

Republic of the Philippines
ENERGY REGULATORY COMMISSION
San Miguel Avenue, Pasig City

**IN THE MATTER OF VIOLATION OF ERC
ORDERS, RULES AND REGULATIONS**

**ERC CASE NO. 2007 – 364 MC
For: Non-Inclusion of Pilferage
Recovery in Purchased Power
Adjustment (PPA) Computation**

**CAMARINES SUR IV ELECTRIC
COOPERATIVE INC. (CASURECO IV)**

Respondent.

x ----- x

D O C K E T E D
Date: FEB 26 2009
By: [Signature]

D E C I S I O N

On May 2, 2007, the Commission issued a Show Cause Order directing Camarines Sur IV Electric Cooperative, Inc. (CASURECO IV) to explain why no administrative penalty and/or criminal action should be imposed upon it, and/or criminal action instituted against its directors and officers, for not including the pilferage recoveries in the computation of its monthly Purchased Power Adjustment (PPA) charges.

On June 26, 2007, CASURECO IV submitted its "Compliance" stating, among others, that: a) its Finance Manager who could shed light on the matter resigned a couple of months before the said over-recoveries came to the attention of its higher management; and b) the over-recoveries were not undertaken as a matter of policy nor for the purpose of gaining advantage at the expense of its consumer-members.

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On September 18, 2007, the Commission conducted a conference to give CASURECO IV an opportunity to substantiate its allegation. It was also informed of the amount of penalty that may be imposed upon it and its right to enter into an amicable settlement.

On October 10, 2007, CASURECO IV submitted its "Motion for Leave to Admit Supplemental Compliance" and a "Supplemental Compliance". In the said Supplemental Compliance, CASURECO IV alleged, among others, the following:

- a) Under Section 6 of the Guidelines to Govern the Imposition of Administrative Sanctions in the Form of Fines and Penalties Pursuant to Section 46 of Republic Act No. 9136 (R.A. No. 9136), a penalty shall be imposed only after the offender has been duly warned of the consequences of its violation;
- b) Not all violations of the Commission's Order are subject to the imposition of fines and penalties. A penalty, before it may be imposed, should have been prescribed for the violation of an Order;
- c) Due to mere oversight, it may have failed to comply with the ERB's Order dated February 19, 1997 by not including pilferage recovery in its PPA computation;
- d) The Commission's Guidelines, insofar as it prescribes a penalty for a violation or non-compliance with the Order, have no legal basis. The Commission has the authority to impose a fine for violation or non-compliance with R.A. 9136 or its Implementing Rules and Regulations (IRR). The Guidelines, however, prescribe a penalty for the violation of

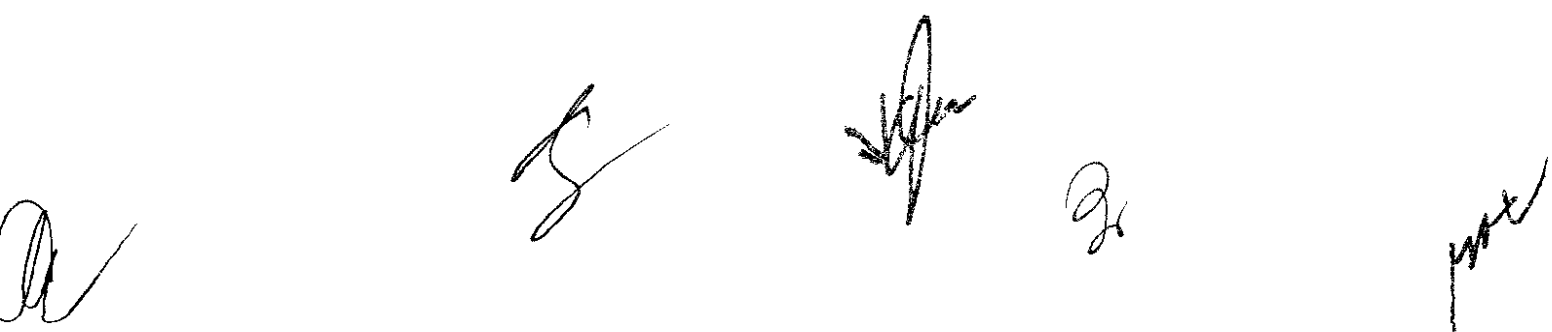
the Commission's Order. Thus, the Guidelines went beyond the parameters defined by R.A. 9136 on the following grounds: 1) the authority to impose a penalty does not include the authority to prescribe a penalty; and 2) the imposition of the penalty is limited to violation or non-compliance with R.A. 9136 or its IRR. It does not include violation or non-compliance with the Commission's Order; and

- e) Principles of equity if not prescription dictates that no sanctions be imposed upon it. The ERB Order supposedly violated by it was issued February 19, 1997. In June 1999, it submitted to the ERB its PPA computation from March 1999 to June 1999. With the said submission, the flaw in its computation should have been immediately discovered by ERB.

DISCUSSION

The "Guidelines to Govern the Imposition of Administrative Sanctions in the Form of Fines and Penalties Pursuant to Section 46 of Republic Act 9136 or the Electric Power Industry Reform Act of 2001", were promulgated by the Commission in accordance with the authority vested to it by law.

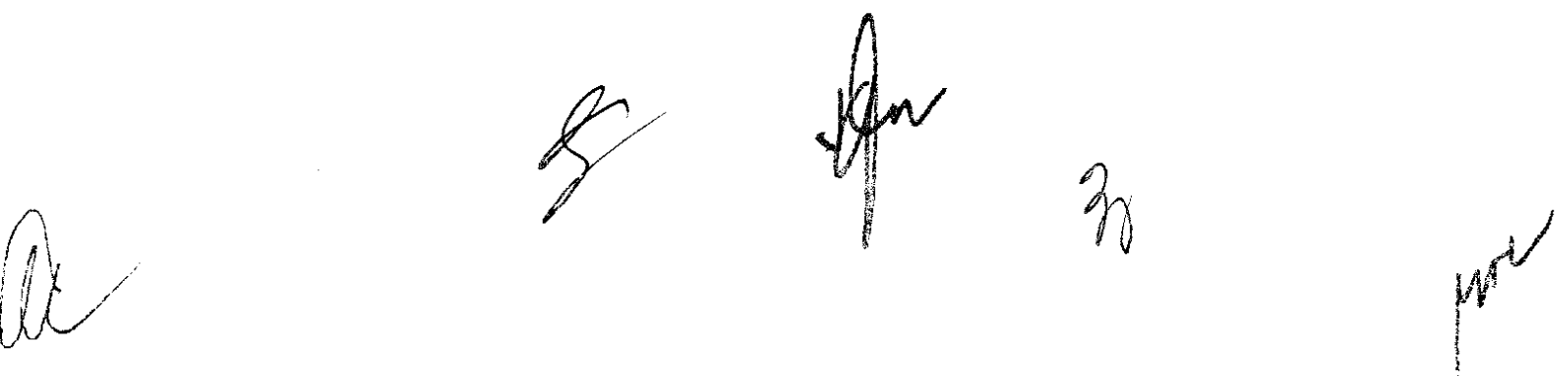
Section 4, Rule 3 of the Implementing Rules and Regulations (IRR) of R.A. 9136 provides that:



"Pursuant to Sections 43 and 45 of the Act, the ERC shall promulgate such rules and regulations as authorized thereby, including but not limited to Competition Rules and limitations on recovery of system losses, and shall impose fines or penalties for any non-compliance with or breach of the Act, these Rules and the rules and regulations which it promulgates or administers."

It is worthy to note that before a penalty is imposed, the concerned Distribution Utility (DU) is apprised of its violation of certain rules and regulations through a Show Cause Order (SCO). In this instant case, records bear that the Commission issued a SCO to CASURECO IV on May 2, 2007 relative to its failure to include pilferage recovery in its PPA formula. The said SCO provided CASURECO IV the opportunity to explain why no administrative penalty and/or criminal action should be imposed upon it for the stated violation. This contradicts the claim of CASURECO IV that it was not duly warned of its violations.

It must also be emphasized that under the same provision of the IRR, the Commission is authorized to promulgate rules and regulations relative to the imposition of fines and penalties for violation and non-compliance of the rules and regulation it promulgates. By virtue of the said mandate, the Commission issued the Guidelines to Govern the Imposition of Administrative Sanctions in the Form of Fines and Penalties Pursuant to Section 46 of R.A. 9136, the pertinent portion of which states:



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“The fines and penalties that shall be imposed by the ERC for any violation of or non-compliance with this Act or IRR shall range from a minimum of Fifty thousand pesos (PhP50,000.00) to a maximum of Fifty million pesos (PhP50,000,000.00)”.

In *Smart Communications, Inc. vs. National Telecommunications*¹, the Supreme Court ruled that “administrative agencies possess quasi-legislative or rule-making powers and quasi-judicial or administrative adjudicatory powers. Quasi-legislative or rule-making power is the power to make rules and regulations which results in delegated legislation that is within the confines of the granting statute and the doctrine of non-delegability and separability powers.” Thus, the authority of the Commission to promulgate rules imposing fines and penalties cannot be questioned.

WHEREFORE, the foregoing premises considered and pursuant to Section 5 of the “*Guidelines to Govern the Imposition of Administrative Sanctions in the Form of Fines and Penalties Pursuant to Section 46 of Republic Act No. 9136 or the Electric Power Industry Reform Act of 2001*”, respondent Camarines Sur IV Electric Cooperative, Inc. (CASURECO IV) is hereby declared to have committed the violation as charged. Accordingly, it is hereby directed to pay, within fifteen (15) days from receipt hereof, the fine of **TWO HUNDRED FIFTY THREE THOUSAND FOUR HUNDRED PESOS (PhP253,400.00)** computed as follows:

¹ G.R. No. 151208, August 12, 2003.

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Particulars	Amount (PhP)
Non-Inclusion of Pilferage Recoveries in PPA Computation	
Under C.A. 146	
PhP200 per day of violation (January 1999 up to June 17, 2002) (PhP200 x 532 days)	
Sub-Total	106,400
Under R.A. 9136	
Initial Amount	100,000
Plus: PhP100 a day for every day of violation (June 18, 2002 up to February 2004) (PhP100 x 470 days)	47,000
Sub-Total	147,000
TOTAL	253,400

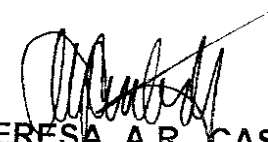
SO ORDERED.


Pasig City, February 23, 2009.


ZENAIDA G. CRUZ-DUCUT
 Chairperson


RAUF A. TAN
 Commissioner


ALEJANDRO Z. BARIN
 Commissioner


MARIA TERESA A.R. CASTAÑEDA
 Commissioner

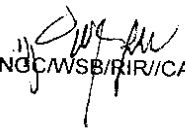

JOSE C. REYES
 Commissioner

Copy furnished:

1. **MR. PEDRITO H. BACULIO**
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2. **ATTY. VERONICA T. BRIONES**
Managing Consultant
Camarines Sur IV Electric Cooperative, Inc. (CASURECO IV)
Tigaon, Camarines Sur 4420

Reference: No. 2008-D1-D137


NGC/WSB/RIR/CASURECO IV