

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



**IN THE MATTER OF
VIOLATION OF ERC
ORDERS, RULES AND
REGULATIONS,**

**ERC CASE NO. 2016-033 SC
Re: Failure to Submit
Depreciation Fund Report**

**SAN FERNANDO LIGHT AND
POWER COMPANY, INC.
(SFELAPCO),**

Respondent.

X ----- X

D O C K E T E D
Date: NOV 08 2017
By: [Signature]

D E C I S I O N

On 01 March 2016, the Commission issued a Show Cause Order (SCO) to San Fernando Light and Power Company, Inc. (SFELAPCO) directing it to submit within fifteen (15) days from receipt of the SCO its explanation under oath why no administrative penalty should be imposed upon it and/or criminal action instituted against it, its directors and officers for failure to submit the Depreciation Fund Report as required under Section 16 (1) of Commonwealth Act No. 146¹ (CA No.146), and in the Commission's Decision dated 08 December 2003 in ERC Case No. 2001-905², ERC Case No. 2002-10³, and ERC Case No. 2002-142⁴.

On 21 July 2016, SFELAPCO filed a Letter dated 09 July 2016 attaching therewith the *Affidavit* of its Senior Vice-President and General Manager, Jose T. Lazatin, and other supporting documents in compliance with the SCO.

¹ Public Service Act.

² In the Matter of Application for Approval of the Revised/Unbundled Rates Pursuant to the Provision of R.A. 9136, with Prayer for Provisional Authority, San Fernando Electric Light and Power Company, Inc.- (SFELAPCO), Applicant.

³ Application for Approval of Unbundled Rates Pursuant to the Provision of Republic Act 9136 Supplemental/Amended Application, San Fernando Electric Light and Power Company, Inc.- (SFELAPCO), Applicant.

⁴ Application for Approval of Unbundled Rates Pursuant to the Provision of RA 9136 Second Amended Application, San Fernando Electric Light and Power Company, Inc.- (SFELAPCO), Applicant.

In the submitted *Affidavit*, SFELAPCO explained the following, among others:

- a) SFELAPCO never intended to defraud the Commission on the non-submission of the depreciation fund report (Report) on a monthly basis;
- b) SFELAPCO is uncertain how to comply with putting up a Depreciation Fund and the submission of the Report considering that SFELAPCO is incurring negative balances on the supposed Depreciation Fund because SFELAPCO has been continuously investing in its distribution system to continuously improve its service to its customers and that the level of investment is higher than the level of depreciation;
- c) Despite the non-submission of the Report, SFELAPCO has continuously invested in property plant and equipment (PPE) to keep its assets and services in a state of efficiency in pursuit of SFELAPCO's mandate to provide secure, reliable, quality and efficient power supply to its customers.
- d) In compliance and to show the comparison between SFELAPCO's investment in its PPE versus the cost of depreciation, a table showing the month on month cost of investment versus cost of depreciation for the period 2006-2015 was attached to the Affidavit as Annex "A".
- e) As shown in Annex "A", SFELAPCO does not have an amount to place in a depreciation fund;
- f) SFELAPCO has continuously appropriated part of its retained earnings for property, plant and equipment expenditure as shown in the audited financial statement attached as Annex "C".

On 25 July 2016, the Commission issued an Order noting the *Letter* filed by SFELAPCO and setting the case for conference on 10 August 2016.

On the 10 August 2016 conference, SFELAPCO appeared. During the conference, SFELAPCO reiterated its explanations as stated in its submitted *Letter*.

ISSUE

The sole issue to be resolved is whether SFELAPCO committed a violation of the Commission's Orders, Rules, or Regulations for its failure to submit its Depreciation Fund Report.

COMMISSION'S RULING

On 13 September 2016, the Commission deliberated and resolved the instant case and found that SFELAPCO had committed a violation of the Commission's Orders, Rules, or Regulations for SFELAPCO's failure to submit its Depreciation Fund Report pursuant to the Commission's directive in the Decision dated 08 December 2003 (Decision) in ERC Case No. 2001-905⁵, ERC Case No. 2002-10⁶, and ERC Case No. 2002-142⁷ in reference to Section 16 (l) of CA No. 146.

However, due to supervening events⁸, the Decision could no longer be promulgated without undergoing reconfirmation by the Commission *En Banc*. Thus, the Commission resolved to reconfirm the same on 19 September 2017.

DISCUSSION

Section 16 (l) of CA No. 146, otherwise known as the Public Service Act, states that:

Section 16. Proceedings of the Commission, upon notice and hearing. - The Commission shall have power, upon proper notice and hearing in accordance with the rules and provisions of this Act, subject to the limitations and exceptions mentioned and saving provisions to the contrary:

xxx

(l) To fix and determine proper and adequate rates of depreciation of property of any public service which will be observed in a proper and adequate depreciation account to be carried for the protection of stockholders, bondholders or creditors, in accordance with such rules, regulations, and form of

⁵ *Supra*, note 2.

⁶ *Supra*, note 3.

⁷ *Supra*, note 4.

⁸ The Chairman was suspended as per Decision of the Office of the President (OP-DC Case No. 17-D-094) dated 2 August 2017.

account as the Commission may prescribe. Said rates shall be sufficient to provide the amounts required over and above the expense of maintenance to keep such property in a state of efficiency corresponding to the progress of the industry. Each public service shall conform its depreciation accounts to the rates so determined and fixed, and shall set aside the moneys so provided for out of its earnings and carry the same in a depreciation fund. The income from investments of money in such fund shall likewise be carried in such fund. This fund shall not be expended otherwise than for depreciation, improvements, new constructions, extensions or conditions to the property of such public service.

xxx

Further, in the Commission's Decision in ERC Case No. 2001-905⁹, ERC Case No. 2002-10¹⁰, and ERC Case No. 2002-142¹¹, SFELAPCO was clearly directed to set up a depreciation fund each year corresponding to the entire amount of depreciation recorded in its books. Likewise, a monthly deposit to this fund is required corresponding to SFELAPCO's monthly depreciation. Further, any withdrawal from the depreciation fund must be reported by SFELAPCO to the Commission within thirty (30) days and the use of the fund must be specified. The dispositive portion of the Decision, reads:

WHEREFORE, the foregoing premises considered, it is hereby decided as follows:

xxx

2. To direct SFELAPCO to comply with the following:

xxx

- e) to set up depreciation fund each year corresponding to the whole amount of depreciation that it has recorded in its books. The setting up of this fund should be done on a monthly basis corresponding to the monthly depreciation. SFELAPCO is required to strictly account for the expenditures out of this fund which should be used strictly for investment in electric plant and all withdrawals from this fund

⁹ *Supra*, note 2.

¹⁰ *Supra*, note 3.

¹¹ *Supra*, note 4.

should be reported to the Commission
within thirty (30) days from withdrawal;

XXX

SFELAPCO explained that it is uncertain how to comply with putting up a depreciation fund, and the submission of the report considering that SFELAPCO is incurring negative balances on the supposed depreciation fund because SFELAPCO has been continuously investing in its distribution system to improve its service to its customers and that the level of investment is higher than the level of depreciation.

However, it is incumbent upon SFELAPCO, as a regulated entity with a legislative franchise, to strictly adhere with laws, rules, regulations and other issuances, including Orders or Decisions of the Commission. The justification presented by the SFELAPCO, that it is incurring negative balances and that it is continuously investing in its distribution system is of no consequence to its non-compliance with the Decision of the Commission for the submission of its depreciation fund report.

Significantly, the submission of depreciation fund report would account for the expenses that SFELAPCO incurred out of this fund. Likewise, the same would monitor and validate if the same was used strictly for investment in the electric plant and not for any other purposes. Thus, the Commission finds no merit on SFELAPCO's argument.

At the onset, the Commission emphasized that the sole issue to be resolved is whether SFELAPCO has violated the directive of the Commission to submit its depreciation fund report pursuant to its Decision dated 08 December 2003. To date, SFELAPCO failed to comply with the said Commission's directive.

WHEREFORE, the foregoing premises considered, Respondent San Fernando Light and Power Company, Inc. (SFELAPCO) is hereby declared to have committed a violation of the Commission's directives in its Decision dated 08 December 2003, particularly, the submission of a Depreciation Fund Report.

ACCORDINGLY, pursuant to Section 5 of Resolution No. 03, Series of 2009¹², an administrative penalty is hereby imposed against SFELAPCO in the amount of **TWO HUNDRED THOUSAND PESOS (PhP200,000.00)**, computed as follows:

PARTICULARS	AMOUNT (PhP)
• Basic Amount of Penalty	100,000.00
• Plus 100% of the basic amount of penalty if the compliance was made after three (3) months from the notice	100,000.00
TOTAL	200,000.00

RELATIVE THERETO, Respondent SFELAPCO is hereby **DIRECTED** to pay the foregoing penalty **within fifteen (15) days** from receipt hereof.

SO ORDERED.

Pasig City, 19 September 2017.


JOSE VICENTE B. SALAZAR*
Chairman and CEO


ALFREDO J. NON
Commissioner


GLORIA VICTORIA C. YAP-TARUC
Commissioner


JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Commissioner


GERONIMO D. STA. ANA
Commissioner

IED: JSP/JACF/CLSG/NDC/FSD LS: LSP/APV 

Copy Furnished:

San Fernando Light and Power Co., Inc. (SFELAPCO)
 Teopaco Subdivision, San Fernando City, Pampanga 2000

¹² A Resolution Amending the Guidelines to Govern the Imposition of Administrative Sanctions in the Form of Fines and Penalties under Section 46 of Republic Act No. 9136.

* The Chairman was placed on preventive suspension as per Decision of the Office of the President (OP-DC Case No. 17-D-094) dated 2 August 2017.