

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. 2016-080 SC
Re: Failure to Comply with ERC
Resolution No. 16, Series of
2009, As Amended by ERC
Resolution No. 21, Series of 2010

**CAGAYAN ELECTRIC POWER
AND LIGHT COMPANY INC.
(CEPALCO),**

Respondent.

X ----- X

D O C K E T E D
Date: APR 12 2018
By: [Signature]

D E C I S I O N

On 26 April 2016, the Commission issued a Show Cause Order (SCO) to Cagayan Electric Power and Light Company, Inc. (CEPALCO) for its failure to file its application in the approval of its over/under recoveries pursuant to the period prescribed under the Commission's Resolution No. 16, Series of 2009¹, as amended by Resolution No. 21, Series of 2010.²

On 28 September 2016, the Commission issued another Order directing CEPALCO for the last time to submit its explanation within fifteen (15) days from receipt of the same, otherwise the Commission shall be compelled to decide the case based on the evidence on record.

On 29 November 2016, CEPALCO filed its *Explanation*, alleging, among others, that:

1. CEPALCO respectfully requested an extension of fifteen (15) working days, or until 21 April 2016, to file its application for approval of (over)/under recoveries pursuant to its letter dated 30 March 2016; and

¹ A Resolution adopting the rules governing the automatic cost adjustment and true-up mechanisms and corresponding confirmation process for distribution utilities.

² A Resolution amending Section 4 of Article 4 and Section 1 of Article 5 of the rules governing the automatic cost adjustment and true-up mechanisms and corresponding confirmation process for distribution utilities.

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2. CEPALCO filed on 21 April 2016 an application for approval of (over)/under recoveries, which is docketed as ERC Case No. 2016-033 CF, in accordance of the requested extension period.

In its Letter dated 30 March 2016, CEPALCO explained that:

1. There is a need to check and validate the computations in the supporting documents with a total of eight (8) power suppliers;
2. CEPALCO must attend to other urgent applications, such as, the filing of the interim average rate application for the 4th Regulatory Period, and the rate application for the 138 kV Kirahon Substation cost recovery;
3. CEPALCO must prepare activities for the ERC hearings on application for approval of Power Supply Agreement with Mapalad Power Corporation and Western Mindanao Power Corporation; and
4. The Holy week holidays significantly reduced the time to properly prepare for the said application.

✓ On 11 January 2017, the Commission issued an Order taking note the *Explanation* filed by CEPALCO and setting the instant case for conference on 18 January 2017.

✓ On 18 January 2017 Conference, representatives of CEPALCO together with its in-house counsel appeared. CEPALCO reiterated its position as presented in its *Explanation* and further manifested that this is the first (1st) time CEPALCO committed lapses. Likewise, CEPALCO further manifested for a compromise settlement of Fifty Thousand Pesos (PhP50,000.00), or fifty percent (50%) of the imposable basic administrative penalty of One Hundred Thousand Pesos (PhP100,000.00).

ISSUE

The sole issue to be resolved is whether CEPALCO committed a violation of the Commission's Orders, Rules, or Regulations for its failure to file its application for the approval of its over/under recoveries within the prescribed period.

COMMISSION'S RULING

The Commission found CEPALCO to have committed a violation of the Commission's Orders, Rules, or Regulations for CEPALCO's failure to file its application for the approval of its over/under recoveries pursuant to Resolution No. 16, Series of 2009³, as amended by Resolution No. 21, Series of 2010.⁴

On 16 March 2017, the Commission deliberated and decided the instant case. However, due to supervening events⁵, the Decision could no longer be promulgated without undergoing reconfirmation by the Commission *En Banc*. Thus, the Commission resolved to reconfirm the Decision on 20 February 2018.

DISCUSSION

On 13 July 2009, the Commission issued Resolution No. 16, Series of 2009⁶ directing all Mindanao Distribution Utilities (DUs) to file their respective applications for approval of the (over)/under recoveries based on the formula on the various automatic cost adjustments and true-up mechanisms and corresponding confirmation process.

Subsequently, on 18 October 2010, the Commission issued Resolution No. 21, Series of 2010⁷, amending Section 1, Article 5 of Resolution No. 16, Series of 2009⁸ and providing a new period of filing of the consolidated applications, as follows:

ARTICLE V **FILING AND RESOLUTION** **OF THE APPLICATIONS**

"Section 1. Filing. The DUs shall file their respective consolidated applications within the period as prescribed hereunder:

X X X

Thereafter, the DU shall file their respective consolidated applications within the period as prescribed hereunder:

³ Ibid.

⁴ Ibid.

⁵ The former Chairman was dismissed as per Decision of the Office of the President (OP-DC Case No. 17-D-094).

⁶ Ibid.

⁷ Ibid.

⁸ Ibid.

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Distribution Utilities	Period of Filing	Covered Adjustments
Luzon DUs	March 31, 2014	Jan. 2011-Dec. 2013
Visayas DUs	March 31, 2015	Jan. 2012-Dec. 2014
Mindanao DUs	March 31, 2016	Jan. 2013-Dec. 2015

It must be emphasized that it is incumbent upon CEPALCO, 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 CEPALCO are untenable.

This is already the second filing for the (over)/under recoveries for pass through charges for Mindanao DUs, thus, CEPALCO should already be aware of the requirements and procedures appurtenant thereto.

All of the Mindanao DUs, including CEPALCO were informed ahead of the schedule on the deadline of filing of the consolidated application and were advised to coordinate with the Commission through its Investigation and Enforcement Division (IED) should there be a need for further clarification on their application.

WHEREFORE, the foregoing premises considered, Respondent Cagayan Electric Power and Light Company, Inc. (CEPALCO) is hereby declared to have committed a violation of the Commission's Orders, rules and regulations for its failure to file its application in the approval of its over/under recoveries within the prescribed period.

ACCORDINGLY, pursuant to Section 5 of Resolution No. 03, Series of 2009⁹, an administrative penalty is hereby imposed against CEPALCO in the amount of **ONE HUNDRED THOUSAND PESOS (PhP100,000.00)**, computed as follows:

PARTICULARS	AMOUNT (PhP)
<ul style="list-style-type: none"> • For failure to comply with Commission's Resolution No. 16, Series of 2009, as amended by Commission's Resolution No. 21, Series of 2010 • Basic amount of penalty 	100,000.00
TOTAL	100,000.00

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.

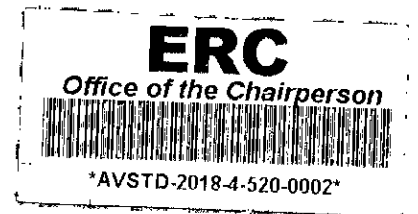
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RELATIVE THERETO, Respondent CEPALCO is hereby **DIRECTED** to pay the foregoing penalty **within fifteen (15) days** from receipt hereof.

SO ORDERED.

Pasig City, 20 February 2018.


AGNES VST DEVANADERA
Chairman and CEO

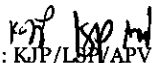



ALFREDO J. NON
Commissioner


GLORIA VICTORIA C. YAP-TARUC
Commissioner


JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Commissioner


GERONIMO D. STA. ANA
Commissioner


LS: KJP/LSP/APV
IED: GHFM/JACF/NDC/FED

Copy Furnished:

Cagayan Electric and Light Company, Inc. (CEPALCO)
33 Toribio Chavez St. Cagayan de Oro City
9000 Misamis Oriental

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