

Republic of the Philippines
ENERGY REGULATORY COMMISSION
San Miguel Avenue, Pasig City



ISMAEL D. SUENO,
Complainant,

-versus-

ERC CASE NO. 2009-436 CC

**SOUTH COTABATO I ELECTRIC
COOPERATIVE, INC.
(SOCOTECO I),**
Respondent.

X-----X

DOCKETED
Date: **MAY 31 2017**
By:

DECISION

Before this Commission for resolution is the verified complaint¹ filed on 25 November 2009 by Ismael Sueno against South Cotabato I Electric Cooperative, Inc. (SOCOTECO I), for its refusal to refund the expenses allegedly incurred in energizing a subdivision, publicly known as Sueno Village, located at Koronadal South Cotabato.

As can be gleaned from the records of this case, the instant complaint stems from the following antecedents:

Mr. Sueno is of legal age, married and presently residing at General Santos Drive, Brgy. Morales, Koronadal City, South Cotabato. On the other hand, SOCOTECO I is a non-stock, non-profit electric cooperative with its principal office located at Matulas, Brgy. Paraiso, Koronadal City, South Cotabato.²

Sometime in 1994, the Sueno Development Corporation (SDC) applied for extension of lines for the housing subdivision that said company was developing. SDC paid for the cost of extending the electrical facilities to Sueno Village I and II located at Koronadal City, South Cotabato.³

In a letter dated 4 December 2002, complainant reiterated his request for refund of the expenses he incurred in providing electricity to the Sueno Village I and II. In addition, complainant requested that his past due account with SOCOTECO I amounting to One Hundred Twenty-Two Thousand Five Hundred Forty One Pesos and Nineteen

¹ Records, page 21

² Position Paper for Respondent dated 23 April 2009, page 1

³ Letter dated 16 March 2005, Annex "6" of the Position Paper for Respondent

Centavos (PhP122,541.19) representing two (2) electric bills for February 2001 and May 2001 be offset against the amount he claims for refund.⁴

On 26 February 2003, complainant once again sent a letter to SOCOTECO I reiterating his claim for refund in the total amount of Seven Hundred Fifty Nine Thousand Seven Hundred Forty Pesos and Seventy Centavos (PhP759,740.70).⁵

SOCOTECO I issued Board Resolution No. 21, Series of 2004 denying the claim of complainant.⁶

On 15 September 2004, complainant sent a letter to SOCOTECO I seeking reconsideration of the denial of his claim for refund.⁷

In response, SOCOTECO I wrote a letter-reply dated 1 February 2005 denying complainant's appeal for reconsideration emphasizing that the cost of extending electricity to the subdivision forms an integral part of the total development cost of the subdivision and that the complainant has already realized profit by its sale to the individual lot owners.⁸

On 16 March 2005, complainant filed a letter-complaint before the Commission regarding the denial of his claim for refund.⁹ On 6 April 2005, the Commission issued a letter directing SOCOTECO I to submit its comment thereon within ten (10) days from receipt thereof.¹⁰

On 26 April 2005, SOCOTECO I sent a letter-reply before the Commission contending that the claim for reimbursement of complainant is without legal basis.¹¹

On 28 September 2005, complainant wrote a follow-up letter to the Commission regarding his complaint.¹² In its letters dated 7 November 2005, 20 January 2006 and 18 July 2006, the Commission reiterated its directive to SOCOTECO I to file its comment.¹³

On 17 August 2006, SOCOTECO I sent a letter to the Commission stating that it had already filed its reply and that the

⁴ Annex "1-a" of the Position Paper for Respondent

⁵ Annex "2", Id.

⁶ Annex "3-a", Id.

⁷ Annex "4", Id.

⁸ Annex "5", Id.

⁹ Annex "6", Id.

¹⁰ Annex "7", Id.

¹¹ Annex "8", Id.

¹² Annex "9", Id.

¹³ Annex "15", Id.

same was sent through facsimile on 26 April 2005 and likewise sent through courier service.¹⁴

On 28 September 2006, the Commission sent a letter¹⁵ to both parties stating that:

“Article 14 of the Magna Carta for Residential Electricity Consumers and Article 2.6.2 of the Distribution Services and Open Access Rules which took effect on July 14, 2004 and February 17, 2006, respectively, provide that the distribution utility shall be responsible to provide all lines and facilities other than a service drop, necessary to provide electric power.

The said rules also provide three (3) modes of refund in cases where the consumer initially advance the cost of facilities.

However, please be informed that, a similar issues concerning the same is now currently being studied by the Commission. We will gladly inform you of the result of the study as soon as the same is available. xxx”

On 6 March 2009, the Commission sent a letter to both parties requiring them to submit their respective position papers within thirty (30) days from receipt thereof.¹⁶

On 25 November 2009, complainant filed with the Commission a verified complaint against SOCOTECO I for its refusal to refund the amount incurred by complainant for providing electric services to Sueno Village I and II.¹⁷

Acting on the said verified complaint, the Commission issued an Order dated 27 November 2009 directing both parties to submit their respective position papers within thirty (30) days from receipt thereof.

On 11 March 2010, SOCOTECO I file its Position Paper dated 23 February 2010.

On 15 August 2013, the Commission gave both parties a non-extendible period of fifteen (15) days within which to submit their respective position papers in the form of a decision.

On 3 October 2013, complainant filed a letter dated 20 September 2013 manifesting his position on the issues he raised on the subject case. On 4 November 2013, the Commission issued an

¹⁴ Annex “13”, Id.

¹⁵ Annex “14” of the Position Paper for Respondent

¹⁶ Annex “15”, Id.

¹⁷ Supra at note 1

Order considering the failure of the parties to submit their respective draft decisions as a waiver of their rights to file the same. The case was accordingly deemed submitted for resolution based on available records.

Taking the parties' respective position papers and contentions altogether, the issue which the Commission is called to resolve can be refined as follows:

ISSUE:

WHETHER OR NOT COMPLAINANT IS ENTITLED TO REFUND THE EXPENSES INCURRED FOR PROVIDING ELECTRIC SERVICES TO SUENO VILLAGES I AND II

DISCUSSION

Complainant claims that in developing the Sueno Village I and II, he had to construct roads and canals, put up the water system and provide the necessary installation to energize the said subdivision. He further claims that it is only fair and just that he be refunded the amount he invested for providing the electric service to the village.¹⁸

Respondent, on the other hand, contends that complainant utterly failed to establish his claim for refund as he had not presented any document to prove the total cost of electrical installations which he had advanced for these projects.¹⁹

Pursuant to Section 23 of Republic Act No. 9136 (R.A. 9136), otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA), distribution utility shall have the obligation to provide distribution services and connection to its system for any end-user within its franchise area consistent with the distribution code.

In line with the aforesaid mandate, the Commission promulgated the Magna Carta for Residential Electricity Consumers (Magna Carta), which establishes the right of consumers to have access to electricity and electric service, and their right to extension of lines or additional facilities.

Article 14 of the Magna Carta pertains to the rights of consumers to avail of extension of lines or additional facilities. The same article states that if a developer initially pays the cost of the extension of lines but passes it to the registered customer, the latter

¹⁸ Supra at Note 3

¹⁹ Position Paper for Respondent dated April 23, 2009

would still be entitled to recover the cost in the manner provided under this article:

"When a developer initially paid the cost of the extension of lines to provide electric service to a specific property and incorporated these expenses in the cost thereof, and that property was purchased and transferred in the name of the registered customer, the latter shall be entitled to the refund of the cost of the extension of lines, and exercise the options for refund provided in this article."²⁰

Article 14 of the Magna Carta provides for a provision on the recovery of the costs advanced by residential end-user, to wit:

"To recover his aforementioned expenditures, the customer may either demand the issuance of a notes payable from the distribution utility or refund at the rate of twenty-five (25) percent of the gross distribution revenue derived for the calendar year, or, if available, the purchase of preferred shares."²¹

Revenue derived from additional customers tapped directly to the poles and facilities so extended shall be considered in determining the revenues derived from the extension of facilities."

In connection thereto, Section 2 (f), Chapter IV of the Guidelines and Procedures to Implement Article 14 of the Magna Carta states that:

"Distribution Utilities shall require developers, under oath, to disclose the total cost of the electrical installations/extensions for a particular project advanced by the said developer, and whether or not they incorporated the said costs to the purchase price of the property. If the cost was incorporated in the purchase price of the properties developed, then the DU shall require the developer to execute a waiver to recover the said amount in favor of the concerned customers of the said amount to be refunded."²²

On 15 November 2010, the Commission issued Resolution No. 28, Series of 2010 adopting the amendments to the Magna Carta, Article 14 thereof now states:

²⁰ Emphasis supplied

²¹ Emphasis supplied

²² Emphasis supplied

"Article 14. Right to Extension of Lines and Facilities. –
xxx

To recover the aforementioned expenditure (advanced payment), the consumer or developer may either demand the issuance of any financial instruments mutually acceptable to the parties or a refund at the rate of seventy-five (75) percent of the gross distribution revenue derived from all consumers connected to the line extension for the calendar year until such amounts are fully refunded, or if the DU is a private corporation, the purchase of preferred shares, if available, subject to the approval of the Securities and Exchange Commission (SEC) on the issuance of such shares or other financial instruments mutually acceptable to the parties. The preferred shares shall be redeemable by the DU within a period of fifteen (15) years. Revenues derived from additional consumers tapped directly to the poles and facilities so extended shall be considered in determining the revenues derived from the extension of facilities.

The parties may agree to accelerate the refund of the cash advance under mutually acceptable terms provided it will not result in any form of cross-subsidies. Only the refunded amount shall form part of the DU's regulatory asset base or plant in service."

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Refund of advances made by developers shall be governed by the provisions of the Distribution Services and Open Access Rules (DSOAR), as amended.

When a developer initially paid the cost of the extension of lines to provide electric service to a specific property and incorporated these expenses in the cost thereof, and that property was purchased and transferred in the name of the registered consumer, the latter, through the developer, shall be entitled to the refund of the cost of the extension of lines, and exercise the options for refund provided in this article.²³ xxx

The Commission also promulgated the Distribution Services and Open Access Rules (DSOAR) which prescribes the rules and

²³ Emphasis supplied

regulations governing the provision of electric service by distribution utilities to electricity consumers. Thus, Section 2.6.2 of the DSOAR²⁴ provides the following:

“Modification and New Physical Connections:

Residential

2.6.1 Right to Extension of Lines and Facilities

In accordance with the Magna Carta, a residential end-user located within thirty (30) meters from the distribution utilities' existing secondary low voltage lines has the right to an extension of lines or installation of additional facilities, other than a service drop, at the expense of the utility. However, if a prospective customer is beyond the said distance **and the said project is not included in the forecasted CAPEX of the DU**, the customer shall advance the amounts necessary to cover the expenditures on the facilities beyond thirty (30) meters.

The advance payment of the facilities on the part of the residential end-user is no longer required if the line extension is part of the forecasted CAPEX (capital expenditures) of the distribution utility. As such, the capital expenditures undertaken by the distribution utility becomes part of its regulatory asset base for the purposes of computing its rates.

In relation to the foregoing, the DSOAR also provides:

2.6.2 Refund

To recover the aforementioned advanced payment, the customer may either demand the issuance of a notes payable from the distribution utility or a refund at the rate of twenty-five (25) percent of the gross distribution revenue derived from all customers connected to the line extension for the calendar year until such amounts are fully refunded or for five (5) years whichever period is shorter, or, if available, the purchase of preferred shares. Revenue derived from additional customers tapped directly to the poles and facilities so extended shall be considered in determining the revenues derived from the extension of facilities. Distribution Connection Assets paid through advances from residential End-users shall be deemed plant in service in the accounts of

²⁴ Resolution No. 28, Series of 2010

the DU. Unpaid advances shall be a reduction to plant in service.

If replacement becomes necessary at any time for any Distribution Connection Assets paid for by residential End-users, the DU shall be solely responsible for the cost of such replacement which shall be become plant in service in the accounts of the DU, and shall not require another advanced payment from the connected residential End-users unless the replacement is due to End-user fault.

If the cost of the extension of lines or installation of additional facilities was funded by the developer for any project other than socialized housing, the said cost shall be subject to refund in accordance with the first paragraph, provided that said developer shall submit to the DU the following:

1. A sworn statement from the developer or a certification from the Housing and Land Use Regulatory Board (HLURB) that the cost thereof was not incorporated in the purchase price of the sold properties; and
2. An Affidavit of publication executed by the editor-in-chief or other responsible officer of the newspaper of general circulation wherein an announcement that the cost thereof was not incorporated in the cost of the sold properties was published, together with a copy of the newspaper issue containing the published announcement. The affidavit of publication shall also contain information on the area or areas where the newspaper is being circulated.

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Starting from the effectivity of the foregoing amendment, all existing refunds for cost of extension of lines and facilities advanced by developers/consumers shall conform herewith.²⁵

As provided in the aforesaid provision, the five-year limit period of refund prescribed in the original provisions has been deleted in the amended DSOAR. To accelerate the advance recovery, the DSOAR was amended (1) to increase, from 25% to 75%, the rate of refund to consumers, based on gross distribution revenue derived from all

²⁵ Emphasis supplied

consumers connected to the line extension, and (2) to allow an agreement between parties to further accelerate the refund process.

If the property developer funded the extension of lines and did not include the cost of such line extension in the purchase price of the property, the cost is recoverable by the developer, in the same manner applicable to the refund to residential end-users.

In the case at bar, SOCOTECO I is indeed liable to refund the payment advanced for extension of lines and facilities either to the homeowners (residential consumers) of Sueno Village I and II or the Sueno Development Corporation (SDC). However, such liability depends on who, as between the consumer or developer, is entitled to refund.

Under the Magna Carta, the residential consumer is entitled to the refund of the advanced payment for extension of lines if the developer incorporated these expenses in the purchase price of the property. In such case, the residential consumer, through the developer, may either demand the issuance of any financial instruments mutually acceptable to the parties or a refund at the rate of seventy-five (75) percent of the gross distribution revenue derived from all consumers connected to the line extension for the calendar year until such amounts are fully refunded.

On the contrary, the developer is entitled to refund if the advanced payment for extension lines and facilities were not incorporated in the purchase price of the property. In which case, the provisions of DSOAR applies as stated in Resolution No. 28, Series of 2010. Thus, the developer may either demand the issuance of notes payable from the distribution utility or a refund at the rate of twenty-five (25) percent of the gross distribution revenue derived from all customers connected to the line extension for the calendar year until such amounts are fully refunded or five (5) years whichever period is shorter, or, if available, the purchase of preferred shares, provided that the developer shall submit to the DU the required sworn statement or certification and the affidavit of publication.

Complainant cannot, in his personal capacity, demand a refund as he is neither a homeowner nor the developer of the subdivision. Well-settled is the rule that a corporation has a personality separate and distinct from that of its officers and stockholders.²⁶ Complainant should be duly authorized by SDC Board to demand and apply for refund of the advanced payment for extension lines and facilities in Sueno Village I and II. If indeed authorized by SDC Board, complainant may demand payment for refund provided that the following documents should be submitted to the distribution utility:

²⁶ Aratea, et al. vs. Suico, et al., G.R. No. 170284, March 16, 2007

1. A sworn statement from complainant or a certification from the Housing and Land Use Regulatory Board (HLURB) that the cost of the electrical facilities was not incorporated in the purchase price of the sold properties;
2. An affidavit of publication executed by the editor-in-chief or other responsible officer of the newspaper of general circulation wherein an announcement that the cost of the electrical facilities was not incorporated in the cost of the sold properties was published, together with a copy of the newspaper issue containing the published announcement. The affidavit of publication shall also contain information on the area or areas where the newspaper is being circulated.

In the event that the entitlement of the complainant to the refund has been established, he cannot offset the recoverable amount to the outstanding liability of Sueno Rice Mill to SOCOTECO I. It must be noted that it is the Sueno Rice Mill which has outstanding liability to SOCOTECO I and not SDC, thus, legal compensation cannot take place as they are not mutually creditors and debtors of each other. Compensation presupposes two persons who, in their own right and as principals, are mutually indebted to each other respecting equally demandable and liquidated obligations over any of which no retention or controversy commenced and communicated in due time to the debtor exists. Compensation, be it legal or conventional, requires confluence in the parties of the characters of mutual debtors and creditors, although their rights as such creditors or their obligations as such debtors need not spring from one and the same contract or transaction.²⁷

WHEREFORE, premises considered, the Commission hereby resolves to allow complainant to recover the expenses incurred for providing electric facilities to Sueno Villages I and II subject to the submission of the following documents:

1. A sworn statement issued by the authorized representative of Sueno Development Corporation (SDC) or a certification from the HLURB that the cost of the electrical facilities was not incorporated in the purchase price of the sold properties;
2. The affidavit of publication executed by the editor-in-chief or other responsible officer of the newspaper of general circulation wherein an announcement that the cost of the electrical facilities was not incorporated in

²⁷ Spouses Nisce vs. Equitable PCI Bank, G.R. No. 167434, February 19, 2007

the cost of the sold properties was published, together with a copy of the newspaper issue containing the published announcement. The affidavit of publication shall also contain information on the area or areas where the newspaper is being circulated;

3. Proofs of the actual cost/expenses incurred in the installation of electrical facilities in Sueno Villages I and II; and
4. Secretary Certificate issued by SDC authorizing complainant to refund the costs of electrical facilities from SOCOTECO I.

Upon submission and evaluation of the aforesaid documents, SOCOTECO I is directed to refund the actual cost incurred by SDC in providing the electrical facilities to Sueno Villages I and II and to submit its compliance within fifteen (15) days from the issuance of the amount of refund.

SO ORDERED.

Pasig City, 13 March 2017.

FOR AND BY AUTHORITY
OF THE COMMISSION


GLORIA VICTORIA C. YAP-TARUC
Commissioner

We Concur:


JOSE VICENTE B. SALAZAR
Chairman


JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Commissioner


ALFREDO G. NON
Commissioner


GERONIMO D. STA. ANA
Commissioner



Copy Furnished:

1. The General Manager

South Cotabato I Electric Cooperative, Inc. (SOCOTECO I)
Koronadal City
South Cotabato

2. Mr. Ismael Sueno

Brgy. Morales, Koronadal City
South Cotabato