

EN BANC

[G.R. No. 192117, September 18, 2012]

ASSOCIATION OF SOUTHERN TAGALOG ELECTRIC COOPERATIVES, INC. (ASTEC), BATANGAS I ELECTRIC COOPERATIVE, INC. (BATELEC I), QUEZON I ELECTRIC COOPERATIVE, INC. (QUEZELCO I), AND QUEZON II ELECTRIC COOPERATIVE, INC. (QUEZELCO II), PETIONERS, VS. ENERGY REGULATORY COMMISSION, RESPONDENT.

[G.R. NO. 192118]

CENTRAL LUZON ELECTRIC COOPERATIVES ASSOCIATION, INC. (CLECA) AND PAMPANGA RURAL ELECTRIC SERVICE COOPERATIVE. INC. (PRESCO), PETITIONERS, VS. ENERGY REGULATORY COMMISSION, RESPONDENT.

D E C I S I O N

CARPIO, J.:

The Case

This is a Petition for Review on *Certiorari*^[1] under Rule 45 of the Rules of Court. The petition assails the 23 December 2008 Decision^[2] and 26 April 2010 Resolution^[3] of the Court of Appeals in the consolidated cases, including CA-G.R. SP Nos. 99249 and 99253.^[4] The Court of Appeals affirmed the Orders of the Energy Regulatory Commission (ERC) directing various rural electric cooperatives 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 Facts

Petitioners Batangas I Electric Cooperative, Inc. (BATELEC I), Quezon I Electric Cooperative, Inc. (QUEZELCO I), Quezon II Electric Cooperative, Inc. (QUEZELCO II) and Pampanga Rural Electric Service Cooperative, Inc. (PRESCO) are rural electric cooperatives established under Presidential Decree (P.D.) No. 269 or the National Electrification Administration Decree.⁵ BATELEC I, QUEZELCO I and QUEZELCO II are members of the Association of Southern Tagalog Electric Cooperatives, Inc. (ASTEC). PRESCO is a member of the Central Luzon Electric Cooperatives Association, Inc. (CLECA). Petitioners are engaged in the distribution of electricity "on a non-profit basis for the mutual benefit of its members and patrons."^[6]

On 8 December 1994, R.A. No. 7832 was enacted. The law imposed a cap on the recoverable rate of system loss^[7] that may be charged by rural electric cooperatives

to their consumers. Section 10 of R.A. No. 7832 provides:

Section 10. *Rationalization of System Losses by Phasing out Pilferage Losses as 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 30 September 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.^[8] 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

(PPA) A

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

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 Kwhrs but not to exceed 1% of total Kwhrs 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 with the IRR of R.A. No. 7832, various associations of rural electric cooperatives throughout the Philippines filed on behalf of their members applications for approval of amended PPA Clauses. On 8 February 1996, ASTEC filed on behalf of its members (including BATELEC I, QUEZELCO I and QUEZELCO II) a verified petition for the approval of the amended PPA Clause. The verified petition of ASTEC was docketed as ERB Case No. 96-35.9 On 9 February 1996, CLECA also filed on behalf of its members (including PRESCO) a verified petition for the approval of the amended PPA Clause. The verified petition of CLECA was docketed as ERB Case No. 96-37.10

The ERB issued Orders on 19 February 1997¹¹ and 25 April 1997¹² provisionally authorizing the petitioners and the other rural electric cooperatives to use and implement the following PPA formula, subject to review, verification and confirmation by the ERB:

$$PPA = \frac{A}{B - (C + C1 + D)} - E$$

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 Kwhrs but not to exceed 1% of total Kwhrs 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

The ERB further directed petitioners to submit relevant documents regarding the monthly implementation of the PPA formula for review, verification and confirmation. The Orders dated 19 February 1997 and 25 April 1997 commonly provide:

Accordingly, all electric cooperatives are hereby directed to submit to the Board within ten (10) days from notice hereof their monthly implementation of the PPA formula from the February, 1996 to January, 1997 for the Board's review, verification and confirmation. The submission should include the following documents:

1. PPA computation following the formula provided above
2. Monthly NPC bill or such other power bill purchased or generated not yet forwarded to ERB from January 1995 onward
3. Monthly Financial and Statistical Report (MFSRs) not yet forwarded to ERB from January 1995 onward
4. Sample bills for the month subject to confirmation for different types of customers.

Thereafter, (from February 1997 and onward) all electric cooperatives are hereby directed 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 as indicated above.^[13]

On 8 June 2001, R.A. No. 9136 or the Electric Power Industry Reform Act of 2001 (EPIRA) was enacted. Section 38 of the EPIRA abolished the ERB, and created the Energy Regulatory Commission (ERC). The ERC is an independent and quasi-judicial regulatory body mandated to "promote competition, encourage market development, ensure customer choice and penalize abuse of market power in the restructured electricity industry."^[14] The powers and functions of the ERB not inconsistent with the provisions of the EPIRA were transferred to the ERC, together with the applicable funds and appropriations, records, equipment, property and personnel of the ERB.^[15]

As a result, ERB Case No. 96-35 involving ASTEC and its members (including BATELEC I, QUEZELCO I and QUEZELCO II) was renamed and renumbered as ERC Case No. 2001-338.^[16] ERB Case No. 96-37 involving CLECA and its members (including PRESCO) was also renamed and renumbered as ERC Case No. 2001-340.^[17] The records further show that these two cases were consolidated, together with the other cases previously consolidated with then ERB Case No. 96-35.^[18]

Subsequently, the ERC issued an Order dated 17 June 2003. The ERC noted therein "that the PPA formula which was approved by the ERB was silent on whether the calculation of the cost of electricity purchased and generated in the formula should be 'gross' or 'net' of discounts."^[19] The cost of electricity is computed at "gross" if the discounts extended by the power supplier to the rural electric cooperative are

not passed on to end-users, while the cost of electricity is computed at “net” if the discounts are passed on to end-users.^[20] The ERC ruled:

To attain uniformity in the implementation of the PPA formulae, the Commission 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”.

Relative thereto, petitioners are directed to implement their respective PPA using the power cost based on net at the next billing cycle upon receipt of this Order until such time that their respective rates have already been unbundled.

Petitioners are hereby directed to submit to the Commission on or before the 20th day of the following month, their implementation of the PPA formula for review, verification and confirmation by the Commission.^[21]

On 29 March 2004, the ERC issued an Order in the consolidated cases resolving the motions for reconsideration filed by several rural electric cooperatives. In the said Order, the ERC explained the general framework of the new PPA confirmation scheme to be adopted by the regulatory body. The ERC stated:

Majority of the issues raised in the motions for reconsideration can be properly addressed by the new PPA confirmation scheme to be adopted by this Commission. Under this scheme, the electric cooperatives shall be allowed to collect/refund the true cost of power due them vis-a-vis the amount already collected from their end-users. In turn, the end-users shall only be charged the true cost of power consumed.

The Commission recognizes that the electric cooperatives implemented their PPA in the manner by which majority of them were implementing the same. Thus, they had no alternative but to adopt the most recent available data for the respective billing months which were based on estimates due to time lag differences. Under the new scheme, the actual data for the billing month shall be adopted as they are available at the time the verification is undertaken.

In this regard, all the other issues raised by the electric cooperatives shall be properly addressed in the confirmation of their respective PPAs.^[22]

Several rural electric cooperatives subsequently filed motions for clarification and/or reconsideration with respect to the ERC’s process of computation and confirmation of the PPA. The rural electric cooperatives advanced the following allegations: