

## FIRST DIVISION

[ G.R. NO. 150253, November 30, 2006 ]

**DAVAO LIGHT AND POWER CORPORATION, INC., PETITIONER,  
VS. ANTONIO G. DIAZ AND FRANCISCO P. TESORERO,  
RESPONDENTS.**

### D E C I S I O N

**CHICO-NAZARIO, J.:**

Before Us is a Petition for Review on *Certiorari* seeking the reversal of the Decision dated 23 February 2001<sup>[1]</sup> and Resolution dated 27 September 2001<sup>[2]</sup> of the Court of Appeals in CA-G.R. SP No. 50771 entitled, "*Antonio G. Diaz and Francisco P. Tesorero v. Energy Regulatory Board and Davao Light & Power Co., Inc.*" The assailed Decision and Resolution imputed grave abuse of discretion on the part of the Energy Regulatory Board<sup>[3]</sup> (ERB) for altering the cut-off date from 18 September 1989 to 14 December 1984 for the purpose of computing consumers' refund.

Petitioner<sup>[4]</sup> is the authorized operator of electric light, heat, and power services in Davao City and in the municipalities of Panabo, Sto. Tomas, and Carmen, all situated in the province of Davao del Norte.

Respondents Antonio Diaz and Francisco Tesorero are consumers of the electric power supplied by petitioner and are therefore the latter's customers.

On 24 June 1982, petitioner filed an application with the then Board of Energy (BOE) for the approval of the sound value appraisal of its properties, assets, and equipment in service as of 9 October 1981. In its application, initially docketed as BOE Case No. 82-684 and re-docketed as ERB Case No. 91-181, petitioner pegged the sound value appraisal of its properties, assets, and equipment in the amount of P302,109,000.00. The BOE, in its Decision dated 6 December 1983, reduced this amount to P282,024,877.40.

Still unsatisfied with the BOE's action, respondents Diaz and Tesorero filed a Petition for Review on *Certiorari* before this Court seeking the annulment of the 6 December 1983 decision of the BOE. Said petition was docketed as G.R. No. 69592<sup>[5]</sup> and, on 8 May 1990, we modified the BOE's decision by further reducing the sound value appraisal of petitioner's properties, assets, and equipment in service as of 9 October 1981 from P282,024,877.40 to P122,175,433.40. We likewise denied petitioner's Motion for Reconsideration in our Resolution dated 27 June 1990.

On 9 October 1985, while G.R. No. 69592 was still pending with this Court, petitioner filed another application before the BOE for the approval of the sound value appraisal of its properties, assets, and equipment in service as of 14 December 1984. This second application was docketed as BOE Case No. 85-103 and

re-docketed as ERB Case No. 87-70.

On 18 September 1989, the ERB rendered a decision approving petitioner's sound value appraisal for its properties, assets, and equipment in service as of 14 December 1984 at P420,606,811.82, thus:

After a judicious evaluation of the records of the case, the Board finds the herein application of Davao Light & Power Co., Inc. for approval of the sound value appraisal of its properties and equipment in service as of December 14, 1984, to be meritorious.

WHEREFORE, in view of all the foregoing, the Board hereby approves the revaluation and appraisal, as modified herein, of the property and equipment of Davao Light & Power Co., Inc. with a total cost of reproduction new of P845,052,967.27 and a total sound value of P420,606,811.82, as herein below shown:

Property Plant and Equipment	1984 Reproduction Cost New	1984 Sound Value
Land	P 10,630,900.00	P 10,630,900.00
Buildings	19,782,100.00	13,528,500.00
Other Land Improvements		4,601,500.00
	6,123,700.00	
Machinery and Equipment:		
Power Plant	431,350,000.00	175,319,000.00
Control Room	1,483,800.00	668,000.00
Machine Shop	971,900.00	267,500.00
Electrical Laboratory Equipment	310,300.00	92,800.00
Yard and Outside Electric Data Processing Equipment	8,899,400.00	4,122,800.00
Desilting Equipment	7,220,380.00	5,054,000.00
Power Plant Laboratory Equipment	685,000.00	240,000.00
Electrical System Equipment	397,000.00	260,700.00
Power Plant Electrical Equipment	297,700.00	181,600.00
Injector Room Equipment	151,100.00	79,100.00
Injector Room Equipment	161,300.00	79,100.00
Pollution Control Equipment	161,300.00	69,100.00
Power Plant	290,000.00	174,000.00
	11,945,600.00	5,538,300.00

Miscellaneous Equipment		
Fire Fighting Equipment	257,000.00	180,000.00
Radio Communication Equipment	2,927,000.00	1,902,500.00
Ponciano Reyes Repair Equipment	197,600.00	76,500.00

Electrical Equipment:		
Substations	76,150,000.00	51,412,000.00
Transmissions and Distribution Poles	168,007,000.00	92,002,000.00
Transformers		
Overhead	86,865,000.00	46,157,000.00
Transmission and Distribution Line		
Consumer Meters	94,592,000.00	42,693,000.00

Transportation Equipment	<u>2,732,000.00</u>	<u>2,364,000.00</u>
T O T A L	P932,427,780.00	P457,614,800.00
	0	

Less:

Values of Property and Equipment which were either not used by the Company on its operation, not existing, or used by other Companies

Buildings	P3,590,597.00	P2,615,252.00
Other Land	19,500.00	14,600.00
Improvements		
Machinery and Equipment	95,000,942.00	36,775,197.00
Electrical Equipment	6,998,481.00	3,270,519.00
Transportation Equipment	<u>275,000.00</u>	<u>275,000.00</u>
TOTAL	<u>P105,884,520.00</u>	<u>P42,950,568.00</u>
	0	0

TOTAL	P826,543,260.00	P414,664,232.00
	0	

Add:

Value of assets which are not included in the appraisal report of 1984 but listed as assets of Davao Light & Power	P18,509,707.27	P5,942,579.82
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Company on its  
Books

TOTAL VALUE OF  
ASSETS APPROVED P845,052,967.27 P420,606,811.82

This Decision shall take effect on the date hereof.

SO ORDERED.

Pasig, Metro Manila, September 18, 1989.<sup>[6]</sup>

On 17 January 1995, respondents filed a petition before the ERB praying for the declaration of nullity of its 18 September 1989 Decision.<sup>[7]</sup> Respondents argued that said ERB decision was void *ab initio* because included therein were certain generators which were ordered excluded by this Court in the computation of the sound value appraisal of petitioner's properties, assets, and equipment in our decision in G.R. No. 69592.<sup>[8]</sup>

In its Comment,<sup>[9]</sup> petitioner insisted that the 18 September 1989 ERB decision had long become final and executory as respondents did not file a motion for reconsideration thereof neither did they assail said finding on appeal; thus, respondents' petition was an attempt to reopen proceedings which had been terminated five years earlier. Moreover, respondents could not invoke our ruling in G.R. No. 69592 as it was only promulgated on 8 May 1990 while the ERB decision in ERB Case No. 87-70 was rendered on 18 September 1989.

The ERB dismissed the respondents' petition for lack of merit on 23 July 1996<sup>[10]</sup> and respondents' motion for reconsideration was denied on 3 October 1996.<sup>[11]</sup>

Respondents' efforts for a favorable ruling before the Court of Appeals and this Court proved to be similarly fruitless. The Court of Appeals, in its 27 May 1999 Decision,<sup>[12]</sup> denied respondents' Petition for Review on *Certiorari* due to lack of merit. When respondents elevated the matter through a Petition for Review on *Certiorari* before this Court,<sup>[13]</sup> we deemed it proper to deny respondents' plea in our Resolution of 18 August 1999.<sup>[14]</sup>

Buoyed, however, by this Court's 8 May 1990 ruling in G.R. No. 69592, respondents sent a letter dated 1 December 1990 to the ERB for the institution of refund proceeding. The pertinent portion of respondents' letter reads:

It is crystal clear, therefore, that since the Supreme Court has finally decided the case with FINALITY disapproving the appraisals made bloating the value of the properties, assets and equipment of Davao Light & Power Co., Inc. thus weighed down the profit to 12% as mandated by law, had already been reduced to P112,175,433.40, the excess from the collections made by Davao Light & Power Co., Inc. be now ordered returned to the more than 70,000 different customers according to the bracket of excess payments made and tendered by each customer since 1981.

It is now therefore the most opportune and proper time that the Energy Regulatory Board, in observing and adhering to the spirit and mandate of the Decision of the Supreme Court to institute a Refund Proceedings in order that all the excess payments made by the more than 70,000 electric customers/consumers in Davao City, Panabo, Carmen, Sto. Tomas, all of Davao Province, be returned to said consumers/customers beginning the year 1981; or, in the alternative, to convert the total excess payments collected from the aforesale [sic] electric consumers/customers be credited as their equity participation with Davao Light & Power Co., Inc., as a lumpsum reimbursement will become a massive financial drain of the financial standing of Davao Light & Power Co., Inc. and which would, in effect, compel them to render poor service to the public.

It is respectfully prayed of the Honorable Chairman of the Energy Regulatory Board that the institution of the Refund Proceedings be acted upon in accordance with the provisions of Republic Act 6713, otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees.<sup>[15]</sup>

On 8 June 1992, the ERB granted the petition for the institution of refund proceedings.<sup>[16]</sup> Petitioner's motion for reconsideration of this decision was denied by the ERB on 1 July 1992 and thereafter, it filed a petition for review before the Court of Appeals.<sup>[17]</sup> On 22 July 1996, the Court of Appeals rendered its decision stating, among other things, the following:

Notwithstanding the foregoing, We still recognize private respondents' right to a refund inasmuch as the rates charged them, in the light of the decision of the Supreme Court in the case of *Tesorero v. Mathay*, were excessive.

It is noteworthy that in *Tesorero, et al. v. Mathay*, 185 SCRA 124, 132-133, the Supreme Court modified the decision of the then Board of Energy dated December 6, 1983 by excluding certain properties of DALIGHT as not being used in the generation and distribution electricity and approved only the sum of P122,175,433.40 as the fair and reasonable value of DALIGHT's properties, assets and equipment in service as of October 9, 1981. Such exclusion must necessarily reduce the sound value of petitioner's allowable rate base and ultimately result in the reduction of the rate of return, which is limited by law to twelve percent (12%) of the rate base. While it cannot be disclaimed that petitioner's rates were fixed by the then Board of Energy (BOE) (now the Energy Regulatory Board) in prior orders, respondent ERB, however, is not without authority to order refund proceedings in the light of the ruling in the aforesaid *Tesorero* case. Such refund proceedings, however, must take into account the overriding principle of fairness which stems from the all-important fact that public utilities such as the petitioner DALIGHT make their financial plans, projections and investments on the basis of the expected revenues. Respondent ERB must therefore consider such facts and circumstances as would minimize the unsettling effect upon the petitioner of having to make necessary reparation or refund revenues which it had already collected on the basis of rates previously