Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NUEVA ECIJA I ELECTRIC COOPERATIVE INCORPORATED (NEECO I), Petitioner,	**G.R. No. 180642**
	Present:
	VELASCO, *J.*, *Chairperson*,
	PERALTA,
	PEREZ,
- versus -	REYES, and
	JARDELEZA, *JJ.*
ENERGY REGULATORY COMMISSION, Respondent.	Promulgated:
	February 3, 2016

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DECISION

REYES, *J.*:

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court assailing the Resolution[2] dated July 11, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 99268 which dismissed the appeal filed by petitioner Nueva Ecija I Electric Cooperative Incorporated (NEECO I) for failure to comply with Sections 5 and 6 of Rule 43 of the Rules of Court.

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1 *Rollo*, pp. 17-60.

2 Penned by Associate Justice Conrado M. Vasquez, Jr., with Associate Justices Edgardo F. Sundiam and Monina Arevalo-Zenarosa concurring; id. at 63-64.

The Facts

NEECO I is a rural electric cooperative organized and existing by virtue of Presidential Decree (P.D.) No. 269;[3] it is a member of the Central Luzon Electric Cooperatives Association (CLECA).

NEECO I was among the various rural electric cooperatives directed by the Energy Regulatory Commission (ERC) to refund their over-recoveries arising from the implementation of the Purchased Power Adjustment (PPA) Clause under Republic Act (R.A.) No. 7832 or the Anti-Electricity and Electric Transmission Lines/Materials Pilferage Act of 1994.

The petitions of other rural electric cooperatives against the said ERC directives were resolved by the Court *en banc* on September 18, 2002 in *Association of Southern Tagalog Electric Cooperatives, Inc. v. ERC*[4] (hereinafter referred to as *ASTEC*), the background facts[5] of which are the same antecedents that gave rise to the present controversy.

R.A. No. 7832 was enacted on December 8, 1994, imposing a cap on the recoverable rate of system loss that may be charged by rural electric cooperatives to their consumers. Section 10 of the law provides:

> Section 10. *Rationalization of System Losses by Phasing out Pilferage Losses as a Component Thereof.* — There is hereby established a cap on the recoverable rate of system losses as follows:
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> x x x x
>
> (b) For rural electric cooperatives:
>
> (i) Twenty-two percent (22%) at the end of the first year following the effectivity of this Act;
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> (ii) Twenty percent (20%) at the end of the second year following the effectivity of this Act;
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> (iii) Eighteen percent (18%) at the end of the third year following the effectivity of this Act;

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3 Id. at 20.
4 G.R. No. 192117, September 18, 2012, 681 SCRA 119.
5 Id. at 124-134.

(iv) Sixteen percent (16%) at the end of the fourth year following the effectivity of this Act; and

(v) Fourteen percent (14%) at the end of the fifth year following the effectivity of this Act.

Provided, That the ERB is hereby authorized to determine at the end of the fifth year following the effectivity of this Act, and as often as is necessary, taking into account the viability of rural electric cooperatives and the interest of the consumers, whether the caps herein or theretofore established shall be reduced further which shall, in no case, be lower than nine percent (9%) and accordingly fix the date of the effectivity of the new caps.

x x x x

The Implementing Rules and Regulations (IRR) of R.A. No. 7832 required every rural electric cooperative to file with the Energy Regulatory Board (ERB), on or before September 30, 1995, an application for approval of an amended PPA Clause incorporating the cap on the recoverable rate of system loss to be included in its schedule of rates. Section 5, Rule IX of the IRR of R.A. No. 7832 provided for the following guiding formula for the amended PPA Clause:

Section 5. *Automatic Cost Adjustment Formula.* —

x x x x

The automatic cost adjustment of every electric cooperative shall be guided by the following formula:

Purchased Power Adjustment Clause

$$(PPA) = \frac{A}{B - (C + D)} - E$$

Where:

A = Cost of electricity purchased and generated for the previous month

B = Total kWh purchased and generated for the previous month

C = The actual system loss but not to exceed the maximum recoverable rate of system loss in kWh plus actual company use in kWh but not to exceed 1% of total kWh purchased and generated

D = kWh consumed by subsidized consumers

E = Applicable base cost of power equal to the amount incorporated into their basic rate per kWh

In compliance therewith, various associations of rural electric cooperatives throughout the Philippines filed on behalf of their members applications for approval of amended PPA Clauses.[6]

NEECO I's application for approval was filed in its behalf by CLECA on February 8, 1996 and it was docketed as ERB Case No. 96-37. It was later on consolidated with identical petitions filed by other associations of electric cooperatives in the country.[7]

On February 19, 1997, the ERB issued an Order[8] granting electric cooperatives with provisional authority to use and implement the following PPA formula pursuant to the mandatory provisions of R.A. No. 7832 and its IRR, *viz*:

$$PPA = \frac{A}{B - (C + C1 + D)} - E$$

Where:

A = Cost of Electricity purchased and generated for the previous month less amount recovered from pilferages, if any.

B = Total kWh purchased and generated for the previous month

C = Actual system loss but not to exceed the maximum recoverable rate of system loss in kWh

C1 = Actual company use in kWh but not to exceed 1% of total kWh purchased and generated

D = kWh consumed by subsidized consumers

E = Applicable base cost of power equal to the amount incorporated into their basic rate per kWh.[9]

The order further directed all electric cooperatives: (1) to submit their monthly implementation of the PPA formula from February 1996 to January 1997 for the ERB's review, verification and confirmation; and (2) thereafter,

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6 Id. at 125-126.
7 *CA rollo*, p. 21.
8 Id. at 74-91.
9 Id. at 81-82.

(from February 1997 and onward), to submit on or before the 20th day of the current month, their implementation of the PPA formula of the previous month for the same purposes.[10]

NEECO I implemented the approved formula in its electric power billings for the period July 1999 to April 2005. For the month of February in 1996, however, NEECO I did not impose PPA charges while for the period March 1996 to June 1999, it used a 'multiplier' scheme.[11]

In the interim or on June 8, 2001,[12] R.A. No. 9136, otherwise known as Electric Power Industry Reform Act of 2001 (EPIRA Law), was enacted creating the ERC which replaced and succeeded the ERB. Consequently, all pending cases before the ERB were transferred to the ERC and the case for NEECO I was re-docketed as ERC Case No. 2001-340.[13]

Upon discerning that the earlier policy issued by ERB anent the PPA formula was silent on whether the calculation of the cost of electricity purchased and generated should be "gross" or "net" of the discounts, the ERC issued an Order[14] dated June 17, 2003, clarifying as follows:

> Let it be noted that the power cost is said to be at "gross" if the discounts are not passed-on to the end-users whereas it is said to be at "net" if the said discounts are passed-on to the end-users.
>
> To attain uniformity in the implementation of the PPA formulae, the [ERC] has resolved that:
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> 1. In the confirmation of past PPAs, the power cost shall still be based on "gross"; and
>
> 2. In the confirmation of future PPAs, the power cost shall be based on "net".[15]

In an Order[16] dated January 14, 2005, the ERC refined its policy on PPA computation and confirmation, to wit:

> A. The computation and confirmation of the PPA prior to the [ERC's] Order dated June 17, 2003 shall be based on the approved PPA Formula;

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10 Id. at 82.
11 *Rollo*, pp. 87-88.
12 *See Kapisanan ng mga Kawani ng Energy Regulatory Board v. Commissioner Barin*, 553 Phil. 1, 3 (2007). The law took effect on June 26, 2001.
13 CA *rollo*, p. 21.
14 Id. at 92-103.
15 Id. at 93-94.
16 Id. at 104-120.

B. The computation and confirmation of the PPA after the [ERC's] Order dated June 17, 2003 shall be based on the power cost "net" of discount; and

C. If the approved PPA Formula is silent on the terms of discount, the computation and confirmation of the PPA shall be based on the power cost at "gross," subject to the submission of proofs that said discounts are being extended to the end-users.[17]

In a subsequent Order[18] dated July 27, 2006, the ERC further clarified the foregoing policy on the PPA confirmation scheme.

According to the ERC, to ensure that only the actual costs of purchased power are recovered by distribution utilities (DUs), the following principles shall govern the treatment of the Prompt Payment Discount granted by power suppliers to DUs including rural electric cooperatives:

I. The over-or-under recovery will be determined by comparing the allowable power cost with the actual revenue billed to end-users.

II. Calculation of the DU's allowable power cost as prescribed in the PPA formula:

a. If the PPA formula explicitly provides the manner by which discounts availed from the power supplier/s shall be treated, the allowable power cost will be computed based on the specific provision of the formula, which may either be at "net" or "gross"; and

b. If the PPA formula is silent in terms of discounts, the allowable power cost will be computed at "net" of discounts availed from the power supplier/s, if there [is] any.

III. Calculation of the DU's actual revenues/actual amount billed to end-users.

a. On actual PPA computed at net of discounts availed from power supplier/s:

a.1. If a DU bills at net of discounts availed from the power supplier/s (i.e., gross power cost minus discounts from power supplier/s) and the DU is not extending discounts to end-users, the actual revenue should be equal to the allowable power cost; and

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17 Id. at 112.

18 *Rollo*, pp. 87-95. The ERC was composed of Chairman Rodolfo B. Albano, Jr. and Commissioners Rauf A. Tan, Alejandro Z. Barin and Maria Teresa A.R. Castaneda.

a.2. If a DU bills at net of discounts availed from the power supplier/s (i.e., gross power cost minus discounts from power supplier/s) and the DU is extending discounts to end-users, the discount extended to end-users shall be added back to the actual revenue.

b. On actual PPA computed at gross

b.1. If a DU bills at gross (i.e., gross power cost not reduced by discounts from power supplier/s) and the DU is extending discounts to end-users, the actual revenue will be calculated as: gross power revenue less discounts extended to end-users. The result shall then be compared to the allowable power cost; and

b.2. If a DU bills at gross (i.e., gross power cost not reduced by discounts from power supplier/s) and the DU is not extending discounts to end-users, the actual revenue shall be taken as is which shall be compared to the allowable power cost.

IV. In the calculation of the DU's actual revenues, the amount of discounts extended to end-users shall, in no case, be higher than the discounts availed by the DU from its power supplier/s.[19]

In the same order, the ERC evaluated documents and records submitted by NEECO I and discovered that it had over-recoveries amounting to ₱60,797,451.00 due to the following:

a. For the period March 1996 to June 1999, NEECO I utilized the 1.4 multiplier scheme which allowed it to recover roughly 29% system loss instead of the cap which was lower, pursuant to [R.A.] No. 7832, otherwise known as the "Anti-Electricity and Electric Transmission Lines/Materials Pilferage Act of 1994." This resulted to an over-recovery of PhP9,393,186.00;

b. For the period July 2003 to April 2005, NEECO I's power cost computation was not reduced by the PPD availed from the National Power Corporation (NPC) resulting to an over-recovery of PhP18,578,476.00;

c. In its power cost computations for the months of May 2002 and June 2002, NEECO I adopted the April 2002 and May 2002 billings of NPC, respectively, based on its actual Purchased Power Cost Adjustment (PPCA). Considering that NPC's actual power costs in May 2002 and June 2002 were lower compared to its April 2002 and May 2002 base cost of PhP0.40/kWh (pursuant to the Presidential Directive May 8, 2002), NEECO I should have used NPC's May 2002 and June 2002 billings. This resulted to over-recoveries amounting to PhP4,192,972.00 and PhP4,047,598.00, respectively[;]

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[19] Id. at 88-89.

d. NEECO I failed to comply with the [IRR] of R.A. No. 7832 which provides that the pilferage recoveries should be deducted from the total purchased power cost used in the PPA computation. Thus, its actual PPA charges should have been reduced by its pilferage recoveries amounting to PhP2,255,171.00;

e. For the month of May 2001, NEECO I's PPA power cost computation was not reduced by the Fuel and Power Cost Adjustment (FPCA) which resulted to an over-recovery of PhP1,534,470.00; and

f. The new grossed-up factor mechanism adopted by the [ERC] which provided a true-up mechanism to allow the DUs to recover the actual costs of purchased power.[20]

Accordingly, NEECO I was directed to refund its over-recoveries in the amount of ₱0.1199/kWh starting the next billing cycle from its receipt of the ERC order until such time that the full amount of ₱60,797,451.00 shall have been refunded.[21]

NEECO I thereafter filed a *Manifestation and Motion for Reconsideration with Deferment of Implementation of the Alleged Over-Recoveries*[22] arguing, among others, that: (a) its use of the 1.4 multiplier scheme was pursuant to the policy of the National Electrification Administration (NEA) which directly manages and supervises NEECO I; (b) despite the fact that it submitted reports to the ERC on a monthly basis, NEECO I did not receive any warning or comment as to its use of the multiplier scheme; (c) there was a confusion as to the application of the 'gross' or 'net' of discount formula because NEECO I was actually giving discounts to its customers; (d) the recovery of pilferages were not deducted since these were mere kWh consumptions already recovered and included in the monthly sales; (e) it was not given the opportunity to be apprised of the method and procedure on the re-confirmation process made by ERC's

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20 Id. at 90-92.

21 Id. at 92-93. The dispositive portion reads in full, thus:

WHEREFORE, the foregoing premises considered, the [ERC] hereby confirms the [PPA] of [NEECO I] for the period March 1996 to April 2005 which resulted to an over-recovery amounting to **SIXTY MILLION SEVEN HUNDRED NINETY[-]SEVEN THOUSAND FOUR HUNDRED FIFTY[-]ONE PESOS (PhP60,797,451.00)** equivalent to **Php0.1199/kWh**. In this connection, NEECO I is hereby directed to refund the amount of Php0.1199/kWh starting the next billing cycle from receipt of this Order until such time that the full amount shall have been refunded.

Accordingly, NEECO I is directed to:

a) Submit within ten (10) days from the initial implementation of the refund, a sworn statement indicating its compliance with the aforesaid directive;

b) Reflect the PPA refund as a separate item in the bill using the phrase "Previous Years' Adjustment on Power Cost"; and

c) Accomplish and submit a report in accordance with the attached prescribed format, on or before the 30th day of January of the succeeding year and every year thereafter until the amount shall have been fully refunded.

SO ORDERED. (Emphasis in the original)

22 Id. at 96-101.

technical staff; (f) the "running average" in the computation of the system loss of NEECO I was the usual practice since the time that it was supervised by the NEA; (g) the retroactive application of the PPA formula deprived NEECO I of due process; (h) R.A. No. 7832 is unconstitutional for being an *ex post facto* law; and (i) the policies issued by ERC are unenforceable because they were not published in a newspaper of general circulation neither were they furnished to the University of the Philippines (U.P.) Law Center.[23]

In an Order[24] dated May 9, 2007, the ERC denied NEECO I's motion on the ground that it "merely reiterates the same arguments earlier raised and does not present any substantial reason not previously invoked."[25]

Ruling of the CA

NEECO I thereafter filed a petition for review before the CA but the same was denied due course in the herein assailed Resolution[26] dated July 11, 2007 for the following infirmities:

> 1. It failed to append the petition filed with [the ERB], the responsive pleading thereto and other pertinent pleadings and paper supporting it;
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> 2. It failed to contain a concise statement of facts of the case required in Section 6, Rule 43 of the Revised Rules of Court;
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> 3. It did not implead the [CLECA] as a party respondent, as mandated by Section 6, Rule 43[.] In fact, it only named ERB as the sole respondent, which is not even required to be impleaded by the rules; and
>
> 4. That CLECA, which is the petitioner before the ERB, was not furnished with a copy of the petition pursuant to Section 5, Rule 43[.][27]

NEECO I's motion for reconsideration[28] was denied in the CA Resolution[29] dated November 9, 2007.

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23 Id. at 97-99.
24 Id. at 105-106.
25 Id. at 105.
26 Id. at 63-64.
27 Id.
28 CA *rollo*, pp. 134-147.
29 *Rollo*, pp. 66-68.

The Present Petition

NEECO I seeks the reversal of the CA issuances and the remand of its case for a resolution on the merits. In the alternative, NEECO I also prays that the substantive merits of its case be evaluated and the ERC Orders dated July 27, 2006 and May 9, 2007 be declared null and void.[30]

NEECO I explains that the documents it was able to submit to the CA were the only ones turned over to its new counsel. It was also unable to locate copies of the pleadings filed before the ERB and such other supporting documents in its own office records because it underwent several changes in management. It also attempted to secure from the ERC copies of the required pleadings but its efforts were futile since the records of ERC Case No. 2001-340 (formerly ERB Case No. 96-37) could no longer be located. ERC also certified that only the following issuances relative to ERC Case No. 2001-340 are on file with its office: ERC Orders dated May 9, 2007, July 27, 2006, April 25, 1997, June 17, 2003 and January 14, 2005.[31]

NEECO I asserts that the outright dismissal of its appeal was unjustified because it has substantially complied with Rule 43 by attaching the foregoing ERC orders as well as the ERC Order dated February 19, 1997 to the petition for review it filed before the CA.[32]

Ruling of the Court

The petition has partial merit.

It is settled that the right to appeal is a statutory right and one who seeks to avail of it must comply with the statute or rules. Procedural rules on appeal are not to be belittled or simply disregarded precisely because these prescribed procedures exist to ensure an orderly and speedy administration of justice.[33]

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30 Id. at 57.
31 Id. at 27-29.
32 Id. at 29-31.
33 *Spouses Lanaria v. Planta,* 563 Phil. 400, 416 (2007).

Under Section 6,[34] Rule 43 of the Rules of Court, a petition for review should be "accompanied by a clearly legible duplicate original or a certified true copy of the award, judgment, final order or resolution appealed from, together with certified true copies of such material portions of the record referred to therein and other supporting papers." Failure to comply therewith shall be a sufficient ground for the outright dismissal of the petition.[35]

However, it is also equally settled that while merely statutory in nature, the right to appeal is an essential part of our judicial system such that courts should proceed with caution so as not to deprive a party of the right to appeal, but rather, ensure that every party-litigant has the amplest opportunity for the proper and just disposition of his cause, freed from the constraints of technicalities.[36]

The Court has thus pronounced that, before an appeal may be denied due course outright for lack of copies of essential pleadings and portions of the case record, the sufficiency of the documents actually accompanying the petition must be first assessed by the CA to determine whether they sufficiently substantiate the allegations in the petition. If they do, then the petitioner is deemed to have substantially complied with the rules.

In *Galvez v. Court of Appeals*,[37] the Court held:

> [T]he mere failure to attach copies of the pleadings and other material portions of the record as would support the allegations of the petition for review is not necessarily fatal as to warrant the outright denial of due course when the clearly legible duplicate originals or true copies of the judgments or final orders of both lower courts, certified correct by the clerk of court of the RTC, and other attachments of the petition sufficiently substantiate the allegations.
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> x x x x

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[34] **Section 6**. *Contents of the petition.* – The petition for review shall: (a) state the full names of the parties to the case, without impleading the court or agencies either as petitioners or respondents; (b) contain a concise statement of the facts and issues involved and the grounds relied upon for the review; (c) be accompanied by a clearly legible duplicate original or a certified true copy of the award, judgment, final order or resolution appealed from, together with certified true copies of such material portions of the record referred to therein and other supporting papers; and (d) contain a sworn certification against forum shopping as provided in the last paragraph of Section 2, Rule 42. The petition shall state the specific material dates showing that it was filed within the period fixed herein.

[35] **Section 7**. *Effect of failure to comply with requirements.* – The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.

[36] Supra note 33.

[37] G.R. No. 157445, April 3, 2013, 695 SCRA 10.

> x x x [T]he significant determinant of the sufficiency of the attached documents is whether the accompanying documents support the allegations of the petition.[38]

The Court espoused a similar reasoning in *Posadas-Moya and Associates Construction Co., Inc. v. Greenfield Development Corporation*:[39]

> Without a doubt, the CA had sufficient basis to actually and completely dispose of the case. The other documents that respondents insist should have been appended to the Petition will not necessarily determine whether the CA can properly decide the case. Besides, these documents were already part of the records of this case and could have easily been referred to by the appellate court if necessary.
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> Time and time again, this Court has reiterated the doctrine that the rules of procedure are mere tools intended to facilitate rather than to frustrate the attainment of justice. A strict and rigid application of the rules must always be eschewed if it would subvert their primary objective of enhancing fair trials and expediting justice. Technicalities should never be used to defeat the substantive rights of the other party. Parties or litigants must be accorded the amplest opportunity for the proper and just determination of their causes, free from the constraints of technicalities.
>
> In denying due course to the Petition, the appellate court gave premium to form and failed to consider the important rights of the parties. At the very least, petitioner substantially complied with the procedural requirements of Section 6 of Rule 43 of the Rules of Court.[40] (Citation omitted)

The Court also adjudged the petitioner in *Silverio v. CA*[41] to have substantially complied with the rule on attachment of relevant lower court judgments and pleadings, thus:

> [I]t was inappropriate for the [CA] to deny the petition on the ground alone that the petitioner failed to attach to the said petition a duplicate original or true copy of the MTC decision because it was supposed to review the decision not of the MTC but of the RTC, notwithstanding that the latter affirmed *in toto* the judgment of the MTC. In short, the failure to attach the MTC decision did not adversely affect the sufficiency of the petition because it was, in any event, accompanied by the RTC decision sought to be reviewed.[42]

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38 Id. at 21-22.
39 451 Phil. 647 (2003).
40 Id. at 660-661.
41 454 Phil. 750 (2003).
42 Id. at 756-757.

In *National Housing Authority v. Basa, Jr., et al.*,[43] the Court found satisfactory the annexes to an appeal which was denied by the CA, *viz*:

> Nevertheless, even if the pleadings and other supporting documents were not attached to the petition, the dismissal is unwarranted because the CA records containing the promissory notes and the real estate and chattel mortgages were elevated to this Court. Without a doubt, we have sufficient basis to actually and completely dispose of the case.[44]

The policy generated three guideposts[45] for the CA to observe in determining the necessity of attaching the pleadings and portions of the records to the petition, to wit:

First, not all pleadings and parts of case records are required to be attached to the petition. Only those which are relevant and pertinent must accompany it. The test of relevancy is whether the document in question will support the material allegations in the petition, whether said document will make out a *prima facie* case of grave abuse of discretion as to convince the court to give due course to the petition.

Second, even if a document is relevant and pertinent to the petition, it need not be appended if it is shown that the contents thereof can also be found in another document already attached to the petition. Thus, if the material allegations in a position paper are summarized in a questioned judgment, it will suffice that only a certified true copy of the judgment is attached.

Third, a petition lacking an essential pleading or part of the case record may still be given due course or reinstated (if earlier dismissed) upon showing that the petitioner later submitted the documents required, or that it will serve the higher interest of justice that the case be decided on the merits.

According to the CA, without the petition filed before the ERB, the responsive pleadings thereto and other supporting documents, it had no basis to determine whether NEECO I's appeal was impressed with merit or not.

The Court disagrees. A scrutiny of the ERC issuances annexed to NEECO I's petition with the CA shows that they were ample enough to enable the appellate court to still act on the appeal despite the deficient pleadings and documents. The ERC Order[46] dated February 19, 1997

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43 632 Phil. 471 (2010).
44 Id. at 489, citing *DBP v. Family Foods Manufacturing Co. Ltd., et al.*, 611 Phil. 843, 851 (2009).
45 Supra note 37, at 22.
46 CA *rollo*, pp. 74-91.

confirmed the background facts of the case as alleged in NEECO I's petition. The Order[47] dated July 27, 2006, substantially summarized the ERC policy on PPA confirmation process upon which the factual findings on NEECO I's over-recoveries were based. The rest of the attached issuances[48] extensively recapitulated the events preceding the controversy elevated to the CA. These attachments adequately provided the CA with the necessary information it needed to pass upon assigned errors in NEECO I's appeal and to determine their merit *sans* the initiatory pleadings and documents from the defunct ERB. The CA thus committed grave error in denying the appeal and depriving NEECO I the right to be heard.

The CA likewise erred in concluding that CLECA had to be impleaded as a respondent to the petition. The rulings for which the CA's review was sought were issued by the ERC and not CLECA, which was the representative organization of NEECO I in the ERC proceedings. Also, to include CLECA as a petitioner or even to furnish it with a copy of the CA petition was unnecessary since the ERC Orders dated July 27, 2006 and May 9, 2007 only concerned NEECO I and not all of the rural electric cooperatives in Central Luzon as represented by CLECA.

Although the subsequent procedural step will be a remand of the case to the CA, it will be more judicious to resolve the substantive merits of NEECO I's appeal in present recourse in view of the Court's supervening pronouncements in the *ASTEC* case and in *Surigao del Norte Electric Coop., Inc. (SURNECO) v. ERC*[49] involving rural electric cooperatives similarly ordered by the ERC to refund their over-recoveries based on the same ERC policy on PPA confirmation process as laid down in its Orders dated June 17, 2003 and January 14, 2005. The arguments advanced by NEECO I in support of its averment of nullity of the ERC Orders dated July 27, 2006 and May 9, 2007 were already exhaustively traversed and definitively settled by the Court in the said cases.

<u>On the use of the multiplier scheme as a method to recover system loss</u>

In *SURNECO*, the Court held that NEA Memorandum No. 1-A which authorized rural electric cooperatives to use the multiplier scheme as a method to recover system loss was a mere administrative issuance that cannot prevail against and is deemed repealed by the legislative enactment in Section 10 of R.A. No. 7832 imposing caps on the recoverable rate of system loss.[50]

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47 Id. at 54-61.
48 Id. at 92-120.
49 646 Phil. 402 (2010).
50 Id. at 413-414.

The Court also held that Section 10 of R.A. No. 7832 was self-executory and did not require the issuance of enabling set of rules or any action by the ERC. The caps should have therefore been applied as of January 17, 1995 when R.A. No. 7832 took effect.[51]

NEECO I cannot thus insist on the continued validity of the multiplier scheme it has been adopting pursuant to the NEA Memorandum No. 1-A.

On whether Section 10 of R.A. No. 7832 was superseded and repealed by EPIRA Law

NEECO I anchored its argument on Section 43(f) of the EPIRA Law which reads:

> 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 [R.A.] 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 or rate-setting methodology, which shall promote efficiency. x x x (Emphasis ours)

The Court interpreted the provision in *SURNECO* to mean that the EPIRA Law actually allowed the caps imposed by Section 10 of R.A. No. 7832 to remain until they are replaced by the ERC pursuant to its delegated authority to prescribe new system loss caps, based on technical parameters such as load density, sales mix, cost of service, delivery voltage, and other technical considerations it may promulgate.[52]

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51 Id.

52 Id. at 419.

The imposable system loss caps are thus within the discretion of the ERC and, until and unless it decrees new caps, those imposed by Section 10 of R.A. No. 7832 shall subsist. From the provision, it can also be deduced that the ERC, upon evaluating the technical parameters stated in Section 43 of EPIRA Law, may actually adopt and maintain the prevailing caps in Section 10 of R.A. No. 7832 if it finds them consistent with its mandate to ensure reasonable rates of electricity.

On whether: (a) the cap on the recoverable rate of system loss prescribed in Section 10 of R.A. No. 7832 is arbitrary and violative of the non-impairment clause; and (b) the PPA computation based on the cost of power net of discount is illegal and unconstitutional for being an unlawful taking of property

The regulation of rates imposed by public utilities such as electricity distributors is an exercise of the State's police power. The Court reiterated this tenet in *SURNECO*, thus:

> The regulation of rates to be charged by public utilities is founded upon the police powers of the State and statutes prescribing rules for the control and regulation of public utilities are a valid exercise thereof. When private property is used for a public purpose and is affected with public interest, it ceases to be *juris privati* only and becomes subject to regulation. The regulation is to promote the common good. Submission to regulation may be withdrawn by the owner by discontinuing use; but as long as use of the property is continued, the same is subject to public regulation.[53]

As the State agency mandated to regulate and to approve rates imposed by electric cooperatives, the ERC merely exercised its task of protecting the public interest imbued in the rates imposed by NEECO I when it directed the latter to refund its over-recoveries to its consumers. The ERC was ensuring that the PPA mechanism remains a purely cost-recovery mechanism and not a revenue-generating scheme for the electric cooperatives,[54] which are organized under P.D. No. 269 to engage in the distribution of electricity on a **non-profit basis**.

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53 Id. at 418, citing *Republic of the Philippines v. Manila Electric Co.*, 440 Phil. 389, 397 (2002).

54 Id.

Verily then, no unlawful taking of property can also result from the imposition of the "net of discount" principle in the PPA computation as it merely preserves the true nature of the PPA formula as an adjustment mechanism strictly for the purpose of recovering the costs actually incurred in the purchase of electricity.

"[I]f the PPA is computed without factoring the discounts given by power suppliers to electric cooperatives, electric cooperatives will impermissibly retain or even earn from the implementation of the PPA."[55]

The Court articulated this fact in *ASTEC,* and held that the nature of the PPA formula precludes an interpretation that includes discounts in the computation of the cost of purchased power.[56] Rural electric cooperatives cannot therefore incorporate in the PPA formula costs that they did not incur. Consumers must not shoulder the gross cost of purchased power; otherwise, rural electric cooperatives will unjustly profit from discounts extended to them by power suppliers.[57]

The police power of the State to regulate the rates imposed by public utilities is also the same reason why the caps set in R.A. No. 7832 cannot be deemed to have impaired the loan agreement between NEA and the Asian Development Bank imposing a 15% system loss cap and providing a "power cost adjustment clause." All private contracts must yield to the superior and legitimate measures taken by the State to promote public welfare. The police power legislation adopted by the State in R.A. No. 7832 to promote the general welfare of the people must imperatively prevail.[58]

<u>On whether NEECO I was deprived of due process</u>

The Court has resolved in *SURNECO* that the ERC observed administrative due process when it enjoined electric cooperatives to refund their over-recoveries. They were duly informed of the need for their monthly documentary submissions and were allowed to submit them accordingly. Hearings and exit conferences with the representatives of electric cooperatives were also conducted. These conferences entailed discussions on preliminary figures and their further verification to determine and correct any inaccuracies. The

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55 Supra note 4, at 157.
56 Id. at 156.
57 Id. at 156-157.
58 Supra note 49, at 418-419.

electric cooperatives were also allowed to file motions for reconsideration of the ERC orders respectively directing them to make the refunds.[59] The Court thus emphasized that:

> Administrative due process simply requires an opportunity to explain one's side or to seek reconsideration of the action or ruling complained of. It means being given the opportunity to be heard before judgment, and for this purpose, a formal trial-type hearing is not even essential. It is enough that the parties are given a fair and reasonable chance to demonstrate their respective positions and to present evidence in support thereof.[60] (Citations omitted)

NEECO I underwent the same administrative procedure and was accorded similar opportunities to present its side and objections. It attended the conferences conducted by the ERC on January 8, 2004 and on November 8, 2005.[61] It was also allowed to file documentary submissions and seek a reconsideration of the ERC Order dated July 27, 2006.[62]

On whether the ERC Orders dated June 17, 2003 and January 14, 2005 as supplements to the IRR of R.A. No. 7832 were void because they were not published in the Official Gazette or in a newspaper of general circulation

The Court held in *ASTEC* that the ERC Orders dated June 17, 2003 and January 14, 2005 containing the policy guidelines on the treatment of discounts extended by power suppliers did not modify, amend or supplant R.A. No. 7832 and its IRR; they merely interpreted the computation of the cost of purchased power.[63]

As such interpretative regulations, their publication in the Official Gazette or their filing with the Office of the National Administrative Register at the U.P. Law Center was not necessary. Procedural due process demands that administrative rules and regulations be published in order to be effective. However, by way of exception, interpretative regulations need not comply with the publication requirement set forth in Section 18, Chapter 5,

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59 Id. at 420.
60 Id.
61 CA *rollo*, p. 57.
62 *Rollo*, pp. 87, 96-101.
63 Supra note 4, at 152.

Book I,[64] and the filing requirement in Sections 3 and 4, Chapter 2, Book VII,[65] of the Administrative Code. Interpretative regulations add nothing to the law and do not affect substantial rights of any person;[66] hence, in this case, they need to be subjected to the procedural due process of publication or filing before electric cooperatives may be ordered to abide by them.

On whether the PPA formula was invalid for having been applied retroactively

This issue was likewise comprehensively settled in *ASTEC*, in this wise:

> 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. x x x [B]asic [is the] 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.

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[64] **SECTION 18.** When Laws Take Effect.—Laws shall take effect after fifteen (15) days following the completion of their publication in the Official Gazette or in a newspaper of general circulation, unless it is otherwise provided.

[65] **SECTION 3.** Filing.—(1) Every agency shall file with the University of the Philippines Law Center three (3) certified copies of every rule adopted by it. Rules in force on the date of effectivity of this Code which are not filed within three (3) months from that date shall not thereafter be the basis of any sanction against any party or persons.

(2) The records officer of the agency, or his equivalent functionary, shall carry out the requirements of this section under pain of disciplinary action.

(3) A permanent register of all rules shall be kept by the issuing agency and shall be open to public inspection.

SECTION 4. Effectivity.—In addition to other rule-making requirements provided by law not inconsistent with this Book, each rule shall become effective fifteen (15) days from the date of filing as above provided unless a different date is fixed by law, or specified in the rule in cases of imminent danger to public health, safety and welfare, the existence of which must be expressed in a statement accompanying the rule. The agency shall take appropriate measures to make emergency rules known to persons who may be affected by them.

[66] Supra note 4, at 151, 157-158.

> 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. x x x [T]he 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.[67] (Citations omitted)

NEECO I is, nevertheless, entitled to a re-computation of its over-recoveries.

Notwithstanding the foregoing, the amount of over-recoveries ascertained by the ERC must be re-computed in view of the invalid grossed-up factor mechanism utilized in the ERC Order dated July 27, 2006, which states that one cause of the over-recovery was the failure of NEECO I to use the new grossed-up factor mechanism adopted by the ERC which provided a true-up mechanism that allows the DUs to recover the actual cost of purchased power.[68]

This is pursuant to the Court's findings in *ASTEC*, to wit:

> [T]he grossed-up factor mechanism **amends** the IRR of R.A. No. 7832 as it serves as an **additional numerical standard** that must be observed and applied by rural electric cooperatives in the implementation of the PPA. While the IRR explains, and stipulates, the PPA formula, the IRR neither explains nor stipulates the grossed-up factor mechanism. The reason is that the grossed-up factor mechanism is admittedly "**new**" and provides a "**different result**," having been formulated only ***after*** the issuance of the IRR.
>
> The grossed-up factor mechanism is not the same as the PPA formula provided in the IRR of R.A. No. 7832. Neither is the grossed-up factor mechanism subsumed in any of the five variables of the PPA formula. Although both the grossed-up factor mechanism and the PPA formula account for system loss and use of electricity by cooperatives, they serve different quantitative purposes.
>
> The grossed-up factor mechanism serves as a threshold amount to which the PPA formula is to be compared. According to the ERC, any amount collected under the PPA that exceeds the Recoverable Cost computed under the grossed-up factor mechanism shall be refunded to the consumers. The Recoverable Cost computed under the grossed-up factor mechanism is "the maximum allowable cost to be recovered from the electric cooperative's customers for a given month." **In effect, the PPA alone does not serve as the variable rate to be collected from the consumers.** The PPA formula and the grossed-up factor mechanism will both have to be observed and applied in the implementation of the PPA.

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67 Id. at 158-159.

68 *Rollo*, p. 92.

Furthermore, the grossed-up factor mechanism accounts for a variable that is not included in the five variables of the PPA formula. In particular, the grossed-up factor mechanism accounts for the amount of power sold in proportion to the amount of power purchased by a rural electric cooperative, expressed as the Gross-Up Factor. It appears that the Gross-Up Factor limits the Recoverable Cost by allowing recovery of the Cost of Purchased Power only in proportion to the amount of power sold. This is shown by integrating the formula of the Gross-Up Factor with the formula of the Recoverable Cost, thus:

The grossed-up factor mechanism consists of the following formulas:

$$\textit{Gross-Up Factor} = \frac{\textit{Kwh Sales + Coop Use}}{\textit{Kwh Purchased (1-\% System Loss)}}$$

Recoverable Cost = Gross-Up Factor x Cost of Purchased Power

Integrating the above-stated formulas will result in the following formula:

$$\textit{Recoverable Cost} = \frac{\textit{Kwh Sales + Coop Use}}{\textit{Kwh Purchased (1-\% System Loss)}} x \quad \textit{Cost of Purchased Power}$$

On the other hand, the PPA formula provided in the IRR of R.A. No. 7832 does not account for the amount of power sold. It accounts for the amount of power purchased and generated, expressed as the variable "B" in the following PPA formula:

Purchased Power Adjustment Clause

$$(\text{PPA}) = \frac{A}{B - (C + D)} - E$$

Where:

A	=	Cost of electricity purchased and generated for the previous month
B	=	**Total Kwh purchased and generated for the previous month**
C	=	The actual system loss but not to exceed the maximum recoverable rate of system loss in Kwh plus actual company use in Kwhrs but not to exceed 1% of total Kwhrs purchased and generated
D	=	Kwh consumed by subsidized consumers

E = Applicable base cost of power equal to the amount incorporated into their basic rate per Kwh

In light of these, the grossed-up factor mechanism does not merely interpret R.A. No. 7832 or its IRR. It is also not merely internal in nature. **The grossed-up factor mechanism amends the IRR by providing an additional numerical standard that must be observed and applied in the implementation of the PPA.** The grossed-up factor mechanism is therefore an administrative rule that should be published and submitted to the U.P. Law Center in order to be effective.

x x x [Since] it does not appear from the records that the grossed-up factor mechanism was published and submitted to the U.P. Law Center[,] x x x it is ineffective and may not serve as a basis for the computation of over-recoveries. The portions of the over-recoveries arising from the application of the mechanism are therefore invalid.

Furthermore, the application of the grossed-up factor mechanism to periods of PPA implementation prior to its publication and disclosure renders the said mechanism invalid for having been applied retroactively. The grossed-up factor mechanism imposes an additional numerical standard that clearly "creates a new obligation and imposes a new duty x x x in respect of transactions or consideration already past."

Rural electric cooperatives cannot be reasonably expected to comply with and observe the grossed-up factor mechanism without its publication. x x x.[69] (Citations omitted and emphasis in the original)

The principle of *stare decisis* enjoins adherence to the foregoing judicial precedents set forth in *ASTEC* and *SURNECO*. The principle means that for the sake of certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same, even though the parties may be different. Absent any powerful countervailing considerations, like cases ought to be decided alike. Thus, where the same questions relating to the same event have been put forward by the parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue.[70]

Indeed, since the questions raised in the present petition were already comprehensively examined and settled in *ASTEC* and *SURNECO*, any further arguments thereon are deemed proscribed.

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69 Supra note 4, at 162-165.

70 *Aquino v. Philippine Ports Authority*, G.R. No. 181973, April 17, 2013, 696 SCRA 666, 678, citing *Chinese Young Men's Christian Association of the Philippine Islands v. Remington Steel Corporation*, 573 Phil. 320, 337 (2008).

WHEREFORE, premises considered, the petition is hereby **PARTLY GRANTED**. The portions of the over-recoveries that may have arisen from the application of the grossed-up factor mechanism in the Order dated July 27, 2006 of the Energy Regulatory Commission are hereby declared **INVALID**. Accordingly, the Energy Regulatory Commission is hereby **DIRECTED** to compute the portions of the over-recoveries arising from the application of the grossed-up factor mechanism and to implement the collection of any amount previously refunded by Nueva Ecija I Electric Cooperative Incorporated to its consumers on the basis of the grossed-up factor mechanism.

SO ORDERED.

BIENVENIDO L. REYES
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

DIOSDADO M. PERALTA
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

FRANCIS H. JARDELEZA
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.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

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.

MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED TRUE COPY
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
FEB 22 2016