

Republic of the Philippines  
**SUPREME COURT**  
Manila

**NATIONAL ASSOCIATION OF  
ELECTRICITY CONSUMERS FOR  
REFORMS (NASECORE), represented  
by PETRONILO ILAGAN, FEDERATION  
OF VILLAGE ASSOCIATIONS (FOVA),  
represented by SIEGFRIEDO VELOSO,  
and FEDERATION OF LAS PIÑAS  
HOMEOWNERS ASSOCIATIONS (FOLPHA),  
represented by BONIFACIO DAZO,**  
Petitioners,

- versus -

**G.R. NO.163935**

**ENERGY REGULATORY COMMISSION  
(ERC) and MANILA ELECTRIC COMPANY  
(MERALCO),**

Respondents.

X-----X

**PETITION**

*for Certiorari, Prohibition and Injunction  
with Prayer for Preliminary Injunction and/or  
Issuance of Temporary Restraining Order*

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

**NATURE OF THE CASE**

Petitioners respectfully elevate for Review on *Certiorari*,  
*Prohibition and Injunction*, pursuant to Rules 65 and 58 of the Rules of  
Civil Procedure and Section 78 of Republic Act No. 9136 otherwise  
known as Electric Power Industry Acts (EPIRA), the Order dated 2 June  
2004 of the Energy Regulatory Commission (ERC) in ERC Case No.  
2004-112 entitled "In the Matter of the Application for the Recovery of  
the Independent Power Producer Costs Under the Generation Rate

Adjustment Mechanism (GRAM).” A certified copy of said Order is hereto attached as Annex “A” and made an integral part hereof.

Public respondent Energy Regulatory Commission (ERC) is a Commission exercising quasi-judicial functions and in the performance of the same acted 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;

That Petitioners are entitled to the relief hereinafter demanded, and such relief consists in restraining the implementation of the said Order of the ERC;

That the implementation of the assailed Order will work injustice to Petitioners as the same is to take effect immediately. Also, if unchecked, the electricity consumers will be helpless as redress is available only by resort to this Honorable Court. In the meantime this imposition upon them will affect adversely their already depleted finances, at the same time deprived of due process.

That by virtue of the said Order, private respondent – MERALCO, is threatening or attempting to implement an increase in the generation charge to be paid by consumer-members of the petitioners and the Public Respondent is suffering this to be done in violation of the rights to due process of petitioners;

That great or irreparable injury would result to the Petitioners before the matter can be heard on notice, thereby making imperative

the issuance by this Honorable Court of a Temporary Restraining Order, and that, for this purpose petitioners are willing and able to file such bond as may be fixed by this Honorable Court as may be necessary for the purpose.

### **PARTIES**

PETITIONERS National Association of Electricity Consumers for Reforms (NASECORE), Federation of Village Association (FOVA) and Federation of Las Piñas Homeowners Association (FOLPHA) are associations whose members are consumers of respondent Manila Electric Company (MERALCO). They may be served with process at their legal counsel's office address at the Ground floor, YCWA Building, 1144 Gen. Luna St., Ermita, Manila.

Private respondent Manila Electric Company (MERALCO) is a corporation organized and existing under Philippine laws, with offices and business address at Meralco Avenue corner Ortigas Avenue, Ortigas Commercial Complex, Pasig City, where it may be served with process.

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 Pacific Center Building San Miguel Avenue, Ortigas Center, Pasig City, where it may be served with process.

### **FACTS OF THE CASE**

On 9 March 2004, private respondent MERALCO filed with the ERC an "Application" to recover the costs of independent power producers under the generation rate adjustment mechanism (GRAM) which "recalculated its proposed generating charge of Php3.1886 per kWh allowed in the 21 January 2004 Order to Php3.4583 per kWh . . ." Pursuant to GRAM guidelines, said application was not published in a

newspaper of general circulation, nor was it with the comments of the Local Government Units (LGUs).

As recited in the said Application, private respondent MERALCO represented as follows:

“ x x x x x .....

6. The proposed generation charge of Php3.4583 will increase the current generation charge of Php3.1886 by 26.97 centavos per kWh . . .

x x x

“8. The proposed generation charge of Php3.4583 per kWh was computed in conformity with the Generation Rate formula in Section 6 of the Implementing Rules for the Recovery of Fuel and Independent Power Producer Costs or the Generation Rate Adjustment Mechanism (GRAM).”

On 19 April 2004, private respondent MERALCO filed an “Amended Application” which allegedly is “aimed at updating the generation charge of Php3.1886 per kWh allowed in the 21 January 2004 Order to Php3.4664 per kWh.” Again, said **amended application was not published in a newspaper of general circulation nor did it have the comments of the LGUs.** A certified photo copy of the Amended Application is hereto attached as Annex “B”.

On 2 June 2004, public respondent ERC issued the Order (Annex “A”), the dispositive portion of which reads, *viz*:

“WHEREFORE, the foregoing premises considered, the Commission hereby APPROVES Manila Electric Company’s (MERALCO) revised Generation Rate of P3.3213/kWh effective immediately.” (underlining ours).

As in the case of the first ERC decision (ERC Order dated 30 January 2004) on MERALCO’s Application for the recovery of fuel and independent power producer costs under the GRAM, the subsequent decision of public respondent ERC to increase the generation charge by

13.27 centavos per kilowatt-hour *effective immediately* was arrived at **without conducting any public hearing/consultation or informing consumer groups who were active participants in ERC proceedings about the MERALCO Application/Amended Application or giving them the opportunity to contest the Application/Amended Application by means of the required publication in a newspaper of general publication.**

For ready reference, a certified true copy of ERC Order dated 24 February 2003 (ERC Case No. 2003-44), which adopts the guidelines of the GRAM, is attached hereto as Annex “C” and made an integral part hereof.

### **ISSUE**

The lone issue, here, is whether or not the ERC Order, dated 2 June, 2004 is **NULL AND VOID**, for lack of the requisite publication, thereby depriving petitioners of procedural due process.

### **DISCUSSION/ARGUMENTS**

This is in consonance with the time-honored concept of due process which hears before it condemns, proceeds upon inquiry and renders judgment only after trial.

“The requirement of due process is not some favor or grace that the ERC may dole out on a bout of whim or on occasion of charity. Rather, it is a statutory right to which the consuming public is entitled.....In no event is the process to be sacrificed.” (Freedom from Debt Coalition et.al., vs. ERC, MERALCO, G.R. No. 161113).

Section 4 (e), Rule 3 of the Implementing Rules and Regulations (IRR) of the EPIRA law, provides for the steps as to how the ERC may grant any application or petition for rate adjustment or any relief affecting the consumers or deny the relief prayed and the required publication of the said application in a newspaper of general circulation.

Any fair reading of the said section would without difficulty yield the conclusion that the Order herein challenged (Annex "A"), is **DEVOID OF BASIS** in so far as the part thereof referring to the comments and pleadings of consumers or LGU are concerned, because there were no such comments or pleadings. And they had no opportunity to present them because they were not informed by publication of the filing of the application for increase in the payment of electric charges which the term "rate adjustment" means. And the reason why they were not informed is that the requirement of publication in a newspaper of general circulation was not complied with by MERALCO and this was countenanced by the public respondent ERC.

"The ERC's failure to accord the oppositors a reasonable opportunity to obtain relevant evidence and to present their opposition or comments on the application, clearly denied them due process." (Freedom from Debt Coalition et.al., vs. ERC, MERALCO, G.R. No. 161113).

The Court further held in the aforecited case, thus:

"The challenged provisional rate increase transgresses Section 4 (e), Rule 3 of the IRR in two major respects. The violation involve a couple of new requirements prescribed by the IRR. These are:

First, the need to publish the application in a newspaper of general circulation in the locality where the applicant operates; and

“Second, the need for ERC to consider the comments or pleadings of the customers and LGU concerned in its action on the application or motion for provisional rate adjustments.”

“Obviously, the requirements are aimed at protecting the consumers and diminishing the disparity or imbalance between the utility and consumers. between the utility and the consumers. The publication requirement gives them enhanced opportunity to consciously weigh the application in terms of the additional financial burden which the proposed rate increase entails and the basis for the application. With the publication of the application itself, the consumers would right from the start be equipped with the needed information to determine for themselves whether to contest the application or not and if they so decide, to take the needed further steps to repulse the application.

“On the other hand the imposition on the ERC to consider the comments of the consumers and the LGU concerned extends the comforting assurance that their interest will be taken into account. Indeed, the requirements address the right of the consuming public to due process and at the same time advance the cause of people empowerment which is also a policy goal of the EPIRA along with consumer protection.

“Corollarily, the requirements seek to temper the lack of fairness in the kind of ex parte, odality theretofore followed in regard to applications for provisional rate increases. Before the adoption of the IRR provision, all that was needed to secure a provisional rate adjustment was for the public utility to file the corresponding application with the supporting documents. WITHOUT THE BURDEN OF A HEARING AND IN TOTAL DISREGARD OF THE OPPOSITION, THE APPLICANT COULD PRESS THE REGULATORY BODY TO GRANT THE APPLICATION. WITH THE NEW PROTOCOL UNDER THE IRR, THE ERC IS TASKED TO PASS UPON THE COMMENTS OR PROTOCOL OF THE CONSUMERS AND THE LGU’s IN ITS RESOLUTION OF THE APPLICATION FOR PROVISIONAL RATE ADJUSTMENT. CONSEQUENTLY, FOR THE ERC TO BE TRUE TO ITS MISSION AND TO PREVENT EVISCERATION OF THE NEW REQUIREMENTS, IT SHOULD MENTION IN THE PROVISIONAL ORDER THE POINTS AND ARGUMENTS OF THE OPPOSITORS WHICH IT ADOPTS OR GIVE ITS REASON IF IT DOES NOT UPHOLD THEM. IN OTHER WORDS, THE PROOF OF ITS COMPLIANCE WITH THE REQUIREMENTS SHOULD APPEAR IN THE PROVISIONAL ORDER ITSELF” (underscoring ours).

In the Order herein sought to be impugned (Annex "A"), nowhere therein do comments of the consumers or the LGU's appear precisely because they were deprived of the opportunity to present them by means of the required publication, which, here, was not done.

The stance of the Office of the Solicitor General as the People's Tribune (G.R. No. 161113) is quoted hereunder as follows:

"The first paragraph of Section 4 (e) of Rule 3 of the EPIRA IRR provides that a 'petition for rate adjustment xxx must xxx be accompanied by xxx a certificate of the notice of publication thereof in a newspaper of general circulation in the locality'. It is very clear from the above-cited rule that the application for rate adjustment must be published in a newspaper of general circulation."

Reproduced herunder is the dispositive portion of the decision in the aforesaid case (G.R. No. 161113):

"WHEREFORE, the Petition and the Petition for Intervention are GRANTED, and the November 27, 2003 Order of the respondent Energy Regulatory Commission in ERC Case No. 2003-480, granting provisional rate increases to the respondent MERALCO, is DECLARED VOID and accordingly SET ASIDE."

Respondent is DIRECTED to comply with Section 4(e), Rule 3 of the Implementing Rules and Regulations of Republic Act No. 9136, particularly the publication and comment requirements therein, in conformity with this recent Supreme Court Decision, in acting upon and resolving respondent MERALCO'S Application dated March 9, 2004 in ERC Case No. 2004-112.

Especially is the Order herein assailed as dangerous and alarming, if odious, because it is not only made to take effect

***immediately*** but also because it runs counter to the very recent precedent in which both public respondent ERC and private respondent MERALCO are involved. We are not suspecting though any web of conspiracy hatched by respondents, if at all, maybe just a coincidence.

The ERC Order, aforesaid, is contrary to the said directive of the Supreme Court, and, considering its being made to take effect immediately, the haste which is intended to characterize its implementation is aimed very apparently at foreclosing any appeal to a higher authority, e.g. this Honorable Court, for redress.

#### **Final Comment**

In Caguioa vs. Laviña (345 SCRA 49), the Supreme Court in terse language held that:

“When a statute is clear and explicit, there is no need for any extended court ratiocination on the law – there is no room for interpretation, vacillation or equivocation, only for application.”

In another case, it declared that a mandatory provision of law must be observed and obeyed. Here, **compliance with the twin requirements of publication and comments is not a matter of discretion but one of law.**

WHEREFORE, it is respectfully prayed that the Order as aforementioned, of the ERC be declared **VOID AND SET ASIDE.**

That in the meantime, petitioners pray that a Temporary Restraining Order be issued enjoining ERC from implementing its assailed order and MERALCO from effecting any rate adjustment by virtue of the said ERC order

Other reliefs just and equitable are prayed for.

June 25, 2004, City of Manila.

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Copy furnished by registered mail:

1. Energy Regulatory Commission (ERC)  
Pacific Center Bldg., San Miguel Avenue  
Ortigas Center, Pasig City
2. Manila Electric Company (MERALCO)  
MERALCO Avenue Cor. Ortigas Avenue  
Ortigas Commercial Complex, Pasig City
3. Office of the Solicitor General  
Amorsolo St., Legazpi Village  
Makati City

EXPLANATION

A copy of each of the foregoing petition was furnished the ERC, MERALCO and the Office of the Solicitor General by registered mail respectively at their above-indicated address in view of the distance and the lack of messengers.

JOSE F. SAÑO