Supreme Court E-Library

THIRD DIVISION

[G.R. No. 141314. April 9, 2003]

REPUBLIC OF THE PHILIPPINES, REPRESENTED BY ENERGY REGULATORY BOARD, *petitioner, vs.* **MANILA ELECTRIC COMPANY,** *respondent.*

[G.R. No. 141369. April 9, 2003]

LAWYERS AGAINST MONOPOLY AND POVERTY (LAMP) consisting of CEFERINO PADUA, Chairman, G. FULTON ACOSTA, GALILEO BRION, ANATALIA BUENAVENTURA, PEDRO CASTILLO, NAPOLEON CORONADO, ROMEO ECHAUZ, FERNANDO GAITE, ALFREDO DE GUZMAN, ROGELIO KARAGDAG, JR., MA. LUZ ARZAGA-MENDOZA, ANSBERTO PAREDES, AQUILINO PIMENTEL III, MARIO REYES, EMMANUEL SANTOS, RUDEGELIO TACORDA, members, and ROLANDO ARZAGA, Secretary-General, JUSTICE ABRAHAM SARMIENTO, SENATOR AQUILINO PIMENTEL, JR. and COMMISSIONER BARTOLOME FERNANDEZ, JR., Board of Consultants, and Lawyer GENARO LUALHATI, *petitioners, vs.* **MANILA ELECTRIC COMPANY (MERALCO),** *respondent.*

SYNOPSIS

For resolution herein is the motion for reconsideration filed by respondent Manila Electric Company (Meralco) from the decision of the Supreme Court reducing Meralco's rate adjustment in the amount of ₱0.017 per kwh for its billing cycles beginning 1994 and further directing Meralco to credit the excess average amount of ₱0.167 per kwh to its customers starting with Meralco billing cycles beginning February, 1994. In this motion for reconsideration, Meralco contended that (1) the deduction of income tax from revenues allowed from rate determination of public utilities is a part of its constitutional

Supreme Court E-Library

right to property; (2) it correctly used the "average investment method" or the "simple average" in computing the value of its properties entitled to a return instead of the "net average investment method" or the "number of months use method"; and (3) the decision of the ERB (Energy Regulatory Board) ordering the refund of ₱0.167 per kwh to its customers should not be given retroactive effect.

The Supreme Court denied with finality Meralco's motion for reconsideration. According to the Court, rate regulation calls for a careful consideration of the totality of facts and circumstances material to each application for an upward rate revision. In this case, even if income tax is to be included as an operating expense and, hence, recoverable from the consuming public, Meralco would still enjoy a rate of return that is above the authorized rate of 12 %. Public utilities cannot be allowed to overcharge at the expense of the public, and worse, they cannot complain that they are not overcharging enough. The Court also found no reversible error on the part of COA and the ERB in adopting the "net average investment method" or the "number of months use method" for property valuation purposes. Such matters are primarily entrusted to the said administrative or regulating authorities, which the courts are ill equipped to enter. The Court ruled that the audit procedures conducted in a rate application proceeding is to determine whether the rate applied for will generate a reasonable return for public utility, which, in accordance with settled laws and jurisprudence, is 12 % on rate base or the present value of the assets used in the operations of a public utility. Hence, the ERB decision ordering a refund to Meralco customers should be given retroactive effect.

SYLLABUS

1. **STATUTORY CONSTRUCTION; STATUTES; MUST BE CONSTRUED IN ACCORDANCE WITH THE INTENTION OF OUR OWN LAWMAKERS; APPLICATION IN CASE AT BAR.**— *American decisions and authorities are not per se controlling in this jurisdiction. At best, they are persuasive for no court holds a patent on correct decisions.* Our laws must be construed in accordance with the intention of our own lawmakers and such intent may be deduced from the language

Supreme Court E-Library

of each law and the context of other local legislation related thereto. More importantly, *they must be construed to serve our own public interest which is the be-all and the end-all of all our laws. And it need not be stressed that our public interest is distinct and different from others.* Rate regulation calls for a careful consideration of the totality of facts and circumstances material to each application for an upward rate revision. *Rate regulators should strain to strike a balance between the clashing interests of the public utility and the consuming public and the balance must assure a reasonable rate of return to public utilities without being unreasonable to the consuming public. What is reasonable or unreasonable depends on a calculus of changing circumstances that ebb and flow with time.* Yesterday cannot govern today, no more than today can determine tomorrow.

2. **POLITICAL LAW; ADMINISTRATIVE LAW; ENERGY REGULATORY COMMISSION (ERC); MANDATED TO REGULATE AND FACILITATE THE UNBUNDLING OF RATES PRESCRIBED BY SECTION 36 OF THE ELECTRIC POWER INDUSTRY REFORM ACT OF 2001 (EPIRA); CASE AT BAR.**— Under Section 36 of the EPIRA, (Electric Power Industry Reform Act of 2001) the NPC and every distribution facility covered by the law is mandated to unbundle, segregate or itemize its rates according to the various sectors of the electric power industry identified in the law, namely: generation, transmission, distribution and supply. The law further directs the ERC to regulate and facilitate the unbundling of rates prescribed by Section 36. Thus, on October 30, 2001, the ERC issued guidelines prescribing the uniform rate filing requirements to be followed by distribution facilities for the purposes of unbundling rates. A proper appreciation of the UFR shows that it simply specifies a uniform accounting system to be complied with by a distribution facility when filing an application for revised rates under the EPIRA. As the EPIRA requires the unbundling or segregation of rates according to the different sectors of the electric power industry, the UFR seeks to facilitate this process by properly identifying the accounts or information required for proper evaluation by the ERB. Thus, the introductory statements of the UFR provide: These uniform rate filing requirements are intended to promote consistency and completeness in the rate filings required by Republic Act No.

Supreme Court E-Library

9136 (RA 9136), Section 36. To that end, the filing requirements *only specify minimum form and content. A rate application in all its aspects continues to be subject to subsequent Commission review and deliberation.* At the onset, it is clear that *the UFR does not seek to determine which accounting method will be used by the ERC for determination of rate base or the items of expenses that may be recovered by a public utility from its customers.* The UFR only seeks to prescribe a *uniform system or format* to standardize or facilitate the process of unbundling of rates mandated by the EPIRA. At best, the UFR prescribes the set of raw data or figures to be disclosed by a distribution facility that the ERC will need to determine the authorized rates that a distribution facility may charge. *The UFR does not, in any way, determine the manner by which the set of data or figures indicated in the rate application will be evaluated by the ERC for rate determination purposes.*

3. ID.; ID.; FINDINGS OF ADMINISTRATIVE OR REGULATORY AGENCIES ON MATTERS WHICH ARE WITHIN THEIR TECHNICAL AREA OF EXPERTISE, GENERALLY ACCORDED NOT ONLY RESPECT BUT AT TIMES EVEN FINALITY; PRESENT IN CASE AT BAR.— The rule then as it is now, is that rate regulating authorities are not hidebound to use any single formula or combination of formulas for property valuation purposes because the rate-making process involves the balancing of investor and consumer interests which takes into account various factors that may be unique or peculiar to a particular rate revision application. We again stress the long established doctrine that findings of administrative or regulatory agencies on matters which are within their technical area of expertise are generally accorded not only respect but at times even finality if such findings and conclusions are supported by substantial evidence. Rate fixing calls for a technical examination and a specialized review of specific details which the courts are ill-equipped to enter, hence, such matters are primarily entrusted to the administrative or regulating authority.

4. ID.; COMMISSION ON AUDIT; ESSENCE OF THE USE OF A "TEST YEAR" FOR AUDITING PURPOSES; CONSTRUED IN CASE AT BAR.— The purpose of the audit procedures conducted in a rate application proceeding is to determine whether the rate applied for will generate a reasonable return for the public utility, which, in accordance with settled laws

Supreme Court E-Library

and jurisprudence, is 12% on rate base or the present value of the assets used in the operations of a public utility. For audit purposes, however, there is a need to obtain a sample set of data — usually derived from figures within a designated period of time — to determine the amount of returns obtained by a public utility during such period. In the cases at bar, the COA conducted an audit for the test year beginning February 1, 1994 and ending January 31, 1995 or a 12-month period immediately after the order of the ERB granting a provisional increase in the amount of ₱0.184 per kwh was issued. Thus, the ultimate issue resolved by the COA when it conducted its audit was whether the provisional increase granted by the ERB generated an amount of return well within the rates authorized by law. As stated earlier, based on the findings of the ERB, with the increase of ₱0.184 per kwh, MERALCO obtained a rate of return which was 8.15% more than the authorized rate of return of 12%. Thus, a refund in the amount of ₱0.167 was determined and ordered by ERB. The essence of the use of a "test year" for auditing purposes is to obtain a sample or representative set of figures to enable the examining authority to arrive at a conclusion or finding based on the gathered data. The use of a "test year" does not mean that the information and conclusions so derived would only be correct for that year and would be incorrect on the succeeding years. The use of a "test year" assumes that within a reasonable period after such test year, figures used to determine the amount of return would only vary slightly from the figures culled during the test year such that the impact on the utility's rate of return would not be very significant. Thus, in the event that there is a substantial change in circumstances significantly affecting the variable amounts that would determine the reasonableness of a return, an event which would normally occur after a certain period of time has elapsed, the public utility may subsequently apply for a rate revision.

Panganiban, J., ***separate opinion:***

REMEDIAL LAW; APPEAL TO THE SUPREME COURT; WHEN ORAL ARGUMENTS DEEMED PROPER; RATIONALE.— There are still lingering questions that need to be answered or clarified before the Motion for Reconsideration of Meralco should be resolved. These questions were not fully taken up

Supreme Court E-Library

by the pleadings of the parties. Thus, it would be pretentious for me to render an opinion on them. On the other hand, I believe that a decision that does not take up these questions would be incomplete. Hearing the parties on Oral Argument before the entire Court, or even by just the Third Division, *prior* to resolving with finality the motion for reconsideration on a very important matter such as the present case is not unusual. In fact, with due respect, I believe that this is the proper thing to do. After all, very recently in *PLDT v. City of Davao* (GR No. 143863, March 27, 1993), the Court *en banc* conducted an Oral Argument on the Motion for Reconsideration challenging the unanimous Decision of the Second Division. That case involved the legality of whether a local government unit (LGU) like the City of Davao may impose local taxes on the Philippine Long Distance Telephone Company. The amount involved there was only about ₱4 million. On the other hand, the present case involves the refund of about ₱2.5 billion per year starting 1994, or about ₱20 billion up to the year 2003. Apart from the monetary consideration, I believe the issues raised — including the foregoing questions — are important enough to merit a hearing also. May I stress that this case will affect not only Meralco and its customers but *all* electric utilities and *all* their customers *all* over the Philippines, which means this case will affect all the people of this country.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.

Ceferino Padua Law Office for Lawyers Against Monopoly and Poverty (LAMP).

Quiason Makalintal Barot Torres & Ibarra for MERALCO

Puno & Puno for Intervenor.

RESOLUTION

PUNO, *J.*:

The business and operations of a public utility are imbued with public interest. In a very real sense, *a public utility is engaged in public service* — providing basic commodities and services indispensable to the interest of the general public.

Supreme Court E-Library

For this reason, a public utility submits to the regulation of government authorities and surrenders certain business prerogatives, including the amount of rates that may be charged by it. It is the imperative duty of the State to interpose its protective power whenever too much profits become the priority of public utilities.

For resolution is the Motion for Reconsideration filed by respondent Manila Electric Company (MERALCO) on December 5, 2002 from the decision of this Court dated November 15, 2002 reducing MERALCO's rate adjustment in the amount of ₱0.017 per kilowatthour (kwh) for its billing cycles beginning 1994 and further directing MERALCO to credit the excess amount of ₱0.167 per kwh to its customers starting with MERALCO's billing cycles beginning February 1994.[1]

First, we leapfrog through the facts. On December 23, 1993, MERALCO filed with the Energy Regulatory Board (ERB) an application for revised rates, with an average increase of P0.21 per kwh in its distribution charge. On January 28, 1994 the ERB granted a *provisional increase* of ₱0.184 per kwh *subject to the condition* that in the event the ERB determines that MERALCO is entitled to a lesser increase in rates, all excess amounts collected by MERALCO shall be refunded to its customers or credited in their favor. The Commission on Audit (COA) conducted an examination of the books of accounts and records of MERALCO and thereafter recommended, among others, that: (1) income taxes paid by MERALCO should not be included as part of MERALCO's operating expenses and (2) the "net average investment method" or the "number of months use method" should be applied in determining the proportionate value of the properties used by MERALCO during the test year.

In its *decision* dated February 16, 1998, the *ERB adopted the recommendations of the COA* and authorized MERALCO to adopt a rate adjustment of *₱0.017 per kilowatthour (kwh)* for its billing cycles beginning 1994. The ERB further directed

---

[1] *Rollo*, G.R. No. 141369, pp. 199-218.

Supreme Court E-Library

MERALCO to *credit the excess average amount of ₱0.167 per kwh to its customers* starting with MERALCO's billing cycles beginning February 1994. The said ruling of the ERB was affirmed by this Court in its decision dated November 15, 2002.

In its Motion for Reconsideration, respondent MERALCO contends that: (1) the deduction of income tax from revenues allowed for rate determination of public utilities is part of its constitutional right to property; (2) it correctly used the "average investment method" or the "simple average" in computing the value of its properties entitled to a return instead of the "net average investment method" or the "number of months use method"; and (3) the decision of the ERB ordering the refund of ₱0.167 per kwh to its customers should not be given retroactive effect.[2]

The Republic of the Philippines through the ERB, now Energy Regulatory Commission (ERC), represented by the Office of the Solicitor General, filed its Comment on March 7, 2003. Surprisingly, in its Comment, the ERC proffered a divergent view from the Office of the Solicitor General. The ERC submits that income taxes are not operating expenses but are reasonable costs that may be recoverable from the consuming public. While the ERC admits that "there is still no categorical determination on whether income tax should indeed be deducted from revenues of a public utility," it agrees with MERALCO that to disallow public utilities from recovering its income tax payments will effectively lower the return on rate base enjoyed by a public utility to 8%. The ERC, however, agrees with this Court's ruling that the use of the "net average investment method" or the "number of months use method" is not unreasonable.[3]

The Office of the Solicitor General, under its solemn duty to protect the interests of the people, defended the thesis that income tax payments by a public utility should not be recovered as costs from consuming public. It contended that: (1) the foreign

---

[2] *Id.*, at 223–270.

[3] G.R. No. 141314, pp. 2309-2313.

Supreme Court E-Library

jurisprudence cited by MERALCO in support of its position is not applicable in this jurisdiction; (2) MERALCO was given a fair rate of return; (3) the COA and the ERB followed the National Accounting and Auditing Manual which expressly disallows the treatment of income tax as operating expense; (4) Executive Order No. 72 does not grant electric utilities the privilege of treating income tax as operating expense; (5) the COA and the ERB have been consistent in not allowing income tax as part of operating expenses; (6) ERB decisions allowing the application of a tax recovery clause are *inapropos*; (7) allowing MERALCO to treat income tax as an operating expense would set a dangerous precedent; (8) assuming that the disallowance of income tax as operating expense would discourage foreign investors and lenders, the government is not precluded from enacting laws and instituting measures to lure them back; and (9) the findings and conclusions of the ERB carry great weight and should be binding on the courts in the absence of grave abuse of discretion. The Solicitor General agrees with the ERC that the "net average investment method" is a reasonable method for property valuation. Finally, the Solicitor General argues that the ERB decision may be applied retroactively and the use of a test period to determine the rate base and allowable rates to be collected by a public utility is an accepted practice.[4]

We shall discuss the main issues *in seriatim*.

I

MERALCO argues that deduction of all kinds of taxes, including income tax, from the gross revenues of a public utility is firmly entrenched in American jurisprudence. It contends that the Public Service Act (Commonwealth Act No. 146) was patterned after Act 2306 of the Philippine Commission, which, in turn, was borrowed from American state public utility laws such as the New Jersey Public Utility Act. Hence, it maintains that American jurisprudence on the inclusion of income taxes as a lawful charge

---

[4] *Id.* at 2305-2399.

Supreme Court E-Library

to operating expenses should be controlling. It cites the rule on statutory construction that a statute adopted from a foreign country will be presumed to be adopted with the construction placed upon it by the courts of that country before its adoption.[5]

We are not persuaded. *American decisions and authorities are not per se controlling in this jurisdiction. At best, they are persuasive for no court holds a patent on correct decisions.* Our laws must be construed in accordance with the intention of our own lawmakers and such intent may be deduced from the language of each law and the context of other local legislation related thereto. More importantly, *they must be construed to serve our own public interest which is the be-all and the end-all of all our laws. And it need not be stressed that our public interest is distinct and different from others.*

Rate regulation calls for a careful consideration of the totality of facts and circumstances material to each application for an upward rate revision. *Rate regulators should strain to strike a balance between the clashing interests of the public utility and the consuming public and the balance must assure a reasonable rate of return to public utilities without being unreasonable to the consuming public. What is reasonable or unreasonable depends on a calculus of changing circumstances that ebb and flow with time.* Yesterday cannot govern today, no more than today can determine tomorrow.

Prescinding from these premises, we reject MERALCO's insistence that the non-inclusion of income tax payments as a legitimate operating expense will deny public utilities a fair return of their investment. This stubborn stance is belied by the report submitted by the COA on the audit conducted on MERALCO's books of accounts and the findings of the ERB.[6]

Upon the instructions of the ERB, the COA conducted an audit of the operations of MERALCO covering the period from

---

[5] *Id.* at 224-226.

[6] Audit Report SAO No. 95-07; *Rollo*, G.R. No. 141314, pp. 143-527.

Supreme Court E-Library

February 1, 1994 to January 31, 1995, *or the period immediately after the implementation of the provisional rate increase.*[7] Hence, amounts culled by the COA from its examination of the books of MERALCO already included the provisional rate increase of ₱0.184 granted by the ERB.

From the figures submitted by the COA, the ERB was able to determine that MERALCO derived *excess revenue* during the test year in the amount of *₱2,448,378,000.*[8] This means that during the test year, and after the rates were increased by ₱0.184, MERALCO earned *₱2,448,378,000 or 8.15% more than the amount it should have earned at a 12% rate of return on rate base.* Accordingly, based on this amount of excess revenue, the ERB determined that the provisional rate granted by it to MERALCO was *₱0.167 per kwh more than the amount MERALCO ought to charge its customers to obtain the prescribed 12% rate of return on rate base.* Thus, the ERB correspondingly lowered the provisional increase by *₱0.167 per kwh* and ordered MERALCO to increase its rates at a reduced amount of *₱0.017* per kwh, computed as follows:[9]

	At appraised value
Total Invested Capital Entitled to Return	₱30,059,614,000[10]
12% return thereon	₱ 3,607,154,000
Add: Total Operating expenses for Rate Determination Purposes	₱38,260,420,000[11]

[7] *Rollo*, G.R. No. 141314, p. 146. Provisional rate increase was granted by the ERB in its Order dated January 28, 1994.

[8] *Id.* at 588.

[9] *Id.*

[10] The "net average investment method" or the "number of months use method" was used to determine proportionate value of assets in service.

[11] Income tax considered as a non-operating expense.

Supreme Court E-Library

Computed Revenue	₱41,867,573,000
Actual Revenue	₱44,315,951,000
Excess Revenue	*₱ 2,448,378,000*
Percent of Excess Revenue to Invested Capital	8.15%
Authorized Rate of Return	12.00%
Actual Rate of Return	*20.15%*
Total kwh sold	14,640,094,000
Ratio of Excess Revenue to Total kwh Sold	*₱ 0.167*

In fact, even *if MERALCO's income tax liability would be included as an operating expense, MERALCO would still enjoy excess revenue of ₱312,738,000.00 or 1.04% above the authorized rate of return of 12%.* Based on its audit, the COA determined that the provision for income tax liability of MERALCO amounted to ₱2,135,639,000.00.[12] Thus, even if such amount of income tax liability would be included as operating expense, *the amount of excess revenue earned by MERALCO during the test year would be more than sufficient to cover the additional income tax expense.* Thus:

	At appraised value
Total Invested Capital Entitled to Return	₱ 30,059,614,000
12% return thereon	₱ 3,607,154,000
Add: Total Operating expenses for Rate Determination Purposes	₱ 40,396,059,000[13]
Computed Revenue	₱ 44,003,213,000

[12] *Rollo*, G.R. No. 141314, p. 455.

[13] Income tax considered as an operating expense.

Supreme Court E-Library

Actual Revenue	₱	44,315,951,000
Excess Revenue	₱	*312,738,000*
Percent of Excess Revenue to Invested Capital		*1.04%*
Authorized Rate of Return		12.00%
Actual Rate of Return		*13.04%*

It is crystal clear, therefore, that even if income tax is to be included as an operating expense and hence, recoverable from the consuming public, MERALCO would still enjoy a rate of return that is above the authorized rate of 12%. *Public utilities cannot be allowed to overcharge at the expense of the public and worse, they cannot complain that they are not overcharging enough.*

Be that as it may, MERALCO contends that considering income tax payments of public utilities constitute one-third of their net income, public utilities will effectively get, not the 12% rate of return on rate base allowed them, but only about 8%.[14] Again, we are not persuaded.

The foregoing argument assumes that the 12% return allowed to public utilities is equivalent to its *taxable income* which will be subject to income tax. The 12% rate of return is computed *only for the purpose of fixing the allowable rates to be charged by a public utility and is in no way determinative of the income subject to income tax of the public utility.* The computation of a corporation's income tax liability is an altogether different matter, with the corporation's taxable income derived by taking into account the corporation's gross revenue less allowable deductions.[15]

At any rate, even on the assumption that in the test year involved (February 1, 1994 to January 31, 1995), MERALCO's computed revenue of ₱41,867,573,000 or the amount that it is

---

[14] *Rollo*, G.R. No. 141314, p. 1408.

[15] H.S. De Leon, *THE FUNDAMENTALS OF TAXATION* 83 (1993).

Supreme Court E-Library

allowed to earn based on a 12% rate of return is its ***taxable income*** after payment of its income tax liability of ₱2,135,639,000.00, MERALCO would still obtain an *11.38% rate of return or a return that is well within the 12% rate allowed to public utilities.*[16]

MERALCO also contends that even the successor of the ERB or the ERC created under the Electric Power Industry Reform Act of 2001 (EPIRA)[17] "adheres to the principle that income tax is part of operating expenses."[18] To bolster its argument, MERALCO cites Article 36 of the EPIRA which charges the ERC with the responsibility of unbundling the rates of the National Power Corporation (NPC) and each distribution utility coming within the coverage of the law.[19] MERALCO alleges that pursuant to said provision, the ERC issued a set of Uniform Rate Filing Requirements (UFR) containing guidelines

---

[16] *Republic v. Medina*, G.R. Nos. 32068, 32083, 32155, 32374, 32402, 32464, October 4, 1971, 41 SCRA 643, 665.

[17] Republic Act No. 9136, June 16, 2001.

[18] *Rollo*, G.R. No. 141314, p. 1419.

[19] Section 36. *Unbundling of Rates and Functions.* Within six (6) months from the effectivity of this Act, the NPC shall file with the ERC its revised rates. The rates of the NPC shall be unbundled between transmission and generation rates and the rates shall reflect the respective costs of providing each service. Inter-grid and intra-grid cross subsidies for both the transmission and generation rates shall be removed in accordance with this Act.

Within six (6) months from effectivity of this Act, each distribution utility shall file its revised rates for the approval of the ERC. The distribution wheeling charge shall be unbundled from the retail rate and the rates shall reflect the respective costs of providing each service. For both the distribution retail wheeling and supplier's charges, inter-class subsidies shall be removed in accordance with this Act.

Within six (6) months from the date of submission of the revised rates by NPC and each distribution facility, the ERC shall notify the entities of their approval.

Any electric power industry participant shall functionally and structurally unbundle its business activities and rates in accordance with the sectors as identified in Section 5 hereof. The ERC shall ensure full compliance with this provision.

Supreme Court E-Library

to be followed with respect to rate unbundling applications to be filed. MERALCO asserts that under the UFR, the enumeration of the expenses which are to be recovered through the rates, and which are to be separated or allocated for the purpose of unbundling of these rates include income tax expenses.

Under Section 36 of the EPIRA, the NPC and every distribution facility covered by the law is mandated to unbundle, segregate or itemize its rates according to the various sectors of the electric power industry identified in the law, namely: generation, transmission, distribution and supply.[20] The law further directs the ERC to regulate and facilitate the unbundling of rates prescribed by Section 36. Thus, on October 30, 2001, the ERC issued guidelines prescribing the uniform rate filing requirements to be followed by distribution facilities for the purposes of unbundling rates.[21]

A proper appreciation of the UFR shows that it simply specifies a uniform accounting system to be complied with by a distribution facility when filing an application for revised rates under the EPIRA. As the EPIRA requires the unbundling or segregation of rates according to the different sectors of the electric power industry, the UFR seeks to facilitate this process by properly identifying the accounts or information required for proper evaluation by the ERB. Thus, the introductory statements of the UFR provide:

> These uniform rate filing requirements are intended to promote consistency and completeness in the rate filings required by Republic Act No. 9136 (RA 9136), Section 36. To that end, the filing requirements *only specify minimum form and content. A rate application in all its aspects continues to be subject to subsequent Commission review and deliberation.*[22]

At the onset, it is clear that *the UFR does not seek to determine which accounting method will be used by the*

---

[20] Section 5, EPIRA.

[21] *Rollo*, G.R. No. 141314, p. 1312-1330.

[22] *Id.* at 1316. Italics supplied.

Supreme Court E-Library

ERC for determination of rate base or the items of expenses that may be recovered by a public utility from its customers. The UFR only seeks to prescribe a *uniform system or format* to standardize or facilitate the process of unbundling of rates mandated by the EPIRA. At best, the UFR prescribes the set of raw data or figures to be disclosed by a distribution facility that the ERC will need to determine the authorized rates that a distribution facility may charge. *The UFR does not, in any way, determine the manner by which the set of data or figures indicated in the rate application will be evaluated by the ERC for rate determination purposes.*

II

MERALCO also challenges the use of the "net average investment method" or the "number of months use method" on the ground that MERALCO and the Public Service Commission (PSC) have been consistently applying the "average investment method" or "simple average," which it alleged was also affirmed by this Court in the case of *MERALCO v. PSC*[23] and *Republic v. Medina*.[24]

It is true that in *MERALCO v. PSC*,[25] the issue of the proper valuation method to be used in determining the value of MERALCO's utility plants for rate fixing purposes was brought to fore. In the said case, MERALCO applied the "average investment method" or "simple average" by obtaining the average value of the utility plants, using its values at the beginning and at the end of the test year. In contrast, the General Auditing Office used the "appraisal method" which fixes the value of the utility plants by ascertaining the cost of production per kilowatt and multiplying the same by the total capacity of said plants, less the corresponding depreciation.[26] In upholding the

---

[23] G.R. Nos. 24762, 24841, 24854, 24872, November 14, 1966, 18 SCRA 651.

[24] *Supra* note 16.

[25] *Supra* note 23.

[26] *Id.* at 670.

Supreme Court E-Library

"average investment method" used by MERALCO, this Court adopted the findings of the PSC for being "by and large, supported by the records of the case."[27] This Court did not make an independent assessment of the validity or applicability of the average investment method but simply did not disturb the findings of the PSC for being supported by substantial evidence. To conclude that the said decision "affirmed" the use of the "average investment method" thereby implying that the said method is the only method to be applied in all instances, is a strained reading of the decision.

In fact, in the case of *Republic v. Medina*,[28] also cited by MERALCO to have affirmed the use of the "average investment method," this Court ruled:

> The decided weight of authority, however, is to the effect that *property valuation is not to be solved by formula but depends upon the particular circumstances and relevant facts affecting each utility* as to what constitutes a just rate base and what would be a fair return, just to both the utility and the public.[29]

Further, Mr. Justice Castro in his concurring opinion in the same case elucidated:

> A regulatory commission's field of inquiry, however, is not confined to the computation of the cost of service or capital nor to a mere prognostication of the future behavior of the money and capital markets. It must also balance investor and consumer expectations in such a way that broad requirements of public interest may be meaningfully realized. *It would hence appear in keeping with its public duty if a regulatory body is allowed wide discretion in the choice of methods rationally related to the achievement of this end.*[30]

Thus, the rule then as it is now, is that rate regulating authorities are not hidebound to use any single formula or combination of

---

[27] *Id.* at 673.

[28] *Supra* note 16.

[29] *Id.* at 662. Italics supplied.

[30] *Id.* at 684. Italics supplied.

Supreme Court E-Library

formulas for property valuation purposes because the rate-making process involves the balancing of investor and consumer interests which takes into account various factors that may be unique or peculiar to a particular rate revision application.

We again stress the long established doctrine that findings of administrative or regulatory agencies on matters which are within their technical area of expertise are generally accorded not only respect but at times even finality if such findings and conclusions are supported by substantial evidence.[31] Rate fixing calls for a technical examination and a specialized review of specific details which the courts are ill-equipped to enter, hence, such matters are primarily entrusted to the administrative or regulating authority.[32]

Thus, this Court finds no reversible error on the part of the COA and the ERB in adopting the "net average investment method" or the "number of months use method" for property valuation purposes in the cases at bar.

III

MERALCO also rants against the retroactive application of the rate adjustment ordered by the ERB and affirmed by this Court. In its decision, the ERB, after authorizing MERALCO to adopt a rate adjustment in the amount of ₱0.017 per kwh, directed MERALCO to refund or credit to its customers' future consumption the excess average amount of ₱0.167 per kwh from its billing cycles beginning February 1994[33] until its billing cycles beginning February 1998.[34] In the decision appealed from,

---

[31] *Radio Communications of the Philippines, et al. v. National Telecommunications Commission, et al.*, G.R. No. 66683, April 23, 1990, 184 SCRA 517, 524.

[32] *Republic v. Medina*, G.R. Nos. 32068, 32083, 32155, 32374, 32402, 32464, October 4, 1971, 41 SCRA 643, 666.

[33] Period after the provisional increase of P0.184 was granted by the ERB.

[34] ERB decision promulgated on February 16, 1998.

Supreme Court E-Library

this Court likewise ordered that the refund in the average amount of ₱0.167 per kwh be made to retroact from MERALCO's billing cycles beginning February 1994.

MERALCO contends that the refund cannot be given retroactive effect as the figures determined by the ERB only apply to the test year or the period subject of the COA Audit, *i.e.*, February 1, 1994 to January 31, 1995. It reasoned that the amounts used to determine the proper rates to be charged by MERALCO would vary from year to year and thus the computation of the excess average charge of ₱0.167 would hold true only for the test year. Thus, MERALCO argues that if a refund of ₱0.167 would be uniformly applied to its billing cycles beginning 1994, with respect to periods after January 31, 1995, there will be instances wherein its operating revenues would fall below the 12% authorized rate of return. MERALCO therefore suggests that the dispositive portion be modified and order that "the refund applicable to the periods after January 31, 1995 is to be computed on the basis of the excess collection in proportion to the excess over the 12% return."[35]

The purpose of the audit procedures conducted in a rate application proceedings is to determine whether the rate applied for will generate a reasonable return for the public utility, which, in accordance with settled laws and jurisprudence, is 12% on rate base or the present value of the assets used in the operations of a public utility. For audit purposes, however, there is a need to obtain a sample set of data — usually derived from figures within a designated period of time — to determine the amount of returns obtained by a public utility during such period. In the cases at bar, the COA conducted an audit for the test year beginning February 1, 1994 and ending January 31, 1995 or a 12-month period immediately after the order of the ERB granting a provisional increase in the amount of ₱0.184 per kwh was issued. Thus, the ultimate issue resolved by the COA when it conducted its audit was whether the provisional increase granted by the ERB generated an amount of return well within the rates authorized by law. As stated earlier, based on the findings

[35] *Supra* note 1 at 266.

Supreme Court E-Library

of the ERB, with the increase of ₱0.184 per kwh, MERALCO obtained a rate of return which was 8.15% more than the authorized rate of return of 12%[36] Thus, a refund in the amount of ₱0.167 was determined and ordered by ERB.

The essence of the use of a "test year" for auditing purposes is to obtain a sample or representative set of figures to enable the examining authority to arrive at a conclusion or finding based on the gathered data. The use of a "test year" does not mean that the information and conclusions so derived would only be correct for that year and would be incorrect on the succeeding years. The use of a "test year" assumes that within a reasonable period after such test year, figures used to determine the amount of return would only vary slightly from the figures culled during the test year such that the impact on the utility's rate of return would not be very significant. Thus, in the event that there is a substantial change in circumstances significantly affecting the variable amounts that would determine the reasonableness of a return, an event which would normally occur after a certain period of time has elapsed, the public utility may subsequently apply for a rate revision.

We agree with the Solicitor General that following MERALCO's reasoning that the figures culled from a test year would only be relevant during such year, there would be a need for public utilities to apply for a rate adjustment *every year* and perform an audit examination on a public utility's books of accounts *every year* as the amount of a utility's revenue may fall above or below the authorized rates at any given year. Needless to say, the trajectory of MERALCO's arguments will lead to an absurdity.

From the time the order granting a provisional increase was issued by the ERB, nowhere in the records does it appear that the subsequent refund of ₱0.167 per kwh ordered by the ERB was ever implemented or executed by MERALCO.[37]

---

[36] See *Supra* note 7.

[37] On March 3, 1998, the ERB issued an order giving MERALCO a period of 15 days from receipt of the Order to submit the required data

Supreme Court E-Library

Accordingly, from January 28, 1994 MERALCO imposed on its customers a charge that is ₱0.167 in excess of the proper amount. In fact, any application for rate adjustment that may have been applied for and/or granted to MERALCO during the intervening period would have to be reckoned from rates increased by ₱0.184 per kwh as these were the rates prevailing at the time any application for rate adjustment was made by MERALCO.

While we agree that the amounts used to determine the utility's rate of return would vary from year to year, we are unable to subscribe to the view that the refund applicable to the periods after January 31, 1995 should be computed on the basis of the excess collection in proportion to the excess over the 12% return. MERALCO's contention that the refund for periods after January 31, 1995 should be computed on the basis of revenue of each year in excess of the 12% authorized rate of return calls for a year-by-year computation of MERALCO's revenues and assets which would be contrary to the essence of an audit examination of a public utility based on a test year. To grant MERALCO's prayer would, in effect, allow MERALCO the benefit of a year-by-year adjustment of rates not normally enjoyed by any other public utility required to adopt a subsequent rate modification. Indeed, had the ERB ordered an *increase* in the provisional rates it previously granted, said increase in rates would apply retroactively and would not have varied from year to year, depending on the variable amounts used to determine the authorized rates that may be charged by MERALCO. We find no significant circumstance prevailing in the cases at bar that would justify the application of a yearly adjustment as requested by MERALCO.

---

indicated in the ERB's decision dated February 16, 1998 for the purpose of implementing the refund. (See CA *Rollo*, pp. 1057-1058). While pending appeal with the Court of Appeals, the Court of Appeals issued a Temporary Restraining Order on March 17, 1998 prohibiting the ERB from implementing its decision dated February 16, 1998 and its Order dated March 3, 1998. (*See* CA *Rollo*, pp. 1064–1065). Further, the Court of Appeals granted MERALCO's prayer for the issuance of a Writ of Preliminary Injunction in a Resolution dated May 20, 1998. (*See* CA *Rollo*, pp. 1302–1309).

Supreme Court E-Library

WHEREFORE, in view of the foregoing, the petitioner's Motion for Reconsideration is DENIED WITH FINALITY.

SO ORDERED.

Sandoval-Gutierrez, Corona, and *Carpio Morales, JJ.,* concur.

PANGANIBAN, *J.*, *separate opinion:*

After perusing the respondent's Motion for Reconsideration, the Comment thereon by the Office of the Solicitor General (OSG) and the other pleadings filed by the parties, I believe there are still lingering questions that need to be answered or clarified before the Motion for Reconsideration should be resolved. Some of the more important questions are the following:

Effect of ERC's Self-Reversal

First, this case reached this Court because the Energy Regulatory Board (ERB), now known as the Energy Regulatory Commission (ERC), appealed to us the Decision of the Court of Appeals (CA), which upheld Meralco. In its Comment to Meralco's Motion for Reconsideration, however, the OSG — as counsel for ERC — informed this Court that ERC has reversed its position and now believes that "income taxes x x x are reasonable costs that may be recoverable from the consuming public." In the words of the *ponencia*, ERC "agrees with Meralco that to disallow public utilities from recovering its income tax payments will effectively lower the return on rate base enjoyed by a public utility to 8%."

1. By reversing itself, is the ERC effectively abandoning its appeal before this Court? If so, is it still proper for this Court to uphold the old ERB Decision? Be it remembered that our own Decision is anchored on the theory that ERB should be affirmed, because it is the knowledgeable and specialized government agency tasked with electric rate determination, and thus its findings and opinions — unless obviously faulty — merit full faith and credit.

2. Is the OSG, as counsel for the ERC and the government, authorized to argue against its own clients' position and thereby leave them without any lawyer?

Supreme Court E-Library

Effects of New EPIRA Law

Second, in its Comment, OSG informs us that a new law, RA 9136 — the Electric Power Industry Reform Act (EPIRA) — was enacted on June 16, 2002. This law allegedly authorizes ERC to determine rates that will "allow the recovery of a just and reasonable return of rate base (RORB) to enable the entity to operate viably." On this basis, ERC opines that actual income taxes paid should now be deemed "reasonable costs" of operating a public utility.

1. Does this mean that effective June 16, 2002, ERC may allow the deduction of income taxes from operating expenses? Does this render our Decision obsolete?

Our Decision Allegedly Reduce Earnings to Only 8%

Third, citing the report of the Commission on Audit (COA), the OSG originally opined that MERALCO — after the infusion of the provisional rate increase of 18.4 centavos — would still earn 13% RORB if income taxes are not treated as operating expenses, and 20% if they are deducted as operating expenses.

1. If this is so, why is Meralco still complaining that the old ERB Decision, which this Court is affirming, bars it from earning the maximum allowable profit of 12%? How accurate are the OSG and COA computations? Or, is Meralco just misleading the Court?

2. In any event, despite the COA figures, the OSG concedes that — at least theoretically — Meralco's profit would be reduced by our Decision to a maximum of only 8% RORB, instead of the allowable 12%. At the same time, it justifies the 8% RORB by arguing that the World Bank and the Asian Development Bank consider a public utility of 8% RORB still viable (p. 42 of the OSG Comment). Which is which?

Special Privilege to Meralco

Fourth, in its Comment, the OSG argues that other public utilities are not allowed to deduct income taxes as operating

Supreme Court E-Library

expenses. Why then should Meralco be given this special privilege, it rhetorically asks?

1. Is this true? If so, why has the ERC changed its position? Why is it now allowing Meralco to deduct income tax payments as "reasonable costs" of operation?

Oral Argument
Is the Proper Thing

The foregoing are the more important questions I posed when I asked the Third Division to refer this case to the Court *en banc* and to conduct oral arguments on the Motion for Reconsideration of Meralco. These questions were not fully taken up by the pleadings of the parties. Thus, it would be pretentious for me to render an opinion on them. On the other hand, I believe that a decision that does not take up these questions would be incomplete.

Hearing the parties on Oral Argument before the entire Court, or even by just the Third Division, *prior* to resolving with finality the motion for reconsideration on a very important matter such as the present case is not unusual. In fact, with due respect, I believe that this is the proper thing to do.

After all, very recently in *PLDT v. City of Davao* (GR No. 143863, March 27, 2003), the Court *en banc* conducted an Oral Argument on the Motion for Reconsideration challenging the unanimous Decision of the Second Division. That case involved the legality of whether a local government unit (LGU) like the City of Davao may impose local taxes on the Philippine Long Distance Telephone Company. The amount involved there was only about ₱4 million. On the other hand, the present case involves the refund of about ₱2.5 billion per year starting 1994, or about ₱20 billion up to the year 2003.

Apart from the monetary consideration, I believe the issues raised — including the foregoing questions — are important enough to merit a hearing also. May I stress that this case will

Supreme Court E-Library

affect not only Meralco and its customers but *all* electric utilities and *all* their customers *all* over the Philippines, which means this case will affect all the people of this country.

Finally, it is interesting to note that the unanimous Second Division Decision in the above-cited *PLDT* case was upheld by the *banc,* with some dissents led by the herein *ponente*, Mr. Justice Reynato S. Puno himself, but only after a full hearing by the full Court.

WHEREFORE, I regret I cannot cast my vote in favor of (or even against) the *ponencia* until and unless an Oral Argument is first called, preferably by the full Court, to clarify the above questions.

FIRST DIVISION

[G.R. No. 143004. April 9, 2003]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **DANTE CLIDORO and JOSEPH BARRA *y* MADERA, accused, DANTE CLIDORO,** *appellant.*

SYNOPSIS

Accused herein were charged with the special complex crime of robbery with rape. They allegedly broke into the house of Salvacion Avila and took from her store three bottles of gin and three packs of cigarettes. But, before they left the place, the two granddaughters of Salvacion were grabbed by each of the accused with the intention of raping them. However, only one of the accused was apparently successful in his exploit, while the other was only able to snatch the necklace of his victim and took away her jeans. After trial, the court *a quo* rendered the assailed decision, which sentenced appellant herein with *reclusion perpetua* for having committed rape on his victim. The other accused who did not appeal his case was sentenced