

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. 2016-031 SC
Re: Failure to Submit
Depreciation Fund Report**

**MANILA ELECTRIC
COMPANY (MERALCO),
Respondent.**

X ----- X

DOCKETED
Date: MAR 01 2018
By: _____

DECISION

On 01 March 2016, the Commission issued a Show Cause Order (SCO) to Manila Electric Company (MERALCO) 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 20 March 2003 in ERC Case No. 2001-646² and ERC Case No. 2001-900³.

On 29 April 2016, MERALCO filed a *Motion for Extension* praying that it be given an additional period of fifteen (15) days, or until 15 May 2016, within which to file its Compliance with the SCO.

On 16 May 2016, MERALCO filed a *Motion for Additional Time* praying that it be given an additional period of ten (10) days from 15 May 2016, or until 25 May 2016, within which to file its verified explanation.

¹ Public Service Act.

² In the Matter of the Application for Approval of Revision of Rate Schedules and Appraisal of Properties with Provisional Authority.

³ In the Matter of the Application for Approval of Revised Rate Schedules in Compliance with Section 36 or Republic Act No. 9136 and ERC Order dated October 30, 2001, and for Approval of Appraisal of Properties with Prayer for Provisional Authority.

On 26 May 2016, MERALCO filed a *Manifestation* stating that due to time constraint it filed its *Compliance with Explanation under Oath* dated 24 May 2016 through registered mail.

On 03 June 2016, the Commission received MERALCO's *Compliance with Explanation under Oath* dated 24 May 2016 (Explanation) filed through registered mail.

In its *Explanation*, MERALCO raised the following arguments, among others:

- a) The provision on the depreciation fund in the Public Service Act and the Distribution Services and Open Access Rule (DSOAR) are not self-executory and requires promulgation of relevant rules, regulations and guidelines;
- b) The provision of a depreciation account in MERALCO's books for Capital Expenditure (CAPEX) conforming to the Commission's approval thereof and the maintenance of more than adequate funds in its bank accounts, substantially complied with the requirements of Section 16(l) of the Public Service Act; and
- c) The requirement to provide a Depreciation Fund Report was no longer applicable when the Commission shifted from the Return on Rate Base (RORB) methodology to Performance-Based Regulation (PBR).

On 15 July 2016, the Commission issued an Order noting the *Manifestation* filed by MERALCO and setting the case for conference on 29 July 2016.

During the conference on 29 July 2016, MERALCO appeared through its counsels. Thereafter, MERALCO moved for resetting thereof due to the unavailability of Ms. Benette D. Bachoco (Ms. Bachoco), Vice-President and Head, Financial Planning and Reporting of MERALCO. The same was granted and another conference was set on 03 August 2016.

On the 03 August 2016 conference, MERALCO together with Ms. Bachoco appeared. MERALCO reiterated therein its allegations as stated in its submitted *Explanation*.

ISSUE

The sole issue to be resolved is whether MERALCO 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 MERALCO had committed a violation of the Commission's Orders, Rules, or Regulations for MERALCO's failure to submit its Depreciation Fund Report pursuant to the Commission's directive in ERC Case No. 2001-646⁴ and ERC Case No. 2001-900⁵ 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:

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 account as the Commission may prescribe. Said rates shall be sufficient to provide the amounts required

⁴ *Supra*, note 2.

⁵ *Supra*, note 3.

⁶ The Chairman was suspended as per Decision of the Office of the President (OP-DC Case No. 17-D-094) dated 2 August 2017.

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

MERALCO alleged that the provision under Section 16 (l) of CA No. 146 on the depreciation, and the Distribution Services and Open Access Rule (DSOAR) are not self-executory and requires the promulgation of the required, rules, regulation and guidelines. MERALCO likewise argued that before the depreciation fund is set up and maintained, the proper and adequate rates of the depreciation of the property of any public service must first be fixed and after notice and hearing in order to determine the amount that will be regularly placed in the depreciation account.

However, it must be emphasized, that in the Commission's Decision dated 20 March 2003 in ERC Case No. 2001-646⁷ and ERC Case No. 2001-900⁸, MERALCO 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 MERALCO's monthly depreciation. Further, any withdrawal from the depreciation fund must be reported by MERALCO 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

3. To order MERALCO:

f.) to set up depreciation fund each year corresponding to the entire amount of depreciation recorded in its books. The setting

⁷ *Supra*, note 2.

⁸ *Supra*, note 3.

up of this fund should be done on a **monthly basis corresponding to monthly depreciation**. MERALCO is required to strictly account for the expenditures out of this fund which should be used only for investments in electric plant and all **withdrawals from this fund should be reported to the Commission within thirty (30) days from withdrawal**; (Emphasis Supplied) xxx

Notably, the foregoing dispositive portion clearly indicates the requirement for MERALCO to set up a depreciation fund, the manner by which the same shall be set up, the corresponding amount for the same, the monthly deposit that needs to be done, the strict observance for its use, and the submission of report in case of any withdrawal from the fund. Contrary to MERALCO's argument, all of the requirements for the setting up of the depreciation fund are clearly defined therein. Thus, there is nothing more left for MERALCO but to implement the same.

MERALCO further argued that it has substantially complied with the requirements of Section 16 (l) of CA No. 146 by providing a depreciation account in its books for Capital Expenditure (CAPEX) in conformity with the Commission's approval, and maintaining of more than adequate funds in its bank accounts. In support thereof, MERALCO presented a schedule of the depreciation and utilization for its CAPEX for the year 2003 to 2014.

However, the Commission finds the same non-compliant with the reportorial requirements contemplated in the Commission's Decision ERC Case No. 2001-646⁹ and ERC Case No. 2001-900¹⁰. Significantly, the submission of the report for depreciation fund would account for the expenses that MERALCO 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 MERALCO's argument.

Finally, MERALCO argued that the requirement of the Commission for the Depreciation Fund was no longer applicable upon the shift of methodology from the RORB to PBR. MERALCO argued that the Commission's Decision dated 20 March 2003¹¹ was superseded by

⁹ *Supra*, note 2.

¹⁰ *Supra*, note 3.

¹¹ In ERC Case No. 2001-646 and ERC Case No. 2001-900.

the Commission's Decision dated 30 August 2007 under ERC Case No. 2007¹² (MERALCO's PBR Case).

It must be emphasized that absence any express provision in the Decision dated 30 August 2007, the same could not supersede nor alter the Commission's Decision dated 20 March 2003. Thus, the requirement for the submission of the depreciation fund report stands.

At the onset, the Commission emphasized that the sole issue to be resolved is whether MERALCO has violated the directive of the Commission to submit its depreciation fund report pursuant to its Decision dated 20 March 2003. To date, MERALCO failed to comply with the said Commission's directive.

WHEREFORE, the foregoing premises considered, Respondent Manila Electric Company (MERALCO) is hereby declared to have committed a violation of the Commission's orders, rules and regulations, particularly, the submission of a Depreciation Fund Report.

ACCORDINGLY, pursuant to *Section 5 of the Guidelines to Govern the Imposition of Administrative Sanctions in the Form of Fines and Penalties under Section 46 of Republic Act No. 9136, as amended, pursuant to Resolution No. 03, Series of 2009*, an administrative penalty is hereby imposed against MERALCO 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

¹² In the Matter of the Application for Approval of the Annual Revenue Requirement and performance Incentive Scheme in accordance with the Provisions of the Rules for Setting Distribution Wheeling Rates – Manila Electric Company (MERALCO), Applicant.

RELATIVE THERETO, Respondent MERALCO 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/CISG/NDC/FED LS: LGSP/APV

Copy Furnished:

Manila Electric Company (MERALCO)
Lopez Building, Ortigas Avenue, Pasig City

* 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.