
2. 6.22% of invested capital (according to MERALCO)	

The main target of attack in this computation is its first item, namely the net value of MERALCO's utility plants, which was fixed by the PSC at P415,427,353.00. The appraisal thereof by the MERALCO was P420,275,000.00 at the beginning of 1963 and P455,772,000.00, at the end of the year, or an average of P438,024,000.00 for the whole year. Upon the other hand, the Republic relies upon the GAO report fixing the value of said utility plants at P340,471,251.00. The difference between the MERALCO is appraisal and that made by GAO is due mainly to the method used by each in determining the present or market value of said plants.

The MERALCO appraiser applied what is known as the "trending method." in its decision of March 15, 1965, the

PSC described this method, as follows:

"Meralco's principal witness with respect to the present value of its property and equipment, other than land, was Mr. E. C. Edgar, Manager of the Economic Engineering Department of Gilbert Associates, Inc., a U.S. engineering firm originally organized in 1906. Mr. Edgar testified that he had specialized in public utility valuation matters since his graduation from Massachusetts Institute of Technology in 1935; that he had been familiar with Meralco's properties since 1946; that, in June, 1962, he had initiated the studies the result of which he presented at the hearing; and that he had determined the December 31, 1962 present cost for Meralco's power plants by employing the so-called 'trending method'. Mr. Edgar described this method as follows: He had first segregated each type of such expenditures by kind of material, labor and the like, going into the manufacture of the particular property item; this segregation was audited by the firm of Sycip, Gorres, Velayo and Company so that there would be no question as to the segregation by virtue of such independent review, check and verification; he then developed and applied specific price increase factors for each of such groupings; and in this way, he repriced basic peso costs in accordance with the increase in cost of the various peso materials utilized and the appropriate peso labor employed and, similarly, he repriced dollar items in accordance with the increase in their costs.

"He emphasized that his valuation for Meralco's power plant (and the other Meralco property which he valued) was designed to express the value of all Meralco's property in service in terms of the 1963 purchasing power of the peso; that Meralco can only collect revenues from its customers in pesos of current purchasing power; that, by expressing its property in terms of pesos with 1963 purchasing power, a correct matching of Meralco's revenues derived from the use of its facilities and the value of such facilities in terms of the same monetary unit is achieved; and that the property which he was evaluating was that actually in service."

Upon the other hand, the GAO fixed the value of MERALCO's utility plants by ascertaining the cost of production per kilowatt and multiplying the same by the total capacity of said plants, less the corresponding depreciation. In the language of the decision appealed from:

"The appraisal-method employed by the GAO for Meralco's power plants does not seem to be satisfactory. It used as its base for determining the current cost of Meralco's steam generating stations the cost per kilowatt to Meralco of installing its Rockwell Station Unit No. 8 which was placed in service in 1963. This unit is a 66,000 KW Unit. The first five Rockwell units are 27,000 KW units and units Nos. 6 and 7, as well as No. 8, are 66,000 KW units. The five Blaisdel' units range in size from 4,000 KW to 12,000 KW. The net effect of the GAO's method is to substitute, for the current cost of the 13 steam generating units actually in service the cost per kilowatt which would result if Meralco's thermal power plants consisted of 5.51 generating units, each with a capacity of 66,000 KW and each installed in 1963. From this theoretical cost figure thus developed by the GAO, it then subtracted the depreciation reserve (restored on a present value basis) which had been accumulated with respect to the 13 units actually in existence.

"The cost of Rockwell Unit No. 8 is not the complete cost of the unit because this was an incremental addition to an existing station and did not take account of the cost of some of the facilities previously installed in the Station in connection with earlier units which are properly assignable in part to Unit No. 8. Meralco has demonstrated that the cost per kilowatt for Rockwell Unit No. 8, should be increased by about 10% if it were to be used as the kind of standard suggested by the GAO Committee, and about P14,000,000.00 of the difference between the Meralco and GAO determination of present value of steam power plants would be eliminated.

"Meralco also questions the propriety of the deduction by the GAO of the depreciation reserve of approximately 20% from the value per kilowatt assigned by the GAO Committee on the basis of the cost of Rockwell Unit No. 8. It urges that there is virtually no depreciation applicable to that Unit and that it is inconsistent to use the cost of that Unit as a standard of value and then to deduct the accumulated depreciation applicable to the other 12 units. Meralco points out that if no such deduction is made, and if the 10% increase

in cost per kilowatt of Rockwell Unit No. 8 referred to in the preceding paragraph is taken into account, then the GAO's method would produce a total present value for Rockwell and Blaisdell station in excess of that claimed by Meralco. We believe that there is merit in Meralco's position on this matter.

"We have also noted Meralco's argument that acceptance of the GAP Committee's method would necessitate greatly increased depreciation allowance in the early lives of facilities and, in the case of rapidly growing utilities, would lead to higher consumer rates.

"Since, as noted above, the GAO's method of determining the present value of Meralco's power plants is basically not acceptable because it involves substituting the value of theoretical facilities not in service for the value of actual facilities which are in service and because it accords insufficient recognition to the underlying purpose of present value determinations, we find it unnecessary to discuss further the claimed defects in the application of the GAO's method.

"The reasonableness of the valuation of Meralco's steam power plants developed by Gilbert Associates, Inc., is attested by data released by the U. S. Federal Power Commission. Such data indicate that the recent cost per kilowatt in the United States for units of the 50,000 to 75,000 KW size is \$199 and for units of the 22,000 to 49,000 KW size is \$228. Expression of such costs in pesos at a P3.91 per \$1 conversion rate would result in current costs for such unit of P778 and P891, respectively. These are costs in the United States where labor construction costs are higher than in the Philippines but such elements as ocean freight, import duties, etc. are not present. The average current costs for Rockwell Units 1-5, inclusive, each of which is a 27,000 KW unit, as determined by Gilbert Associates, Inc. is P697 or well below the comparable P891 per KW figure derived from the Federal Power Commission data. The average current cost of Rockwell Units 6 and 7, each of which is a 66,000 KW unit, as determined by Gilbert Associates, Inc. is P563 per KW, or again well below the P778 per KW comparable figure derived from the Federal Power Commission data. The Federal Power Commission data do not include units as small as those in the Blaisdell Station, but the average current cost of P1,016 per KW for the units in this station, as determined by Gilbert Associates, Inc., appears to be in line, bearing in mind the fact that the cost per kilowatt in small units is substantially greater than in large ones.

"What has been said with respect to Meralco's steam generating stations is even more applicable to its Botocan hydro-electric station. Gilbert Associates, Inc. valued Botocan by trending the surviving peso and dollar components of the cost of Botocan into 1963 peso and dollar costs. The GAO, on the other hand, based its determination of the value of Botocan on the cost of the National Power Corporation's much larger Binga hydro-electric project. Yet the data presented by GAO with respect to Binga demonstrate that the cost per kilowatt for one hydroelectric project will not accurately measure the cost of another hydro-electric project - even one built by the same agency on the same river. Hydro project costs are greatly affected by site conditions, permissible water storage, available head and the like. The cost of one hydro-electric does not measure the cost or value of another - at least so long as both are economically advantageous in the electric systems of which they are a part.

"For the reasons stated, we are inclined to accept the valuation of Meralco's power plants as determined by Gilbert Associates, Inc." (Underscoring ours.)

We find no cogent reason to disturb either the facts upon which the foregoing conclusions of the PSC are premised or the conclusions drawn from said facts, both being, by and large, supported by the records.

It is urged that the present value theory is now an obsolete doctrine, it having been rejected by the Supreme Court of the United States in *Federal Power Commission vs. Hope Natural Gas Co.* (320 U. S. 591, 88 L. ed. 333), in which the prudent investment or modified original cost theory was allegedly adopted. This assertion is inaccurate. In said case the Court did not reject the present or fair market value theory. It merely refused to interfere with the action taken by the Federal Power Commission in applying said prudent investment or modified original cost theory.[17]

As regards the working capital of the MERALCO, we note that the latter claimed therefor P17,884,000.00, which was reduced by the PSC to P10,739,132.00, after making some deductions recommended by the GAO. Similarly, the MERALCO had fixed its operating expenses at P81,020,337.00, which, in line with the opinion of the GAO, was reduced by the PSC to P80,558,039.00. Thus, MERALCO's working capital and operating expenses were assessed by the PSC in accordance with the view taken by the GAO.

In other words, the revised rates authorized in the decision of March 15, 1965, were substantially supported by the policy of authorizing the MERALCO to secure a net return of 12% on the present or market value, as of 1963, of its property actually devoted to public service. But, then, MERALCO alleges, the PSC had acted arbitrarily in establishing exceptions and directing a reduction in the rates for residential customers, as provided in the order of July 16, 1965. The reasons given in said order were:

"Hardest hit by the rate increase are the poor people who consume electric currents of from 1 to 100 kwh. Those who use from 1 to 14 kwh., under the decision sought to be reconsidered, pay an increase of 16% while those who consume from 14 kwh. to 20 kwh. pay an increase of 22%. The full 23% is charged for consumption starting from 30 kwh. and upwards, and up to 28% increase for a consumption of 90 kwh.

"According to data available, of the 348,943 total residential customers of the Meralco, one-half are those who consume from 1 to 100 kwh. The consumers of from 100 kwh to 300 kwh. may safely be classified as well-to-do customers since their capacity already involves the use of electrical appliances, like TV sets, radios, electric ranges, air conditioners, electric fans, electric irons, etc.

"It is on behalf of the poor people that the Solicitor General and Mayor Villegas are loyally battling for. They have used all iota of arguments, legal or logical, to convince the Commission of the wisdom of their thinking and the justice due the total of 348,943 residential consumers of Manila, suburbs and part of a few surrounding towns of Manila. Even our very own Chief Executive has expressed his deep concern for these less fortunate ones with whom he is so significantly identified. His battle-cry: 'Fight Poverty'.

"Of course, in a democracy the instrumentality of the State favors not only one segment of society, like favoring only the poor, or favoring only the rich; it must favor the public good or well-being, the reason for its existence. And so it is that in determining a reasonable compensation for the services of a public utility, it should be just to the public and just to the Company; but the more enlightened reason is that if it cannot be just to both it must in any event be just to the public."

The order appealed from does not give any specific figures that would permit us to estimate the amount of the reduction that would thus be effected in the revenues and returns of the MERALCO, as determined in the original decision, dated March 15, 1965. Neither has the MERALCO supplied the figures necessary to show that the modifications provided in the order of July 16, 1965, are materially inconsistent with the basic principles or premises established and adopted in said decision and confirmed in the order appealed from. And, since the findings of and determinations by administrative organs, in matters which are within their peculiar competence, should be respected by courts of justice, unless clearly devoid of factual or legal foundation, and no such flaw has been shown in the cases at bar, we deem it improper, at this time, to review the modifications thus effected by said order. At any rate, it should always be understood that if, after having been in operation long enough to reasonably ascertain the effects of the contested modifications, the same should prove to be unjust and unfair, the PSC may, after due notice and hearing, grant such relief as may be proper to remove the resulting evils, if any, and promote public interest.

The City maintains, also, that the appealed decision and the appealed order are null and void for lack of jurisdiction of the PSC to entertain MERALCO's application for revision (increase) of its rate schedules: (1) because said application includes territories which are beyond the City, for which MERALCO has, allegedly, no

legislative franchise; and (2) because, although possessing a legislative franchise for the City, MERALCO has no certificate of public convenience to operate therein, as required by the Public Service Law.[18]

We find no merit in this pretense. To begin with, the alleged lack of legislative franchise of the MERALCO to operate in areas outside the City, but adjoining the same, as well as the absence of a certificate of public convenience to operate in the City proper, might affect, not the jurisdiction of the PSC, but MERALCO's cause of action, or its right to seek a revision of rates.

Secondly, pursuant to Act No. 484 of the Philippine Commission, approved and effective on October 20, 1902, and Republic Act No. 150, approved on June 14, 1947, the MERALCO may operate an electric system in the "City of Manila and its suburbs ." It is true that in PSC Case No. 23044, the PSC held, in an order dated April 4, 1963, that the term "suburbs", in said laws, does not include territory outside the perimeter of the City, although adjoining the same. However, said order has, in effect, authorized the continuance of MERALCO's operation within the disputed area for one year from the date thereof, by giving the MERALCO said period of time within which to secure the corresponding legislative franchise and certificate of public convenience. Besides, the order was set aside by this Supreme Court in G. R. No. L-21435.[19]

In fact, even prior thereto, or on June 20, 1964, Congress had passed Republic Act No. 4159, extending, for 30 years, the time within which the MERALCO may operate "throughout the City of Manila and its suburbs", and, according to the Explanatory Note of the Bill[20] which, upon approval, became Republic Act No. 4159, its purpose is to extend, for said period, MERALCO's authority to operate "throughout the City of Manila and the Cities and Municipalities now being serviced by it" (underscoring ours).

Thirdly, in *A. L. Ammen Transportation Co. vs. Golingo* (43 Phil. 286), we held that a certificate of public convenience issued by the PSC is a prerequisite to the operation of a public utility in the Philippines, unless the same was in operation when our first law on public utilities (Act No. 2307) went into effect.[21] The MERALCO was then in operation, its franchise having been granted by said Act No. 484 of the Philippine Commission,[22] and carried into effect by Ordinance No. 44 of the City in 1903.[23]

The MERALCO has moved for the dismissal of the appeal of the Republic upon the ground that its brief had been filed after the expiration of the reglementary period therefor. Upon submission of the Republic's opposition to said motion and of MERALCO's reply thereto, we resolved to defer action thereon until after the case is considered on the merits. Considering the circumstances surrounding the delay in the filing of said brief, and the fact that the issues therein raised are, likewise, taken up in the briefs of the City and Ricardo Rosal, as well as the public interest involved in these cases, we deem it best, in the exercise of our discretion, to deny the aforementioned motion of the MERALCO.

WHEREFORE, subject to the above-mentioned qualification, the PSC decision of March 15, 1965, as amended by the appealed order of July 16, 1965, are hereby affirmed, without special pronouncement as to costs.

IT IS SO ORDERED.

Reyes, J. B. L., Dizon, Regala, Makalintal, Bengzon, J. P., Zaldivar, Sanchez and Ruiz Castro, JJ., concur.

Barrera, J., on leave.

[1] In G. R. Nos. L-13638-40.

[2] PSC Case No. 64-5706, which is the subject-matter of the present appeal.

[3] Of the PSC, dated March 15, 1965.

[4] Suspending ex parte the effectivity of the rate increases authorized in the PSC decision of March 15, 1965.

[5] Associate Commissioners Guinto, Perfecto, Fornier, Panganiban and De Guzman.

[6] Who, likewise, signed the order dated July 16, 1965.

[7] Section 36. - "Any order, ruling, or decision of the Commission may be reviewed on the application of any person or public service affected thereby, by certiorari in appropriate cases or by petition to be known as Petition for Review, which shall be filed within thirty days from the notification of such order, ruling or decision, or in case a petition is filed in accordance with the preceding section for the reconsideration of such order, ruling or decision and the same is denied, it shall be filed within fifteen days after notice of the order denying reconsideration. Said petition shall be placed on file of the office of the clerk of the Supreme Court, who shall furnish copies thereof to the Secretary of the Commission and other parties interested." (Italics supplied)

[8] Section 34 - "Any interested party may request the reconsideration of any order, ruling, or decision of the Commission by means of a petition filed not later than fifteen days after the date of the notice of the order, ruling, or decision in question."

[9] An appeal from a final award, order or decision of the Public Service Commission, the Patent Office, the Agricultural Invention Board, the Court of Tax Appeals, and the General Auditing Office shall be perfected by filing with said bodies a notice of appeal and with the Supreme Court twelve (12) copies of a petition for review of the award, order or ruling complained of, within the period of thirty (30) days from notice of such award, order or decision. (Underscoring ours.)

[10] P840,000,000.00, according to MERALCO's petition (paragraph X).

[11] Indeed, it is alleged in MERALCO's petition, and none of the oppositors has denied that:

"IX. Applicant's forecast of the electric power requirements of its service area discloses that such requirements may reasonably be expected to treble in the next 10 years. This will require the addition to the system of approximately 1,100,000 KW of additional generating capacity and related additions to applicant's transmission, subtransmission and distribution facilities. Almost all of such equipment must be purchased from foreign sources. In addition, during this period it will be necessary to replace part of applicant's existing facilities as such facilities complete their service lives.

"X. In order to meet this mammoth construction program for the next decade, applicant will require additional capital on the order of P840,000,000. The bulk of such capital must come from foreign sources, not only because capital of this magnitude is not available in the Philippines but also because, even if it were available, absorption by applicant of a substantial part of this amount of capital in the Philippines would greatly restrict the availability of capital for other industries and businesses.

"XI. Applicant and its predecessors have successfully met the electric power needs of the Manila area for approximately 60 years. With this record of satisfactory performance, applicant has demonstrated in the past three years that it possesses the standing and reputation with foreign sources of capital that should enable it to obtain the capital which it will require provided it is permitted to earn at a rate which will maintain its financial integrity and cover the interest and dividend requirements of its securities. Such demonstrations included: (a) Applicant's borrowing in 1962-63 of dollars \$9,400,000 on a Serial Bank loan from a group of 9 U.S. Banks; (b) applicant's obtaining in 1963 of \$13,400,000 of credit to finance Tegen Station unit No. 1; and (c) applicant's issuance and sale in 1964 of \$8,000,000 of 20-year bonds to a group of U.S. insurance companies and other U. S. institutional

investors. All of these required the most strenuous efforts over several months and even then could be achieved only because applicant had a relatively low debt ratio (about 35%) prior to the first of these transactions and, therefore, had room in its capital structure to take on the debt obligations by which such funds were obtained. These transactions have resulted in increasing applicant's debt ratio to 48% as of October 1, 1964, with the consequence that applicant must have substantial additional earnings to maintain the coverage of its fixed charges (primarily interest) to maintain the status of applicant's debt obligations as institutional grade securities.

"XII The primary sources of external foreign capital from which applicant can expect to obtain funds to finance its construction program are insurance companies, pension funds, and other institutional investors of the U. S. and other parts of the free world. Such investors generally are not willing to purchase the debt securities of an electric public utility unless the utility's operating income available for interest in recent periods is several times the combined interest requirements of the utilities outstanding debt obligations and those obligations which are to be issued. The increased rates here proposed will enable applicant to meet such a standard."

[12] According to Spur: "Many factors are taken into consideration in determining the reasonableness of the return. Having fixed the rate based and found the cost of operation, the next question is related to the percentage of rate of return. Whether a particular percentage, or rate is reasonable depends upon numerous considerations, the most frequently mentioned being the risks to which the principal and income from it are subjected, whether these risks be moral or physical or otherwise, the uniformity and certainty of the return, the character of the business, the locality in which it is placed, the density of population, whether competition exists, the returns secured in the locality from other investments of a similar nature, whether the return is gross or net, for example, whether it is clear of taxes or other expenses, the necessity of obtaining money to provide good service, the size and comparative financial strength of the company, the ability of the company to borrow money, the demand for money, the prevailing rate of interest in the community in which the enterprise is located, the desirability of attracting capital, the necessity of providing surplus for contingencies, the competency of the management, the advisability of rewarding superior management, the character of service rendered, the previous financial history of the company, whether it has been poor or prosperous, and the market value of money.

"It is said that the question of the reasonableness of the return cannot be determined without reference to the interest of the public; that the value of the service and the financial condition of locality served must be taken into account. It is held that no one element is sufficient in itself, but that all enter as governing factors in the problem; that there is no inflexible rule as to the rate of return to be allowed, each case depending upon its own circumstances, x x x" (Guiding Principles of Public Service Regulation, by Henry C. Spur, 1926 ed., Vol. III, p. 43 et seq.)

[13] "It has been said that an electric lighting company should be entitled to at least 12-1/2 per cent on an investment in additional equipment for electric pumping, to cover the necessary interest, depreciation, and tax charges." (Guiding Principles of Public Service Regulation, by Henry C. Spur, 1926 ed., Vol. III, p. 43 et seq.) (Underscoring ours.)

[14] (1) Including the government-owned National Power Corporation, which has increased up to 30% the cost of electricity it supplies to Meralco.

[15] *Inchausti vs. Public Utility Commission* (42 Phil. 621); *Metropolitan Water District vs. PSC* (58 Phil. 397); *Municipality of Pagsanjan vs. Cacho* (G. R. No. 36544 [1933]); *Philippine Railway vs. Asturias* (72 Phil. 454); and *Halili vs. Ice & Cold Storage* (77 Phil. 823).

[16] "Notwithstanding the strong inclination of the Commission towards the investment theory, the rule of the courts appears to be that public utility companies are entitled to earn a return upon the value of their property,

rather than upon its cost. We are here concerned merely with the inquiry as to what the law on this subject is — not whether the one theory or the other is more reasonable. The great weight of authority is certainly in favor of the standard of present value as the basis of determining rates." (Guiding Principles of Public Service Regulation, by Henry C. Spur, 1924 ed., Vol. I, p. 222)

[17] Not because the Court was in favor of the formula applied by the Commission and against the present value theory, but because the Commission was not bound to use any single formula or combination of formulas; because it is the result reached not the method employed that is controlling; because "if the total effect of the rate order cannot be said to be unjust and unreasonable, judicial inquiry under the Act is at an end"; because the order of the Commission fixing rates "is the product of expert judgment which carries a presumption of validity"; because the rate-making process involves a balancing of the investor and the consumer interests; because the standard of the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks; because such returns should, moreover, be sufficient to assure confidence in the financial integrity of the enterprise so as to maintain its credit and to attract capital; and because it is not important to determine the various permissible ways in which any rate base on which the return is computed may be arrived at, if the Court is of the view that the end result in the case cannot be condemned, under the Act as unjust and unreasonable.

[18] Act No. 3108, as amended by Act No. 3311.

[19] Entitled Manila Electric Co. vs. PSC, decided on February 28, 1966.

[20] House Bill No. 10633.

[21] December 19, 1913.

[22] Approved and effective on October 20, 1902.

[23] City of Manila vs. Public Service Commission, 52 Phil. 517.

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