

SECOND DIVISION

[G.R. No. 183626, October 04, 2010]

**SURIGAO DEL NORTE ELECTRIC COOPERATIVE, INC. (SURNECO),
PETITIONER, VS. ENERGY REGULATORY COMMISSION,
RESPONDENT.**

D E C I S I O N

NACHURA, J.:

Assailed in this petition for review on *certiorari*^[1] under Rule 45 of the Rules of Court are the Decision dated April 17, 2008^[2] and the Resolution dated June 25, 2008^[3] of the Court of Appeals (CA) in CA-G.R. SP No. 99781.

The antecedent facts and proceedings follow--

Petitioner Surigao Del Norte Electric Cooperative, Inc. (SURNECO) is a rural electric cooperative organized and existing by virtue of Presidential Decree No. 269.

On February 8, 1996, the Association of Mindanao Rural Electric Cooperatives, as representative of SURNECO and of the other 33 rural electric cooperatives in Mindanao, filed a petition before the then Energy Regulatory Board (ERB) for the approval of the formula for automatic cost adjustment and adoption of the National Power Corporation (NPC) restructured rate adjustment to comply with Republic Act (R.A.) No. 7832.^[4] The case was docketed as ERB Case No. 96-49, and later consolidated with identical petitions of other associations of electric cooperatives in the Philippines.

The relevant provisions of R.A. No. 7832 for compliance are Sections 10 and 14, which provide--

Sec. 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 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

Sec. 14. *Rules and Regulations.* - The ERB shall, within thirty (30) working days after the conduct of hearings which must commence within thirty (30) working days upon the effectivity of this Act, issue the rules and regulation as may be necessary to ensure the efficient and effective implementation of the provisions of this Act, to include but not limited to, the development of methodologies for computing the amount of electricity illegally used and the amount of payment or deposit contemplated in Section 7 hereof as a result of the presence of the *prima facie* evidence discovered.

Corollary thereto, Sections 4 and 5 of Rule IX of the Implementing Rules and Regulations (IRR) of R.A. No. 7832 provide--

Section 4. *Caps on System Loss allowed to Rural Electric Cooperatives.* - The maximum rate of system loss that the cooperative can pass on to its customers shall be as follows:

- a. Twenty-two percent (22%) effective on February 1996 billing.
- b. Twenty percent (20%) effective on February 1997 billing.
- c. Eighteen percent (18%) effective on February 1998 billing.
- d. Sixteen percent (16%) effective on February 1999 billing.
- e. Fourteen percent (14%) effective on February 2000 billing.

Section 5. *Automatic Cost Adjustment Formula.* - Each and every cooperative shall file with the ERB, on or before September 30, 1995, an application for approval of an amended Purchased Power Adjustment Clause that would reflect the new system loss cap to be included in its schedule of rates.

The automatic cost adjustment of every electric cooperative shall be

guided by the following formula:

Purchased Power Adjustment Clause

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

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 an Order^[5] dated February 19, 1997, the ERB granted SURNECO and other rural electric cooperatives provisional authority to use and implement the Purchased Power Adjustment (PPA) formula pursuant to the mandatory provisions of R.A. No. 7832 and its IRR, with a directive to submit relevant and pertinent documents for the Board's review, verification, and confirmation.

In the meantime, the passage of R.A. No. 9136^[6] led to the creation of the Energy Regulatory Commission (ERC), replacing and succeeding the ERB. All pending cases before the ERB were transferred to the ERC. ERB Case No. 96-49 was re-docketed as ERC Case No. 2001-343.

In the Order dated June 17, 2003, the ERC clarified ERB's earlier policy regarding the PPA formula to be used by the electric cooperatives, *viz.*--

After a careful evaluation of the records, the Commission noted 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 the discounts.

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 formula, 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."

The electric cooperatives filed their respective motions for clarification and/or reconsideration. Hence, the ERC issued an Order^[7] dated January 14, 2005, stating that the PPA was a cost-recovery mechanism, not a revenue-generating scheme, so that the distribution utilities or the electric cooperatives must recover from their customers only the actual cost of purchased power. The ERC thus adopted a new PPA policy, to wit--

- A. The computation and confirmation of the PPA prior to the Commission's Order dated June 17, 2003 shall be based on the approved PPA Formula;
- B. The computation and confirmation of the PPA after the Commission'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.^[8]

Thereafter, the ERC continued its review, verification, and confirmation of the electric cooperatives' implementation of the PPA formula based on the available data and information submitted by the latter.

On March 19, 2007, the ERC issued its assailed Order,^[9] mandating that the discounts earned by SURNECO from its power supplier should be deducted from the computation of the power cost, disposing in this wise ^¾

WHEREFORE, the foregoing premises considered, the Commission hereby confirms the Purchased Power Adjustment (PPA) of Surigao del Norte Electric Cooperative, Inc. (SURNECO) for the period February 1996 to July 2004 which resulted to an over-recovery amounting to **EIGHTEEN MILLION ONE HUNDRED EIGHTY EIGHT THOUSAND SEVEN HUNDRED NINETY FOUR PESOS (Php18,188,794.00)** equivalent to Php0.0500/kwh. In this connection, SURNECO is hereby directed to refund the amount of Php0.0500/kwh to its Main Island consumers starting the next billing cycle from receipt of this Order until such time that the full amount shall have been refunded.

The Commission likewise confirms the PPA of SURNECO for its Hikdop Island consumers for the period February 1996 to July 2004 which resulted to an under-recovery amounting to **TWO MILLION FOUR HUNDRED SEVENTY EIGHT THOUSAND FORTY FIVE PESOS**

(PhP2,478,045.00). SURNECO is hereby authorized to collect from its Hikdop Island consumers the amount of PhP0.0100/kwh starting the next billing cycle from receipt of this Order until such time that the full amount shall have been collected.

Accordingly, SURNECO is directed to:

- a) Reflect the PPA refund/collection as a separate item in the bill using the phrase "Previous Years' Adjustment on Power Cost";
- b) Submit, within ten (10) days from its initial implementation of the refund/collection, a sworn statement indicating its compliance with the aforecited directive; and
- c) Accomplish and submit a report in accordance with the attached prescribed format, on or before the 30th day of January of the succeeding year and every year thereafter until the amount shall have been fully refunded/collected.

SO ORDERED.^[10]

SURNECO filed a motion for reconsideration, but it was denied by the ERC in its Order^[11] dated May 29, 2007 on the ground that the motion did not raise any new matter which was not already passed upon by the ERC.

Aggrieved, SURNECO went to the CA via a petition for review,^[12] with prayer for the issuance of a temporary restraining order and preliminary injunction, seeking the annulment of the ERC Orders dated March 19, 2007 and May 29, 2007.

In its Decision dated April 17, 2008, the CA denied SURNECO's petition and affirmed the assailed Orders of the ERC.

On June 25, 2008, upon motion for reconsideration^[13] of SURNECO, the CA issued its Resolution denying the same.

Hence, this petition, with SURNECO ascribing error to the CA and the ERC in: (1) disallowing its use of the multiplier scheme to compute its system's loss; (2) ordering it to deduct from the power cost or refund to its consumers the discounts extended to it by its power supplier, NPC; and (3) ordering it to refund alleged over-recoveries arrived at by the ERC without giving SURNECO the opportunity to be heard.

The petition should be denied.

First. SURNECO points out that the National Electrification Administration (NEA), which used to be the government authority charged by law with the power to fix rates of rural electric cooperatives, entered into a loan agreement with the Asian Development Bank (ADB). The proceeds of the loan were intended for use by qualified rural electric cooperatives, SURNECO included, in their rehabilitation and expansion projects. The loan agreement imposed a 15% system loss cap, but