

Republic of the Philippines
SUPREME COURT
MANILA

NATIONAL ASSOCIATION OF
ELECTRICITY CONSUMERS FOR
REFORMS, INC. (NASECORE),
represented by PETRONILO ILAGAN,
FEDERATION OF VILLAGE
ASSOCIATIONS (FOVA), represented
by SIEGFRIEDO VELOSO, and
FEDERATION OF LAS PINAS VILLAGE
ASSOCIATIONS (FOLVA), represented
by BONIFACIO DAZO,
Petitioners,

G.R. NO.

For: Certiorari under Rule 65 of
1997 Rules of Civil Procedure
with Urgent Prayer for the
Issuance of a TRO or Status Quo
Order (ERC Case No. 2009-
057RC)

ENERGY REGULATORY COMMISSION
(ERC) and MANILA ELECTRIC
COMPANY, INC. (MERALCO),
Respondents.

x-----x

PETITION

COME NOW Petitioners, through counsel, unto this Honorable Court,
respectfully allege:

I. NATURE OF THE CASE

1.1 This is special civil action for Certiorari pursuant to Rule 65 of the
1997 Rules of Civil Procedure assailing the Decision dated 14 December 2009 of
the Energy Regulatory Commission (ERC) in ERC Case No. 2009-057 RC entitled
*"In the Matter of the Application for Approval of: (A) Maximum Average Price
(MAP) for the Regulatory Year 2010 (RY 2010) and (B) Translation of*

Distribution Rate Structure for its Various Customer Classes, with Prayer for the Issuance of a Provisional Authority” for LACK OF DUE PROCESS OF LAW. A certified copy of said Decision is hereto attached as Annex “A” and made an integral part hereof.

II. PARTIES

2.1 PETITIONERS National Association of Electricity Consumers for Reforms, Inc. (NASECORE), Federation of Village Associations (FOVA) and Federation of Las Piñas Village Associations (FOLVA) are associations whose members are consumers of respondent Manila Electric Company (MERALCO). They may be served with court processes through their Legal Counsel, Atty. Leonardo A. Aurelio at A.M. SISON, JR and Partners Law Office, 20th Floor, Security Bank Center Bldg., Ayala Avenue, Makati, Metro Manila.

2.2 Public Respondent Energy Regulatory Commission (ERC), is a government agency created under the Electric Power Industry Reform Act (Republic Act No. 9136), with offices and business address at 15th Floor Pacific Center Building, San Miguel Avenue, Ortigas Center, Pasig City where it may be served with processes of this Honorable Court.

2.3 Private Respondent Manila Electric Company (MERALCO) is a corporation organized and existing under Philippine Laws, with offices and business address at Lopez Building, Meralco Compound, Ortigas Avenue, Pasig City. It may be served with Court processes through its legal counsel, Atty. Jose Ronald V. Valles, 7th Floor, Lopez Bldg., MERALCO Compound, Ortigas Avenue, Pasig City.

III. TIMELINESS OF THE PETITION

3.1 On January 5, 2010, Petitioner NASECORE received a copy of the assailed Decision promulgated by ERC (Annex "A" hereof);

3.2 Petitioners have therefore until March 5, 2010 to file the instant special civic action for Certiorari (Rule 65 of the 1997 Rules of Civil Procedure);

3.3 Thus, this Petition is being filed within the period prescribed by the Rules;

IV.
BRIEF STATEMENT OF FACTS/CASE

4.1 On August 7, 2009, private Respondent Manila Electric Company (MERALCO for short) filed an application with the public respondent Energy Regulatory Commission (ERC for short) for, among others, the increase of its average distribution rate, docketed as ERC Case No. 2009-057RC. A copy of said application is hereto attached as Annex "B" and made an integral part hereof;

4.2 Four (4) months prior to the filing of the aforesaid application, ERC issued an Order in ERC Case Nos. 2008-004RC and 2008-018RC granting an increase in the average distribution rate of MERALCO by P0.257kWh (from P0.9657/kWh to P1.2227/kWh) which is equivalent to a whopping twenty six percent (26%) increase;

4.3 Petitioners filed an appeal under Rule 43 with the Court of Appeals docketed as CA-G.R. SP No. 108663, seeking to set aside the ERC Decision in ERC Case Nos. 2008-004RC and 2008-018RC. Said appeal is pending resolution by the said Appellate Court;

4.4 Petitioner NASECORE filed a Petition for Intervention in the instant case on August 14, 2009 while Petitioners FOLVA and FOVA filed their respective motions for intervention on August 16, 2009;

4.5 On November 13 and 19, 2009, MERALCO presented its two (2) witnesses;

4.6 On November 26, 2009 hearing, NASECORE and FOLVA failed to attend the said hearing;

4.7 Upon motion by MERALCO on the said hearing, ERC declared NASECORE to have waived its right to cross-examine the witnesses of MERALCO for failure to attend the said hearing. Moreover, right there and then, ERC made an Order to the effect that:

“MERALCO was then given five (5) days from said date of hearing within which to file its Formal Offer of Evidence. FOVA and all the other Intervenors were, likewise, given ten (10) days from receipt thereof to file their comments thereon and fifteen (15) days from said date of hearing to file their position papers or Memoranda.” (please see page 11 of the ERC Decision)

4.8 On December 8, 2009, Petitioner NASECORE received MERALCO's Formal Offer of Evidence dated December 01, 2009 thus, giving Petitioner until December 18, 2009 within which to file its comment;

4.9 On the same date, December 8, 2009, petitioner NASECORE received a copy of ERC's Order dated December 7, 2009 directing MERALCO to submit numerous additional information/data in order to facilitate the evaluation of the instant application, a copy of which is hereto attached as Annex "C" and is made as an integral part hereof;

4.10 On December 10, 2009, Petitioner NASECORE filed with ERC a Manifestation with Motion dated December 9, 2009 requesting the following:

- a. to direct applicant MERALCO to furnish Intervenor NASECORE all the items (1-9) in its directive/Order dated December 7, 2009;
- b. to furnish Intervenor NASECORE copy of the Records of the Proceedings of the November 19 and 26, 2009 hearings, and;
- c. to grant Intervenor NASECORE fifteen (15) days within which to file its comment to applicant's Formal Offer of Evidence, from receipt of applicant's compliance to the ERC's Order dated December 7, 2009 (annex "C") hereof;

A copy of said Manifestation with Motion is hereto attached as Annex "D" and is made as an integral part hereof.

4.11 On December 14, 2009, ERC issued the assailed Decision (Annex "A" hereof) received by Petitioners on January 5, 2010. Among others, the said Decision granted to MERALCO an average distribution rate increase of P0.269/kWh (from P1.2227/kWh to P1.4917/kWh) equivalent to 22% increase, which is in addition to the increase granted barely eight (8) months ago to MERALCO. (please see paragraph 4.2 above). In other words, in a span of eight (8) months, MERALCO was granted by the ERC a staggering 54% increase, i.e., from P0.9657/kWh to P1.4917/kWh;

4.12 On December 15, 2009, Petitioner NASECORE belatedly received the documents requested in ERC's Order dated December 7, 2009 (Annex "C") directing MERALCO to submit to ERC additional numerous documents in order to facilitate the evaluation of its application. Copy of Compliance furnished by MERALCO to Petitioner NASECORE is attached hereto as Annex "E" and is made as an integral part hereof;

4.13 Petitioner NASECORE's request in item "c" of its Manifestation with Motion cited above prays that it be granted fifteen (15) days to comment on MERALCO's Formal Offer of Evidence upon receipt of the said Compliance (or until December 30, 2009);

4.14 However, on December 29, 2009, Petitioner came across the news that ERC had already issued its Decision on ERC Case No. 2009-057RC on December 14, 2009. News item was sourced at ERC website (<http://www.erc.gov.ph/new/09-12-29%20MeralcoGetsERCnodOn2010Rates.html>) and copy of which is attached hereto as Annex "F" and is made as an integral part hereof;

4.15 Hence, this Petition for Certiorari was immediately resorted to by Petitioners in order to timely prevent a grave injustice to the 4.3 million customers of MERALCO who stand to suffer by reason of a patently void decision by ERC which would result in additional monthly billing of at least half billion pesos starting next month;

4.16 Petitioners did not file a Motion for Reconsideration before resorting to this Petition for Certiorari precisely in order to prevent the imminent miscarriage of justice, that the issue involves the principles of social justice, that the Decision sought to be set aside is a patent nullity and that the need for relief therefore is extremely urgent. (*ABS-CBN Broadcasting Corporation vs Comelec*, 323 SCRA 811);

4.17 A Petition for Certiorari was filed by the Petitioners although the remedy of appeal is available. This is because an appeal would be slow, inadequate and insufficient. (*SMI Development Corporation VS Republic* 323 SCRA 862);

4.18 Likewise, direct resort to the highest court of the land was made by Petitioners since time is of the essence and transcendental constitutional issues (social justice and due process) are involved in this case. (*ABS-CBN Broadcasting Corporation, ibid*);

V. ISSUE

5.1 THE SOLE ISSUE IN THIS THIS CASE IS WHETHER OR NOT THE ASSAILED ERC DECISION DATED DECEMBER 14, 2009 (Annex "A" hereof), IS NULL AND VOID FOR LACK OF DUE PROCESS OF LAW.

VI. DICUSSION/ARGUMENTS

6.1 Though procedural rules in administrative proceedings are less stringent and applied more liberally, administrative proceedings are not exempt from basic and fundamental procedural principles, such as the right to due process in investigations and hearings. In fine, the right to procedural due process are very much applicable to administrative proceedings;

6.2 Thus, according to the Supreme Court:

“While administrative agencies exercising quasi-judicial powers are not hide-bound by technical procedures, nonetheless, they are not free to disregard the basic demands of due process.” (UY vs Commission on Audit, 328 SCRA 607).

“The right to be heard is one of the brightest hallmarks of the free society - every person who may be involved in a controversy is entitled to present his side, no less than his adversary at a hearing duly called for that purpose.” (MARINO vs SALCEDO 344 SCRA 797)

6.3 In the landmark case of *Ang Tibay vs CIR, 69 Phil. 635 (1984)*, it has been held that in administrative cases, among others, a party should be given an opportunity to adduce his evidence to support his side of the case and that the evidence should be considered in the adjudication of the case;

6.4 In the instant case, the Decision of the ERC on the application for a Rate Increase filed by MERALCO was issued by ERC on December 14, 2009, before the Petitioners could file an opposition or comment to MERALCO’s Formal Offer of Evidence and before Petitioners could start presenting their own evidence;

6.5 It should be noted that the Formal Offer of Evidence filed by MERALCO dated December 1, 2009 was received by Petitioner NASECORE on December 8, 2009;

6.6 Pursuant to the Order of ERC during the hearing of the case on November 26, 2009, MERALCO was directed to file its Formal Offer of Evidence within five (5) days from said date while the Petitioners were given ten (10) days from receipt thereof to file their respective comments thereon;

6.7 The Formal Offer of Evidence as stated in paragraph 6.5 above was received by Petitioner NASECORE on December 8, 2009 thus Petitioners have until December 18, 2009 to file their respective comment;

6.8 However, the ERC, for unknown reason, issued the assailed Decision on December 14, 2009, which is four (4) days prior

to the deadline they themselves set for the Petitioners to file their comments;

- 6.9 Not only that. ERC ignored and disregarded the plea of Petitioner NASECORE in its Manifestation with Motion dated December 9, 2009 (Annex "D" hereof) for the latter to be given additional time to review the additional documents which ERC required from MERALCO as contained in its Order dated December 7, 2009 (Annex "C" hereof), before Petitioner NASECORE files its comment;
- 6.10 Petitioner NASECORE, received the said additional documents (which are so voluminous and consist of 178 pages) only on December 15, 2009;
- 6.11 Clearly, therefore, the twin actions of ERC i.e. issuing the assailed Decision on December 14, 2009 which is four (4) days prior to the date it set for Petitioners to file their comments n MERALCO's Formal Offer of Evidence; and ignoring and disregarding Petitioner NASECORE's plea for additional time to file its comment thereby depriving said Petitioner of its right to resist and oppose the Formal Offer of Evidence filed by MERALCO;
- 6.12 Worse, the ERC, again for unknown reason, disregarded the basic rights of the Petitioners to present evidence by precipitately issuing the assailed Decision (Annex " A" hereof) on December 14, 2009;
- 6.13 It should be noted that under Section 5, Rule 18 of the ERC's Rules of Practice and Procedure, it has been provided that:

"Section 5. *Order of Presentation.* - The following order of presentation of evidence shall be followed:

- (a) The party initiating the proceeding shall present its evidence by offering the affidavits and supporting documents of its

witnesses and such additional evidences as it may wish to present. In consolidated proceedings, all parties initiating the consolidated proceeding shall first present their evidence.

(b) The witnesses shall be cross-examined by the respondent, opposing party or intervenors;

(c) The party initiating the proceeding may, if it deems necessary, ask questions on re-direct examination on matters covered during the cross-examination of its witness and the respondent, opposing party or intervenors shall thereafter be allowed to conduct re-cross-examination on matters covered by the re-direct examination of the witness;

(d) After presentation of its witnesses, the party initiating the proceeding shall formally offer its exhibits;

(e) The respondent, opposing party or intervenors, as the case may be, shall then present their evidence in the same manner;

(f) Presentation of rebuttal or sur-rebuttal evidence may be allowed subject to the discretion of the Commission.”

6.14 Ineluctably, when the ERC issued the assailed Decision, it had terminated the case and, in effect, has blatantly deprived the Petitioners of their right to present evidence and for said evidence to be considered in the adjudication of the instant application;

6.15 Therefore, the ERC is ousted from its jurisdiction because they violated not only their own rules (item e, *Section 5, Rule 18 quoted above*) but most importantly the Petitioners’ basic constitutional right to due process, thus:

“The cardinal precept is that, where there is a violation of the constitutional right, Courts are ousted from their jurisdiction. The violation of a party’s right to due process raises a serious jurisdictional issue which can not be glossed over or disregarded at will. Where the denial of the fundamental right of due process is apparent, a decision rendered in disregard of that right is void for lack of jurisdiction. The Rule must be equally true for quasi-judicial or administrative bodies, for the constitutional guarantee that no man shall be deprived of life, liberty, or property without due process is unqualified by what type of proceedings (whether judicial or administrative) he stands to lose the same.” (*MONTOYA vs VARILLA, 574 SCRA 831*);

6.16 Beyond doubt, the assailed Decision dated December 14, 2009 (Annex "A" hereof) of the public respondent ERC granting a 22% increase in the average distribution charge of MERALCO is patently NULL and VOID;

6.17 In *NAZARENO vs Court of Appeals*, 378 SCRA 28, the Supreme Court stated the consequences of a void judgement, viz:

"A void judgement never acquires finality. Hence, while admittedly, the petitioner in the case at bar failed to appeal timely the aforementioned Decision of the municipal trial court, it can not be deemed to have become final and executory. In contemplation of law, that void decision is deemed non-existent. Thus, there was no effective or operative judgement to appeal from.

"In *Metropolitan Waterworks and Sewerage System vs Sison*, this Court held that:

"xxx{A} void judgement is not entitled to the respect accorded to a valid judgement, but may be entirely disregarded or declared inoperative by any tribunal in which effect is sought to be given to it. It is attended by none of the consequences of a valid adjudication. It has no legal or binding effect or efficacy for any purpose or at any place. It can not affect, impair, or create rights. It is not entitled to enforcement and is, ordinarily, no protection to those who seek to enforce. All proceedings founded on the void judgement are themselves regarded as invalid. In other words, a void judgement is regarded as a nullity, and the situation is the same as if it would be if there was no judgement. It, accordingly, leaves the parties litigants in the same position they were in before the trial."

Thus, a void judgement is no judgement at all. It can not be the source of any right nor of any obligation. All acts performed pursuant to it and all claims emanating from it have no legal effect. Hence, t can never become final and any writ of execution based on it is void: xxx It may be said to be a lawless thing which can be treated as an outlaw and slain at sight, or ignored wherever and whenever it exhibits its head."

VII.

ALLEGATIONS IN SUPPORT OF THE URGENT PRAYER FOR THE ISSUANCE OF A TRO OR A STATUS QUO ORDER

7.1 It is a well settled doctrine that a void judgement is no judgement at all. It can not be the source of any right or of any obligation;

- 7.2 In the assailed ERC Decision, the average distribution rate was allowed to be increased by 22%;
- 7.3 Under Rule 22, Section 5 of the ERC Rules of Practice and Procedure, it is provided that - any appeal shall not stay the decisions of the ERC unless the appellate court shall direct otherwise;
- 7.4 The Petitioners thus expect that the increased distribution rate shall start to be reflected on the billings that would be sent by MERALCO to its subscribers sometime on the second week of February 2010;
- 7.5 Nobody will be spared. Hospitals, schools, streetlights, government offices, factories, commercial establishments and the residential customers, rich or poor, shall be hit;
- 7.6 Even those so-called marginalized customers of MERALCO (those using not more than 200 kWh/month) shall not be spared. The increase in their distribution rate will be 27%;
- 7.7 Based on Petitioners calculations, the additional monthly charges to the subscribers of MERALCO will amount to at last P603,008,333.00, which shall reach P7.236 billion in just a span of one year;
- 7.8 This amount clearly represents windfall profits to MERALCO which ironically is based on a VOID decision. In fine, MERALCO shall be unjustly enriched monthly in the amount of P603,008,333.00 at the expense of the consumers;
- 7.9 If not stayed, the present financial hardships of 4.3 million MERALCO customers due to the global financial meltdown and the recent calamities in the country will surely further worsen;

7.10 As already shown earlier, the assailed ERC Decision is a patent nullity due to lack of due process of law. Thus, being a void decision, it can not be the source of any right on the part of MERALCO to collect additional charges from its customers. Invariably, the 4.3 million customers of MERALCO has no obligation whatsoever to pay additional distribution charges to MERALCO. To implement said void ERC decision, is plainly oppressive, confiscatory, and unjust;

7.11 Thus, in the interest of justice, Petitioners, most respectfully beg the Honorable Supreme Court to stay the execution/implementation of the assailed ERC Decision by issuing a TRO or a Status Quo Order.

VIII. PRAYER

WHEREFORE, premises considered, it is most respectfully prayed that upon receipt of the instant petition with urgent prayer for TRO or a Status Quo Order, an Order be issued by this Honorable Court restraining Private Respondent MERALCO from collecting the average distribution rate increase of P0.269/kWh granted by the ERC in its assailed Decision.

Petitioners also most respectfully pray that this Honorable Court declare the assailed Decision of the ERC dated December 14, 2009, NULL and VOID for lack of due process of law and to refund to MERALCO's customers all collections that might have been made based on the rate increase granted under the said assailed Decision immediately on the succeeding billing cycle, plus the legal interest.

Other just and equitable reliefs are also rayed for.

Makati City for Manila City. 18 January 2010.

By:

LEONARDO A. AURELIO
Probono Counsel
c/o A. M. Sison, Jr. & Partners Law Office
20th Floor Security Bank Centre
6776 Ayala Avenue, Makati City
Tel. Nos. 891-1338 to 40
Roll No. 25411
PTR OR# 2088139-1.5.10-Makati
IBP Lifetime No. 05020
MCLE Compliance No.II-0002792-May 05, 2007

VERIFICATION and CERTIFICATION OF NON-FORUM SHOPPING

We, NASECORE represented by Petronilo Ilagan, FOLVA represented by Bonifacio Dazo, and FOVA represented by Siegfriedo Veloso all of legal age, and subscribing under oath, depose and say:

1. We are the PETITIONERS in the above-entitled case;
2. We caused the preparation of the foregoing Petition, copies of Secretary's Certificates to file this Petition are attached as Annexes "G" "H" and "I";
3. We have read the petition and avers that the contents thereof are true and correct of our own knowledge and based on authentic documents and that all its Annexes are faithful reproduction of the original ;
4. We hereby certify that we have not commenced nor caused the commencement of any other action or proceeding involving the issues raised herein before the Regional Trial Court, the Supreme Court, the Court of Appeals or different Divisions thereof, or any other tribunal or agency, and that to the best of our knowledge, no such action or proceedings is pending before the Regional Trial Court, the Supreme Court, the Court of Appeals or different Divisions thereof, or any other tribunal or agency; and that if we should learn that a similar action or proceeding has been filed or pending before the Supreme Court, the Court of Appeals or different Divisions thereof, or any other tribunals or

agency, we shall notify this Honorable Supreme Court within five (5) days from such notice;

PETRONILO ILAGAN

BONIFACIO DAZO

SIEGFRIEDO VELOSO

SUBSCRIBED AND SWORN to before me this _____ day of _____ 2010, affiants exhibited their Driver's License as follows:

	Driver's License No.	Place of Issue
PETRONILO ILAGAN <i>President, NASECORE</i>	N10-74-012320	LTO - East Avenue
BONIFACIO DAZO <i>President, FOLVA</i>	N04-55-007185	LTO - East Avenue
SIEGFRIEDO VELOSO <i>Director for External Affairs, FOVA</i>	N18-60-028113	LTO - East Avenue

Doc. No. _____

Page No. _____

Book No. _____

Series of 2010.

Copy Furnished:

Legal Services

Energy Regulatory Commission
15th Floor, Pacific Center Bldg
San Miguel Avenue, Pasig City

Atty. Jose Ronald V. Valles

Counsels for Meralco
7th Floor, Lopez Building
Ortigas Avenue, Pasig City

Office of the Solicitor General

134 Amorsolo St., Legaspi Village
Makati City

EXPLANATION

Copies of this Petition were served upon respondents' counsel and other parties by registered mail due to distance and lack of messengers

AFFIDAVIT OF SERVICE

I, RUTH ANN O. CARPIO of legal age, Filipino, and with office address at 10 Bayside Court Compound, 680 Quirino Avenue, Tambo, Parañaque City after having been duly sworn to in accordance with law, depose and state that:

1. I am the administrative assistant of National Association of Electricity Consumers for Reforms, Inc., with office address at 10 Bayside Court Compound, 680 Quirino Avenue, Tambo, Paranaque City.
2. On _____, I served by registered mail copies of the Petition in the case entitled "*National Association of Electricity Consumers for Reforms, Inc. et al, Petitioners vs. Energy Regulatory Commission (ERC) and Manila Electric Company (MERALCO) Respondents*", to be filed with the Supreme Court upon:

<u>Name</u>	<u>Address</u>	<u>Manner of Service</u>
Legal Services Energy Regulatory Commission	15 th Floor, Pacific Center Bldg San Miguel Avenue, Pasig City	Registered Mail
Atty. Jose Ronald V. Valles Counsel for Meralco	7 th Floor, Lopez Building Ortigas Avenue, Pasig City	Registered Mail

FURTHER AFFIANT SAYETH NONE.

Affiant

SUBSCRIBED AND SWORN to before me this _____ day of January, 2010 at Parañaque City affiant exhibiting to me her SSS No. 33-6915469-4 issued at Bacoor Branch, Cavite.

Doc. No. _____;
Page No. _____;
Book No. _____;

Series of 2010.