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REPORT OF CASES

DECIDED BY THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[G.R. No. 214042. August 13, 2024]

FOUNDATION FOR ECONOMIC FREEDOM, *Petitioner, v.* **ENERGY REGULATORY COMMISSION and NATIONAL RENEWABLE ENERGY BOARD,** *Respondents.*

[G.R. No. 215579. August 13, 2024]

REMIGIO MICHAEL A. ANCHETA II, *Petitioner, v.* **ENERGY REGULATORY COMMISSION, DEPARTMENT OF ENERGY, NATIONAL TRANSMISSION CORPORATION, NATIONAL RENEWABLE ENERGY BOARD, and MANILA ELECTRIC COMPANY,** *Respondents*,

FOUNDATION FOR ECONOMIC FREEDOM and CITIZENWATCH, INC., *Intervenors,*

[G.R. No. 235624. August 13, 2024]

ALYANSA NG MGA GRUPONG HALIGI NG AGHAM AT TEKNOLOHIYA PARA SA MAMAMAYAN (AGHAM) and ANGELO B. PALMONES, *Petitioners, v.* **DEPARTMENT OF ENERGY, ENERGY REGULATORY COMMISSION, NATIONAL**

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RENEWABLE ENERGY BOARD, NATIONAL TRANSMISSION CORPORATION, and MANILA ELECTRIC COMPANY, *Respondents*,

DEVELOPERS FOR RENEWABLE ENERGY FOR ADVANCEMENT, INC. (DREAM), *Intervenor.*

D E C I S I O N

LEONEN, *J.*:

These consolidated cases involve a determination of the validity of the Feed-In Tariff System implemented by the Energy Regulatory Commission, Department of Energy, National Renewable Energy Board, and National Transmission Corporation, in accordance with Republic Act No. 9513, otherwise known as the Renewable Energy Act of 2008. It involves an application of doctrines relating to judicial review, police power, delegation of legislative power, and substantive and procedural due process of law.

G.R. No. 214042

A Petition for Review on *Certiorari* (with Application for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction)[1] is filed under Rule 45 of the Rules of Court by Foundation for Economic Freedom to question the Court of Appeals Decision[2] and Resolution[3] in CA-G.R. SP No. 122371. The appellate court dismissed the Foundation for Economic

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1 *Rollo* (G.R. No. 214042), pp. 12–48.

2 *Id.* at 50–69. The December 13, 2013 Decision was penned by Associate Justice Pedro B. Corales and concurred in by Associate Justices Sesinando E. Villon and Samuel H. Gaerlan (now a Member of the Court) of the Court of Appeals, Manila, Special Sixteenth Division.

3 *Id.* at 71–73. The August 27, 2014 Resolution was penned by Associate Justice Pedro B. Corales and concurred in by Associate Justices Sesinando E. Villon and Samuel H. Gaerlan (now a Member of the Court) of the Court of Appeals, Manila, Former Special Sixteenth Division.

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Freedom's Petition for *Certiorari* for being moot and academic and an improper remedy.

The Foundation for Economic Freedom prays for this Court to enjoin the National Renewable Energy Board and the Energy Regulatory Commission from implementing the July 27, 2012 Energy Regulatory Commission Resolution No. 10, Series of 2012, titled Resolution Approving the Feed-In Tariff Rates,[4] issued pursuant to Section 7 of Republic Act No. 9513. It initially contested the National Renewable Energy Board's Petition to Initiate Rule-Making for the Adoption of Feed-In Tariff[5] with the Energy Regulatory Commission, arguing that it is premature and did not comply with the publication and comment requirements.

G.R. No. 215579

A Petition for Prohibition and *Certiorari* (with Application for a Temporary Restraining Order and/or Writ of Preliminary Injunction)[6] is filed under Rule 65 of the Rules of Court by Remigio Michael Ancheta II (Ancheta) to enjoin Energy Regulatory Commission, Department of Energy, National Renewable Energy Board, National Transmission Corporation, and Manila Electric Company (Meralco) from implementing and collecting the PHP 0.0406/kWh Feed-In Tariff Allowance (FIT Allowance). Ancheta seeks for this Court to declare as unconstitutional:

(i) the Order of Energy Regulatory Commission dated October 7, 2014,[7] insofar as it granted National Transmission Corporation's application for provisional approval of the PHP 0.0406/kWh FIT Allowance effective January 2015 for all on-grid consumer billings; and

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4 ERC Case No. 2011-006RM.

5 *Rollo* (G.R. No. 214042), pp. 89–137.

6 *Rollo* (G.R. No. 215579), pp. 3–34.

7 *Id.* at 35–61.

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(ii) the Feed-In Tariff Rules (FIT Rules)[8] and Feed-In Tariff Guidelines (FIT Guidelines),[9] insofar as these implement the PHP 0.0406/kWh FIT Allowance.

G.R. No. 235624

A Petition for *Certiorari* and Prohibition (with Application for a Temporary Restraining Order and/or Writ of Preliminary Injunction)[10] is filed under Rule 65 of the Rules of Court by Alyansa ng mga Grupong Haligi ng Agham at Teknolohiya para sa Mamamayan (AGHAM) and Angelo B. Palmones (Palmones), seeking to nullify:

(i) Section 6 of Republic Act No. 9513;

(ii) the Certifications issued by the Department of Energy dated April 30, 2014[11] and April 7, 2015[12] increasing the installation targets for solar and wind energy;

(iii) the Energy Regulatory Commission's Decisions and Orders setting the solar and wind FIT Rates at PHP 8.69/kWh and PHP 7.40/kWh, respectively; and

(iv) the Energy Regulatory Commission's Orders provisionally approving the 2016 and 2017 FIT Allowance at PHP 0.1240/kWh and PHP 0.1830/kWh, respectively.

On December 16, 2008, Republic Act No. 9513 or the Renewable Energy Act of 2008 was signed into law. One of its policies is to accelerate the exploration and development and increase the use of renewable energy resources.[13]

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[8] *Id.* at 65–76.

[9] *Id.* at 94–123.

[10] *Rollo* (G.R. No. 235624), pp. 3–74.

[11] *Id.* at 76–78.

[12] *Id.* at 80–82.

[13] Republic Act No. 9513 (2008), sec. 2 (a) and (b).

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Pursuant to the policy of accelerating the development of renewable energy resources, Section 7 of Republic Act No. 9513[14] mandates the adoption of a Feed-In Tariff System (FIT System) for electricity produced from renewable energy, or energy from wind, solar, ocean, run-of-river hydropower, and biomass. Under the FIT System, electric power industry participants who will source electricity from the generation of renewable energy are incentivized. One of the incentives is the Feed-In Tariff (FIT)—a guaranteed fixed amount of payment for a set period of time.[15]

The Energy Regulatory Commission, in consultation with the National Renewable Energy Board, is tasked to formulate and promulgate the rules for the FIT System.[16]

On July 12, 2010, the Energy Regulatory Commission issued Resolution No. 16, Series of 2010[17] titled Resolution Adopting

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[14] Section 7. Feed-In Tariff System. – To accelerate the development of emerging renewable energy resources, a feed-in tariff system for electricity produced from wind, solar, ocean, run-of-river hydropower and biomass is hereby mandated. Towards this end, the ERC in consultation with the National Renewable Energy Board (NREB) created under Section 27 of this Act shall formulate and promulgate feed-in tariff system rules within one (1) year upon the effectivity of this Act which shall include, but not limited to the following:
(a) Priority connections to the grid for electricity generated from emerging renewable energy resources such as wind, solar, ocean, run-of-river hydropower and biomass power plants within the territory of the Philippines;
(b) The priority purchase and transmission of, and payment for, such electricity by the grid system operators;
(c) Determine the fixed tariff to be paid to electricity produced from each type of emerging renewable energy and the mandated number of years for the application of these rates, which shall not be less than twelve (12) years;
(d) The feed-in tariff to be set shall be applied to the emerging renewable energy to be used in compliance with the renewable portfolio standard as provided for in this Act and in accordance with the RPS rules that will be established by the DOE.

[15] Department of Energy, Rules and Regulations Implementing Republic Act No. 9513 (2008), sec. 5.

[16] Republic Act No. 9513 (2008), sec. 7.

[17] *Rollo* (G.R. No. 215579), pp. 62–64.

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the Feed-In Tariff Rules (FIT Rules).[18] The FIT Rules became effective on August 12, 2010. Under the FIT Rules, the National Renewable Energy Board was tasked to recommend the FITs and their degression rates to the Energy Regulatory Commission.[19] The National Renewable Energy Board thus filed with the Energy Regulatory Commission a Petition to Initiate Rule-Making for the Adoption of Feed-In Tariff (Petition to Initiate),[20] recommending the FIT and degression rates for each of the renewable resources.[21]

The Energy Regulatory Commission set the National Renewable Energy Board's Petition to Initiate for public hearing on September 9, 16, 27, 29, and 30, 2011. It also required the National Renewable Energy Board to cause the publication of the notice of public hearing "twice (2x) for two (2) successive weeks in two (2) newspapers of general circulation in the Philippines, with the date of the last publication to be made not later than ten (10) days before the date of the scheduled public hearing."[22]

Subsequently, the National Renewable Energy Board filed a Notice of Compliance dated September 2, 2011,[23] attaching

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[18] *Id.* at 65–76.

[19] *Id.* at 69, 72.
Section 2.2 and 2.11 of the FIT Rules provide:
2.2. Per technology and size
Technology-specific FITs shall be approved by the ERC based on such FITs to be recommended by the NREB. Such technology-specific FITs may further be differentiated based on the size of Eligible RE Plant, as may be recommended by the NREB.
2.11. Degression
To encourage the RE producers to invest at the initial stage and hasten deployment of RE, the FITs to be established by ERC shall be subject to a degression rate which it shall determine based on NREB's recommendation. The Eligible RE Plants shall be entitled to such degressed FITs corresponding to the year when they started commercial operation. The ERC may approve a different degression rate for different technologies.

[20] *Rollo* (G.R. No. 214042), pp. 89–137.

[21] *Id.* at 135.

[22] *Id.* at 140.

[23] *Id.* at 172–176.

affidavits and newspaper issuances showing the publication within the prescribed period.[24]

G.R. No. 214042

Later, Foundation for Economic Freedom opposed the National Renewable Energy Board's Petition to Initiate.[25] It argued that the publication requirements[26] were not complied with[27] because the resolution of the National Renewable Energy Board's Petition to Initiate did not merely involve the exercise of the Energy Regulatory Commission's rule-making (i.e., quasi-legislative) powers. It involved its rate-setting powers which was quasi-judicial in nature. It also argued that Section 7 of Republic Act No. 9513 entailed an undue delegation of legislative power.[28]

The Foundation for Economic Freedom added that the Department of Energy and the Energy Regulatory Commission did not comply with several requirements prior to the filing of the Petition to Initiate, including: the establishment of installation targets; setting of penetration limits; fixing of minimum percentage generation; and determining the sectors to which the Renewable Portfolio Standard shall be imposed on a per grid basis pursuant to Section 6[29] of Republic Act No. 9513.[30]

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[24] *Id.* at 173.

[25] *Id.* The Foundation for Economic Freedom, Inc. filed an Opposition (*Rollo* [G.R. No. 214042], pp. 195–198) and a Verified Supplemental Opposition *Ex Abudante Ad Cautelam* (*Rollo* [G.R. No. 214042], pp. 204–221).

[26] Under the Revised Administrative Code of 1987, publication of the proposed rates in a newspaper of general circulation is at least two (2) weeks before the first hearing; and "full blown Public Hearing ..." and not merely a public consultation.

[27] *Rollo* (G.R. No. 214042), p. 197.

[28] *Id.* at 196.

[29] Section 6. Renewable Portfolio Standard (RPS). – All stakeholders in the electric power industry shall contribute to the growth of the renewable energy industry of the country. Towards this end, the National Renewable Energy Board (NREB), created under Section 27 of this Act, shall set the minimum percentage of generation from eligible renewable energy resources and determine to which sector RPS shall be imposed on a per grid basis within one (1) year from the effectivity of this Act.

[30] *Rollo* (G.R. No. 214042), pp. 216–217.

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On October 3, 2011, the Energy Regulatory Commission issued an Order[31] denying Foundation for Economic Freedom's opposition, holding that the National Renewable Energy Board's Petition to Initiate did not involve the exercise of quasi-judicial power, and that it complied with publication requirements.[32]

The Foundation for Economic Freedom sought reconsideration,[33] insisting that the publication of the notices of hearing were not done on two successive weeks. It also argued that the Petition was premature because there are no rules yet on the Renewable Portfolio Standard, or a study on penetration limits. However, the Energy Regulatory Commission denied this Motion in its Order dated November 10, 2011.[34]

The Foundation for Economic Freedom thus filed a Petition for *Certiorari* and Prohibition, and applied for a temporary restraining order and/or writ of preliminary injunction before the Court of Appeals.

Meanwhile, the Energy Regulatory Commission issued Resolution No. 10, Series of 2012 titled Resolution Approving the Feed-In-Tariff Rates (Resolution No. 10).

On December 13, 2013, the Court of Appeals dismissed Foundation for Economic Freedom's Petition for *Certiorari*. It ruled that the Petition had become moot and academic since the proposals in the National Renewable Energy Board's Petition to Initiate have already been approved with certain modifications in the Energy Regulatory Commission's Resolution No. 10. The Foundation for Economic Freedom's Petition for *Certiorari* was also ruled to be an improper remedy because the case involved the exercise of quasi-legislative powers, not quasi-judicial. The court also concluded that the National Renewable Energy Board complied with the publication requirements, that the adoption of

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[31] *Id.* at 247.

[32] *Id.* at 243–260.

[33] *Id.* at 249–257.

[34] *Id.* at 290–297.

the Renewable Portfolio Standard was meant to coincide with and need not precede the FIT System, and that the penetration limits has nothing to do with the FITs.[35]

Aggrieved, the Foundation for Economic Freedom filed a Motion for Reconsideration, which was denied.[36]

The Foundation for Economic Freedom thus filed the Petition docketed as G.R. No. 214042. It reiterates its arguments: that the National Renewable Energy Board did not comply with publication requirements; and that the *Petition to Initiate* was premature because there are no rules yet on the Renewable Portfolio Standard, or a study on penetration limits. It also prays for the issuance of a temporary restraining order and/or writ of preliminary injunction to enjoin the enforcement of the Energy Regulatory Commission's Resolution No. 10.

G.R. No. 215579

As mentioned, the Energy Regulatory Commission approved the FIT Rates in its Resolution No. 10. It reads:[37]

NOW THEREFORE, the ERC, after thorough and due deliberation, hereby RESOLVES, as it is hereby RESOLVED, to APPROVE and ADOPT, the following FEED-IN TARIFF RATES:

RE Technology	Approved FIT Rates (PhP/kWh)	Approved Degression Rate
Wind	8.53	0.5% after year 2 from effectivity of FIT
Biomass	6.63	0.5% after year 2 from effectivity of FIT
Solar	9.68	6% after year 1 from effectivity of FIT
Hydro	5.90	0.5% after year 2 from effectivity of FIT

[35] *Id.* at 60–68.

[36] *Id.* at 1521.

[37] Energy Regulatory Commission Resolution No. 10, Series of 2012, titled *Resolution Approving the Feed-In Tariff Rates*, issued July 27, 2012.

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The payment of the approved FIT rates to the eligible RE Developers shall commence upon the effectivity of the Feed-in Tariff Allowance (FIT-All), which shall be determined by the Commission at a later date after due proceedings thereon.

This Resolution shall take effect fifteen (15) days after its publication in a newspaper of general circulation in the country.[38]

On March 7, 2012, Department of Health Secretary Jose Rene Almendras endorsed to the Energy Regulatory Commission a letter from Senator Sergio Osmeña III, which contained his proposed bidding of renewable energy resources in setting the FIT Rates.

On April 2, 2012, the Energy Regulatory Commission posted an Issues Paper on its website to prepare for the FIT System implementation and to address Senator Sergio FIT III's issues. It set April 18, 2012 as the deadline for the submission of comments. Public consultations were held on May 2, 2012.[39]

In consideration of the comments and issues raised during the public consultations, the Energy Regulatory Commission issued Resolution No. 15, Series of 2012 (Resolution No. 15) amending the FIT Rules.[40] One of the amendments is the designation of the National Transmission Corporation as the FIT Allowance Administrator, replacing the National Grid Corporation of the Philippines.[41]

On December 16, 2013, the Energy Regulatory Commission issued Resolution No. 24, Series of 2013 to provide the guidelines under the FIT System for collecting and disbursing the FIT Allowance (FIT Guidelines).[42]

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[38] Resolution No. 10, Series of 2012, July 27, 2012.

[39] *Rollo* (G.R. No. 215579), p. 80.

[40] *Id.* at 81. Resolution No. 15, Series of 2012, dated November 19, 2012, titled *A Resolution Adopting the Position of the Commission on the Issues Paper Published on 02 April 2012 and the Corresponding Amendments to the Feed-In Tariff Rules*.

[41] *Id.* at 82–83.

[42] Resolution No. 24, Series of 2013 is titled *A Resolution Adopting the Guidelines on the Collection of the Feed-in Tariff Allowance [FIT-All] and the Disbursement of the Fit-All Fund*.

On July 30, 2014, the National Transmission Corporation filed an application[43] with the Energy Regulatory Commission for the approval of the FIT Allowance for years 2014 and 2015. The National Transmission Corporation also sought provisional authority to impose the proposed FIT Allowance rate of PHP 0.0406/kWh using the formula in Section 1.3 of the FIT Guidelines.

The Energy Regulatory Commission, in its Order[44] dated October 7, 2014, granted National Transmission Corporation's application and provisionally approved the FIT Allowance, to be made effective in the January 2015 billing on all on-grid consumers:

> WHEREFORE, the foregoing premises considered, the Commission hereby PROVISIONALLY APPROVES the Feed-In Tariff Allowance (FIT-All) of PhP/kWh 0.0406, effective in the January 2015 billing of all On-Grid electricity consumers. For this purpose, all Distribution Utilities, Retail Electricity Suppliers, the National Grid Corporation of the Philippines, are hereby directed to adopt the necessary modifications in their respective billing and collection systems, to effect the implementation of the said FIT-All as a separate line item in their bills to end-users starting in the January 2015 billing and remit the same in accordance with the FIT-All Guidelines.[45]

Hence, Ancheta filed the Petition docketed as G.R. No. 215579, questioning the Energy Regulatory Commission's provisional approval of the FIT Allowance. Ancheta raises grave abuse of discretion by the Energy Regulatory Commission in issuing the FIT Rules and FIT Guidelines, arguing that it allows the advance collection of FITs, thus, unduly expanding Republic Act No. 9513. Ancheta submits that Congress invalidly delegated its legislative powers to the Department of Energy and the Energy Regulatory Commission to establish the necessary infrastructure and mechanisms to implement Republic Act No. 9513. He adds

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[43] This was docketed as ERC Case No. 2014-109RC.

[44] *Rollo* (G.R. No. 215579), pp. 35–59.

[45] *Id.* at 59.

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that the Energy Regulatory Commission's implementation of the FIT Allowance is an invalid exercise of police power, depriving consumers of property without due process of law.[46]

G.R. No. 235624

As earlier mentioned, the National Renewable Energy Board filed with the Energy Regulatory Commission a Petition to Initiate,[47] recommending the FIT and degression rates for each of the renewable resources.[48] Thereafter, on June 2, 2011 and August 18, 2011, Joint Congressional Power Commission hearings were held, in which the FIT System and initial installation targets were discussed.[49]

On July 6, 2011, the Energy Regulatory Commission received Department of Energy resolutions approving the final installation targets for each renewable energy technology: 250 megawatts (MW) for biomass, 10 MW for ocean, 250 MW for run-of-river hydropower, 50 MW for solar, and 200 MW for wind.[50] Subsequently, the Energy Regulatory Commission issued the FIT Rules and FIT Guidelines, and provisionally approved the initial FITs.

On April 30, 2014, the Department of Energy issued a certification increasing the installation target for solar renewable energy from 50 MW to 500 MW.[51] When the National Renewable Energy Board received the certification, it endorsed it to the Energy Regulatory Commission.[52] Subsequently, the Energy Regulatory Commission issued Resolution No. 6, Series of

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[46] *Id.* at 1308.

[47] *Rollo* (G.R. No. 214042), pp. 89–137.

[48] *Id.* at 135.

[49] *Rollo* (G.R. No. 235624), p. 23.

[50] *Id.*

[51] *Id.* at 76–78.

[52] *Id.* at 83.

2015, approving a decrease in the solar renewable energy FIT from the 2012 rate of PHP 9.68/kWh to PHP 8.69/kWh.[53]

On Apri1 7, 2015, the Department of Energy issued another certification, this time increasing the installation target for wind renewable energy from 200 MW to 400 MW. The increase was meant to boost power supply.[54] The National Renewable Energy Board again referred the matter to the Energy Regulatory Commission,[55] and the Energy Regulatory Commission issued a Decision that adjusted the wind renewable energy FIT rate from PHP 8.53/kWh to PHP 7.40/kWh.[56] This was also approved in the Energy Regulatory Commission's Resolution No. 14, Series of 2015.[57]

The National Transmission Corporation then subsequently filed applications to collect the FIT Allowance for 2016 to 2018.[58] On December 22, 2015, it filed an application to increase the 2016 FIT Allowance rate to PHP 0.1025/kWh.[59] In its Order dated February 16, 2016, the Energy Regulatory Commission provisionally approved a FIT Allowance rate of PHP 0.1240/kWh.[60]

On December 1, 2016, the National Transmission Corporation requested for provisional authority to collect PHP 0.2291/kWh as the 2017 FIT Allowance rate. The Energy Regulatory Commission approved a FIT Allowance rate of PHP 0.1830/kWh.[61] The following year, on August 30, 2017, the National Transmission Corporation requested for provisional authority to collect PHP 0.2932/kWh as the 2018 FIT Allowance rate.[62]

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[53] *Id.* at 83–106. ERC Decision dated March 27, 2015.

[54] *Id.* at 80–82.

[55] *Id.* at 83.

[56] *Id.* at 109–139. ERC Decision dated October 6, 2015.

[57] *Id.* at 144–146.

[58] *Id.* at 1274.

[59] *Id.* at 29.

[60] *Id.* at 30.

[61] *Id.*

[62] *Id.* at 31.

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On December 7, 2017, AGHAM and Palmones filed a Petition for *Certiorari* and Prohibition with Application for a Temporary Restraining Order and/or Writ of Preliminary Injunction[63] with this Court, seeking to nullify:

(i) Section 6 of Republic Act No. 9513;

(ii) the Department of Energy's Certifications dated April 30, 2014 and April 7, 2015 increasing the installation targets for solar and wind energy;

(iii) the Energy Regulatory Commission's Decisions and Orders setting the solar and wind FIT Allowance at PHP 8.69/kWh and PHP 7.40/kWh, respectively; and

(iv) the Energy Regulatory Commission's Orders provisionally approving the 2016 and 2017 FIT Allowance at PHP 0.1240/kWh and PHP 0.1830/kWh, respectively.[64]

After the Petition was filed in G.R. No. 214042 (FEF Petition), respondents were ordered to comment. The Energy Regulatory Commission and the National Renewable Energy Board filed their respective comments.[65]

Meanwhile, in G.R. No. 215579 (Ancheta Petition), the Foundation for Economic Freedom filed a Motion for Leave of Court to Intervene and to allow the admission of its Petition-in-Intervention,[66] which was granted on April 7, 2015. The Federation of Philippine Industries, Inc. and Citizenwatch also filed separate Motions for Leave to Intervene and to admit their Petitions-in-Intervention.[67] However, the Federation of Philippine Industries, Inc. later withdrew its Petition-in-Intervention.[68] Citizenwatch's Motion to Intervene was granted on April 21, 2015.

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63 *Rollo* (G.R. No. 235624), pp. 3–74.

64 *Id.* at 65.

65 *Rollo* (G.R. No. 214042), pp. 659, 692.

66 *Id.* at 145, 268.

67 *Rollo* (G.R. No. 215579), p. 640.

68 *Id.* at 275.

On March 10, 2015, G.R. Nos. 214042 and 215579 were consolidated.

The remaining respondents in these two cases thus filed their respective Consolidated Comments to the Petitions and Petitions-in-Intervention.[69]

Ancheta, Foundation for Economic Freedom, and Citizenwatch each filed their Consolidated Replies.[70]

On June 27, 2017, all parties to these two cases were instructed to file their memoranda. By September 20, 2017, all parties to G.R. Nos. 214042 and 215579 already complied with the submission.[71]

On December 1, 2017, AGHAM filed its Petition docketed as G.R. No. 235624. Respondents National Transmission Corporation, Meralco, National Renewable Energy Board, and the Department of Energy with the Energy Regulatory Commission thus filed their respective comments or oppositions.[72]

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[69] *Rollo* (G.R. No. 215579), p. 731 (National Transmission Corporation); *Rollo* (G.R. No. 214042), pp. 838 (Meralco's Consolidated Comment), 915 (National Renewable Energy Board's Comment), 928–965 (Energy Regulatory Commission and Department of Energy's Consolidated Comment), 1088–1105 (National Transmission Corporation's Explanation and Consolidated Comment), 1174–1188 (Meralco's Consolidated Comment), and 1272 (National Renewable Energy Board's Comment to Citizenwatch's Petition-in-Intervention).

[70] *Rollo* (G.R. No. 214042), pp. 998–1018 (Ancheta's Consolidated Reply), 1038–1050 (Foundation for Economic Freedom's Consolidated Reply), and 1119–1127 (Citizenwatch's Consolidated Reply).

[71] *Id.* at 1346–1377 (National Renewable Energy Board's Memorandum), 1411–1461 (Citizenwatch Memorandum), 1509–1571 (Energy Regulatory Commission and Department of Energy's Consolidated Memorandum), 1577–1596 (National Transmission Corporation's Memorandum), 1604–1622 (Foundation for Economic Freedom's Consolidated Memorandum), 1641–1679 (Meralco's Memorandum), and 1683-1717 (Ancheta's Memorandum).

[72] *Rollo* (G.R. No. 235624), pp. 705–727 (National Transmission Commission's Comment), 751–770 (Meralco's Comment), 779-808 (National Renewable Energy Board's Opposition), and 848-901 (Energy Regulatory Commission and Department of Energy's Comment).

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AGHAM filed its Consolidated Reply on January 16, 2019.[73]

On July 30, 2019, Developers for Renewable Energy for Advancement, Inc. (DREAM) filed a Petition for Leave to Intervene.[74]

On September 10, 2019, G.R. No. 235624 was consolidated with G.R. Nos. 214042 and 215579.

The following are the issuances that petitioners seek to nullify:

(i) Court of Appeals Decision dated December 13, 2013[75] and Resolution dated August 27, 2014[76] in CA-G.R. SP No. 122371;
(ii) Sections 6 and 7 of Republic Act No. 9513;
(iii) FIT Rules;
(iv) FIT Guidelines;
(v) National Renewable Energy Board's *Petition to Initiate*;
(vi) Energy Regulatory Commission's Order dated October 7, 2014, which granted National Transmission Corporation's application for a provisional FIT Allowance;
(vii) Department of Energy Certification dated April 30, 2014 (DOE Certification – Solar);
(viii) Department of Energy Certification dated April 7, 2015 (DOE Certification – Wind);
(ix) Energy Regulatory Commission Decision and Resolution dated March 27, 2015, which set the Solar FIT Rate at PHP 8.69/kWh;

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[73] *Id.* at 929–968.

[74] *Id.* at 1245–1255.

[75] *Rollo* (G.R. No. 214042), pp. 50–69. The Decision was penned by Associate Justice Pedro B. Corales and concurred in by Associate Justices Sesinando E. Villon and Samuel H. Gaerlan (now a Member of the Court) of the Court of Appeals, Manila, Special Sixteenth Division.

[76] *Id.* at 71–73. The Resolution was penned by Associate Justice Pedro B. Corales and concurred in by Associate Justices Sesinando E. Villon and Samuel H. Gaerlan (now a Member of the Court) of the Court of Appeals, Manila, Former Special Sixteenth Division.

(x) Energy Regulatory Commission Decision and Resolution dated October 6, 2015, which set the Wind FIT Rate at PHP 7.40/kWh;
(xi) Energy Regulatory Commission Order dated February 16, 2016, which provisionally approved a FIT Allowance of PHP 0.1240/kWh; and
(xii) Energy Regulatory Commission Decision dated May 9, 2017, which approved the increase in the FIT Allowance Rate to PHP 0.1830/kWh, which is higher than the provisional rate of PHP 0.1240/kWh and the rate applied for by the National Transmission Corporation of PHP 0.1025/kWh.

The parties raise issues relating to judicial review, police power, delegation of legislative power, and substantive and procedural due process of law. Their detailed arguments are incorporated in the discussion.

The procedural issues in this case can be narrowed down to the following:

First, whether the Ancheta and AGHAM Petitions filed under Rule 65 of the Rules of Court are proper remedies, even if the respondents' acts in question were not done in the exercise of their judicial, quasi-judicial, or ministerial functions;

Second, whether this Court can exercise its power of judicial review;

Third, whether the (i) determination of the Renewable Portfolio Standard, (ii) the adoption of Renewable Portfolio Standard Rules, (iii) the conduct of a maximum penetration limit study, and (iv) the determination of installation targets for technology are prerequisites to implementing the FIT System and determining the FIT rates and allowance;

Fourth, whether there is valid delegation of legislative power in (i) Section 7 of Republic Act No. 9513 covering the FIT System, and in (ii) Section 6 of Republic Act No. 9513 covering the Renewable Portfolio Standard;

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Fifth, whether respondents gravely abused their discretion, exceeded the powers delegated to them, and expanded the scope of Republic Act No. 9153 and other relevant laws in (i) providing for the advanced collection of FITs in the FIT Rules and FIT Guidelines, and (ii) issuing the Department of Energy Certifications increasing the installation targets;

Sixth, whether the implementation of the FIT System is a valid exercise of police power or taxation powers;

Seventh, whether consumers were deprived of their property without due process of law;

Eighth, whether the Foundation for Economic Freedom committed forum shopping when it filed its Petition-in-Intervention in G.R. No. 215579;[77] and

Ninth, whether there is a basis for granting petitioners' injunctive relief.

I

The parties in this consolidated case argue over the propriety of seeking redress in this Court through a Rule 65 Petition for *Certiorari* and/or Prohibition.

Ancheta argues that this is the proper remedy to assail the constitutionality of the FIT Rules and FIT Guidelines, given the alleged grave abuse of discretion on the part of respondents.[78] Thus, the acts in question supposedly need not be in the exercise of judicial, quasi-judicial, or ministerial functions.[79] Meanwhile, Citizenwatch affirms that this Court has jurisdiction to review acts of government agencies constituting grave abuse of discretion.[80]

Ancheta and Citizenwatch further maintain that the validity of the FIT Rules, FIT Guidelines, and the Energy Regulatory

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[77] *Rollo* (G.R. No. 215579), p. 1463.

[78] *Id.* at 1583.

[79] *Id.* at 1601.

[80] *Id.* at 1324.

Commission's Orders are justiciable issues, which do not involve political questions. The issues raised do not pertain to the wisdom of the issuances but to the abuse of discretion of respondents, and the legality of the FIT Rules and FIT Guidelines, in relation to the implementation of Republic Act No. 9513.[81]

AGHAM also argues that under this Court's expanded jurisdiction under the Constitution, *certiorari* and prohibition as remedies are not limited to questioning judicial or quasi-judicial acts of government entities. It extends to all unconstitutional acts and any grave abuse of discretion of all branches of government, even if done in the exercise of legislative or quasi-legislative powers.[82]

Meanwhile, the Energy Regulatory Commission and the Department of Energy maintain that *certiorari* or prohibition is not the proper remedy to question the Petition to Initiate[83] or the FIT Rules and FIT Guidelines[84] because these were filed and issued pursuant to the Energy Regulatory Commission's rule-making power—a quasi-legislative function.[85] They argue that a petition for *certiorari* looks only into the exercise of an agency's judicial and quasi-judicial powers and corrects errors of jurisdiction,[86] while a petition for prohibition only lies against judicial or ministerial functions.[87] They thus assert that these remedies cannot be availed of in this case because the Energy Regulatory Commission's power to determine the FIT is essentially legislative in nature. They further maintain that there is no showing that respondents gravely abused their discretion.[88]

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81 *Id.* at l324, 1592.

82 *Rollo* (G.R. No. 235624), pp. 940, 943.

83 *Rollo* (G.R. No. 215579), pp. 1396, 1400.

84 *Id.* at 1397, 1415.

85 *Id.* at 1416, 1417.

86 *Id.* at 1402.

87 *Id.* at 1416.

88 *Id.* at 1417.

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The National Transmission Corporation forwards the same argument against the AGHAM Petition.[89] It argues that the grave abuse of discretion of other government agencies is not an independent ground for the exercise of this Court's power of judicial review. "[I]t cannot be used to impose a judicial preference over a measure determined by the Executive Department."[90] It further adds that the Petitions of Ancheta and Foundation for Economic Freedom raise political concerns as they question the wisdom of Congress and the Energy Regulatory Commission.[91]

The National Renewable Energy Board agrees that the AGHAM Petition is not proper. It argues that AGHAM should have instead filed a Petition for Declaratory Relief under Rule 64 of the Rules of Court.[92] Furthermore, it posits that the AGHAM Petition was filed late. It points that despite all the hearings, proceedings, public consultations, and meetings, AGHAM did not file a comment, opposition, or any appropriate legal remedy to question the assailed issuances, even if some have been released and implemented as early as 2010.[93]

This Court has recognized the Rule 65 writs of *certiorari* and prohibition as appropriate remedies against grave abuse of discretion of any branch or instrumentality of the government. Petitions for it may be filed even if the acts in question were not done in the exercise of judicial, quasi-judicial, or ministerial functions. Sections 1 and 2 of the rule provides:

> SECTION 1. *Petition for Certiorari*. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court,

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89 *Rollo* (G.R. No. 235624), pp. 713–714.

90 *Rollo* (G.R. No. 215579), p. 1463.

91 *Id.*

92 *Rollo* (G.R. No. 235624), pp. 790–791.

93 *Id.*

alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the paragraph of Section 3, Rule 46.

SECTION 2. *Petition for Prohibition*. — When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require.

The petition shall likewise be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

While these provisions more explicitly state that the *certiorari* and prohibition writs are meant to address grave abuse of discretion of judicial and quasi-judicial bodies or those exercising ministerial functions, this Court has also recognized it as the remedy to address any grave abuse of discretion on the part of any branch or instrumentality of the government. This is because of Article VIII, Section 1 of the Constitution:

ARTICLE VIII
Judicial Department

SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine *whether or not there has been a grave*

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abuse of discretion amounting to lack or excess of jurisdiction on the part of ***any*** *branch or instrumentality of the Government*. (Emphasis supplied)

It has been held in numerous cases that this provision in the Constitution has expanded the scope of judicial power. The power of the courts is not only limited to ruling on "actual controversies involving rights which are legally demandable and enforceable." It also includes determining if any government branch or instrumentality gravely abused its discretion, such that it acted beyond the extent of its powers.

In *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*,[94] this Court explained how Rule 65 became the remedy for the Court's exercise of its expanded scope of judicial power:

> The use of petitions for *certiorari* and prohibition under Rule 65 is a remedy that judiciaries have used long before our Rules of Court existed. As footnoted below, these writs — now recognized and regulated as remedies under Rule 65 of our Rules of Court — have been characterized as "supervisory writs" used by superior courts to keep lower courts within the confines of their granted jurisdictions, thereby ensuring orderliness in lower courts' rulings.
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> We confirmed this characterization in *Madrigal Transport v. Lapanday Holdings Corporation*, when we held that a writ is founded on the supervisory jurisdiction of appellate courts over inferior courts, and is issued to keep the latter within the bounds of their jurisdiction. Thus, the writ corrects only errors of jurisdiction of judicial and quasi-judicial bodies, and cannot be used to correct errors of law or fact. For these mistakes of judgment, the appropriate remedy is an appeal.
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> This situation changed after 1987 when the new Constitution "expanded" the scope of judicial power by providing that —
>
> > Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine ***whether or not there has been a grave abuse of discretion amounting to lack or excess of***

[94] 802 Phil. 116 (2016) [Per J. Brion, *En Banc*].

jurisdiction on the part of any branch or instrumentality of the Government*. (italics supplied)*

In *Francisco v. The House of Representatives*, we recognized that this expanded jurisdiction was meant "to ensure the potency of the power of judicial review to curb grave abuse of discretion by 'any branch or instrumentalities of government.'" Thus, the second paragraph of Article VIII, Section 1 engraves, for the first time in its history, into black letter law the "expanded *certiorari* jurisdiction" of this Court, whose nature and purpose had been provided in the sponsorship speech of its proponent, former Chief Justice Constitutional Commissioner Roberto Concepcion[:]

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The first section starts with a sentence copied from former Constitutions. It says:

The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

I suppose nobody can question it.

The next provision is new in our constitutional law. I will read it first and explain.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government.

Fellow Members of this Commission, this is actually a product of our experience during martial law. As a matter of fact, it has some antecedents in the past, but the role of the judiciary during the deposed regime was marred considerably by the circumstance that in a number of cases against the government, which then had no legal defense at all, the solicitor general set up the defense of political question and got away with it. As a consequence, certain principles concerning particularly the writ of *habeas corpus*, that is, the authority of courts to order the release of political detainees, and other matters related to the operation and effect of martial law failed because the government set up the defense of political question. And the Supreme Court said: "Well, since it is political, we have no authority to pass upon it." The Committee on the

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> Judiciary feels that this was not a proper solution of the questions involved. It did not merely request an encroachment upon the rights of the people, but it, in effect, encouraged further violations thereof during the martial law regime. . . .
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> xxx xxx xxx
>
> Briefly stated, courts of justice determine the limits of power of the agencies and offices of the government as well as those of its officers. In other words, the judiciary is the final arbiter on the question whether or not a branch of government or any of its officials has acted without jurisdiction or in excess of jurisdiction, or so capriciously as to constitute an abuse of discretion amounting to excess of jurisdiction or lack of jurisdiction. This is not only a judicial power but a duty to pass judgment on matters of this nature.
>
> This is the background of paragraph 2 of Section 1, which means that the courts cannot hereafter evade the duty to settle matters of this nature, by claiming that such matters constitute a political question.[95] (Emphasis in the original, citations omitted)

In *Kilusang Mayo Uno v. Aquino III*,[96] this Court also explained that Rule 65 is the remedy to "invoke the expanded scope of judicial power" and restrain any act of grave abuse of discretion, whether or not it was done in the exercise of judicial, quasi-judicial, or ministerial functions:

> Rule 65, Sections 1 and 2 of the Rules of Court provides remedies to address grave abuse of discretion by any government branch or instrumentality, particularly through petitions for *certiorari* and prohibition:
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> . . . .
>
> While these provisions pertain to a tribunal's, board's, or an officer's exercise of discretion in judicial, quasi-judicial, or ministerial functions, Rule 65 still applies to invoke the expanded scope of judicial power. In *Araullo v. Aquino III*, this Court differentiated *certiorari* from prohibition, and clarified that Rule 65 is the remedy to "set right,

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[95] *Id.* at 136–138.

[96] 850 Phil. 1168 (2019) [Per J. Leonen, *En Banc*].

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undo[,] and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, *even if the latter does not exercise judicial, quasi-judicial[,] or ministerial functions*."

This Court further explained:

> The present *Rules of Court* uses two special civil actions for determining and correcting grave abuse of discretion amounting to lack or excess of jurisdiction. These are the special civil actions for *certiorari* and prohibition, and both are governed by Rule 65. . . .
>
> The ordinary nature and function of the writ of *certiorari* in our present system are aptly explained in *Delos Santos v. Metropolitan Bank and Trust Company*:
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> xxx xxx xxx
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> > The sole office of the writ of *certiorari* is the correction of errors of jurisdiction, which includes the commission of grave abuse of discretion amounting to lack of jurisdiction. In this regard, mere abuse of discretion is not enough to warrant the issuance of the writ. The abuse of discretion must be grave, which means either that the judicial or quasi-judicial power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, or that the respondent judge, tribunal or board evaded a positive duty, or virtually refused to perform the duty enjoined or to act in contemplation of law, such as when such judge, tribunal or board exercising judicial or quasi-judicial powers acted in a capricious or whimsical manner as to be equivalent to lack of jurisdiction.
>
> Although similar to prohibition in that it will lie for want or excess of jurisdiction, *certiorari* is to be distinguished from prohibition by the fact that it is a corrective remedy used for the re-examination of some action of an inferior tribunal, and is directed to the cause or proceeding in the lower court and not to the court itself, while prohibition is a preventative remedy issuing to restrain future action, and is directed to the court itself. The Court expounded on the nature and function of the writ of prohibition in *Holy Spirit Homeowners Association, Inc. v. Defensor*:
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> . . . .

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> With respect to the Court, however, the remedies of *certiorari* and prohibition are necessarily broader in scope and reach, and the writ of *certiorari* or prohibition may be issued to correct errors of jurisdiction committed not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions but also to set right, undo and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, *even if the latter does not exercise judicial, quasi-judicial or ministerial functions*. This application is expressly authorized by the text of the second paragraph of Section 1, ...
>
> Thus, petitions for *certiorari* and prohibition are appropriate remedies to raise constitutional issues and to review and/or prohibit or nullify the acts of legislative and executive officials.[97] (Emphasis in the original, citations omitted)

While there may be a need to promulgate a more specific procedural vehicle for cases calling for the exercise of this Court's expanded jurisdiction, this Court cannot shirk from its duty to hear these types of cases on the flimsy ground of lack of an explicit rule of procedure. Thus, it has consistently acknowledged Rule 65 as the *de facto* modality for such matters. Thus, the petitions under Rule 65 may be filed in this Court to review, prohibit, or nullify the acts of legislative and executive officials, especially those where constitutional issues are involved.

Here, petitioners filed petitions for *certiorari* and prohibition to question the constitutionality of provisions of Republic Act No. 9153, and the validity of several issuances and acts of respondents. They allege that respondents gravely abused their discretion by not complying with due process requirements, by exceeding their delegated legislative authority, by invalidly exercising police and taxation powers, and by going against State policies in their issuances.

Thus, petitioners did not err in filing Rule 65 Petitions to raise these issues.

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[97] *Id.* at 1183–1186.

II

Nonetheless, considering petitioners are raising questions of constitutionality and are invoking the power of judicial review, they must show that all the requisites for its exercise are present: "(1) there must be an actual case or justiciable controversy before this Court; (2) the question before this Court must be ripe for adjudication; (3) the person challenging the act must be a proper party; and (4) the issue of constitutionality must be raised at the earliest opportunity and must be the very *litis mota* of the case."[98]

Petitioners argue that all the requisites of judicial review are present.[99] The respondents, however, contest this.[100]

This Court finds that the requisites of judicial review are present.

II(A)

AGHAM insists that its Petition presents an actual case or controversy because respondents' issuances causing the increase in the FIT Allowance Rates are already being implemented. The FIT Allowance charge is already being imposed on electricity consumers.[101] Citizenwatch points out that effective January 2015, the electricity billing had already reflected the proposed FIT Allowance.[102] AGHAM also argues that there is an actual case or controversy because of the obvious unconstitutionality of Section 6 of Republic Act No. 9513.[103]

Meanwhile, the Energy Regulatory Commission and Department of Energy, the National Renewable Energy Board, and Developers for Renewable Energy for Advancement, Inc.

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[98] *Id.* at 1187.

[99] *Rollo* (G.R. No. 215579), p. 1324; *Rollo* (G.R. No. 235624), p. 16.

[100] *Rollo* (G.R. No. 235624), pp. 785, 858, 1267, and 1275.

[101] *Id.* at 16.

[102] *Rollo* (G.R. No. 215579), p. 1325.

[103] *Rollo* (G.R. No. 235624), p. 16.

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argue that there is no actual case or controversy.[104] They point that AGHAM is questioning the wisdom of the assailed issuances and the Renewable Portfolio Standard, which is an issue this Court cannot pass upon.[105]

The National Renewable Energy Board and Developers for Renewable Energy for Advancement, Inc. further point that AGHAM failed to indicate the opposing legal claims or the rights that were violated from the implementation of the issuances.[106] They add that AGHAM's claim that the assailed acts caused an increase of charges imposed on electricity consumers are bare allegations.[107]

They also argue that the AGHAM Petition is not yet ripe.[108] They maintain that it is speculative, baseless, and without factual basis for AGHAM to assert that the Renewable Portfolio Standard caused an increase in electricity rates.[109] They point that it came into effect only on December 31, 2017. Furthermore, distribution utilities and electric cooperatives are still in the planning stage of their power supply procurement, and the Energy Regulatory Commission has yet to approve an application for power supply agreement as compliance with the Renewable Portfolio Standard.[110]

This Court finds that there is an actual case or controversy presented by the parties.

An actual case or controversy is an absolute necessity before any judicial power is exercised.[111] This requirement is again found under Article VIII, Section 1 of the Constitution:

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[104] *Id.* at 785, 860, 1267, and 1275.

[105] *Id.* at 787, 860, and 1277.

[106] *Id.* at 786, 1276.

[107] *Id.*

[108] *Id.* at 787, 1277.

[109] *Id.* at 788, 1278.

[110] *Id.* at 788–789, 1273.

[111] *Kilusang Mayo Uno v. Aquino III*, 850 Phil. 1168, 1188 (2019) [Per J. Leonen, *En Banc*].

ARTICLE VIII
Judicial Department

SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to *settle actual controversies involving rights which are legally demandable and enforceable*, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. (Emphasis supplied)

An actual case or controversy is "one which involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution; the case must not be moot or academic or based on extra-legal or other similar considerations not cognizable by a court of justice."[112] Thus, a party seeking relief from the courts must show that there is a real and substantial controversy between legally demandable and enforceable rights that the courts may remedy. There must be "definite and concrete issues involving the legal relations of the parties having adverse legal interest."[113]

To be justiciable, courts cannot rule on just any legal question. It is limited to resolving justiciable issues—questions presented in an adversarial context. In *Kilusang Mayo Uno*, this Court discusses that the rationale behind the requirement is to maintain and ensure the separation of powers of the Judiciary from the other branches of government:

This requirement [of an actual case or controversy] goes into the nature of the judiciary as a co-equal branch of government. It is bound by the doctrine of separation of powers, and will not rule on any matter or cause the invalidation of any act, law, or regulation, if there is no actual or sufficiently imminent breach of or injury to a right. The courts

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[112] *Joya v. Presidential Commission on Good Government*, 296-A Phil. 595, 606 (1993) [Per J. Bellosillo, *En Banc*]; *see also Republic Telecommunications Holdings, Inc. v. Santiago*, 556 Phil. 83, 91–92 (2007) [Per J. Tinga, Second Division].

[113] *Kilusang Mayo Uno v. Aquino III*, 850 Phil. 1168, 1188 (2019) [Per J. Leonen, *En Banc*]; *David v. Macapagal-Arroyo*, 522 Phil. 705, 753 (2006) [Per J. Sandoval-Gutierrez, *En Banc*].

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interpret laws, but the ambiguities may only be clarified in the existence of an actual situation.

In *Lozano v. Nograles*, the petitions assailing House Resolution No. 1109 were dismissed due to the absence of an actual case or controversy. This Court held that the "determination of the nature, scope[,] and extent of the powers of government is the exclusive province of the judiciary, such that any mediation on the part of the latter for the allocation of constitutional boundaries would amount, not to its supremacy, but to its mere fulfillment of its 'solemn and sacred obligation' under the Constitution." The judiciary's awesome power of review is limited in application.[114] (Citations omitted)

Kilusang Mayo Uno also discusses the guidelines in determining whether an actual case or controversy exists:

Jurisprudence lays down guidelines in determining an actual case or controversy. In *Information Technology Foundation of the Philippines v. Commission on Elections*, this Court required that "the pleadings must show an active antagonistic assertion of a legal right, on the one hand, and a denial thereof on the other; that is, it must concern a real and not a merely theoretical question or issue." Further, there must be "an actual and substantial controversy admitting of specific relief through a decree conclusive in nature, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts."

Courts, thus, cannot decide on theoretical circumstances. They are neither advisory bodies, nor are they tasked with taking measures to prevent *imagined possibilities* of abuse.

Hence, in *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, this Court ruled:

> Without any justiciable controversy, the petitions have become pleas for declaratory relief, over which the Court has no original jurisdiction. Then again, declaratory actions characterized by "double contingency," where both the activity the petitioners intend to undertake and the anticipated reaction to it of a public official are merely theorized, lie beyond judicial review for lack of ripeness.

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[114] 850 Phil. 1168, 1188–1189 (2019) [Per J. Leonen, *En Banc*].

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> *The possibility of abuse in the implementation of RA 9372 does not avail to take the present petitions out of the realm of the surreal and merely imagined. . . . Allegations of abuse must be anchored on real events before courts may step in to settle actual controversies involving rights which are legally demandable and enforceable.* (Emphasis supplied, citations omitted)

In *Republic v. Roque*, this Court further qualified the meaning of a justiciable controversy. In dismissing the Petition for declaratory relief before the Regional Trial Court, which assailed several provisions of the Human Security Act, we explained that justiciable controversy or ripening seeds refer to:

> . . . an existing case or controversy that is appropriate or ripe for judicial determination, not one that is conjectural or merely anticipatory. *Corollary thereto, by "ripening seeds" it is meant, not that sufficient accrued facts may be dispensed with, but that a dispute may be tried at its inception before it has accumulated the asperity, distemper, animosity, passion, and violence of a full blown battle that looms ahead.* The concept describes a state of facts indicating imminent and inevitable litigation provided that the issue is not settled and stabilized by tranquilizing declaration.[115]

The conflict of rights thus must arise from actual facts, properly proven by evidence. Otherwise, the court will be left ruling on theoretical or abstract situations. To do so will provide it with space to determine policies or impose personal predilections on situations that have not yet occurred, thus acting outside the scope of its power.

Corollary to the requirement of an actual case or controversy, the matter to be resolved must be ripe for adjudication, and not moot or academic. This means that the rights being asserted by the complainant ought to be enforceable and legally demandable.

"A case is ripe for adjudication when the challenged governmental act is a *completed action* such that there is a direct, concrete, and adverse effect on the petitioner."[116] Before the Court

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[115] *Id.* at 1189–1190.

[116] *Id.* at 1191.

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may take cognizance of the case, it is necessary that there be an action by a government branch or instrumentality that results in an immediate or threatened injury to the party filing the case.[117]

The allegations of the parties determine whether there is an actual case or controversy.[118]

In this case, petitioners question the constitutionality of provisions of Republic Act No. 9513, and the validity of several acts and issuances of respondents, which are already in effect and are being implemented. They allege that respondents acted outside the scope of their delegated legislative authority and in violation of due process requirements. They also allege that respondents gravely abused their discretion by invalidly exercising police and taxation powers, and by going against State policies in their issuances. In the process, they assert that respondents have caused them and the public to pay for electricity not yet consumed. Petitioners claim that pursuant to the issuances, they are already being billed the proposed FIT Allowance, and the subsequent acts of respondents have also caused an increase in their electricity bills.

Respondents do not deny the assertion that amounts are already being collected from consumers. Instead, they assert that they have validly acted within the powers delegated to them and have complied with substantive and procedural due process requirements.

There is thus a clear controversy between the parties, and the opposing legal claims may be resolved by this Court. The parties do not present theoretical circumstances, neither are they asking this Court for a mere advisory opinion. Hence, there is an actual case or controversy.

II(B)

Another matter related to ripeness is the doctrine of hierarchy of courts.

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[117] *Id.*

[118] *Id.* at 1190–1191.

The Energy Regulatory Commission and the Department of Energy claim that Ancheta violated the doctrine of hierarchy of courts in directly filing Petition for *Certiorari* in this Court after the Energy Regulatory Commission provisionally approved the FIT Allowance in 2014.[119] They argue that the lower courts exercise jurisdiction over questions of constitutionality or validity of issuances of administrative agencies promulgated pursuant to its quasi-legislative functions.[120] They also insist that there is no compelling or exceptional circumstance that warrants a direct resort to the Supreme Court.[121] Thus, they posit that the Ancheta Petition should have first been filed in the Regional Trial Court.

Ancheta counters that his Petition for *Certiorari* did not violate the hierarchy of courts doctrine.[122] Since the FIT Rules and FIT Guidelines are patent nullities, this Court may brush aside any procedural barrier as it raises an issue of paramount importance and constitutional significance.[123]

In *Gios-Samar, Inc. v. Department of Transportation and Communications*,[124] this Court explained the rationale behind the doctrine of hierarchy of courts:

> The doctrine of hierarchy of courts operates to: (1) prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction; (2) prevent further over-crowding of the Court's docket; and (3) prevent the inevitable and resultant delay, intended or otherwise, in the adjudication of cases which often have to be remanded or referred to the lower court as the proper forum under the rules of procedure, or as the court better equipped to resolve factual questions.
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> Strict adherence to the doctrine of hierarchy of courts is an effective mechanism to filter the cases which reach the Court. As of December

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[119] *Id.* (G.R. No. 215579), pp. 1397, 1418.

[120] *Id.* at 1420.

[121] *Id.* at 1418–1419.

[122] *Id.* at 1603.

[123] *Id.*

[124] 849 Phil. 120 (2019) [Per J. Jardeleza, *En Banc*].

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31, 2016, 6,526 new cases were filed to the Court. Together with the reinstated/revived/reopened cases, the Court has a total of 14,491 cases in its docket. Of the new cases, 300 are raffled to the Court *En Banc* and 6,226 to the three Divisions of the Court. The Court *En Banc* disposed of 105 cases by decision or signed resolution, while the Divisions of the Court disposed of a total of 923 by decision or signed resolution.

These, clearly, are staggering numbers. The Constitution provides that the Court has original jurisdiction over five extraordinary writs and by our rule-making power, we created four more writs which can be filed directly before us. There is also the matter of appeals brought to us from the decisions of lower courts. Considering the immense backlog facing the court, this begs the question: *What is really the Court's work? What sort of cases deserves the Court's attention and time?*

We restate the words of Justice Jose P. Laurel in Angara that the Supreme Court is the final arbiter of the Constitution. Hence, direct recourse to us should be allowed only when the issue involved is one of law. However, and as former Associate Justice Vicente V. Mendoza reminds, the Court may still choose to avoid passing upon constitutional questions which are confessedly within its jurisdiction if there is some other ground on which its decision may be based.[125]

In *The Diocese of Bacolod v. Commission on Elections*,[126] this Court laid down the exceptions to the doctrine:

Thus, the doctrine of hierarchy of courts is not an iron-clad rule. This court has "full discretionary power to take cognizance and assume jurisdiction [over] special civil actions for *certiorari* . . . filed directly with it for exceptionally compelling reasons or if warranted by the nature of the issues clearly and specifically raised in the petition." As correctly pointed out by petitioners, we have provided exceptions to this doctrine:

First, a direct resort to this court is allowed when there are genuine issues of constitutionality that must be addressed at the most immediate time. A direct resort to this court includes availing of the remedies of *certiorari* and prohibition to assail the constitutionality of actions of both legislative and executive branches of the government.

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[125] *Id.* at 182–183.

[126] 751 Phil. 301 (2015) [Per J. Leonen, *En Banc*].

A second exception is when the issues involved are of transcendental importance. In these cases, the imminence and clarity of the threat to fundamental constitutional rights outweigh the necessity for prudence. The doctrine relating to constitutional issues of transcendental importance prevents courts from the paralysis of procedural niceties when clearly faced with the need for substantial protection.

. . . .

Third, cases of first impression warrant a direct resort to this court. In cases of first impression, no jurisprudence yet exists that will guide the lower courts on this matter. In *Government of the United States v. Purganan*, this court took cognizance of the case as a matter of first impression that may guide the lower courts:

> In the interest of justice and to settle once and for all the important issue of bail in extradition proceedings, we deem it best to take cognizance of the present case. Such proceedings constitute a matter of first impression over which there is, as yet, no local jurisprudence to guide lower courts.

. . . .

Fourth, the constitutional issues raised are better decided by this court. In *Drilon v. Lim*, this court held that:

> . . . it will be prudent for such courts, if only out of a becoming modesty, to defer to the higher judgment of this Court in the consideration of its validity, which is better determined after a thorough deliberation by a collegiate body and with the concurrence of the majority of those who participated in its discussion. (Citation omitted)

. . . .

Fifth, the time element presented in this case cannot be ignored. This case was filed during the 2013 election period. Although the elections have already been concluded, future cases may be filed that necessitate urgency in its resolution. Exigency in certain situations would qualify as an exception for direct resort to this court.

Sixth, the filed petition reviews the act of a constitutional organ. COMELEC is a constitutional body. In *Albano v. Arranz*, cited by petitioners, this court held that "[i]t is easy to realize the chaos that would ensue if the Court of First Instance of each and every province were [to] arrogate itself the power to disregard, suspend, or contradict any order of

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the Commission on Elections: that constitutional body would be speedily reduced to impotence."

In this case, if petitioners sought to annul the actions of COMELEC through pursuing remedies with the lower courts, any ruling on their part would not have been binding for other citizens whom respondents may place in the same situation. Besides, this court affords great respect to the Constitution and the powers and duties imposed upon COMELEC. Hence, a ruling by this court would be in the best interest of respondents, in order that their actions may be guided accordingly in the future.

Seventh, petitioners rightly claim that they had no other plain, speedy, and adequate remedy in the ordinary course of law that could free them from the injurious effects of respondents' acts in violation of their right to freedom of expression.

In this case, the repercussions of the assailed issuances on this basic right constitute an exceptionally compelling reason to justify the direct resort to this court. The lack of other sufficient remedies in the course of law alone is sufficient ground to allow direct resort to this court.

Eighth, the petition includes questions that are "dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy." In the past, questions similar to these which this court ruled on immediately despite the doctrine of hierarchy of courts included citizens' right to bear arms, government contracts involving modernization of voters' registration lists, and the status and existence of a public office.

This case also poses a question of similar, if not greater import. Hence, a direct action to this court is permitted.

It is not, however, necessary that all of these exceptions must occur at the same time to justify a direct resort to this court. While generally, the hierarchy of courts is respected, the present case falls under the recognized exceptions and, as such, may be resolved by this court directly.[127]

We find that the exceptions to the rule of the doctrine of hierarchy of courts are present in this case. It presents issues of first impression considering it involves: (i) the constitutionality of

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[127] *Id.* at 330–335.

particular provisions of Republic Act No. 9513 and (ii) the validity of its implementation. Furthermore, as the implementation of the questioned issuances already have an impact on the electricity bills of consumers, there is an urgency calling for direct resort to this Court. Finally, the issues in this case involve questions relating to the advancement of public policies, affecting the overall public sphere.

II(C)

The Energy Regulatory Commission and the Department of Energy contend that Foundation for Economic Freedom's Petition in G.R. No. 214042 is already moot and academic.[128] They explain that the Foundation for Economic Freedom filed its Petition to restrain the proceedings in the Court of Appeals and the implementation of the Energy Regulatory Commission's Orders[129] which ruled as valid: (i) the National Renewable Energy Board's compliance with publication requirements and (ii) the finalization of the FIT Allowance rates prior to the determination of the Renewable Portfolio Standards, its rules, and the conduct of a maximum penetration limit study.[130] They argue that there is nothing left to be restrained or prohibited because during the pendency of the case at the Court of Appeals, the Energy Regulatory Commission promulgated a Decision terminating the proceedings, and setting in motion the implementation of the FIT System.[131] The Foundation for Economic Freedom argues that the Energy Regulatory Commission's Decision was not questioned in any court.[132]

A case becomes moot when a supervening event arises, causing the resolution of the issue to lose its practical value. This Court

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[128] *Rollo* (G.R. No. 215579), pp. 1396, 1398.

[129] Orders dated October 3, 2011 at *Rollo* (G.R. No. 214042), pp. 236–248 and November 10, 2011 in ERC Case No. 2011-006 RM at *Rollo* (G.R. No. 214042), pp. 290–299.

[130] *Rollo* (G.R. No. 215579), p. 1399.

[131] *Id.*

[132] *Id.* at 1400.

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"cannot render judgment after the issue has already been resolved by or through external developments," and no relief prayed for can be granted or denied.[133] The case no longer becomes justiciable because the relief that the courts may grant will be rendered useless, as if it is ruling on a matter that is theoretical.[134]

The exceptions to the rule, however, are enumerated in *Kilusang Mayo Uno*:

> As for mootness, as earlier mentioned, moot cases prevent the actual case or controversy from becoming justiciable. Courts cannot render judgment after the issue has already been resolved by or through external developments. This entails that they can no longer grant or deny the relief prayed for by the complaining party.
>
> This is consistent with this Court's deference to the powers of the other branches of government. This Court must be wary that it is ruling on *existing facts* before it invalidates any act or rule.
>
> Nonetheless, this Court has enumerated circumstances when it may still rule on moot issues. In *David*:
>
> > Courts will decide cases, otherwise moot and academic, if: *first*, there is a grave violation of the Constitution; *second*, the exceptional character of the situation and the paramount public interest is involved; *third*, when constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and *fourth*, the case is capable of repetition yet evading review. (Emphasis in the original, citations omitted)
>
> The third exception is corollary to this Court's power under Article VIII, Section 5 (5) of the 1987 Constitution. This Court has the power to promulgate rules and procedures for the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts. It applies where there is a clear need to clarify principles and processes for the protection of rights.

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[133] *Kilusang Mayo Uno v. Aquino III*, 850 Phil. 1168, 1201 (2019) [Per J. Leonen, *En Banc*].

[134] *Delos Santos v. Commissioner of Internal Revenue*, G.R. No. 222548, June 22, 2022 [Per J. Leonen, Second Division].

As for the rest of the exceptions, however, all three (3) circumstances must be present before this Court may rule on a moot issue. There must be an issue raising a grave violation of the Constitution, involving an exceptional situation of paramount public interest that is capable of repetition yet evading review.[135]

We find that the exceptions are applicable to this case.

Ultimately, what is in question in this case is the validity of all of respondents' acts and issuances—past, current, and future—relating to the FIT System and the Renewable Portfolio Standard.

Thus, even if the rulings or assailed issuances have rendered the initial issues raised moot and academic, the exceptions are present in this case: (i) petitioners allege violations of constitutional rights; (ii) the issues are of paramount public interest; (iii) the resolution of the raised issues is necessary to guide the bench, the bar, and the public on the power of respondents in implementing the FIT System and the Renewable Portfolio Standard; and (iv) the issues raised are capable of repetition yet evading review, involving possibly recurring questions of law.

All things considered—the presence of an actual case or controversy, the ripeness in terms of compliance with the doctrine of hierarchy of courts, and the mootness of the issues—it is this Court that can ultimately determine whether respondents acted with grave abuse of discretion or acted in violation of the Constitution through the assailed issuances.

II(D)

Citizenwatch argues that it has *locus standi* because its members are burdened by the additional charge in their electricity bills.[136] Ancheta and Citizenwatch also contend that the issues raised in this case are of transcendental importance, involving the

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[135] *Kilusang Mayo Uno v. Aquino III*, 850 Phil. 1168, 1201–1203 (2019) [Per J. Leonen, *En Banc*].

[136] *Rollo* (G.R. No. 215579), p. 1325.

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public welfare and advancement of public policy and affecting consumers' rights to affordable electricity.[137]

AGHAM also maintains that it has *locus standi* as a party-list organization and a nonstock, nonprofit association advocating for "the importance of science and technology in shaping national policies and programs to ensure sustainable development in the country." It is seeking to ensure that Republic Act No. 9513 is properly implemented. It maintains that this case's significant impact on electricity consumers is of transcendental importance.[138] It also claims that it is filing as an electricity consumer directly affected by the assailed issuances and acts of respondents.[139]

Palmones, who filed the Petition with AGHAM, explains that he has *locus standi* as a former member of the House of Representatives, a member of AGHAM, and an advocate of promoting public interest through science and technology. He is also filing the Petition as an electricity consumer who has been paying the costs to implement the assailed issuances.[140]

On the other hand, the Energy Regulatory Commission and DREAM argue that AGHAM has no *locus standi*.[141] They maintain that AGHAM did not allege or show that it sustained any injury in the implementation of the assailed issuances relating to the FIT System or the Renewable Portfolio Standard.[142] The Energy Regulatory Commission also claims that the Petition cannot be heard on the basis of transcendental importance, and that petitioners failed to show a relation between their alleged constitutional rights and the government acts in question.[143]

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[137] *Id.* at 1601–1602, 1327.

[138] *Rollo* (G.R. No. 235624), p. 13.

[139] *Id.*

[140] *Id.*

[141] *Id.* at 861, 1279.

[142] *Id.* at 861, 1281.

[143] *Id.* at 862–863.

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Legal standing refers to a party's personal and substantial interest in a case. A party with legal standing is one who "has sustained or will sustain direct injury as a result of the governmental act that is being challenged[.]" They are "alleging more than a generalized grievance."[144]

As a rule, an action must be brought by the party with legal standing before courts may exercise its power of judicial review.[145] However, this Court has allowed for exceptions to this rule. In *Anti-Trapo Movement of the Philippines v. Land Transportation Office*:[146]

> This Court will only exercise the power of judicial review if the action is brought "by a party who has legal standing to raise the constitutional or legal question." Legal standing relates to "a personal and substantial interest in the case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged."
>
> However, there are exceptions to the rule on legal standing. As summarized in *Funa v. Villar*, this Court takes cognizance of petitions from the following "non-traditional suitors" despite the lack of direct injury from the questioned governmental action for raising constitutional issues with crucial significance:
>
> 1. For *taxpayers*, there must be a claim of illegal disbursement of public funds or that the tax measure is unconstitutional;
>
> 2. For *voters*, there must be a showing of obvious interest in the validity of the election law in question;
>
> 3. For *concerned citizens*, there must be *a showing that the issues raised are of transcendental importance which must be settled early*; and
>
> 4. For legislators, there must be a claim that the official action complained of infringes their prerogatives as legislators. (Emphasis supplied)

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[144] *Kilusang Mayo Uno v. Aquino III*, 850 Phil. 1168, 1203 (2019) [Per J. Leonen, *En Banc*].

[145] *Anti-Trapo Movement of the Philippines v. Land Transportation Office*, G.R. No. 231540, June 27, 2022 [Per J. Leonen, Second Division].

[146] *Id.*

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. . . .

Although bereft of any doctrinal definition on transcendental importance, the following are the bases for its determination:

> There being no doctrinal definition of transcendental importance, the following instructive determinants formulated by former Supreme Court Justice Florentino P. Feliciano are instructive: (1) the character of the funds or other assets involved in the case; (2) the presence of a clear case of disregard of a constitutional or statutory prohibition by the public respondent agency or instrumentality of the government; and (3) the lack of any other party with a more direct and specific interest in raising the questions being raised.

Whether an issue is of transcendental importance is determined on a case-to-case basis. A claim of transcendental importance must be backed by proper allegations. Its plain invocation does not suffice for this Court to brush aside procedural technicalities.[147]

In this case, petitioners Ancheta and Palmones, as electricity consumers subjected to the charges under the FIT System, stand to suffer direct and material injury from the enforcement of the assailed issuances. Thus, they have the legal personality to question the assailed issuances.

However, petitioners Foundation for Economic Freedom and AGHAM were unable to show the direct and material injury they will suffer from the implementation of the assailed issuances. Their reliance on the transcendental importance of the issues in this case likewise deserves scant consideration.

In *Gios-Samar*, this Court ruled that it is not enough to assert "special and important reasons" or the argument of transcendental importance to warrant the exercise of this Court's power of judicial review. It may only be accepted if it raises purely legal issues. It should not put forth questions of fact:

[W]hen a question before the Court involves determination of a factual issue indispensable to the resolution of the legal issue, the Court will

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[147] *Id.*

refuse to resolve the question regardless of the allegation or invocation of compelling reasons, such as the transcendental or paramount importance of the case. Such question must first be brought before the proper trial courts or the CA, both of which are specially equipped to try and resolve factual questions.[148]

The argument of transcendental importance should not be at the expense of the requisites of justiciability. In *Pangilinan v. Cayetano*:[149]

Transcendental importance is often invoked in instances when the petitioners fail to establish standing in accordance with customary requirements. However, its general invocation cannot negate the requirement of *locus standi*. Facts must be undisputed, only legal issues must be present, and proper and sufficient justifications why this Court should not simply stay its hand must be clear.

Falcis explained:

> *Diocese of Bacolod* recognized transcendental importance as an exception to the doctrine of hierarchy of courts. In cases of transcendental importance, imminent and clear threats to constitutional rights warrant a direct resort to this Court. . . .
>
> . . . .
>
> Still, it does not follow that this Court should proceed to exercise its power of judicial review just because a case is attended with purely legal issues. Jurisdiction ought to be distinguished from justiciability. Jurisdiction pertains to competence "to hear, try[,] and decide a case." On the other hand,
>
> > [d]etermining whether the case, or any of the issues raised, is justiciable is an exercise of the power granted to a court with jurisdiction over a case that involves constitutional adjudication. Thus, even if this Court has jurisdiction, the canons of constitutional adjudication in our jurisdiction allow us to disregard the questions raised at our discretion.

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[148] 849 Phil. 120, 187 (2019) [Per J. Jardeleza, *En Banc*].

[149] *Pangilinan v. Cayetano*, 898 Phil. 522 (2021) [Per J. Leonen, *En Banc*].

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Appraising justiciability is typified by constitutional avoidance. This remains a matter of enabling this Court to act in keeping with its capabilities. Matters of policy are properly left to government organs that are better equipped at framing them. Justiciability demands that issues and judicial pronouncements be properly framed in relation to established facts:

> *Angara v. Electoral Commission* imbues these rules with its libertarian character. Principally, *Angara* emphasized the liberal deference to another constitutional department or organ given the majoritarian and representative character of the political deliberations in their forums. It is not merely a judicial stance dictated by courtesy, but is rooted on the very nature of this Court. Unless congealed in constitutional or statutory text and imperatively called for by the actual and non-controversial facts of the case, this Court does not express policy. This Court should channel democratic deliberation where it should take place.
>
> xxx xxx xxx
>
> Judicial restraint is also founded on a policy of conscious and deliberate caution. This Court should refrain from speculating on the facts of a case and should allow parties to shape their case instead. Likewise, this Court should avoid projecting hypothetical situations where none of the parties can fully argue simply because they have not established the facts or are not interested in the issues raised by the hypothetical situations. In a way, courts are mandated to adopt an attitude of judicial skepticism. What we think may be happening may not at all be the case. Therefore, this Court should always await the proper case to be properly pleaded and proved.

Thus, concerning the extent to which transcendental importance carves exceptions to the requirements of justiciability, "[t]he elements supported by the facts of an actual case, and the imperatives of our role as the Supreme Court within a specific cultural or historic context, must be made clear":

> . . . .
>
> ***Otherwise, this Court would cede unfettered prerogative on parties. It would enable the parties to impose their own determination of what issues are of paramount, national***

> ***significance, warranting immediate attention by the highest court of the land***. (Emphasis supplied, citations omitted)

Chamber of Real Estate and Builders' Associations, Inc. v. Energy Regulatory Commission lists the following considerations to determine whether an issue is of transcendental importance:

> (1) the character of the funds or other assets involved in the case; (2) the presence of a clear case of disregard of a constitutional or statutory prohibition by the public respondent agency or instrumentality of the government; and (3) the lack of any other party with a more direct and specific interest in the questions being raised. (Citation omitted)
>
> . . . .
>
> This Court is competent to decide legal principles only in properly justiciable cases. That a party must have standing in court is not a mere technical rule that may easily be waived. Courts should be scrupulous in protecting the principles of justiciability, or else their legitimacy may be undermined. Transcendental importance of issues excusing requisite standing should not be so recklessly invoked, and is justified only in extraordinary circumstances.
>
> The alleged transcendental importance of the issues raised here will be better served when there are actual cases with the proper parties suffering an actual or imminent injury.[150]

Thus, alleging the transcendental importance of the issues in this case is not sufficient to warrant the exercise of this Court's power of judicial review.

Nonetheless, this Court finds that the required legal standing may be relaxed, considering the impact of the assailed issuances on millions of Filipinos. The implementation of the FIT System and the Renewable Portfolio Standard affects the billing of electricity charges on all on-grid electricity consumers. This Court would thus be remiss in its constitutional duty should it further delay the resolution of the issues raised in this case.

For these reasons, this Court relaxes the rule on legal standing to review the assailed issuances.

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[150] *Id.* at 617–620.

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II(E)

Citizenwatch and AGHAM assert that the issue of constitutionality is raised at the earliest possible opportunity.[151] AGHAM argues that the questioned issuances continuously violate their rights as electricity consumers and "[t]he earliest opportunity to attack an administrative regulation for being unconstitutional or invalid may be reckoned on every occasion that the regulation is being enforced."[152] Citizenwatch contends that the Energy Regulatory Commission could not have resolved the issue of constitutionality raised in this case.[153]

DREAM, however, contests their claims.[154] It points that several of the issuances have been released and implemented since 2010.[155] Furthermore, the Energy Regulatory Commission complied with the publication and hearing requirements, yet petitioners did not show up to the hearings to contest the issuances or file any comment or opposition.[156] Its earliest opportunity to question these issuances would have been in the Regional Trial Court through a petition under Rule 64 for declaratory relief.[157] Similarly, the Department of Energy had numerous public consultations, and the National Renewable Energy Board held several meetings with non-governmental organizations. In all these instances, petitioners were not present.[158]

We find that petitioners raised the issue of constitutionality at the earliest opportunity.

In *Matibag v. Benipayo*:[159]

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[151] *Rollo* (G.R. No. 235624), p. 17; *Rollo* (G.R. No. 215579), p. 1325.

[152] *Rollo* (G.R. No. 235624), p. 17.

[153] *Rollo* (G.R. No. 215579), p. 1325.

[154] *Rollo* (G.R. No. 235624), p. 1281.

[155] *Id.* at 1283.

[156] *Id.* at 1281.

[157] *Id.*

[158] *Id.*

[159] 429 Phil. 554 (2002) [Per J. Carpio, *En Banc*].

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. . . it is not the date of filing of the petition that determines whether the constitutional issue was raised at the earliest opportunity. The earliest opportunity to raise a constitutional issue is to raise it in the pleadings before a competent court that can resolve the same, such that, "if it is not raised in the pleadings, it cannot be considered at the trial, and, if not considered at the trial, it cannot be considered on appeal." Petitioner questioned the constitutionality of the *ad interim* appointments of Benipayo, Borra and Tuason when she filed her petition before this Court, which is the earliest opportunity for pleading the constitutional issue before a competent body. Furthermore, this Court may determine, in the exercise of sound discretion, the time when a constitutional issue may be passed upon. There is no doubt petitioner raised the constitutional issue on time.[160]

Petitioners raised the issue of constitutionality at the first instance in their pleadings in this case, and this issue could not have been resolved by the Department of Energy, Energy Regulatory Commission, or the National Renewable Energy Board.

II(F)

AGHAM and Citizenwatch contend that the issue of constitutionality is the very *lis mota* of the case.[161] AGHAM points that the issues in this case cannot be resolved without passing upon the constitutionality of Section 6 of Republic Act No. 9513 and the validity of the assailed issuances:[162] the Department of Energy Certifications were issued unlawfully in the exercise of legislative power; the Energy Regulatory Commission's issuances sanction the unlawful deprivation of property of consumers; and Section 6 lacks sufficient standards and is confiscatory and unreasonable.[163] Similarly, Citizenwatch maintains that the constitutionality issue cannot be resolved without passing upon the validity of the FIT Rules, FIT Guidelines, and the Energy Regulatory Commission's Orders.[164]

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[160] *Id.* at 578–579.

[161] *Rollo* (G.R. No. 235624), p. 17; *Rollo* (G. R. No. 215579), p. 1325.

[162] *Rollo* (G.R. No. 235624), p. 18.

[163] *Id.*

[164] *Rollo* (G.R. No. 215579), p. 1325.

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The Energy Regulatory Commission and DREAM, however, argue that the constitutionality of the issuances is not the very *lis mota* of the Petitions.[165] The Energy Regulatory Commission points that the issues can be resolved by examining the powers of the Department of Energy under Republic Act No. 9163, or the Electric Power Industry Reform Act of 2001 (EPIRA), and Republic Act No. 9513.[166] What petitioners are really questioning is the manner of implementation of the FIT System and the Renewable Portfolio Standard under Republic Act No. 9513.[167]

The constitutional issues raised in justiciable cases may be classified into four categories: (i) violations of constitutional rights or fundamental liberties; (ii) constitutional issues involving allocation of powers between other branches of the government; (iii) violations of constitutional requirements; and (iv) constitutional amendments and provisions. In all these constitutional cases, the requisites for judicial review must be present.

In *Parcon-Song v. Parcon*:[168]

Courts are obligated to presume that the acts of Congress are valid, unless the contrary is clearly shown. Thus, courts avoid resolving the constitutionality of a law if the case can be ruled on other grounds. The question of constitutionality will only be passed upon if it is indispensable to the resolution of the case, but it cannot be raised collaterally. This Court ruled:

> Judicial review of official acts on the ground of unconstitutionality may be sought or availed of through any of the actions cognizable by courts of justice, not necessarily in a suit for declaratory relief. . . . The constitutional issue, however, (a) must be properly raised and presented in the case, and (b) its resolution is necessary to a determination of the case, *i.e.*, the issue of constitutionality must be the very *lis mota* presented. (Citation omitted)

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[165] *Rollo* (G.R. No. 235624), pp. 863, 1283.

[166] *Id.* at 863.

[167] *Id.* at 863–864.

[168] 876 Phil. 364 (2020) [Per J. Leonen, *En Banc*].

These principles were further discussed in *Ty v. Trampe*:

> Having already definitively disposed of the case through the resolution of the foregoing two issues, we find no more need to pass upon the third. It is axiomatic that the constitutionality of a law, regulation, ordinance or act will not be resolved by courts if the controversy can be, as in this case it has been, settled on other grounds. In the recent case of *Macasiano v. National Housing Authority*, this Court declared:
>
> > "It is a rule firmly entrenched in our jurisprudence that the constitutionality of an act of the legislature will not be determined by the courts unless that question is properly raised and presented in appropriate cases and is necessary to a determination of the case, *i.e.*, the issue of constitutionality must be the very *lis mota* presented. To reiterate, the essential requisites for a successful judicial inquiry into the constitutionality of a law are: (a) the existence of an actual case or controversy involving a conflict of legal rights susceptible of judicial determination, (b) the constitutional question must be raised by a proper party, (c) the constitutional question must be raised at the earliest opportunity, and (d) *the resolution of the constitutional question must be necessary to the decision of the case*." (Italics supplied)
>
> The aforequoted decision in *Macasiano* merely reiterated the ruling in *Laurel v. Garcia*, where this Court held:
>
> > "The Court does not ordinarily pass upon constitutional questions unless these questions are properly raised in appropriate cases and their resolution is necessary for the determination of the case[.] *The Court will not pass upon a constitutional question although properly presented by the record if the case can be disposed of on some other found such as the application of a statute or general law*[.]" (Emphasis in the original, citations omitted)

In *Spouses Mirasol v. Court of Appeals*, this Court explained that the presumption of constitutionality is anchored on the doctrine of separation of powers. Courts should not assume that legislative and executive acts were done without thoughtful consideration:

. . . .

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The judicial review requirement that a constitutional issue seasonably raised should be the *lis mota* of the case is rooted in two constitutional principles: first, the principle of deference; and second, the principle of reasonable caution in striking down an act by a co-equal political branch of government.

Article VIII, Section 1 of the Constitution, which specifies that courts may act on any grave abuse of discretion by any government branch or instrumentality, does not license this Court to issue advisory opinions. Apart from an actual case or controversy, this Court must be satisfied that the reliefs prayed for require the resolution of a constitutional issue.

There are exceptions, namely: (a) when a facial review of the statute is allowed, as in cases of actual or clearly imminent violation of the sovereign rights to free expression and its cognate rights; or (b) when there is a clear and convincing showing that a fundamental constitutional right has been actually violated in the application of a statute, which are of transcendental interest. The violation must be so demonstrably and urgently egregious that it outweighs a reasonable policy of deference in such specific instance. The facts constituting that violation must either be uncontested or established on trial. The basis for ruling on the constitutional issue must also be clearly alleged and traversed by the parties. Otherwise, this Court will not take cognizance of the constitutional issue, let alone rule on it.[169]

Here, petitioners are not raising the question of constitutionality collaterally. Furthermore, they raise violations of their constitutional right to due process and assert the overstepping of powers on the part of other branches of government.

Considering these circumstances, this Court finds that all requisites of justiciability are present in this case.

III

The Foundation for Economic Freedom,[170] Citizenwatch,[171] and Meralco[172] insist that the FIT Rules, FIT Guidelines, and the

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[169] *Id.* at 398–402.

[170] *Rollo* (G.R. No. 215579), pp. 1486, 1488.

[171] *Id.* at 1337, 1339–1340.

[172] *Id.* at 1542.

setting of the FIT Allowance were premature because the maximum penetration limits should have first been studied, and the Renewable Portfolio Standard, its rules, and the installation targets for technology should have been determined first. They argue that these are conditions precedent because the FITs are required to be consistent with the Renewable Portfolio Standard Rules.[173] Meralco points that the Renewable Portfolio Standard is necessary to lay the proper groundwork and parameters indispensable to the proper calculation of the FITs, ensuring it is sound and has proper practical and financial basis.[174]

However, the Energy Regulatory Commission and the Department of Energy,[175] as well as the National Renewable Energy Board,[176] insist that these are not prerequisites, and are separate and independent from the implementation of the FIT System.[177] They maintain that while the Renewable Portfolio Standard is necessary to achieve the policy objectives of Republic Act No. 9513, it is not relevant to the determination of FITs.[178] The two can complement each other, but the FITs are not dependent on the Renewable Portfolio Standard.[179]

The Energy Regulatory Commission and the Department of Energy discuss that while the Renewable Portfolio Standard is a target, the FIT System is a mechanism.[180] The purpose of the Renewable Portfolio Standard and its rules is to require electricity suppliers to source some of their energy supply from eligible renewable energy resources.[181] The FIT System, on the other hand,

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[173] *Id.* at 1339, 1486–1487.

[174] *Id.* at 1548–1550.

[175] *Id.* at 1398, 1436, and 1411.

[176] *Id.* at 1268.

[177] *Id.* at 1396, 1411, and 1437.

[178] *Id.* at 1270.

[179] *Id.* at 1412.

[180] *Id.* at 1411.

[181] *Id.*

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is meant to guarantee payments for the development of renewable energy sources.[182]

The National Renewable Energy Board expounds further that compliance with the Renewable Portfolio Standard is needed only when the approved FIT Rates are already being implemented and applied.[183] What is required is that only renewable energy resources covered by the Renewable Portfolio Standard should enjoy the FITs.[184]

Furthermore, the FIT System and Renewable Portfolio Standard are treated differently under Republic Act No. 9513.[185] The National Renewable Energy Board points that the wording of the law shows that the Renewable Portfolio Standard and its rules are anticipated to be established by the Department of Energy at the future date "with reference to the period when [National Renewable Energy Board] submits its recommended FIT Rates to the [Energy Regulatory Commission]."[186] There is no requirement in the law or rules that one policy mechanism be established ahead of the others.[187] Thus, the Department of Energy's Timeline for Policy Mechanisms reveals that the target accomplishment timeline of the Renewable Portfolio Standard, FIT Rates, and the Green Energy Option Program shall be in the second quarter of 2011. It did not specify a date when each shall begin.[188]

The Energy Regulatory Commission and the National Renewable Energy Board also point that what must be consistent with the Renewable Portfolio Standard and its rules is the installation targets per technology, not the FIT Rates.[189] The National Renewable Energy Board also contends that when it filed

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[182] *Id.* at 1412.

[183] *Id.* at 1269–1270.

[184] *Id.*

[185] *Id.* at 1413.

[186] *Id.* al 1271.

[187] *Id.*

[188] *Id.*

[189] *Id.* at 1270, 1414.

its Petition to Initiate, it sought the adoption of its recommended FIT and degression rates, not the approval of installation targets.[190] The minimum requirement is that the National Renewable Energy Board discuss on the installation targets for technology.[191]

As to the maximum penetration limits study, Citizenwatch discusses that it is necessary because it determines the amount each type of eligible renewable energy resource can be absorbed by the grids. Without it, "there would be overlapping, duplication and wastage of [renewable energy] resources, which in turn may prove to be costly for the consumers."[192] The Foundation for Economic Freedom points that the Department of Energy admitted to not conducting a grid impact study on the maximum penetration limits to determine the installation targets.[193]

However, the Energy Regulatory Commission and the Department of Energy, as well as the National Renewable Energy Board, insist that the maximum penetration limits study is not a prerequisite to establish the FIT Rates.[194] They maintain that it is relevant to the priority dispatch accorded to eligible renewable energy plants with intermittent renewable energy resources.[195] They argue that it is concerned with the transmission and distribution of renewable energy supply, not with renewable energy generation.[196] Thus, it is supposedly separate and distinct from an eligible renewable energy producer's entitlement to the FIT.[197] This is why the provision is found under separate chapters of Republic Act No. 9513.[198]

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[190] *Id.* at 1271.

[191] *Id.*

[192] *Id.* at 1341.

[193] *Id.* at 1486–1487.

[194] *Id.* at 1414, 1272.

[195] *Id.* at 1414, 1273.

[196] *Id.* at 1415.

[197] *Id.* at 1273.

[198] *Id.* The maximum penetration limits study is found in Chapter VII, Section 20 on General Incentives, not under Chapter III on On-Grid Renewable Energy Development, where Section 7 on FIT System is.

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This Court rules that the determination of the Renewable Portfolio Standards, its rules and the installation targets for technology, and the study on the maximum penetration limits are not prerequisites to the establishment of the FIT System or the determination of the initial FIT rates.

The Renewable Portfolio Standards pertain to "a market-based policy that requires electricity suppliers to source an agreed portion of their energy supply from eligible renewable energy resources."[199] It is provided for under Section 6 of Republic Act No. 9513:

> SECTION 6. *Renewable Portfolio Standard (RPS)*. — All stakeholders in the electric power industry shall contribute to the growth of the renewable energy industry of the country. Towards this end, the National Renewable Energy Board (NREB), created under Section 27 of this Act, shall set the minimum percentage of generation from eligible renewable energy resources and determine to which sector RPS shall be imposed on a per grid basis within one (1) year from the effectivity of this Act.

Its purpose and mandate were further clarified in the Implementing Rules and Regulations of Republic Act No. 9513:[200]

> SECTION 4. *Renewable Portfolio Standards*. —
>
> The Renewable Portfolio Standards (RPS) is a policy which places an obligation on electric power industry participants such as generators, distribution utilities, or suppliers to source or produce a specified fraction of their electricity from eligible RE Resources, as may be determined by NREB.
>
> (a) *Purpose*: The purpose of the RPS is to contribute to the growth of the renewable energy industry by diversifying energy supply and to help address environmental concerns of the country by reducing greenhouse gas emissions.

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[199] Republic Act No. 9513, sec. 4(ss). *See also* Section 3(bbb) Rule 2, Part II of DOE Circular No. DC2009-05-0008, Rules and Regulations Implementing Republic Act No. 9513 (2009).

[200] Department of Energy, DOE Circular No. DC2009-05-0008, Rules and Regulations Implementing Republic Act No. 9513 (2009).

(b) *Mandate*: RPS shall be imposed on the electric power industry participants, serving on-grid areas, on a per grid basis, as may be determined by the NREB.

(c) *Formulation of RPS Rules*: The NREB shall, in consultation with appropriate government agencies and in accordance with the National Renewable Energy Program (NREP), set the minimum percentage of generation from eligible RE Resources based on the sustainability of the RE Resources, the available capacity of the relevant grids, the available RE Resources within the specific grid, and such other relevant parameters. The NREB shall, within one (1) year from the effectivity of the Act, determine to which sector the RPS shall be imposed on a per grid basis, in accordance with the NREP.

The Renewable Portfolio Standard Rules are to be formulated by the Department of Energy within six months from the effectivity of the Implementing Rules and Regulations:

SECTION 4.

. . . .

(c) *Formulation of RPS Rules*:

Upon the recommendation of the NREB, the DOE shall, within six (6) months from the effectivity of this IRR, formulate and promulgate the RPS Rules which shall include, but not be limited to, the following:

(1) Types of RE Resources, and identification and certification of generating facilities using said resources that shall be required to comply with the RPS obligations;
(2) Yearly minimum RPS requirements upon the establishment of the RPS Rules;
(3) Annual minimum incremental percentage of electricity sold by each RPS-mandated electricity industry participant which is required to be sourced from eligible RE Resources and which shall, in no case, be less than one percent (1%) of its annual energy demand over the next ten (10) years;
(4) Technical feasibility and stability of the transmission and/or distribution grid systems; and
(5) Means of compliance by RPS-mandated electricity industry participant of the minimum percentage set by the government to meet the RPS requirements including direct generation from eligible RE Resources, contracting the energy sourced from eligible RE Resources, or trading in the REM.

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The Renewable Portfolio Standard and its rules thus ultimately impose a requirement to utilize renewable energy resources. Under this mechanism, electric power industry participants are obligated to obtain or generate a portion of their electricity from renewable energy resources. The National Renewable Energy Board is tasked to determine this standard—of how much electricity is required to be sourced from renewable energy resources and to which sector it will be imposed. Under Republic Act No. 9513, it shall be determined within one year from the law's effectivity.

The FIT System, meanwhile, is meant to provide an incentive for electric power industry participants who produce electricity from renewable energy sources. It is found under Section 7 of Republic Act No. 9513:

> SECTION 7. *Feed-In Tariff System*. — To accelerate the development of emerging renewable energy resources, a feed-in tariff system for electricity produced from wind, solar, ocean, run-of-river hydropower and biomass is hereby mandated. Towards this end, the ERC in consultation with the National Renewable Energy Board (NREB) created under Section 27 of this Act shall formulate and promulgate feed-in tariff system rules within one (1) year upon the effectivity of this Act which shall include, but not limited to, the following:
>
> (a) Priority connections to the grid for electricity generated from emerging renewable energy resources such as wind, solar, ocean, run-of-river hydropower and biomass power plants within the territory of the Philippines;
>
> (b) The priority purchase and transmission of, and payment for, such electricity by the grid system operators;
>
> (c) Determine the fixed tariff to be paid to electricity produced from each type of emerging renewable energy and the mandated number of years for the application of these rates, which shall not be less than twelve (12) years;
>
> (d) The feed-in tariff to be set shall be applied to the emerging renewable energy to be used in compliance with the Renewable Portfolio Standard as provided for in this Act and in accordance with the RPS rules that will be established by the DOE.

In the Implementing Rules and Regulations:

SECTION 5. *Feed-in Tariff (FiT) System*. —
The Feed-in Tariff system is a scheme that involves the obligation on the part of electric power industry participants to source electricity from RE generation at a guaranteed fixed price applicable for a given period of time, which shall in no case be less than twelve (12) years, to be determined by the ERC.

(a) *Purpose*: This system shall be adopted to accelerate the development of emerging RE Resources through a fixed tariff mechanism.

(b) *Mandate*: A FiT system shall be mandated for wind, solar, ocean, run-of-river hydropower, and biomass energy resources.

(c) *Guidelines Governing the FiT System*:

(1) Priority connections to the grid for electricity generated from emerging RE Resources such as wind, solar, ocean, run-of-river, hydropower, and biomass power plants within the territory of the Philippines;

(2) The priority purchase, transmission of, and payment for such electricity by the grid system operators;

(3) Determination of the fixed tariff to be paid for electricity produced from each type of emerging RE Resources and the mandated number of years for the application of such tariff, which shall in no case be less than twelve (12) years;

(4) Application of the FiT to the emerging RE Resources to be used in compliance with the RPS. Only electricity generated from wind, solar, ocean, run-of-river hydropower, and biomass power plants covered under the RPS, shall enjoy the FiT; and

(5) Other rules and mechanisms that are deemed appropriate and necessary by the ERC, in consultation with the NREB, for the full implementation of the FiT system.

Within one (1) year from the effectivity of the Act, the ERC shall, in consultation with the NREB, formulate and promulgate the FiT system rules.

Thus, aside from a fixed tariff, the FIT System also entitles eligible renewable energy developers to priority connections to

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the grid, and priority purchase, transmission of, and payment for electricity generated from emerging renewable energy resources. This incentivization aims to accelerate the development of emerging renewable energy resources. As with the Renewable Portfolio Standard, the FIT System is required to be established within one year from the effectivity of Republic Act No. 9513.

A plain reading of the law reveals that the determination of the Renewable Portfolio Standard and its rules are not prerequisites to the establishment of the FIT System.

When the language of a statute or provision is clear, plain, and free from ambiguity, "it must be given its literal meaning and applied without attempted interpretation."[201]

> A cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application. As the statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is what is known as the plain-meaning rule or *verba legis*. It is expressed in the maxim, *index animi sermo*, or "speech is the index of intention." Furthermore, there is the maxim *verba legis non est recedendum*, or "from the words of a statute there should be no departure."[202]

Here, neither of the provisions on the Renewable Portfolio Standard and the FIT System specifies that one is a prerequisite to the other. It does not state that the Renewable Portfolio Standard must first be determined before the FIT System—its rules, guidelines, and mechanisms—can be established. The provisions, in fact, only provide that both the Renewable Portfolio Standard and the FIT System be established within one year from the effectivity of Republic Act No. 9513.

While the Implementing Rules and Regulations provide that the FIT shall be applied to renewable energy resources used in compliance with the Renewable Portfolio Standard, and that

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[201] *Bolos v. Bolos*, 648 Phil. 630, 637 (2010) [Per J. Mendoza, Second Division].

[202] *Id.*

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only electricity generated from renewable energy power plants covered under the Renewable Portfolio Standard shall enjoy the FIT, this does not preclude the development of the FIT System. It only means that those who comply with the Renewable Portfolio Standard are those entitled to be paid the FIT. Thus, the Renewable Portfolio Standard should only be considered when the FIT is already being distributed to those eligible to it. Compliance with the Renewable Portfolio Standard is simply a requirement to be eligible or entitled to the FIT.

The independence of the two provisions from the other is also revealed by their different objectives and purposes. On one hand, the FIT System is meant to hasten the development of emerging renewable energy resources by providing an incentive of a fixed tariff mechanism for the production of electricity from renewable energy. The Renewable Portfolio Standard, on the other hand, is a requirement for electric power industry participants to source or produce a fraction of their electricity from eligible renewable energy resources; contribute to the growth of the renewable energy industry; diversify energy supply; and help address environmental concerns of the country.

The provision on the FIT System is also an entirely different provision from that of the Renewable Portfolio Standard, and this is revealed by their placement in Republic Act No. 9513. Both are found in Chapter III of the same law, providing for the development of renewable energy in on-grid systems.[203] Discussed in this chapter are the Renewable Portfolio Standard (Section 6), the FIT System (Section 7), the Renewable Energy Market (Section 8), Green Energy Option (Section 9), Net-metering for Renewable Energy (Section 10), and Transmission and Distribution System Development (Section 11). While all are meant to accelerate or encourage the development of renewable energy, and may be

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[203] Republic Act No. 9513, sec. 4(kk). "On-Grid System" refers to electrical system composed of interconnected transmission lines, distribution lines, substations, and related facilities for the purpose of conveyance of bulk power on the grid of the Philippines.

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related to one another, all are separate mechanisms to be developed and implemented by relevant government agencies.

Thus, the determination of the Renewable Portfolio Standard is not a prerequisite to the establishment of the FIT System. The FIT Rules and FIT Guidelines may be promulgated without the Renewable Portfolio Standard.

However, as to whether the Renewable Portfolio Standard is a prerequisite to the determination of the FIT, we qualify our ruling.

The FIT Rules as promulgated by the Energy Regulatory Commission provide how the FIT is determined and set. Section 5 of the FIT Rules state:

5. Determination of FITs

The FITs that NREB shall calculate and submit to the ERC for approval shall be in accordance with the methodology that the ERC shall adopt. *For the initial FITs, the NREB may base its calculations on a reference cost study for each technology based on a real candidate project or a hypothetical one depending on the available information. The project to be chosen shall be representative of the average conditions of the renewable energy plant operating in compliance or at par with applicable international technical standards and practices for such technologies, and the pricing study should consider also all non-price incentives in R.A. No. 9513.*

The NREB shall propose the FITs taking into account the expected MW capacity for each technology that it shall set as installation targets and the number of years when this target shall be achieved.

The FITs shall cover the costs of the plant, including the costs of other services that the plant may provide, as well as the costs of connecting the plant through the transmission or distribution network, calculated over the expected lives of the plant, and provide for market-based weighted average cost of capital (WACC) and determining return on invested capital. (Emphasis supplied)

Section 8 of the FIT Rules provides:

8. Procedure for the setting of the FIT's

Upon the effectivity of these rules, the ERC shall issue a Notice of Rule-making for the establishment and fixing of the FITs in accordance

with these Rules. The filing shall conform to the procedures in the ERC Rules of Practice and Procedure (ERC RPP) on Rule-making. In the said Notice, the ERC shall direct NREB within the period stated therein *to submit its recommended FITs. In its submission, NREB shall provide discussion on the installation targets per technology, which it shall ensure are consistent with the Renewable Portfolio Standards (RPS) and whatever RPS Rules that will be established by the DOE and the details and results of its reference cost study for each technology.*

If necessary, the ERC shall choose and appoint experts to assist it in the evaluation of the NREB's recommended FTTs, with the cost of such engagement to be borne by NREB.[204] (Emphasis supplied)

Petitioners cite Section 8 of the FIT Rules as its basis for insisting that the Renewable Portfolio Standard and its rules must first be established before the FIT is determined. Under Section 8, before the FITs are set, the National Renewable Energy Board is required to submit its recommended FITs and provide a discussion on the installation targets per renewable energy technology. The installation targets refer to the target megawatt capacity per renewable energy technology and the number of years that it shall be achieved, as set by the National Renewable Energy Board.[205] The National Renewable Energy Board is also tasked to ensure that the installation targets are consistent with the Renewable Portfolio Standard and its rules. As discussed, the National Renewable Energy Board shall propose the FITs with a discussion on and in consideration of these installation targets, which in turn must be consistent with the Renewable Portfolio Standard and its rules.[206]

The FIT Rules thus require that the installation targets be considered in determining the FIT. It is likewise clear that the National Renewable Energy Board is required to ensure that these installation targets are consistent with the Renewable Portfolio Standard and its rules. Thus, the installation targets and the Renewable Portfolio Standard are necessary to determine the FIT.

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[204] *Rollo* (G.R. No. 215579), p. 75.

[205] *Id.* at 67.

[206] *Id.* at 73, 75.

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However, the initial determination of the FITs need not comply with this procedure.

Section 5 of the FIT Rules provides:

5. Determination of FITs

. . . .*For the initial FIT's, the NREB may base its calculations on a reference cost study for each technology based on a real candidate project or a hypothetical one depending on the available information. The project to be chosen shall be representative of the average conditions of the renewable energy plant operating in compliance or at par with applicable international technical standards and practices for such technologies, and the pricing study should consider also all non-price incentives in R.A. No. 9513.* (Emphasis supplied)

Thus, the provision allows a different mode of determining the initial FITs. As stated, the National Renewable Energy Board's calculations may be based on a reference cost study for each technology based on a real candidate project or a hypothetical one, depending on the available information.

In this case, petitioners are questioning the initial FIT rates as recommended by the National Renewable Energy Board in its Petition to Initiate and approved by Energy Regulatory Commission Resolution No. 10. However, aside from insisting that the Renewable Portfolio Standards and its rules were not first established prior to the determination of the initial FITs, petitioners did not assert nor make any showing that the calculations of the National Renewable Energy Board were not done in compliance with this provision.

As to the maximum penetration limits, the Foundation for Economic Freedom and Citizenwatch cite Section 20 of Republic Act No. 9513 to support their argument that it is necessary to determine the installation targets:[207]

SECTION 20. *Intermittent RE Resources*. — TRANSCO [National Transmission Corporation] or its successors-in-interest, in consultation with stakeholders, shall determine the maximum penetration limit of the

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[207] *Id.* at 1477.

Intermittent RE-based power plants to the Grid, through technical and economic analysis. Qualified and registered RE generating units with intermittent RE resources shall be considered "must dispatch" based on available energy and shall enjoy the benefit of priority dispatch. All provisions under the WESM Rules, Distribution and Grid Codes which do not allow "must dispatch" status for intermittent RE resources shall be deemed amended or modified. The PEMC and TRANSCO [National Transmission Corporation] or its successors-in-interest shall implement technical mitigation and improvements in the system in order to ensure safety and reliability of electricity transmission.

As used in this Act, RE generating unit with intermittent RE resources refers to a RE generating unit or group of units connected to a common connection point whose RE resource is location-specific, naturally difficult to precisely predict the availability of RE resource thereby making the energy generated variable, unpredictable and irregular and the availability of the resource inherently uncontrollable, which include plants utilizing wind, solar, run-of-river hydro or ocean energy.

This Court hesitates to rule that a maximum penetration limits study is a prerequisite to determine the installation targets.[208]

A reading of the provision shows that the maximum penetration limits study is for the benefit of allowing priority dispatch to "renewable energy generating units with intermittent renewable energy resources," or those connected to a common connection point whose renewable energy resource is location-specific and, thus, its availability is uncontrollable, unpredictable or irregular.

While the study may be advantageous in determining the installation targets, or the expected megawatt capacity for each renewable energy technology, there is no showing in the provision that it is a requisite to its determination. This Court thus shall not infer any intent to add such a condition in the absence of clear or unambiguous language.

IV

Ancheta, Citizenwatch, and AGHAM question the legislative power of the administrative agencies to determine the infrastructure

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[208] *Id.* at 1414, 1272.

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and mechanisms to implement the FIT System and the Renewable Portfolio Standard under Republic Act No. 9513.

Ancheta and Citizenwatch maintain that the delegation of legislative power in Republic Act No. 9513 to the Energy Regulatory Commission does not comply with the completeness and sufficient standard tests to be considered valid.[209] They argue that the mandate is too general and did not provide sufficient guidelines or limitations to its exercise of legislative power.[210]

AGHAM argues that Section 6 of Republic Act No. 9513, covering the Renewable Portfolio Standard, is also unconstitutional as an invalid delegation of legislative power. It maintains that the imposition of the Renewable Portfolio Standard is a legislative policy, which the Congress cannot delegate. It argues that Section 6 does not contain sufficient standards to guide and limit the authority of the National Renewable Energy Board.[211] It adds that the minimum percentage for the initial implementation of the Renewable Portfolio Standard should have been provided or should at least be capable of determination.[212] Furthermore, AGHAM maintains that its determination should have been based on certain criteria and parameters to avoid possible abuse of discretion in its implementation by administrative agencies.[213]

However, respondents insist on the validity of the delegation of legislative power to the administrative agencies to establish and implement the infrastructures and mechanisms of the FIT System[214] and the Renewable Portfolio Standard[215] under Republic Act No. 9513.

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[209] *Id.* at 1328, 1583.

[210] *Id.* at 1328, 1549.

[211] *Rollo* (G.R. No. 235624), pp. 15, 33, 52–56, and 53.

[212] *Id.* at 52.

[213] *Id.* at 52–53.

[214] *Rollo* (G.R. No. 215579), pp. 1397, 1420, 1425, and 1463.

[215] *Rollo* (G.R. No. 235624), pp. 714–715, 717, 802, 885, 889, and 1297.

They claim that Republic Act No. 9513 is complete in all its essential terms and conditions. The Energy Regulatory Commission, the Department of Energy, and the National Transmission Corporation argue that silence as to the specific rates to be imposed and the years it will be made effective does not render the delegation incomplete. They argue that the determination of these details was left to the discretion of the Energy Regulatory Commission as the administrative agency possessing the special knowledge and technical expertise over such matters.[216]

The National Transmission Corporation maintains that it is absurd to expect Congress to detail the exact parameters of the mechanism and infrastructure for renewable energy development considering its highly specialized nature, especially in terms of technology and finance. Nonetheless, Republic Act No. 9513 lays down the policy objectives and the limitations to the powers of the Energy Regulatory Commission.[217]

The Energy Regulatory Commission, the Department of Energy, the National Transmission Corporation, DREAM, and the National Renewable Energy Board[218] also maintain that the required sufficient standards are present. Section 2 of Republic Act No. 9513[219] enumerates the State policies and provides the guidelines for the law's implementation.[220] Section 7 of Republic Act No. 9513 lays down the conditions under which the grant of the FIT Rates is to be implemented, and sets boundaries on the Energy Regulatory Commission's authority to promulgate rules to implement the FIT System.[221]

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[216] *Rollo* (G.R. No. 215579), p. 1425; *Rollo* (G.R. No. 235624), pp. 717–718.

[217] *Rollo* (G.R. No. 215579), pp. 1461-1462. *See also* Republic Act No. 9513 (2008), sec. 2.

[218] *Rollo* (G.R. No. 235624), pp. 794, 1287.

[219] *Rollo* (G.R. No. 215579), pp. 1426–1427; *Rollo* (G.R. No. 235624), p. 718.

[220] *Rollo* (G.R. No. 235624), pp. 715, 1297.

[221] *Id.* at 798, 1291, 719, and 1426.

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Section 6 similarly provides the limits and boundaries to promulgate rules and implement the Renewable Portfolio Standard.[222]

The Energy Regulatory Commission points that the Renewable Portfolio Standard under Section 6 is made certain by legislative parameters found in the law,[223] including Sections 27 and 33 of Republic Act No. 9513, and Rule 2, Section 4 of its Implementing Rules and Regulations.[224] The Energy Regulatory Commission maintains that the requirement in Section 6 of Republic Act No. 9513 for all stakeholders to contribute to the growth of the country's renewable energy industry is also a sufficient standard that will guide the determination of the Renewable Portfolio Standard.[225]

Developers for Renewable Energy for Advancement, Inc. and the National Renewable Energy Board further affirm that the setting of the Renewable Portfolio Standard is best left to the National Renewable Energy Board because at the time of Republic Act No. 9513's enactment, not all information and data were yet available to set it.[226] The sustainability of the renewable energy resources, the available capacity of the relevant grids, and the available renewable energy resources within the specific grid are the "minutiae of everyday life," referred to in *Gerochi v. Department of Energy*.[227] The questioned issuances only filled in the details which cannot be incorporated in Republic Act No. 9513.[228] The information and data are laid down in Rule 2, Section 4 of the Implementing Rules and Regulations.[229]

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[222] *Id.* at 719.

[223] *Id.* at 866.

[224] *Id.* at 886–888.

[225] *Id.* at 889.

[226] *Id.* at 803, 1298.

[227] *Id.* at 1298. *See also* 554 Phil. 563 (2007) [Per J. Nachura, *En Banc*].

[228] *Rollo* (G.R. No. 235624), pp. 804, 1298.

[229] *Id.* at 1298.

Developers for Renewable Energy for Advancement, Inc. also argues that the mandate in Section 6 is consistent with and is meant to achieve the legislative policies in Section 2 of Republic Act No. 9513[230] and the objective of maximizing the use of renewable energy sources and, eventually, achieving self-reliance.[231]

This Court rules that the delegation of legislative power to the Department of Energy and the Energy Regulatory Commission to establish the infrastructures and mechanisms to implement the FIT System and the Renewable Portfolio Standard under Republic Act No. 9513 is valid.

As a rule, the powers of each of the three branches of government cannot be delegated to the others. This principle is in keeping with the doctrine of separation of powers:

> The principle of separation of powers ordains that each of the three branches of government has exclusive cognizance of and is supreme in matters falling within its own constitutionally allocated sphere. A logical corollary to the doctrine of separation of powers is the principle of non-delegation of powers, as expressed in the Latin maxim *potestas delegata non delegari potest* (what has been delegated cannot be delegated). This is based on the ethical principle that such delegated power constitutes not only a right but a duty to be performed by the delegate through the instrumentality of his own judgment and not through the intervening mind of another.[232]

However, modern society has given rise to an exception to this rule because government tasks and public service have grown increasingly complex, with more and more of its responsibilities requiring proficiency or intricate familiarity with technical or specialized knowledge. Thus, in many instances, this Court has ruled as valid the delegation of legislative power to specialized administrative agencies. In *Eastern Shipping Lines v. Philippine Overseas Employment Administration*:[233]

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[230] *Id.* at 1297.

[231] *Id.* at 1296.

[232] *Gerochi v. Department of Energy*, 554 Phil. 563, 584 (2007) [Per J. Nachura, *En Banc*].

[233] 248 Phil. 762 (1988) [Per J. Cruz, First Division].

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The principle of non-delegation of powers is applicable to all the three major powers of the Government but is especially important in the case of the legislative power because of the many instances when its delegation is permitted. The occasions are rare when executive or judicial powers have to be delegated by the authorities to which they legally pertain. In the case of the legislative power, however, such occasions have become more and more frequent, if not necessary. This has led to the observation that the delegation of legislative power has become the rule and its non-delegation the exception.

The reason is the increasing complexity of the task of government and the growing inability of the legislature to cope directly with the myriad problems demanding its attention. The growth of society has ramified its activities and created peculiar and sophisticated problems that the legislature cannot be expected reasonably to comprehend. Specialization even in legislation has become necessary. To many of the problems attendant upon present-day undertakings, the legislature may not have the competence to provide the required direct and efficacious, not to say, specific solutions. These solutions may, however, be expected from its delegates, who are supposed to be experts in the particular fields assigned to them.

The reasons given above for the delegation of legislative powers in general are particularly applicable to administrative bodies. With the proliferation of specialized activities and their attendant peculiar problems, the national legislature has found it more and more necessary to entrust to administrative agencies the authority to issue rules to carry out the general provisions of the statute. This is called the "power of subordinate legislation."

With this power, administrative bodies may implement the broad policies laid down in a statute by "filling in" the details which the Congress may not have the opportunity or competence to provide. This is effected by their promulgation of what are known as supplementary regulations, such as the implementing rules issued by the Department of Labor on the new Labor Code. These regulations have the force and effect of law.[234]

Nonetheless, as an exception to the rule, the exercise of legislative power is restricted. The delegation of legislative

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[234] *Id.* at 772–773.

power must be: "complete in itself, setting forth... the policy to be executed, carried out, or implemented by the delegate... fixes a standard — the limits of which are sufficiently determinate and determinable — to which the delegate must conform in the performance of his functions."[235] It must pass the completeness and sufficient standard tests:

> All that is required for the valid exercise of this power of subordinate legislation is that the regulation must be germane to the objects and purposes of the law; and that the regulation be not in contradiction to, but in conformity with, the standards prescribed by the law. Under the first test or the so-called completeness test, the law must be complete in all its terms and conditions when it leaves the legislature such that when it reaches the delegate, the only thing he will have to do is to enforce it. The second test or the sufficient standard test, mandates that there should be adequate guidelines or limitations in the law to determine the boundaries of the delegate's authority and prevent the delegation from running riot.[236]

In *Pantaleon v. Metro Manila Development Authority*:[237]

> Thus, Congress may delegate the authority to promulgate rules to implement a law and effectuate its policies. To be permissible, however, the delegation must satisfy the *completeness* and *sufficient standard* tests.
>
> > In the face of the increasing complexity of modern life, delegation of legislative power to various specialized administrative agencies is allowed as an exception to this principle. Given the volume and variety of interactions in today's society, it is doubtful if the legislature can promulgate laws that will deal adequately with and respond promptly to the minutiae of everyday life. Hence, the need to delegate to administrative bodies — the principal agencies tasked to execute laws in their specialized fields — the authority to promulgate rules and regulations to implement a

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[235] *Pantaleon v. Metro Manila Development Authority*, 890 Phil. 453, 479 (2020) [Per J. Leonen, *En Banc*].

[236] *Kilusang Mayo Uno v. Aquino III*, 850 Phil. 1168, 1206 (2019) [Per J. Leonen, *En Banc*].

[237] 890 Phil. 453 (2020) [Per J. Leonen, *En Banc*].

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> given statute and effectuate its policies. *All that is required for the valid exercise of this power of subordinate legislation is that the regulation be germane to the objects and purposes of the law and that the regulation be not in contradiction to, but in conformity with, the standards prescribed by the law. These requirements are denominated as the* ***completeness test*** *and the* ***sufficient standard test****.* (Emphasis supplied)
>
> The delegation of legislative power is valid only if:
>
> . . . .the law (a) is complete in itself, setting forth therein the policy to be executed, carried out, or implemented by the delegate; and (b) fixes a standard — the limits of which are sufficiently determinate and determinable — to which the delegate must conform in the performance of his functions. A sufficient standard is one which defines legislative policy, marks its limits, maps out its boundaries and specifies the public agency to apply it. It indicates the circumstances under which the legislative command is to be effected.[238]

In *Kilusang Mayo Uno*:

> Simply put, what are needed for a valid delegation are: (1) the completeness of the statute making the delegation; and (2) the presence of a sufficient standard.
>
> To determine completeness, all of the terms and provisions of the law must leave nothing to the delegate except to implement it. "What only can be delegated is not the discretion to determine what the law shall be but the discretion to determine how the law shall be enforced."
>
> More relevant here, however, is the presence of a sufficient standard under the law. Enforcement of a delegated power may only be effected in conformity with a sufficient standard, which is used "to map out the boundaries of the delegate's authority and thus 'prevent the delegation from running riot.'" The law must contain the limitations or guidelines to determine the scope of authority of the delegate.[239]

The law is deemed complete if it specifies the policy to be executed. Its standards are sufficient if it indicates the conditions

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[238] *Id.* at 478–479.

[239] 850 Phil. 1168, 1207 (2019) [Per J. Leonen, *En Banc*].

and limitations on the authority of the delegate. The law must pass both tests. Failure to satisfy one of the requisites renders the delegation of legislative power invalid.

Applying these requirements to this case, we find that Republic Act No. 9513 is complete in its terms, containing the guiding principles to be implemented by the Energy Regulatory Commission, and fixes a sufficient standard that determines the limitations of its authority.

Section 2 of Republic Act No. 9513 contains the State policies:

SECTION 2. *Declaration of Policies*. — It is hereby declared the policy of the State to:

(a) Accelerate the exploration and development of renewable energy resources such as, but not limited to, biomass, solar, wind, hydro, geothermal and ocean energy sources, including hybrid systems, to achieve energy self-reliance, through the adoption of sustainable energy development strategies to reduce the country's dependence on fossil fuels and thereby minimize the country's exposure to price fluctuations in the international markets, the effects of which spiral down to almost all sectors of the economy;

(b) Increase the utilization of renewable energy by institutionalizing the development of national and local capabilities in the use of renewable energy systems, and promoting its efficient and cost-effective commercial application by providing fiscal and nonfiscal incentives;

(c) Encourage the development and utilization of renewable energy resources as tools to effectively prevent or reduce harmful emissions and thereby balance the goals of economic growth and development with the protection of health and the environment; and

(d) Establish the necessary infrastructure and mechanism to carry out the mandates specified in this Act and other existing laws.

A reading of these State policies reveals specific guidelines against which the actions of the involved administrative agencies would be measured. They are complete and specific enough to establish the intent to develop renewable energy in the country to positively impact the economy and the environment.

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As to the mechanism of the FIT System, a more specific State policy is further identified in Section 7: to accelerate the development of emerging renewable energy resources. It likewise clearly provides the standards that limit the implementing power of the Energy Regulatory Commission and the National Renewable Energy Board in formulating and promulgating the rules:

> SECTION 7. *Feed-In Tariff System*. — To accelerate the development of emerging renewable energy resources, a feed-in tariff system for electricity produced from wind, solar, ocean, run-of-river hydropower and biomass is hereby mandated. Towards this end, the ERC in consultation with the National Renewable Energy Board (NREB) created under Section 27 of this Act shall formulate and promulgate feed-in tariff system rules within one (1) year upon the effectivity of this Act which shall include, but not limited to, the following:
>
> (a) Priority connections to the grid for electricity generated from emerging renewable energy resources such as wind, solar, ocean, run-of-river hydropower and biomass power plants within the territory of the Philippines;
>
> (b) The priority purchase and transmission of, and payment for, such electricity by the grid system operators;
>
> (c) Determine the fixed tariff to be paid to electricity produced from each type of emerging renewable energy and the mandated number of years for the application of these rates, which shall not be less than twelve (12) years;
>
> (d) The feed-in tariff to be set shall be applied to the emerging renewable energy to be used in compliance with the Renewable Portfolio Standard as provided for in this Act and in accordance with the RPS rules that will be established by the DOE.

Thus, Section 7 specifies the legislative policy, designates the Energy Regulatory Commission and the National Renewable Energy Board as the administrative agencies to realize it, and provides the limits and the boundaries of their powers.

The same can be said for the Renewable Portfolio Standard under Section 6 of Republic Act No. 9513. In addition to the policies in Section 2, Section 6 specifies more particularly the policy that is meant to guide the determination of the Renewable Portfolio Standard—for all stakeholders in the electric power

industry to contribute to the growth of the renewable energy industry of the country.

SECTION 6. *Renewable Portfolio Standard (RPS)*. — All stakeholders in the electric power industry shall contribute to the growth of the renewable energy industry of the country. Towards this end, the National Renewable Energy Board (NREB), created under Section 27 of this Act, shall set the minimum percentage of generation from eligible renewable energy resources and determine to which sector RPS shall be imposed on a per grid basis within one (1) year from the effectivity of this Act.

This Court notes that unlike the FIT System, which involves the setting of a particular mechanism to accomplish it, the Renewable Portfolio Standard involves the determination of a mere policy. It calls for the setting of the minimum percentage of generation from eligible renewable energy resources and determining which sector the policy shall be imposed on a per grid basis. Thus, Section 6 on the Renewable Portfolio Standard is not as detailed as Section 7 on the FIT System. Nonetheless, Republic Act No. 9513 provides sufficient standards which limit the authority of the National Renewable Energy Board, the determining agency.

This Court is mindful not to limit its interpretation on a single provision, but to consider the law in its entirety.

. . . . the law must be read in its entirety, because a statute is passed as a whole, and is animated by one general purpose and intent. Its meaning cannot be extracted from any single part thereof but from a general consideration of the statute as a whole.[240]

We thus note that the Renewable Portfolio Standard is also defined under Section 4 of Republic Act No. 9513:

SECTION 4. *Definition of Terms*. — As used in this Act, the following terms are herein defined.

(ss) "Renewable Portfolio Standards (RPS)" refer to a market-based policy that requires electricity suppliers to source an agreed portion of their energy supply from eligible RE resources.

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[240] *Freedom From Debt Coalition v. Energy Regulatory Commission*, 476 Phil. 134, 196 (2004) [Per J. Tinga, *En Banc*].

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While Section 6 does not specify the basis on which the National Renewable Energy Board will set the Renewable Portfolio Standard, this definition indicates that the Renewable Portfolio Standard is market-based. Its determination thus calls not only for technical and specialized know-how, but also for shifting data and statistics, which administrative agencies are more adept at.

This Court notes that the powers of the National Renewable Energy Board as to the Renewable Portfolio Standard in off-grid areas are also specified in Section 27 of Republic Act No. 9513:

> SECTION 27. *Creation of the National Renewable Energy Board (NREB)*. — The NREB is hereby created . . .
>
> . . . .
>
> The NREB shall have the following powers and functions:
>
> (a) Evaluate and recommend to the DOE the mandated RPS and minimum RE generation capacities in off-grid areas, as it deems appropriate;
>
> (b) Recommend specific actions to facilitate the implementation of the National Renewable Energy Program (NREP) to be executed by the DOE and other appropriate agencies of government and to ensure that there shall be no overlapping and redundant functions within the national government departments and agencies concerned;
>
> (c) Monitor and review the implementation of the NREP, including compliance with the RPS and minimum RE generation capacities in off-grid areas;
>
> (d) Oversee and monitor the utilization of the Renewable Energy Trust Fund created pursuant to Section 28 of this Act and administered by the DOE; and
>
> (e) Perform such other functions, as may be necessary, to attain the objectives of this Act.

Based on these standards and limitations, we thus find that Republic Act No. 9513 passes the completeness and sufficient standard tests.

As discussed, legislative power is delegated to specialized administrative agencies to address the growing varieties,

complexities, and volume of modern-day matters. The particular market-related details relating to the systems and mechanisms necessary to achieve the development of renewable energy in the country is evidently one of the "minutiae of everyday life" which Congress can no longer be expected to deal with promptly or adequately.

Thus, this Court upholds the validity of the delegated powers to the Energy Regulatory Commission and the National Renewable Energy Board to implement the provisions on the FIT System and the Renewable Portfolio Standard.

V

Ancheta,[241] Citizenwatch,[242] and Meralco[243] assert that the Energy Regulatory Commission exceeded its authority and unduly expanded Republic Act No. 9513 when, in the FIT Rules and FIT Guidelines, it provided for the advanced collection of FIT Allowance from consumers before the actual generation, delivery, or consumption of renewable energy. Ancheta points that the amount charged is already reflected in consumers' monthly Meralco bills.[244]

Ancheta, Citizenwatch, and Meralco argue that Republic Act No. 9513 does not contemplate the advanced collection of the FIT Allowance from consumers.[245] They contend that the law and its implementing rules provide that the fixed tariff will be paid only for electricity produced or generated. It does not authorize collection of the FIT for electricity that has not yet been produced or is only about to be produced at a future time.[246]

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[241] *Rollo* (G.R. No. 215579), p. 1583.

[242] *Id.* at 1331–1333.

[243] *Id.* at 1541–1543, 1545.

[244] *Id.* at 1585.

[245] *Id.* at 1588.

[246] *Id.* at 1588, 1331–1333, and 1543–1545.

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Ancheta and Meralco expound that the basis of the charge against consumers (the FIT Allowance) includes components that are unreliable and highly speculative. It includes the "forecasted annual required revenue" and "Forecast RE Generation" of renewable energy plants, which factor in electricity yet to be produced.[247] They allege that there are renewable energy plants not yet existing, are in preconstruction phase, are still in negotiations for project financing, or are lacking documents relating to FIT-eligibility.[248] Meralco asserts that there are entries lacking a date of commencement of commercial operations, or zero to low percentage of interconnection. It also claims that some projects are delayed.[249] There is thus a clear probability that some projects may not be completed, and the electricity expected from the renewable energy developers will not even materialize.[250] Meralco even contends that several nonexistent renewable energy plants still receive the FIT.

They claim that unlike the current manner of billing electricity where bills are based on actual consumption, consumers are charged the FIT Allowance regardless of whether electricity is produced or not. Even if the FIT will be paid to renewable energy developers later, consumers are still required to part with their money before the electricity has been produced or generated.[251] Furthermore, even if these plants do produce electricity later, consumers may still not be able to use it because existing transmission and distribution systems may still require infrastructure adjustments to be able to readily interconnect these projected capacities.[252]

Meralco maintains that the FIT Allowance should be charged on an "as incurred" basis, the same way other electricity charges

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[247] *Id.* at 1588, 1332–1333, 1545–1547, 1552, and 1588.

[248] *Id.* at 1552, 1588.

[249] *Id.* at 1556, 1588.

[250] *Id.* at 1552, 1589.

[251] *Id.* at 1548.

[252] *Id.* at 1557.

are currently imposed on consumers.[253] Meralco insists that it should only be charged after electricity has been injected into the power grid and the consumers have benefitted from it.[254] This way, "the actual generation can be accurately measured based on metered quantities," thus minimizing or avoiding over- or under-recoveries in its computation.[255]

Meralco also claims that the National Transmission Corporation caused a higher FIT Allowance rate because it deviated from the mandated formula of the Energy Regulatory Commission for computing collection efficiency and did not provide a sufficient reason for doing so.[256]

Ancheta argues that the creation of the FIT Allowance fund is too advantageous to renewable energy developers.[257] He insists that there are other reasonable means of attracting investors and ensuring their returns without undue burden to consumers.[258] Yet, consumers are expected to pay prior to actual production, sale, and use of renewable energy, only to assure the guaranteed payment of renewable energy developers for their production. Ancheta maintains that consumers are paying more than they ought to.[259] He argues that the reckoning period for consumers is the time they part with their money, not the time of the payment to the renewable energy plants. In effect, paying consumers supposedly subsidize both the renewable energy developers and the consumers who fail to pay the electricity bills, which incorporate the FIT Allowance.[260]

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[253] *Id.* at 1559.

[254] *Id.*

[255] *Id.*

[256] *Id.* at 1542, 1559.

[257] *Id.* at 1588.

[258] *Id.* at 1589.

[259] *Id.*

[260] *Id.* at 1590.

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The Foundation for Economic Freedom,[261] Citizenwatch,[262] and Meralco[263] also argue that the FIT Rules, FIT Guidelines, and the implementation of the FIT Allowance are acts outside the scope of the respondents' delegated powers because they contradict State policies laid down in the EPIRA and Republic Act No. 9513.

Meralco and the Foundation for Economic Freedom point that the commercial utilization of renewable energy resources must be "made or promoted in the most efficient and cost-effective manner."[264] Furthermore, the Energy Regulatory Commission is mandated to promote consumer interest, ensure consumer choice, and penalize abuse of market power.[265] Citizenwatch claims that the respondents' acts are contrary to the State policies of protecting the public interest and ensuring "affordability," "transparent and reasonable prices of electricity," and "full public accountability of governmental officers in an immensely vital public service."[266] Meralco further asserts its mandate to supply energy in the "least cost manner."[267]

Respondents, meanwhile, argue that they acted within the bounds of their delegated powers.

The National Transmission Corporation and the National Renewable Energy Board insist that Republic Act No. 9513 was not expanded and the established FIT System, including the FIT Rules, FIT Guidelines, and FIT Allowance,[268] is constitutional.[269] They argue that the Energy Regulatory Commission's power to issue guidelines was valid and authorized by Congress

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[261] *Id.* at 1488–1489.

[262] *Id.* at 1327.

[263] *Id.* at 1560.

[264] *Id.* at 1488, 1560.

[265] *Id.*

[266] *Id.* at 1327.

[267] *Id.* at 1560.

[268] *Id.* at 1459.

[269] *Id.*

under Republic Act No. 9513 and its Implementing Rules and Regulations.[270] They maintain that Republic Act No. 9513 prohibits neither the Energy Regulatory Commission's issuance of the FIT Guidelines, nor the advance collection of the FIT Allowance.[271] The FIT Guidelines also does not expand the implementation of Republic Act No. 9513.[272]

The Energy Regulatory Commission and the Department of Energy,[273] the National Transmission Corporation,[274] and the National Renewable Energy Board[275] argue that the FIT Rules and FIT Guidelines do not provide for the advance payment of renewable energy not yet produced or consumed.[276] They point that petitioners are confusing collection and payment.[277] Payment will not be made to developers until renewable energy is produced and distributed.[278] The FIT Allowance fund will not be disbursed to renewable energy developers until after they generate and supply renewable energy to the grid.[279]

The Energy Regulatory Commission and the Department of Energy expound that under the FIT Rules and FIT Guidelines,[280] an eligible renewable energy plant will only be paid for renewable energy-sourced electricity that is actually generated and delivered into the relevant transmission or distribution grid.[281] The amount of electricity exported into the transmission or distribution grid will

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[270] *Id.* at 1274, 1459. *See also* Implementing Rules and Regulations or Republic Act No. 9513 (2009), secs. 5 and 7.

[271] *Rollo* (G.R. No. 215579), p. 1459.

[272] *Id.* at 1274.

[273] *Id.* at 1397, 1427.

[274] *Id.* at 1456.

[275] *Id.* at 1274, 1276.

[276] *Id.* at 1397, 1427.

[277] *Id.* at 1461.

[278] *Id.* at 1274, 1276, 1429, 1456, 1461.

[279] *Id.* at 1429, 1456.

[280] Section 2.7 of the FIT Rules and Section 1.1 of the FIT Guidelines.

[281] *Rollo* (G.R. No. 215579), p. 1429.

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be determined through a metering device required to be installed in each plant.[282] The plant will be required to submit a record of meter reading for each billing period and payment of the FIT will be made based on the actual kilowatt-hour generated.[283] They point that the National Transmission Corporation, as FIT Administrator, audits the metering and calculates the amounts due to the plants based on the applicable FIT rate and the actual injections.[284]

They argue thus that contrary to the contention of Citizenwatch, Section 2.5 of the FIT Rules and Section 1.3 of the FIT Guidelines "merely provide for the formula on how to determine the FIT Allowance." It is understandable thus for the National Transmission Corporation to use the information on the projected line-up of eligible renewable energy plants to approximate the level of the FIT Allowance needed to complement the estimate of what the eligible renewable plant should receive. All relevant factors are also considered to determine the FIT Allowance.[285]

The Energy Regulatory Commission and the Department of Energy also contend that the FIT System is the most efficient and effective support scheme to promote renewable energy.[286] They cite a European Commission Report which showed that 18 out of 27 member states used FITs as their national support scheme to promote renewable energy.[287] While the FIT may be higher during its infancy stage because of the huge capital investment needed for renewable energy technologies, they maintain that in the long run, renewable energy may realize grid price parity because of the current price volatility of the world oil market.[288]

They argue that this is similar to the Philippines' capitalization on the natural potential of geothermal energy in the "Pacific

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[282] *Id.*

[283] *Id.* at 1430, 1431, 1456.

[284] *Id.* at 1431.

[285] *Id.* at 1432.

[286] *Id.* at 1439.

[287] *Id.* at 1440.

[288] *Id.* at 1440, 1457.

Ring of Fire" during the Middle East oil crisis of 1970.[289] They emphasize that geothermal energy has shown its potential to drive down the price of energy and to offer more jobs to the local economy.[290] Today, the Philippines is the second largest producer of geothermal energy in the world. Investments to renewable energy also contribute to climate change mitigation and carbon emission reduction.[291]

They also contend that the approved FIT System is responsive to lowering costs of renewable energy technologies through the degression rates.[292]

For their part, the National Renewable Energy Board and the National Transmission Corporation contend that the FIT Allowance collected from consumers is based on projected output. They point that this was determined to be an effective, less costly, and more efficient way of ensuring payment for renewable energy actually produced. Considering that production may fluctuate on a daily basis, they add that it may be difficult to collect the FITs corresponding to electricity actually produced.[293] The National Transmission Corporation also claims that financing the FIT by spreading the costs between all end users reduces the increase in price per household.[294]

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[289] *Id.* at 1440.

[290] *Id.*

[291] *Id.* at 1441.

[292] *Id.* ". . . The FIT rules [provide] for a degression rate which is set on the premise that a diminishing premium will be paid for electricity generated from each of the emerging [renewable energy] sources, which premium is gradually eliminated as generation costs approximate market prices. This degression rate is necessary to reflect differences in the costs of [renewable energy] from the various technologies and power plants, and to assure that the FIT is reflective of the actual generation costs. As such, windfall revenues for developers are avoided and no unreasonable costs are passed to electricity consumers. More importantly, the same is applied to immediately transfer to the consumers the benefit from a potential decrease in the costs of certain technologies, while giving developers the extra incentive to invest early."

[293] *Rollo* (G.R. No. 215579), pp. 1276–1278, 1461.

[294] *Id.* at 1457.

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In any case, the National Transmission Corporation asserts that as the mere administrator of the FIT Allowance fund, it has no power to forestall its implementation.[295] It maintains that it is not charged with implementing the FIT System or promulgating its rules and guidelines.[296] It argues that its role as administrator was provided under Energy Regulatory Commission Resolution No. 15, Series of 2012, and its application for the approval of the FIT Allowance rate was filed in compliance with this resolution.[297] Insofar as it is concerned, the assailed issuances and provision are presumed regular and constitutional until set aside with finality by a competent court.[298]

The Energy Regulatory Commission and the Department of Energy, and the National Transmission Corporation also assert that the FIT Rules and FIT Guidelines are consistent with the declared policies of Republic Act No. 9513.[299] The National Transmission Corporation points that the law aims to encourage the exploration and development of renewable energy resources to achieve energy self-reliance and eventually reduce the country's dependence on fossil fuels, as well as minimizing exposure to price fluctuations of fossil fuels in international markets. Republic Act No. 9513 likewise aims to encourage the use of renewable energy to reduce our carbon footprint.[300]

They further argue that to ensure that electricity price stays reasonable and market-driven, the Energy Regulatory Commission has issued Resolution No. 13, Series of 2015 (Competitive Selection Process Resolution), which mandates a public tender or competitive bidding process in procuring distribution utilities and electric cooperatives of power supply agreements for their captive customers.[301]

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[295] *Id.* at 1455. *See also Rollo* (G.R. No. 235624), p. 712.

[296] *Rollo* (G.R. No. 215579), p. 1455.

[297] *Id. See also Rollo* (G.R. No. 235624), p. 712.

[298] *Rollo* (G.R. No. 235624), p. 713.

[299] *Rollo* (G.R. No. 215579), pp. 1398, 1404, 1438.

[300] *Id.* at 1404.

[301] *Rollo* (G.R. No. 235624), pp. 788–789, 1273.

Similarly, the National Renewable Energy Board and the Department of Energy have also adopted safeguards to protect consumer interests in Department Circular No. DC2017-12-0015 (Renewable Portfolio Standard Rules).[302] This includes: (i) the competitive selection process in Energy Regulatory Commission Resolution No. 13, Series of 2015; and (ii) the suspension or carry-over compliance of a mandated participant with the annual Renewable Portfolio Standard requirements when there is a consideration or condition outside their control as determined by the Department of Energy.[303]

Firstly, this Court shall not rule on the contentions relating to the status of renewable energy projects or the eligibility of renewable energy plants. These are issues involving questions of fact, and this Court is precluded from reviewing such issues.[304] Considering that this case involves a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court and Petitions for *Certiorari* under Rule 65, this Court shall limit itself to questions of law and in determining whether respondents acted in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction.

We rule that the Energy Regulatory Commission acted within the bounds of its delegated power in providing for the advanced collection of the FIT Allowance from consumers in the FIT Rules, FIT Guidelines, and its orders implementing the FIT System.

The FIT Rules and FIT Guidelines provide that the FITs due to the eligible renewable energy plants shall be paid by on-grid electricity consumers through the FIT Allowance:

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[302] *Id.*

[303] *Id.* at 788–789, 1279.

[304] *Gerochi v. Department of Energy*, 554 Phil. 563, 589 (2007) [Per J. Nachura, *En Banc*].

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1.4. Scope

. . . . All Eligible RE plants shall be entitled to the appropriate *FITs* as established and such *shall be paid by all on-grid electricity consumers* according to the FIT system established in these Rules.[305]

2.5. Feed-in Tariff Allowance (FIT-All)

Electricity consumers who are supplied with electricity through the distribution or transmission network shall share in the cost of the FITs in part through a uniform charge (in PhP/kWh) to be referred to as the FIT-All and applied to all billed kWh.

. . . .

2.6. FIT-All as a Separate Uniform Charge

The FIT-All shall be included in the transmission billing statement as a separate line item to be imposed and collected by the NGCP from the consumers who are directly connected to its system and in the distribution billing statement as a separate line item to be imposed and collected by the DUs from the consumers connected to their respective systems. Upon the start of open access and retail competition, the FIT-All shall be included among the charges to be *imposed and collected, also as a separate item, by the Retail Electricity Suppliers from their respective customers*.

Proceeds from the imposition and collection by the DUs and RES of the FIT-All shall be remitted to NGCP based on the more detailed guidelines to be established by the NREB and approved by the ERC for the collection and disbursement of the FIT-All fund.

For this purpose, NGCP shall consolidate the information on the generation of all Eligible RE Plants for all the On-Grid areas, including those that are embedded in the distribution system.[306] (Emphasis supplied)

The FIT Rules also specify that the renewable energy plants eligible for the incentive shall only be paid based on their actual metered deliveries:

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[305] *Rollo* (G.R. No. 215579), p. 68.

[306] *Id.* at 70.

2.7. Priority Connection, Purchase, and Transmission

All Eligible RE Plants shall enjoy priority connection to the transmission or distribution system, as the case may be, subject to their compliance with the pertinent standards and ERC rules governing such connection. Whenever generation from their plants is available, *Eligible RE Plants* shall be given priority to inject into the network they are connected and *shall be paid the corresponding FITs based on their actual metered deliveries, by all On-Grid electricity consumers* through the NGCP, consistent with sections 1.4, 2.5, 2.6, and 2.9. For this reason, NGCP and the DUs, in the case of embedded Eligible RE Plants, shall proportionately allocate among all their customers and consumers connected to them the renewable energy covered by the FIT system flowing into their systems.[307]

2.8. Distribution Utilities with Embedded Eligible RE Plants or their own Eligible RE Plants

The embedded Eligible RE Plants or DU-owned Eligible RE Plants shall deliver the energy they generate to the DU where they are connected for such energy be allocated among DU's customers or to the transmission system through the DU's system, subject to the payment by the Eligible RE Plants of the applicable DU wheeling charges.

In case of delivery is made to the DUs, prior to retail competition and open access, such DUs shall include in their respective monthly generation charge to their consumers the generation cost portion of the *actual energy deliveries* of the embedded Eligible RE Plants or DU-owned Eligible RE Plants. This shall be *computed using the actual deliveries of these RE Plants* and the average generation charge of the particular DU from all its other generation sources. If all the requirements of the DU shall come from embedded Eligible RE Plants, the generation charge to be imposed on the DU's consumers shall be that as determined by the ERC.

The proceeds of this generation cost recovery mechanism, in addition to the proceeds of the imposition of the FIT-All, shall likewise be remitted by the DU to the NGCP, based on the guidelines referred to in Section 2.6, for them to form part of the FIT-All fund.[308]

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[307] *Id.* at 70–71.

[308] *Id.* at 71.

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2.9. Settlement

The process of settlement includes the determination of the monthly payments to each Eligible RE Plant *based on actual metering* and the applicable FITs. NGCP shall be responsible for the disbursement of the FIT-All fund for the purpose of settlement and payment of the FITs for the Eligible RE Plants. The funds pertaining to the FIT-All and all interests accruing thereon shall be kept in a separate trust account with any government financial institution for the benefit of the Eligible RE Plants.

For this purpose, NGCP shall consolidate the information on *energy deliveries in kWhs of all Eligible RE Plants and the RE generation for the entire On-Grid areas* and shall make this information available to relevant stakeholders.

In consultation with all relevant stakeholders, the ERC may consider the issuance of additional guidelines governing the dispatch and settlement process to integrate the same, if necessary, in the WESM operations.[309]

. . . .

3. Applicability of FITs

. . . .

FITs shall be paid for such electricity from power plants using technologies mentioned above, which is *exported to the distribution or transmission network, as metered* at the high voltage side of the step-up transformer at the Eligible RE Plants side.

In case of generation from DU-owned Eligible RE Plants or Eligible RE Plants primarily intended for Own-Use, FITs shall only *be paid for such amount of electricity actually exported to the distribution or transmission network* and not utilized for their own use.[310]

6. Administration of FITs

Being in-charge of the FIT settlement, NGCP shall be authorized to perform the following for all our RE generation:

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[309] *Id.*

[310] *Id.* at 72–73.

a. Collect information for all *RE injections in any distribution or transmission network across the Philippines*, including those of the Eligible RE Plants that are embedded in the distribution network;

b. Audit the metering;

c. Based on the applicable FIT and the *actual injections*, calculate the payments for each Eligible RE Plant;

d. Collect and make payments; and

e. Based on applicable FITs and FIT duration, enter into an RE Payment Agreement (REPA) with Eligible RE plants. The ERC shall issue a pro-forma REPA after due proceedings. Any REPA executed between NGCP and an Eligible RE Plant, which conforms to the pro-forma REPA shall be deemed approved.

In case of dispute between or among the electricity sector participants, the ERC shall decide.

All Eligible RE Plants are required to submit information for all RE injections to the NGCP.[311] (Emphasis supplied)

Notably, while the FIT Rules originally designated the National Grid Corporation of the Philippines as the administrator of the FIT Allowance Fund, Energy Regulatory Commission Resolution No. 15, Series of 2012, which amended the FIT Rules, replaced the National Grid Corporation of the Philippines with the National Transmission Corporation as the new FIT Allowance administrator.

It bears stressing that Section 7 of Republic Act No. 9513 specifies that the FIT Rules shall include the priority payment for electricity generated from emerging renewable energy resources:

SECTION 7. *Feed-In Tariff System*. — ... Towards this end, the ERC in consultation with the National Renewable Energy Board (NREB) created under Section 27 of this Act shall formulate and promulgate feed-in tariff system rules within one (1) year upon the effectivity of this Act which shall include, but not limited to, the following:

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[311] *Id.* at 74.

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> (a) Priority connections to the grid for electricity generated from emerging renewable energy resources such as wind, solar, ocean, run-of-river hydropower and biomass power plants within the territory of the Philippines;
>
> (b) The priority purchase and transmission of, *and payment for, such electricity by the grid system operators*;
>
> (c) Determine the *fixed tariff to be paid to electricity produced from each type* of emerging renewable energy and the mandated number of years for the application of these rates, which shall not be less than twelve (12) years;
>
> (d) The feed-in tariff to be set shall be applied to the emerging renewable energy to be used in compliance with the renewable portfolio standard as provided for in this Act and in accordance with the RPS rules that will be established by the DOE. (Emphasis supplied)

It is also clear that the provision does not prohibit the advanced collection of amounts from consumers to implement the FIT System. The law simply specifies that priority payment shall be made for electricity produced from emerging renewable energy. What it thus requires is that the electricity from renewable energy resources must first be produced before being entitled to the FIT.

As to whether the advance collection through the FIT Allowance is contrary to the policies of Republic Act No. 9513, this Court rules that it is not. It is well to recall the policies that govern Republic Act No. 9513:

> SECTION 2. *Declaration of Policies*. — It is hereby declared the policy of the State to:
>
> (a) Accelerate the exploration and development of renewable energy resources such as, but not limited to, biomass, solar, wind, hydro, geothermal and ocean energy sources, including hybrid systems, to achieve energy self-reliance, through the adoption of sustainable energy development strategies to reduce the country's dependence on fossil fuels and thereby minimize the country's exposure to price fluctuations in the international markets, the effects of which spiral down to almost all sectors of the economy;
>
> (b) Increase the utilization of renewable energy by institutionalizing the development of national and local capabilities in the use of

> renewable energy systems, and promoting its efficient and cost-effective commercial application by providing fiscal and nonfiscal incentives;
>
> (c) Encourage the development and utilization of renewable energy resources as tools to effectively prevent or reduce harmful emissions and thereby balance the goals of economic growth and development with the protection of health and the environment; and
>
> (d) Establish the necessary infrastructure and mechanism to carry out the mandates specified in this Act and other existing laws.

The policy is meant to accelerate the exploration, development, and use of renewable energy resources by establishing and institutionalizing the necessary infrastructures and systems. Ultimately, its objectives are both economic and environmental: (i) to reduce the country's dependence on fossil fuels and minimize the country's exposure to price fluctuations in international markets, and (ii) to effectively prevent or reduce harmful emissions and protect the health and environment of the people.

Considering these policies, this Court finds no grave abuse of discretion on the part of the Energy Regulatory Commission in enacting the FIT Rules and FIT Guidelines.

Petitioners assert that contrary to the policies set forth in the EPIRA, the advance collection of the FIT does not protect consumers.

However, the nature of the FITs can be likened to the Universal Charge found in the EPIRA, which this Court ruled as valid in *Gerochi*:

> Petitioners failed to pursue in their Memorandum the contention in the Complaint that the imposition of the Universal Charge on all end-users is oppressive and confiscatory, and amounts to taxation without representation. Hence, such contention is deemed waived or abandoned per Resolution of August 3, 2004. Moreover, the determination of whether or not a tax is excessive, oppressive or confiscatory is an issue which essentially involves questions of fact, and thus, this Court is precluded from reviewing the same.
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> . . . .

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Finally, every law has in its favor the presumption of constitutionality, and to justify its nullification, there must be a clear and unequivocal breach of the Constitution and not one that is doubtful, speculative, or argumentative. Indubitably, petitioners failed to overcome this presumption in favor of the EPIRA. We find no clear violation of the Constitution which would warrant a pronouncement that Sec. 34 of the EPIRA and Rule 18 of its IRR are unconstitutional and void.[312] (Citations omitted)

Thus, the FIT Rules and FIT Guidelines—providing for advanced collection from consumers, and payment only of the FITs to eligible renewable energy developers on the basis of actual metered deliveries—is well within the bounds of the Energy Regulatory Commission's authority to issue.

V(A)

AGHAM questions the validity of the Department of Energy Certifications increasing the installation targets.

It argues that the Department of Energy gravely abused its discretion in issuing the Certifications because it does not have the authority to do so either under the EPIRA or Republic Act No. 9513.[313] AGHAM claims that the Department of Energy arrogated upon itself the power to decide a legislative policy, issued a law in the guise of rules, and thus acted beyond its powers.[314] It points that the Certifications were not even signed by the Secretary of the Department of Energy.[315]

AGHAM further contends that the increase of the installation targets is unilateral, indiscriminate, and accepted beyond question.[316] It underscores that it was used by the Energy Regulatory Commission in its decision-making and policy-

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[312] 554 Phil. 563, 589-590 (2007) [Per J. Nachura, *En Banc*].

[313] *Rollo* (G.R. No. 235624), pp. 34–35.

[314] *Id.*

[315] *Id.* at 35.

[316] *Id.* at 34–35.

formulation.[317] AGHAM insists that the Certifications formed the basis for additional FIT-eligible renewable energy developers, the FIT Allowance, and the higher FIT Rate.[318]

The Energy Regulatory Commission, the National Renewable Energy Board, and Developers for Renewable Energy for Advancement, Inc. maintain that the Department of Energy Certifications are valid and merely filled in the gaps of Republic Act No. 9513 for its proper and effective implementation.[319]

As to the authority of the Department of Energy to increase the installation targets for each renewable energy source,[320] the Energy Regulatory Commission, the National Renewable Energy Board, and Developers for Renewable Energy for Advancement, Inc. affirm that there was no undue delegation of power.[321] Its power was validly delegated under the EPIRA and Republic Act No. 9513.[322] They maintain that these two laws should be read together,[323] and both pass the completeness and sufficient standard tests.[324] Section 2 of Republic Act No. 9513[325] enumerates the State policies, while Section 37 of the EPIRA limits the extent of the Department of Energy's authority.[326]

They also deny that the Department of Energy's increase of installation targets was indiscriminate or unilateral.[327] They maintain that it was meant to encourage renewable energy

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317 *Id.*

318 *Id.* at 35.

319 *Id.* at 1292.

320 *Id.* at 866.

321 *Id.* at 867.

322 *Id.*

323 *Id.* at 796, 1289.

324 *Id.* at 791, 796, 1284, 1286–1287, 1289.

325 *Rollo* (G.R. No. 215579), pp. 1426–1427; *see also Rollo* (G.R. No. 235624), p. 718.

326 *Rollo* (G.R. No. 235624), pp. 796, 1289.

327 *Id.*

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developers to build more plants and displace the use of conventional ones to minimize harmful emissions.[328] They also insist that it did not increase the price of electricity for consumers. They add that consumers actually benefited from the increase because it was able to avoid billions of costs to electricity consumers whose distribution utility or electric cooperative service providers purchased at the Wholesale Electricity Spot Market from 2014 to 2019.[329]

They further contend that the installation targets were determined after considering several factors.[330] They argue that the targets were increased because of an impending electricity shortage for the summer months of 2015 and 2016.[331] Wind and solar plants would supposedly be the fastest powerplants that can fully comply with the requirement, as opposed to coal and natural gas plants.[332] They point that the targets were arrived at after publications of notices, numerous hearings, public consultations, board meetings, and comments from industry stakeholders.[333]

Developers for Renewable Energy for Advancement, Inc. further argues that the Certifications are consistent with the policies of Republic Act No. 9513.[334] It maintains that the Certifications adhered to the purpose of the FIT System to accelerate the development of renewable energy sources for electricity produced from wind and solar plants.[335] More particularly, it insists that the Certifications adhered to the standards of: (i) efficient and cost effective application of renewable energy technologies under Section 2(b) of the Republic Act No. 9513; (ii) efficient supply and economical

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[328] *Id.* at 795, 1287–1288.

[329] *Id.* at 795, 1288.

[330] *Id.*

[331] *Id.*

[332] *Id.* at 795, 1289.

[333] *Id.* at 796, 1289.

[334] *Id.* at 794, 1287.

[335] *Id.* at 798, 1291.

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use of energy under Section 37 of the EPIRA; (iii) transparent and reasonable prices of electricity under Section 1(c) of the EPIRA; (iv) reliability, quality, and security of supply of electric power under Section 37(d) of the EPIRA; and (v) encouraging private sector investments in the electricity sector and promoting indigenous and renewable energy sources under Section 37(e) of the EPIRA, among others.[336]

The National Renewable Energy Board and Developers for Renewable Energy for Advancement, Inc. also assert that the Department of Energy Certifications, with the Energy Regulatory Commission issuances, and Section 6 of Republic Act No. 9513 are constitutional as they are means to protect the constitutional right of every Filipino to a balanced and healthful ecology and to environmental integrity.[337] The National Renewable Energy Board points that "health and ecological concerns are proper purposes of regulation and can be the basis of the state's exercise of power."[338] Developers for Renewable Energy for Advancement, Inc. asserts that they are means to achieve the State policies in Republic Act No. 9513, "to encourage the development and utilization of renewable energy resources as tools to effectively prevent or reduce harmful emissions and thereby balance the goals of economic growth and development with the protection of health and environment."[339] It asserts there is an undeniable relationship between the issuances and the purpose of encouraging investment in renewable energy that will protect health and environment.[340]

This Court rules that the Department of Energy acted within the scope of its authority in issuing its Certifications increasing the installation targets for solar and wind energy.

Republic Act No. 9513 designates the Department of Energy as the lead agency tasked to implement its provisions:

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[336] *Id.* at 799, 1292.

[337] *Id.* at 804, 1267, 1299.

[338] *Id.* at 806.

[339] *Id.* at 1299–1300.

[340] *Id.* at 1300.

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SECTION 5. *Lead Agency*. — The DOE shall be the lead agency mandated to implement the provisions of this Act.

Among other mandates, the Department of Energy is also tasked to promulgate the law's implementing rules and regulations, upon consultation with the Senate and House of Representatives Committees on Energy, relevant government agencies, and renewable energy stakeholders.

SECTION 33. *Implementing Rules and Regulations (IRR)*. — Within six (6) months from the effectivity of this Act, the DOE shall, in consultation with the Senate and House of Representatives Committees on Energy, relevant government agencies and RE stakeholders, promulgate the IRR of this Act.

In the Implementing Rules and Regulations, the Department of Energy's tasks and duties were further delineated, thus:

PART V
Organization and Renewable Energy Trust Fund
RULE 8
The Role of the Department of Energy

SECTION 22. *Lead Agency*. — The DOE shall be the lead agency mandated to implement the provisions of the Act and this IRR. In pursuance thereof and in addition to its functions provided for under existing laws, the DOE shall:

(a) Promulgate the RPS Rules;
(b) Establish the REM and direct the PEMC to implement changes in order to incorporate the rules specific to the operation of the REM under the WESM;
(c) Supervise the establishment of the RE Registrar by the PEMC;
(d) Promulgate the appropriate implementing rules and regulations necessary to achieve the objectives of the Green Energy Option program;
(e) Determine the minimum percentage of generation which may be sourced from available RE Resources of the NPC-SPUG or its successors-in-interest and/or qualified third parties in off-grid areas;
(f) Issue certification to RE Developers, local manufacturers, fabricators, and suppliers of locally-produced RE equipment

to serve as basis for their entitlement to incentives, as provided for in the Act;

(g) *Formulate and implement the NREP together with relevant government agencies;*

(h) Administer the Renewable Energy Trust Fund (RETF) as a special account in any of the government financial institutions identified under Section 29 of the Act;

(i) Recommend and endorse RE projects applying for financial assistance with government financial institutions pursuant to Section 29 of the Act;

(j) Encourage the adoption of waste-to-energy technologies pursuant to Section 30 of the Act;

(k) Determine the mechanisms in the grant of subsidy to electric consumers of Host LGUs, together with DOF, ERC, and NREB; and

(l) Perform such other functions as may be necessary, to attain the objectives of the Act. (Emphasis supplied)

These tasks are in addition to its mandates outlined in the EPIRA:

CHAPTER III

Role of the Department of Energy

SECTION 37. *Powers and Functions of the DOE*. — In addition to its existing powers and functions, the DOE is hereby mandated to supervise the restructuring of the electricity industry. In pursuance thereof, Section 5 of RA 7638 otherwise known as "The Department of Energy Act of 1992" is hereby amended to read as follows:

(a) Formulate policies for the planning and implementation of a comprehensive program for the efficient supply and economical use of energy consistent with the approved national economic plan and with the policies on environmental protection and conservation and maintenance of ecological balance, and provide a mechanism for the integration, rationalization, and coordination of the various energy programs of the Government;

(b) *Develop and update annually the existing Philippine Energy Plan, hereinafter referred to as 'The Plan', which shall provide for an integrated and comprehensive exploration, development, utilization, distribution, and conservation of energy resources, with preferential bias for environment-friendly, indigenous, and low-cost sources of energy.* The plan shall include a policy

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direction towards the privatization of government agencies related to energy, deregulation of the power and energy industry, and reduction of dependency on oil-fired plants. Said Plan shall be submitted to Congress not later than the fifteenth day of September and every year thereafter;

(c) Prepare and update annually a Power Development Program (PDP) and integrate the same into the Philippine Energy Plan. The PDP shall consider and integrate the individual or joint development plans of the transmission, generation, and distribution sectors of the electric power industry, which are submitted to the Department: *Provided, however*, That the ERC shall have exclusive authority covering the Grid Code and the pertinent rules and regulations it may issue;

(d) Ensure the reliability, quality and security of supply of electric power;

(e) Following the restructuring of the electricity sector, the DOE shall, among others:

(i) Encourage private sector investments in the electricity sector and promote development of indigenous and renewable energy sources;
(ii) Facilitate and encourage reforms in the structure and operations of distribution utilities for greater efficiency and lower costs;
(iii) In consultation with other government agencies, promote a system of incentives to encourage industry participants, including new generating companies and end-users to provide adequate and reliable electric supply; and
(iv) Undertake, in coordination with the ERC, NPC, NEA and the Philippine Information Agency (PIA), information campaign to educate the public on the restructuring of the electricity sector and privatization of NPC assets;

(f) Jointly with the electric power industry participants, establish the wholesale electricity spot market and formulate the detailed rules governing the operations thereof;

(g) Establish and administer programs for the exploration, transportation, marketing, distribution, utilization, conservation, stockpiling, and storage of *energy resources of all forms*, whether conventional or non-conventional;

(h) *Exercise supervision and control over all government activities relative to energy projects* in order to attain the goals embodied in Section 2 of RA 7638;

(i) *Develop policies and procedures and, as appropriate, promote a system of energy development incentives to enable and encourage electric power industry participants to provide adequate capacity to meet demand* including, among others, reserve requirements;

(j) Monitor private sector activities relative to energy projects in order to attain the goals of the restructuring, privatization, and modernization of the electric power sector as provided for under existing laws: *Provided*, That the Department shall endeavor to provide for an environment conducive to free and active private sector participation and investment in all energy activities;

(k) Assess the requirements of, determine priorities for, provide direction to, and disseminate information resulting from energy research and development programs for the optimal development of various forms of energy production and utilization technologies;

(i) Formulate and implement programs, including a system of providing incentives and penalties, for the judicious and efficient use of energy in all energy-consuming sectors of the economy;

(m) *Formulate and implement a program for the accelerated development of non-conventional energy systems and the promotion and commercialization of its applications;*

(n) Devise ways and means of giving direct benefit to the province, city, or municipality, especially the community and people affected, and equitable preferential benefit to the region that hosts the energy resource and/or the energy-generating facility: *Provided, however*, That the other provinces, cities, municipalities, or regions shall not be deprived of their energy requirements;

(o) Encourage private enterprises engaged in energy projects, including corporations, cooperatives, and similar collective organizations, to broaden the base of their ownership and thereby encourage the widest public ownership of energy-oriented corporations;

(p) Formulate such rules and regulations as may be necessary to implement the objectives of this Act; and

(q) Exercise such other powers as may be necessary or incidental to attain the objectives of this Act. (Emphasis supplied)

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The FIT Rules state that the installation targets are to be set by the National Renewable Energy Board.

1.3. Definitions

Installation Target refers to the megawatt capacity per RE Technology and the number of years that it shall be achieved *as set by the NREB*.[341]

The FIT Rules state:

5. Determination of FITs

The FITs that the NREB shall calculate and submit to the ERC for approval shall be in accordance with the methodology that the ERC shall adopt. For the initial FIT's, the NREB may base its calculations on a reference cost study for each technology based on a real candidate project or a hypothetical one depending on the available information. The project to be chosen shall be representative of the average conditions of the renewable energy plant operating in compliance or at par with applicable international technical standards and practices for such technologies, and the pricing study should consider also all non-price incentives in R.A. No. 9513.

The *NREB shall propose that FIT's taking into account the expected MW capacity for each technology that it shall set as installation targets and the number of years when this target shall be achieved*.

The FITs shall cover the costs of the plant, including the costs of other services that the plant may provide, as well as the costs of connecting the plant through the transmission or distribution network, calculated over the expected life of the plant, and provide for the market based weighted average cost of capital (WACC) and determining return on invested capital.

The FIT Rules provide:

8. Procedure for the setting of the FITs

Upon the effectivity of these rules, the ERC shall issue a Notice of Rulemaking for the establishment and fixing of the FITs in accordance with these Rules. The filing shall conform to the procedures in the ERC Rules of Practice and Procedure (ERC RPP) on Rule-making. In the said Notice, the ERC shall direct NREB within the period stated therein *to*

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[341] *Rollo* (G.R. No. 215579), p. 67.

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submit its recommended FITs. In its submission, NREB shall provide discussion on the installation targets per technology, which it shall ensure are consistent with the Renewable Portfolio Standards (RPS) and whatever RPS Rules that will be established by the DOE and the details and results of its reference cost study for each technology. (Emphasis supplied)

This Court notes, however, that under Section 27 of Republic Act No. 9513, the National Renewable Energy Board recommends specific actions to facilitate the implementation of the National Renewable Energy Program by the Department of Energy:

SECTION 27 *Creation of the National Renewable Energy Board (NREB)*. — The NREB is hereby created . . . .

The NREB shall have the following powers and functions:

(a) Evaluate and recommend to the DOE the mandated RPS and minimum RE generation capacities in off-grid areas, as it deems appropriate;

(b) Recommend specific actions to facilitate the implementation of the National Renewable Energy Program (NREP) to be executed by the DOE and other appropriate agencies of government and to ensure that there shall be no overlapping and redundant functions within the national government departments and agencies concerned;

(c) Monitor and review the implementation of the NREP, including compliance with the RPS and minimum RE generation capacities in off-grid areas;

(d) Oversee and monitor the utilization of the Renewable Energy Trust Fund created pursuant to Section 28 of this Act and administered by the DOE; and

(e) Perform such other functions, as may be necessary, to attain the objectives of this Act.

Ultimately, thus, it is the Department of Energy that implements the National Renewable Energy Program.

Moreover, Section 1.5.1 of the FIT Guidelines provides that the application of the FIT Allowance shall be supported by data from the previous year. The FIT Administrator is authorized to request and secure data and information it needs to complete and file the application for approval of the FIT Allowance from the Department of Energy:

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1.5. Application and Approval of the Annual FIT-All

1.5.1. Procedure

Except for its initial setting, the FIT-All shall be determined and approved by the ERC on an annual basis no later than October 31 of the current calendar year (Year t). The application for the setting of the annual FIT-All shall be filed by the Administrator no later than July 31 of the same year. The FIT-All so approved shall be applied to the succeeding calendar year.

The application shall be supported by data from the past twelve (12) months from date of filing, or such other period specified in the Guidelines. The ERC hereby authorizes the Administrator to request and secure *from the DOE*, National Grid Corporation of the Philippines (NGCP), PEMC, PSALM, National Electrification Administration ("NEA"), Eligible RE Plants, Metering Services Providers, DUs and Retail Electricity Suppliers ("RES"), and such entities *are enjoined to provide, the data and information as required by these Guidelines for the Administrator to complete and file the application for approval of that FIT-All in a timely manner*. The application must clearly state the following, among others, and shall comply with the ERC's Rules of Practice and Procedure and the FIT Rules:

(i) Forecast National Sales;
(ii) WESM prices and applicable Forecast Cost Recovery Revenues for Eligible RE-Plants- Non-WESM;
(iii) Forecast Annual RE Generation; and
(iv) Other factors are provided in these Guidelines.

Considering the Department of Energy's powers, it thus cannot be said that it acted outside the scope of its authority in issuing its Certifications increasing the installation targets for solar and wind energy.

VI

Ancheta and Citizenwatch argue that the implementation of FIT Allowance is an exercise of the taxation power because the purpose of its collection is to raise revenue.[342] Ancheta discusses that it is a tax measure "used as an implement of police power to

[342] *Rollo* (G.R. No. 215579), pp. 1331, 1583, 1597.

promote the welfare of [renewable energy] developers," similar to coconut levy funds and stabilization fees for the promotion of the sugar industry.[343] However, it violates the rule that a tax must be for a public purpose because it is levied to guarantee payment to investors constructing renewable energy plants. It thus benefits a very limited part of the population, i.e. only renewable energy developers and private entities, at the expense of the public.[344]

Assuming that the same is an exercise of police power, Ancheta[345] and Citizenwatch[346] argue it is still unconstitutional for being an invalid exercise of police power. They insist that while the purpose of Republic Act No. 9513 is of public interest, the means employed to achieve it is unreasonable, oppressive, arbitrary, beyond what is necessary to achieve the objective, and to the prejudice of the public.[347] They claim payment is made without any assurance that the purpose of the FIT System will be achieved. They insist collection of the FIT Allowance does not reasonably ensure the development of renewable energy resources.[348]

Moreover, Citizenwatch maintains it is cruel to impose the advanced collection of the FIT prior to the generation of the electricity with no assurance that the production will even materialize, especially to those "who need to stretch every peso as far as possible just to live a decent life."[349] Ancheta contends that the public purpose may still be achieved if the FIT Allowance is calculated, billed, and paid when the FIT eligible plants have actually operated and supplied power to the grid, and consumers have actually used the renewable energy.[350]

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[343] *Id.* at 1597–1599.

[344] *Id.* at 1331, 1599.

[345] *Id.* at 1583, 1597.

[346] *Id.* at 1337.

[347] *Id.* at 1596.

[348] *Id.* at 1337.

[349] *Id.*

[350] *Id.* at 1596.

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The Energy Regulatory Commission and Department of Energy counter that the imposition of the FIT Allowance is not a tax measure, but a valid exercise of police power.[351] It is imposed for a regulatory purpose, i.e. accelerating the development of emerging renewable energy resources.[352] It was not imposed to generate revenue, but to ensure the attainment of the State's policy objectives of developing and enhancing the growth of renewable energy resources in the Philippines.[353]

Both the Energy Regulatory Commission and Department of Energy also claim that the imposition satisfies the requisites of a valid exercise of police power.

First, they claim that there is a lawful subject. They allege that the FIT System is meant to incentivize renewable developers to invest in the generation of power from renewable energy to advance energy self-reliance, decreased dependence on fossil-based energy, and provision of adequate capacity to meet energy demands.[354] They maintain that the benefits to the public outweigh petitioners' misgivings.[355]

Second, they claim that there are lawful means to achieve the public purpose. They argue that the FIT Allowance is reasonably necessary to accomplish the objectives of Republic Act No. 9513 and the EPIRA.[356] It also does not result in deprivation of property.[357]

Third, they reiterate that the collection of FIT Allowance is reasonable compensation for energy actually supplied to electricity consumers, and in all instances, only to the extent of their actual

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[351] *Id.* at 1397–1398.

[352] *Id.*

[353] *Id.* at 1431; *Rollo* (G.R. No. 235624), p. 723.

[354] *Rollo* (G.R. No. 235624), p. 884.

[355] *Id.*

[356] *Id.* at 883–884.

[357] *Id.* at 883.

electricity usage.[358] The safeguards in place ensure that consumers only pay for renewable energy actually produced or consumed.[359]

Under the FIT Guidelines, eligible renewable energy plants will only be paid the amount per kilowatt hour of electricity actually generated, produced, and delivered to the transmission or distribution network.[360] The amount paid by petitioner-consumers in their electricity bill is the actual amount used by them multiplied by the FIT rate.[361] Eligibility for the FIT System also involves an elaborate and competitive process.[362] It entails the submission of several requirements and a thorough procedure before a renewable energy developer is issued a certificate of endorsement.[363] They will not be deemed eligible unless it is in actual operation, and will not be paid if they have not yet started commercial operations.[364]

Petitioner AGHAM also challenges Section 6 of Republic Act No. 9513 on Renewable Portfolio Standards as an invalid exercise of police power for being confiscatory and unreasonable.[365] It claims that the objectives of Republic Act No. 9513 may be attained without causing the burden it imposes on electricity consumers.[366] It alleges that the Renewable Portfolio Standard is meant to guarantee the return of investments of private entities. It explains that the Renewable Portfolio Standard forces distribution utilities to secure a percentage of generation from renewable energy resources of whatever costs and regardless of their circumstances. This ensures a demand for electricity produced by renewable energy sources. The increase in demand for renewable energy-sourced electricity will necessarily entail an increase

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[358] *Id.* at 875, 884.

[359] *Rollo* (G.R. No. 215579), p. 1436.

[360] *Id.* at 1435; *Rollo* (G.R. No. 235624), p. 878.

[361] *Rollo* (G.R. No. 235624), p. 879.

[362] *Id.* at 876.

[363] *Id.*

[364] *Id.* at 878.

[365] *Id.* at 52, 54.

[366] *Id.* at 55.

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in the cost of the electricity, which will ultimately be borne by electricity consumers. Consequently, it will only add to the already burdensome charges and costs paid by consumers. It maintains that promoting renewable energy resources could be done in a less intrusive and confiscatory manner.[367]

The Energy Regulatory Commission and Department of Energy counter that the Renewable Portfolio Standard is a valid exercise of police power.[368] The fact that it will guarantee the return of investments of renewable energy developers and its cost will be borne by consumers is not a valid ground to invalidate the provision.[369] They cite *Gerochi*, where this Court allowed a universal charge on consumers imposed in pursuit of the State's exercise of its police power.[370] Similarly, the Renewable Portfolio Standard is meant to accelerate the exploration and development of renewable energy resources by attracting more investors to put their money in the industry. Moreover, it is to ensure the viability of the renewable energy industry at its nascent stage. The fiscal and nonfiscal incentives provided in Republic Act No. 9513 reveal the intention to achieve its declared policies.[371]

We rule that the FIT System under Republic Act No. 9513 is an exercise of the State's police power, not power of taxation.

Police power is the power of the State to interfere with life, liberty, or property through legislation for the benefit of general welfare.[372] Its main objective is to regulate conduct or behavior for the common good.[373] In *Carlos Superdrug Corp. v. Department of Social Welfare and Development*,[374] this Court held that:

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[367] *Id.* at 55–56.

[368] *Id.* at 889.

[369] *Id.* at 892.

[370] *Id.*

[371] *Id.* at 894.

[372] *See Kilusang Mayo Uno v. Aquino III*, 850 Phil. 1168, 1214-1215 (2019) [Per J. Leonen, *En Banc*].

[373] *See Morfe v. Mutuc*, 130 Phil. 415 (1968) [Per J. Fernando, *En Banc*].

[374] 553 Phil. 120 (2007) [Per J. Azcuna, *En Banc*].

Police power is not capable of an exact definition, but has been purposely veiled in general terms to underscore its comprehensiveness to meet all exigencies and provide enough room for an efficient and flexible response to conditions and circumstances, thus assuring the greatest benefits. Accordingly, it has been described as "the most essential, insistent and the least limitable of powers, extending as it does to all the great public needs." It is "[t]he power vested in the legislature by the constitution to make, ordain, and establish all manner of wholesome and reasonable laws, statutes, and ordinances, either with penalties or without, not repugnant to the constitution, as they shall judge to be for the good and welfare of the commonwealth, and of the subjects of the same."[375]

In the same case *Carlos Superdrug Corp. v. Department of Social Welfare and Development*, the Court discusses that the exercise of police power may interfere with property rights for the sake of the general welfare:

> For this reason, when the conditions so demand as determined by the legislature, property rights must bow to the primacy of police power because property rights, though sheltered by due process, must yield to general welfare.
>
> Police power as an attribute to promote the common good would be diluted considerably if on the mere plea of petitioners that they will suffer loss of earnings and capital, the questioned provision is invalidated. Moreover, in the absence of evidence demonstrating the alleged confiscatory effect of the provision in question, there is no basis for its nullification in view of the presumption of validity which every law has in its favor.
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> . . . .
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> The Court is not oblivious of the retail side of the pharmaceutical industry and the competitive pricing component of the business. While the Constitution protects property rights, petitioners must accept the realities of business and the State, in the exercise of police power, can intervene in the operations of a business which may result in an impairment of property rights in the process.
>
> Moreover, the right to property has a social dimension. While Article XIII of the Constitution provides the precept for the protection of

[375] *Id.* at 132.

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property, various laws and jurisprudence, particularly on agrarian reform and the regulation of contracts and public utilities, continuously serve as a reminder that the right to property can be relinquished upon the command of the State for the promotion of public good.[376]

On the other hand, the power of taxation is the State's power to levy taxes for use for public purposes. Its main objective is to generate revenue. While it may be used to implement police power, the State is deemed to be exercising power of taxation if the legislation's main purpose is to substantially raise amounts for public purposes. In *Planters Products, Inc. v. Fertiphil Corp.*:[377]

> Police power and the power of taxation are inherent powers of the State. These powers are distinct and have different tests for validity. Police power is the power of the State to enact legislation that may interfere with personal liberty or property in order to promote the general welfare, while the power of taxation is the power to levy taxes to be used for public purpose. The main purpose of police power is the regulation of a behavior or conduct, while taxation is revenue generation. The "lawful subjects" and "lawful means" tests are used to determine the validity of a law enacted under the police power. The power of taxation, on the other hand, is, circumscribed by inherent and constitutional limitations.
>
> We agree with the RTC that the imposition of the levy was an exercise by the State of its taxation power. While it is true that the power of taxation can be used as an implement of police power, the primary purpose of the levy is revenue generation. If the purpose is primarily revenue, or if revenue is, at least, one of the real and substantial purposes, then the exaction is properly called a tax.
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> In *Philippine Airlines, Inc. v. Edu*, it was held that the imposition of a vehicle registration fee is not an exercise by the State of its police power, but of its taxation power, thus:
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> > It is clear from the provisions of Section 73 of Commonwealth Act 123 and Section 61 of the Land Transportation and Traffic Code that the legislative intent and purpose behind the law requiring owners of vehicles to pay for their registration is mainly to raise funds for the construction and maintenance of highways and

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[376] *Id.* at 132–135.

[377] 572 Phil. 270 [Per J. R. T. Reyes, Third Division].

> to a much lesser degree, pay for the operating expenses of the administering agency.... Fees may be properly regarded as taxes even though they also serve as an instrument of regulation.
>
> Taxation may be made the implement of the state's police power (*Lutz v. Araneta*, 98 Phil. 148). If the purpose is primarily revenue, or if revenue is, at least, one of the real and substantial purposes, then the exaction is properly called a tax. Such is the case of motor vehicle registration fees. The same provision appears as Section 59(b) in the Land Transportation Code. It is patent therefrom that the legislators had in mind a regulatory tax as the law refers to the imposition on the registration, operation or ownership of a motor vehicle as a "tax or fee." ... Simply put, if the exaction under [Republic] Act 4136 were merely a regulatory fee, the imposition in Rep. Act 5448 need not be an "additional" tax. [Republic] Act 4136 also speaks of other "fees" such as the special permit fees for certain types of motor vehicles (Sec. 10) and additional fees for change of registration (Sec. 11). These are not to be understood as taxes because such fees are very minimal to be revenue-raising. Thus, they are not mentioned by Sec. 59(b) of the Code as taxes like the motor vehicle registration fee and chauffeurs' license fee. Such fees are to go into the expenditures of the Land Transportation Commission as provided for in the last proviso of Sec. 61.[378] (Citations omitted)

In *Gerochi*, this Court differentiated the State's police power from its taxation power:

> The power to tax is an incident of sovereignty and is unlimited in its range, acknowledging in its very nature no limits, so that security against its abuse is to be found only in the responsibility of the legislature which imposes the tax on the constituency that is to pay it. It is based on the principle that taxes are the lifeblood of the government, and their prompt and certain availability is an imperious need. Thus, the theory behind the exercise of the power to tax emanates from necessity; without taxes, government cannot fulfill its mandate of promoting the general welfare and well-being of the people.
>
> On the other hand, police power is the power of the state to promote public welfare by restraining and regulating the use of liberty and property. It is the most pervasive, the least limitable, and the most demanding of the three fundamental powers of the State. The justification is found in

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[378] *Id.* at 293–295.

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the Latin maxims *salus populi est suprema lex* (the welfare of the people is the supreme law) and *sic utere tuo ut alienum non laedas* (so use your property as not to injure the property of others). As an inherent attribute of sovereignty which virtually extends to all public needs, police power grants a wide panoply of instruments through which the State, as *parens patriae*, gives effect to a host of its regulatory powers. We have held that the power to "regulate" means the power to protect, foster, promote, preserve, and control, with due regard for the interests, first and foremost, of the public, then of the utility and of its patrons.

The conservative and pivotal distinction between these two powers rests in the purpose for which the charge is made. If generation of revenue is the primary purpose and regulation is merely incidental, the imposition is a tax; but if regulation is the primary purpose, the fact that revenue is incidentally raised does not make the imposition a tax.[379] (Citations omitted)

In the same case, it was ruled that the universal charge imposed on all electricity end users under Section 34 of the EPIRA is an imposition done in the exercise of the State's police power because of its regulatory character of ensuring the viability of the country's electric power industry:

In exacting the assailed Universal Charge through Sec. 34 of the EPIRA, the State's police power, particularly its regulatory dimension, is invoked. Such can be deduced from Sec. 34 which enumerates the purposes for which the Universal Charge is imposed and which can be amply discerned as regulatory in character. The EPIRA resonates such regulatory purposes, thus:

. . . .

From the aforementioned purposes, it can be gleaned that the assailed Universal Charge is not a tax, but an exaction in the exercise of the State's police power. Public welfare is surely promoted.

Moreover, it is a well-established doctrine that the taxing power may be used as an implement of police power. In *Valmonte v. Energy Regulatory Board, et al.* and in *Gaston v. Republic Planters Bank*, this Court held that the Oil Price Stabilization Fund (OPSF) and the Sugar Stabilization Fund (SSF) were exactions made in the exercise of the police power. The

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[379] 554 Phil. 563, 579–580 (2007) [Per J. Nachura, *En Banc*].

doctrine was reiterated in *Osmeña v. Orbos* with respect to the OPSF. Thus, we disagree with petitioners that the instant case is different from the aforementioned cases. With the Universal Charge, a Special Trust Fund (STF) is also created under the administration of PSALM. The STF has some notable characteristics similar to the OPSF and the SSF, *viz.*:

. . . .

This feature of the Universal Charge further boosts the position that the same is an exaction imposed primarily in pursuit of the State's police objectives. The STF reasonably serves and assures the attainment and perpetuity of the purposes for which the Universal Charge is imposed, i.e., to ensure the viability of the country's electric power industry.[380] (Citations omitted)

In this case, the FIT System is provided for under Section 7 of Republic Act No. 9513. The provision is clear that its purpose is to accelerate the development of emerging renewable energy resources:

SECTION 7. *Feed-In Tariff System*. — To accelerate the development of emerging renewable energy resources, a feed-in tariff system for electricity produced from wind, solar, ocean, run-of-river hydropower and biomass is hereby mandated.

This was affirmed in the Implementing Rules and Regulations of Republic Act No. 9513:[381]

SECTION 5. *Feed-in Tariff (FiT) System*. —

The Feed-in Tariff system is a scheme that involves the obligation on the part of electric power industry participants to source electricity from RE generation at a guaranteed fixed price applicable for a given period of time, which shall in no case be less than twelve (12) years, to be determined by the ERC.

(1) *Purpose: This system shall be adopted to accelerate the development of emerging RE Resources through a fixed tariff mechanism.*

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[380] *Id.* at 580–584.

[381] Department of Energy, DOE Circular No. DC2009-05-0008 (2009), Rules and Regulations Implementing Republic Act No. 9513 (Renewable Energy Act of 2008).

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> (b) *Mandate:* A FiT system shall be mandated for wind, solar, ocean, run-of-river hydropower, and biomass energy resources[.] (Emphasis supplied)

This purpose of accelerating the development of emerging renewable energy resources is consistent with the State policies that Republic Act No. 9513 seeks to achieve:

> SECTION 2. *Declaration of Policies*. — It is hereby declared the policy of the State to:
>
> (a) *Accelerate the exploration and development of renewable energy resources such as, but not limited to, biomass, solar, wind, hydro, geothermal and ocean energy sources, including hybrid systems, to achieve energy self-reliance, through the adoption of sustainable energy development strategies to reduce the country's dependence on fossil fuels and thereby minimize the country's exposure to price fluctuations in the international markets, the effects of which spiral down to almost all sectors of the economy;*
>
> (b) Increase the utilization of renewable energy by institutionalizing the development of national and local capabilities in the use of renewable energy systems, and promoting its efficient and cost-effective commercial application by providing fiscal and nonfiscal incentives;
>
> (c) Encourage the development and utilization of renewable energy resources as tools to effectively prevent or reduce harmful emissions and thereby balance the goals of economic growth and development with the protection of health and the environment; and
>
> (d) Establish the necessary infrastructure and mechanism to carry out the mandates specified in this Act and other existing laws. (Emphasis supplied)

The purpose of the amounts collected from the FIT System is not to generate revenue for the State, but to encourage participation in the production of electricity from renewable energy sources. It ensures the payment of a fixed tariff to those who produce electricity from emerging renewable energy resources. In this way, the development of emerging renewable energy resources may be accelerated.

We also rule that both the FIT System and the Renewable Portfolio Standard are valid exercises of police power.

The valid exercise of police power requires the presence of a lawful subject and lawful means and that there must be a reasonable relation between the purpose and the means.[382] In *Acosta v. Ochoa*:[383]

> [T]he test to determine the validity of a police power measure: (1) "[t]he interests of the public generally, as distinguished from those of a particular class, require the exercise of the police power"; and (2) "[t]he means employed are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals."[384]

We find that both the FIT System and the Renewable Portfolio Standard satisfy this test.

The right of the people to a balanced and healthful ecology is provided for in the Constitution. Article II, Section 16 states:

> SECTION 16. The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.

In Article XII, Section 2 of the Constitution:

> SECTION 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty *per centum* of whose capital is owned by such

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[382] *Kilusang Mayo Uno v. Aquino III*, 850 Phil. 1168, 1215 (2019) [Per J. Leonen, *En Banc*].

[383] 865 Phil. 400 (2019) [Per J. Leonen, *En Banc*].

[384] *Id.* at 482.

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citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.

The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.

The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fishworkers in rivers, lakes, bays, and lagoons.

The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources.

The President shall notify the Congress of every contract entered into in accordance with this provision, within thirty days from its execution.

Article XII, Section 1 of the Constitution also states the goals of the national economy:

SECTION 1. The goals of the national economy are a more equitable distribution of opportunities, income, and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and an expanding productivity as the key to raising the quality of life for all, especially the underprivileged.

The State shall promote industrialization and full employment based on sound agricultural development and agrarian reform, through industries that make full and efficient use of human and natural resources, and which are competitive in both domestic and foreign markets. However, the State shall protect Filipino enterprises against unfair foreign competition and trade practices.

In the pursuit of these goals, all sectors of the economy and all regions of the country shall be given optimum opportunity to develop. Private enterprises, including corporations, cooperatives, and similar collective organizations, shall be encouraged to broaden the base of their ownership.

As earlier mentioned, the FIT System and the Renewable Portfolio Standards seek to effectuate the State policies under Republic Act No. 9513, a reading of which reveals the intent to develop renewable energy in the country to positively impact both the *national economy* and the *environment*. While the FIT System provides for the ensured payment to renewable energy developers, its purpose is ultimately meant to benefit public interests by reducing our dependence on fossil fuels and minimizing the State's exposure to price fluctuations in international markets.

We further find that the means employed to achieve this purpose is reasonable. The development of renewable energy is largely reliant on stakeholders in the electric industry that have the capacity to advance this objective. Thus, the incentivization of renewable energy developers to ensure the realization of the enumerated State policies is reasonably necessary and directly related.

Petitioners likewise failed to sufficiently show that its implementation is arbitrary, oppressive, or detrimental. They heavily rely on conjecture—the possibility of abuse, or the lack of proof of the legislation's effectivity. Absent any concrete proof however, this Court hesitates to strike down the legislative act. "Every law has in its favor the presumption of constitutionality, and to justify its nullification, there must be a clear and unequivocal breach of the Constitution, and not one that is doubtful, speculative or argumentative."[385]

Finally, the reasonableness and effectiveness of FIT Systems are recognized in other countries:

A FiT is an energy supply policy which mandates the utilities enter into long-term, fixed price contracts with RE generators to purchase their

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[385] *Arceta v. Judge Mangrobang*, 476 Phil. 106, 115 (2004) [Per J. Quisimbing, *En Banc*].

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electricity ahead of fossil-fuel generated electricity. Specifically, FiTs are a per kilowatt hour payment for electricity produced by renewable power with the payment amount differing depending on the generating technology, and the size and geographical location of the technology. The goal of the FiT is to encourage deployment of renewable power technology by making production of electricity from these sources competitive with conventionally fueled electricity.

FiTs are not taxes or tariffs as commonly understood in the United States. Rather, FiTs are best understood as a consumer funded subsidy for RE. FiTs work by requiring utilities or wholesale purchasers of electricity to purchase RE generated power from wind turbine operators, for example, at rates set by the government. The utilities then pass the costs on to the consumers. Thus, in the end, FiTs succeed in increasing RE generation because the government-set price encourages production and use while the costs are passed on to the consumer.

Of all policies targeted to increase renewable power production, FiTs result in the highest amount of installed RE capacity. FiTs are successful because they are market mechanisms that directly reward RE production. FiTs allow wholesale prices to be set to promote the targeted renewable technology for a specific geographic location. The prices are typically reduced over the life of the program to encourage early investment and deployment.

. . . .

The additional costs to consumers are outweighed by four important benefits to developing RE capacity through FiTs. First, fossil fuels, the main sources of electricity today, cause air pollution – including emissions of fine particulates, nitrogen dioxide, sulfur dioxide, and carbon dioxide – that contributes to public in health impacts, and to climate change and its concomitant effects. Successful FiTs aid in and avoiding these negative effects associated with fossil fuel-based electricity because they offset the need for fossil-fuel generated electricity and its associated pollution.

Second, the Energy Information Administration estimates electricity demand rising 3 percent per year over the next 25 years. With this rise in demand comes the need for more supply. Electricity generated from energy sources like wind, sun, and water can help meet demand growth while displacing or replacing polluting fossil-fuel based electricity.

Third, FiTS could help stabilize energy markets and protect electricity grids from disruption by encouraging more distributed generation, which reduces reliance on large centralized electricity generators. Typically,

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electricity is distributed from remote, large powerproducing plants that send the electrons over long distances to the areas which consume the electrons. Distributed generation, on the other hand, usually use small-scale renewable power to generate electricity close to the site where it will be consumed, and any excess power can be returned to the grid.

Finally, FiTs are likely to create jobs, especially in planning, construction, and maintenance of RE projects. In the short term, FiTs may cause higher electricity rates for consumers – when compared against fossil-fueled electricity rates – and a reduction in fossil-fueled electricity jobs. However, in the long run, FiTs are expected to create new jobs at a rate that outpaces lost jobs thus resulting in a net positive economic effect.[386]

VII

We next rule on whether respondents sufficiently complied with due process requirements.

The parties argue over respondents' compliance with due process requirements in: (i) the initial implementation of the FIT System (i.e., issuance of the FIT Rules and FIT Guidelines, the filing of the NREB of its *Petition to Initiate*); and (ii) the issuance of the Department of Energy's Certifications increasing the installation targets and the corresponding Energy Regulatory Commission's Decisions and Orders adjusting the Solar and Wind FIT Rates and provisionally approving the 2016 and 2017 FIT Allowance.

The constitutional right to due process is found in Article III, Section 1 of the Constitution:

SECTION 1. No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws.

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[386] Ivan Lieben and Ian Boisvert, *Making Renewable Energy FiT: A Feed-in-Tariff Certifying Body Could Accelerate Renewable Energy Deployment in the United States*, 52 NATURAL RESOURCES JOURNAL 157, 161–165 (2022).

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The restriction of a person's life, liberty, or property is constitutionally allowed so long as the right to due process of law is respected. Due process is accorded procedurally and substantively. In both instances, the constraint upon the right must be consistent with fairness, reason, and justice, and free from caprice and arbitrariness.[387] In *Legaspi v. City of Cebu*:[388]

> The guaranty of due process of law is a constitutional *safeguard against any arbitrariness* on the part of the Government, whether committed by the Legislature, the Executive, or the Judiciary. It is a protection essential to every inhabitant of the country, for, as a commentator on Constitutional Law has vividly written:
>
> > . . . If the law itself unreasonably deprives a person of his life, liberty, or property, he is denied the protection of due process. If the enjoyment of his rights is conditioned on an *unreasonable* requirement, due process is likewise violated. Whatsoever be the source of such rights, be it the Constitution itself or merely a statute, its unjustified withholding would also be a violation of due process. Any government act that militates against the *ordinary norms of justice or fair play* is considered an infraction of the great guaranty of due process; and this is true whether the denial involves violation merely of the procedure prescribed by the law or affects the very validity of the law itself.[389] (Emphasis supplied, citation omitted)

In *Manila International Ports Terminal, Inc. v. Philippine Ports Authority*:[390]

> The 1935, 1973, and 1987 Constitutions command that no person shall be deprived of life, liberty, or property without due process of law. This provision guarantees protection against *any form of arbitrariness* on the part of the government, whether committed by the *Legislature*, Executive, or the Judiciary:

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[387] *Philippine Association of Free Labor Unions v. Bureau of Labor Relations*, 161 Phil. 179, 188 (1976) [Per J. Fernando, Second Division].

[388] 723 Phil. 90 (2013) [Per J. Bersamin, *En Banc*].

[389] *Id.* at 106–107.

[390] 918-A Phil. 144 (2021) [Per J. Hernando, *En Banc*].

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>
> > . . . If the law itself unreasonably deprives a person of his life, liberty, or property, he is denied the protection of due process. If the enjoyment of his rights is conditioned on an *unreasonable* requirement, due process is likewise violated. Whatsoever be the source of such rights, be it the Constitution itself or merely a statute, its unjustified withholding would also be a violation of due process. Any government act that militates against the ordinary norms of justice or fair play is considered an infraction of the great guaranty of due process; and this is true whether the denial involves violation merely of the procedure prescribed by the law or affects the very validity of the law itself.

There are two components of due process. The first, *procedural due process, pertains to the procedures that the government must follow before it deprives a person of life, liberty, or property*; the second, *substantive due process, to the justification for the denial or restriction on life, liberty, or property*.

While due process has no exact definition, the standard in determining whether a person was accorded due process is whether the restriction on the person's life, liberty, or property is *consistent with fairness, reason, and justice, and free from caprice and arbitrariness*. This standard applies both to procedural and substantive due process. As applied to procedural due process, the question to be asked is whether the person was given sufficient notice and opportunity to be heard. On the other hand, as applied to substantive due process, the question is whether such deprivation or restriction is necessary and fair to the affected parties.

. . . .

As discussed, due process guarantees protection against *any form of arbitrariness* on the part of the government, including the Legislature. Any government act that militates against the ordinary norms of *justice* or *fair play* is considered a violation of the guaranty of due process. This is consistent with the nature of due process as *dependent on the circumstances and the necessities of the situation*, and is *anchored on fairness and equity*. As described by Justice Jose C. Vitug:

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> Like "public concern," the term due process does not admit of any restrictive definition. *Justice Frankfurter has viewed this flexible concept, aptly I believe, as being ". . . compounded by history, reason, the past course of decisions, and stout confidence in the democratic faith." The framers of our own Constitution, it would seem, have deliberately intended, to make it malleable to the ever-changing milieu of society. Hitherto, it is dynamic and resilient, adaptable to every situation calling for its application that makes it appropriate to accept an enlarged concept of the term as and when there is a possibility that the right of an individual to life, liberty and property might be diffused.* Verily, whenever there is an *imminent threat to the life, liberty or property of any person* in any proceeding conducted by or under the auspices of the State, his right to due process of law, when demanded, must not be ignored.[391] (Emphasis supplied; citations omitted)

Procedural due process refers to the manner in which the deprivation of life, liberty, or property was executed. It requires the affected persons sufficient notice or an opportunity to be heard. Substantive due process concerns itself with the justification for the deprivation of liberty or property. It must be fair, reasonable, and just. In *White Light Corp. v. City of Manila*:[392]

> The primary constitutional question that confronts us is one of due process, as guaranteed under Section 1, Article III of the Constitution. Due process evades a precise definition. The purpose of the guaranty is to prevent arbitrary governmental encroachment against the life, liberty and property of individuals. The due process guaranty serves as a *protection against arbitrary regulation or seizure*. Even corporations and partnerships are protected by the guaranty insofar as their property is concerned.
>
> The due process guaranty has traditionally been interpreted as imposing two related but distinct restrictions on government, "procedural due process" and "substantive due process". Procedural due process refers to the procedures that the government must follow before it deprives a person of life, liberty, or property. Procedural due process concerns itself with government action adhering to the established process when

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[391] *Id.* at 166–170.

[392] 596 Phil. 444 (2009) [Per J. Tinga, *En Banc*].

it makes an intrusion into the private sphere. Examples range from the form of notice given to the level of formality of a hearing.

If due process were confined solely to its procedural aspects, there would arise absurd situation of arbitrary government action, provided the proper formalities are followed. Substantive due process completes the protection envisioned by the due process clause. It inquires whether the government has *sufficient justification* for depriving a person of life, liberty, or property.[393] (Emphasis supplied, citations omitted)

In *Associated Communications & Wireless Services, Ltd. v. Dumlao*:[394]

In order to fall within the protection of this provision, two conditions must concur, namely, that there is a deprivation and that such deprivation is done without proper observance of due process. When one speaks of due process of law, a distinction must be made between matters of procedure and matters of substance. In essence, procedural due process "refers to the method or manner by which the law is enforced," while substantive due process "requires that the law itself, not merely the procedures by which the law would be enforced, is *fair, reasonable, and just*."[395] (Emphasis supplied, citation omitted)

We first discuss respondents' compliance with substantive due process.

VII(A)

As to substantive due process, this Court notes that the parties argue over the reasonableness and arbitrariness of the burden imposed on consumers by respondents' issuances.

In addition to the arguments stated by the parties on police power, AGHAM claims the Department of Energy Certifications increasing the installation targets and the consequential Energy Regulatory Commission Issuances that increased the FIT Rate result in unlawful deprivation of property without due process of

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[393] *Id.* at 461.

[394] 440 Phil. 787 [Per J. Carpio, First Division].

[395] *Id.* at 804.

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law.[396] It claims that these issuances are unreasonable, arbitrary, and oppressive.[397] They do not further the interests of the public, and instead add an onerous burden to electricity consumers in favor of private entities.[398]

They explain that the increase in installation targets were issued without the conduct of technical studies and research to support it.[399] There was thus no justification for it despite its impact on the economy, standard of living, employment, and environment.[400] It has also resulted in a significant rise in electricity costs, claiming that the total FIT payments of electricity consumers would already amount to PHP 821,579,218,000.00 for a period of 20 years.[401] Despite these costs, benefits from these technologies are limited in terms of addressing the power supply shortage.[402]

AGHAM further questions the reasonableness of choosing solar and wind energy to address the power supply shortage. It points that solar technology is the most expensive infrastructure to build, but has limited contribution in addressing the power supply shortage as compared to other renewable energy sources.[403] They cite the power statistics of the Department of Energy that allegedly reveal that while solar generation is high during March and April, system peak demand for Luzon occurs in May or June.[404] It further points that Negros Occidental is now suffering from the saturation of solar plants resulting in overcapacity of solar energy generated electricity, despite lack of demand in the province and transmission constraints to the grid.[405] The electricity generated

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396 *Rollo* (G.R. No. 235624), pp. 15–16.

397 *Id.* at 42.

398 *Id.* at 38, 43.

399 *Id.* at 43.

400 *Id.*

401 *Id.* at 45.

402 *Id.* at 47.

403 *Id.*

404 *Id.*

405 *Id.* at 48.

cannot be maximized and will not benefit the public, but the plants will be entitled to the FIT.[406] As to wind energy, it allegedly requires a high initial investment than fossil-fueled generators, but is not a dependable source of base load power because it is not constant and its production varies all the time.[407]

AGHAM also asserts that in terms of environmental impact, the Philippines does not substantially contribute to carbon emissions globally, as 80% of which comes from developed countries.[408] Thus, the shift to renewable energy should not be made abruptly or drastically. The minimal impact on the environment should be weighed against the heavy burden passed to electricity consumers.[409]

AGHAM also points that non-FIT eligible solar plants have offered lower rates than the FITs approved by the Energy Regulatory Commission.[410] Several distribution utilities have power supply agreements with solar plants with cheaper rates compared to the Solar FIT Rate of PHP 8.69/kWh.[411] It also claims that the increase in the installation targets further raised the FIT Allowance Rate by 450% from the original rate, thus showing its confiscatory nature.[412]

It claims that the Energy Regulatory Commission itself recognized that the increase in the FIT Allowance Rate has a negative impact on consumers in its Decision dated May 9, 2017 where it discussed that the FIT Allowance fund is no longer sufficient to pay the eligible renewable energy plants.[413] However, instead of holding off further increases in the installation targets

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406 *Id.*

407 *Id.*

408 *Id.* at 49.

409 *Id.*

410 *Id.*

411 *Id.*

412 *Id.* at 50.

413 *Id.* at 51.

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to keep up with what the FIT Allowance can cover, the increase in the FIT rate was considered the solution.[414] It thus argues that the FIT Allowance fund is used to pay for the inefficiencies in the implementation of the FIT System.[415] AGHAM maintains that if it is not nullified, the increase of the costs will continue, and expose electricity consumers to shoulder this burden for 20 years.[416]

On the other hand, the Department of Energy and Energy Regulatory Commission argue that the increase in installation targets did not result in excessive electricity prices.[417] Firstly, despite the increase in installation targets, the FIT Rates decreased.[418] This is because the installation targets is not the sole or primary factor in computing the FITs.[419] Regardless of installation targets, FITs are adjusted annually to allow pass-through of local inflation and foreign exchange rate variation.[420] The increase in installation targets only triggers the review of the FITs.[421] It affects the FITs only when the National Renewable Energy Board and Energy Regulatory Commission take into account the total capacity of built and commissioned or to be commissioned powerplants within the year from the time the FIT Rate is computed.[422] The FIT Rate must: (i) cover the baseline costs of a renewable energy plant and the other services it may provide, and of connecting to the transmission and distribution network, calculated over the expected lives of the plant; and (ii) provide for market based-weighted average cost of capital in determining return on invested capital.[423] Thus, when the Energy Regulatory Commission arrived

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414 *Id.*

415 *Id.*

416 *Id.*

417 *Id.* at 879.

418 *Id.*

419 *Id.*

420 *Id.* at 880.

421 *Id.*

422 *Id.*

423 *Id.*

at the new FIT Rates for the solar and wind energy capacities in 2015, it took into consideration the following factors: (i) total project cost, (ii) engineering, procurement, and construct cost, transportation to the project site and balance of plant, (iii) net capacity factor, (iv) switchyard and transformers, (v) transmission and interconnection cost, (vi) equity IRR, (vii) local inflation rate, (viii) base peso to U.S. dollar exchange rate, (ix) forward peso to U.S. dollar exchange rate, and (x) base local CPI.[424]

They also explained that the Power Supply Agreement Rates are not lower than FIT rates.[425] The generation rates approved by the Energy Regulatory Commission for Power Supply Agreements entered into by solar renewable energy developers from 2014 to 2016 ranged from PHP 8.50/kWh to PHP 8.75/kWh. Thus, the PHP 8.69/kWh Solar FIT Rate for the 500MW installation target is within this range and is not excessive.[426]

For the generation rates approved from 2016 onwards, the rates are lower than the Solar FIT Rate because the numerical assumptions were different and much lower in 2016 for the Power Supply Agreements than when the FIT Rates were determined in 2015.[427] For example, the cost of building a solar renewable energy plant in 2014 was higher compared to building one in 2016.[428] Furthermore, the Department of Energy and Energy Regulatory Commission does not have authority to compel renewable energy developers and distribution utilities to enter into Power Supply Agreements that would have addressed the expected undersupply of energy in the summers of 2015 and 2016.[429] They could not have just waited for private entities to enter into contracts.[430]

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[424] *Id.*

[425] *Id.* at 881.

[426] *Id.*

[427] *Id.*

[428] *Id.*

[429] *Id.*

[430] *Id.*

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Finally, they argue that if the assailed issuances were nullified, the vested rights of renewable energy developers who have been declared FIT-eligible will be prejudiced.[431] The invalidation will result in the withdrawing of renewable energy developers of their right to receive a guaranteed FIT until 2034 and 2035 for every kilowatt hour of energy that they produce and dispatch to the public.[432] This cannot be allowed especially considering that the Congress mandated the FIT System to incentivize the renewable energy developers who responded to the forecast of energy demand in the face of a looming power crisis.[433]

The National Transmission Corporation affirms the argument that the increase in the installation targets and the higher FIT Allowance is not unreasonable, arbitrary, or oppressive. The imposition of the higher FIT Allowance is essential to the FIT System's implementation as it ensures that renewable developers will be paid in full for their actual generation.[434] It is a necessary machinery to enforce the state policy.[435] It also argues that it is a valid exercise of police power.[436]

The National Renewable Energy Board and DREAM maintain that the increase in the installation targets and the higher FIT Allowance did not unduly and unlawfully burden electricity consumers.[437] In fact, its implementation from November 2014 to August 2017 resulted in a net avoided cost of PHP 18.69 billion to electricity consumers whose distribution utility or electric cooperative service providers purchased at the Wholesale Electricity Spot Market from 2014 to 2017.[438] Even assuming consumers were deprived of property, the incentives under the

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[431] *Id.* at 881–882.

[432] *Id.* at 882.

[433] *Id.*

[434] *Id.* at 723.

[435] *Id.*

[436] *Id.* at 722.

[437] *Id.* at 1295.

[438] *Id.* at 799, 1295.

FIT System is allowed under Republic Act No. 9513 and is a valid exercise of police power.[439] The means to encourage investments is reasonable.[440] This Court has allowed that property rights be regulated to preserve public health and welfare.[441] DREAM further adds that accelerating the development of renewable energy is necessary to protect public health and welfare.[442]

As discussed, this Court shall not resolve questions of fact. Considering this case involves a petition for review on *certiorari* under Rule 45 of the Rules of Court and petitions for *certiorari* under Rule 65, this Court shall limit itself to questions of law and in determining whether respondents acted in excess of or with grave abuse of discretion amounting to lack or excess of jurisdiction.

The Department of Energy's increase of installation targets and the succeeding issuances of the Energy Regulatory Commission cannot be said to be violative of substantive due process.

In *White Light Corp.*, this Court explains that substantive due process requires a sufficient justification for the government's deprivation of life, liberty, and property. It also explains that the sufficiency of the justification depends on the rights infringed:

> If due process were confined solely to its procedural aspects, there would arise absurd situation of arbitrary government action, provided the proper formalities are followed. Substantive due process completes the protection envisioned by the due process clause. It inquires whether the government has sufficient justification for depriving a person of life, liberty, or property.
>
> The question of substantive due process, moreso than most other fields of law has reflected dynamism in progressive legal thought tied with the expanded acceptance of fundamental freedoms. Police power, traditionally awesome as it may be, is now confronted with a more

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[439] *Id.* at 801–802, 1296.

[440] *Id.* at 802, 1296.

[441] *Id.* at 1296.

[442] *Id.*

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rigorous level of analysis before it can be upheld. The vitality though of constitutional due process has not been predicated on the frequency with which it has been utilized to achieve a liberal result for, after all, the libertarian ends should sometimes yield to the prerogatives of the State. Instead, the due process clause has acquired potency because of the sophisticated methodology that has emerged to determine the proper metes and bounds for its application.

C.

The general test of the validity of an ordinance on substantive due process grounds is best tested when assessed with the evolved footnote 4 test laid down by the U.S. Supreme Court in *U.S. v. Carolene Products*. Footnote 4 of the *Carolene Products* case acknowledged that the judiciary would defer to the legislature unless there is a discrimination against a "discrete and insular" minority or infringement of a "fundamental right". Consequently, two standards of judicial review were established: strict scrutiny for laws dealing with freedom of the mind or restricting the political process, and the rational basis standard of review for economic legislation.

A third standard, denominated as heightened or immediate scrutiny, was later adopted by the U.S. Supreme Court for evaluating classifications based on gender and legitimacy. Immediate scrutiny was adopted by the U.S. Supreme Court in *Craig*, after the Court declined to do so in *Reed v. Reed*. While the test may have first been articulated in equal protection analysis, it has in the United States since been applied in all substantive due process cases as well.

We ourselves have often applied the rational basis test mainly in analysis of equal protection challenges. Using the rational basis examination, laws or ordinances are upheld if they rationally further a legitimate governmental interest. Under intermediate review, governmental interest is extensively examined and the availability of less restrictive measures is considered. Applying strict scrutiny, the focus is on the presence of compelling, rather than substantial, governmental interest and on the absence of less restrictive means for achieving that interest.

In terms of judicial review of statutes or ordinances, strict scrutiny refers to the standard for determining the quality and the amount of governmental interest brought to justify the regulation of fundamental freedoms. Strict scrutiny is used today to test the validity of laws dealing with the regulation of speech, gender, or race as well as other fundamental

rights as expansion from its earlier applications to equal protection. The United States Supreme Court has expanded the scope of strict scrutiny to protect fundamental rights such as suffrage, judicial access and interstate travel.[443] (Citations omitted)

Thus, there are three tests to determine whether a regulation complies with substantive due process: (i) the rational basis test, (ii) the heightened or immediate scrutiny test, and (iii) the strict scrutiny test. The test that applies depends on the governmental act and the right it impedes.

Under the rational basis test, regulations on rights are generally considered valid so long as there is a legitimate government interest that it rationally advances.[444] Under the heightened scrutiny test, the regulation is deemed valid only after extensive examination of the governmental interest and consideration of the available less restrictive means of furthering it.[445] Under the strict scrutiny test, there must be a compelling governmental interest, and there must be no other less restrictive means to it.[446]

This Court finds that the rational basis test is best applied to this case. Generally, the validity of economic legislation is reviewed using the rational basis test.[447] Here, the regulations in question involve the billing of amounts from electricity consumers to ensure an incentive for those willing to accelerate the development and use of renewable energy in the country. Ultimately, the objectives are economic and environmental. The development of renewable energy in the country is meant: (i) to reduce the country's dependence on fossil fuels and minimize its exposure to price fluctuations in international markets, and (ii) to effectively prevent or reduce harmful emissions and protect the health and

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[443] *White Light Corp. v. City of Manila*, 596 Phil. 444, 461–463 (2009) [Per J. Tinga, *En Banc*].

[444] *Id.* at 462.

[445] *Id.* at 462–463.

[446] *Id.* at 463.

[447] *Id.* at 462–463.

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environment of the people. The regulation thus affects consumers' property rights for the benefit of the economy and environment.

Applying thus the rational basis test, we find the questioned issuances to be valid, considering there is a legitimate government interest that it rationally advances.

It likewise cannot be said that the questioned issuances are so arbitrary as to be without basis. One of the questioned issuances, Department of Energy Certification dated April 30, 2014 reads:[448]

INSTALLATION TARGET OF SOLAR ENERGY GENERATION UNDER THE FEED-IN TARIFF (FIT) SYSTEM

. . . .

WHEREAS, the Feed-In Tariff (FIT) System is one of the non-fiscal incentives and mechanisms that promotes efficient and cost-effective commercial application of and accelerates the development and installation of solar energy generation product projects;

WHEREAS, since the issuance by the Energy Regulatory Commission (ERC) of the Resolution No. 16 Series of 2011 entitled "Adopting the Feed-In Tariff Rules" on 12 July 2010 until the filing of the petition by the National Renewable Energy Board (NREB) for the FIT rates on 16 May 2011, there was only one (1) Solar Energy Service Contract (SESC) approved by the Department of Energy (DOE) with an identified capacity of 30 Megawatts (MW) to be connected to the main transmission grid system (on grid) which served as the basis for the certification of an installation target of 50 MW for solar energy covering the first three (3) years of FIT system implementation;

WHEREAS, from 16 May 2011 until approval of the FIT rates by the ERC through its Resolution No. 10, Series of 2012, entitled "Resolution Approving the Feed-In Tariff Rates" on 27 July 2012, including that for solar energy generation at [PHP] 9.68 per kilowatt-hour (kWh) with a degression rate of six percent (6%) after year 1 from effectivity of the FIT System, the DOE approved additional 14 SESCs with an aggregate on grid capacity of 200MW indicating the increased interest of the private sector in solar energy generation projects;

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[448] *Rollo* (G.R. No. 235624), pp. 75–79.

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WHEREAS, from November 2012 up to April 2014, the DOE approved 29 SESCs with an aggregate capacity of 557.5 MW, increasing the total number of SESCs to 52 with a total on grid capacity of 978 MW reflecting increased private sector investment as the commercial application of solar energy generation projects becomes more cost effective;

WHEREAS, pending the effectivity of the FIT System, there are two (2) on-grid solar energy installation projects nearing completion with an aggregate capacity of 62 MW vis-à-vis an installation target of 50 MW that would potentially hinder further installation of solar energy generation projects and discourage huge private sector investments in the sector;

WHEREAS, based on the 2014-2020 Power Demand-Supply Outlook, there will be critical power supply during the summer seasons of 2015 and 2016;

WHEREAS, solar energy generation projects given their short installation period can greatly contribute in providing additional generating and reserve capacity in the summer seasons of 2015 and 2016, particularly during the daytime peak demand hours; and

WHEREAS, adjustment of the installation target for solar energy generation under the FIT is likewise necessary to facilitate the entry of rooftop solar photovoltaic (PV) installations and other solar energy technologies, such as concentrated solar power (CSP) generation, in addition to ground mounted PV systems;

Now, therefore, premises considered, it is hereby certified that:

1. Installation Target for Solar Energy Generation under the FIT System. The installation target for solar energy generation under the FIT System shall now be 500 MW to include solar energy generation systems and technologies, such as but not limited to Solar PV and CSP, for ground-mounted and/or rooftop installations; and

2. Coverage of the Installation Target. To ensure availability for the summer periods of 2015 and 2016, the installation target for solar energy generation projects shall be valid upon full subscription of the 500 MW or until 15 March 2016, whichever comes first: Provided, That the FIT rate for fully commissioned solar energy projects after March 15, 2015 until March 15, 2016 shall be lower than those solar energy projects commissioned on or before March 15, 2015, in accordance with the Rules issued and/or to be issued by the Energy Regulatory Commission: Provided further, That

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> solar energy generation capacities installed beyond the 500 MW installation target or after 15 March 2016 shall qualify under the Must-Dispatch Rule in the Wholesale Electricity Spot Market (WESM) covered by a separate issuance: Provided finally, That the Renewable Energy Developers of solar energy generation projects may opt to enter into bilateral supply contracts with potential off-takers or directly trade in WESM.

It can be seen thus that the adjustment of the installation targets for solar energy was in consideration of the increased interest of the private sector in solar energy generation projects, a predicted critical power supply during the summer seasons of 2015 and 2016, the short installation period of solar energy generation projects, and the possibility of entry of other solar energy technologies.

Similarly, the adjustment of the installation targets for wind energy was because of a remarkable growth of wind technology as shown by a surge in investments, the possible contribution of wind energy generation projects to address the energy demand requirements for the summer season, and its capability to boost power supply.[449]

Thus, the questioned issuances have a legitimate government interest that it rationally advances.

As to whether there is a better method of addressing the increasing energy demands, this Court finds that this is a matter that pertains to the policy or wisdom of the issuances, which the Court has no power to review.[450]

> As a component of the doctrine of separation of powers, courts must never go into the question of the wisdom of the policy of the law. In *Magtajas v. Pryce Properties Corporation, Inc.*, where this Court resolved the issue of the morality of gambling, this Court held:
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> > The morality of gambling is not a justiciable issue. Gambling is not illegal *per se*. While it is generally considered inimical to the interests of the people, there is nothing in the Constitution

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[449] *Id.* at 79–82.

[450] *Kilusang-Mayo Uno v. Aquino III*, 850 Phil. 1168, 1212 (2019) [Per J. Leonen, *En Banc*].

> categorically proscribing or penalizing gambling or, for that matter, even mentioning it at all. *It is left to Congress to deal with the activity as it sees fit. In the exercise of its own discretion, the legislature may prohibit gambling altogether or allow it without limitation or it may prohibit some forms of gambling and allow others for whatever reasons it may consider sufficient.* Thus, it has prohibited *jueteng* and *monte* but permits lotteries, cockfighting and horse-racing. *In making such choices, Congress has consulted its own wisdom, which this Court has no authority to review, much less reverse. Well has it been said that courts do no[t] sit to resolve the merits of conflicting theories. That is the prerogative of the political departments. It is settled that questions regarding the wisdom, morality, or practicibility of statutes are not addressed to the judiciary but may be resolved only by the legislative and executive departments, to which the function belongs in our scheme of government.* That function is exclusive. Whichever way these branches decide, they are answerable only to their own conscience and the constituents who will ultimately judge their acts, and not to the courts of justice.

Recently, in *Garcia v. Drilon*, this Court has upheld the long-settled principle that courts do not go into the wisdom of the law:

> It is settled that courts are not concerned with the wisdom, justice, policy, or expediency of a statute. Hence, we dare not venture into the real motivations and wisdom of the members of Congress . . . *Congress has made its choice and it is not our prerogative to supplant this judgment. The choice may be perceived as erroneous but even then, the remedy against it is to seek its amendment or repeal by the legislative. By the principle of separation of powers, it is the legislative that determines the necessity, adequacy, wisdom and expediency of any law.* We only step in when there is a violation of the Constitution.[451] (Emphasis supplied, citations omitted)

VII(B)

As to procedural due process, AGHAM claims that the Department of Energy Certifications increasing installation targets, which are in the nature of administrative rules because

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[451] *Id.* at 1211–1212.

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they increase the burden of electricity consumers, were issued without prior notice and hearing or public consultations, as required under Book VII, Chapter 2 of the Revised Administrative Code.[452] It contends the use of the term "certification" reveals an intent to conceal to evade the rules on public participation.[453] They point that there were two joint congressional power commission hearings held in June and August 2011 for the initial installation targets,[454] but no more public consultations were held for its increase for solar energy.[455] Without the required notice and hearing, the Department of Energy effectively supplanted the legislative wisdom in setting the initial installation target.[456] Also, in increasing the installation targets for solar energy, it disregarded the initial intention of giving preference to cheaper renewable energy sources like hydropower and biomass.[457]

The Energy Regulatory Commission however argues that notice and hearing is not necessary for the Department of Energy Certifications to be valid[458] because its issuance was not done in the exercise of quasi-judicial functions—it does not apply to any particular person, or to past acts or conditions.[459] It explains that the Department of Energy Certifications are administrative in nature, as they put into operation the renewable energy laws and fill out the details necessary to implement it.[460]

It further claims that the Administrative Code provision providing for publication and public consultation is merely directory.[461] For quasi-legislative acts, prior hearing is necessary

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[452] *Rollo* (G.R. No. 235624), pp. 39–40.

[453] *Id.* at 40.

[454] *Id.*

[455] *Id.* at 41.

[456] *Id.* at 42.

[457] *Id.*

[458] *Id.* at 870.

[459] *Id.* at 871–872.

[460] *Id.* at 872.

[461] *Id.* at 873.

only for the issuance of legislative rules that affect substantive rights.[462] The Department of Energy Certifications are merely interpretative of Republic Act No. 9513 and the EPIRA.[463] They do not create a right in favor of power producers or impose any additional burden to the public. It only allows more power producers to join the FIT System.[464] It is still the Energy Regulatory Commission that fixes the FIT Rate and the FIT Allowance.[465] Furthermore, the Department of Energy Certifications are not addressed to the public but to the Energy Regulatory Commission and the National Renewable Energy Board as the entities that set the FIT Rate and FIT Allowance. They are thus in the same nature as internal rules.[466]

As to the Energy Regulatory Commission Issuances released pursuant to the Department of Energy Certifications, the Energy Regulatory Commission,[467] National Transmission Corporation,[468] National Renewable Energy Board, and DREAM[469] argue that procedural due process was first observed before they were issued. They point that the stakeholders in the power sector industry were given numerous opportunities to state their position on the proposed amendments to the FIT System, installation targets and Renewable Portfolio Standard.[470] Respondents held hearings, public consultations, meetings, and focus group discussions, and proceedings.[471]

National Transmission Corporation specifies that notices were posted at the Energy Regulatory Commission website on June 4,

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462 *Id.*

463 *Id.* at 874.

464 *Id.*

465 *Id.*

466 *Id.*

467 *Id.*

468 *Id.* at 720.

469 *Id.* at 799, 1267.

470 *Id.* at 800, 1267, 1294.

471 *Id.* at 720, 800–801, 874, 1294.

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2014 and May 12, 2015. The Energy Regulatory Commission requested all interested stakeholders to submit their inputs or comments on the possible amendment of the FIT Rules in light of the issuance of the Department of Energy Certification setting a new installation target for solar energy.[472] The Energy Regulatory Commission issued its decisions only after concerned parties filed their comments.[473]

The National Transmission Corporation, National Renewable Energy Board, DREAM argue that the discussion in the Joint Congressional Power Commission hearings[474] as to the FIT Rate for solar energy should not be the basis to question the increase of the installation targets.[475] The National Transmission Corporation points out that the factual milieu is different from what was attendant then.[476] The congressional hearings were conducted when the FIT System was still at its early stages when extensive consultation and hearings were still needed.[477] When the Department of Energy Certifications were issued because subsequent events called for the increase of installation targets, the system is already established and guidelines were already in place.[478] Furthermore, the costs of putting up solar power plants in 2015 to 2018 have gone down from 2011.[479] In 2011, the electricity costs sourced from solar plants were higher than other conventional power plants. However, the global downward trend of solar panels has made the cost of putting up a solar power plant cheaper in 2015.[480] The cost of renewable energy technologies

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[472] *Id.* at 720.

[473] *Id.*

[474] Held on June and August 2011.

[475] *Rollo* (G.R. No. 235624), pp. 721, 801, 1295.

[476] *Id.* at 721.

[477] *Id.*

[478] *Id.*

[479] *Id.* at 801, 1295.

[480] *Id.* at 1295.

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have further gone down in 2017.[481] This explains the lower rates of the power supply agreement applications in 2017.[482]

This Court finds that the Energy Regulatory Commission complied with the notice and hearing requirements.

AGHAM does not deny the respondents' contention that as to the Energy Regulatory Commission's issuances, the latter held hearings, public consultations, meetings, and focus group discussions, and proceedings.[483] The Energy Regulatory Commission posted notices on its website and interested stakeholders were asked to comment.[484] The Energy Regulatory Commission also issued its decisions and orders after consideration of all parties' contentions.[485]

Thus, its issuances cannot be said to have been in violation of procedural due process.

VII(C)

The Foundation for Economic Freedom argues the National Renewable Energy Board failed to comply with the publication requirements for its Petition to Initiate, which are jurisdictional in nature, and thus the Energy Regulatory Commission did not acquire jurisdiction over it.[486] Consequently, the Energy Regulatory Commission's Decision dated July 27, 2012 is null and void.[487] Furthermore, The Foundation for Economic Freedom argues that the FIT Rules, FIT Guidelines, and ERC Order dated October 7, 2014[488] are unconstitutional, are not rule-making, but

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[481] *Id.*

[482] *Id.* at 801, 1295.

[483] *Id.* at 720, 800–801, 874, 1294.

[484] *Id.* at 720.

[485] *Id.*

[486] *Rollo* (G.R. No. 215579), p. 1490.

[487] *Id.* at 1489–1490.

[488] ERC Order dated October 7, 2014 provisionally approved the Feed-in Tariff Allowance, to be made effective in the January 2015 billing on all on-grid consumers.

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rate-fixing, done without complying with standards imposed by law.[489]

However, the Energy Regulatory Commission and Department of Energy, and the National Renewable Energy Board insist that the latter sufficiently complied with the publication requirements.[490] Its Petition to Initiate was published twice, for two consecutive weeks, in two newspapers of general circulation in the Philippines.[491] The last date of publication was made not later than 10 days before the schedule of the first hearing.[492]

They contend that a week is a period of seven consecutive days starting on either Sunday or Monday.[493] It is only secondarily defined as "any consecutive seven-day period."[494] Thus, the requirement of "successive weeks" means separate weeks in the calendar. The publications need not be seven consecutive days apart.[495] The Notices of Public Hearing were published on August 11 and 15, 2011—two time periods consisting of seven days each. The first publication's date is part of the seven-day period constituting the first week and there is a publication in each seven-day period.[496]

The Energy Regulatory Commission and Department of Energy also insist that the National Renewable Energy Board's Petition to Initiate is not a rate-fixing petition, and thus need not comply with pre-filing requirements.[497] In any case, the National Renewable Energy Board still accorded consumers their right to due process. The publications sufficiently informed the public of the Petition

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489 *Rollo* (G.R. No. 215579), p. 1489.

490 *Id.* at 1265, 1396, 1405.

491 *Id.* at 1265.

492 *Id.*

493 *Id.* at 1266.

494 *Id.*

495 *Id.* at 1408.

496 *Id.* at 1410.

497 *Id.* at 1396, 1400, 1404–1405.

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to Initiate and the public hearing,[498] and the Energy Regulatory Commission's Order dated October 7, 2014 was issued only after these public hearings and after consideration of all the contentions and evidence of the parties.[499]

We rule that the National Renewable Energy Board sufficiently complied with publication requirements for its Petition to Initiate. Consequently, the Energy Regulatory Commission's Decision dated July 27, 2012, FIT Rules, FIT Guidelines, and Order dated October 7, 2014[500] are constitutional and valid.

The ERC Rules of Practice and Procedure defines "rule-making" as the proceeding to adopt, amend, or repeal an Energy Regulatory Commission rule. A "rule" is a "statement, order, guideline, or decision of general applicability issued by the [Energy Regulatory Commission] that implements, interprets and prescribes law or policy, or describes the organization, procedures, or practice requirements of the Commission."

Rule 21 of the ERC Rules of Practice and Procedure provides the notice and publication requirements for a petition to initiate new rule-making initiated by the Energy Regulatory Commission or any interested party:

RULE 21 - RULE-MAKING

Section 1. Initiation of Rule-making. - The process of adopting a new rule or amending or repealing an existing rule may be initiated by the Commission or by interested persons upon a petition for the issuance, amendment, or repeal of any rule.

Section 2. Petition to Initiate Rule-making. - Interested persons may petition the Commission to adopt, amend, or repeal a rule by filing a petition to initiate rule-making. The petition must contain the name and address of the petitioner, the specific rule or action requested, the reasons

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[498] *Id.* at 1410.

[499] *Id.* at 1405.

[500] ERC Order dated October 7, 2014 provisionally approved the Feed-in Tariff Allowance, to be made effective in the January 2015 billing on all on-grid consumers.

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for the rule or action requested, and facts showing that the petitioner has a substantial interest in the rule or action requested. The Commission shall either deny the petition, stating its reasons in writing, or will grant the petition by initiating rule-making and issuing a Notice of Proposed Rule-making.

Section 3. Notice of Rule-making. - The Commission shall *give Notice of Proposed Rule-making* and cause the proposed rule to be *published on its Website*. Depending on the nature or subject matter of the proposed rule, the Commission may also cause the *publication thereof in newspapers of general circulation and send copies thereof to affected parties. For proposed rules that involve the fixing or setting rates and charges, the notice shall be published in a newspaper of general circulation at least two (2) weeks* before the scheduled hearing thereon. The Notice shall set any written comment period, the manner these comments will be received by the Commission, and will specify the time, date, and place of any public hearing thereon.

Section 4. Rule-making Proceedings. - Before finalizing language of a proposed new rule or an amendment to, or repeal of, an existing rule, *the Commission shall receive public input through written comments and/or oral submissions*. The Commission shall designate in its Notice the format and timing of public comment. Any public hearing shall provide affected persons and other members of the public a reasonable opportunity for presentation of evidence, arguments, and oral statements within reasonable conditions and limitations imposed by the Commission to avoid duplication, irrelevant comments, unnecessary delay, or disruption of the proceedings. For this purpose, the procedure set forth in Rule 19 shall be applied insofar as it is applicable. The Chair, any Commissioner, or any person designated by the Commission may preside at the public hearing. The Commission shall ensure that the Commission staff responsible for preparing the proposed rule or amendment are available, and shall notify interested parties who petitioned for the institution of rule-making proceedings to be present, for them to explain the proposal and to respond to questions or comments regarding the proposed rule. The Commission shall preserve the comments made at the public hearing by a stenographer or by recording instruments. Any person may submit written statements within the specified period of time. All timely, written statements shall be considered by the Commission and shall be made a part of the record of the rule-making proceeding.

Section 5. Resolution to Adopt a Rule. - Before acting on a proposed rule, the Commission will consider all of the written submissions and/or oral submissions and evidences received in the rule-making proceeding

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or any memorandum summarizing such submissions. The Commission will use its own experience, specialized knowledge, and judgment in the adoption of a rule. The rule adopted by resolution of the Commission shall not be the subject of a motion for reconsideration under Rule 23 and one who is adversely affected by said rule may petition the Commission to initiate rule-making under Section 2.

The Foundation for Economic Freedom argues that the National Renewable Energy Board's Petition to Initiate is not a petition for the exercise of the Energy Regulatory Commission's rule-making power, but of its rate-fixing power. Thus, it argues that what is applicable is Rule 6 of the Energy Regulatory Commission's Rules of Practice and Procedure, which requires compliance with prefiling requirements for petitions that directly affect the electricity rates chargeable to the end users or directly affect the consumers.

RULE 6 - PRE-FILING REQUIREMENTS

Section 1. Rate Applications and Other Applications or Petitions for Relief Affecting the Consumers. - Among the applications or petitions that directly affect the electricity rates chargeable to the end users or directly affect the consumers are applications for a general change in rate schedules or revision of rates and applications for approval of a power supply contract between a distribution utility and power producer. The Commission may consider other applications and petitions as falling under this category of applications/petitions and thus direct compliance with the pre-filing requirements in Section 2 of this rule.

Section 2. Pre-filing Requirements for Rate Applications and Other Applications/Petitions for Relief Affecting the Consumers. - Before the Commission shall accept and docket rate applications and other applications or petitions for relief affecting the consumers, the applicant or petitioner must comply with the following requirements:

(a) The applicant or petitioner must furnish the Local Government Unit (LGU) Legislative Body (and not the Office of the Mayor) of the city or municipality where it principally operates, a copy of the application or petition, and not a mere notice of application/petition, with all its annexes and accompanying documents. If such principal place of operation is a component city or a municipality, the applicant or petitioner shall likewise furnish the LGU Legislative Body of the province of which such component city or municipality is part.

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(b) The applicant or petitioner must cause the publication of the entire application or petition, excluding its annexes, and not a mere notice of filing or notice of application or petition, in a newspaper of general circulation within its franchise area or area where it principally operates.

The National Renewable Energy Board's Petition to Initiate was filed to determine the FIT—the fixed amount that will be paid to renewable energy developers per kilowatt-hour should they choose to produce electricity from renewable energy resources.

The FIT Rates differ from the FIT Allowance. The FIT Allowance is the uniform charge on all electricity consumers who are supplied through the distribution or transmission network to share in the cost of the FIT.[501]

It is thus the FIT Allowance that directly affects electricity rates chargeable to end users or directly affects users, not the FIT Rate. The FIT Rate is not a charge to the public or to an individual for any service.

The Foundation for Economic Freedom itself admits that the FIT Rates, if approved, will not instantly affect the rates charged to end-user. It is and is only a step in the determination of the FIT Allowance, which is what will be billed to end-users.[502]

The setting of the FIT Allowance requires a separate petition different from National Renewable Energy Board's Petition to Initiate. While the FIT rate is recommended by the National Renewable Energy Board, the petition to set the FIT Allowance is filed by the National Transmission Commission.[503]

Considering these differences, this Court rules that the notice and publication requirements complied with by the National

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[501] *Rollo* (G.R. No. 215579), p. 69.

[502] *Rollo* (G.R. No. 214042), p. 35.

[503] *Rollo* (G.R. No. 215579), pp. 69, 82. In ERC Resolution No. 15, series of 2012, National Transmission Corporation (TRANSCO) replaced the National Grid Corporation of the Philippines (NGCP) as the settlement agent or FIT Allowance Administrator. *See also id.* at 88-89.

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Renewable Energy Board for its Petition to Initiate are sufficient to fulfill procedural due process requirements.

VIII

The Energy Regulatory Commission, Department of Energy, and the National Transmission Corporation argue that the Foundation for Economic Freedom committed forum shopping when it filed its petition-in-intervention in G.R. No. 215579.[504] They contend that in G.R. No. 214042, the Energy Regulatory Commission and the Court of Appeals already passed upon the issues of the National Renewable Energy Board's compliance with publication requirements and the necessity of the determination of the Renewable Portfolio Standards and its rules before implementation of the FIT System.[505] The National Transmission Corporation asserts that in G.R. No. 215579, the Foundation for Economic Freedom through its petition-in-intervention, is masquerading its arguments as a constitutional attack on the FIT System to try to obtain a favorable judgment on what has already been passed upon by the Energy Regulatory Commission and the Court of Appeals.[506] Furthermore, they point that the Petition of the Foundation for Economic Freedom suffers from inconsistencies[507] as it seeks to invalidate the FIT Rates for solar and wind, but not the FIT Rates for other renewable energy technologies like biomass and hydropower.[508]

Rule 7, Section 5 of the Rules of Court states the rule against forum shopping:

> SECTION 5. *Certification against forum shopping*. — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not

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[504] *Id.* at 1463, 1437.

[505] *Id.* at 1464, 1437.

[506] *Id.* at 1464.

[507] *Id.* at 1463.

[508] *Id.* at 1404.

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theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

There is forum shopping when in two or more cases pending, there is "identity of parties, rights[,] or causes of action and relief sought."[509] The parties in at least two cases must be representing the same interests in all actions, asserting the same rights and praying for the same reliefs, based and founded on the same factual circumstances. These particulars must be the same such that a judgment on one case would amount to *res judicata* in the other.[510]

In *In Re: Ferrer*,[511] this Court discussed the ways in which forum shopping is committed and explained that it is meant to avoid the circumstance in which a party avails of several judicial remedies in different forums to obtain a favorable ruling:

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[509] *International School, Inc. (Manila) v. Court of Appeals*, 368 Phil. 791, 798 (1999) [Per Gonzaga-Reyes, Third Division].

[510] *Dasmariñas Village Association, Inc. v. Court of Appeals*, 359 Phil. 944, 954 (1998) [Per J. Romero, Third Division].

[511] 781 Phil. 48 (2016) [Per J. Leonen, Second Division].

In *Asia United Bank v. Goodland Company, Inc.*, this court enumerated the instances where forum shopping takes place:

> There is forum shopping "when a party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court." The different ways *by which forum shopping may be committed were explained in Chua v. Metropolitan Bank & Trust Company*:
>
> > *Forum shopping can be committed in three ways: (1) filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is litis pendentia); (2) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (where the ground for dismissal is res judicata); and (3) filing multiple cases based on the same cause of action, but with different prayers (splitting causes of action, where the ground for dismissal is also either litis pendentia or res judicata).* (Citations omitted)

In *Dy v. Mandy Commodities Co, Inc.*:

> The grave evil sought to be avoided by the rule against forum shopping is the rendition by two competent tribunals of two separate and contradictory decisions. Unscrupulous party litigants, taking advantage of a variety of competent tribunals, may repeatedly try their luck in several different fora until a favorable result is reached. To avoid the resultant confusion, this Court strictly adheres to the rules against forum shopping, and any violation of these rules results in the dismissal of a case.[512] (Citations omitted)

Considering these standards and the consolidation of the two cases, the evil sought to be avoided by the rule against forum shopping has been averted. This Court thus finds this issue moot and academic.

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[512] *Id.* at 548.

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IX

AGHAM prays for the issuance of a temporary restraining order and/or a writ of preliminary injunction, insisting that all the requisites for its grant are present.[513] It maintains it has a clear and unmistakable right that has been violated,[514] and its violation is material and substantial.[515] The Department of Energy allegedly exercised prerogatives that it was not authorized to do, and it did so in a manner that violates due process and constitutes grave abuse of discretion amounting to lack or excess of jurisdiction.[516] Because of respondents, there is an increase in costs to be shouldered by consumers, but there is no reasonable assurance that the respondents' solution will adequately address the problem of expected power shortage in the coming summer.[517] It claims that the way the Department of Energy is setting the installation targets ignores the safeguards that Congress put in place in Republic Act No. 9513 and its Implementing Rules and Regulations to prevent an escalation of electricity costs.[518] If the Department of Energy is not restrained, there is no guarantee that it will not abuse its power and continue the increase in installation targets beyond what is within the current capacity of consumers to pay.[519] Furthermore, the assailed issuances will cause them and other electricity consumers grave and irreparable injury.[520] The need for the injunctive writs is urgent and paramount to prevent serious damage.[521]

Citizenwatch also argues it is entitled to injunctive relief. It claims the implementation of the FIT Rules, FIT Guidelines, and

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513 *Rollo* (G.R. No. 235624), pp. 26, 58.

514 *Id.* at 59.

515 *Id.* at 61.

516 *Id.* at 60.

517 *Id.* at 61.

518 *Id.*

519 *Id.* at 62.

520 *Id.*

521 *Id.* at 63.

the ERC Orders would continue to violate its members' clear and unmistakable rights not to be deprived of property without due process of law and cause them to suffer grave and irreparable injury and immeasurable injustice by compelling to depart with their property for a commodity that has not yet materialized.[522] It maintains the need for the injunctive relief is urgent to prevent serious damage, and there is no other ordinary, speedy, and adequate remedy.[523] This violation is continuing in nature and may still be enjoined by the Court.[524] It is likewise incapable of pecuniary estimation.[525] It is not measured by the amount paid for the FIT, but by "the compulsion to part with their property without due process of law."[526]

However, the Energy Regulatory Commission,[527] the National Transmission Corporation,[528] the National Renewable Energy Board,[529] and DREAM argue that there is no basis to grant the applications for injunctive relief.

The Energy Regulatory Commission argues its issuance will be contrary to its sole object of maintaining the status quo until the merits of the case can be heard.[530] In this case, AGHAM's petition was filed when the FIT System and Renewable Portfolio Standard was already effective.[531] Thus, the issuance of any injunctive relief will be a prejudgment of the case.[532] It will rule against the prima facie validity of Republic Act No. 9513 and the Assailed

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[522] *Rollo* (G.R. No. 215579), p. 1343.

[523] *Id.*

[524] *Id.* at 1344.

[525] *Id.*

[526] *Id.*

[527] *Rollo* (G.R. No. 235624), p. 894.

[528] *Rollo* (G.R. No. 215579), pp. 1464–1465; *Rollo* (G.R. No. 235624), p. 724.

[529] *Rollo* (G.R. No. 235624), p. 806.

[530] *Id.*

[531] *Id.* at 897.

[532] *Id.*

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Issuances.[533] The National Transmission Corporation and the Energy Regulatory Commission argue that none of petitioners' arguments are sufficient to overcome the presumption of validity of the questioned law or the assailed issuances.[534]

The Energy Regulatory Commission, National Renewable Energy Board, and DREAM also point that AGHAM failed to comply with the requisites for its issuance.[535] They contend that the petitioners' right to due process was not violated.[536] The assailed issuances were all approved and implemented in accordance with the mandate of the Republic Act No. 9513, after consultations, meetings, and hearings conducted by respondents.[537]

The National Renewable Energy Board and DREAM further agree that AGHAM does not have clear and unmistakable rights that could have been violated by respondents.[538] They argue that no Filipino has the right to have a constant price of electricity.[539] They also failed to show any urgency and necessity.[540] Ten years have lapsed since the passage of Republic Act No. 9513 and almost seven years since the FIT System and the installation targets was approved by the Energy Regulatory Commission.[541] The questioned Energy Regulatory Commission and Department of Energy issuances and Section 6 of Republic Act No. 9513 are reasonable and consistent with legislative policy, not oppressive and confiscatory, and are valid exercises of police power.[542] The

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[533] *Id.*

[534] *Rollo* (G.R. No. 215579), pp. 1464–1465; *Rollo* (G.R. No. 235624), pp. 724, 894.

[535] *Rollo* (G.R. No. 235624), p. 898.

[536] *Id.* at 805, 807, 898, 1301.

[537] *Id.* at 805, 807, 1301.

[538] *Id.* at 806, 1267, 1301.

[539] *Id.* at 805, 1301.

[540] *Id.* at 807, 1301-1302.

[541] *Id.* at 807, 1301.

[542] *Id.* at 807.

Energy Regulatory Commission insists petitioners were not unlawfully deprived of their property.[543]

The Energy Regulatory Commission, National Renewable Energy Board and DREAM further argue that petitioners did not suffer any injury that is irreparable.[544] The damage they alleged to have suffered is the cost of generation of renewable energy sources. That they were able to compute their alleged damage shows that it is readily quantifiable and capable of pecuniary estimation.[545] Furthermore, the grant of the injunctive relief will cause electricity consumers to suffer grave and irreparable injury because it will discourage the production of renewable energy, which will ultimately affect the energy supply of the public.[546]

We deny the applications for injunctive relief.

In a Rule 65 petition, a temporary restraining order or a writ of preliminary injunction may be issued by the court to preserve the rights of parties pending final judgment on the proceedings between them. Rule 65, Section 7 of the Rules of Court provides:

> SEC. 7. *Expediting proceedings; injunctive relief*. — The court in which the petition is filed may issue orders expediting the proceedings, and it may also grant a temporary restraining order or a writ of preliminary injunction for the preservation of the rights of the parties pending such proceedings. The petition shall not interrupt the course of the principal case, unless a temporary restraining order or a writ of preliminary injunction has been issued, enjoining the public respondent from further proceeding with the case.
>
> The public respondent shall proceed with the principal case within ten (10) days from the filing of a petition for *certiorari* with a higher court or tribunal, absent a temporary restraining order or a preliminary injunction, or upon its expiration. Failure of the public respondent to proceed with the principal case may be a ground for an administrative charge.

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[543] *Id.* at 898.

[544] *Id.* at 807–808, 899, 1302.

[545] *Id.* at 807–808, 1302-1303, 900.

[546] *Id.* at 900.

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Parties seeking this relief apply for it in addition to their Rule 65 petitions because a petition for certiorari does not interrupt the course of the principal case unless a temporary restraining order or a writ of preliminary injunction is issued. To be entitled to it, the petitioner must show a meritorious ground for its grant.[547]

In *Amalgamated Motors Philippines, Inc. v. Secretary of the Department of Transportation and Communications*,[548] this Court outlined the purpose of an injunction and enumerated the requisites for its issuance:

> The purpose of a writ of preliminary injunction is "to prevent threatened or continuous irremediable injury to some of the parties before their claims can be thoroughly studied and adjudicated." Aiming to preserve the *status quo* until the merits of the case can be fully heard, the court will only issue such writ when it is satisfied that the applicant has a clear and unmistakable right to it and an urgent necessity for its issuance. In *Marquez v. Sanchez*, this Court explained the nature of the writ, thus:
>
> > The writ of preliminary injunction is issued to prevent threatened or continuous irremediable injury to some of the parties before their claims can be thoroughly studied and adjudicated. Its sole aim is to preserve the *status quo* until the merits of the case can be heard fully. Thus, it will be issued only upon a showing of a clear and unmistakable right that is violated. Moreover, an urgent necessity for its issuance must be shown by the applicant.
>
> Under Section 3, Rule 58 of the 1997 Revised Rules of Civil Procedure, the issuance of a writ of preliminary injunction may be granted if the following grounds are established, thus:
>
> > (a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;

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[547] *Reyes v. Ombudsman*, 783 Phil. 304, 370 (2016) [Per J. Perlas-Bernabe, *En Banc*].

[548] G.R. No. 206042, July 4, 2022 [Per J. J. Lopez, Second Division].

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> (b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or
>
> (c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

Taking off from *Marquez*, the following are the requisites for the issuance of a preliminary injunction:

(1) the applicant must have a clear and unmistakable right, that is a right *in esse*;

(2) there is a material and substantial invasion of such right;

(3) there is an urgent need for the writ to prevent irreparable injury to the applicant; and

(4) no other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury.[549] (Citations omitted)

This Court also explained that a preliminary injunction is issued in cases of extraordinary or emergency situations requiring urgency. In *Philippine Ports Authority v. Cipres Stevedoring & Arrastre, Inc.*:[550]

> A preliminary injunction is an order granted at any stage of an action prior to judgment of final order, requiring a party, court, agency, or person to refrain from a particular act or acts. It is a preservative remedy to ensure the protection of a party's substantive rights or interests pending the final judgment in the principal action. *A plea for an injunctive writ lies upon the existence of a claimed emergency or extraordinary situation which should be avoided for otherwise, the outcome of a litigation would be useless as far as the party applying for the writ is concerned.*
>
> At times referred to as the "Strong Arm of Equity," we have consistently ruled that there is no power the exercise of which is more

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[549] *Id.*

[550] 501 Phil. 646 (2005) [Per J. Chico-Nazario, Second Division].

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delicate and which calls for greater circumspection than the issuance of an injunction. It should only be extended in cases of great injury where courts of law cannot afford an adequate or commensurate remedy in damages; "*in cases of extreme urgency; where the right is very clear; where considerations of relative inconvenience bear strongly in complainant's favor; where there is a willful and unlawful invasion of plaintiff's right against his protest and remonstrance, the injury being a continuing one, and where the effect of the mandatory injunction is rather to reestablish and maintain a preexisting continuing relation between the parties, recently and arbitrarily interrupted by the defendant, than to establish a new relation*".

For the writ to issue, two requisites must be present, namely, the existence of the right to be protected, and that the facts against which the injunction is to be directed are violative of said right[.][551] (Emphasis supplied)

Here, it cannot be said that petitioners have established their clear and unmistakable right to the injunctive relief or respondents' invasion or violation of this right.

AGHAM and Citizenwatch insist that respondents' acts violated their right to property without due process of law by causing them to pay increasing costs of renewable energy that they say have not yet been produced or consumed,[552] or do not guarantee a solution to expected power shortages.[553]

This Court notes that this alleged right and its alleged violation constitute one of the main issues being contested in the main case and is one of the matters for this Court's resolution. Thus, to issue an injunctive relief recognizing the right to be a clear and unmistakable one will be premature and will amount to a prejudgment of the case.

Neither were the petitioners able to establish the existence of the emergency, or the urgent and extraordinary circumstance required

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[551] *Id.* at 661–662.

[552] *Rollo* (G.R. No. 215579), p. 1343.

[553] *Rollo* (G.R. No. 235624), p. 61.

by law for its issuance. They did not show that the outcome of the litigation will be rendered useless if the writ was not issued.

The alleged injury they will sustain pertain to paying the costs of renewable energy. These are fixed amounts that are quantifiable, capable of pecuniary estimation, and are thus refundable should it turn out to have been unjustly paid for.

Considering these circumstances, we deny the applications for injunctive relief.

ACCORDINGLY, the Petitions in G.R. No. 215579, G.R. No. 214042, and G.R. No. 235624 are **DENIED**. The December 13, 2013 Decision and August 27, 2014 Resolution of the Court of Appeals in CA-G.R. SP No. 122371 are **AFFIRMED**.

This Court upholds the constitutionality and validity of:

(i) Sections 6 and 7 of Republic Act No. 9513;

(ii) The Energy Regulatory Commission's Resolution No. 10, Series of 2012, entitled *Resolution Approving the Feed-In Tariff Rates*, and Resolution No. 16, Series of 2010, *Adopting the Feed-In Tariff Rules* (FIT Rules);

(iii) The Energy Regulatory Commission's Resolution No. 24, Series of 2013, entitled *A Resolution Adopting the Guidelines on the Collection of the Feed-in Tariff Allowance [FIT-All] and the Disbursement of the Fit-All Fund* (FIT Guidelines);

(iv) The Energy Regulatory Commission's October 7, 2014 Order granting the National Transmission Corporation's application for provisional approval of the PHP 0.0406/kWh FIT Allowance effective January 2015 for all on-grid consumer billings;

(v) The Energy Regulatory Commission's Resolution No. 6, Series of 2015, adjusting the Feed-in Tariff Rate for Solar Renewable Energy from PHP 9.68/kWh in 2012 to PHP 8.69/kWh;

(vi) The Energy Regulatory Commission's October 6, 2015 Decision adjusting the Feed-in Tariff Rate for Wind Renewable Energy from PHP 8.53/kWh to PHP 7.40/kWh;

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(vii) The Energy Regulatory Commission's Resolutions No. 6 and 14, Series of 2015; and

(viii) The Energy Regulatory Commission's February 16, 2016 and May 9, 2017 Orders provisionally approving the 2016 and 2017 FIT Allowance at PHP 0.1240/kWh, PHP 0.1830/kWh, respectively.

SO ORDERED.

Caguioa, Hernando, Inting, Zalameda, M. Lopez, Rosario, J. Lopez, Dimaampao, Marquez, and *Kho, Jr., JJ.*, concur.

Gesmundo, C.J., see concurring opinion.

Lazaro-Javier, J., please see concurrence.

Gaerlan,[*] *J.*, no part.

Singh, *J.*, on official leave.

CONCURRING OPINION

GESMUNDO, *C.J.*:

I respectfully write in relation to the above-captioned consolidated cases.

I thank the distinguished Senior Associate Justice Marvic M.V.F. Leonen for his extensive *ponencia* on the said cases. I concur in the denial of the Petitions and with the upholding of the constitutionality and validity of the following:

1. Sections 6 and 7 of Republic Act No. 9513, otherwise known as the Renewable Energy Law;
2. The Energy Regulatory Commission's (ERC) July 27, 2012 Resolution No. 10, series of 2012 entitled "Resolution Approving the Feed-In Tariff Rates";

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[*] No part due to his prior participation in the Court of Appeals.

3. ERC's Resolution No. 24, series of 2013 entitled "A Resolution Adopting the Guidelines on the Collection of the Feed-in Tariff Allowance and the Disbursement of the Fit-All Fund";

4. ERC Order dated October 7, 2014, granting the National Transmission Corporation's (TRANSCO) application for provisional approval of the PHP 0.0406/kWh FIT Allowance effective January 2015 for all on-grid consumer billings;

5. ERC's Resolution No. 6, series of 2015 dated March 27, 2015, adjusting the Feed-in Tariff Rate for Solar Renewable Energy from PHP 9.68/kWh in 2012 to PHP 8.69/kWh;

6. ERC's Decision dated October 6, 2015 adjusting the Feed-in Tariff Rate for Wind Renewable Energy from PHP 8.53/kWh to PHP 7.40/kWh;

7. ERC's Resolutions No. 6 and 14, series of 2015;

8. ERC's Orders provisionally approving the 2016 and 2017 FIT Allowance at PHP 0.1240/kWh and PHP 0.1830/kWh,[1] respectively; and

9. Department of Energy (DOE) Certifications[2] dated April 30, 2014 and April 7, 2015.[3]

I write this concurring opinion to expound on my reasons for upholding the validity of the DOE Certifications dated April 30, 2014 and April 7, 2015.

These consolidated cases assail the validity of the Feed-In Tariff (FIT) System implemented by the ERC, DOE, National Renewable Energy Board (NREB), and the TRANSCO pursuant

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[1] *Ponencia*, pp. 117–118.

[2] *Rollo* (G.R. No. 235624), pp. 76–78.

[3] *Ponencia*, pp. 103–105.

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to Republic Act No. 9513 or the Renewable Energy Law.[4] "Under the FIT System, electric power industry participants who will source electricity from the generation of renewable energy are incentivized. One of the incentives is the Feed-In Tariff (FIT) – a guaranteed fixed amount of payment for a set period of time."[5]

The consolidated Petitions assailed, among others, the validity of ERC issuances on the ground that they were issued in violation of due process requirements. The *ponencia* declared that the ERC complied with the notice and hearing requirements. It observed that petitioner Alyansa ng mga Grupong Haligi ng Agham at Teknolohiya Para sa Mamamayan (AGHAM) did not deny that the ERC held hearings, public consultations, meetings, and focus group discussions, and proceedings as to its own issuances. Further, the *ponencia* noted that the ERC posted notices on its website, asking interested stakeholders to comment on the same. Finally, the *ponencia* found that the ERC issued its decisions and orders after consideration of all parties' contentions.[6]

Meanwhile, the consolidated Petitions also averred that the NREB failed to comply with the publication requirements for its Petition to Initiate Rule-Making for Adoption of Feed-In Tariff (Petition to Initiate), recommending the FIT and degression rates for each of the renewable resources.[7] Said Petition to Initiate "was filed to determine the FIT – the fixed amount that will be paid to renewable energy developers per kilowatt-hour should they choose to produce electricity from renewable energy resources."[8] It differs from the FIT Allowance, which is "the uniform charge on all electricity consumers who are supplied through the distribution or transmission network to share in the cost of the FIT,"[9] since it is the latter which directly affects electricity rates chargeable

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4 *Id.* at 2.

5 *Id.* at 5.

6 *Id.* at 103–105.

7 *Id.* at 5.

8 *Id.* at 109.

9 *Id.*

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to end users. Thus, the *ponencia* held that the NREB sufficiently complied with publication requirements for its Petition to Initiate, having published the same twice, for two consecutive weeks, in two newspapers of general circulation in the Philippines. The last date of publication was not later than 10 days before the schedule of the first hearing.[10]

In addition, AGHAM contended that the DOE Certifications dated April 30, 2014 and April 7, 2015, which increased the installation targets of solar and wind energy, respectively, are in the nature of administrative rules since they increase the burden of electricity. It posited that the same were issued in violation of procedural due process because they did not comply with the requirement of prior notice and hearing or public consultations, as required in Book VII, Chapter 2 of the Revised Administrative Code.[11]

On this point, the *ponencia* declared that the ERC complied with the notice and hearing requirements. It observed that AGHAM does not deny ERC's contention that the ERC held hearings, public consultations, and focus group discussions, and proceedings on its issuances. The ERC also posted notices on its website, with interested stakeholders being asked to comment. The ERC issued its decisions and orders only after consideration of all the parties' contentions. Thus, the issuances cannot be said to have been in violation of procedural due process.[12]

I concur with the findings of the *ponencia*. I would like to further elucidate my position on why there is no reason to invalidate the DOE Certifications. To my mind, the DOE Certifications are not subject to the notice and hearing requirements.

The Administrative Code of 1987 provides:

Section 9. *Public Participation*. — (1) If not otherwise required by law, an agency shall, as far as practicable, publish or circulate notices

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[10] *Id.* at 106, 109.

[11] *Id.* at 103.

[12] *Id.* at 105.

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of proposed rules and afford interested parties the opportunity to submit their views prior to the adoption of any rule.

(2) In the fixing of rates, no rule or final order shall be valid unless the proposed rates shall have been published in a newspaper of general circulation at least two (2) weeks before the first hearing thereon.

(3) In case of opposition, the rules on contested cases shall be observed.

Meanwhile, case law instructs us that "[w]hen an administrative rule is merely interpretative in nature, its applicability needs nothing further than its bare issuance, for it gives no real consequence more than what the law itself has already prescribed. ***When, on the other hand, the administrative rule goes beyond merely providing for the means that can facilitate or render least cumbersome the implementation of the law but substantially increases the burden of those governed***, it behooves the agency to accord at least to those directly affected a chance to be heard, and thereafter to be duly informed, before that new issuance is given the force and effect of law."[13]

The concerned DOE Certifications and the pertinent excerpts from the same are as follows:

1. DOE Certification dated April 30, 2014 entitled "Installation Target of Solar Energy Generation under the Feed-In Tariff (FIT) System"

> **NOW, THEREFORE**, premises considered, it is hereby certified that:
>
> 1. ***Installation Target for Solar Energy Generation under the FIT System.*** The installation target for solar energy generation under the FIT System shall now be 500 MW to include solar energy generation systems and technologies, such as but not limited to solar PV

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[13] *Commissioner of Internal Revenue v. Michel J. Lhuillier Pawnshop, Inc.*, 453 Phil. 1043, 1058 (2003) [Per C.J. Davide, Jr., First Division].

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> and CSP, for ground-mounted and/or rooftop installations[.][14] (Emphasis supplied)

2. DOE Certification dated April 7, 2015 entitled "Installation Target of Wind Energy Generation under the Feed-In Tariff (FIT) System"

> **NOW, THEREFORE,** premises considered, it is hereby certified that:
>
> 1. ***Installation Target for Wind Energy Generation under the FIT System.*** The installation target for wind energy generation under the FIT System shall now be 400 MW[.][15] (Emphasis supplied)

For this purpose, ERC Resolution No. 16-10,[16] entitled "Resolution Adopting the Feed-In Tariff Rules" and referred to as the FIT Rules, defines an installation target as "the megawatt capacity per [Renewable Energy] Technology and the number of years that it shall be achieved as set by NREB."

Section 5 of the FIT Rules provides for the determination of FITs. It states that the NREB shall propose FITs after taking into account the expected MW capacity for each technology that it shall set as installation targets and the numbers of years when this target shall be achieved, viz.:

5. Determination of FITs

The FITs that NREB shall calculate and submit to the ERC for approval shall be in accordance with the methodology that the ERC shall adopt. For the initial FITs, the NREB may base its calculations on a reference cost study for each technology based on a real candidate project or a hypothetical one depending on the available information. The project to be chosen shall be representative of the average conditions of the renewable energy plant operating in compliance or at par with applicable international technical standards and practices for such technologies, and

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[14] *Rollo* (G.R. No. 235624), p. 78.

[15] *Id.* at 82.

[16] Dated July 12, 2010.

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the pricing study shall consider also all non-price incentives in [Republic Act] No. 9513.

The NREB shall propose the FITs taking into account the expected MW capacity for each technology that it shall set as installation targets and the number of years when this target shall be achieved.

The FITs shall cover the costs of the plant, including the costs of other services that the plant may provide, as well as the costs of connecting the plant to the transmission or distribution network, calculated over the expected lives of the plant, and provide for market-based weighted average cost of capital (WACC) in determining return on invested capital. (Emphasis supplied)

Meanwhile, Section 8 of the FIT Rules mandates the NREB to include in its recommendation of the FITs to the ERC a discussion on the installation targets per technology, ensuring that it is consistent with the Renewable Portfolio Standards and its rules:

8. Procedure for the Setting of the FITs

Upon the effectivity of these Rules, the ERC shall issue a Notice of Rule-making for the establishment and fixing of the FITs in accordance with these Rules. The filing shall conform to the procedures in the ERC Rules of Practice and Procedure (ERC RPP) on Rule-making. ***In the said Notice, the ERC shall direct NREB within the period stated therein to submit its recommended FITs. In its submission, NREB shall provide discussion on the installation targets per technology, which it shall ensure are consistent with the Renewable Portfolio Standards (RPS) and whatever RPS Rules that will be established by the DOE and the details and results of its reference cost study for each technology.***

If necessary, the ERC shall choose and appoint experts to assist it in the evaluation of the NREB's recommended FITs, with the cost of such engagement to be borne by NREB. (Emphasis supplied)

Considering the foregoing, the following are evident:

1. The installation targets, as established by the DOE Certifications dated April 30, 2014 and April 7, 2015, are relevant insofar as the NREB shall consider the same in recommending the FITs to the ERC. In so many words, the installation targets constitute only ***one of the factors*** for

consideration or study of the NREB in arriving at the FITs to be recommended.

2. The DOE Certifications, which established the installation targets, are directed or addressed to the NREB and, by necessary implication, to the ERC. It is not addressed to the electric power industry participants.

In view of these observations, it is my considered view that the DOE Certifications do not substantially increase the burden of those governed, or the electric power industry participants. It is apparent that the DOE Certifications establishing installation targets merely provide for means to facilitate the implementation of the law, in this case Republic Act No. 9513. Since the installation targets merely constitute one factor for the determination of the FITs, its impact is already sufficiently addressed by the notice and hearing required at the level of the NREB and the ERC. As discussed previously, the esteemed *ponente* himself concluded that the NREB and the ERC were indeed compliant with these due process requirements.

Further, I respectfully submit that it would be unduly burdensome to require a separate notice and hearing for the setting of installation targets when the same may be questioned at the level of public participation for the respective issuances of the NREB and the ERC setting the FITs. To accord such an interpretation would unnecessarily add a secondary layer to the public consultations to be held, where none is required at the stage of setting the installation targets. It would be redundant and counterproductive to require the same.

In conclusion, there is no reason to invalidate the DOE Certifications as they are not subject to the notice and hearing requirements.

ACCORDINGLY, I vote to **DENY** the consolidated Petitions.

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CONCURRENCE

LAZARO-JAVIER, *J.*:

As settled in the *ponencia*, the role of Feed-in-Tariff (FIT) settlement agent has been transferred by virtue of Energy Regulatory Commission (ERC) Resolution No. 15, series of 2012 to a government-owned and controlled corporation, the National Transmission Corporation (TransCo).

Perusing ERC Resolution No. 15, series of 2012, I cannot help but observe that the designation of TransCo as settlement agent was the result of proactiveness on the part of several agencies of the government (all respondents in these cases), namely: the ERC (by posting an Issues Paper soliciting comments, inputs and suggestions from electricity industry stakeholders), the Office of the Government Corporate Counsel (for issuing an opinion that the FIT is a public fund), and the National Renewable Energy Board (for recommending the designation of TransCo as settlement agent).[1] Even without any pending legal action before the courts, respondents took the initiative to pre-empt any issues regarding the implementation of the FIT system. To my mind, this collaborative effort and self-awareness on the part of respondents should be recognized and encouraged.

That said, I now fully concur with the *ponencia*'s validation of the early collection from and payment by end-consumers of the FIT Allowance (FIT-All).

Though end-consumers of electricity are already financially burdened by the imposition of FIT-All, *Republic v. Bacolod-Murcia Milling*,[2] provides a legal cover for the FIT-All arrangement as a legitimate police power imposition:

> Under Section 6 of the said law, Commonwealth Act 567, all collections made thereunder "shall accrue to a special fund in the Philippine Treasury, to be known as the 'Sugar Adjustment and Stabilization Fund,'

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[1] ERC Resolution No. 15, series of 2012, Annex A.

[2] 124 Phil. 27 (1966) [Per J. Regala, *En Banc*].

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and shall be paid out only for any or all of the following purposes or to attain any or all of the following objectives, as may be provided by law." It then proceeds to enumerate the said purposes, among which are "to place the sugar industry in a position to maintain itself; ... to readjust the benefits derived from the sugar industry ... so that all might continue profitably to engage therein; to limit the production of sugar to areas more economically suited to the production thereof; and to afford laborers employed in the industry a living wage and to improve their living and working conditions."

The plaintiff in the above case, Walter Lutz, contended that the aforementioned tax or special assessment was unconstitutional because it was being "levied for the aid and support of the sugar industry exclusively," and therefore, not for a public purpose. In rejecting the theory advanced by the said plaintiff, this Court said:

> "The basic defect in the plaintiff's position is his assumption that the tax provided for in Commonwealth Act No. 567 is a pure exercise of the taxing power. Analysis of the Act, and particularly Section 6, will show that the tax is levied with a regulatory purpose, to provide means for the rehabilitation and stabilization of the threatened sugar industry. In other words, the act is primarily an exercise of the police power.
>
> "This Court can take judicial notice of the fact that sugar production is one of the great industries of our nation, sugar occupying a leading position among its export products; that it gives employment to thousands of laborers in fields and factories; that it is a great source of the state's wealth, is one of the important source of foreign exchange needed by our government, and is thus pivotal in the plans of a regime committed to a policy of currency stability. Its promotion, protection and advancement, therefore redounds greatly to the general welfare. Hence it was competent for the legislature to find that the general welfare demanded that the sugar industry should be stabilized in turn; and in the wide field of its police power, the law-making body could provide that the distribution of benefits therefrom be readjusted among its components to enable it to resist the added strain of the increase in taxes that it had to sustain (Sligh v. Kirkwood, 237 U.S. 52, 59 L. Ed. 835; Johnson v. State ex rel. Marey, 99 Fla. 1311, 128 So. 853; Maxcy Inc. v. Moyo, 103 Fla. 552, 139 So. 121)
>
> "As stated in Johnson v. State ex rel. Marey, with reference to the citrus industry in Florida —

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> "The protection of a large industry constituting one of the great source of the state's wealth and therefore directly or indirectly affecting the welfare of so great a portion of the population of the State is affected to such an extent by public interests as to be within the police power of the sovereign." (128 So. 857)
>
> "Once it is conceded, as it must that the protection and promotion of the sugar industry is a matter of public concern, it follows that the Legislature may determine within reasonable bounds what is necessary for its protection and expedient for its promotion. Here, the legislative discretion must be allowed full play, subject only to the test of reasonableness; and it is not contended that the means provided in Section 6 of the law (above quoted) bear no relation to the objective pursued or are oppressive in character. If objective and methods are alike constitutionally valid, no reason is seen why the state may not levy taxes to raise funds for their prosecution and attainment. Taxation may be made the implement of the state's police power. (*Great Atl. & Pac. Tea Co. v. Grosjean*, 301 U.S. 412, 81 L. Ed. 1193; *US v. Butler*, 237 U.S. 1, 30 L. Ed. 477; *M'callock v. Maryland*, 4 Wheat. 316, 4 L. Ed. 579)."

On the authority of the above case, then, We hold that the special assessment at bar may be considered similarly as the above, that is, that the levy for the Philsugin Fund is not so much an exercise of the power of taxation, nor the imposition of a special assessment, but, the exercise of the police power for the general welfare of the entire country. It is, therefore, an exercise of a sovereign power which no private citizen may lawfully resist.

Elsewhere, FIT schemes are also in place, and end-users are also made to shoulder the cost of incentivizing renewable energy generation companies. Under Japan's FIT system, "electric utilities and merchants purchase renewable-generated electricity at prices and contract durations set by the Ministry of Economy, Trade and Industry [and] end-users pay a surcharge to help cover the renewable portion of the total power supply."[3] In Germany too, "the extra cost of [Renewable Energy] is shared among all

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[3] About Japan's Feed-In Tariff, https://www.ichigo-green.co.jp/en/operation/purchase/ last accessed on April 10, 2023.

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energy [end-users] by the [German FIT] meaning that [end-users are expected] to pay a specific amount for each kWh used."[4]

Be that as it may, I submit my observation that the balance is tilted too much against the end-consumers. Why should the big businesses of a select few be treated delicately but the burden is passed on to end-consumers? Why not disincentivize instead the use of fossil fuel as sources of electricity by cutting into their profits in a way that cannot be passed on to end consumers? Of course, this is matter of wisdom which I concede is not for the Court to inquire into. But I cannot help expressing my opinion as a citizen of the Republic whose fervent wish is to be exempt, even just once, from a burden merely passed on.

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[4] The German Feed-In Tariff, https://www.futurepolicy.org/climate-stability/renewable-energies/the-german-feed-in-tariff/ last accessed on April 10, 2023.