

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. 2016-035 SC
Re: Failure to Submit
Depreciation Fund Report**

**DAGUPAN ELECTRIC
CORPORATION (DECORP),
Respondent.**

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DOCKETED
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 Dagupan Electric Corporation (DECORP) 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 (l) of Commonwealth Act No. 146¹ (CA No.146), and in the Commission's Decision dated 21 January 2004 in ERC Case No. 2002-13 (2001-899)².

On 06 May 2016, DECORP filed a *Reply-Affidavit*, stating the following, among others:

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3. ERC's verification showed that DECORP failed to comply and did not submit its Depreciation Fund Report either as a separate document or as encoded in their monthly Uniform Reportorial Requirement (URR) in accordance with the Commission's Decision dated January 21, 2004 in ERC Case No. 2002-13(2001- 899) as quoted hereunder:

"DECORP is required to set up a depreciation fund each year corresponding to the whole

¹ Public Service Act.

² In the Matter of the Application for the Approval of the Revised Rate Schedules in Compliance with Section 36 of Republic Act No. 9136 and Order Dated October 30, 2001, and for Approval of Appraisal of Properties, with Prayer for Provisional Authority, Dagupan Electric Corporation (DECORP)- Applicant.

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. DECORP will be required to strictly account for the expenditures out of this fund which should be used strictly for the investment in electric plant. The utility is free to withdraw funds from this account at any time but all withdrawals should be reported to the Commission within 30 days specifying the use of funds, this report should be consolidated with the monthly reportorial requirements (M-001 & M-002).”

4. For clarity, DECORP revisited the relative provision in ERC Case No. 2002. 13(2001-899), and it is worded as follows:

“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. DECORP 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.”

5. In 2005, on the matter of setting up a depreciation fund, DECORP assigned one of its bank accounts to serve as its depreciation fund. It is a regular bank account with self imposed restriction, limiting the transactions to investment in electric plant.
6. DECORP started reporting the said fund to the Commission in 2005 through the Annual Report, please see Annex A. A summary is provided below:

Period, Annual Report	Additions to Fund During the Year				Deductions from the Fund	End Balance
	Beg. Balance	Cash Appropriation	Fund Income	Total Additions		
2005	4,576,950	106,839,267	98,250	106,937,517	106,518,647	4,995,820
2006	4,995,820	115,000,000	119,197	115,119,197	95,636,816	24,478,201
2007	24,478,202	85,481,250	68,368	85,549,618	108,829,819	1,198,001
2008	1,198,001	115,679,709	39,878	115,719,587	114,331,512	2,586,076
2009	2,586,076	152,000,000	59,201	152,059,201	145,133,780	9,511,497
2010	9,511,497	149,000,000	35,068	149,035,068	157,452,190	1,094,375
2011	1,094,375	125,000,000	35,375	125,035,375	113,899,701	12,230,049
2012	12,230,049	134,000,000	38,761	134,038,761	133,372,454	12,896,356
2013	12,896,356	162,119,047	25,163	162,144,210	166,967,599	8,072,967
2014	8,072,967	156,000,000	23,922	156,023,922	156,242,777	7,854,112

7. DECORP does not limit the yearly addition to the fund with the amount of depreciation expense, because the capital expenditure requirements are normally higher than the depreciation amounts. Below is a summary of the annual depreciation:

Period, Annual Report	Depreciation, Cost	Depreciation, Appraisal	Depreciation, Total
2005	40,221,195	13,012,922	53,234,116
2006	34,141,258	13,012,922	47,154,180
2007	31,053,008	13,012,922	44,065,930
2008	32,431,893	13,012,922	45,444,815
2009	38,004,373	12,843,135	50,847,508
2010	39,166,099	22,815,826	61,981,925
2011	42,900,060	26,603,853	69,503,913
2012	46,424,280	26,603,853	73,028,133
2013	52,377,991	26,603,853	78,981,844
2014	56,627,094	26,603,853	83,230,947

8. DECORP apologizes for the lapse in complying with the ERC's directive specifically, "*... all withdrawals from this fund should be reported to the Commission within thirty (30) days from withdrawal.*" Opportunity might have presented itself to clarify compliance, however, we were not able to ask it. Thus, continued with our practice of yearly reporting as discussed above.
9. The year 2004 is a milestone for DECORP, being occupied in converting its system into unbundled rates and the changing/shifting of its manpower to accommodate the development in the industry. The movement of the people might be one of the factors that contributed to the oversight.
10. The Commission's Order mentioned two (2) manners of reporting, as a separate document or to encode it in the URR. Recently, DECORP discovered the depreciation fund portion in the URR. Thus, DECORP's submission of URR starting January 2016 includes reporting of depreciation fund.
11. Considering the above explanations, DECORP believes that it has materially complied with the requirements of the Commission. The lapses were unintentional brought about by uncontrolled situation during transition. We pray that you will accept our explanation.

On 20 May 2016, the Commission issued an Order noting the *Reply-Affidavit* filed by DECORP and setting the case for conference on 16 June 2016.

On the 16 June 2016 conference, DECORP appeared. During the conference, DECORP reiterated its position as stated in its submitted *Reply-Affidavit*.

ISSUE

The sole issue to be resolved is whether DECORP 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 DECORP had committed a violation of the Commission's Orders, Rules, or Regulations for DECORP's failure to submit its Depreciation Fund Report pursuant to the Commission's directive in the Decision dated 21 January 2004 (Decision) in ERC Case No. 2002-13 (2001-899)³ in reference to Section 16 (l) of CA No. 146.

However, due to supervening events⁴, 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

³ Ibid.

⁴ The Chairman was suspended as per Decision of the Office of the President (OP-DC Case No. 17-D-094)

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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Further, in the Commission's Decision dated 21 January 2004 in ERC Case No. 2002-13 (2001-899)⁵, DECORP 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 DECORP's monthly depreciation. Further, any withdrawal from the depreciation fund must be reported by DECORP 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:

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3. To direct DECORP to comply with the following:

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- g) 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. DECORP 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

⁵ See, *supra* note 2.

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

xxx

DECORP explained, among others, that in 2005, on the matter of setting up a depreciation fund, DECORP assigned one of its bank accounts to serve as its depreciation fund. Likewise, DECORP started reporting the said fund to the Commission in 2005 through its Annual Report.

It must be emphasized that it is incumbent upon DECORP, 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 DECORP that it submitted its depreciation fund report through its Annual Report is untenable.

The Annual Report submitted by DECORP would not substitute for the Depreciation Fund Report, which is clearly required pursuant to the directives of the Commission in the Decision dated 21 January 2004.

Significantly, the very purpose of the submission of Depreciation Fund Report is to account for the expenses that DECORP 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 DECORP's explanation.

At the onset, the Commission emphasized that the sole issue to be resolved is whether DECORP has violated the directive of the Commission to submit its depreciation fund report pursuant to its Decision dated 21 January 2004. DECORP failed to comply with the said Commission's directive.

WHEREFORE, the foregoing premises considered, Respondent Dagupan Electric Corporation (DECORP) is hereby declared to have committed a violation of the Commission's directives in its Decision dated 21 January 2004, particularly, the submission of a Depreciation Fund Report.

ACCORDINGLY, pursuant to Section 5 of Resolution No. 03, Series of 2009⁶, an administrative penalty is hereby imposed against DECORP 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 DECORP is hereby **DIRECTED** to pay the foregoing penalty **within fifteen (15) days** from receipt hereof.

SO ORDERED.

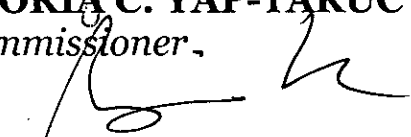
Pasig City, 19 September 2017.

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/JAGF/C/SG/NDC/FED LS: LSSP/APV

Copy Furnished:

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 62 West Avenue, Quezon City 1104

⁶ 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.