

## **SECOND DIVISION**

**[ G.R. No. 192578, September 16, 2020 ]**

**PHILIPPINE SINTER CORPORATION, PETITIONER, VS.  
NATIONAL TRANSMISSION CORPORATION AND CAGAYAN  
ELECTRIC POWER AND LIGHT COMPANY, INC., RESPONDENTS.**

### **DECISION**

**HERNANDO, J.:**

Challenged in this appeal is the December 17, 2009 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. SP. No. 108069 which upheld the findings of the Energy Regulatory Commission (ERC) that the 138kV Aplaya-PSC Line is a sub-transmission asset and thus may be subject for divestment, and its June 9, 2010 Resolution<sup>[2]</sup> denying the Motion for Reconsideration thereof.

#### **The Parties**

Petitioner Philippine Sinter Corporation (PSC) is a domestic corporation which operates a sinter plant at the Phividec Industrial Estate, Villanueva, Misamis Oriental.<sup>[3]</sup>

On the other hand, respondent National Transmission Corporation (TRANSCO) is a government owned and controlled corporation created under Republic Act (R.A.) No. 9136,<sup>[4]</sup> otherwise known as the Electric Power Industry Reform Act of 2000 (EPIRA).

Lastly, respondent Cagayan Electric Power Light Company, Inc. (CEPALCO) is a domestic corporation and a distribution facility, as per its franchise under R.A. No. 3427, as amended.<sup>[5]</sup> As a distribution facility, CEPALCO has the authority to distribute electric power within its franchise area, which includes Villanueva, Misamis Oriental.<sup>[6]</sup>

#### **The Antecedents**

PSC is a directly-connected customer of the National Power Corporation (NAPOCOR) for the supply of electricity to its sinter plant. Under their Contract for the Supply of Electricity (CSE), NAPOCOR obliged itself to supply power to PSC through the 138kV Aplaya-PSC line. With the enactment of R.A. No. 9136, the generation and transmission functions of the NAPOCOR have been unbundled and the operation and maintenance of the 138kV Aplaya-PSC line was transferred to TRANSCO.<sup>[7]</sup>

Sometime in 2002, CEPALCO expressed interest in acquiring the 138kV Aplaya-PSC

line. CEPALCO contended that said line is a sub-transmission asset which can be sold by TRANSCO to a qualified distribution facility or consortium under the EPIRA. However, TRANSCO classified the 138kV Aplaya-PSC line as a transmission asset, and therefore cannot be sold or disposed of or even offered for sale to CEPALCO.<sup>[8]</sup>

Disagreeing with the foregoing classification by TRANSCO, CEPALCO brought the matter for dispute resolution before the ERC under the ERC Guidelines to the Sale and Transfer of the TRANSCO Sub-Transmission Assets and the Franchising of Qualified Consortiums (Guidelines).<sup>[9]</sup> The petition<sup>[10]</sup> filed by CEPALCO against TRANSCO was entitled, *"In the Matter of the Dispute Resolution Pursuant to the Guidelines to the Sale and Transfer of the TRANSCO's Sub-Transmission Assets and the Franchising of Qualified Consortiums"* and docketed as ERC Case No. 2005-248MC.

TRANSCO moved to dismiss the petition arguing that the 138kV Aplaya-PSC line is a transmission asset and not a sub-transmission asset, therefore incapable of acquisition by CEPALCO or any other distribution facility. However, the ERC denied the motion to dismiss for lack of merit<sup>[11]</sup> and proceeded to rule on the merits of the petition.

#### *Ruling of the Energy Regulatory Commission:*

In its June 25, 2008 Decision,<sup>[12]</sup> the ERC granted CEPALCO's petition and classified the 138kV Aplaya-PSC line as a sub-transmission asset. In addition, the ERC ordered said line to be restored in TRANSCO's list of sub-transmission lines which can be purchased by a qualified distribution facility or consortium under the EPIRA's provisions.<sup>[13]</sup> The dispositive portion of the ERC's Decision reads:

WHEREFORE, the foregoing premises considered, the petition to classify the 138 kV Aplaya-PSC Line as a sub-transmission asset filed by Cagayan Electric Power and Light Company, Incorporated (CEPALCO) is hereby APPROVED.

Accordingly, TRANSCO is hereby directed to restore the 138 kV [Aplaya]-PSC Line in the list of its sub-transmission assets.

SO ORDERED.<sup>[14]</sup>

Unsatisfied with the ERC's disposition, PSC filed a Motion for Reconsideration which was denied in the ERC's February 9, 2009 Order.<sup>[15]</sup>

#### *Ruling of the Court of Appeals:*

PSC then filed a petition for review under Rule 43 of the Rules of Court before the CA. In its December 17, 2009 Decision, the appellate court found the petition to be bereft of merit and upheld the findings of the ERC. It found no error on the part of the ERC in classifying the 138kV Aplaya-PSC line as a sub-transmission asset, which can be divested by TRANSCO. The appellate court further pointed out that

classifying the 138kV Aplaya-PSC line as a sub- transmission asset is in accord with Sections 7 and 8 of EPIRA, and Section 4 of Rule 6 of EPIRA's Implementing Rules and Regulations (IRR).<sup>[16]</sup>

The dispositive portion of the Decision of the CA reads:

WHEREFORE, the foregoing considered, the instant petition for review is hereby DENIED and the assailed Decision and Order are AFFIRMED *in toto*. No costs.

SO ORDERED.<sup>[17]</sup>

PSC's Motion for Reconsideration was denied by the CA in its June 9, 2010 Resolution.<sup>[18]</sup> Thus, PSC filed the instant Petition for Review on *Certiorari*<sup>[19]</sup> under Rule 45 of the Rules of Court.

### **Issue**

Whether or not the CA erred in affirming the ERC's Decision in classifying the 138kV Aplaya-PSC Line as a sub-transmission asset, and restoring the same to TRANSCO's list of assets that can be sold or disposed under the EPIRA to a qualified distribution facility or consortium.

### **The Court's Ruling**

The petition lacks merit. The appellate court properly upheld the findings of the ERC.

***ERC has the sole authority to set the standards to distinguish transmission assets from sub-transmission assets.***

PSC asserts that a CSE exists between NAPOCOR as supplier and PSC as customer, wherein the parties have clearly expressed their intention to treat the 138kV Aplaya-PSC line as a transmission asset. PSC further explains that upon the enactment of the EPIRA, TRANSCO assumed the functions of NAPOCOR to provide transmission services. PSC also claims that the CSE further stipulates that it (PSC) has the right to continue to avail of transmission services, while NAPOCOR, and TRANSCO, as its successor-in-interest, has the obligation to continue to provide such transmission services.<sup>[20]</sup> Thus, PSC argues that the re-classification of the 138kV Aplaya-PSC line from a transmission asset to a sub-transmission asset would impair TRANSCO's contractual obligations under the CSE.

This argument is untenable.

As properly held by the CA, the ERC has the sole authority to set the standards of the transmission voltages and other factors that shall distinguish transmission assets from sub-transmission assets, pursuant to the provisions of the EPIRA and its

IRR. Section 7 of the EPIRA pertinently states:

SECTION 7. *Transmission Sector* — The transmission of electric power shall be a regulated common electricity carrier business, subject to the ratemaking powers of the ERC.

The **ERC shall set the standards of the voltage transmission that shall distinguish the transmission from the subtransmission assets.** Pending the issuance of such new standards, the distinction between the transmission and subtransmission assets shall be as follows: 230 kilovolts and above in the Luzon Grid, 69 kilovolts and above in the Visayas and in the isolated distribution systems, and 138 kilovolts and above in the Mindanao Grid: *Provided*, That for the Visayas and the isolated distribution system, should the 69 kilovolt line not form part of the main transmission grid and be directly connected to the substation of the distribution utility, it shall form part of the subtransmission system. *(Emphasis supplied).*

Similarly, Section 4, Rule 6 of the EPIRA's IRR states as follows:

#### RULE 6: Transmission Sector

SECTION 4. *Separation between Transmission and Subtransmission.* - **The ERC shall set the standards of the transmission voltages and other factors that shall distinguish transmission assets from Subtransmission Assets.** Towards this end, ERC shall issue appropriate guidelines to distinguish between these categories of assets according to voltage level and function. [x x x] *(Emphasis supplied).*

Therefore, the so-called mutual agreement of the PSC and TRANSCO in their CSE or through their exchange of letters to classify the 138kV Aplaya-PSC line as a transmission asset is immaterial and without any binding legal effect since the legal authority to classify transmission and sub-transmission assets lies with the ERC, and not to either TRANSCO or PSC. The foregoing relevant provisions are clear that the ERC is vested with the sole authority to set the standards of the transmission voltages and other factors that shall distinguish transmission assets from sub-transmission assets.

***The classification of the 138kV Aplaya-PSC line as a sub-transmission asset is in accordance with existing laws.***

This Court finds that respondents have sufficiently proven that in accordance with existing laws, the 138kV Aplaya-PSC Line is a sub-transmission asset which is subject to divestment by TRANSCO.