

Also pending is the *Motion to Dismiss* filed by Junia on 14 July 2017.

ANTECEDENTS

On 29 April 2016, Applicants Manila Electric Company (MERALCO) and Atimonan One Energy, Inc. (A1E) filed the instant *Joint Application* for the approval of their Power Supply Agreement (PSA).

The Commission issued an *Order with Notice of Public Hearing*, both dated 05 September 2016, setting the case for hearing on 14 November 2016.

Public hearings were conducted for the instant case on the following dates:

1. 14 November 2016, for the determination of compliance with jurisdictional requirements, expository presentation, pre-trial conference, and evidentiary hearing;
2. 28 November 2016, for the continuation of the evidentiary hearing; and
3. 06 March 2017, also for the continuation of the evidentiary hearing.

On 06 and 08 March 2017, MERALCO and A1E filed their respective *Formal Offer of Evidence*.

Thereafter, Junia filed his *Petition for Leave to Intervene* on 13 June 2017.

Subsequently, Bait, et al. filed their *Motion for Leave to Intervene and to Admit Petition for Intervention* on 28 June 2017.

On 14 July 2017, Junia filed a *Motion to Dismiss* dated 13 July 2017.

MERALCO then filed its *Consolidated Opposition to Petitions for Leave to Intervene* on 19 July 2017, asking the Commission to deny the petitions filed by Junia and Bait, et al.

On 21 July 2017, A1E filed its *Comment/Opposition (To the Petition for Leave to Intervene dated 13 June 2017 & Motion for Leave to Intervene and Petition for Intervention dated 27 June 2017)*.

On 03 August 2017, Borja filed his *Request for Intervenor Status*. Likewise, MERALCO filed its *Opposition to the Motion to Dismiss*.

On 14 August 2017, A1E filed its *Comment/Opposition (To the Motion to Dismiss dated 13 July 2017)*.

On 18 August 2017, Junia filed his *Consolidated Reply* seeking to dismiss the instant application. Likewise, MERALCO filed its *Opposition to the Request for Intervenor Status*.

ISSUES

The issues for the Commission's resolution are the following:

- 1) Whether the Petitions for Intervention separately filed by Junia, Bait, et al., and Borja, should be granted; and
- 2) Whether the *Motion to Dismiss* filed by Junia on 14 July 2017 should be granted.

THE COMMISSION'S RULING

In a Commission Meeting held on 30 August 2017, the Commission deliberated and resolves to DENY the Petitions filed by Junia, Bait, et al., and Borja to be admitted as intervenors in the instant case. However, the said Petitions are hereby treated as Oppositions to the instant Application.

The Commission also resolves to DENY the *Motion to Dismiss* filed by Junia.

DISCUSSION

I. The Petitions for Intervention must be filed within five (5) days prior to the date of scheduled hearing.

Section 2, Rule 9 of the ERC Rules of Practice and Procedure (RPP) governs the filing of petitions for intervention, thus:

Section 2. Filing of Petitions to Intervene.- Petitions under this rule shall be served on the original parties and filed with the Commission **not less than five (5) days prior to the time the proceeding is called for hearing**, unless the notice of hearing fixes the time for filing such petitions, in which case such notice shall govern. A petition, which for good cause shown was not filed within the time herein limited, may be presented to and allowed or denied by the Commission or the presiding officer at the time the proceeding is called for hearing.

Based on the foregoing rule, Petitions for Intervention must be filed at least **five (5) days before the date of hearing**, or at least 5 days before the scheduled hearing on 14 November 2016. However, it must be noted that the said Petitions were belatedly filed by the said Petitioners, to wit:

- 1) Junia filed his petition on 13 June 2017, or seven (7) months after the initial hearing;
- 2) Bait, et al. filed their petition on 28 June 2017, or seven (7) months after the initial hearing; and
- 3) Borja filed his petition on 03 August 2017, or nine (9) months after the initial hearing.

Relevant to the foregoing, the *Notice of Public Hearing* dated 05 September 2016 does not supply any other date, but adopts instead the same five (5)-day period prior to initial hearing, *to wit*:

All persons who have an interest in the subject matter of the proceeding may become a party by filing, at **least five (5) days prior to the initial hearing** and **subject to the requirements in the ERC's Rules of Practice and Procedure**, a verified petition with the Commission x x x. (Emphasis supplied.)

In the instant case, there was no verified petition for intervention filed by the Petitioners within the period provided in the Rules. Neither did the Petitioners appear at the initial hearing held on 14 November 2016 despite several publications of the Notice of Public Hearing in newspapers of nationwide circulation and posting of the said hearing schedule on the Commission's website, as well as on bulletin boards of other public offices.

A ruling admitting the Petitioners as Intervenors could have been made at the initial hearing despite absence of a petition for intervention had it entered its appearance in accordance with Section 2, Rule 9 of the afore-quoted Rule, *to wit*:

x x x A petition, **which for good cause shown was not filed within the time herein limited**, may be presented to and allowed or denied by the Commission or the presiding officer **at the time the proceeding is called for hearing**. (Emphasis and underscoring supplied.)

It must be emphasized that in the instant case, the Applicants have already rested their case, and filed their respective Formal Offer of Evidence as early as 06 March 2017.

Therefore, the Petitions for Intervention filed by Junia, Bait *et al.* and Borja are hereby denied.

II. The Commission finds no merit in the explanation advanced by the Petitioners for the belated filing of the petitions for intervention.

As noted earlier, Junia, Bait, *et al.*, and Borja filed their petitions after the lapse of at least seven (7) months from the scheduled date of initial hearing of the instant case.

While Borja failed to lend any explanation as to his failure to file his Intervention on time, Junia and Bait, *et al.*, explained in their respective Petitions that they were never privy to the PSAs and could not have known of the filing of the seven (7) Applications.

It must be emphasized that neither the Applicants nor the Commission is duty-bound to personally notify each person that may

be affected by an Application as regards the filing and hearing thereof.

In actions *in rem*, the Commission need not acquire jurisdiction over the parties as these are actions against the thing itself. Actions *in rem* require publication, not for the purpose of vesting the Commission with jurisdiction, but for complying with the requirements of fair play or due process in order that the interested parties may be informed of the pendency of the application and may thereby take steps to protect their interests, or the interests of their constituents, if they are so minded. As the Supreme Court explained in the case of *De Pedro vs. Romasan Development Corporation*¹, to wit:

Courts need not acquire jurisdiction over parties on this basis in *in rem* and *quasi in rem* actions. Actions *in rem* or *quasi in rem* are not directed against the person based on his or her personal liability.

Actions *in rem* are actions against the thing itself. They are binding upon the whole world. x x x

However, to satisfy the requirements of due process, jurisdiction over the parties in *in rem* and *quasi in rem* actions is required.

The phrase, "against the thing," to describe *in rem* actions is a metaphor. It is not the "thing" that is the party to an *in rem* action; only legal or natural persons may be parties even in *in rem* actions. "Against the thing" means that resolution of the case affects interests of others whether direct or indirect. It also assumes that the interests — in the form of rights or duties — attach to the thing which is the subject matter of litigation. In actions *in rem*, our procedure assumes an active vinculum over those with interests to the thing subject of litigation.

In the case of *Republic of the Philippines vs. Rosalie Bringas*² the Supreme Court emphasized the value of publication in a proceeding, in this wise:

The Court to be sure, is fully aware that the required publication serves as notice to the whole world that the proceeding in question has for its object to bar indifferently all who might be minded to make an objection of any and against the right sought to be established. It is the publication of such

¹ *Aurora N. De Pedro vs. Romasan Development Corporation*, G.R. No. 194751, 26 November 2014.

² G.R. No. 160597, 20 July 2006.

notice that brings in the whole world as a party in the case and vests the court with jurisdiction to hear and decide it.

The case of *Alba vs. Court of Appeals and Herrera*³ further emphasized the purpose of publication in *in rem* proceedings, thus:

Moreover, **the publication of the order is a notice to all indispensable parties**, including Armi and petitioner minor, **which binds the whole world to the judgment that may be rendered in the petition**. An *in rem* proceeding is validated essentially through publication. The absence of personal service of the order to Armi was therefore cured by the trial court's compliance with Section 4, Rule 108, which requires notice by publication x x x (Emphasis ours)

Thus, the publication of the Notice of Public Hearing serves as notice to the whole world that brings it as a party in the case and vests the court with jurisdiction to hear and decide the case.

In fact, the Commission strictly requires two (2) kinds of publication in relation to PSA Applications, to wit:

1. Publication of the Application as a Pre-filing Requirement pursuant to Section 2, Rule 6 of the RPP, to wit:

Rule 6, Section 2. Pre-filing Requirements for Rate Applications and Other Applications/ Petitions for Relief Affecting Consumers. - Before the Commission shall accept and docket rate applications and other applications or petitions for relief affecting the consumers, the applicant or petitioner must comply with the following requirements:

xxx

(b) The applicant or petitioner must **cause the publication of the entire application or petition**, excluding its annexes, and not a mere notice of filing of notice of application or petition, **in a newspaper of general circulation** within its franchise area or area where it principally operates. (Emphasis Ours).

2. Publication of the Notice of Public Hearing pursuant to Section 4, Rule 13 of the RPP, to wit:

³ *Rosendo Alba, minor, represented by his mother and natural guardian, Armi A. Alba, and Armi A. Alba, in her personal capacity vs. Court of Appeals and Rosendo C. Herrera*, G.R. No. 164041, 29 July 2005.

Rule 13. Section 4. Publication and Other Requirements. - The **notice of hearing for any application or petition for rate adjustment** or for any relief affecting the consumers shall be **published by the applicant or petitioner, at its own expense, at least twice for two (2) successive weeks in two (2) newspapers of nationwide circulation**, the last day of publication to be made not to be later than ten (10) days before the scheduled hearing.

xxx

All notices of hearing of any application or petition shall also be **posted on the Commission's Website** upon its issuance. (Emphasis Ours).

As pointed out by MERALCO in its *Consolidated Opposition to Petitions for Leave to Intervene*, the public, including Petitioners, were put on notice about the Application when it published the same and the Notice of Public Hearing in the following instances:

1. As a pre-filing requirement, the Application was published in the 29 April 2016 edition of the Business Mirror, a newspaper of general circulation in the Philippines;
2. As a jurisdictional requirement, the Notice of Hearing dated 05 September 2016 was published twice for two (2) successive weeks in the 21 and 28 October 2016 editions of the Malaya Business Insight and Business Mirror, both newspapers of general circulation in the Philippines; and
3. The said Notice of Hearing was likewise posted on MERALCO's website and business centers, as well as in the appropriate bulletin boards in the City Halls, Municipal Halls, or Provincial Capitol/Halls of the Cities, Municipalities and Provinces within the franchise area of MERALCO.

Likewise, the Notice of Public Hearing and the schedules of subsequent hearings were posted on the Commission's website.

The foregoing publications and postings serve as sufficient notice to the whole world. The Commission had accordingly acquired jurisdiction thereof through the submission of the Applicants of their proof of compliance with the publication and posting requirements. Likewise, by virtue of the publication, the Commission acquired

jurisdiction over any one that may be interested in the instant case, including Junia, Bait, *et al.*, and Borja.

Moreover, any Order made by the Commission acting within its jurisdiction, including an Order of General Default, is valid, even if the above-named Petitioners were not personally informed thereof.

In the course of the hearing for the instant case, the Commission has already issued an Order of General Default against everyone else who failed to signify their intent to intervene in the case. This includes Junia, Bait, *et al.*, and Borja, who all failed to timely signify their intention to participate in the hearing. Accordingly, the failure of the Petitioners to appear during the hearing placed them in default and barred them from participating therein.

In view of the foregoing, the Commission denies the Petitions for Intervention for utter lack of merit in the explanation advanced by the Petitioners for their belated filing thereof.

**III. The Commission hereby
treats the Petitions for
Intervention as
Oppositions.**

It must be remembered that in the instant case, the Applicants have already rested their case, and submitted their Formal Offer of Evidence. Hence, the proceeding has already been terminated.

While the rules only allow the submission of an opposition before an Applicant rests its case, nonetheless, the rules also allow the Commission, *motu proprio*, to reopen the proceedings for the reception of further evidence at any time prior to the issuance of its decision, after notice to the parties and opportunity to be heard, pursuant to Section 17, Rule 18 of the RPP, to wit:

Section 17. Reopening of Proceedings. - Notwithstanding the provisions of Section 16, any party may file a motion for reopening of the proceedings for the purpose of taking additional evidence at any time after the presentation of evidence has been completed but before promulgation of a decision, order or resolution, if during that period there should occur or arise transactions, events or matters, whether factual or legal resulting in a changed situation of the parties. Copies of such motion shall be served upon all parties or their attorneys of record, and shall set forth clearly the facts

claimed to constitute grounds requiring reopening of the proceedings, including material changes of fact or of law alleged to have occurred since the conclusion of the hearing. Within ten (10) days following the service of such motion, or such shorter or longer time as the Commission shall order, any other party to the proceedings may object to the motion.

The Commission may also motu proprio reopen the proceedings for reception of further evidence at any time prior to the issuance of its decision, order, or resolution, after notice to the parties and opportunity to be heard. (Emphasis Ours).

Accordingly, in view of the Petitioners' failure to submit their petition for intervention on time, and after having given the Applicants an opportunity to file their Comments or Oppositions thereto, the subject Petitions for Intervention filed by Junia, Bait, *et al.*, and Borja are hereby treated as Oppositions. Thus, the said Petitioners, as Oppositors, are entitled to the following pursuant to Sections 5 and 6, Rule 9 of the RPP which provides:

Section 5. Opposition and Comment. - Any person other than a party of record who objects to the approval of an application, petition, or other matter which is, or will be, under consideration by the Commission, or otherwise may have some comments thereon, may file an opposition thereto or comment thereon at any stage of the proceedings before the applicant or petitioner rests its case. No particular form of opposition or comment is required, but the document, letter or writing should contain the name and address of such person and a concise statement of the opposition or comment and the grounds relied upon. If possible, three (3) legible copies of the opposition or comment including the original shall be filed with the Commission and the assigned docket number of such proceeding shall be clearly indicated therein. The parties affected by the opposition or comment filed shall be served with a copy thereof and shall be given the opportunity to respond to the same within ten (10) days from receipt thereof.

Section 6. Effect of Filing of Opposition or Comment.- An opposition or comment is intended solely to alert the Commission and the parties to a proceeding of the fact and nature of the objections to or comments on an application, petition, or any other proposed Commission action and does not become evidence in the proceeding. The filing of an opposition or comment does not make the filer a party to the proceedings unless it is permitted by the Commission to intervene therein on petition to intervene.

IV. The Motion to Dismiss filed by Romeo L. Junia is DENIED for having no legal personality to file the same.

On 14 July 2017, Junia filed a *Motion to Dismiss* mainly on the ground that the instant PSA Application is a “midnight deal” and that the Applicants herein failed to undergo Competitive Selection Process (CSP) prescribed by ERC Resolution No. 13, Series of 2015, as amended by ERC Resolution No. 1, Series of 2016.

It must be noted that only parties to a case may make and argue motions and participate in the proceedings.

The classification of parties, as well as their rights, is provided under Rule 8 of the RPP. Section 1 thereof provides the following:

Section 1. Classification of Parties. – According to the nature of the proceedings before the Commission and the relationships of the parties to the proceedings, a party to a proceeding shall be classified as an **applicant, petitioner, complainant, respondent, or intervenor**. (Emphasis ours)

Further, Section 4 of the same Rule enumerates the rights of the parties, to wit:

Section 4. Rights of Parties. – At any proceeding before the Commission, each party of record is entitled to enter an appearance, introduce evidence, examine and cross-examine witnesses, make arguments, **make and argue motions** and generally participate in the proceeding. (Emphasis Ours)

In light of the denial of the *Petition for Leave to Intervene* filed by Junia in the instant case, Junia has no legal personality to file the subject *Motion to Dismiss*.

Accordingly, the *Motion to Dismiss* filed by Junia is denied.

WHEREFORE, premises considered, the following Petitions for Intervention are hereby DENIED:

1. *Petition for Leave to Intervene* filed by Romeo L. Junia on 13 June 2017;
2. *Motion for Leave to Intervene and to Admit Petition for Intervention* filed by Fe R. Bait, et al. on 28 June 2017; and
3. *Request for Intervenor Status* filed by Uriel G. Borja on 03 August 2017.

However, the Commission hereby treats the said Petitions for Intervention as Oppositions, pursuant to Sections 5 and 6, Rule 9 of the ERC Rules of Practice and Procedure.

Likewise, the *Motion to Dismiss* filed by Romeo L. Junia on 14 July 2017 is hereby DENIED for lack of personality to file the same.

SO ORDERED.

Pasig City, 30 August 2017.

FOR AND BY AUTHORITY
OF THE COMMISSION:


JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Commissioner

LS: /MH/JUM/APV

Copy furnished:

1. Attys. Francis Dino S. Antonio, Carmen Grace S. Ramos, Katherine Mari S. Garcia-Moreno and Raymond B. Yap
Counsel for Applicant MERALCO
7th Floor, Lopez Building, Ortigas Avenue
Barangay Ugong, Pasig City
2. Puyat Jacinto & Santos
Counsel for Applicant A1E
10th Floor 8 Rockwell
Plaza corner Hidalgo Drive
Rockwell Center, Makati City

3. Manila Electric Company (MERALCO)
Applicant
Ortigas Avenue, Barangay Ugong, Pasig City
4. Atimonan One Energy, Inc. (A1E)
Applicant
8th Floor, Tower 1, Rockwell Business Center
Ortigas Avenue, Pasig City
5. Mr. Uriel G. Borja
BSA Towers, 108 Legaspi Street
Makati City
6. National Association of Electricity Consumers for Reforms, Inc. (NASECORE)
No. 85 Independencia St., Tacloban City
7. Matuwid na Singil sa Kuryente Consumer Alliance, Inc. (MSK)
Unit 327, Eagle Court Condominium, Matalino Road,
Diliman, Quezon City
8. Mr. Romeo L. Junia
No. 8, Kaimito Road, Nayong Silangan,
Brgy. Dalig, Antipolo City
9. Ms. Fe R. Bait
Aniban ng Manggagawa sa Agrikultura (AMA)
Apartment C, Harry's Apartment, Road 1, Maria Magdalena Subdivision,
San Juan, Balagtas, Bulacan
10. Mr. Gerard C. Arances
Center for Energy, Ecology and Development (CEED)
Room 1, 29 P. Matimtiman St., Brgy. Teacher's Village,
Quezon City
11. Mr. Samuel Cesar M. Gamboa
Freedom from Debt Coalition (FDC)
11 Matimpiin St., Brgy. Pinyahan,
Quezon City
12. Mr. Bibiano C. Rivera, Jr.
Philippine Movement for Climate Justice (PMCJ)
13 Mabait St., Brgy. Teacher's Village,
Quezon City
13. Atty. Jose M. Aaron Pedrosa, Jr.
Sanlakas National
29 P Matimtiman St., Brgy. Teacher's Village,
Quezon City
14. Mr. Lynie L. Olimpo
Koalisyong Pabahay ng Pilipinas (KPP)
29 P Matimtiman St., Brgy. Teacher's Village,
Quezon City
15. PSA TWG Team C
14th Floor, Pacific Center Building,
San Miguel Avenue, Ortigas Center, Pasig City