

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



**IN THE MATTER OF THE
APPLICATION FOR THE
APPROVAL OF THE
POWER SUPPLY
AGREEMENT (PSA)
BETWEEN MANILA
ELECTRIC COMPANY
(MERALCO) AND
REDONDO PENINSULA
ENERGY, INC. (RPE), WITH
MOTION FOR
CONFIDENTIAL
TREATMENT OF
INFORMATION,**

ERC CASE NO. 2016-084 RC

**MANILA ELECTRIC
COMPANY (MERALCO)
AND REDONDO
PENINSULA ENERGY, INC.
(RPE),**

Applicants.

x-----x

D O C K E T E D
Date: NOV 28 2017
By: [Signature]

O R D E R

Before this Commission for resolution are several Motions for Reconsideration (Motions) filed by several groups and individuals (Movants), namely:

1. *Motion for Partial Reconsideration* dated 02 October 2017 filed by Romeo L. Junia (Junia) on 02 October 2017;
2. *Joint Motion for Reconsideration* dated 28 September 2017 filed by Samuel Cesar M. Gamboa, Gerard C. Arances, Bibiano C. Rivera, Jr., Atty. Jose Aaron M. Pedrosa, Jr. and Lynie L. Olimpo (Gamboa, et al.) on 03 October 2017; and

3. *Motion for Reconsideration* dated 05 October 2017 filed by Uriel G. Borja (Borja) on 06 October 2017.

ANTECEDENTS

On 13 June 2017, Junia filed his *Petition for Leave to Intervene* on 13 June 2017.

Subsequently, Gamboa et al. filed their *Motion for Leave to Intervene and to Admit Petition for Intervention* on 28 June 2017.

Similarly, on 14 July 2017, Junia filed a *Motion to Dismiss* dated 13 July 2017.

On 03 August 2017, Borja filed his *Request for Intervenor Status*.

On 30 August 2017, the Commission issued an Order denying the Petitions for Intervention filed by Junia, Gamboa, et al., and Borja, as well as the *Motion to Dismiss* filed by Junia, the dispositive portion of which reads:

WHEREFORE, premises considered, the following Petitions for Intervention are hereby DENIED:

1. Petition for Leave to Intervene filed by Romeo L. Junia on 13 June 2017;
2. Motion for Leave to Intervene and to Admit Petition for Intervention filed by Fe R. Bait, et al. on 28 June 2017; and
3. Request for Intervenor Status filed by Uriel G. Borja on 03 August 2017.

However, in the interest of substantial justice, the Commission hereby treats the said Petitions for Intervention as Oppositions, pursuant to Sections 5 and 6, Rule 9 of the ERC Rules of Practice and Procedure.

Likewise, the Motion to Dismiss filed by Romeo L. Junia on 14 July 2017 is hereby DENIED for lack of personality to file the same.

Consequently, on 02 October 2017, Junia filed his *Motion for Partial Reconsideration* assailing the Commission's Order dated 30 August 2017.

On 03 October 2017, Gamboa, et al. filed their *Joint Motion for Reconsideration* praying that an Order be issued admitting movants as intervenors in the instant case, with the exclusion of Fe R. Bait.

Likewise, on 06 October 2017, Borja filed a *Motion for Reconsideration* reiterating his request to be admitted as an intervenor.

In response to the various Motions for Reconsideration filed by the aforementioned Movants, Applicants Manila Electric Company (MERALCO) and Redondo Peninsula Energy, Inc. (RPE) filed their respective Comments and Oppositions, to wit:

1. *Comment (To the Joint Motion for Reconsideration dated 28 September 2017)* filed by RPE on 18 October 2017;
2. *Opposition to the Motion for Reconsideration dated 05 October 2017* filed by MERALCO on 18 October 2017;
3. *Opposition to the Joint Motion for Reconsideration dated 28 September 2017* filed by MERALCO on 18 October 2017;
4. *Opposition to the Motion for Partial Reconsideration dated 02 October 2017* filed by MERALCO on 19 October 2017;
5. *Comment (To the Motion for Reconsideration dated 05 October 2017)* filed by RPE on 30 October 2017; and
6. *Comment (To the Motion for Partial Reconsideration dated 02 October 2017)* filed by RPE on 30 October 2017.

ISSUE

The issue subject to the Commission's resolution is whether or not the Motions for Reconsideration separately filed by Junia, Gamboa, et al., and Borja, should be granted.

THE COMMISSION'S RULING

In a Commission meeting held on 17 November 2017, the Commission deliberated, and resolved to deny the Motions for Reconsideration filed by Junia, Gamboa, et al., and Borja. Be that as it may, the Commission treats the Petitions for Intervention filed by Junia, Gamboa, et al., and Borja as Oppositions or Comments to the instant Application. Hence, as Oppositors, the said parties are not precluded from filing comments, and submitting other supporting documents, that may be considered by the Commission in the resolution of the instant Application.

DISCUSSION

- I. **Movants have failed i.) to file their respective Petitions for Intervention within the period prescribed by the Rules; and ii.) to show good cause to excuse the belated filing of their Petitions for Intervention**

As discussed in the assailed Orders, the ERC Rules of Practice and Procedure (2006 RPP) provides that Petitions for Intervention must be filed not less than five (5) days prior to the hearing. Section 2, Rule 9 of the 2006 RPP states, to wit:

Section 2. Filing of Petitions to Intervene.- Petitions under this rule shall be served on the original parties and filed with the Commission **not less than five (5) days prior to the time the proceeding is called for hearing**, unless the notice of hearing fixes the time for filing such petitions, in which case such notice shall govern. x x x (Emphasis supplied.)

The initial hearing for the instant case took place on 23 November 2016. The various Petitions for Intervention submitted by Movants were filed on the following dates:

1. Junia filed his petition on 13 June 2017, two hundred and two (202) days or seven (7) months after the initial hearing;

2. Bait, et al. filed their petition on 28 June 2017, two hundred and seventeen (217) days or seven (7) months after the initial hearing; and
3. Borja filed his petition on 03 August 2017, two hundred and fifty (250) days or nine (9) months after the initial hearing.

It is also worthy to note that Applicants MERALCO and RPE have already rested their cases. According to the records of the case, on 24 and 28 March 2017, MERALCO and RPE filed their respective Formal Offers of Evidence before the Commission.

Despite the failure to file their respective Petitions for Intervention in a timely manner, Movants anchor their Motions for Reconsideration on the argument that they were able to sufficiently show good cause to justify the late filing of their Petition for Intervention.

The 2006 RPP provides that the Commission will allow the filing of a Petition to Intervene beyond the prescribed period only upon the showing of good cause. Section 2, Rule 9 of the afore-quoted Rule provide, to wit:

Section 2. Filing of Petitions to Intervene.- x x x A petition, **which for good cause shown was not filed within the time herein limited**, may be presented to and allowed or denied by the Commission or the presiding officer **at the time the proceeding is called for hearing**. (Emphasis and underscoring supplied.)

As proof of good cause, Movants allege that because they were not privy to the seven (7) Power Supply Agreements (PSAs), they could not be expected to know about the instant Application.

A perusal of the Motions for Reconsideration shows that no valid explanation was made by Junia, Gamboa, et al, and Borja, to justify the belated filing of their respective Petitions for Intervention.

Any party who seeks the exercise of liberality in the application of rules of procedure has the burden of proving that there exists exceptional circumstance or compelling reason to relax the rules. Every assertion must be accompanied by a valid explanation of the aggrieved party's failure to comply with applicable rule.¹

¹ *Nilo T. Pates v. Commission on Elections and Emelita B. Almirante*, G.R. No. 184915, 30 June 2009.

The Commission, considering all attendant circumstances on a case-to-case basis, is empowered to decide which instances would excuse a relaxation of its own rules of procedure. Jurisprudence is replete with examples of circumstances that would warrant a liberal application of technical rules of procedure.² In the instant case, the Commission finds no compelling reason or good cause that would warrant a relaxation of its procedural rules.

It must also be noted that applications for the approval of Power Supply Agreements (PSA), as well as other types of applications filed with the Commission which directly affect consumers are akin to land registration cases wherein the requirement of notice and publication is indispensable.³ Land registration cases, as repeatedly held by the Supreme Court, are in the nature of an action *in rem*. An action *in rem* is that which concerns the status of the parties therein, which affects or binds the whole world.

The Commission treats PSA applications and other rate cases as actions *in rem* because the resolution of such cases would directly affect all consumers and the general public, who ultimately bear the burden of shouldering any change in rates.

In actions *in rem*, courts or tribunals need not acquire jurisdiction over the parties as these are actions against the thing itself. Actions *in rem* require publication, not for the purpose of vesting the court with jurisdiction, but for complying with the requirements of fair play or due process in order that the interested

² *Fernando G. Manaya v. Alabang Country Club Incorporated*, G.R. No. 168988, 19 June 2007:
x x x

In *Ramos v. Bagasao*, 96 SCRA 395, we excused the delay of four days in the filing of a notice of appeal because the questioned decision of the trial court was served upon appellant Ramos at a time when her counsel of record was already dead. Her new counsel could only file the appeal four days after the prescribed reglementary period was over. In *Republic v. Court of Appeals*, 83 SCRA 453, we allowed the perfection of an appeal by the Republic despite the delay of six days to prevent a gross miscarriage of justice since the Republic stood to lose hundreds of hectares of land already titled in its name and had since then been devoted for educational purposes. In *Olacao v. National Labor Relations Commission*, 177 SCRA 38, 41, we accepted a tardy appeal considering that the subject matter in issue had theretofore been judicially settled, with finality, in another case (Emphasis ours.)

³ *Republic of the Philippines vs. Florencia Marasigan and Hon. Court of Appeals*, G.R. No. 85515, 06 June 1991:

x x x

Section 23 of P.D. No. 1529 is entitled Notice of initial hearing, publication, etc. and provides, inter alia, that:

The public shall be given notice of initial hearing of the application for land registration by means of (1) publication; (2) mailing; and (3) posting.

x x x

parties may be informed of the pendency of the application and may thereby take steps to protect their interests, or the interests of their constituents, if they are so minded. As the Supreme Court explained in the case of *De Pedro vs. Romasan Development Corporation*⁴, to wit:

Courts need not acquire jurisdiction over parties on this basis in *in rem* and *quasi in rem* actions. Actions *in rem* or *quasi in rem* are not directed against the person based on his or her personal liability.

Actions *in rem* are actions against the thing itself. They are binding upon the whole world. x x x

However, to satisfy the requirements of due process, jurisdiction over the parties in *in rem* and *quasi in rem* actions is required.

The phrase, "against the thing," to describe *in rem* actions is a metaphor. It is not the "thing" that is the party to an *in rem* action; only legal or natural persons may be parties even in *in rem* actions. "Against the thing" means that resolution of the case affects interests of others whether direct or indirect. It also assumes that the interests — in the form of rights or duties — attach to the thing which is the subject matter of litigation. In actions *in rem*, our procedure assumes an active vinculum over those with interests to the thing subject of litigation.

The case of *Alba vs. Court of Appeals and Herrera*⁵ further emphasized the purpose of publication in *in rem* proceedings, thus:

Moreover, **the publication of the order is a notice to all indispensable parties**, including Armi and petitioner minor, **which binds the whole world to the judgment that may be rendered in the petition**. An *in rem* proceeding is validated essentially through publication. The absence of personal service of the order to Armi was therefore cured by the trial court's compliance with Section 4, Rule 108, which requires notice by publication x x x (Emphasis ours)

In carrying out the above pronouncements, the 2006 RPP strictly requires two (2) kinds of publication in relation to PSA Applications, to wit:

⁴ *Aurora N. De Pedro vs. Romasan Development Corporation*, G.R. No. 194751, 26 November 2014.

⁵ *Rosendo Alba, minor, represented by his mother and natural guardian, Armi A. Alba, and Armi A. Alba, in her personal capacity vs. Court of Appeals and Rosendo C. Herrera*, G.R. No. 164041, 29 July 2005.

1. Publication of the Application as a Pre-filing Requirement pursuant to Section 2, Rule 6 of the RPP, to wit:

Rule 6, Section 2. Pre-filing Requirements for Rate Applications and Other Applications/ Petitions for Relief Affecting Consumers.- Before the Commission shall accept and docket rate applications and other applications or petitions for relief affecting the consumers, the applicant or petitioner must comply with the following requirements:

xxx

(b) The applicant or petitioner must **cause the publication of the entire application or petition**, excluding its annexes, and not a mere notice of filing of notice of application or petition, **in a newspaper of general circulation** within its franchise area or area where it principally operates. (Emphasis Ours).

2. Publication of the Notice of Public Hearing pursuant to Section 4, Rule 13 of the RPP, to wit:

Rule 13. Section 4. Publication and Other Requirements.- The **notice of hearing for any application or petition for rate adjustment** or for any relief affecting the consumers shall be **published by the applicant or petitioner, at its own expense, at least twice for two (2) successive weeks in two (2) newspapers of nationwide circulation**, the last day of publication to be made not to be later than ten (10) days before the scheduled hearing.

xxx

All notices of hearing of any application or petition shall also be **posted on the Commission's Website** upon its issuance. (Emphasis Ours).

It must be recalled that during the hearing on 23 November 2016, Applicants MERALCO and RPE were able to show substantial compliance with the twin-requirements of notice and publication, in accordance with the provisions of the 2006 RPP regarding jurisdictional compliance. Thus, during the said hearing, the Commission acquired jurisdiction over the instant case, including any and all interested parties.

It is a well-established rule that publication of the Notice of Public Hearing constitutes notice to the whole world that brings it as a party in the case and vests the court with jurisdiction to hear and decide the case.⁶

The Commission reiterates its previous ruling that neither the Applicants nor the Commission is duty-bound to personally notify each and every person that may be affected by an Application about the filing and hearing thereof. Therefore, the Movants' failure to file their respective Petitions for Intervention within the period prescribed by the 2006 RPP and their failure to participate in the hearing on 23 November 2016 has placed them in default.

Based on the foregoing, the Commission believes that, after careful consideration of the arguments raised in their respective Motions for Reconsideration, Movants have failed to show good cause to excuse the belated filing of their respective Petitions for Intervention.

II. The allegation of direct and substantial interest contained in the Motions for Reconsideration does not warrant the application of Section 3, Rule 9 of the 2006 RPP

Movants also assert that they have a direct and substantial interest in the subject matter of the Application, and thus, they must be granted leave to intervene pursuant to Section 3, Rule 9 of the 2006 RPP, which states:

Section 3. Grant of Leave to Intervene. - If a petition to intervene shows that the petition has a **direct and substantial interest** in the subject of the proceeding, or any part of it, and the intervention would not unduly broaden the issues, the Commission or the presiding officer may grant leave for the petition to intervene or otherwise to appear in the proceeding with respect to the matters set forth in the petition and subject to such reasonable conditions as may be prescribed by the Commission or presiding officer. (Emphasis and underscoring supplied.)

⁶ *Rosendo Alba, minor, represented by his mother and natural guardian, Armi A. Alba, and Armi A. Alba, in her personal capacity vs. Court of Appeals and Rosendo C. Herrera*, G.R. No. 164041, 29 July 2005.

As captive customers within the franchise area of MERALCO, Movants argue that the denial of their Petitions for Intervention would cause irreparable damage and detrimental outcomes to the public.

A careful review of the allegations made by Movants to support their claim of having a direct and substantial interest does not excuse the relaxation of the relevant provisions of the 2006 RPP. The facts alleged by Movants do not sufficiently warrant the application of Section 3, Rule 9 of the 2006 RPP.

The Commission takes note of Movants' legal standing as consumers within the franchise area of MERALCO and members of the consuming public. In support of its legal mandate to promote consumer interest, the Commission, through the assailed Order, has already granted the Movants the status of Oppositors in the instant case. As such, Movants have already been recognized by the Commission as individuals or entities who may submit their respective comments or oppositions to the instant Application.

Accordingly, the Commission denies the Motions for Reconsideration for failure to provide sufficient grounds to set aside or reverse the assailed Orders.

WHEREFORE, premises considered, the following Motions for Reconsideration are hereby DENIED:

1. *Motion for Partial Reconsideration* dated 02 October 2017 filed by Romeo L. Junia (Junia) on 02 October 2017;
2. *Joint Motion for Reconsideration* dated 28 September 2017 filed by Samuel Cesar M. Gamboa, Gerard C. Arances, Bibiano C. Rivera, Jr., Atty. Jose Aaron M. Pedrosa, Jr. and Lynie L. Olimpo (Gamboa, et al.) on 03 October 2017; and
3. *Motion for Reconsideration* dated 05 October 2017 filed by Uriel G. Borja (Borja) on 06 October 2017.

As Oppositors, Junia, Gamboa, et al., and Borja are given a period of fifteen (15) days from receipt of this Order TO SUBMIT their respective Oppositions or Comments to the instant Application.

SO ORDERED.

Pasig City, 17 November 2017.

FOR AND BY AUTHORITY
OF THE COMMISSION:


JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Commissioner


LS: MCB/ARG/APV

Copy furnished:

- 1. Atty. Francis Dino S. Antonio, Atty. Carmen Grace S. Ramos, Angelica Diane B. Monteza**
Counsel for Applicant MERALCO
7th Floor, Lopez Building, Ortigas Avenue,
Brgy. Ugong, Pasig City
- 2. Atty. Joshua Gilbert F. Paraiso, Atty. Roberto Miguel D. Ramiro and Atty. Lara Victoria Estevez**
Counsel for Applicant RPE
10/F 8 Rockwell
Plaza cor. Hidalgo Drive
Rockwell Center, Makati City
- 3. Manila Electric Company (MERALCO)**
Applicant
Lopez Building, Ortigas Avenue,
Brgy. Ugong, Pasig City
- 4. Redondo Peninsula Energy, Inc. (RPE)**
Applicant
Unit 310, The Venue, Rizal Highway
Subic Bay Industrial Park, Phase 1
Subic Bay Freeport Zone, Philippines
- 5. Mr. Uriel G. Borja**
BSA Towers, 108 Legaspi Street
Makati City
- 6. National Association of Electricity Consumers for Reforms, Inc. (NASECORE)**
No. 85 Independencia St., Tacloban City

- 7. Matuwid na Singil sa Kuryente Consumer Alliance, Inc. (MSK)**
Unit 327, Eagle Court Condominium, Matalino Road,
Diliman, Quezon City
- 8. Mr. Romeo L. Junia**
No. 8, Kaimito Road, Nayong Silangan,
Brgy. Dalig, Antipolo City
- 9. Mr. Gerard C. Arances**
Center for Energy, Ecology and Development (CEED)
Room 1, 29 P. Matimtiman St., Brgy. Teacher's Village,
Quezon City
- 10. Mr. Samuel Cesar M. Gamboa**
Freedom from Debt Coalition (FDC)
11 Matimpiin St., Brgy. Pinyahan,
Quezon City
- 11. Mr. Bibiano C. Rivera, Jr.**
Philippine Movement for Climate Justice (PM CJ)
13 Mabait St., Brgy. Teacher's Village,
Quezon City
- 12. Atty. Jose M. Aaron Pedrosa, Jr.**
Sanlakas National
29 P Matimtiman St., Brgy. Teacher's Village,
Quezon City
- 13. Mr. Lynie L. Olimpo**
Koalisyong Pabahay ng Pilipinas (KPP)
29 P Matimtiman St., Brgy. Teacher's Village,
Quezon City