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[G.R. No. 174697, July 08, 2010]

CHAMBER OF REAL ESTATE AND BUILDERS' ASSOCIATIONS, INC. (CREBA), PETITIONER, VS. ENERGY REGULATORY COMMISSION (ERC) AND MANILA ELECTRIC COMPANY (MERALCO), RESPONDENTS.

D E C I S I O N

BRION, J.:

This is a Petition for *Certiorari* with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction[1] to nullify Section 2.6 of the Distribution Services and Open Access Rules (DSOAR), promulgated by respondent Energy Regulatory Commission (ERC) on January 18, 2006. Petitioner Chamber of Real Estate and Builders' Associations, Inc. asserts that Section 2.6 of the DSOAR, which obligates certain customers to advance the amount needed to cover the expenses of extending lines and installing additional facilities, is unconstitutional and contrary to Republic Act No. 9136, otherwise known as "The Electric Power Industry Reform Act of 2001 (EPIRA)."

The Background Facts

The petitioner is a non-stock, non-profit corporation, organized under the laws of the Republic of the Philippines, with principal office at 3/F CREBA Center, Don Alejandro Roces Avenue cor. South "A" Street, Quezon City. It has almost 4,500 members, comprising of developers, brokers, appraisers, contractors, manufacturers, suppliers, engineers, architects, and other persons or entities engaged in the housing and real estate business.[2]

The ERC is a quasi-judicial and quasi-legislative regulatory body created under Section 38 of the EPIRA, with office address at the Pacific Center Building, San Miguel Avenue, Ortigas Center, Pasig City. It is an administrative agency vested with broad regulatory and monitoring functions over the Philippine electric industry to ensure its successful restructuring and modernization, while, at the same time, promoting consumer interest.[3]

Respondent Manila Electric Company (MERALCO) is a corporation organized under the laws of the Republic of the Philippines, with principal office at Lopez Building, Ortigas Avenue, Pasig City. It is engaged primarily in the business of power production, transmission, and distribution. It is the largest distributor of electricity in the Philippines.[4]

Pursuant to its rule-making powers under the EPIRA, the ERC promulgated the Magna Carta for Residential Electricity Consumers (*Magna Carta*), which establishes residential consumers' rights to have access to electricity and electric service,

subject to the requirements set by local government units and distribution utilities (*DUs*).[5] **Article 14** of the Magna Carta pertains to the rights of consumers to avail of extension lines or additional facilities. It also *distinguishes between consumers located within 30 meters from existing lines and those who are located beyond 30 meters; the latter have the obligation to advance the costs of the requested lines and facilities*, to wit:

> Article 14. Right to Extension of Lines and Facilities.--A consumer located within thirty (30) meters from the distribution utilities' existing secondary low voltage lines, has the right to an extension of lines or installation of additional facilities, other than a service drop, at the expense of the utility inasmuch as said assets will eventually form part of the rate base of the private distribution utilities, or will be sourced from the reinvestment funds of the electric cooperatives. However, if a prospective customer is beyond the said distance, or his demand load requires that the utility extend lines and facilities, the customer may initially fund the necessary expenditures.

Article 14 of the Magna Carta continues with a provision on how the costs advanced by the residential end-user can be recovered:

> To recover his aforementioned expenditures, the customer may either demand the issuance of a notes payable from the distribution utility or refund at the rate of twenty-five (25) percent of the gross distribution revenue derived for the calendar year, or, if available, the purchase of preferred shares.
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> Revenue derived from additional customers tapped directly to the poles and facilities so extended shall be considered in determining the revenues derived from the extension of facilities.

The same article specifies that if a developer initially pays the cost of the extension lines but passes it to the registered customer, the customer would still be entitled to recover the cost in the manner provided under this article:

> When a developer initially paid the cost of the extension of lines to provide electric service to a specific property and incorporated these expenses in the cost thereof, and that property was purchased and transferred in the name of the registered customer, the latter shall be entitled to the refund of the cost of the extension of lines, and exercise the options for refund provided in this article.

On January 18, 2006, the ERC modified this provision when it issued the DSOAR. Section 2.6.1 reiterates the old rule requiring consumers located beyond 30 meters from existing lines to advance the costs of the requested lines and facilities. Section 2.6.2 likewise provides that the costs advanced by consumers may be refunded at the rate of 25% of the annual gross distribution revenue derived from all customers

connected to the line extension. However, Section 2.6.2 amends Article 14 of the Magna Carta by limiting the period for the refund to five years, whether or not the amount advanced by the consumer is fully paid. Section 2.6 of the DSOAR decrees that:

> 2.6. MODIFICATIONS AND NEW PHYSICAL CONNECTIONS: RESIDENTIAL
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> 2.6.1 RIGHT TO EXTENSION OF LINES AND FACILITIES - In accordance with the Magna Carta, a residential End-user located within thirty (30) meters from the distribution utilities' existing secondary low voltage lines has the right to an extension of lines or installation of additional facilities, other than a service drop, at the expense of the utility. However, if a prospective customer is beyond the said distance, the customer shall advance the amounts necessary to cover the expenditures on the facilities beyond thirty (30) meters.
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> 2.6.2 REFUND--To recover the aforementioned advanced payment, the customer may either demand the issuance of a notes payable from the distribution utility or a refund at the rate of twenty-five (25) percent of the gross distribution revenue derived from all customers connected to the line extension for the calendar year until such amounts are fully refunded or for five (5) years whichever period is shorter, or, if available, the purchase of preferred shares. Revenue derived from additional customers tapped directly to the poles and facilities so extended shall be considered in determining the revenues derived from the extension of facilities.
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> Distribution Connection Assets paid for through advances from residential End-users shall be deemed plant in service in the accounts of the DU. Unpaid advances shall be a reduction to plant in service. If replacement becomes necessary at any time for any Distribution Connection Assets paid for by residential End-users, the DU shall be solely responsible for the cost of such replacement which shall become plant in service in the accounts of the DU, and shall not require another advanced payment from the connected residential End-users unless the replacement is due to End-user fault.

The petitioner alleged that the entities it represented applied for electrical power service, and MERALCO required them to sign *pro forma* contracts that (1) obligated them to advance the cost of the construction of new lines and other facilities and (2) allowed annual refunds at 25% of the gross distribution revenue derived from the customer's electric service, until the amount advanced is fully paid, pursuant to Section 2.6 of the DSOAR.[6]

The petitioner seeks to nullify Section 2.6 of the DSOAR, on the following grounds: (1) it is unconstitutional since it is oppressive and it violates the due process and equal protection clauses; (2) it contravenes the provisions of the EPIRA; and (3) it violates the principle of unjust enrichment.[7]

Petitioner claims that Section 2.6 of the DSOAR is unconstitutional as it is

oppressive to the affected end-users who must advance the amount for the installation of additional facilities. Burdening residential end-users with the installation costs of additional facilities defeats the objective of the law - the electrification of residential areas - and contradicts the provisions of the legislative franchise, requiring DUs to be financially capable of providing the distribution service. Moreover, the questioned provision violates the equal protection clause since the difference in treatment between end-users residing within 30 meters of the existing lines and those beyond 30 meters does not rest on substantial distinctions.[8]

In addition, the petitioner alleges that the assailed provision contravenes Sections 2, 23, 41 and 43 of the EPIRA[9] which are geared towards ensuring the affordability of electric power and the protection of consumers.[10] Lastly, requiring consumers to provide the huge capital for the installation of the facilities, which will be owned by distribution utilities such as MERALCO, results in unjust enrichment.[11]

THE RESPONDENTS' CASE

a. The ERC Position

Contradicting the petitioner's arguments, the ERC avers that it issued Section 2.6 of the DSOAR as an exercise of police power directed at promoting the general welfare. The rule seeks to address the inequitable situation where the cost of an extension facility benefiting one or a few consumers is equally shared by them.[12]

The ERC likewise asserts that the equal protection clause is observed since the distinction between end-users residing within 30 meters of the existing lines and those beyond 30 meters is based on real and substantial differences, namely: (1) proximity of end-user service drop to the main distribution lines; (2) manner of checking status service; (3) system loss risk; (4) cost in installing the facilities; and (5) additional risk posed by the possibility of the customer defaulting in his electric service with the DU.[13]

The ERC also maintains that Section 2 of the DSOAR is consistent with Sections 2, 23, 41 and 43 of the EPIRA. By not subjecting most consumers to the payment of installation costs benefitting customers located beyond a reasonably-set boundary, the provision in question gives effect to the EPIRA policy to ensure that the prices of electricity remain affordable, transparent, and reasonable to the majority. The policy of accelerating the total electrification of the country is also served when the residents of far-flung areas are given the option to apply for extension lines. This option is subject only to the condition that the cost of the extension of existing lines is advanced by the end-user, who will eventually be reimbursed; without such condition, businesses will be reluctant to provide service connection in remote areas.[14]

Additionally, the ERC points out that the DSOAR provisions do not result in unjust enrichment since the DUs do not stand to be materially benefited by the customers' advances. The DUs have the obligation to reimburse the customers the advances within five years, and whatever advances are unpaid during the five-year period are recorded as reductions in "plant in service."[15]

Finally, it argues that petitioner lacks the standing to file the present suit since the petitioner is not an end-user who will sustain a direct injury as a result of the issuance and implementation of the DSOAR. The ERC likewise maintains the petition for *certiorari* must fail since petitioner fails to impute grave abuse of discretion to the ERC.[16]

b. The MERALCO Position

MERALCO reiterates the defenses raised by the ERC. It also contends that the present petition does not involve the ERC's judicial and quasi-judicial functions so that a petition for *certiorari* is an improper remedy. MERALCO likewise argues that the petition for *certiorari*, assuming it to be a correct remedy, should be dismissed since the petitioner failed to observe the doctrine of hierarchy of courts by filing an original petition with this Court.

On the merits, MERALCO points out that even if Section 2.6 of the DSOAR is struck down, the provision in the Magna Carta, on the same point, would nevertheless require end-users located beyond 30 meters from existing lines to advance the cost. The petitioner's members are not also end-users, but subdivision developers, brokers, and various entities who are not affected by the questioned provision; if a developer would apply for electric service, the terms and conditions of the service will not be governed by Section 2.6 of the DSOAR.[17]

MERALCO also elaborates on why the provision does not result in unjust enrichment and justifies the distinction between end-users within the 30-meter limit and those located outside of this limit. The DSOAR provides that the unpaid amounts that the end-users advanced for the electrical facilities are not included in "plant in service." The total "plant in service" is the basis in fixing the rates collected by the DU from all its customers. By having the end-users, located 30 meters away from existing lines, advance the amount, this amount is no longer included in the rates passed on to regular consumers. The DSOAR further limits the subsidies by regular consumers, by limiting the amount to be recovered to 25% and to five years. Thus, if the costs of the lines are too great and the revenues are too small, it is the end-user who would bear the cost and not the regular customers.[18]

THE ISSUES

The petitioner summarizes the issues as follows:

> Procedural Issues:
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> A. Whether petitioner can challenge the constitutionality of a quasi-legislative act (i.e., the Rules) in a petition for certiorari under Rule 65 of the Rules of Court.
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> B. Whether the Honorable Supreme [Court] has original jurisdiction over this case.
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> C. Whether petitioner has legal standing to sue.