

THIRD DIVISION

[G.R. No. 180642, February 03, 2016]

**NUEVA ECIJA I ELECTRIC COOPERATIVE INCORPORATED
(NEECO I), PETITIONER, VS. ENERGY REGULATORY
COMMISSION, RESPONDENT.**

DECISION

REYES, J.:

This is a petition for review on *certiorari*^[1] under Rule 45 of the Rules of Court assailing the Resolution^[2] dated July 11, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 99268 which dismissed the appeal filed by petitioner Nueva Ecija I Electric Cooperative Incorporated (NEECO I) for failure to comply with Sections 5 and 6 of Rule 43 of the Rules of Court.

The Facts

NEECO I is a rural electric cooperative organized and existing by virtue of Presidential Decree (P.D.) No. 269;^[3] it is a member of the Central Luzon Electric Cooperatives Association (CLECA).

NEECO I was among the various rural electric cooperatives directed by the Energy Regulatory Commission (ERC) to refund their over-recoveries arising from the implementation of the Purchased Power Adjustment (PPA) Clause under Republic Act (R.A.) No. 7832 or the Anti-Electricity and Electric Transmission Lines/Materials Pilferage Act of 1994.

The petitions of other rural electric cooperatives against the said ERC directives were resolved by the Court en banc on September 18, 2002 in *Association of Southern Tagalog Electric Cooperatives, Inc. v. ERC*^[4] (hereinafter referred to as *ASTEC*), the background facts^[5] of which are the same antecedents that gave rise to the present controversy.

R.A. No. 7832 was enacted on December 8, 1994, imposing a cap on the recoverable rate of system loss that may be charged by rural electric cooperatives to their consumers. Section 10 of the law provides:

Section 10. *Rationalization of System Losses by Phasing out Pilferage Losses as a Component Thereof.* — There is hereby established a cap on the recoverable rate of system losses as follows:

x x x x

(b) For rural electric cooperatives:

- (i) Twenty-two percent (22%) at the end of the first year following the effectivity of this Act;
- (ii) Twenty percent (20%) at the end of the second year following the effectivity of this Act;
- (iii) Eighteen percent (18%) at the end of the third year following the effectivity of this Act;
- (iv) Sixteen percent (16%) at the end of the fourth year following the effectivity of this Act; and
- (v) Fourteen percent (14%) at the end of the fifth year following the effectivity of this Act.

Provided, That the ERB is hereby authorized to determine at the end of the fifth year following the effectivity of this Act, and as often as is necessary, taking into account the viability of rural electric cooperatives and the interest of the consumers, whether the caps herein or theretofore established shall be reduced further which shall, in no case, be lower than nine percent (9%) and accordingly fix the date of the effectivity of the new caps.

x x x x

The Implementing Rules and Regulations (IRR) of R.A. No. 7832 required every rural electric cooperative to file with the Energy Regulatory Board (ERB), on or before September 30, 1995, an application for approval of an amended PPA Clause incorporating the cap on the recoverable rate of system loss to be included in its schedule of rates. Section 5, Rule IX of the IRR of R.A. No. 7832 provided for the following guiding formula for the amended PPA Clause:

Section 5. *Automatic Cost Adjustment Formula.* —

x x x x

The automatic cost adjustment of every electric cooperative shall be guided by the following formula:

Purchased Power Adjustment Clause

$$\frac{A}{(PPA) - \frac{B - (C + D)}{E}} =$$

Where:

A = Cost of electricity purchased and generated for the previous month

B = Total kWh purchased and generated for the previous month

C = The actual system loss but not to exceed the maximum recoverable rate of system loss in kWh plus actual company use in kWh but not to exceed 1% of total kWh purchased and generated

D = kWh consumed by subsidized consumers

E = Applicable base cost of power equal to the amount incorporated into their basic rate per kWh.

In compliance therewith, various associations of rural electric cooperatives throughout the Philippines filed on behalf of their members applications for approval of amended PPA Clauses.^[6]

NEECO I's application for approval was filed in its behalf by CLECA on February 8, 1996 and it was docketed as ERB Case No. 96-37. It was later on consolidated with identical petitions filed by other associations of electric cooperatives in the country.^[7]

On February 19, 1997, the ERB issued an Order^[8] granting electric cooperatives with provisional authority to use and implement the following PPA formula pursuant to the mandatory provisions of R.A. No. 7832 and its IRR, viz:

$$\begin{array}{rcl} & A & \\ & \text{-----} & \\ \text{PPA} & \text{-----} & \\ = & B - (C & - E \\ & + C1 & \\ & + D) & \end{array}$$

Where:

- A = Cost of Electricity purchased and generated for the previous month less amount recovered from pilferages, if any.
- B = Total kWh purchased and generated for the previous month
- C = Actual system loss but not to exceed the maximum recoverable rate of system loss in kWh
- C1 = Actual company use in kWh but not to exceed 1% of total kWh purchased and generated
- D = kWh consumed by subsidized consumers
- E = Applicable base cost of power equal to the amount incorporated into their basic rate per kWh.^[9]

The order further directed all electric cooperatives: (1) to submit their monthly implementation of the PPA formula from February 1996 to January 1997 for the ERB's review, verification and confirmation; and (2) thereafter, (from February 1997 and onward), to submit on or before the 20th day of the current month, their implementation of the PPA formula of the previous month for the same purposes.^[10]

NEECO I implemented the approved formula in its electric power billings for the period July 1999 to April 2005. For the month of February in 1996, however, NEECO I did not impose PPA charges while for the period March 1996 to June 1999, it used a 'multiplier' scheme.^[11]

In the interim or on June 8, 2001,^[12] R.A. No. 9136, otherwise known as Electric Power Industry Reform Act of 2001 (EPIRA Law), was enacted creating the ERG which replaced and succeeded the ERB. Consequently, all pending cases before the ERB were transferred to the ERC and the case for NEECO I was re-docketed as ERC Case No. 2001-340.^[13]

Upon discerning that the earlier policy issued by ERB anent the PPA formula was silent on whether the calculation of the cost of electricity purchased and generated should be "gross" or "net" of the discounts, the ERC issued an Order^[14] dated June 17, 2003, clarifying as follows:

Let it be noted that the power cost is said to be at "gross" if the discounts are not passed-on to the end-users whereas it is said to be at "net" if the said discounts are passed-on to the end-users.

To attain uniformity in the implementation of the PPA formulae, the [ERC] has resolved that:

1. In the confirmation of past PPAs, the power cost shall still be based on "gross"; and
2. In the confirmation of future PPAs, the power cost shall be based on "net".^[15]

In an Order^[16] dated January 14, 2005, the ERC refined its policy on PPA computation and confirmation, to wit:

- A. The computation and confirmation of the PPA prior to the [ERC's] Order dated June 17, 2003 shall be based on the approved PPA Formula;
- B. The computation and confirmation of the PPA after the [ERC's] Order dated June 17, 2003 shall be based on the power cost "net" of discount; and
- C. If the approved PPA Formula is silent on the terms of discount, the computation and confirmation of the PPA shall be based on the power cost at "gross," subject to the submission of proofs that said discounts are being extended to the end-users.^[17]

In a subsequent Order^[18] dated July 27, 2006, the ERC further clarified the foregoing policy on the PPA confirmation scheme.

According to the ERC, to ensure that only the actual costs of purchased power are recovered by distribution utilities (DUs), the following principles shall govern the treatment of the Prompt Payment Discount granted by power suppliers to DUs including rural electric cooperatives:

- I. The over-or-under recovery will be determined by comparing the allowable power cost with the actual revenue billed to end-users.
- II. Calculation of the DU's allowable power cost as prescribed in the PPA formula:
 - a. If the PPA formula explicitly provides the manner by which discounts availed from the power supplier/s shall be treated, the allowable power cost will be computed based on the

specific provision of the formula, which may either be at "net" or "gross"; and

- b. If the PPA formula is silent in terms of discounts, the allowable power cost will be computed at "net" of discounts availed from the power supplier/s, if there [is] any.

III. Calculation of the DU's actual revenues/actual amount billed to end-users.

- a. On actual PPA computed at net of discounts availed from power supplier/s:

- a.1.If a DU bills at net of discounts availed from the power supplier/s (i.e., gross power cost minus discounts from power supplier/s) and the DU is not extending discounts to end-users, the actual revenue should be equal to the allowable power cost; and

- a.2.If a DU bills at net of discounts availed from the power supplier/s (i.e., gross power cost minus discounts from power supplier/s) and the DU is extending discounts to end-users, the discount extended to end-users shall be added back to the actual revenue.

- b. On actual PPA computed at gross

- b.1.If a DU bills at gross (i.e., gross power cost not reduced by discounts from power supplier/s) and the DU is extending discounts to end-users, the actual revenue will be calculated as: gross power revenue less discounts extended to end-users. The result shall then be compared to the allowable power cost; and

- b.2.If a DU bills at gross (i.e., gross power cost not reduced by discounts from power supplier/s) and the DU is not extending discounts to end-users, the actual revenue shall be taken as is which shall be compared to the allowable power cost.

IV. In the calculation of the DU's actual revenues, the amount of discounts extended to end-users shall, in no case, be higher than the discounts availed by the DU from its power supplier/s.^[19]

In the same order, the ERC evaluated documents and records submitted by NEECO I and discovered that it had over-recoveries amounting to P60,797,451.00 due to the following:

- a. For the period March 1996 to June 1999, NEECO I utilized the 1.4 multiplier scheme which allowed it to recover roughly 29% system loss instead of the cap which was lower, pursuant to [R.A.] No. 7832, otherwise known as the "Anti-Electricity and Electric