



Republic of the Philippines  
**Supreme Court**  
 Manila

**SECOND DIVISION**

**ILOCOS NORTE ELECTRIC COOPERATIVE, INC. (INEC),** G.R. No. 246940  
**COOPERATIVE, INC. (INEC),**

*Petitioner,* Present:

PERLAS-BERNABE, S.A.J.,  
*Chairperson,*

- versus -

HERNANDO,  
 INTING,  
 GAERLAN, and  
 ROSARIO,\* JJ.

**ENERGY REGULATORY COMMISSION,** Promulgated:

*Respondent.*

**SEP 15 2021**

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**DECISION**

**INTING, J.:**

Before the Court is a Petition for Review on *Certiorari*<sup>1</sup> under Rule 45 of the Rules of Court assailing the Decision<sup>2</sup> dated November 15, 2018 and the Resolution<sup>3</sup> dated May 3, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 151452. The assailed Decision affirmed the Decision<sup>4</sup> dated August 12, 2013 and Order<sup>5</sup> dated May 30, 2017 of the Energy Regulatory Commission (ERC) in ERC Case No. 2011-023 CF which ordered Ilocos Norte Electric Cooperative, Inc. (INEC) to refund to its customers the amount of ₱394,911,640.39 representing the over-recoveries in its electric billings for the years 2004 to 2010.<sup>6</sup>

\* Designated additional member per Special Order No. 2835 dated July 15, 2021.

<sup>1</sup> *Rollo*, pp. 3-64.

<sup>2</sup> *Id.* at 67-102; penned by Associate Justice Pablito A. Perez with Associate Justices Mariflor P. Punzalan Castillo and Danton Q. Bueser, concurring.

<sup>3</sup> *Id.* at 104-107.

<sup>4</sup> *Id.* at 206-220; signed by Chairperson Zenaida G. Cruz-Ducut and Commissioners Alfredo J. Non and Gloria Victoria C. Yap-Taruc.

<sup>5</sup> *Id.* at 108-118; signed by Commissioners Alfredo J. Non, Gloria Victoria C. Yap-Taruc and Josefina Patricia A. Magpale-Asirit.

<sup>6</sup> *Id.* at 114-115.

The assailed Resolution, on the other hand, denied the motion for reconsideration filed by INEC in CA-G.R. SP No. 151452 for lack of merit.

### *The Antecedents*

Republic Act No. (RA) 9136,<sup>7</sup> otherwise known as the *Electric Power Industry Reform Act of 2001* (EPIRA), was enacted in 2001 to provide a framework for the restructuring of the electric power industry. It organized the electric power industry by dividing it into four sectors, namely: generation, transmission, distribution, and supply. In addition, it provided for the privatization of the assets of the National Power Corporation (NPC), the transition to the desired competitive structure, and the definition of the responsibilities of the various government agencies and private entities in connection with the electric power industry.<sup>8</sup>

The EPIRA likewise created the ERC to be the independent *quasi-judicial* body that will regulate the electric power industry.<sup>9</sup> It was tasked to promote competition, encourage market development, ensure customer choice, and penalize abuse of market power in the restructured electricity industry.<sup>10</sup> Pursuant to its mandate, the ERC was likewise authorized to adopt alternative forms of internationally accepted rate selling methodology that will ensure a reasonable price of electricity at non-discriminatory rates.<sup>11</sup>

<sup>7</sup> Approved on June 8, 2001.

<sup>8</sup> Section 3 of Republic Act No. (RA) 9136 provides:

SECTION 3. Scope. — This Act shall provide a framework for the restructuring of the electric power industry, including the privatization of the assets of NPC, the transition to the desired competitive structure, and the definition of the responsibilities of the various government agencies and private entities.

<sup>9</sup> Section 38 of RA 9136 provides:

SECTION 38. Creation of the Energy Regulatory Commission. — There is hereby created an independent, quasi-judicial regulatory body to be named the Energy Regulatory Commission (ERC). For this purpose, the existing Energy Regulatory Board (ERB) created under Executive Order No. 172, as amended, is hereby abolished.

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<sup>10</sup> Section 43 of RA 9136.

<sup>11</sup> Section 43(f) of 9136 provides:

SECTION 43. Functions of the ERC. — The ERC shall promote competition, encourage market development, ensure customer choice and penalize abuse of market power in the restructured electricity industry. In appropriate cases, the ERC is authorized to issue cease and desist order after due notice and hearing. Towards this end, it shall be

On October 13, 2004, ERC issued an Order<sup>12</sup> in ERC Case No. 2004-322 adopting the *Guidelines for the Automatic Adjustment of Generation Rates and System Loss Rates by Distribution Utilities*.<sup>13</sup> Its objectives are to ensure, among others, transparent and reasonable prices of electric power services, as well as full recovery of all allowable generation costs and other costs associated with the system loss caps in an efficient and timely manner. To these ends, the guidelines provided

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responsible for the following key functions in the restructured industry:

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- (f) In the public interest, establish and enforce a methodology for setting transmission and distribution wheeling rates and retail rates for the captive market of a distribution utility, taking into account all relevant considerations, including the efficiency or inefficiency of the regulated entities. The rates must be such as to allow the recovery of just and reasonable costs and a reasonable return on rate base (RORB) to enable the entity to operate viably. The ERC may adopt alternative forms of internationally-accepted rate-setting methodology as it may deem appropriate. The rate-setting methodology so adopted and applied must ensure a reasonable price of electricity. The rates prescribed shall be non-discriminatory. To achieve this objective and to ensure the complete removal of cross subsidies, the cap on the recoverable rate of system losses prescribed in Section 10 of Republic Act No. 7832, is hereby amended and shall be replaced by caps which shall be determined by the ERC based on load density, sales mix, cost of service, delivery voltage and other technical considerations it may promulgate. The ERC shall determine such form of rate-setting methodology, which shall promote efficiency. In case the rate setting methodology used is RORB, it shall be subject to the following guidelines:
- (i) For purposes of determining the rate base, the TRANSCO or any distribution utility may be allowed to revalue its eligible assets not more than once every three (3) years by an independent appraisal company: *Provided, however,* That ERC may give an exemption in case of unusual devaluation: *Provided, further,* That the ERC shall exert efforts to minimize price shocks in order to protect the consumers;
  - (ii) Interest expenses are not allowable deductions from permissible return on rate base;
  - (iii) In determining eligible cost of services that will be passed on to the end-users, the ERC shall establish minimum efficiency performance standards for the TRANSCO and distribution utilities including systems losses, interruption frequency rates, and collection efficiency;
  - (iv) Further, in determining rate base, the TRANSCO or any distribution utility shall not be allowed to include management inefficiencies like cost of project delays not excused by *force majeure*, penalties and related interest during construction applicable to these unexcused delays; and
  - (v) Any significant operating costs or project investments of the TRANSCO and distribution utilities which shall become part of the rate base shall be subject to verification by the ERC to ensure that the contracting and procurement of the equipment, assets and services have been subjected to transparent and accepted industry procurement and purchasing practices to protect the public interest.

x x x x

<sup>12</sup> *Rollo*, pp. 119-129.

<sup>13</sup> *Id.* at 122-128.

for the respective adjustment formulae for the computation of Generation Rate<sup>14</sup> and System Loss Rate<sup>15</sup> to be used by Distribution Utilities (DUs).

Thereafter, on September 28, 2005, ERC adopted ERC Resolution No. 19, Series of 2005 (ERC Resolution 19-05) or the *Guidelines for the Adjustment of Transmission Rates by Distribution Utilities*.<sup>16</sup> It laid down the formula for the automatic adjustment of transmission rates for DUs to ensure full recovery of all allowable transmission costs.

In order to consolidate the separate issuances concerning the automatic cost adjustment mechanisms, ERC issued Resolution No. 16, Series of 2009<sup>17</sup> (ERC Resolution 16-09) on July 13, 2009 entitled "*A Resolution Adopting the Rules Governing the Automatic Cost Adjustment and True-Up Mechanisms and Corresponding Confirmation Process for Distribution Utilities*." In essence, ERC Resolution 16-09 set forth the formulae for the computation of the adjusted rates for generation, transmission, system loss, lifeline subsidy, and franchise and business taxes of the DUs. Moreover, it provided the method for the calculation of their over/under-recovery in the implementation of adjustment mechanisms. This was later amended by ERC Resolution No. 21, Series of 2010<sup>18</sup> (ERC Resolution 21-10) dated October 18, 2010 insofar as it revised the formula to be used by the DUs in the computation of system loss rate over/under-recovery.

Further, Resolution 16-09 directed DUs to file their applications for the approval of their respective over/under-recoveries based on the formulae on the various automatic cost adjustments stated therein. This

<sup>14</sup> Section 2(g), Article II of the Guidelines for the Automatic Adjustment of Generation Rates and System Loss Rates by Distribution Utilities defines Generation Rate as "the cost of power generated and sold to the distribution utility by the National Power Corporation (NPC) as well as the Independent Power Producers (IPPs), which shall be passed on to the DU's customers, as calculated in the formula prescribed in these Guidelines," *id.* at 123.

<sup>15</sup> Section 2(m), Article II of the Guidelines for the Automatic Adjustment of Generation Rates and System Loss Rates by Distribution Utilities, defines System Loss Rate as "the rate determined in accordance with the formula set forth in Article IV hereof. Individual System Loss Rates may be calculated for different customer classes if the Distribution Utility maintains records on the individual customer class System Loss," *id.* at 124.

<sup>16</sup> *Rollo*, pp. 130-136.

<sup>17</sup> *Id.* at 137-171.

<sup>18</sup> Entitled, "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," *id.* At 172-176.

was intended to protect the interest of the consuming public by ensuring that what was charged and collected from them are reasonable and accurate rates.

Pursuant to the foregoing, various DUs filed their applications for the approval of their over/under-recoveries. One of them was INEC, a non-profit electric cooperative organized and existing under Presidential Decree No. (PD) 269,<sup>19</sup> as amended by PD 1645,<sup>20</sup> which serves as a distribution utility for electric power in the Province of Ilocos Norte.<sup>21</sup> In its application docketed as ERC Case No. 2011-023 CF, INEC sought the approval by the ERC of the following over/under-recoveries:

SUMMARY	(Over)/Under Recoveries (Php)
Generation	(2,364,668.01)
Transmission	(2,443,468.24)
System Loss	435,860.11
Lifeline Subsidy	1,445,533.37
Inter-Class Cross Subsidy	1,433,730.70
Prompt Payment Discount	(6,522,060.66)
TOTAL	(8,015,072.73) <sup>22</sup>

### *Ruling of the ERC*

On August 12, 2013, the ERC issued a Decision<sup>23</sup> in ERC Case No. 2011-023 CF approving the application of INEC with the following modifications, to wit:

WHEREFORE, the foregoing premises considered, the application filed by Ilocos Norte Electric Cooperative, Inc. (INEC) for approval of its (over)/under-recoveries based on the formulae on the various automatic cost adjustments and true-up mechanisms and

<sup>19</sup> Otherwise known as the, "National Electrification Administration Decree," approved on August 6, 1973.

<sup>20</sup> Entitled, "Amending Presidential Decree 269, Increasing the Capitalization and Broadening the Lending and Regulatory Powers of the National Electrification Administration and for Other Purposes," approved on October 8, 1979.

<sup>21</sup> *Rollo*, p. 6.

<sup>22</sup> ERC Decision dated August 12, 2013, *id.* at 208.

<sup>23</sup> *Id.* at 206-220.

corresponding confirmation process pursuant to ERC Resolution No. 16, Series of 2009, as amended by Resolution No. 21, Series of 2010, is hereby APPROVED with MODIFICATION.

Accordingly, INEC is hereby directed to REFUND the following amounts starting the next billing cycle from receipt hereof until such time that the full amount shall have been refunded:

- a) GENERATION COST over-recoveries amounting to PhP148,183,593.28, equivalent to PhP0.1982/kWh;
- b) TRANSMISSION COST over-recoveries amounting to PhP209,905,547.45, equivalent to the following rate per customer class:

Customer Class	PhP/kWh	PhP/kW
Residential	0.2978	
Low Voltage	0.2574	
High Voltage		195.1458

- c) SYSTEM LOSS over-recoveries amounting to PhP100,487,084.78, equivalent to PhP0.1344/kWh;
- d) LIFELINE SUBSIDY over-recoveries amounting to PhP4,217,348.61 equivalent to PhP0.0320/kWh;
- e) INTER-CLASS CROSS SUBSIDIES over recoveries amounting to PhP10,420,039.81, equivalent to PhP0.0675/kWh; and
- f) REINSTATED PROMPT PAYMENT DISCOUNT over recoveries of PhP6,570,563.55, equivalent to the following rate per customer class:

Customer Class	PhP/kWh	PhP/kW
Residential	0.0093	
Low Voltage	0.0081	
High Voltage		3.2913

In connection therewith, INEC is hereby directed to comply with the following:

- a. Submit, within ten (10) days from its initial implementation, a sworn statement indicating its

compliance with the aforesaid directive;

- b. Reflect the over-recoveries in the monthly computations of GR, TR, SLR, and LSR as 'OGA' for Generation, 'OTCA' for Transmission, 'OSLA' for System Loss and 'OLRA' for Lifeline Subsidy;
- c. Reflect the over-recoveries for Inter-Class Cross Subsidy as a separate line item in the bill using the phrase 'ICCS Adj.';
- d. Reflect the over-recoveries for Prompt Payment Discount as a separate line item in the bill using the phrase 'PPD Adj.'; and
- e. Accomplish and submit a report in accordance with the attached prescribed format, on or before the 30th day of the following month, together with the monthly reportorial requirement, and every month thereafter until the amount shall have been fully refunded.

SO ORDERED.<sup>24</sup>

The ERC computed the total over-recovery of INEC in the amount of ₱479,784,177.48 covering the years 2004 until 2010. Aggrieved, INEC filed a Motion for Reconsideration<sup>25</sup> seeking for a recomputation of its over/under-recoveries or, in the alternative, it requested that it be given an extended period of time within which to implement its refund. In an Order<sup>26</sup> dated May 30, 2017, the ERC partially granted the Motion for Reconsideration and ruled as follows:

WHEREFORE, the foregoing premises considered, the Motion for Reconsideration dated 22 October 2013 filed on 22 October 2013 by the Ilocos Norte Electric Cooperative, Inc. (INEC) is hereby PARTIALLY GRANTED. The Commission hereby RESOLVES to:

1. GRANT INEC's motion to re-compute the Generation (over)-recoveries taking into consideration the Net Settlement Surplus (NSS) as reflected in the report as certified Mr. Millan H. Libongco, Manager - Billing Settlement and Metering of PEMC;

<sup>24</sup> *Id.* at 218-220.

<sup>25</sup> *Id.* at 223-235.

<sup>26</sup> *Id.* at 108-118.

2. DENY INEC's request to re-compute the System Loss using the previous month;
3. DENY INEC's request to re-compute the Transmission Rate;
4. DENY the motion to re-compute the Inter Class Cross Subsidy (ICCS);
5. GRANT the motion to extend the period of refund from 36 months to 48 months; and
6. DENY INEC's request for a detailed computation of (over) /under-recoveries.

Relative to the foregoing, the Commission hereby confirms the following re-computed (over)/under-recoveries incurred by INEC for the period of November 2004 to December 2010:

Summary of Mechanisms	Total (Over)/Under Recovery (PhP)	ERC Case No. 2011-023 CF		
		24 Mos.	48 Mos.	
		PhP/ kWh	PhP/ kWh	PhP/ kW
1. GENERATION	(90,778,350.11)		(0.0750)	
2. TRANSMISSION	(208,952,038.10)			
<i>Residential</i>			(0.1830)	
<i>Low Voltage</i>			(0.1576)	
<i>High Voltage</i>				(76.8397)
3. SYSTEM LOSS	(74,256,177.18)		(0.0614)	
4. LIFELINES	(3,934,471.64)	(0.0066)		
5. INTER-CLASS CROSS SUBSIDY	(10,420,039.81)	(0.0379)		
6. REINSTATED PROMPT PAYMENT DISCOUNT	(6,570,563.55)			
<i>Residential</i>			(0.0058)	
<i>Low Voltage</i>			(0.0050)	
<i>High Voltage</i>				(2.4162)
TOTAL	(394,911,640.39)			
Total kWh Sales		25,206,086		



OVER-ALL TARIFF ADJUSTMENT	(0.3264)
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SO ORDERED.<sup>27</sup>

*Ruling of the CA*

INEC filed a Petition for Review<sup>28</sup> before the CA questioning the manner of computation by the ERC of its over-recoveries, as well as the retroactive application of Resolution 16-09 in the calculation of its over/under-recoveries. In the assailed Decision dated November 15, 2018,<sup>29</sup> the CA affirmed the August 12, 2013 Decision and May 30, 2017 Order of the ERC, the dispositive portion of which states:

WHEREFORE, premises considered, the Petition for Review of petitioner Ilocos Norte Electric Cooperative, Inc. is DENIED. The Decision dated 12 August 2013 and Order dated 30 May 2017 of the Energy Regulatory Commission in ERC Case No. 2011-023-CF are hereby AFFIRMED.

SO ORDERED.<sup>30</sup>

The CA ruled that the application of Resolution 16-09 to transactions before 2009 did not take away from INEC any vested right over a specific formula in computing over/under-recoveries.<sup>31</sup> ERC, the regulator, must be allowed reasonable leeway to confirm the correctness and fairness of power rates, particularly under the EPIRA.<sup>32</sup> Moreover, the CA held that the ERC sufficiently explained the formulae relied upon in computing the over/under-recoveries of INEC and in observance of the right of INEC to procedural due process.

Undaunted, INEC filed a Motion for Reconsideration from the assailed Decision. The CA denied the motion in a Resolution<sup>33</sup> dated May 3, 2019 for lack of merit.

<sup>27</sup> *Id.* at 114-115.

<sup>28</sup> *Id.* at 262-296.

<sup>29</sup> *Id.* at 67-102.

<sup>30</sup> *Id.* at 102.

<sup>31</sup> *Id.* at 87.

<sup>32</sup> *Id.* at 86.

<sup>33</sup> *Id.* at 104-107.

Hence, this petition.

*Issues Before the Court*

INEC raised the following grounds for consideration of the Court, to wit:

I.

THE COURT OF APPEALS ERRED IN FINDING THAT INEC DID NOT SHOW THE MATERIAL DATE TO PROVE THAT ERC FAILED TO VERIFY THE GENERATION AND SYSTEM LOSS RATE.

II.

THE COURT OF APPEALS ERRED IN FAILING TO APPRECIATE THAT THE ERC, IN APPLYING RETROACTIVELY ITS CHALLENGED RESOLUTION IN DEPRIVING INEC OF ITS PROPERTY RIGHTS, RESULTED IN VIOLATION OF ITS SUBSTANTIVE DUE PROCESS RIGHTS.

III.

THE COURT OF APPEALS ERRED IN NOT HOLDING THAT ERC GRAVELY ABUSED ITS DISCRETION IN DENYING INEC'S MOTION FOR DATA AND INFORMATION WHICH IS THE BASIS OF ERC'S RECOMPUTATION OF INEC'S OVER-RECOVERIES, IN VIOLATION OF PROCEDURAL DUE PROCESS.

IV.

THE COURT OF APPEALS ERRED IN AFFIRMING THE ERC'S ERROR IN THE RECOMPUTATION OF INEC'S OVER-RECOVERIES.<sup>34</sup>

*The Court's Ruling*

The petition lacks merit.

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<sup>34</sup> See Petition for Review on *Certiorari*, *id.* at 13-14.

*On the material date when ERC should have verified the generation and system loss rate.*

The following portion of the Resolution dated May 3, 2019 of the CA is being questioned by INEC, to wit:

*First, INEC did not show the material dates to prove that ERC failed to verify the Generation and System Loss Rates. We cannot speculate on the date when INEC submitted its calculation with the ERC and from which the 6-month period for the latter to verify commenced. Consequently, We cannot deem said rates as final and confirmed.<sup>35</sup>*

INEC pointed out that the foregoing statement was contrary to the statement of the CA in its assailed Decision dated November 15, 2018, the relevant portion of which states:

*On 26 May 2011, INEC applied for ERC's confirmation of its computation of over-recoveries/under-recoveries and prayed that it be allowed to refund/collect said over-recoveries/under-recoveries for the period of 2004 to 2010. INEC's application was docketed as ERC Case No. 2011-023-CF entitled *In the Matter of the Application for Approval of Over/Under Recoveries based on the Formula on the Various Automatic Cost Adjustments and True-Up Mechanisms and Corresponding Confirmation Process pursuant to ERC Resolution No. 16, Series of 2009 as Amended by Resolution No. 21, Series of 2010*, and set for initial hearing on 12 August 2011.<sup>36</sup>*

According to INEC, the findings become relevant in that they served as the premise for the conclusions of the CA in the assailed Decision as regards the generation and system loss rates of INEC. It anchors its position on Section 2, Article V of ERC Case No. 2004-322,<sup>37</sup> which reads:

*Section 2. Post Verification. – At least every six (6) months, the ERC shall verify the recovery of Generation Costs by comparing the actual allowable costs incurred for the period with the actual revenues for the same period generated by the Generation Rates and*

<sup>35</sup> *Id.* at 105.

<sup>36</sup> *Id.* at 70.

<sup>37</sup> *Id.* at 122-128.

the portion of the System Loss Rates attributable to Generation Costs.

Should the ERC fail to verify the Generation Rate (including the OGA) and System Loss Rate within six (6) months from the submission of calculation and supporting documentations in accordance with the immediately preceding Section, the rates shall be deemed final and confirmed.<sup>38</sup>

INEC claims that no verification and confirmation was made by the ERC because it did not provide the procedure or formula in the computation of over/under-recoveries in ERC Case No. 2004-322. It was not until the issuance of Resolution 16-09 that the formulae to be used in the computation were laid down and, by that time, the generation rate and system loss rate as computed by INEC had already become final by failure of ERC to verify them pursuant to Section 2, Article V of ERC Case No. 2004-322 as above-quoted.<sup>39</sup>

Interestingly, this was the first time that INEC raised this issue. It may be recalled that INEC filed the application for the approval of its over/under-recoveries pursuant to ERC Resolution 16-09, as amended by ERC Resolution 21-10.<sup>40</sup> In its Motion for Reconsideration<sup>41</sup> dated October 22, 2013, INEC only raised the following errors before the ERC:

1. Re-computation of the Generation Rate using the Net Settlement Surplus data of INEC with the Philippine Electricity Market Corporation (PEMC);
2. Re-computation of the over/under-recoveries on the allowable cost on Generation, Transmission, and System Loss using the previous month cost;
3. The confirmation of INEC's Transmission Rate before the effectivity of the TRAM Guidelines be computed using the Transmission Cost recovered from consumers versus actual transmission cost;
4. The corresponding effect of the changes in the computation of the Generation Rate and Transmission Rate on the System Loss computation;

<sup>38</sup> *Id.* at 126-127.

<sup>39</sup> *Id.* at 31.

<sup>40</sup> *Id.* at 206.

<sup>41</sup> *Id.* at 223-235.

5. The corresponding effect of the changes in the computation of the Generation Rate, Transmission Rate and System Loss Rate on the Lifeline Subsidy computation;
6. INEC's computation of the Interclass Subsidy;
7. Should INEC be made to make a refund of over-recoveries, the period of refund be extended in such a way that the cooperative can still viably maintain and pursue its operations; and
8. INEC be provided the Honorable Commission's detailed computation of its over/under-recoveries to properly guide the cooperative in computing its over/under recoveries in the future.<sup>42</sup>

When INEC elevated the case to the CA, only the following issues were raised: (1) the retroactive application of ERC Resolution 16-09 in the computation of its over/under-recoveries which violates its right to substantive due process; (2) the denial of its motion for data and information on the basis of which ERC computed its over-recoveries which violates its right to procedural due process; and (3) the errors in the computation of INEC's over-recoveries.<sup>43</sup>

Settled is the rule that issues not raised in the proceedings below cannot be raised for the first time on appeal. Fairness and due process dictate that evidence and issues not presented below cannot be taken up for the first time on appeal.<sup>44</sup> As in the case, INEC would want to impress upon the Court that it was "basic error" for the CA to not consider the material dates to prove that ERC failed to verify the generation and system loss rates pursuant to Section 2, Article V of ERC Case No. 2004-322; and that the CA based its judgment on this supposed misapprehension of fact.<sup>45</sup> Apart from the fact that this matter was only raised on appeal before the Court, INEC did not discuss how this purported misapprehension of fact on the material dates could have substantially changed the ruling of the CA, especially when the assailed rulings merely affirmed the findings of the ERC where this particular issue was not raised.

<sup>42</sup> *Id.* at 233-234.

<sup>43</sup> *Id.* at 262-291.

<sup>44</sup> *Tan v. Commission on Elections*, 537 Phil 510, 533 (2006), citing *Coca-Cola Bottlers Phils. Inc. v. Daniel*, 499 Phil. 491, 505 (2005) and *Lim v. Queensland Tokyo Commodities, Inc.*, 424 Phil 35, 47 (2002).

<sup>45</sup> *Rollo*, p. 18.

In other words, assuming, for the sake of argument, that the CA may have made conflicting statements, the Court does not agree with the submission of INEC that the supposed error was material in that the CA would have ruled differently because of it.

*On the retroactive application of  
Resolution No. 16, Series of 2009.*

INEC argues that the generation rate and system loss rate as submitted by INEC had become final and confirmed when ERC failed to verify them within a period of six months as stated in Section 2, Article V of ERC Case No. 2004-322. Consequently, INEC's property rights to its collections from its monthly billings and entitlements within the period covering 2004-2009 have become vested rights.<sup>46</sup>

Moreover, INEC avers that it relied on an administrative ruling of ERC in a 2004 case decision in determining the rates for generation and system loss by DUs. It was only in 2009 that ERC passed ERC Resolution 16-09 laying down the formulae for automatic cost adjustments and the corresponding confirmation process. Thus, in applying its rules retroactively, ERC attached new legal duties and liabilities adversely affecting INEC's property rights without due process of law.<sup>47</sup>

As earlier stated, ERC issued an Order on October 13, 2004 in ERC Case No. 2004-322 adopting the *Guidelines for the Automatic Adjustment of Generation Rates and System Loss Rates by Distribution Utilities*.<sup>48</sup> It provided for the respective adjustment formulae for the computation of generation rate and system loss rate to be used by DUs. This was followed by the adoption of ERC Resolution 19-05 on September 28, 2005 which laid down the formula for the DUs to calculate new transmission rates for each of their customer classes.

ERC Resolution 16-09 was thereafter adopted by the ERC on July

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<sup>46</sup> *Id.* at 22.

<sup>47</sup> *Id.* at 25.

<sup>48</sup> *Id.* at 122-128.


13, 2009 to establish a systematized confirmation process for the following automatic cost adjustment and true-up mechanisms:

1. Automatic Generation Rate and System Loss Adjustment Mechanism;
2. Transmission Rate Adjustment Mechanism;
3. Lifeline Rate Recovery Mechanism;
4. Local Franchise Tax Recovery Mechanism;
5. Local Business Tax Recovery Mechanism;
6. Guidelines for the Calculation of the Over or Under Recovery in the Implementation of Lifeline Rates by Distribution Utilities;
7. Guidelines for a True-Up Mechanism of the Over or Under Recovery in the Implementation of Inter-Class Cross Subsidy Removal by Distribution Utilities;
8. ERC Resolution No. 12, Series of 2005, "A Resolution Approving a New Policy on the Treatment of Prompt Payment Discount (PPD);"
9. Guidelines for the Calculation of the Over or Under Recovery in the Implementation of System Loss Rate by Distribution Utilities; and
10. Rules for the Calculation of the Over or Under Recovery in the Implementation of Transmission Rates.<sup>49</sup>

In view of the issuance of ERC Resolution 16-09, the automatic cost adjustment mechanisms which were adopted by ERC in separate issuances were consolidated, updated, and rationalized into one. Prior to its issuance on July 13, 2009, ERC conducted public consultations and

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<sup>49</sup> *Id.* at 137.



considered the various views and comments submitted by interested parties.

INEC thereafter filed its application for the approval of its over/under-recoveries pursuant to ERC Resolution 16-09. It sought over-recoveries and under-recoveries of generation rate, transmission rate, system loss rate, lifeline subsidy, inter-class cross subsidy and prompt payment discount covering the years 2004 until 2010.<sup>50</sup> When the amount of its over/under-recoveries were modified by the ERC Decision in ERC Case No. 2011-023 CF dated August 12, 2013, it sought for a reconsideration of the ERC computation still on the basis of ERC Resolution 16-09. No issue as to the alleged retroactive application of said Resolution was raised by INEC in its Motion for Reconsideration before the ERC.

While INEC invokes Section 2, Article V of ERC Case No. 2004-322 on its claim that the generation and system loss rates had already become final for failure of ERC to verify them within six months, said issuance did not provide for the formulae on how to compute over/under-recoveries in the implementation of adjustment mechanisms. It was only in ERC Resolution 16-09 that the formulae for post-verification and confirmation were laid down. It cannot be said that the latter issuance impaired the vested rights of INEC because ERC Case No. 2004-322 itself provided for the verification process by ERC. It is only that the formulae to be used for it were finally adopted in Resolution 16-09. Verily, its issuance did not create a new obligation nor impose a new duty on the part of INEC. It merely prescribed the means by which the verification process shall be conducted.

At this juncture, the ruling of the Court in *ASTECC, et al. v. Energy Regulatory Commission*<sup>51</sup> is enlightening, to wit:

Petitioners further assert that the policy guidelines are invalid for having been applied retroactively. According to petitioners, the ERC applied the policy guidelines to periods of PPA implementation prior to the issuance of its 14 January 2005 Order. In *Republic v. Sandiganbayan*, this Court recognized the basic rule “that no statute, decree, ordinance, rule or regulation (or even policy) shall be given retrospective effect unless explicitly stated

<sup>50</sup> *Id.* at 208.

<sup>51</sup> 695 Phil. 243 (2012).



rule “that no statute, decree, ordinance, rule or regulation (or even policy) shall be given retrospective effect unless explicitly stated so.” A law is retrospective if it “takes away or impairs vested rights acquired under existing laws, or creates a new obligation and imposes a new duty, or attaches a new disability, in respect of transactions or consideration already past.”

The policy guidelines of the ERC on the treatment of discounts extended by power suppliers are not retrospective. The policy guidelines did not take away or impair any vested rights of the rural electric cooperatives. The usage and implementation of the PPA formula were provisionally approved by the ERB in its Orders dated 19 February 1997 and 25 April 1997. The said Orders specifically stated that the provisional approval of the PPA formula was subject to review, verification and confirmation by the ERB. Thus, the rural electric cooperatives did not acquire any vested rights in the usage and implementation of the provisionally approved PPA formula.

Furthermore, the policy guidelines of the ERC did not create a new obligation and impose a new duty, nor did it attach a new disability. As previously discussed, the policy guidelines merely interpret R.A. No. 7832 and its IRR, particularly on the computation of the cost of purchased power. The policy guidelines did not modify, amend or supplant the IRR.<sup>52</sup>

*On INEC's request for data  
and information.*

INEC maintains that ERC withheld from it data and other documents in that it could not determine the accuracy of the computation made by the ERC, or the correctness or veracity of its figures and other data used in the verification and confirmation process of its over/under-recoveries.<sup>53</sup> Consequently, it avers that it was denied procedural due process of law.

The Order dated May 30, 2017 of the ERC addressed the issue as follows:

It is worthy to note that it has been the practice of the Commission to conduct exit conferences to discuss matters or issues pertaining to the computation of (over)/under-recoveries. The Commission, without compromising the confidentiality of its

<sup>52</sup> *Id.* at 280-281. Citations omitted.

<sup>53</sup> *Rollo*, p. 53.

conducting its evaluation of the distribution utility (DU)'s application during the exit conference; hence, the motion for detailed computation is untenable.<sup>54</sup>

As aptly ruled by the CA:

A careful review of the assailed Decision reveals that ERC used evidence and data which were either presented by INEC itself or based on ERC resolutions. INEC cannot claim that its right to know and meet the case against them was violated because INEC primarily based its computations on the formulae prescribed in ERC Resolution No. 16-09, using information derived from certified photocopies of official receipts or deposit slips made to and invoices received from various power suppliers and the NGCP, among others.

The ERC also made an itemized explanation of why INEC incurred either an over-recovery or under-recovery for each electric charge.

It was incorrect for INEC to claim that the ERC withheld data and information in using PEMC documents, even if these were not presented during the proceedings. Administrative tribunals are not prohibited from exploring legal means to arrive at a just disposition of the case. *Ang Tibay, supra* explains:

“Only by confining the administrative tribunal to the evidence disclosed to the parties, can the latter be protected in their right to know and meet the case against them. It should not, however, detract from their duty actively to see that the law is enforced, and for that purpose, to use the authorized legal methods of securing evidence and informing itself of facts material and relevant to the controversy.” (underscoring supplied)

Besides, the PEMC documents referred to by the ERC are accessible by INEC since these involve or relate to INEC's share in the NSS, its trading amount and kWh purchases from PEMC.

The ERC thus sufficiently explained its Decision and presented the documents and formulae relied upon in computing INEC's over-recoveries/under-recoveries, in observance of INEC's right to procedural due process.<sup>55</sup>

The Court agrees with the ERC and CA that INEC was not denied

<sup>54</sup> *Id.* at 113.

<sup>55</sup> *Id.* at 100-101.

due process of law. In fact, the ERC even partially granted the Motion for Reconsideration filed by INEC in its Order dated May 30, 2017 and came up with adjusted rates after taking into consideration the submissions of INEC in its motion for reconsideration.

In the case of *Surigao del Norte Electric Coop., Inc. (SURNECO) v. Energy Regulatory Commission*,<sup>56</sup> the Court addressed a similar issue in this regard:

Verily, the PPA confirmation necessitated a review of the electric cooperatives' monthly documentary submissions to substantiate their PPA charges. The cooperatives were duly informed of the need for other required supporting documents and were allowed to submit them accordingly. In fact, hearings were conducted. Moreover, the ERC conducted exit conferences with the electric cooperatives' representatives, SURNECO included, to discuss preliminary figures and to double-check these figures for inaccuracies, if there were any. In addition, after the issuance of the ERC Orders, the electric cooperatives were allowed to file their respective motions for reconsideration. It cannot be gainsaid, therefore, that SURNECO was not denied due process.

Finally, the core of the issues raised is factual in character. It needs only to be reiterated that factual findings of administrative bodies on technical matters within their area of expertise should be accorded not only respect but even finality if they are supported by substantial evidence even if not overwhelming or preponderant, more so if affirmed by the CA. Absent any grave abuse of discretion on the part of ERC, we must sustain its findings. Hence, its assailed Orders, following the rule of non-interference on matters addressed to the sound discretion of government agencies entrusted with the regulation of activities coming their special technical knowledge and training, must be upheld.<sup>57</sup>

As in this case, INEC was not denied due process of law because it was given full opportunity to be heard through the submission of documents and hearings conducted in connection with its application for over/under-recoveries.

Anent the last issue raised by INEC in the petition, suffice it to state that findings of administrative or regulatory agencies on matters within their technical area of expertise are generally accorded not only

<sup>56</sup> 646 Phil. 402 (2010).

<sup>57</sup> *Id.* at 420-421.


respect but finality if such findings are supported by substantial evidence.<sup>58</sup> As the CA correctly ruled, INEC cannot demand the ERC to intricately explain its Decision as long as it had sufficiently shown the bases and formulae used for computing the over-recoveries and provided INEC with ample opportunity to raise its objections thereto.<sup>59</sup>

**WHEREFORE**, the petition is **DENIED**. The Decision dated November 15, 2018 and the Resolution dated May 3, 2019 of the Court of Appeals in CA-G.R. SP No. 151452 are **AFFIRMED**.

**SO ORDERED.**

  
**HENRI JEAN PAUL B. INTING**  
*Associate Justice*

WE CONCUR:

  
**ESTELA M. PERLAS-BERNABE**  
*Senior Associate Justice*  
*Chairperson*

  
**RAMON PAUL L. HERNANDO**  
*Associate Justice*

  
**SAMUEL H. GAERLAN**  
*Associate Justice*


  
**RICARDO R. ROSARIG**  
*Associate Justice*

<sup>58</sup> *MERALCO v. Lualhati*, 509 Phil 509, 530 (2006), citing *Radio Communications of the Philippines v. National Telecommunications Commission*, 234 Phil. 443, 449 (1987).

<sup>59</sup> *Rollo*, p. 106.


**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**ESTELA M. GERLAS-BERNABE**  
*Senior Associate Justice*  
*Chairperson*

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**ALEXANDER G. GESMUNDO**  
*Chief Justice*

