

THIRD DIVISION

[G.R. No. 134437, January 31, 2000]

**NATIONAL STEEL CORPORATION, PETITIONER, VS. THE
HONORABLE COURT OF APPEALS, THE ENERGY REGULATORY
BOARD, THE NATIONAL POWER CORPORATION AND ILIGAN
LIGHT AND POWER, INC., RESPONDENTS.**

DECISION

VITUG, J.:

National Steel Corporation ("NSC"), the petitioner, is engaged in steel manufacturing and operates a steel plant in Iligan City, Lanao del Norte, Mindanao. It is registered with the Board of Investments and has, since 1974, been sourcing its electric power directly from the National Power Corporation ("NAPOCOR"). Private respondent Iligan Light and Power, Inc. ("ILIGAN"), is the sole power utility firm generally servicing the area where the NSC plant is located.

The instant controversy was spawned by a decision, dated 28 February 1997, of the Energy Regulatory Board ("ERB") in ERB Case No. 95-233, the 11th March 1997 order amending the said decision, the 10th April 1997 order directing NAPOCOR to implement the decision, and the 20th May 1997 order reiterating the 10th April 1997 issuance.

The antecedents. -

On 09 June 1995, NAPOCOR filed an application with the ERB for authority to implement a new power rate structure in its "Mindanao Grid" (ERB Case No. 95-233). The application sought an increase in the Mindanao Grid's average power rate for "non-utilities" (customers who directly source their power from NAPOCOR like herein petitioner) and "utilities" (local power entities which source their power from NAPOCOR for distribution to end-users). In its application, NAPOCOR prayed for a provisional approval of its proposed rate schedule in the Mindanao Grid, pursuant to Section 8 of Executive Order No. 172, viz:

"Small utilities:

Average Rate (P/kwh)	1.3116
Demand Charge (P/kwh)	14.69
Energy Charge (P/kwh)	1.2455

"Medium (Provincial) Utilities:

Average Rate (P/kwh)	1.3157
Demand Charge (P/kwh)	128.14
Energy Charge (P/kwh)	0.9868

"Large (Urban) Utilities:

Average Rate (P/kwh)	1.3166
Demand Charge (P/kwh)	177.65
Energy Charge (P/kwh)	0.9216

"Non-Utilities

Average Rate (P/kwh)	1.3463
Demand Charge (P/kwh)	205.09
Energy Charge (P/kwh)	0.8751" ^[1]

The Association of Mindanao Industries ("AMI"), of which petitioner is a member, participated in the proceedings in the ERB case. AMI, on 20 October 1995, submitted a "Manifestation/Comment" showing that it was in full agreement with the proposal of NAPOCOR for a power rate restructuring in the Mindanao Grid contending that under the then prevailing power rate structure, "the efficient consumers of power (had) been subsidizing the inefficient consumers." Several oppositors to the application of NAPOCOR sought a twelve (12%) percent power rate difference between "utilities" and "non-utilities," i.e., that the utility rates would be 12% less than the non-utility rates, claiming that the minimal two (2%) percent rate difference proposed by NAPOCOR in its application discriminated against the Mindanao utilities and favored the industries directly supplied by NAPOCOR.

After due notice and hearing, the ERB issued its assailed decision, dated 28 February 1997, approving and ratiocinating a new rate structure for the Mindanao Grid, later modified by an order, dated 11 March 1997, as follows:

"Customer Classification	Demand Charge P/Kw	Energy Charge P/Kwh	Average Rate P/Kwh	D/E Allocation	
Small Utilities	19.06	1.1972	1.2602	5%	95%
Medium (Provincial) Utilities	136.29	0.9534	1.2712	25%	75%
Large (Urban) Utilities	181.12	0.8934	1.2762	30%	70%
Non-utilities	238.81	0.9291	1.4293	35%	65%
Over-all Mindanao	181.95	0.9258	1.3226	30%	70%

"Eventhough, the new rate structure is revenue neutral, most of the utilities will experience a decrease in their rates. On the average, the rate of Small Utilities will decrease by P0.0422/kwh, P0.0428/kwh for Medium (Provincial) Utilities and P0.0395/kwh for Large (Urban) Utilities, while Non-Utilities will experience an increase in rate of P0.0898/kwh.

"The impact to individual customers were, likewise, simulated in order to determine the magnitude of effect to each individual customer for all customer classification. Seventeen (17) out of twenty six (26) medium (Provincial) utilities or 65% will experience a decrease in rate ranging from P0.0829 to P0.0122 while nine (9) utilities or 35% will have a rate

increase ranging from P0.0011 to P0.0764. For Large (Urban) Utilities, each will have a rate decrease ranging from P0.0645 to P0.0286. Upon the other hand, 100% of the customers under the category for Non-Utilities will experience a rate increase ranging from P0.0121 to P0.6321."^[2]

Intervenors AMI and NAPOCOR filed their separate motions for reconsideration on, respectively, 21 March 1997 and 25 March 1997. In its orders, dated 10 April 1997 and 20 May 1997, the ERB directed NAPOCOR to implement its 28 February 1997 decision despite the still unresolved motions for reconsideration. The decretal portion of the 10 April 1997 order stated:

"WHEREFORE, premises considered, applicant NPC is hereby directed to implement the Decision dated February 28, 1997 including its Order dated March 11, 1997. In this connection, applicant NPC is hereby directed to show cause in writing why it should not be cited for contempt by a fine of P5,000.00, pursuant to Section 7 of Executive Order No. 172 and why it should not be penalized pursuant to Section 21 of Commonwealth Act No. 146, for its willful refusal and continuous disregard of the Board's Decision dated February 28, 1997 and Order dated March 11, 1997, within five (5) days from receipt hereof."^[3]

While the motions for reconsideration aforementioned were still pending resolution, NSC, on 30 June 1997, filed a petition for certiorari and prohibition, with application for a temporary restraining order ("TRO") and writ of preliminary injunction, with the Court of Appeals (CA-G.R. SP No. 44550). In its comment on the petition, respondent NAPOCOR urged that the orders of the ERB should not be implemented pending the finality of its resolution and argued, in opposition to the application for a writ of preliminary injunction, that petitioner did not have a clear right to be protected by an injunctive writ. In a resolution, dated 07 July 1997, the appellate court resolved not to grant the prayer for a TRO. In its 10th October 1997 resolution, the same court likewise denied the application for a writ of preliminary injunction. Still later, in a resolution dated 02 December 1997, the petition for *certiorari* (CA-G.R. SP No. 44550) of NSC was itself denied due course and dismissed for lack of merit. A motion for the reconsideration of the aforesaid resolution was also denied.

Meanwhile, on 27 March 1998, the ERB denied the pending motions for reconsideration of AMI and NAPOCOR in ERB Case No. 95-233. It would appear that AMI interposed an appeal to the Court of Appeals, docketed CA-G.R. No. 47533, assailing the 28th February 1997 decision and 11th March 1997 order of the ERB.

The instant appeal by *certiorari* filed by NSC so assails as aforesaid the various resolutions and decision of 02 July 1998 of the Court of Appeals. Asserting that public interest could be best served if it were given reliable and direct power at the lowest cost, petitioner insists that the decision in ERB Case No. 95-233 prescribing the twelve (12%) percent power rate differential is all but intended to compel petitioner and other "non-utilities" to disconnect with NAPOCOR through unjust power rate increases.

The Court sees no reversible error on the part of the appellate court.