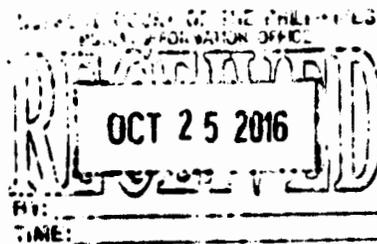




Republic of the Philippines
 Supreme Court
 Manila

FIRST DIVISION



**NATIONAL ASSOCIATION OF
 ELECTRICITY CONSUMERS
 FOR REFORMS (NASECORE),
 represented by PETRONILO
 ILAGAN, FEDERATION OF
 VILLAGE ASSOCIATIONS
 (FOVA), represented by
 SIEGFRIEDO VELOSO, and
 FEDERATION OF LAS PIÑAS
 VILLAGE ASSOCIATIONS
 (FOLVA), represented by
 BONIFACIO DAZO,**

G.R. No. 191150

Present:

SERENO, C.J.,*
 LEONARDO-DE CASTRO,
 Acting Chairperson,**
 BERSAMIN,
 PERLAS-BERNABE, and
 CAGUIOA, JJ.

Petitioners,

Promulgated:

OCT 10 2016

- versus -

**MANILA ELECTRIC
 COMPANY (MERALCO),**
 Respondent.

X-----X

DECISION

PERLAS-BERNABE, J.:

Before this Court is a petition for review on *certiorari*¹ assailing the Decision² dated January 29, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 108663, which affirmed the Decision³ dated May 29, 2008 and the

* On Official leave.

** Per Special Order No. 2386 dated September 29, 2016.

¹ *Rollo*, Vol. I, pp. 8-72.

² Id. at 74-96. Penned by Associate Justice Hakim S. Abdulwahid with Associate Justices Normandie B. Pizarro and Florito S. Macalino concurring.

³ Id. at 101-135. Signed by Chairman Rodolfo B. Albano, Jr. and Commissioners Rauf A. Tan, Alejandro Z. Barin, Maria Teresa A.R. Castañeda, and Jose C. Reyes.

Order⁴ dated April 13, 2009 of the Energy Regulatory Commission (ERC) in ERC Case Nos. 2008-004 RC and 2008-018 RC, approving with modification respondent Manila Electric Company's (MERALCO) applications for the translation into distribution rates of the Energy Regulatory Commission (ERC)-approved Annual Revenue Requirement (ARR), utilizing the Performance-Based Regulation (PBR) methodology, covering the first and second regulatory years of the 2007-2011 regulatory period.

The Facts

On April 14, 2000, MERALCO, a utility company engaged in the business of sale and distribution of electricity within its franchise area, filed with the now-defunct Energy Regulatory Board (ERB) an application for approval of the revision of its current rate schedules and an appraisal of its properties, which would allow an increase in its basic charge by about ₱0.30 per kilowatt hour (kWh), docketed as ERB Case No. 2000-57.⁵ During the pendency of this case, the Philippine Congress enacted Republic Act No. 9136,⁶ otherwise known as the "Electric Power Industry Reform Act of 2001" (EPIRA), which provisions, *inter alia*, abolished the ERB and created the ERC in its stead,⁷ as well as directed all electric distribution utilities to file an application for approval of their unbundled rates with the ERC.⁸ Thus, pursuant to the EPIRA, MERALCO filed an application for the approval of its unbundled rates and the appraisal of its properties, docketed as **ERC Case No. 2001-900**. Eventually, this latter case was consolidated with ERB Case No. 2000-57, which was re-docketed as **ERC Case No. 2001-646**.⁹ During this time, the ERC adopted the Rate on Return Base (RORB) methodology in its rate-setting function. Under the RORB methodology, rates are set to recover the cost of service incurred by the distribution utility plus a reasonable rate of return¹⁰, whereby historical costs are used to determine the revenue requirement.¹¹

On March 20, 2003, the ERC issued a Decision in **ERC Case Nos. 2001-646 and 2001-900**, approving MERALCO's twin applications and fixing its rate of return, initially at 12%, but later, upon reconsideration, at 15.5% through an Order dated May 30, 2003.¹² The matter eventually reached this Court through separate petitions respectively filed by

⁴ Id. at 136-167. Signed by Chairperson Zenaida G. Cruz-Ducut and Commissioners Rauf A. Tan, Alejandro Z. Barin, Maria Teresa A.R. Castañeda, and Jose C. Reyes.

⁵ Id. at 75.

⁶ Entitled "AN ACT ORDAINING REFORMS IN THE ELECTRIC POWER INDUSTRY, AMENDING FOR THE PURPOSE CERTAIN LAWS AND FOR OTHER PURPOSES" (June 26, 2001).

⁷ See Section 38 of the EPIRA.

⁸ See Sections 23, 24, and 25 of the EPIRA.

⁹ *Rollo*, Vol. I, p. 75.

¹⁰ Id. at 76.

¹¹ See id. at 90.

¹² Id. at 75-76.

MERALCO, *i.e.*, G.R. No. 166769¹³ and the ERC, *i.e.*, G.R. No. 166818,¹⁴ which cases were eventually consolidated. On December 6, 2006, this Court rendered a Decision in these consolidated cases, *i.e.*, *MERALCO v. Lualhati (Lualhati)*,¹⁵ upholding the new rates fixed by the ERC, albeit provisionally, pending the complete audit on the books, records, and accounts of MERALCO to be performed by the Commission on Audit (COA).¹⁶

Meanwhile, the ERC, acting in accordance with its rate-setting authority under the EPIRA,¹⁷ and after the conduct of several public consultations, issued Resolution No. 4, Series of 2003 dated May 29, 2003, **signaling its shift from the RORB methodology to the PBR methodology in fixing the wheeling rates of regulated entities.**¹⁸ Under the PBR methodology, the price of the utility concerned, *i.e.*, electricity, is controlled through an average price cap mechanism under which a limit is placed upon the average revenue per kWh at a particular period which the utility is allowed to earn.¹⁹

Consequently, the ERC issued Resolution No. 12-02, Series of 2004²⁰ promulgating the Distribution Wheeling Rate Guidelines (DWRG), which would govern the setting of distribution rates of privately-owned distribution utilities that will enter into the new PBR system.²¹ Under the DWRG, five (5) entry groups are defined to enter into the PBR system.²² MERALCO, together with Dagupan Electric Corporation (DECORP) and Cagayan Electric Power and Light Company, Inc. (CEPALCO), were among the first entrants to the PBR.²³

On July 26, 2006, the ERC issued Resolution No. 39, Series of 2006,²⁴ promulgating the Rules for Setting Distribution Wheeling Rates (RDWR) for Privately Owned Distribution Utilities Entering Performance Based Regulation.²⁵ The RDWR, which is an update of the DWRG, sets a maximum price cap on the distribution wheeling rates that may be charged by regulated entities in a regulated period. Regulation occurs during a four (4)-year period and prices are set in advance for each regulatory year in a period.²⁶ The PBR-entrant is given an ARR,²⁷ which is a forecast of the cash

¹³ Entitled "*MERALCO v. Genaro Lualhati, et al.*"

¹⁴ Entitled "*ERC v. Genaro Lualhati, et al.*"

¹⁵ See 539 Phil. 509 (2006).

¹⁶ *Rollo*, Vol. I, pp. 77-78.

¹⁷ See Section 43 (f) of the EPIRA.

¹⁸ See *rollo*, Vol. I, p. 78 and *rollo*, Vol. III, p. 1336.

¹⁹ See *rollo*, Vol. III, p. 1339.

²⁰ Entitled "ADOPTING A METHODOLOGY FOR SETTING DISTRIBUTION WHEELING RATES" dated December 10, 2004; see *rollo*, Vol. II, p. 675.

²¹ See *rollo*, Vol. I, p. 78.

²² See *rollo*, Vol. II, p. 675.

²³ See *rollo*, Vol. I, p. 78 and *rollo*, Vol. II, p. 675.

²⁴ Entitled "Adopting the Rules for Setting Distribution Wheeling Rate (RDWR) for Privately Owned Distribution Utilities Entering Performance Based Regulation" dated July 26, 2006. *Rollo*, Vol. II, pp. 675-677.

²⁵ Dated August 1, 2006. *Id.* at 678-831.

²⁶ Article II of the RDWR; *rollo*, Vol. II, p. 703. See also *rollo*, Vol. I, p. 78.

²⁷ Article IV, Section 4.6.1; *rollo*, Vol. II, p. at 720.

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flow requirements of the regulated entity, based on a Building Block analysis that uses a 'classical' weighted average cost of capital (WACC).²⁸ This will be used to derive the Maximum Annual Price (MAP),²⁹ which, in turn, shall be allocated by the distribution utilities in setting the rate schedule for its distribution, supply, and metering charges for each customer class or segment³⁰ following the provisions of the Distribution Services Open Access Rules³¹ and the Uniform Rate Filing Requirements.³² Prompted by the foregoing, MERALCO filed on September 1, 2006 an application for the approval of its ARR and performance incentive scheme for the regulatory period 2007-2011 in accordance with the RDWR before the ERC, docketed as **ERC Case No. 2006-045 RC**.³³

On May 16, 2007, the ERC, in accordance with the RDWR, issued a Draft Determination³⁴ in **ERC Case No. 2006-045 RC** that embodied its initial views on the price control arrangements that were to apply to PBR entrants, as well as its initial evaluation of MERALCO's proposals and subjected it to public consultation.³⁵ Various stakeholders in the energy sector, including herein petitioners National Association of Electricity Consumers for Reforms (NASECORE), Federation of Village Associations (FOVA), and Federation of Las Piñas Village Associations (FOLVA; collectively, petitioners), were invited to attend the said public consultations, ask clarificatory questions, and even file their respective petitions for intervention; however, petitioners, among others, failed to do so despite due notice.³⁶ As such, the ERC declared a general default against all those who failed to appear during the hearing and file their petitions for intervention without justifiable reasons, especially since a considerable length of time from the publication of MERALCO's application, as well as of the Notice of Public Hearing, had lapsed without said stakeholders heeding the notices of the ERC.³⁷

After considering all the evidence and public comments submitted, the ERC rendered a Decision³⁸ dated August 30, 2007 in **ERC Case No. 2006-**

²⁸ Article IV, Section 4.6.2; *id.* at 721.

²⁹ Article III, Section 3.2.1; *rollo*, Vol. II, p. 704. See also *rollo*, Vol. I, p. 79.

³⁰ *Rollo*, Vol. I, p. 108.

³¹ As promulgated by the ERC under Resolution No. 1, Series of 2006, dated January 18, 2006. See *rollo*, Vol. II, p. 688.

³² Dated January 13, 2001, resulting from ERC Case No. 2001-873, docketed on October 31, 2001. See *rollo*, Vol. II, p. 696. See also *rollo*, Vol. I, pp. 323-326.

³³ See *rollo*, Vol. I, p. 332.

³⁴ Under Article VII, Section 7.1.7, in relation to Section 7.1.11 of the RDWR, the ERC, not later than four months prior to the commencement of the relevant Regulatory Period, must publish a Draft Determination (DD) on the price control arrangements that are to apply for the relevant Regulatory Period and after considering all written submissions of interested parties and public hearings held for that purpose, the ERC must publish a Final Determination (FD) on the price control arrangements not later than one (1) month prior to the commencement of the relevant regulatory period. (See *rollo*, Vol. II, pp. 774-775.)

³⁵ See *rollo*, Vol. I, pp. 79-80, 327-328, and 335.

³⁶ *Id.* at 333.

³⁷ *Id.* at 333-334.

³⁸ *Rollo*, Vol. II, pp. 833-843. Signed by Commissioners Rauf A. Tan, Maria Teresa R. Castañeda and Jose C. Reyes. Chairman Rodolfo B. Albano, Jr. and Commissioner Alejandro Z. Barin, on leave.

045 RC, approving MERALCO's application *albeit* with substantial disallowances and reductions, the details of which were embodied in the Final Determination³⁹ (FD) that was annexed to the said Decision.⁴⁰ MERALCO sought for the reconsideration⁴¹ of the foregoing, which was denied in an Order⁴² dated December 5, 2007. It appearing that no more appeals were filed, the ERC ruling in **ERC Case No. 2006-045 RC** became final and executory.

Pursuant to the directives of the ERC, as stated in the FD, MERALCO consequently filed on January 11, 2008 and April 1, 2008 separate applications for the approval of its translation into distribution rates of different customer classes for the first and second regulatory years of the ERC-approved ARR for the regulatory period 2007-2011 before the ERC, docketed as **ERC Case Nos. 2008-004 RC⁴³ and 2008-018 RC,⁴⁴** from which the present petition before this Court originated.

At the initial hearing, the following intervenors/oppositors entered their appearances, namely, herein petitioners, Consolidated Industrial Gases, Incorporated (CIGI), Freedom from Debt Coalition (FDC), National Power Corporation (NPC), and Mr. Amado H. Soliman.⁴⁵ None of the intervenors/oppositors presented any evidence in support of their stand despite the opportunity given.⁴⁶

The ERC Ruling in ERC Case Nos. 2008-004 RC and 2008-018 RC and Further Proceedings

On May 29, 2008, the ERC rendered a Decision⁴⁷ approving with modification MERALCO's separate applications for approval of its translation into distribution rates of different customer classes for the 1st and 2nd regulatory years of the ERC-approved ARR for the regulatory period 2007-2011. It consolidated the two (2) distribution rate applications for regulatory years 2008 and 2009 into one price reset to be implemented

³⁹ The Final Determination embodies the ERC's initial position on the price control arrangements that will apply to MERALCO for regulatory period 2007-2011. It describes the ERC's evaluation of MERALCO's revenue and performance incentive scheme application, as well as the evidence presented in support thereof during the clarificatory meetings and evidentiary hearings. It is designed to present ERC's final decision on the price arrangements and will form the basis on which MERALCO will prepare and submit a rate application for the regulatory period 2007-2011. Id. at 844-924.

⁴⁰ See id. at 840-842.

⁴¹ Not attached to the *rollos*.

⁴² *Rollo*, Vol. II, pp. 960-979. Signed by Chairman Rodolfo B. Albano, Jr. and Commissioners Rauf A. Tan, Alejandro Z. Barin and Jose C. Reyes. Commissioner Maria Teresa R. Castañeda, on leave.

⁴³ Dated January 10, 2008. Id. at 1122-1133.

⁴⁴ Dated March 28, 2008. Id. at 1230-1240.

⁴⁵ *Rollo*, Vol. I, pp. 83 and 105.

⁴⁶ Id. at 83.

⁴⁷ Id. at 101-135.

beginning July 1, 2008, in view of the substantial delay in the issuance of the FD for MERALCO.⁴⁸

Petitioners, in a joint motion, sought for reconsideration,⁴⁹ averring in the main that the new PBR methodology adopted was inconsistent and contrary to the provisions of the EPIRA. The other intervenors/oppositors likewise filed separate motions for reconsideration of the May 29, 2008 ERC Decision; while the Office of the Solicitor General (OSG), for the Republic of the Philippines through the Department of Trade and Industry (DTI) and the Philippine Chamber of Commerce and Industry (PCCI), moved to intervene and to admit their motions for reconsideration.⁵⁰

In the meantime, MERALCO submitted a Manifestation,⁵¹ stating, among others, its intention to defer the recovery of its corporate income tax (CIT) in order to mitigate the impact of the implementation of the new distribution rate structure on its consumers and prevent price shocks.⁵²

In an Order⁵³ dated April 13, 2009, the ERC modified its May 29, 2008 Decision relative to the computation of the MAP for 2009 to reflect a zero CIT component after MERALCO manifested to defer the recovery of its CIT and further removed all rate distortions from MERALCO's distribution costs for regulatory year 2008.⁵⁴ On the other hand, all the motions for reconsideration, as well as petitions for intervention were denied for lack of merit.⁵⁵ It held that the issues relative to the propriety of the PBR methodology under the RDWR should have been raised during the time the RDWR was being promulgated by the ERC and that no further interventions can be entertained as it had already issued declarations of general default in accordance with the ERC rules.⁵⁶

Unconvinced, petitioners appealed⁵⁷ to the CA, docketed as **CA-G.R. SP No. 108663**, asserting that: (a) the ERC should have first revisited the assumptions it used in approving the increased RORB rate from 12% to 15.5% in accordance with its Order⁵⁸ dated May 30, 2003 in **ERC Case Nos. 2001-646 and 2001-900**⁵⁹; and (b) there must be compliance with the

⁴⁸ Id. at 83, 128-129, and 116-117.

⁴⁹ Not attached to the *rollos*.

⁵⁰ *Rollo*, Vol. I, p. 137.

⁵¹ Dated October 22, 2008. *Rollo*, Vol. II, pp. 1076-1081.

⁵² *Rollo*, Vol. I, p. 144.

⁵³ Id. at 136-161.

⁵⁴ Id. at 159-161.

⁵⁵ See id. at 161.

⁵⁶ See id. at 157-158.

⁵⁷ Not attached to the *rollos*.

⁵⁸ *Rollo*, Vol. II, pp. 614-656.

⁵⁹ These cases pertain to MERALCO's previous application for approval of its unbundled rates and appraisal of its properties that had been approved by the ERC in its Decision dated March 20, 2003 (Unbundling Decision) and affirmed by the Supreme Court in *MERALCO v. Lualhati*, 539 Phil. 509 (2006).

audit requirement by the COA as directed by this Court in *Lualhati* before the ERC could approve MERALCO's applications.⁶⁰

The CA Ruling in CA-G.R. SP No. 108663

In a Decision⁶¹ dated January 29, 2010, the CA affirmed the May 29, 2008 Decision and April 13, 2009 Order of the ERC in **ERC Case Nos. 2008-004 RC and 2008-018 RC**, holding that a review of the assumptions used in the approval of the provisional rate increase in *Lualhati* was not required since the RORB rate-setting methodology used therein had already been abandoned by the adoption of the PBR methodology. It added that the factors considered in determining MERALCO's ARR and MAP had already been settled in the ERC's August 30, 2007 Decision and FD in **ERC Case No. 2006-045**, hence, cannot be the subject of review.⁶² The CA likewise dismissed petitioners' contention that a complete audit by the COA is required before approving MERALCO's applications, pointing out that no less than the *Lualhati* case held that the same was not an indispensable requirement, and that absent any showing that the decision and order of the ERC were arrived at arbitrarily, the latter's findings are accorded not only respect but even finality.⁶³ In the same manner, the CA denied petitioners' claims for rate rollback and refund for lack of basis.⁶⁴

Hence, the instant petition.

The Issue Before the Court

The main issue for the Court's resolution is whether or not the CA correctly upheld the ERC ruling in **ERC Case Nos. 2008-004 RC and 2008-018 RC**, which approved with modification MERALCO's applications for the translation into distribution rates of the ERC-approved ARR under the PBR methodology for the first and second regulatory years of the 2007-2011 regulatory period.

The Court's Ruling

The petition is without merit.

Primarily, petitioners assail the ERC's shift to the PBR methodology, arguing that while the ERC has the authority to adopt alternative forms of internationally-accepted rate-setting methodology as provided for by the

⁶⁰ See *rollo*, Vol. I, p. 87.

⁶¹ Id. at 74-96.

⁶² See id. at 88-89.

⁶³ See id. at 93-95

⁶⁴ See id. at 95.

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EPIRA, it must nevertheless ensure a reasonable price of electricity.⁶⁵ Corollary thereto, petitioners likewise assail the approval of MERALCO's proposed rates pursuant to the PBR methodology, contending that such rates are unreasonable and unjustified, especially in view of its allegation that MERALCO was receiving excessive profits over the last six (6) years.⁶⁶

The arguments are untenable.

The rule is settled that “[a]dministrative regulations enacted by administrative agencies to implement and interpret the law which they are entrusted to enforce have the force of law x x x and enjoy the presumption of constitutionality and legality until they are set aside with finality in an appropriate case by a competent court.”⁶⁷ As such, they “cannot be attacked collaterally. Unless [such] rule is annulled in a direct proceeding, the legal presumption of its validity stands.”⁶⁸

In this case, petitioners' opposition against the PBR rate-setting methodology adopted by the ERC, through its issuance of the DWRG and the RDWR, was not made through the proper case directly attacking the constitutionality and/or validity of the same. Hence, the instant petition constitutes a collateral attack on the above-stated regulation, and therefore, should, at the outset, be disallowed. To explain, based on the PBR methodology, regulated entities, such as MERALCO, are required to go through two (2) **separate** proceedings for their rates to be finally approved. These are: *first*, the determination of the ARR, which is used to derive the MAP; and *second*, the translation of the MAP into a distribution rate structure for each customer class or segment.⁶⁹ **ERC Case Nos. 2008-004 RC and 2008-018 RC, from which the instant petition emanated,** already refer to MERALCO's separate applications for the translation of its MAP into distribution rates of different customer classes for the First and Second regulatory years of the ERC-approved ARR for the regulatory period 2007-2011, which is the second proceeding contemplated under the PBR methodology. **It no longer concerns the propriety of MERALCO's shift to the PBR methodology,** which was what the ERC had officially adopted at the time **ERC Case Nos. 2008-004 RC and 2008-018 RC** were filed.

Moreover, it should be highlighted that no discernible objection was raised by petitioners during the public consultations conducted by the ERC relative to its shift to the PBR methodology. Neither did petitioners raise their opposition to the ERC's adoption of the same in **ERC Case No. 2006-045 RC** where the subject matter was precisely MERALCO's application for the approval of its ARR and determination of its MAP for the same

⁶⁵ See *id.* at 42-44 and 48.

⁶⁶ *Id.* at 45 and 49-50.

⁶⁷ *Spouses Dacudao v. Sec. Gonzales*, 701 Phil. 96, 110-111 (2013), citing *ABAKADA GURO Party List v. Purisima*, 584 Phil. 246, 283 (2008).

⁶⁸ *Dasmariñas Water District v. Monterey Foods Corporation*, 587 Phil. 403, 416 (2008).

⁶⁹ See MERALCO's Comment; *rollo*, Vol. I, pp. 366.

regulatory period, which is the first proceeding contemplated under the PBR system. As the records show, during the pendency of **ERC Case No. 2006-045 RC**, MERALCO was not only required to present to the public the circumstances of its application, they also had to present their witnesses who undertook a lengthy-cross examination and addressed clarificatory questions propounded by the ERC and its technical consultants. Further, when the ERC issued its Draft Determination, it invited various stakeholders in the energy sector, including herein petitioners, to attend public consultations, ask clarificatory questions themselves, and even file their respective comments and/or petitions for intervention; however, they failed to do so despite due notice. It was only after affording all stakeholders the opportunity to be heard that the ERC rendered its Decision dated August 30, 2007 approving with modification MERALCO's ARR, performance incentive scheme, and MAP for regulatory period 2007-2011, **which ruling has now lapsed into finality**. Based on the foregoing, it is therefore evident that petitioners were given an ample opportunity to question the ERC's shift to the PBR methodology, including its application relative to MERALCO's rate propositions, but to no avail. Consequently, they can no longer question the judgment rendered in said case which had long become final and executory and hence, immutable.⁷⁰

Besides, the resolution of the instant petition would nonetheless entail a determination of factual matters which is proscribed in petitions for review on *certiorari* under Rule 45 of the Rules of Court. The general rule is that in a petition for review under Rule 45, only questions of law may be raised.⁷¹ In this case, petitioners contest the reasonableness of the rates approved by the ERC⁷² inasmuch as it granted MERALCO's application for the approval of its ARR and determination of its MAP covering the regulatory period of 2007-2011. In support of their protest, petitioners presented factual data which purportedly show MERALCO's strong financial position for the last 21 years (1987-2007), considering that it had actually earned a total of ₱88,960.00 for every ₱1,000.00 investment, which translates to a gain of 8,896% on their actual investments.⁷³ For its part, MERALCO contests petitioners' "misleading assertions", clarifying that petitioners incorrectly assumed that the original value of the common shares issued is the only investment of the investors, and further maintained that when net income earned throughout the years are retained by a company as accumulated in the Retained Earnings account and are used for the company's continuing operations, it is considered a reinvestment, and therefore should be an addition to the investors' investment in the company.⁷⁴

Case law provides that the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the

⁷⁰ See *Argel v. Singson*, G.R. No. 202970, March 25, 2015, 754 SCRA 468, 476.

⁷¹ See *Delos Reyes Vda. Del Prado v. People*, 685 Phil. 149, 159-161 (2012).

⁷² *Rollo*, Vol. I, p. 42.

⁷³ *Id.* at 54-55, 58, and 61.

⁷⁴ See Comment dated June 10, 2010; *id.* at 409-410.

same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.⁷⁵ As applied in this case, in order to assess the reasonableness of the rates approved by the ERC, there is a glaring need to scrutinize the veracity of the adverse allegations of both parties, which, in turn, necessitates an examination of the evidence in support thereof. Therefore, the issue on reasonableness posed in the petition inevitably treads the territory of questions of fact, which is generally proscribed from review in a Rule 45 petition, as in this case.

The factual nature of the considerations involved in the present petition is further highlighted by the observation that the ERC, in line with the PBR methodology, used macroeconomic forecasts available for the Philippines from a number of independent sources and compared them with the economic forecasts submitted by it in its Revenue Application (which includes data on the Philippines Consumer Price Index [CPI], the United States CPI, and the PhP/US\$ exchange rate) in order to assess whether these forecasts are reasonable to apply during the covered regulatory period, or whether these need to be adapted.⁷⁶ As to the regulatory year 2009 rate application, MERALCO echoed the following factual findings of the ERC:

iv. The annual adjusted MAP for a regulatory year, in terms of the RDWR, is an adjustment of the MAP for the previous regulatory year, taking into account the following factors:

- a. The X-factor as determined by the Commission;
- b. The Philippines CPI for the previous measurement period;
- c. The US Consumer Price Index (CPI) for the previous measurement period;
- d. The US Dollar-Philippine Peso exchange rate for the previous measurement period;
- e. The performance incentive factor (S-factor) for the previous measurement period; and
- f. Under or over recovery in rates over the previous measurement period (the K_t-factor)

These factors were calculated by MERALCO and thoroughly reviewed by the Commission. It was noted that all of MERALCO's calculations were carried out in accordance with the RDWR.

v. Based on the Commission's own calculation using the actual March index, the CPI movement over this period was determined to be 3.83%.

vi. Based on the actual indices, the Commission made its own calculation on the ΔUSER-factor at -10.19%.

vii. After correcting the factors noted above, the Commission recalculated the same at -1.78%.

⁷⁵ *Century Iron Works, Inc. v. Bañas*, 711 Phil. 577, 586 (2013).

⁷⁶ *Rollo*, Vol. I, p. 390.

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viii. The table below shows a comparison of MERALCO's performance incentive targets and its actual service performance over the measurement period. It can be noted that MERALCO performed reasonably well, slightly exceeding its average performance of recent times. This corresponds with the calculation made by the Commission.

ix. MERALCO calculated the under-recovery factor (k_{2009}) at PHP0.1580/kWh. This is the same figure that was determined by the Commission.⁷⁷ (Emphasis and underscoring supplied)

It must be stressed that since rate-fixing calls for a technical examination and a specialized review of specific details which the courts are ill-equipped to enter, such matters are primarily entrusted to the administrative or regulating authority.⁷⁸ Hence, the factual findings of administrative officials and agencies that have acquired expertise in the performance of their official duties and the exercise of their primary jurisdiction are generally accorded not only respect but, at times, even finality if such findings are supported by substantial evidence. Absent any of the exceptions laid down by jurisprudence, such factual findings of quasi-judicial agencies, especially when affirmed by the CA, are binding on this Court.⁷⁹

As determined by the ERC, which was affirmed by the CA, petitioners failed to sufficiently show that the rates approved in the proceedings below were unreasonable as they claimed to be. As pointed out by the CA, MERALCO's rate applications were approved only after the ERC conducted the necessary proceedings, received evidence in support of the applications and, thereafter, made an independent evaluation of the same.⁸⁰ Thus, the CA cannot be faulted in sustaining the reasonableness of the rates approved by the ERC. In *Ynchausti Steamship Co. v. Public Utility Commissioner*,⁸¹ this Court articulated that "[t]here is a legal presumption that the fixed rates are reasonable, and it must be conceded that the fixing of rates by the Government, through its authorized agents, involves the exercise of reasonable discretion and unless there is an abuse of that discretion, the courts will not interfere."⁸²

For another, petitioners decry the ERC's failure to wait for and take into consideration the complete audit on the books, records, and accounts of MERALCO by the COA before approving MERALCO's new rates. According to them, *Lualhati* directed the ERC to request the COA to perform such audit relative to MERALCO's provisionally-approved increase and unbundled rates. Petitioners further add that due to ERC's unbridled

⁷⁷ Id. at 401-402. See also id. at 119-122.

⁷⁸ *Republic of the Philippines (Republic) v. MERALCO*, 449 Phil. 118, 135 (2003), citing *Republic v. Medina*, 148-B Phil. 1127, 1153 (1971).

⁷⁹ See *NGEI Multi-Purpose Cooperative, Inc. v. Filipinas Palmoil Plantation, Inc.*, 697 Phil. 433, 443-444 (2012), citations omitted.

⁸⁰ *Rollo*, Vol. I, p. 95.

⁸¹ 42 Phil. 621 (1922).

⁸² Id. at 624.

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approval of new rates, MERALCO was able to amass excess profits in the amount of ₱39,208,556,000.00 for the period of 2003-2008, thus, giving it an average annual return of investment of 51%, which is way above the 12% return on investment generally allowed for public utilities.⁸³

However, it is well to point out that *Lualhati* is traced from **ERC Case Nos. 2001-646 and 2001-900**, which cover MERALCO's application for rate increase when the ERC was still adopting the RORB methodology in its rate-setting function. In other words, the need of a COA audit, under the auspices of the *Lualhati* ruling, pertained to MERALCO's rates when it was still under the RORB system. During the pendency of this case, the ERC shifted to the PBR methodology, which premises and assumptions are conceptually different from that followed in the RORB. In particular, under the RORB methodology, power rates were set to recover the cost of service prudently incurred, *i.e.*, historical costs, plus a reasonable rate of return. This means that actual and reasonable costs were used for a prescribed test year to determine the revenue requirement, with the use of the test year assuming that the past relationship among revenue, costs, and net investment during said test year will continue into the future.⁸⁴ On the other hand, the PBR methodology deviates from the use of historical costs, and instead, uses projections of operating and capital expenditures to meet projected demand, thereby enabling the regulated entities to invest in facilities to meet customer requirements and prescribed service levels. This methodology also features a performance incentive scheme which provides incentives and penalties to the utility to compel it to be more efficient and reliable, while maintaining reasonable rates and improving the quality of service to achieve pre-determined target levels.⁸⁵

Because of the variances in its premises and assumptions, the ERC's shift from the RORB to the PBR methodology should therefore be deemed as a supervening circumstance that rendered inconsequential this Court's provisional approval of the rate increases applied for by MERALCO in *Lualhati* which was made under the context of the now-defunct RORB system. Accordingly, the issue of whether or not the ERC should have first took into account the findings in the COA audit before approving MERALCO's applications in **ERC Case Nos. 2008-004 RC and 2008-018 RC** as directed in *Lualhati* has become moot and academic. In *Carpio v. CA*,⁸⁶ it was explained that "[a] case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use," as the aforesaid issue raised in this case. For all these reasons, the petition is therefore denied.

⁸³ See *rollo*, Vol. I, p. 41.

⁸⁴ *Id.* at 319-320.

⁸⁵ See *id.* at 320.

⁸⁶ 705 Phil. 154, 163 (2013).

WHEREFORE, the petition is **DENIED**. The Decision dated January 29, 2010 of the Court of Appeals in CA-G.R. SP No. 108663 is hereby **AFFIRMED**.

SO ORDERED.

Ms. Pearl
ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:

On Official Leave
MARIA LOURDES P. A. SERENO
Chief Justice

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson

Lucas P. Bersamin
LUCAS P. BERSAMIN
Associate Justice

Alfredo Benjamin S. Caguioa
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

A T T E S T A T I O N

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson, First Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Acting Chief Justice