

[G.R. No. 172960, March 26, 2010]

MACTAN ELECTRIC COMPANY, INC., PETITIONER, VS. NATIONAL POWER CORPORATION, MACTAN CEBU INTERNATIONAL AIRPORT AUTHORITY AND NATIONAL TRANSMISSION CORPORATION, RESPONDENTS.

D E C I S I O N

CORONA, J.:

Mactan Electric Company, Inc. (MECO) posed the purely legal question of whether paragraph (v), Section 43 of RA 9136:^[1]

Sec. 43. *Functions of the ERC.* - The ERC shall promote competition, encourage market development, ensure customer choice and discourage/penalize abuse of market power in the restructured electricity industry. Towards this end, it shall be responsible for the following key functions in the restructured industry:

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(v) **The ERC shall have the original and exclusive jurisdiction** over all cases contesting rates, fees, fines and penalties imposed by the ERC in the exercise of the abovementioned powers, functions and responsibilities and **over all cases involving disputes between and among participants or players in the energy sector.** All notices of hearings to be conducted by the ERC for the purpose of fixing rates or fees shall be published at least twice for two successive weeks in two (2) newspapers of nationwide circulation.(emphasis supplied)

clothed the Energy Regulatory Commission (ERC) with jurisdiction to resolve disputes involving MECO as an energy distribution company with a public franchise, National Power Corporation (NPC) as an energy generation company, National Transmission Corporation (TRANSCO) as a transmission and sub-transmission company and Mactan Cebu International Airport Authority (MCIAA) as an energy end-user.

The facts are not disputed.

MECO holds a franchise to operate an electric light and power service in the areas comprising Lapu-Lapu City and the Municipality of Cordova.^[2] It has a contract with NPC for the supply of "contract energy"^[3] from September 26, 2005 to September 25, 2015.^[4] It is charged a minimum rate based on the contract energy per billing period, regardless of whether it fails to consume the contract energy allocated to it.^[5] However, it may apply for reduction of its contract energy upon payment of a

buy-out fee^[6] except under the following circumstances:

4.7.1. The reduction is caused by the transfer by a consumer of its power and energy source from [MECO] to [NPC] or, to another customer of [NPC] located within the same grid prompting the other customer to correspondingly increase its electric supply requirement with [NPC], notwithstanding that [MECO] may have itself imposed penalties or buy-out provisions to such transferring consumer. [MECO] shall have sixty (60) days from transfer within which to request the appropriate reduction and the decrease shall be deemed effective from such date of transfer. Provided further that [MECO] and [NPC] shall ensure that the transfer shall not disadvantage any assignee(s) of [NPC].

4.7.2. Expected reduction in the Contracted Energy by the [MECO] with the [NPC] caused or initiated by the industrial customers of the [MECO] as listed in Annex 1a shall be excused by the SUPPLIER. To be able to avail of this exemption, [MECO] must inform [NPC] in writing sixty (60) days prior to the effectivity of the reduction in the Contracted Energy. It is understood that the expected reduction is neither due to self-generation nor transfer to another power SUPPLIER.^[7]

MCIAA was listed as an industrial costumer of MECO in Annex 1a of the supply contract.^[8] MCIAA and MECO had a contract for electric power service connection^[9] for a period of one year, subject to automatic renewal, unless either party desired to terminate the contract, in which case said party must serve a 30-day written notice upon the other for the termination or amendment to take effect.^[10] Their contract began on September 19, 1995 and was renewed every year thereafter. On April 24, 2006, MECO received notice from MCIAA that it was terminating their contract effective May 24, 2006.^[11]

MECO filed with the Regional Trial Court (RTC), Branch 54, Lapu-Lapu City, a complaint for damages with prayer for temporary restraining order and/or writ of preliminary injunction against MCIAA, NPC and TRANSCO.^[12] The material allegations in the complaint are reproduced below, for they are determinative of the question of law raised herein:

2.19 Although the MCIAA letter of termination does not indicate from whom MCIAA will get its electric power supply after May 24, 2006, there are strong indications as shown by the following circumstances recently validated, and thus reasonable grounds to believe that NPC will directly supply electric power to MCIAA and the latter will directly source and buy such electric power from the NPC without passing through the distribution system of MECO x x x.

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All these were done notwithstanding the validity, enforceability and existence of the "MECO-MCIAA Connection Contract" on one hand, and

the validity, enforceability and existence of the "NPC-MECO Supply Contract" on the one hand.

2.20 It must be stressed that with the advent of the EPIRA of 2001, NPC is now without authority to sell electric energy directly to end-users including MCIAA.

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CAUSES OF ACTION

FIRST CAUSE OF ACTION AGAINST DEFENDANT NPC (For Injunctive Relief)

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3.1 NPC is now without authority in law to directly sell electric energy to end users including MCIAA. Such being the case, MECO has a clear and unmistakable right to secure an injunctive relief against NPC to enjoin the latter from committing an illegal act.

FIRST ALTERNATIVE CAUSE OF ACTION TO THE FIRST CAUSE OF ACTION

3.2 Granting without conceding that NPC has authority to directly sell electric energy to end-users, NPC cannot lawfully do so to MCIAA without prior approval from the appropriate government regulatory agencies such as the ERC and DOE. The intended sale of electric energy by NPC to MCIAA [not] having [the approval of] ERC and DOE, plaintiff has a clear and unmistakable right to an injunctive relief to enjoin NPC from committing such unauthorized act.

SECOND ALTERNATIVE CAUSE OF ACTION TO THE FIRST CAUSE OF ACTION

3.3 Granting without conceding that NPC has authority to directly sell electric energy to end-users MECO has a clear, positive and unmistakable property right as a franchise holder, guaranteed by the due process protection of the constitution, to be heard first before the NPC can directly supply electric energy to any end user within MECO's franchise area.

3.4 MECO likewise enjoys the priority in right to distribute electricity to any existing or prospective enterprises within its franchise area to the exclusion of any person or entity including the NPC.

3.5 MECO furthermore enjoys the constitutional right to free enterprise as well as the protective mantle of P.D. 2029 from competition with government-owned or controlled corporation including the NPC in various economic activities like the distribution of services in which MECO is primarily engaged.

3.6 The acts of NPC in directly supplying electric energy to MCIAA grossly violate the foregoing constitutional rights of MECO and seriously impair the franchise of MECO to exclusively operate a distribution system in the whole Island of Mactan and to directly convey electric power to end-users in that area of coverage.

3.7 The acts complained of against NPC will result in MECO breaching the NPC-MECO Supply Contract and be penalized by NPC under the said contract MECO will not be able to fully consume or take out the level of electrical energy contracted for a particular period.

3.8 The acts complained of against NPC also constitute an unlawful contractual interference by NPC with the contractual obligation of MCIAA to MECO as evidenced by the existing MECO-MCIAA Connection Contract which is valid until September 19, 2006.

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3.11 As a matter of law, MECO is therefore entitled to a writ of prohibitory injunction against NPC, enjoining the latter from directly supplying electric energy to MCIAA.

In the event, however, that NPC is now directly supplying electric energy to MCIAA, MECO is as a matter of law entitled to a writ of mandatory injunction against NPC, directing the latter to discontinue directly supplying electric energy to MCIAA.

FIRST CAUSE OF ACTION AGAINST DEFENDANT MCIAA
(For Specific Performance & Injunctive Relief)

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4.1 MECO has a clear and unmistakable right to demand from MCIAA to honor and faithfully comply with the terms and conditions of the MECO-MCIAA Connection Contract which is valid, enforceable and existing until September 19, 2006.

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4.3 Even assuming without conceding that MCIAA is given the right to terminate the said contract, the circumstances would show that such exercise of right by MCIAA was arbitrary amounting to bad faith, and grossly abused by MCIAA to the prejudice and damage of MECO, aware as it was that such termination would expose MECO to liability under the latter's "NPC-MECO Supply Contract" which is valid until September 25, 2015.

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CAUSE OF ACTION AGAINST DEFENDANT TRANSCO
(For Injunctive Relief)

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5.1 In the commission or performance of the acts complained of by NPC and MCIAA, NPC and MCIAA will unavoidably and consequently use the electrical transmission and sub-transmission facilities of TRANSCO and all other assets related to transmission operations.

5.2 In order not to allow the commission by NPC and MCIAA of illegal acts, TRANSCO should be enjoined from allowing the use of its electrical transmission and sub-transmission facilities

COMMON CAUSES OF ACTION AGAINST DEFENDANTS NPC and MCIAA
(For Damages)

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6.2 These acts likewise constitute an abuse of right under Articles 19 and 20 of the Civil Code which requires every person to act with justice, give everyone his due and observe honesty and good faith in the exercise of his rights and in the performance of his duties. Furthermore, the commission of the acts complained of will willfully cause loss or injury to MECO in a manner that is contrary to morals, good customs or public policy in violation of Article 21 of the Civil Code.

6.3 More importantly, the acts complained of against NPC constitute an inducement by a third party to MCIAA to violate its existing contract with MECO which contract is valid until September 19, 2006 amounting to contract interference which is prohibited by Article 1311 of the Civil Code.

[13]

The RTC issued a 72-hour temporary restraining order^[14] and later, a status quo order effective until June 11, 2006.^[15]

MCIAA,^[16] NPC^[17] and TRANSCO^[18] each filed a motion to dismiss on the grounds of lack of jurisdiction and improper venue. They argued that, under Section 43 of RA 9136, ERC had the primary administrative jurisdiction over the dispute as it involved players in the energy sector. MCIAA further pointed out a stipulation in its contract with MECO that in case of suit, the same should be filed in Cebu City, not Lapu-Lapu City.^[19]

NPC^[20] and MCIAA^[21] filed oppositions to the application of MECO for preliminary injunction. They disclosed that, in compliance with the requirements set forth in *Cagayan Electric Power and Light Company v. National Power Corporation*^[22] (i.e., that an electric franchisee must be given the opportunity to be heard before NPC may provide direct service to enterprises within the franchise area), NPC and MCIAA disclosed to MECO on February 3, 2001,^[23] August 20, 2001^[24] and October 2, 2001^[25] their planned direct sale of bulk power and invited it to make a better offer, but MECO did not heed the invitation.