



SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE
RECEIVED
JUN 29 2023
BY: *[Signature]*
TIME: *[Signature]*

Republic of the Philippines
Supreme Court
Baguio City

SECOND DIVISION

**POWER SECTOR ASSETS AND
LIABILITIES MANAGEMENT
CORPORATION,**

G.R. No. 193521

Petitioner,

Present:

-versus-

LEONEN, *J.*, Chairperson,
LAZARO-JAVIER,
INTING*,
LOPEZ, *J.*, and
KHO, JR., *JJ.*

**ENERGY REGULATORY
COMMISSION and PHILIPPINE
ELECTRICITY MARKET
CORPORATION,**

Promulgated:

Respondents.

APR 17 2023

[Signature]

X-----X

DECISION

LEONEN, *J.*:

The Philippine Electricity Market Corporation has investigative powers over energy sector participants, which it exercises concurrently with the Energy Regulatory Commission.

This Court resolves the Petition for Review on Certiorari,¹ assailing the Decision² and Resolution³ of the Court of Appeals that denied the Petition for

* Designated additional Member per Raffle dated March 28, 2023.

¹ *Rollo*, pp. 3-43.

² *Id.* at 45-68. The August 28, 2009 Decision in CA-G.R. SP No. 103355 was penned by Associate Justice Rebecca De Guia-Salvador and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Mario V. Lopez (now a member of this Court) of the Special Ninth Division of the Court of Appeals, Manila.

³ *Id.* at 70-71. The August 19, 2010 Resolution in CA-G.R. SP No. 103355 was penned by Associate Justice Rebecca De Guia-Salvador and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Mario V. Lopez (now a member of this Court) of the Former Special Ninth Division of the Court of Appeals, Manila.

[Handwritten mark]

Prohibition⁴ filed by the Power Sector Assets and Liabilities Management Corporation.⁵

The Power Sector Assets and Liabilities Management Corporation is a government-owned and controlled corporation created under Republic Act No. 9136, or the Electric Power Industry Reform Act of 2001 (EPIRA). Among its mandates is to manage the orderly sale, disposition, and privatization of the assets of the National Power Corporation and independent power producer contracts with the objective of liquidating all financial obligations and stranded contracts costs of the National Power Corporation in an optimal manner.⁶

On the other hand, the Energy Regulatory Commission was created as “an independent, quasi-judicial regulatory body”⁷ under EPIRA. Among others, it is tasked to “promote competition, encourage market development, ensure customer choice[,] and penalize abuse of market power in the restructured [electricity] industry[.]”⁸

Meanwhile, the Philippine Electricity Market Corporation is a private corporation constituted pursuant to EPIRA⁹ and its implementing rules and regulations¹⁰ to undertake the preparation for and initial implementation of the Wholesale Electricity Spot Market in accordance with its rules and regulations.

On January 31, 2008, the Energy Regulatory Commission and the Philippine Electricity Market Corporation executed a memorandum of agreement.¹¹ This memorandum of agreement was accompanied by a protocol,¹² which provides:

2.2. Matters Pertaining to Breach of WESM Rules and WESM Manuals.

Under Section 43 of the EPIRA, the ERC is responsible for enforcing the rules and regulations governing the operations of the electricity spot market and the activities of the spot market operator and other participants in the spot market. On the other hand, Chapter 7 of the WESM Rules lays down the procedures on how an alleged Breach is to be investigated and sanctioned by PEMC.

For orderly procedure, Breaches shall be investigated and penalized as follows:

⁴ Id. at 119–132.

⁵ Id. at 67.

⁶ Id. at 5.

⁷ Republic Act No. 9136 (2001), sec. 38.

⁸ Republic Act No. 9136 (2001), sec. 43.

⁹ Republic Act No. 9136 (2001), sec. 30.

¹⁰ Implementing Rules and Regulations of Republic Act No. 9136 (2002), Rule 9, secs. 6 and 7.

¹¹ *Rollo*, pp. 103–105.

¹² Id. at 106–112.

PEMC, through the ECO [Enforcement and Compliance Officer], shall have the authority to initially investigate and resolve cases involving Breach. Upon completion of ECO's investigation and after PEMC shall have imposed the proper sanctions and penalties, if any, pursuant to the WESM Rules and the relevant WESM Market Manuals, PEMC shall furnish the ERC a copy of its investigation and its conclusion thereon.

Any complaint received by the ERC involving Breach shall, at the first instance, be referred to the ECO for investigation and resolution. The ERC shall correspondingly inform the complainant of said action.

As a result of its monitoring activities, should the ERC find any irregular act or behavior which, it has reasonable ground to believe, involves a Breach, it shall refer the same to PEMC for investigation and resolution.

2.3. Matters Pertaining to Conduct of Anti-Competitive Behavior.

PEMC shall refrain from taking cognizance of a case involving Anti-Competitive Behavior unless it has been directed by the ERC to do so, or has been expressly or impliedly allowed by the ERC to conduct, an investigation of the case.

If upon complaint of a WESM member or a result of the monitoring functions of the PEMC, there is sufficient ground to believe that conduct constituting Anti-Competitive Behavior has been committed, the PEMC shall issue a Notice of Possible Commission of Anti-Competitive Behavior (the 'Notice') and transmit the same to the ERC, together with the complaint and such other relevant documents that may aid the ERC in its investigation. The ERC shall, within ten (10) business days from receipt of the said Notice, communicate to PEMC its decision to either a.) take cognizance of the investigation or b.) on a 'no objection basis', direct PEMC to investigate the matter. Unless it issues an order declaring otherwise, ERC's failure to communicate its decision within the aforesated period shall be deemed to be a consent for PEMC to proceed with its investigation.

Upon conclusion of its investigation, and if it finds reasonable ground to believe that an Anti-Competitive Behavior has been committed, PEMC shall issue a Resolution to such effect including its recommendation to the ERC on the appropriate fines and penalties that should be imposed, if any.

2.4. Matters Pertaining to Acts that Constitute both a Breach and Anti-Competitive Behavior.

For avoidance of doubt, if an act or omission constitutes both a Breach and an Anti-Competitive Behavior, PEMC shall have the authority to investigate the Breach but shall refrain from investigating the alleged Anti-Competitive Behavior unless the ERC has consented/directed otherwise. Upon completion of its investigation, the PEMC shall impose the appropriate sanctions and penalties on the Breach, pursuant to the relevant provisions of the WESM Rules and/or WESM Market Manual.¹³

In a letter,¹⁴ the Philippine Electricity Market Corporation requested then Energy Secretary Angelo T. Reyes to approve the conduct of a formal

¹³ Id. at 107-108.

¹⁴ Id. at 113-117.

investigation against the Power Sector Assets and Liabilities Management Corporation for possible breach of the Wholesale Electricity Spot Market Rules (Rules) with regard to six power generating plants whose electricity output is traded in the spot market. The letter enumerated the following matters needing action:

1. Investigation Report Alleged Non-Compliance to the Dispatch Instructions by Bakun Hydroelectric Power Plant (HEPP) – PEMC ECO 2006-0002

On November 14, 2007, the Corporate Secretary of PEMC received from the MSC [Market Surveillance Committee] its Memorandum to PEM Board in connection with its review of the Investigation Report of the Enforcement and Compliance Officer's (ECO) Report on the Alleged Non-Compliance by Bakun HEPP to Dispatch Schedules and Instructions. The energy output of Bakun is traded by the Power Sector Assets and Liabilities Management (PSALM). In its Memorandum, the MSC ruled that the ECO has complied with the procedural requirements of the Market Surveillance, Compliance and Enforcement Manual (MSECM) and adopts the ECO's factual findings. Per Memorandum, the ECO concluded as follows:

- On various trading hours from 27 July 2006 to 6 September 2006, Bakun HEPP generated more electricity from its Real Time Dispatch (RTD) schedule in excess of 3% tolerance limit prescribed by the System Operator;
- PSALM, the registered trader of Bakun HEPP, failed to make Bakun HEPP comply with the MO dispatch schedules and the SO dispatch instructions. Therefore, ECO finds PSALM in violation of Section 4.3, Appendix A.7 of the Dispatch Protocol Manual.
- However, the ECO does not recommend the imposition of any financial penalty against PSALM since the violations were committed during the six-month period when the application of the financial penalties against Trading Participants was suspended under the Transitory Provisions of the MSECM Manual (Appendix B, paragraph 2.7) and the ECO did not find evidence of bad faith, fraud, gross negligence[,] or gross incompetence on the part of PSALM.

The matter is referred to the PEM Board to review the correctness of penalty, where applicable.

2. MSC Non-Compliance Report against Limay CCGT, Bauang DPP, Sual CFTPP, Malaya TPP, Pagbilao CFTPP and Subic Enron DPP all traded by PSALM.

On January 14, 2008, the Corporate Secretary received a memorandum addressed to the Board from the MSC reporting possible non-compliance of certain generators with the submission of offers under Section 3.5.5 and Appendix A1.1 of the WESM Rules. Section 3.5.5 of the WESM Rules provide:

“3.5.5.1 Each Scheduled Generation Company including

Generation Companies with bilateral contracts shall submit a standing generation offer for each of its scheduled generating units for each trading interval in each trading day of the week in accordance with the timetable.”

While Appendix A1.1 Generation Offer, as amended, states:

“3.5.5.2 Each generation offer shall include the information specified in Appendix A1.1:

Appendix A1.1 Generation Offer:

(c) May include up to ten (10) energy offer blocks per (aggregate) unit. The maximum combined capacity of generation and reserve offers must not be less than the maximum available capacity of the generator.”

Thus, the MSC recommends that appropriate investigation be conducted for possible breach of the WESM Rules for the following plants:¹⁵

Power Plant	Trading Team	Company	Explanations Provided by Trading Participants
1. Limay CCGT	PSALM 1	PSALM	Technical constraints
2. Bauang DPP	PSALM 2	PSALM	No offer/cancelled offer due to lower day-ahead dispatch (DAP) market clearing price than plant variable cost
3. Sual CFTPP	PSALM 2	PSALM	Capacity available for trading is only 2 x 500 MW, which is the capacity covered by the Energy Conversion Agreement between NPC and Mirant; For each unit, a portion of the 500 MW is being nominated as ancillary.
4. Malaya TPP	PSALM 2	PSALM	On economic shutdown due to limited fuel supply adequate only for test and heat runs
5. Pagbilao CFTPP	PSALM 3	PSALM	Reduced capacity to prolong plant operation when coal stock was low due delay in coal shipment delivery (April 14-25, 2007); Reduced capacity due to high sulfur dioxide (SO ₂) emission attributed to low coal quality.
6. Subic Enron	PSALM 3	PSALM	Day-ahead dispatch

¹⁵ Id. at 113-115.

DPP			(DAP) market clearing price below plant variable cost
-----	--	--	---

Attached to this formal request were the memorandum of agreement, the protocol, as well as a letter¹⁶ from the Energy Regulatory Commission, stating that it did not object to the conduct of the investigation.

Thereafter, the Power Sector Assets and Liabilities Management Corporation filed a Petition¹⁷ with the Court of Appeals. It claimed that the Philippine Electricity Market Corporation had no jurisdiction to determine possible breaches of the Rules by a market participant or player in the energy sector.¹⁸ As such, it prayed:

1. Upon filing of the instant Petition, a Temporary Restraining Order and/or Writ of Preliminary Injunction be issued by this Honorable Court enjoining private respondent, its representatives, agents[,] or anyone acting for and on its behalf, from assuming and/or conducting any investigation against petitioner for possible breaches of the WESM rules or from encroaching, usurping or exercising the exclusive powers, authority[,] and jurisdiction of public respondent.

2. The instant Petition be given due course and after deliberation on the merits:

(i) A Writ of Prohibition be issued prohibiting private respondent from encroaching, usurping[,] or exercising the exclusive powers, authority and jurisdiction of public respondent.

(ii) Nullifying the Memorandum of Agreement dated January 31, 2008 and the accompanying Protocol executed by public and private respondent being in derogation of the provisions of the EPIRA.

3. Other reliefs and remedies, as may be just and equitable in the premises are likewise prayed for.¹⁹

In its Decision,²⁰ the Court of Appeals dismissed the Petition. It found that the Energy Regulatory Commission did not unduly delegate its powers in the assailed memorandum and protocol. It noted that the Philippine Electricity Market Corporation was created pursuant to EPIRA. Under the rules and regulations implementing EPIRA, the Department of Energy, jointly with the industry participants, was mandated to formulate rules for the Wholesale Electricity Spot Market. It later formulated the Rules after public consultations, which were jointly endorsed by electric power industry

¹⁶ Id. at 118.

¹⁷ Id. at 119–132.

¹⁸ Id. at 123.

¹⁹ Id. at 129–130.

²⁰ Id. at 45–68.

participants, including the Power Sector Assets and Liabilities Management Corporation itself.²¹

Citing the Rules, the Court of Appeals found that the Philippine Electricity Market Corporation's investigative powers came from its designation under EPIRA as the autonomous group tasked to implement the electricity spot market and formulate the Rules. It further noted that this was also made clear in the assailed protocol, which delineates the actions that the Energy Regulatory Commission and the Philippine Electricity Market Corporation may take. The investigations that each may conduct are separate and distinct.²²

The Court of Appeals added that the application of the nondelegation doctrine has been relaxed, especially in the context of regulatory jurisdiction of administrative agencies. Moreover, it found that the Power Sector Assets and Liabilities Management Corporation was one of the market participants that endorsed the Rules and entered into a market participation agreement, where it agreed to be bound by the Rules. Accordingly, there is contractual basis for the Philippine Electricity Market Corporation to exercise investigative and punitive powers, independent of those exercised by the Energy Regulatory Commission.²³

The Power Sector Assets and Liabilities Management Corporation filed a Motion for Reconsideration, which the Court of Appeals denied.²⁴

Thus, the present Petition.²⁵

Petitioner insists that respondent Philippine Electricity Market Corporation has no investigative and punitive powers over energy sector participants. It argues that the exclusive and original jurisdiction of respondent Energy Regulatory Commission over disputes between and among electricity market participants includes the investigation to be undertaken by respondent Philippine Electricity Market Corporation. This is allegedly because exercising jurisdiction over such disputes requires investigation, ascertainment of facts, and the holding of hearings.²⁶ Considering that the powers were granted to it by EPIRA, the Energy Regulatory Commission was duty bound to exercise these powers itself and could not discharge them through another body.²⁷

Petitioner also asserts that it was not bound by the terms of the market

²¹ Id. at 55-63.

²² Id. at 57-60.

²³ Id. at 63-64.

²⁴ Id. at 70.

²⁵ Id. at 3-43.

²⁶ Id. at 1238-1239.

²⁷ Id. at 1249.

participation agreement, as no evidence was presented to show that it had agreed to it. Even assuming that petitioner did enter such agreement, it claims that jurisdiction cannot be fixed, conferred, or acquired by any act or omission of the parties.²⁸ Thus, it was error for the Court of Appeals to uphold the validity of the memorandum of agreement and the protocol.²⁹

In its Comment,³⁰ respondent Energy Regulatory Commission argues that the memorandum of agreement and the protocol do not delegate any powers and are merely clarificatory.³¹ It explains that respondent Philippine Electricity Market Corporation was authorized to investigate and sanction breaches of the Rules under EPIRA, its implementing rules and regulations, the Rules, and manuals.³² Moreover, it asserts that the Petition was prematurely filed since the enforcement and compliance officer was only in the process of obtaining consent from the Department of Energy to initiate its investigation and that the investigation is only preliminary in nature.³³

In its Comment,³⁴ respondent Philippine Electricity Market Corporation maintains that petitioner's arguments must be rejected outright for being a collateral attack against the validity of the Rules.³⁵ In any case, it asserts that EPIRA mandates the Department of Energy to formulate rules for the spot market, which shall provide, among others, procedures for surveillance and assurance of the participants' compliance with the rules. It explains that the electric industry participants jointly formulated the Rules with the Department of Energy and are bound by these rules.³⁶

Having established the basis for finding petitioner bound by the Rules, respondent Philippine Electricity Market Corporation cites the provisions of the Rules that authorize it to investigate and penalize breaches thereof.³⁷ It further argues that market participants, upon becoming members of the Wholesale Electricity Spot Market, voluntarily bound themselves to abide by and comply with its articles of incorporation and bylaws. Among its secondary purposes under its articles of incorporation are the overseeing of the implementation of the Rules, the provision of adequate sanctions, and the imposition of said sanctions in case of breaches.³⁸

The issue for resolution is whether the Philippine Electricity Market Corporation has the power to investigate possible breaches of the Rules governing the Wholesale Electricity Spot Market.

²⁸ Id. at 1241–1242.

²⁹ Id. at 1237.

³⁰ Id. at 717–735.

³¹ Id. at 726.

³² Id. at 720.

³³ Id. at 733.

³⁴ Id. at 736–781.

³⁵ Id. at 745.

³⁶ Id. at 747.

³⁷ Id. at 753–754.

³⁸ Id.

We deny the Petition. We hold that the power to investigate violations of the Rules is concurrently exercised by the Energy Regulatory Commission and respondent Philippine Electricity Market Corporation.

EPIRA provides for the establishment of a spot market, whose rules are to be formulated by the Department of Energy jointly with the industry participants. The said market would also be implemented by a group to be constituted by the Department of Energy with representation from industry participants.³⁹

The implementing rules and regulations of EPIRA also mandate the Department of Energy and industry participants to establish the appropriate governance structure of the Wholesale Electricity Spot Market.⁴⁰ The rules governing the spot market would then be formulated to provide a cost-effective framework for resolution of disputes between the participants and the market operator, as well as sanctions in cases of breaches.⁴¹ A market operator would implement spot market and be responsible for, among others, operating and administering the spot market and allocating resources to enable it to operate and administer the market in accordance with the Rules.⁴²

In turn, the Rules provide that the Philippine Electricity Market Corporation “shall do all things reasonably necessary to ensure that all. . . Members comply with the [Rules]” and is empowered to direct the disputes resolution administrator to investigate alleged breaches.⁴³ They also empower the Philippine Electricity Market Corporation to impose sanctions on any participant for breach of the Rules, without prejudice to the authority of the Energy Regulatory Commission to impose fines and penalties under EPIRA.⁴⁴

Thus, EPIRA empowered the Department of Energy, together with the industry participants, to develop the governance structure of Wholesale Electricity Spot Market. This structure, as laid down in the Rules, empowered the Philippine Electricity Market Corporation to investigate breaches of the Rules and act accordingly to ensure the members comply with them. The Philippine Electricity Market Corporation is likewise vested with the power to resolve disputes between market participants and the market operator and provide adequate sanctions in case of breaches of the Rules.

Thus, when respondent Philippine Electricity Market Corporation requested the approval of the conduct of a formal investigation against

³⁹ Republic Act No. 9136 (2001), sec. 30.

⁴⁰ Implementing Rules and Regulations of Republic Act No. 9136 (2002), Rule 9.

⁴¹ Implementing Rules and Regulations of Republic Act No. 9136 (2002), Rule 9, sec. 5.

⁴² Implementing Rules and Regulations of Republic Act No. 9136 (2002), Rule 9, sec. 6(c).

⁴³ Wholesale Electricity Spot Market Rules (2002), sec. 7.2.1.

⁴⁴ Wholesale Electricity Spot Market Rules (2002), sec. 7.2.5.2.

petitioner Power Sector Assets and Liabilities Management Corporation for possible breach of the Rules, it merely exercised powers bestowed upon it by law, which are concurrently exercised by the Energy Regulatory Commission.

The investigations to be conducted by the Philippine Electricity Market Corporation involve breaches of rules and regulations governing the operations of the electricity spot market and the activities of the spot market operator and other participants in the spot market. As explained in the assailed protocol, such breaches would be investigated and penalized as follows:

PEMC, through the ECO [Enforcement and Compliance Officer], shall have the authority to initially investigate and resolve cases involving Breach. Upon completion of ECO's investigation and after PEMC shall have imposed the proper sanctions and penalties, if any, pursuant to the WESM Rules and the relevant WESM Market Manuals, PEMC shall furnish the ERC a copy of its investigation and its conclusion thereon.

Any complaint received by the ERC involving Breach shall, at the first instance, be referred to the ECO for investigation and resolution. The ERC shall correspondingly inform the complainant of said action.

As a result of its monitoring activities, should the ERC find any irregular act or behavior which, it has reasonable ground to believe, involves a Breach, it shall refer the same to PEMC for investigation and resolution.⁴⁵

On the investigation and sanction of conduct constituting anticompetitive behavior, the protocol provides:

If upon complaint of a WESM member or a result of the monitoring functions of the PEMC, there is sufficient ground to believe that conduct constituting Anti-Competitive Behavior has been committed, the PEMC shall issue a Notice of Possible Commission of Anti-Competitive Behavior (the 'Notice') and transmit the same to the ERC, together with the complaint and such other relevant documents that may aid the ERC in its investigation. The ERC shall, within ten (10) business days from the receipt of the said Notice, communicate to PEMC its decision to either a.) take cognizance of the investigation or b.) on a 'no objection basis', direct PEMC to investigate the matter. Unless it issues an order declaring otherwise, ERC's failure to communicate its decision within the aforesated period shall be deemed to be a consent for PEMC to proceed with its investigation.

Upon a conclusion of its investigation, and if it finds reasonable ground to believe that an Anti-Competitive Behavior has been committed, PEMC shall issue a Resolution to such effect including its recommendation to the ERC on the appropriate fines and penalties that should be imposed, if any.⁴⁶

On acts that allegedly constitute both anticompetitive behavior and

⁴⁵ *Rollo*, p. 108.

⁴⁶ *Id.*

breach of governing rules, the protocol provides:

For avoidance of doubt, if an act or omission constitutes both a Breach and an Anti-Competitive Behavior, PEMC shall have the authority to investigate the Breach but shall refrain from investigating the alleged Anti-Competitive Behavior unless the ERC has consented/directed otherwise. Upon completion of its investigation, the PEMC shall impose the appropriate sanctions and penalties on the Breach, pursuant to the relevant provisions of the WESM Rules and/or the WESM Market Manual.⁴⁷

The act of investigating and sanctioning breaches of the Rules may be considered related to Section 43(r) of EPIRA, under which respondent Energy Regulatory Commission has the responsibility to

act against any participant or player in the energy sector for violations of any law, rule and regulation governing the same, including the rules on cross-ownership, anti-competitive practices, abuse of market positions and similar or related acts by any participant in the energy sector or by any person, as may be provided by law, and require any person or entity to submit any report or data relative to any investigation or hearing conducted pursuant to this Act.⁴⁸

However, while Section 43(r) states that respondent Energy Regulatory Commission is responsible for this key function in the restructured industry, it does not mandate it to perform all functions related to this responsibility by itself. The Commission may therefore exercise these functions concurrently with the Philippine Electricity Market Corporation.

With the statutory basis for respondent Philippine Electricity Market Corporation's power to investigate and sanction breaches of the Rules outlined and considering that petitioner failed to show how these acts encroach on the exclusive and original jurisdiction of respondent Energy Regulatory Commission, we deny the Petition.

ACCORDINGLY, the Petition for Review on Certiorari is **DENIED**. The Decision and Resolution of the Court of Appeals are **AFFIRMED** insofar as they denied the Petition for Prohibition in CA-G.R. SP No. 103355.

SO ORDERED.


MARVIC M.V.F. LEONEN
Senior Associate Justice

⁴⁷ Id.

⁴⁸ Republic Act No. 9136 (2001), sec. 43(r).

WE CONCUR:



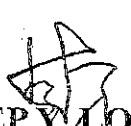
AMY C. LAZARO-JAVIER

Associate Justice



HENRI JEAN PAUL B. INTING

Associate Justice



JHOSEP Y. LOPEZ

Associate Justice



ANTONIO T. KHO, JR.

Associate Justice

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.



MARVIC M.V.F. LEONEN

Senior Associate Justice

Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 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