

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




IN THE MATTER OF THE  
APPLICATION FOR APPROVAL OF  
AN ADJUSTMENT IN RATES UNDER  
THE RULES FOR SETTING  
ELECTRIC COOPERATIVES'  
WHEELING RATES (RSEC-WR),  
WITH PRAYER FOR PROVISIONAL  
AUTHORITY

ERC CASE NO. 2009-167 RC

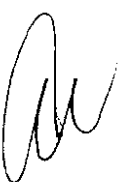
CENTRAL NEGROS ELECTRIC  
COOPERATIVE, INC. (CENECO),  
Applicant.

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DOCKETED  
Date: JAN 10 2012  
By: 

**ORDER**

Before the Commission for resolution are the following: 1) the "*Motion for Intervention/Opposition*" filed on June 11, 2010 by Mr. Romeo L. Lavilla, Sr.; 2) the "*Petition for Intervention*" filed on July 1, 2010 by Mr. George K. Sanchez; 3) the "*Motion to Require Applicant to Submit Under Oath as to the Genuineness and Due Execution of the Attached Board Resolution No. 8560-A*" filed on February 7, 2011 by Mr. Sanchez; and 4) the "*Motion to Declare the Provisional Authority as Stated in the Order Dated January 11, 2010 Null and Void and to Require CENECO to Refund*" filed on April 20, 2011 by Mr. Lavilla.



Relative thereto, the Commission takes note of the following: 1) the *"Motion to Resolve (Re: Motion to Declare Provisional Authority Null and Void)"* filed on May 25, 2011 by Mr. Lavilla; 2) the *"Manifestation and Motion (Re: Motion to Resolve and Declare Provisional Authority Null and Void)"* filed on August 26, 2011 by Mr. Lavilla; 3) the *"Comment"* filed on September 28, 2011 by Central Negros Electric Cooperative, Inc. (CENECO); and 4) the *"Reply (to Comment Filed by CENECO Dated September 26, 2011)"* filed on November 14, 2011 by Mr. Sanchez.

## DISCUSSION

### ***I. Mr. Lavilla's "Motion for Intervention/Opposition"***

In his motion, Mr. Lavilla alleged, among others, that:

1. He is a legitimate consumer-member of CENECO;
2. Any upward adjustment in CENECO's rates will result to an increase in the monthly electric bills of its consumers; and
3. He has legal and substantial interest in the instant application and will be adversely affected by the additional increase in CENECO's rates.

Mr. Lavilla's motion for intervention is granted since he has a direct and substantial interest in the subject matter of the instant application as a member-consumer of CENECO. Further, he has filed his motion within the period prescribed under Section 2, Rule 9 of the Commission's Rules of Practice and Procedure.



**II. Mr. Sanchez's "Petition for Intervention"**

In his petition, Mr. Sanchez alleged, among others, that:

1. He is a member-consumer of CENECO, thus, he has a legal interest in the matter under litigation and will be adversely affected by the approval of the instant application; and
2. The approval of the instant application would adversely affect the entire consumers of CENECO considering that its current rates will be entirely amended.

Mr. Sanchez's petition for intervention is denied since he failed to file the said petition within the prescribed period. Although he attended the initial hearing held on June 23, 2010, he did not manifest his intention to intervene. Had he done so, he may have been provisionally accepted as an Intervenor and given an additional period within which to file his petition. Thus, his petition filed on July 1, 2010 is considered filed out of time. As aptly held by the Supreme Court in the case of *Tomas Osmeña vs. Commission on Audit*<sup>1</sup>:

*"Several times in the past, we emphasized that procedural rules should be treated with utmost respect and due regard, since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice. From time to time, however, we have recognized exceptions to the Rules but only for the most compelling reasons where stubborn obedience to the Rules would defeat rather than serve the ends of justice. Every plea for a liberal construction of the Rules must at least be accompanied by an explanation why the party-litigant failed to comply with the Rules and by a justification for the requested liberal construction."*

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<sup>1</sup> G.R. No. 188818, May 31, 2011 citing *Pates vs. COMELEC*, G.R. No. 184915, June 30, 2009, 591 SCRA 481



In view of the foregoing, Mr. Sanchez is considered as a mere Oppositor and his petition for intervention will be treated as his Opposition in the instant application.

**III. Mr. Sanchez's "Motion to Require Applicant to Submit Under Oath as to the Genuineness and Due Execution of the Attached Board Resolution No. 8560-A"**

Considering that Mr. Sanchez is a mere Oppositor in the instant application, he is only allowed under Section 5, Rule 9 of the Commission's Rules of Practice and Procedure to file comments or opposition but not motions. Thus, his motion need not be resolved.

**IV. Mr. Lavilla's "Motion to Declare the Provisional Authority as Stated in the Order Dated January 11, 2010 Null and Void and to Require CENECO to Refund"**

In his motion, Mr. Lavilla alleged, among others, the following:

1. In CENECO's Pre-trial Brief dated June 17, 2010, one (1) of the documentary evidence to be presented was its Board Resolution No. 8560-A marked as Exhibit "R" for the purpose of substantiating its allegations in paragraph 9 of the application. Said Board Resolution, which was attached to the application and verified under oath by Mr. Sulpicio C. Lagarde, Jr., is part of the pre-filing requirements as stated in paragraph 19 of the application;
2. In his "Opposition/Comment" dated December 7, 2010, Mr. Sanchez assailed and attacked the validity and due execution of the said Board Resolution;
3. On December 10, 2010, he filed a letter informing the Commission that a Criminal Complaint for "Falsification of Public Documents" was filed with the Office of the City Prosecutor of Bacolod City by Atty. Enrique S. Tabino, the former Officer-in-Charge of CENECO, against Mr. Edward Gasambelo, Mr. Luis G. Cuenca and Mr. Lagarde, Jr., docketed as NPS VI-03-INV-10K-1141, for presenting a spurious and forged Board Resolution;
4. CENECO filed an Amended Pre-trial Brief dated December 6, 2010. Said Board Resolution was no longer included as one (1) of its documentary evidence which is an admission that it was indeed forged and spurious. In the absence of the said Board Resolution, the instant application suffers from legal infirmities, thus, should be dismissed for failure to fully comply with the pre-filing requirements;



5. The presentation of the said forged and spurious Board Resolution is a direct attack on the integrity of the Commission;
6. The grant of the provisional authority is null and void since it was based on a forged and spurious Board Resolution;
7. The Order dated January 11, 2010 provisionally authorizing CENECO to implement its revised rate schedule is null and void, thus, should be lifted for being a "fruit of the poisonous tree";
8. CENECO should be sanctioned by the Commission for misrepresentation and misleading it in granting the provisional authority;
9. Considering that the provisional authority is null and void, CENECO should therefore be required to refund to its consumers the amount of PhP0.1518/kWh per month starting February 2010 billing; and
10. He prays that an Order be issued: a) lifting the provisional authority for being null and void; b) requiring CENECO to refund to its consumers the amount of PhP0.1518/kWh per month effective February 2010 billing up to the present; and c) requiring Mr. Lagarde, Jr. to explain why he should not be held liable for contempt for submitting a forged and spurious Board Resolution as one (1) of the pre-filing requirements.

On September 28, 2011, CENECO filed its "*Comment Re: 1) Motion to Require Applicant to Submit Under Oath as to the Genuineness and Due Execution of the Attached Board Resolution No. 8560-A; and 2) Motion to Declare the Provisional Authority as Stated in the Order Dated January 11, 2010 as Null and Void and to Require CENECO to Refund; Motion to Resolve (Re: Motion to Declare Provisional Authority Null and Void) and Manifestation and Motion (Re: Motion to Resolve and Declare Provisional Authority Null and Void)*".

In the said comment, CENECO alleged, among others, the following:

1. Movants are not recognized Interveners in the instant case, therefore, do not have any legal personality to question any matter relative thereto before the Commission. On the said ground alone, the Commission need not consider the merits of the motions;

2. In the remote event that the Commission takes into consideration the merits of the subject motions, the latter, nonetheless, should be denied for utter lack of merit;
3. Board Resolution No. 8560-A was not among the pre-filing requirements prescribed by the Commission for the validity, sufficiency or completeness of its application. In fact, similar applications filed by some of the other electric cooperatives (ECs) did not include Board Resolutions of the same tenor;
4. The instant application would still be accepted by the Commission for filing even without the inclusion of the said Board Resolution. The attachment of the said Board Resolution among the annexes to the application was an inadvertence, unnecessary and should be considered a mere surplusage;
5. The inclusion of the said Board Resolution among the annexes to the application was immaterial and never considered by, much less made the basis of, the Commission in issuing its Order dated January 11, 2010. It did not affect the validity and efficacy of the said Order. For which reason, there is no valid and justifiable ground to render said Order null and void or without any force and effect; and
6. It prays that the subject motions be denied for utter lack of merit.

It may be recalled that on April 4, 2009, the General Managers of all the on-grid ECs in the Philippines adopted *Resolution No. 1, Series of 2009, entitled "A Resolution Imploring Upon the Energy Regulatory Commission to Implement a New Rate-Setting Methodology for Setting the Electric Cooperatives' Wheeling Rates (RSEC-WR)"*. Relative thereto, on April 21, 2009, the Commission issued a Notice of Proposed Rule-Making wherein it treated the said Resolution as a petition by the ECs who were signatories thereto to initiate rule-making, docketed as ERC Case No. 2009-007 RM, entitled "*In the Matter of the Petition by the On-Grid Electric Cooperatives for the Adoption of the Rules for Setting the Electric Cooperatives' Wheeling Rates*".

On September 23, 2009, the Commission issued *Resolution No. 20, Series of 2009, entitled "A Resolution Adopting the Rules for Setting the Electric Cooperatives' Wheeling Rates (RSEC-WR)"*. Article 10 of the said RSEC-WR mandates all the on-grid ECs, including CENECO, although it is not a signatory to Resolution No. 1, Series



of 2009, to file their respective or individual rate applications which would be governed by *Rule 3, Section 4 (e) of the Implementing Rules and Regulations (IRR) of Republic Act No. 9136*, as amended, and the Commission's Rules of Practice and Procedure. All the applications must comply with the following requirements:

1. The applicant must cause the publication of the entire application, excluding its annexes, and not a mere notice of filing or notice of application, in a newspaper of general circulation within its franchise area or area where it principally operates;
2. The applicant must furnish the Local Government Unit (LGU) Legislative Body (and not the Office of the Mayor) of the city or municipality where it principally operates, a copy of the application and not a mere notice of application, with all its annexes and accompanying documents. If such principal place of operation is a component city or municipality, the applicant shall, likewise, furnish the LGU Legislative Body of the province of which such component city or municipality is part;
3. The applicant shall attach to its application a certification issued by the Presiding Officer, Secretary of the LGU legislative Body concerned, or their duly authorized representatives, attesting to the fact that such LGU Legislative Body was served a copy of the application, with all its annexes and accompanying documents, and the date of such service. The affiant shall also attach to the affidavit a copy of the page of the application bearing the stamp "received" or acknowledgment of receipt by the LGU Legislative Body;
4. The applicant shall also attach to the application an affidavit of publication executed by the editor-in-chief or other responsible officer of the newspaper of general circulation wherein the application was published, together with a copy of the newspaper issue containing the published application. The affidavit of publication shall also contain information on the area or areas where the newspaper is being circulated; and
5. The application must be verified and accompanied with proofs of compliance with the pre-filing requirements prescribed by the Commission prior to its filing with the Docket Section.

CENECO filed the instant application pursuant to the RSEC-WR. Said application was found by the Commission to be sufficient in form and substance. It must be emphasized that a Board Resolution is not among the pre-filing requirements prescribed by the Commission.



Contrary to the allegation of Mr. Lavilla, CENECO's Board Resolution No. 8560-A was not the basis of the Commission in granting the provisional authority to CENECO. The instant application was filed consistent with the RSEC-WR and the rates being proposed therein were initially found to be just and reasonable. Thus, Mr. Lavilla's motion to declare the provisional authority null and void and to require CENECO to refund must necessarily fail.

**WHEREFORE**, the foregoing premises considered, the Commission hereby resolves to:

1. **GRANT** the "*Motion for Intervention/Opposition*" filed by Mr. Romeo L. Lavilla, Sr.;
2. **DENY** the "*Petition for Intervention*" filed by Mr. George K. Sanchez;
3. **DENY** the "*Motion to Require Applicant to Submit Under Oath as to the Genuineness and Due Execution of the Attached Board Resolution No. 8560-A*" filed by Mr. Sanchez; and
4. **DENY** the "*Motion to Declare the Provisional Authority as Stated in the Order Dated January 11, 2010 Null and Void and to Require CENECO to Refund*" filed by Mr. Lavilla.

**SO ORDERED.**

Pasig City, January 4, 2012.

FOR AND BY AUTHORITY  
OF THE COMMISSION:

  
**MARIA TERESA A.R. CASTAÑEDA**  
Commissioner

Copy Furnished:

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