

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. 2016-034 SC
Re: Failure to Submit
Depreciation Fund Report**

**LA UNION ELECTRIC
COMPANY, INC. (LUECO),
Respondent.**

X ----- X

D O C K E T E D
Date: NOV 07 2017
By: _____

D E C I S I O N

On 01 March 2016, the Commission issued a Show Cause Order (SCO) to La Union Electric Company, Inc. (LUECO) 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 (I) of Commonwealth Act No. 146¹ (CA No.146), and in the Commission's Decision dated 22 December 2003 in ERC Case No. 2001-895² and ERC Case No. 2002-09³.

On 11 July 2016, LUECO filed a *Verified Explanation* dated 07 July 2016 (Explanation), stating the following, among others:

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3. To begin with, LUECO is a grantee of a congressional franchise to provide electric service in the City of San Fernando and the Municipalities of Bauang and San Juan, all in the Province of La Union. As such grantee, LUECO is fully aware of its obligations and responsibilities as mandated under the terms and conditions of its franchise, among which is to comply with existing laws, orders, rules and

¹ Public Service Act.

² In the Matter of the Application for the Approval of the Unbundled Rates Pursuant to the Provisions of Republic Act No. 9136, La Union Electric Company, Inc.- (LUECO), Applicant.

³ Application for Authority to Revise/Unbundled Rates in Accordance with Section 36 of RA 9136, with Prayer for Provisional Authority, La Union Electric Company, Inc.- (LUECO), Applicant.

regulations of this Honorable Commission and to provide reliable, efficient and adequate electric service to its end-consumers.

4. Insofar as the above alleged violations, it was never the intention of LUECO to disregard nor defy any existing law, order, rules and/or regulations of this Honorable Commission. Records of this Honorable Commission will evince the truthfulness and veracity of this allegation.
5. The failure of LUECO to submit its Depreciation Fund Report either as a separate document or as encoded in its monthly Uniform Reportorial Requirement (“URR”) was a complete oversight, which, however did not prejudice any party, either juridical or natural. LUECO was never in bad faith, it was all along in good faith.
6. In fact, while said directive was inadvertently not complied with, LUECO from the time it received the Decision of this Honorable Commission in ERC Case Nos. 2001-895 and 2002-09, continuously poured its resources primarily to (a.) pay on time the National Power Corporation (“NPC”) to avoid disconnection; and (b.) whatever was left, were used by the company to provide for its growth, reduce system losses and improve its service. LUECO assures this Honorable Commission that all money intended to be placed in the depreciation fund were used by LUECO in the conduct of its electric distribution business, i.e., acquisition of assets, which are all reflected in its Annual Reports.
7. Elsewise stated, LUECO’s primordial concern was and will always be the welfare of its electric consumers, in terms of reliable, effective, adequate and affordable electric service.
8. Nonetheless, in compliance with Section 16 (I) of Commonwealth Act No. 146 and the Decision in ERC Case Nos. 2001-895 and 2002-09, and to show that it does not intend to defy nor disregard any existing law, order, rules and regulations, LUECO herein manifests that it has opened a bank account with the Development Bank of the Philippines (“DBP”) solely for its depreciation fund and will comply with this Honorable Commission’s reportorial requirements.

On 12 July 2016, the Commission issued an Order noting the *Explanation* filed by LUECO and setting the case for conference on 25 July 2016.

On the 25 July 2016 conference, LUECO appeared. During the conference, LUECO reiterated its position as stated in its submitted *Explanation*. Likewise, LUECO manifested that that it would file a

supplemental verified explanation to further support and augment its position.

On 01 August 2016, LUECO submitted its *Supplemental Verified Explanation* dated 28 July 2016 (Supplemental Explanation), stating the following, among others:

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5. As stated in its Verified Explanation, the failure of LUECO to submit its Depreciation Fund Report either as a separate document or as encoded in its monthly Uniform Reportorial Requirements (“URR”) was a complete oversight and/or lapse on the part of LUECO, which, however did not prejudice any party, either juridical or natural. LUECO was never in bad faith, it was all along in good faith.
6. Fact is, the person who was entrusted by LUECO to prepare and submit the required Depreciation Fund Report, Mr. Lovino T. Torricer, then Chief Accountant and Corporate Services Head of LUECO, unfortunately, for reasons only known to him, did not comply with the said directive. To make matters worse, Mr. Torricer resigned from the company sometime in 2014 without even informing anybody of the directive of this Honorable Commission to be complied with and even his failure to comply with the same.
7. LUECO only knew of the requirement to submit the required Depreciation Fund Report when it received on 24 June 2016 a copy of the Show Cause Order of this Honorable Commission dated 01 March 2016.
8. Be that as it may, while the purpose of the Depreciation Fund Report is to “fix and determine proper and adequate rates of depreciation of the property of any public service”, LUECO herein manifests that the said purpose was attained when it had been religiously submitting its Annual Report where the increases in assets as well as the depreciation are reported. In other words, while it may be true that the Depreciation Fund Report and Annual Report are different in terms of nomenclature or terminology, the purpose for which the Depreciation Fund Report is created, i.e. to show this Honorable Commission the increases in assets and the corresponding depreciation, had been properly achieved. Again, it was never the intention of LUECO to defy any directive of this Honorable Commission and/or any existing law.
9. Nonetheless, to show this Honorable Commission that the increase in assets vis-à-vis depreciation cost are duly accounted for by LUECO, attached as Annex “A” of this

Supplemental Verified Explanation is a table for the period 2003 to 2015 showing/indicating the following:

- a. the increase in assets;
 - b. the depreciation cost;
 - c. the depreciation on appraisal interest; and
 - d. the total depreciation
10. Based on the above provided data, it is to be noted that despite LUECO's failure to put up a depreciation fund and report the same to this Honorable Commission, the increases in assets for the last thirteen (13) years (2003 to 2015) is far over and above the depreciation cost.
 11. And as already stated in its Verified Explanation, LUECO's primordial concern was and will always be the welfare of its electric consumers, in terms of reliable, effective, adequate and affordable electric service. LUECO will never compromise its service to its end consumers.
 12. It may not be amiss to emphasize also that LUECO, in compliance with the directive of this Honorable Commission embodied in its Decision dated [23] December 2008 in ERC Case Nos. 2001-895 and 2002-09, will be submitting in August, 2016, its Depreciation Fund Report for the period January, 2016 to June, 2016.
 13. Finally, in the event that this Honorable Commission finds LUECO to have violated the aforementioned directive, it respectfully prays that if there are any penalty/ies to be imposed, the same be reduced considering the surrounding circumstances, i.e., the good faith as well as being a first (1st) time offender of LUECO.

ISSUE

The sole issue to be resolved is whether LUECO 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 LUECO had committed a violation of the Commission's Orders, Rules, or Regulations for LUECO's failure to submit its Depreciation Fund Report pursuant to the Commission's directive in the Decision dated 22 December 2003 (Decision) in ERC

Case No. 2001-895⁴ and ERC Case No. 2002-095⁵ in reference to Section 16 (l) of CA No. 146.

However, due to supervening events⁶, 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:

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(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 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.

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⁴ See, *supra* note 2.

⁵ See, *supra* note 3.

⁶ The Chairman was suspended as per Decision of the Office of the President (OP-DC Case No. 17-D-094)

Further, in the Commission's Decision in ERC Case No. 2001-8957 and ERC Case No. 2002-09⁸, LUECO 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 LUECO's monthly depreciation. Further, any withdrawal from the depreciation fund must be reported by LUECO 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, this Commission hereby decided as follows:

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3. To direct LUECO to comply with the following:

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- e) To set up a depreciation fund each year corresponding to the whole amount of depreciation that it has recorded on its books. The setting up of this fund should be done on a monthly basis corresponding to the monthly depreciation. LUECO 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 should be reported to the Commission within thirty (30) days from withdrawal;

xxx

LUECO explained, among others, that its failure to submit its Depreciation Fund Report either as a separate document or as encoded in its monthly Uniform Reportorial Requirement (URR) was a complete oversight, which, however did not prejudice any party, either juridical or natural. Likewise, the person who is supposed to comply with the directives of the Commission had resigned from LUECO.

Further, LUECO explained that while the purpose of the Depreciation Fund Report is to fix and determine proper and adequate rates of depreciation of the property of any public service, LUECO manifests that the said purpose was attained when it had been

⁷ See, *supra* note 2.

⁸ See, *supra* note 3.

religiously submitting its Annual Report where the increases in assets as well as the depreciation are reported.

It must be emphasized that it is incumbent upon LUECO, 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 justifications presented by the LUECO, *i.e.*, the oversight on the non-submission and the non-prejudicial effect of which to any person, juridical or natural; and the resignation of its officer person who is supposed to prepare and set up the required depreciation fund report are untenable and of no consequence to the required submission of depreciation fund.

Contrary to LUECO's explanation, the Annual Report it submits would not substitute for the Depreciation Fund Report, which is clearly required pursuant to the directives of the Commission in the Decision dated 22 December 2003.

Significantly, the very purpose of the submission of Depreciation Fund Report is to account for the expenses that LUECO incurred out of this fund. Likewise, the report would monitor and validate if the Depreciation Fund was used strictly for investment in the electric plant and not for any other purposes. Thus, the Commission finds no merit on LUECO's explanation.

At the onset, the Commission emphasized that the sole issue to be resolved is whether LUECO has violated the directive of the Commission to submit its depreciation fund report pursuant to its Decision dated 22 December 2003. To date, LUECO failed to comply with the said Commission's directive.

WHEREFORE, the foregoing premises considered, Respondent La Union Electric Company, Inc. (LUECO) is hereby declared to have committed a violation of the Commission's directives in its Decision dated 22 December 2003, particularly, the submission of a Depreciation Fund Report.

ACCORDINGLY, pursuant to Section 5 of Resolution No. 03, Series of 2009⁹, an administrative penalty is hereby imposed against LUECO in the amount of **TWO HUNDRED THOUSAND PESOS (PhP200,000.00)**, computed as follows:

⁹ 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.

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 LUECO 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/FBD LS: LGSF/APV

Copy Furnished:

La Union Electric Company, Inc. (LUECO)
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 San Fernando City, La Union

* 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.