

FIFTH DIVISION

[CA-G.R. SP. NO. 114686, June 11, 2014]

**NATIONAL GRID CORPORATION OF THE PHILIPPINES (NGCP),
PETITIONER, VS. ENERGY REGULATORY COMMISSION,
RESPONDENT.**

CA-G.R. SP. NO. 118868

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PETITIONER, VS. ENERGY REGULATORY COMMISSION,
RESPONDENT.**

DECISION

SORONGON, E.D., J.

This refers to the separate petitions for review under Rule 43 of the Rules of Court both filed at the instance of National Grid Corporation of the Philippines (NGCP for brevity) assailing the April 12, 2010 and December 1, 2010 decisions of the Energy Regulatory Commission (ERC) in ERC Case No. 2009-009 RC and ERC Case No. 2009-83 MC, respectively.

A Joint Decision is had on these cases given that both petitions essentially involve the same parties, issues and defenses.

The undisputed facts as stated in the petitions are as follows:

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"Pursuant to Section 8 of R.A. 9136, the National Transmission Corporation (TRANSCO), a government owned and controlled corporation was created to assume responsibility to operate and maintain the national transmission system formerly performed by the National Power Corporation.

Under R.A. 9511 (NGCP's franchise), entitled "An Act Granting the National Grid Corporation of the Philippines A Franchise to Engage in the Business of Conveying or Transmitting Electricity Through High Voltage Back-bone System or Interconnected Transmission Lines, Substations and Related Facilities, and For other Purposes," NGCP was granted the franchise to construct, install, finance, manage, improve, expand, operate, maintain, rehabilitate, repair and refurbish the present nationwide transmission system of the Republic of the Philippines.

On 15 January 2009, NGCP assumed the transmission functions of TRANSCO including the operation, management and maintenance of the nationwide electrical grid. In the performance of its functions as transmission service provider, NGCP entered into a Memorandum of

Agreement (the "Agreement") with its GNPOWER MARIVELES COA: PLANT LTD., CO. (GNPOWER) on 11 January 2010. The Agreement provides, among others, that NGCP shall construct, operate, and maintain a connection facility (the "Connection Assets") which shall connect GNPOWER's coal plant located in Mariveles, Bataan to NGCP's transmission network to supply electricity to the grid subject to the approval by the ERC.

Consequently, NGCP and GNPOWER filed a Petition with ERC entitled "In the Matter of the Application for Approval of the Implementation of the Construction of the Connection Assets Associated with the 2 x 300 MW Coal Fired Power Plant of GNPOWER Mariveles Coal Plant Limited Company (GNPOWER), with prayer for Provisional Authority docketed as ERC Case No. 2009-009 RC."^[1]

After due notice and hearing the said application was approved by the ERC in its Decision dated April 12, 2010. Included in said decision, however, was a directive for NGCP to pay, within fifteen (15) days from receipt thereof, the Permit Fee in the amount of Six Million Eight Hundred Ninety Thousand Six Hundred Eighteen Pesos and Eighty Nine Centavos (Php6,890,618.89). The dispositive portion of the decision provides:

"WHEREFORE, the foregoing premises considered, the joint application for the approval of the connection assets associated with the 2 X 300 MW coal fired power plant of the GNPOWER filed by the National Grid Corporation of the Philippines (NGCP) and GNPOWER Mariveles Coal Plant Limited Company (GNPOWER) is hereby APPROVED subject to the following conditions:

1.The proposed Connection that NGCP shall impose to GNPOWER will be subject to verification and confirmation by the Commission on the annual application of NGCP's Connection Charges and Residual Subtransmission Charges; and

2. The proposed projects will be further optimized based on its actual use during the reset process for the next Regulatory Period following the procedures stated in the RTWR and other relevant issuances of the Commission.

Relative thereto, NGCP is hereby directed to pay a permit fee, within fifteen (15) days from receipt hereof, in the amount of Six Million Eight Hundred Ninety Thousand Six Hundred Eighteen Pesos and Eighty Nine Centavos (Php6,890,618.89), computed as follows:

Php918,749.185.00

----- x Php0.75 = Php6,890,618.89

Php100.00

SO ORDERED."

On May 7, 2010, NGCP filed a Motion for Partial Reconsideration of the foregoing pronouncement of the ERC, particularly on the imposition of Permit Fee of

Php6,890,618.89 on the ground that under Section 9 of R.A. 9511 or NGCP's Franchise, NGCP is exempted from payment of fees and charges, as hereunder quoted:

"Section 9. Tax Provisions. - *In consideration of the franchise and rights hereby granted, the Grantee, its successors or assigns, shall pay a franchise tax equivalent to three percent (3%) of all gross receipts derived by the Grantee from its operation under this franchise. Said tax shall be in lieu of income tax and any and all taxes, duties, fees and charges of any kind, nature or description levied, established or collected by any authority whatsoever, local or national, on its franchise, rights, privileges, receipts, revenues and profits, and on properties used in connection with its franchise, from which taxes, duties and charges, the Grantee is hereby expressly exempted: Provided, That the Grantee, its successors or assigns, shall be liable to pay the same taxes on their real estate, buildings and personal property, exclusive of this franchise, as other corporations are now or hereby may be required by law to pay: Provided, further, That payment by Grantee of the concession fees due to PSALM under the concession agreement shall not be subject to income tax and value-added tax (VAT).*

On June 17, 2010, NGCP received the Order of the ERC dated June 7, 2010 denying its Motion for Partial Reconsideration, the dispositive portion thereof reads:

"WHEREFORE, the foregoing premises, the "Motion for Partial Reconsideration" filed on May 7, 2010 by the National Grid Corporation of the Philippines (NGCP) is hereby DENIED for lack of merit.

Relative thereto, the Commission takes note of the letter dated May 7, 2010 filed by NGCP informing the Commission that it shall pay under protest the permit fee in the amount of Php6,890,618.89. subsequently, on May 12, 2010, NGCP paid the said permit fee as evidenced by ERC Official Receipt No. 7078472.

SO ORDERED."

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"Pursuant to Section 8 of R.A. 9136, the National Transmission Corporation (TRANSCO), a government owned and controlled corporation was created to assume responsibility to operate and maintain the national transmission system formerly performed by the National Power Corporation.

Under R.A. 9511 (NGCP's franchise), entitled "An Act Granting the National Grid Corporation of the Philippines A Franchise to Engage in the Business of Conveying or Transmitting Electricity Through High Voltage Back-bone System or Interconnected Transmission Lines, Substations and Related Facilities, and For other Purposes," NGCP was granted the franchise to construct, install, finance, manage, improve, expand, operate, maintain, rehabilitate, repair and refurbish the present nationwide transmission system of the Republic of the Philippines.

On 15 January 2009, NGCP assumed the transmission functions of TRANSCO including the operation, management and maintenance of the nationwide electrical grid. In the performance of its functions as transmission service provider, NGCP entered into a Memorandum of Agreement (the "Agreement") with Cebu Energy Development Corporation (CEDC) wherein the latter will undertake the Transmission Projects subject to reimbursement by NGCP of the relevant costs as may be approved by the ERC.

Consequently, NGCP and CEDC filed a Joint Petition with ERC entitled "In the Matter of the Application for Approval of the Implementation of the Transmission Project associated with the 2 x 82 MW Thermal Power Plant of Cebu Energy Development Corporation, including Replacement Works for the Naga-Sigpit Tower NS-38 Line, with prayer for Provisional Authority." Said joint application was docketed as ERC Case No. 2009-83 MC."^[2]

NGCP's application was approved by the ERC by Decision dated December 1, 2010 but subject to a directive for NGCP to pay the Permit Fee in the amount of Two Hundred Eight Thousand Four Hundred Three Pesos and Eighty Nine Centavos (Php208,403.89). The dispositive portion of the decision reads:

"WHEREFORE, the foregoing premises considered, the joint application filed by the National Grid Corporation of the Philippines (NGCP) and the Cebu Energy Development Corporation (CEDC) for approval of the implementation of the Transmission Projects associated with the 3 x 82 MW thermal power plant of CEDC, is hereby APPROVED, subject to the condition that the proposed projects will be further optimized based on its actual use during the reset process for the next Regulatory Period following the procedures stated in the Rules for Transmission Wheeling Rates (RTWR) and other relevant issuances of the Commission.

Relative thereto, NGCP is hereby directed to pay a total permit fee in the amount of Two Hundred Eight Thousand Four Hundred Three and 31/100 Pesos (Php208,403.31), computed as follows:

*Php27,787,108.00
----- x Php0.75 = Php208,403.31
Php100.00*

SO ORDERED."

NGCP moved for partial reconsideration of the foregoing Decision, specifically on the imposition of the Php208,403.31 permit fee banking on the argument that under Section 9 of R.A. 9511 or NGCP's Franchise, it is exempted from payment of fees and charges, as hereunder quoted:

"Section 9. Tax Provisions. *- In consideration of the franchise and rights hereby granted, the Grantee, its successors or assigns, shall pay a franchise tax equivalent to three percent (3%) of all gross receipts derived by the Grantee from its operation under this franchise. Said tax shall be in lieu of income tax and any and all taxes, duties, fees and*

charges of any kind, nature or description levied, established or collected by any authority whatsoever, local or national, on its franchise, rights, privileges, receipts, revenues and profits, and on properties used in connection with its franchise, from which taxes, duties and charges, the Grantee is hereby expressly exempted: Provided, That the Grantee, its successors or assigns, shall be liable to pay the same taxes on their real estate, buildings and personal property, exclusive of this franchise, as other corporations are now or hereby may be required by law to pay: Provided, further, That payment by Grantee of the concession fees due to PSALM under the concession agreement shall not be subject to income tax and value-added tax (VAT).

Just like the first petition, ERC also denied NGCP's Motion for Partial Reconsideration by Order dated February 21, 2011, decreeing as follows:

"WHEREFORE, the foregoing premises considered, the "Motion for Partial Reconsideration" filed on January 28, 2011 by the National Grid Corporation of the Philippines (NGCP) is hereby DENIED.

Accordingly, NGCP is hereby directed to pay the permit fee in the amount of Two Hundred Eight Thousand Four Hundred Three Pesos and 31/100 (PHP208, 403.31), within five (5) days from receipt hereof, which will be included as part of its Regulatory Compliance Cost for the 3rd Regulatory Period, computed as follows:

Php27,787,108.00
----- x Php0.75 = Php208,403.31
Php100.00

SO ORDERED."^[3]

Displeased with the findings of the ERC in both cases, NGCP instituted the present recourse premised on this lone issue:

WHETHER OR NOT NGCP IS EXEMPT FROM PAYMENT OF PERMIT FEES IN VIEW OF SECTION 9 OF R.A. 9511 (NGCP FRANCHISE)

NGCP contends that as grantee, its rights conferred by its legislative franchise should be respected. It insists that the tax exemption it enjoys under Section 9 of R.A. 9511 is plain, unambiguous and comprehensive enough as to include all fees and taxes of any nature whether collected by the local or national government. For that matter, it was a glaring error on the part of the ERC to pigeonhole the definition of a permit fee and limit the application of Section 9 to tax-related impositions alone.

We uphold.

Although tax exemptions are undoubtedly looked highly with disfavor, however, it should not also be construed grudgingly as to defeat the purpose for which it is intended. The privilege must be justified by the clearest grant of a law that leaves no doubt of the intention of the legislature.