

[ERB, November 20, 1987]

RULES OF PRACTICE AND PROCEDURE GOVERNING HEARINGS BEFORE THE ENERGY REGULATORY BOARD

Pursuant to Section 6 of Executive Order No. 172, the Energy Regulatory Board hereby adopts and promulgates the following rules of procedure governing inquiries, studies, hearings, investigations and proceedings conducted by and before the Board.

Rule 1 General Provisions

SECTION 1. Title — These Rules shall be known and cited as the Rules of Practice and Procedure governing hearings before the Energy Regulatory Board.

SECTION 2. Scope — These Rules shall govern pleadings, practice and procedure before the Energy Regulatory Board in all matters of inquiry, study, hearing, investigation and/or any other proceedings within the jurisdiction of the Board. However, in the broader interest of justice, the Board may, in any particular matter, except itself from these Rules and apply such suitable procedure as shall promote the objectives of the Order.

SECTION 3. Construction — These Rules shall be liberally construed to protect and promote public interest, and to attain the objectives of Executive Order No. 172.

SECTION 4. Definitions — For purposes of these Rules, the terms:

- a. **Order** shall mean Executive Order No. 172 creating the Energy Regulatory Board.
- b. **Board** shall refer to the Energy Regulatory Board.
- c. **Member** shall include the Chairman and anyone of the Board members.

Rule 2 Parties

SECTION 1. Who May Be A Party — Any person or group of persons, whether natural or juridical, who may be affected by the decision, order, ruling or resolution to be rendered by the Board in a particular case may appear and participate in the manner hereinafter provided for in these Rules.

SECTION 2. Applicant — An applicant is a person who seeks a certificate of public convenience and necessity (CPCN) to operate an electric light, heat and power service or any authorization, license or permission to undertake any matter or business within the regulatory power and jurisdiction of the Board.

SECTION 3. Oppositor — Any person having a substantial and adverse interest in, or who may be affected by the application or petition, or the subject matter thereof and who interposes an objection to the approval of the application or petition is an oppositor.

SECTION 4. Complainant — A complainant is any aggrieved person or group of persons who files a complaint on matters within the jurisdiction of the Board. If the complainant desires to participate in the hearing of the matter complained of, he must file a written complaint in accordance with these Rules.

SECTION 5. Petitioner — A petitioner is any person who seeks remedies, relief or ruling that is within the power of the Board to grant.

SECTION 6. Respondent — A respondent is any person or party to whom an order is issued by the Board to appear and show cause or otherwise summoned to answer any allegation, imputation or issue in any hearing or proceeding before the Board.

SECTION 7. Appearance by Consumers or Users — If individual users or entities opposing an application for approval of prices or rates are represented by several attorneys, the latter shall choose from among themselves not more than four (4) who shall be allowed by the Board to conduct the proceedings in behalf of all the oppositors.

Rule 3 Pleadings

SECTION 1. Pleadings Allowed — The pleadings allowed by these Rules are the application, the complaint, the petition, the opposition, the answer, the reply and such other pleadings as the Board may allow.

SECTION 2. Form and Substance — All pleadings shall be in English and/or Pilipino typewritten or printed double spaced on only one side of a legal size white bond paper, and shall be filed in six (6) copies, including the original. Every pleading shall have a caption, title, signature and address and shall contain, in logical form, a plain, concise and direct statement of the ultimate facts relied upon by the party.

SECTION 3. Verification and Supporting Papers — All pleadings shall be verified or accompanied by affidavits and by such documents as would reasonably tend to establish *prima facie* the truth of the factual allegations contained therein. A pleading is verified by an affidavit stating that the person verifying has read the pleading and that the allegations of fact therein made are true of his own personal knowledge.

SECTION 4. Application — By means of an application, the applicant seeks a certificate of public convenience and necessity (CPCN) to operate an electric light, heat and power service or any authorization, license or permission to undertake any matter or business within the regulatory power or jurisdiction of the Board. It shall contain a concise statement of the service proposed or authorization applied for, and the ultimate facts that would qualify or entitle the applicant to the grant of the certificate, privilege or authorization being sought.

When the application is predicated on a franchise, sale, lease, mortgage, or any other contract, such franchise or contract shall be impleaded in the application by alleging in substance its salient and pertinent provisions and appending to the application a copy of the franchise or contract.

SECTION 5. Complaint — The complaint is a concise statement of the ultimate facts of the matter or act complained of within the regulatory power or jurisdiction of the Board, and shall specify the principal relief sought.

SECTION 6. Petition — A petition may be filed by one who may be a party to a hearing or proceeding, or who, under the provisions of the Order, is subject to the jurisdiction of the Board concerning any matter or controversy within the regulatory power or jurisdiction of the Board.

SECTION 7. Opposition — An opposition may be filed by any person whose interest may be prejudiced by an application.

SECTION 8. Answer — The respondent to whom an order is issued by the Board to show cause, or otherwise summoned to answer, shall file an answer in compliance therewith. The answer shall admit or deny the material allegations of fact stated in the show cause order or in the complaint or petition. Whenever practicable, the respondent shall state the matters of fact and law relied upon and shall attach to his answer such documents and affidavits in proof of his allegations.

The respondent may, in his answer, pray for the grant of an affirmative relief.

SECTION 9. Amendments — Any modification or supplement to an application, complaint, petition or other pleading shall be deemed an amendment to the pleading, and shall comply with the requirements of this Rule relating to the pleading amended insofar as appropriate and in all other respects with the requirements of **Rule 5** hereof. Amendments may be made as a matter of right at any time before hearing, and, thereafter, only with leave of the Board.

SECTION 10. Amendment to Conform to the Evidence — When, at a hearing, issues not raised by the pleadings are introduced by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. If evidence upon a new issue is objected to on the ground that the issue is not among those raised in the pleadings, the Board may allow the pleadings to be amended and such evidence received when it appears that the presentation of the merits of the proceeding will be served thereby without prejudicing the public interest or the rights of any party. The Board may grant a continuance to enable the objecting party to meet such evidence.

SECTION 11. Directed Amendments — The Board, may, upon motion of any party, direct any other party to amend his pleading in order to state his case more fully or in a more detailed manner. Such amendment shall be reduced to writing and filed within such time as may be fixed therefor, and shall comply with the requirements of this Rule pertaining to the pleading amended insofar as appropriate and in all other respects with the requirements of **Rule 5** hereof.

SECTION 12. Withdrawal of Pleadings — At any time before a responsive pleading is filed, a party may withdraw his pleading by filing notice thereof with the Board.

However, such withdrawal shall be subject to the approval of the Board.

SECTION 13. Defect of Form — No defect in the form of any pleading allowed to be filed under these Rules will prejudice the pleader; however, the Board may direct amendments or require the submission of additional affidavits or other supporting documents.

Rule 4 Motions

SECTION 1. Scope and Contents — Every application for any procedural or interlocutory ruling or relief may be made by a motion. Motions shall set forth the ruling or relief sought, and state the grounds therefor, and if necessary, shall be accompanied by supporting affidavits and documents. The requirements of **Rule 3** shall apply to all written motions. However, every ancillary motion for provisional authorization or proposed services or rates/prices shall be governed by *Section 2* of **Rule 13**.

SECTION 2. Form — Unless made in the course of a hearing, all motions shall be in writing and copies thereof shall be served upon all parties at least three (3) working days before the hearing thereof. Motions made during hearings may be stated orally upon the record unless the Board or Hearing Member or Officer requires that such motions be reduced to writing and filed separately.

SECTION 3. Notice — Written motions shall contain a notice setting the hearing thereof at a specified date and time. However, for good cause shown, the Board may hear a motion on shorter notice.

SECTION 4. Proof of Service — The Board shall not act upon any motion without proof of service of notice thereof on all parties, except when the Board is satisfied that the rights of the adverse party or parties are not affected.

SECTION 5. Ex parte Motions — *Ex parte* motions shall be acted upon by the Board only upon showing of urgent necessity therefor.

SECTION 6. Evidence on Motion — Allegations of fact in a motion or in an opposition thereto not appearing of record may be proved by affidavits or sworn documents, but the Board may require that the matter be heard wholly or partly on oral testimony.

Rule 5 Filing and Service of Papers

SECTION 1. Filing — All pleadings, motions, documents and other papers required or allowed to be filed under these Rules shall be filed with the Executive Director of the Board.

SECTION 2. Number of Copies — Unless the Board shall require otherwise, every party filing a pleading, motion, document or other papers shall file an original and five (5) conformed copies thereof.

SECTION 3. Acceptance for Filing — Only pleadings, motions, documents and other

papers which conform to the formal requirements of these Rules shall be accepted for filing. Those unacceptable for filing shall be returned by the Executive Director with an indication of the deficiencies thereof and the reasons for nonacceptance and return. Acceptance for filing shall not waive any failure to comply with the Rules and such failure may be cause for striking all or any part of such paper filed.

SECTION 4. Service Upon Parties — All pleadings, documents and other papers tendered to the Executive Director for filing shall show proof of service thereof upon all parties to the proceeding. Such service shall be made by personal delivery or by registered mail, properly addressed, with postage prepaid, of one (1) conformed copy to each party, together with all annexes attached thereto.

SECTION 5. Service Upon Parties Represented by Attorneys — When any party has appeared by attorney, service upon him shall be made upon his attorney or anyone of his attorneys of record.

SECTION 6. Service of Orders — All decisions, orders and resolutions of the Board shall be served upon all parties who have entered their appearance, either by personal delivery to such party or his attorney of record, or by mailing copies thereof to said party or attorney.

SECTION 7. Extension of Time — Whenever by any decision or order of the Board, a pleading, motion or document is required to be filed within a fixed time or period, the Board, for good cause shown, may extend the period upon motion made before the expiration of the period fixed. The Board may, upon such terms as may be just, also allow or admit any pleading to be filed after the time fixed by these Rules.

Rule 6

Show Cause Order

SECTION 1. Hearing or Inquiry of the Board — The Board may *motu proprio* initiate an action or inquiry against any person or entity when so required by law, national or public interest, and/or in its exercise of any of the powers and functions vested upon it by the Order or any other law enforced and administered by it. In the exercise of this prerogative, the Board may commence such hearing or inquiry by an order to show cause, setting forth the grounds for such order. The order shall state with definiteness and clarity, the facts constituting the violation and also the range or extent of the sanction or penalty that may be imposed should the violation be substantiated.

SECTION 2. Other Instance When a Show Cause Order is Issued — If the Board finds a complaint or otherwise sufficient in form and substance to warrant a hearing, it shall issue a show cause order.

SECTION 3. Sufficiency of Complaint — A complaint is sufficient if it contains the name of the complainant or offended party; the name of the respondent; a reference, whenever practicable, to the provisions of the law, certificate, order, decision or regulation violated; the acts or omissions complained of as constituting the offense; and the date, hour and place of the commission of the offense.

SECTION 4. Contents of the Order — The show cause order shall contain a statement of the matters concerning which the Board proposes a hearing or inquiry