

## FIRST DIVISION

[ G.R. No. 195138, August 24, 2016 ]

**NATIONAL TRANSMISSION CORPORATION, PETITIONER, VS.  
MISAMIS ORIENTAL I ELECTRIC COOPERATIVE, INC.,  
RESPONDENT.**

### D E C I S I O N

**SERENO, C.J.:**

This is a Petition<sup>[1]</sup> for Review on Certiorari dated 1 February 2011 seeking to set aside the Decision<sup>[2]</sup> dated 20 April 2010 and Resolution<sup>[3]</sup> dated 3 January 2011 rendered by the Court of Appeals (CA), Eighth Division, in CA-G.R. SP No. 108322. The assailed rulings affirmed the Energy Regulatory Commission (ERC) Decision<sup>[4]</sup> dated 30 June 2008 and Order<sup>[5]</sup> dated 16 March 2009 in ERC Case No. 2004-463.

### THE ANTECEDENT FACTS

The facts as summarized by the CA are as follows:

Petitioner National Transmission Corporation (hereafter Transco) is a government-owned and controlled corporation located in Iligan City and is engaged in the business of transmitting electric power. It transmits to its consumers electricity generated by Mindanao Generation Corporation (hereafter Genco). By virtue of Republic Act No. 9136,<sup>[6]</sup> Transco assumed the electrical transmission function, while Genco, the electricity generation function, of the National Power Corporation (hereafter NPC).

Respondent Misamis Oriental I Electric Cooperative, Inc. (hereafter MORESCO I) is an electric cooperative engaged in the business of distributing electric power to its members-consumers in the western part of Misamis Oriental.

Sometime in May 2002, NPC and MORESCO I signed a Transition Contract for the Supply of Electricity, otherwise known as Transition Supply Contract (hereafter TSC) whereby the former obligated itself to supply and sell electricity to the latter. Attached to the TSC as Annex C is a document entitled Charges and Adjustments, Section 25 of which provides:

ADJUSTMENT DUE TO INACCURATE METERS AND ERRONEOUS  
BILLINGS WITHIN A BILLING PERIOD

**25. In the event that a billing is found erroneous due to  
a wrong reading, arithmetical mistakes or omissions,  
SUPPLIER shall send CUSTOMER a debit/credit memo**

**within ninety (90) days from the date of bill's receipt to correct the error.** SUPPLIER shall also be deemed to waive any claim on any billing error if it fails to send notice for such billing error to CUSTOMER within ninety (90) days from billing date. Provided, that if the error is due to an inaccurate meter, said error may be corrected anytime. (*Emphasis supplied*)

x x x x

Pursuant to the contract, Transco and Genco began supplying electricity to MORESCO I. For billing purposes, Transco installed a kilowatt hour (kWh) billing meter device at Metering Point No. 6 in Opol Substation, Misamis Oriental to determine the amount of electricity used by MORESCO I. The computation of the actual consumption of electricity by the said billing meter device required the factoring in of a multiplier to the meter reading. The value of the multiplier is the product of the values of the internal multiplier and the external multiplier peculiar to the billing meter device. The multiplier in the meter device used at the time was 1,000. Accordingly, this value was used in the computation of the bill of MORESCO I. The billing date appears to be the 25<sup>th</sup> of each month as this was the cut-off date of each monthly billing period.

On July 30, 2003, Transco replaced the billing meter device of MORESCO I in the presence of MORESCO I personnel, including its Meter Calibrator, Mr. Ernie C. Janobas. As the multiplier is inherent in the meter device, the change in the said device brought a corresponding change in the multiplier. The old billing meter device had a multiplier of 1,000 and the new one had a multiplier of 3,500. This necessarily affected the electricity reading inasmuch as the higher multiplier value would result to a higher electricity consumption reading. Transco then conducted a Meter Test thereon and Mr. Ernie C. Janobas, as witness to the Meter Test, signed the Meter Test Report prepared by Transco. The meter test showed that the newly installed billing meter device was calibrated and found to be accurate. It was Transco which indicated on the face of the Report that the multiplier was 5,250, notwithstanding that the actual multiplier was 3,500. Mr. Janobas did not verify the 5,250 multiplier value of the new billing meter device.

Then, Transco conducted electricity consumption readings on the new meter and billed MORESCO I every billing period beginning on the 26<sup>th</sup> of a given month and ending on the 25<sup>th</sup> of the next month. It later discovered that it inadvertently used an incorrect multiplier of 3,500 instead of 5,250 for the billing periods starting from August 26, 2003 up to June 25, 2004. The use of the incorrect multiplier resulted to an underbilling.

Hence, Transco sent MORESCO I on July 13, 2004 an adjustment bill or a debit/credit memo dated July 9, 2004 in the amount of six million four hundred sixty-two thousand seven hundred ninety-nine and eighty-one centavos (P6,462,797.81) (sic) covering the ten (10) billing periods from August 26, 2003 up to June 25, 2004.

On July 23, 2004 Genco, through NPC, sent MORESCO I another adjustment bill dated July 20, 2004 in the amount of eleven million four hundred sixty-three thousand nine hundred eight pesos and eighty-five centavos (P11,463,908.85). This separate bill covered the following billing periods, which were the same periods used by Transco:

- |                  |                    |                      |
|------------------|--------------------|----------------------|
| 1 <sup>st</sup>  | July 26, 2003      | - August 25, 2003    |
| 2 <sup>nd</sup>  | August 26, 2003    | - September 25, 2003 |
| 3 <sup>rd</sup>  | September 26, 2003 | - October 25, 2003   |
| 4 <sup>th</sup>  | October 26, 2003   | - November 25, 2003  |
| 5 <sup>th</sup>  | November 26, 2003  | - December 25, 2003  |
| 6 <sup>th</sup>  | December 26, 2003  | - January 25, 2004   |
| 7 <sup>th</sup>  | January 26, 2004   | - February 25, 2004  |
| 8 <sup>th</sup>  | February 26, 2004  | - March 25, 2004     |
| 9 <sup>th</sup>  | March 26, 2004     | - April 25, 2004     |
| 10 <sup>th</sup> | April 26, 2004     | - May 25, 2004       |
| 11 <sup>th</sup> | May 26, 2004       | - June 25, 2004      |

The two adjustment bills or debit/credit memos reflected the total amount of seventeen million nine hundred twenty-six thousand seven hundred six pesos and sixty-six centavos (P17,926,706.66) allegedly due Transco and Genco.

However, MORESCO I believed that it was liable for the total amount of only four million two hundred twenty thousand forty-seven pesos and seventeen centavos (P4,220,047.17) covering the 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> billing periods adverted to above instead of P17,926,706.66 pursuant to Section 25 of Annex C to the TSC.

On October 11, 2004, MORESCO I formally offered to pay Transco and Genco P4,220,047.17. It claimed that since the omission or failure of Transco and Genco to apply the right multiplier is considered a "wrong reading, omission or arithmetical mistake," under Section 25 of Annex C to the TSC, Transco and Genco should have sent the adjustment bill, debit/credit memo or a notice of such billing error within ninety (90) days from the bill's receipt, which is presumably every 25<sup>th</sup> of the month as this was the last day of each billing period. Otherwise, Transco and Genco shall be deemed to have waived the payment of the amount thereof. Since Transco and Genco sent the adjustment bills or debit/credit memos for the billing periods referred to above only on July 4 and 20, 2004, the right to collect on the amount on the adjusted bill representing the 1<sup>st</sup> to

8<sup>th</sup> billing periods had already prescribed because the billings with respect to these periods were made beyond the 90-day prescriptive period. On the other hand, the adjustment bills covering the 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> billing periods remained due and payable because these were the bills covered within the 90-day prescriptive period reckoned from July 4 and 20, 2004, the dates of the adjustment bills.

Transco and Genco rejected MORESCO's offer to pay.<sup>[7]</sup>

### **THE RULING OF THE ERC**

A petition<sup>[8]</sup> dated 23 November 2004 was filed before the ERC by Moresco I against petitioner Transco, along with Mindanao Generation Corporation (Genco) and National Power Corporation (NPC).

After both parties submitted the required pleadings and participated in the hearings, the ERC concluded that Moresco I must not be held liable to pay the amount claimed by the NPC and Transco. Rather, it was deemed liable only for the amount representing the corrected billings made within the 90-day prescriptive period reckoned from the time the adjustments were made.<sup>[9]</sup> The ERC also held that MORESCO I should be allowed to avail itself of the Prompt Payment Discount, considering that the latter was willing to pay its arrearages, but the NPC and Transco refused.<sup>[10]</sup> Finally, the ERC ruled that Moresco I was not remiss in the latter's obligations and could not be declared to be at fault.<sup>[11]</sup>

The ERC rendered its Decision dated 30 June 2008, the dispositive portion of which reads:

**WHEREFORE**, the foregoing premises considered, the Commission finds that Misamis Oriental I Electric Cooperative, Inc. (MORESCO I) is liable to pay only the total amount of Four Million Two Hundred Twenty Thousand Forty-Seven Pesos and Seventeen Centavos (PhP4,220,047.17) representing the amount equivalent to three (3) months billing counted from the time of notice.

**SO ORDERED.**<sup>[12]</sup>

A Motion for Reconsideration dated 1 September 2008 was filed by petitioner<sup>[13]</sup> and another one, dated 3 September 2008 by the NPC,<sup>[14]</sup> both asking that the Decision be set aside.<sup>[15]</sup> In the Order dated 16 March 2009, however, the ERC denied both motions for lack of merit.<sup>[16]</sup>

### **THE RULING OF THE CA**

Of the three respondents in the ERC case, only petitioner filed an appeal<sup>[17]</sup> before the CA to which Moresco I filed a Comment.<sup>[18]</sup>

Unconvinced, the appellate court denied the Petition for lack of merit.

Transco filed its Motion for Reconsideration<sup>[19]</sup> further arguing as follows:

Respondent was well aware of the correct multiplier to be applied to their billing consumptions. More importantly, Respondent was likewise aware that the billings it received for the period August 26, 2003 to June 25, 2004 applied an incorrect meter multiplier. However, despite knowledge thereof, Respondent did not bother to inform Petitioner and NPC of the error and enjoyed the benefits of the lower power bills for ten (10) billing periods.

For this reason, equity dictates that Respondent should be held liable to Petitioner and NPC for the amount equivalent to what it received having been unjustly enriched at the expense of the latter.<sup>[20]</sup>

The motion was denied.

Hence, this petition imputing reversible error to the CA in its affirmation of the ERC ruling. Respondent filed its Comment<sup>[21]</sup> dated 13 February 2013.

### **THE ISSUE**

The sole issue to be resolved by this Court is whether the CA committed reversible error in affirming the ERC's ruling that Transco's failure to install the correct device that was reflective of the multiplier used in the billing indeed constituted an omission under Section 25 of Annex "C" of the Transition Contract, which should thus be rectified within 90 days from receipt of the bill.

### **OUR RULING**

The present controversy calls for the application of Section 25 of the Transition Supply Contract, to wit:

25. In the event that a billing is found erroneous due to a wrong reading, arithmetical mistakes or omissions, SUPPLIER shall send CUSTOMER a debit/credit memo within ninety (90) days from the date of bill's receipt to correct the error. SUPPLIER shall also be deemed to waive any claim on any billing error if it fails to send notice for such billing error to CUSTOMER within ninety (90) days from billing date. Provided, that if the error is due to an inaccurate meter, said error may be corrected anytime.<sup>[22]</sup>

Two categories of error in billing are evidently envisioned by the provision: (1) error due to a wrong reading, or an arithmetical mistake or omission, which may be corrected only within 90 days from the date of customer's receipt of the bill, else, the claim shall be deemed waived; and (2) error due to an inaccurate meter, which may be corrected any time.

Invoking the second category of error, petitioner, along with Genco, sent Debit/Credit Memos dated 9 and 20 July 2004 to respondent, asking payment of P6,462,797.81<sup>[23]</sup> and P11,463,908.85,<sup>[24]</sup> or a total amount of P17,926,706.66.