Republic of the Philippines
Supreme Court
Manila

EN BANC

ASSOCIATION OF SOUTHERN TAGALOG ELECTRIC COOPERATIVES, INC. (ASTEC), BATANGAS I ELECTRIC COOPERATIVE, INC. (BATELEC I), QUEZON I ELECTRIC COOPERATIVE, INC. (QUEZELCO I), and QUEZON II ELECTRIC COOPERATIVE, INC. (QUEZELCO II), Petitioners,	**G.R. No. 192117**
- versus -	
ENERGY REGULATORY COMMISSION, Respondent.	
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CENTRAL LUZON ELECTRIC COOPERATIVES ASSOCIATION, INC. (CLECA) and PAMPANGA RURAL ELECTRIC SERVICE COOPERATIVE, INC. (PRESCO), Petitioners,	**G.R. No. 192118**
	Present:
	SERENO, *C.J.*, CARPIO, VELASCO, JR., LEONARDO-DE CASTRO, BRION, PERALTA, BERSAMIN, DEL CASTILLO, ABAD, VILLARAMA, JR., PEREZ, MENDOZA, REYES, and PERLAS-BERNABE, *JJ.*
- versus -	
ENERGY REGULATORY COMMISSION, Respondent.	Promulgated: **SEPTEMBER 18, 2012**
x----------x	

D E C I S I O N

CARPIO, *J.*:

The Case

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court. The petition assails the 23 December 2008 Decision[2] and 26 April 2010 Resolution[3] of the Court of Appeals in the consolidated cases, including CA-G.R. SP Nos. 99249 and 99253.[4] The Court of Appeals affirmed the Orders of the Energy Regulatory Commission (ERC) directing various rural electric cooperatives to refund their over-recoveries arising from the implementation of the Purchased Power Adjustment (PPA) Clause under Republic Act (R.A.) No. 7832 or the Anti-Electricity and Electric Transmission Lines/Materials Pilferage Act of 1994.

The Facts

Petitioners Batangas I Electric Cooperative, Inc. (BATELEC I), Quezon I Electric Cooperative, Inc. (QUEZELCO I), Quezon II Electric Cooperative, Inc. (QUEZELCO II) and Pampanga Rural Electric Service Cooperative, Inc. (PRESCO) are rural electric cooperatives established under Presidential Decree (P.D.) No. 269 or the National Electrification Administration Decree.[5] BATELEC I, QUEZELCO I and QUEZELCO II are members of the Association of Southern Tagalog Electric Cooperatives, Inc. (ASTEC). PRESCO is a member of the Central Luzon Electric

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1 *Rollo*, pp. 7-25.

2 Id. at 26-55. Penned by Associate Justice Estela M. Perlas-Bernabe (now a member of this Court) with Associate Justices Lucas P. Bersamin and Myrna Dimaranan-Vidal concurring.

3 Id. at 56-64.

4 The consolidated cases were CA-G.R. SP Nos. 99249, 99250, 99251, 99252, 99253, 99267, 99269, 99270, 99271, 99272, 99273, 99323, 99462, 99782, 100671, and 100822. The petitioners in CA-G.R. SP Nos. 99249 and 99253 appealed from the Court of Appeals Decision and Resolution subject-matter of this petition.

5 *Rollo*, p. 253.

Cooperatives Association, Inc. (CLECA). Petitioners are engaged in the distribution of electricity "on a non-profit basis for the mutual benefit of its members and patrons."[6]

On 8 December 1994, R.A. No. 7832 was enacted. The law imposed a cap on the recoverable rate of system loss[7] that may be charged by rural electric cooperatives to their consumers. Section 10 of R.A. No. 7832 provides:

> Section 10. *Rationalization of System Losses by Phasing out Pilferage Losses as Component Thereof*. – There is hereby established a cap on the recoverable rate of system losses as follows:
>
> x x x x
>
> (b) For rural electric cooperatives:
>
> (i) Twenty-two percent (22%) at the end of the first year following the effectivity of this Act;
>
> (ii) Twenty percent (20%) at the end of the second year following the effectivity of this Act;
>
> (iii) Eighteen percent (18%) at the end of the third year following the effectivity of this Act;
>
> (iv) Sixteen percent (16%) at the end of the fourth year following the effectivity of this Act; and
>
> (v) Fourteen percent (14%) at the end of the fifth year following the effectivity of this Act.
>
> *Provided*, That the ERB is hereby authorized to determine at the end of the fifth year following the effectivity of this Act, and as often as is necessary, taking into account the viability of rural electric cooperatives and the interest of the consumers, whether the caps herein or theretofore established shall be reduced further which shall, in no case, be lower than nine percent (9%) and accordingly fix the date of the effectivity of the new caps.
>
> x x x x

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6 P.D. No. 269, as amended, Sec. 35.

7 Guidelines Implementing Executive Order No. 473, Sec. 3, par. (p): "System Loss" refers to energy lost in an electric system in the process of delivering electricity to consumers or end-users. Lost energy may be caused either by technical factors or by non-technical factors like pilferage.

The Implementing Rules and Regulations (IRR) of R.A. No. 7832 required every rural electric cooperative to file with the Energy Regulatory Board (ERB), on or before 30 September 1995, an application for approval of an amended PPA Clause incorporating the cap on the recoverable rate of system loss to be included in its schedule of rates.[8] Section 5, Rule IX of the IRR of R.A. No. 7832 provided for the following guiding formula for the amended PPA Clause:

> Section 5. *Automatic Cost Adjustment Formula*. –
>
> x x x x
>
> The automatic cost adjustment of every electric cooperative shall be guided by the following formula:
>
> Purchased Power Adjustment Clause
>
> $$(\text{PPA}) = \frac{A}{B-(C+D)} - E$$
>
> Where:
>
> A = Cost of electricity purchased and generated for the previous month
>
> B = Total Kwh purchased and generated for the previous month
>
> C = The actual system loss but not to exceed the maximum recoverable rate of system loss in Kwh plus actual company use in Kwhrs but not to exceed 1% of total Kwhrs purchased and generated
>
> D = Kwh consumed by subsidized consumers
>
> E = Applicable base cost of power equal to the amount incorporated into their basic rate per Kwh

In compliance with the IRR of R.A. No. 7832, various associations of rural electric cooperatives throughout the Philippines filed on behalf of their members applications for approval of amended PPA Clauses. On 8 February 1996, ASTEC filed on behalf of its members (including BATELEC I, QUEZELCO I and QUEZELCO II) a verified petition for the approval of

[8] IRR OF R.A. NO. 7832, Rule IX, Sec. 5.

the amended PPA Clause. The verified petition of ASTEC was docketed as ERB Case No. 96-35.[9] On 9 February 1996, CLECA also filed on behalf of its members (including PRESCO) a verified petition for the approval of the amended PPA Clause. The verified petition of CLECA was docketed as ERB Case No. 96-37.[10]

The ERB issued Orders on 19 February 1997[11] and 25 April 1997[12] provisionally authorizing the petitioners and the other rural electric cooperatives to use and implement the following PPA formula, subject to review, verification and confirmation by the ERB:

$$\text{PPA} = \frac{A}{B-(C+C1+D)} - E$$

Where:

A = Cost of Electricity purchased and generated for the previous month less amount recovered from pilferages, if any

B = Total Kwh purchased and generated for the previous month

C = Actual system loss but not to exceed the maximum recoverable rate of system loss in Kwh

C1 = Actual company use in Kwhrs but not to exceed 1% of total Kwhrs purchased and generated

D = Kwh consumed by subsidized consumers

E = Applicable base cost of power equal to the amount incorporated into their basic rate per Kwh

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[9] ERB Case No. 96-35 was initially consolidated with ERB Case No. 96-36 (North Western Luzon Electric Cooperatives Association, Inc. and North Eastern Luzon Electric Cooperatives Association, Inc.), ERB Case No. 96-43 (Western Visayas Electric Cooperatives Association, Inc., Central Visayas Electric Cooperatives Association, Inc. and Leyte Samar Electric Cooperatives Association, Inc.) and ERB Case No. 96-49 (Association of Mindanao Rural Electric Cooperatives, Inc.). The consolidated cases were entitled "IN THE MATTER OF THE ADOPTION OF FORMULA FOR AUTOMATIC COST ADJUSTMENT AND ADOPTION OF RESTRUCTURED RATE ADJUSTMENT OF NPC [National Power Corporation]". See CA *rollo* (CA-G.R. SP No. 99249), p. 251.

[10] The case was entitled "IN THE MATTER OF THE APPLICATION FOR APPROVAL OF AMENDED PURCHASED POWER ADJUSTMENT CLAUSE". See CA *rollo* (CA-G.R. SP No. 99253), p. 180.

[11] The Order dated 19 February 1997 was issued in ERB Case Nos. 96-35, 96-36, 96-43, 96-49.

[12] The Order dated 25 April 1997 was issued in ERB Case No. 96-37.

The ERB further directed petitioners to submit relevant documents regarding the monthly implementation of the PPA formula for review, verification and confirmation. The Orders dated 19 February 1997 and 25 April 1997 commonly provide:

> Accordingly, all electric cooperatives are hereby directed to submit to the Board within ten (10) days from notice hereof their monthly implementation of the PPA formula from the February, 1996 to January, 1997 for the Board's review, verification and confirmation. The submission should include the following documents:
>
> 1. PPA computation following the formula provided above
>
> 2. Monthly NPC bill or such other power bill purchased or generated not yet forwarded to ERB from January 1995 onward
>
> 3. Monthly Financial and Statistical Report (MFSRs) not yet forwarded to ERB from January 1995 onward
>
> 4. Sample bills for the month subject to confirmation for different types of customers.
>
> Thereafter, (from February 1997 and onward) all electric cooperatives are hereby directed to submit on or before the 20th day of the current month, their implementation of the PPA formula of the previous month for the same purposes as indicated above.[13]

On 8 June 2001, R.A. No. 9136 or the Electric Power Industry Reform Act of 2001 (EPIRA) was enacted. Section 38 of the EPIRA abolished the ERB, and created the Energy Regulatory Commission (ERC). The ERC is an independent and quasi-judicial regulatory body mandated to "promote competition, encourage market development, ensure customer choice and penalize abuse of market power in the restructured electricity industry."[14] The powers and functions of the ERB not inconsistent with the provisions of the EPIRA were transferred to the ERC, together with the applicable funds and appropriations, records, equipment, property and personnel of the

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[13] CA *rollo* (CA-G.R. SP No. 99249), p. 259; CA *rollo* (CA-G.R. SP No. 99253), pp. 191-192.
[14] EPIRA, Sec. 43.

ERB.[15]

As a result, ERB Case No. 96-35 involving ASTEC and its members (including BATELEC I, QUEZELCO I and QUEZELCO II) was renamed and renumbered as ERC Case No. 2001-338.[16] ERB Case No. 96-37 involving CLECA and its members (including PRESCO) was also renamed and renumbered as ERC Case No. 2001-340.[17] The records further show that these two cases were consolidated, together with the other cases previously consolidated with then ERB Case No. 96-35.[18]

Subsequently, the ERC issued an Order dated 17 June 2003. The ERC noted therein "that the PPA formula which was approved by the ERB was silent on whether the calculation of the cost of electricity purchased and generated in the formula should be 'gross' or 'net' of discounts."[19] The cost of electricity is computed at "gross" if the discounts extended by the power supplier to the rural electric cooperative are not passed on to end-users, while the cost of electricity is computed at "net" if the discounts are passed on to end-users.[20] The ERC ruled:

> To attain uniformity in the implementation of the PPA formulae, the Commission has resolved that:
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> 1. In the confirmation of past PPAs, the power cost shall still be based on "gross"; and
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> 2. In the confirmation of future PPAs, the power cost shall be based on "net".

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15 EPIRA, Sec. 44.

16 The other cases initially consolidated with ERB Case No. 96-35 were renamed and renumbered accordingly: ERB Case No. 96-36 as ERC Case No. 2001-339; ERB Case No. 96-43 as ERC Case No. 2001-341; and ERB Case No. 96-49 as ERC Case No. 2001-343. See CA *rollo* (CA-G.R. SP No. 99249), pp. 81-82.

17 See CA *rollo* (CA-G.R. SP No. 99249), p. 81.

18 Consequently, the consolidated cases included ERC Case Nos. 2001-338, 2001-339, 2001-340, 2001-341 and 2001-343.

19 CA *rollo* (CA-G.R. SP No. 99249), p. 82.

20 Id.

> Relative thereto, petitioners are directed to implement their respective PPA using the power cost based on net at the next billing cycle upon receipt of this Order until such time that their respective rates have already been unbundled.
>
> Petitioners are hereby directed to submit to the Commission on or before the 20th day of the following month, their implementation of the PPA formula for review, verification and confirmation by the Commission.[21]

On 29 March 2004, the ERC issued an Order in the consolidated cases resolving the motions for reconsideration filed by several rural electric cooperatives. In the said Order, the ERC explained the general framework of the new PPA confirmation scheme to be adopted by the regulatory body. The ERC stated:

> Majority of the issues raised in the motions for reconsideration can be properly addressed by the new PPA confirmation scheme to be adopted by this Commission. Under this scheme, the electric cooperatives shall be allowed to collect/refund the true cost of power due them vis-a-vis the amount already collected from their end-users. In turn, the end-users shall only be charged the true cost of power consumed.
>
> The Commission recognizes that the electric cooperatives implemented their PPA in the manner by which majority of them were implementing the same. Thus, they had no alternative but to adopt the most recent available data for the respective billing months which were based on estimates due to time lag differences. Under the new scheme, the actual data for the billing month shall be adopted as they are available at the time the verification is undertaken.
>
> In this regard, all the other issues raised by the electric cooperatives shall be properly addressed in the confirmation of their respective PPAs.[22]

Several rural electric cooperatives subsequently filed motions for clarification and/or reconsideration with respect to the ERC's process of computation and confirmation of the PPA. The rural electric cooperatives advanced the following allegations:

> 1. They are non-profit organizations and their rate components do not include any possible extra revenue except the discounts; and

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[21] Id. at 83.
[22] Id. at 87-88.

> 2. They are burdened with expenses in their continuing expansion programs of rural electrification to the remotest barangays and sitios of their respective franchise areas and could not give any benefit or incentive to their employees.[23]

On 14 January 2005, the ERC issued an Order addressing the motions for clarification and/or reconsideration filed by the rural electric cooperatives. In the said Order, the ERC expounded on the general framework of the new PPA confirmation scheme. The ERC stated that "the new PPA scheme creates a venue where both the [electric cooperatives] can recover and the end-users can be charged the true cost of power."[24] The ERC stressed that "[t]he purchased power cost is a pass through cost to customers and as such, the same should be revenue neutral."[25] In other words, rural electric cooperatives should only recover from their members and patrons the actual cost of power purchased from power suppliers.[26]

In the same Order, the ERC clarified certain aspects of the new PPA confirmation scheme. With respect to the data to be utilized in the confirmation of the PPA, the ERC stated:

> All electric cooperatives were directed to implement the PPA in the manner the then Energy Regulatory Board (ERB) had prescribed. In calculating their respective PPAs, the [electric cooperatives] had no alternative but to adopt the most available data for the respective billing months, i.e. the previous month, due to time lag differences. Under the new PPA confirmation scheme, the actual data for the billing month shall be adopted primarily because they reflect the true cost of power, they are available at the time the confirmation is undertaken and they have already been charged to the end-users. Thus, the new PPA scheme creates a venue where both the [electric cooperatives] can recover and the end-users can be charged the true cost of power. There will also be proper matching of revenue and cost.[27]

As regards the cap on the recoverable rate of system loss, the ERC explained:

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[23] Id. at 92.
[24] Id. at 95.
[25] Id. at 96.
[26] Id.
[27] Id. at 95.

> The caps on the recoverable system loss provided in R.A. 7832 were established to encourage distribution utilities to operate efficiently. Since the PPA is merely a cost recovery mechanism, the [electric cooperatives] are not supposed to earn revenue nor suffer losses therefrom. To allow them to adopt the caps even in cases where the system losses are actually lower would be contrary to the underlying principle of a recovery mechanism.[28]

Finally, with respect to the Prompt Payment Discount (PPD) extended by power suppliers to rural electric cooperatives, the ERC reiterated that rural electric cooperatives should only recover the actual costs of purchased power.[29] Thus, any discounts extended to rural electric cooperatives must necessarily be extended to end-users by charging only the "net" cost of purchased power.

In light of the foregoing clarifications, the ERC outlined the following directives in the said Order:

> A. The computation and confirmation of the PPA prior to the Commission's Order dated June 17, 2003 shall be based on the approved PPA formula;
>
> B. The computation and confirmation of the PPA after the Commission's Order dated June 17, 2003 shall be based on the power cost "net" of discount; and
>
> C. If the approved PPA formula is silent on the terms of discount, the computation and confirmation of the PPA shall be based on the power cost at "gross", subject to the submission of proofs that said discounts are being extended to the end-users.[30]

Subsequently, the ERC issued the following Orders:

1. 22 March 2006 Order in ERC Case No. 2001-338 regarding the monthly PPA implementation of BATELEC I;

2. 16 February 2007 Order in ERC Case No. 2001-338 regarding the monthly PPA implementation of QUEZELCO I;

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[28] Id.
[29] Id. at 96.
[30] Id. at 97.

3. 7 December 2005 Order in ERC Case No. 2001-338 regarding the monthly PPA implementation of QUEZELCO II; and

4. 27 March 2006 Order in ERC Case No. 2001-340 regarding the monthly PPA implementation of PRESCO.

In the said Orders, the ERC clarified its policy on the PPA confirmation scheme previously adopted in its Order dated 14 January 2005. For the distribution utilities to recover only the actual costs of purchased power, the ERC stated the following principles governing the treatment of the PPD granted by power suppliers to distribution utilities including rural electric cooperatives:

> I. The over-or-under recovery will be determined by comparing the Allowable Power Cost with the Distribution Utility's Actual Revenue (AR) billed to end-users.
>
> II. Calculation of the Allowable Power Cost as prescribed in the PPA Formula:
>
> > a. For a Distribution Utility which PPA formula explicitly provides the manner by which discounts availed from the power supplier/s shall be treated, the allowable power cost will be computed based on the specific provision of the formula, which may either be at "net" or "gross"; and
> >
> > b. For a Distribution Utility which PPA formula is silent in terms of discounts, the allowable power cost will be computed at "net" of discounts availed from the power supplier/s, if there is any.
>
> III. Calculation of the Distribution Utility's Actual Revenues/Actual Amount Billed to End-users.
>
> > a. On Actual PPA Computed at Net of Discounts Availed from Power Supplier/s:
> >
> > > a.1. If a Distribution Utility bills at net of discounts availed from the power supplier/s (i.e. Gross power cost minus discounts from power supplier/s) and the Distribution Utility is not extending discounts to end-users, the actual revenue should be equal to the allowable power cost; and

> a.2. If a Distribution Utility bills at net of discounts availed from the power supplier/s (i.e. Gross power cost minus discounts from power supplier/s) and the Distribution Utility is extending discounts to end-users, the discount extended to end-users will be added back to actual revenue.
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> b. On Actual PPA Computed at Gross
>
> b.1. If a Distribution Utility bills at gross (i.e. Gross power cost not reduced by discounts from power supplier/s) and the Distribution Utility is extending discounts to end-users, the actual revenue will be calculated as: Gross Power Revenue less Discounts extended to end-users. The result will then be compared to the allowable power cost; and
>
> b.2. If a Distribution Utility bills at gross (i.e. Gross power cost not reduced by discounts from power supplier/s) and the distribution utility is not extending discounts to end-users, the actual revenue will be taken as is which shall be compared to the allowable power cost.
>
> IV. In calculating the Distribution Utility's actual revenues, in no case shall the amount of discounts extended to end-users be higher than the discounts availed by the Distribution Utility from its power supplier/s.[31]

The ERC then directed petitioners to refund their respective over-recoveries to end-users arising from the implementation of the PPA Clause under R.A. No. 7832 and its IRR, as follows:

1. 22 March 2006 Order[32]

In the Order dated 22 March 2006, the ERC evaluated the monthly PPA implementation of BATELEC I covering the period from February 1996 to September 2004. The verification and confirmation of the PPA implementation was based on the monthly implementation reports, documents and information submitted by BATELEC I in compliance with

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[31] Id. at 34-35, 52-53, 69-70; CA *rollo* (CA-G.R. SP No. 99253), pp. 27-28.
[32] CA *rollo* (CA-G.R. SP No. 99249), pp. 33-40.

the Order dated 19 February 1997 issued by the ERB. The ERC determined that there were over-recoveries amounting to **Fifty Nine Million Twenty One Thousand Nine Hundred Five Pesos (₱59,021,905.00)** equivalent to ₱0.0532/kWh. The ERC outlined the following bases for the over-recoveries:

> 1. For the period August 1998 to May 1999, NPC made an erroneous reading on BATELEC I's meter which resulted to the application of PPA charges at higher sales volume vis-a-vis those utilized in the PPA computation. The system loss adopted in the PPA formula was the running average of the preceding twelve (12) months, which is the period when the erroneous meter reading had not yet occurred. As a result, the PPA formula's denominator which represents the sales volume was lower than the actual sales for the period when the PPA was implemented and the impact of the different "E" (basic charge power cost component) on the said period resulted to a net over-recovery of PhP38,317,933.00;
>
> 2. For the period July 2003 to August 2004, BATELEC I erroneously added back the Power Act Reduction amounting to PhP20,565,981.00 to its total power cost; and
>
> 3. The new grossed-up factor mechanism adopted by the Commission which provided a true-up mechanism that allows the distribution utilities to recover the actual cost of purchased power.[33]

The ERC confirmed the PPA of BATELEC I covering the period from February 1996 to September 2004, and directed BATELEC I "to refund the amount of ₱0.0532/kWh starting on the next billing cycle from receipt of this Order until such time that the full amount shall have been refunded."[34]

2. 16 February 2007 Order[35]

In the Order dated 16 February 2007, the ERC evaluated the monthly PPA implementation of QUEZELCO I for the period from January 1999 to April 2004. QUEZELCO I previously submitted its monthly implementation reports, documents and information for review, verification and confirmation pursuant to the Order dated 19 February 1997 issued by the ERB. The ERC determined that there were over-recoveries amounting to

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[33] Id. at 38-39.
[34] Id. at 39.
[35] Id. at 51-56.

Twenty Million Twenty Seven Thousand Five Hundred Fifty Two Pesos (₱20,027,552.00) equivalent to ₱0.0486/kWh. The ERC outlined the following bases for the over-recoveries:

> 1. For the period July 2003 to April 2004, QUEZELCO I's power cost was not reduced by the PPD availed from its suppliers resulting to an over-recovery of PhP8,457,824.00;
>
> 2. QUEZELCO I failed to comply with the Implementing Rules and Regulations (IRR) of Republic Act No. 7832 x x x which provides that the pilferage recoveries should be deducted from the total purchased power cost used in the PPA computation. Thus, QUEZELCO I's actual PPA should have been reduced by the pilferage recoveries amounting to PhP580,855.00;
>
> 3. QUEZELCO I failed to reflect the power cost adjustments on its PPA as a result of the billing adjustments of NPC under the Credit Memo for the month of June 2003 amounting to PhP4,210,855.00;
>
> 4. QUEZELCO I's power supply agreement with Camarines Norte Electric Cooperative, Inc. (CANORECO) was not approved by the Commission. Thus, the Commission pegged CANORECO's power cost at NPC's total average rate which resulted to an over-recovery of PhP849,324.00;
>
> 5. In computing its PPA, QUEZELCO I included the subsidized consumptions of 2,051,753 kWh which resulted to an over-recovery of PhP1,611,036.00;
>
> 6. The new grossed-up factor mechanism adopted by the Commission which provides a true-up mechanism to allow the DUs to recover the actual costs of purchased power.[36]

The PPA of QUEZELCO I for the period of January 1999 to April 2004 was confirmed by the ERC. In light of the over-recovery, QUEZELCO I was directed "to refund the amount of ₱0.0486/kWh starting the next billing cycle from receipt of this Order until such time that the full amount shall have been refunded."[37]

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[36] Id. at 54-55.
[37] Id. at 55.

3. 7 December 2005 Order[38]

In the Order dated 7 December 2005, the ERC reviewed and verified the monthly PPA implementation of QUEZELCO II covering the period from January 2000 to November 2003, based on the monthly implementation reports, documents and information submitted by the rural electric cooperative. The ERC established that there were over-recoveries amounting to **Five Million Two Hundred Forty Eight Thousand Two Hundred Eighty Two Peso**s **(₱5,248,282.00)** equivalent to ₱0.1000/kWh. The bases of the over-recoveries are as follows:

> 1. QUEZELCO II treated the penalty on excess/below contracted demand in April 2000 as a discount;
>
> 2. For the period May 2000 to November 2000, QUEZELCO II overstated its power cost due to accounts payable for fuel oil consumption from November 1999 to June 2000;
>
> 3. The new grossed-up factor scheme adopted by the Commission which provided a different result vis-a-vis the originally approved formula; and
>
> 4. The Purchased Power Cost was reduced by the Prompt Payment Discount availed from the power suppliers.[39]

The ERC confirmed the PPA of QUEZELCO II for the period of January 2000 to November 2003, and directed QUEZELCO II "to refund the amount of ₱0.1000/kWh starting on the next billing cycle from receipt of this Order until such time that the full amount shall have been refunded."[40]

4. 27 March 2006 Order[41]

In the Order dated 27 March 2006, the ERC evaluated the monthly PPA implementation of PRESCO covering the period of February 1996 to

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38 Id. at 67-72.
39 Id. at 68-69.
40 Id. at 71.
41 CA *rollo* (CA-G.R. SP No. 99253), pp. 26-32.

June 2004. PRESCO previously submitted its monthly PPA implementation reports, documents and information for review, verification and confirmation pursuant to the Order dated 25 April 1997 issued by the ERB. The ERC determined that there were over-recoveries amounting to **Eighteen Million Four Hundred Thirty Eight Thousand Nine Hundred Six Pesos (₱18,438,906.00)** equivalent to ₱0.1851/kWh. The over-recoveries were based on the following:

> 1. In its PPA computation, PRESCO excluded its subsidized consumers in the components of the kWh sales despite that these consumers where being charged with PPA;
>
> 2. Since PRESCO sources its power from the National Power Corporation (NPC) and Angeles Power Incorporated (API), the Commission used PRESCO's actual power cost from API for the years 1998, 1999 (except August), 2000, 2001 and 2002 (January to April only) being lower than NPC's rate. However, for the years 2002 (May to December), 2003 and 2004, the Commission applied NPC's rate being lower than API. x x x x
>
> 3. For the period February 1996 to April 1999, PRESCO utilized the 1.4 multiplier scheme which is roughly equivalent to 29% system loss which resulted to an over-recovery of PhP5,701,173.00; and
>
> 4. The Commission computed PRESCO's allowable power cost at "net" of the Power Factor Discount (PFD) and Prompt Payment Discount (PPD) availed from NPC at PhP2,185,812.00. PRESCO did not extend the discounts to the end users. Thus, the Commission considered PRESCO's actual revenue.[42]

The ERC confirmed the PPA of PRESCO for the period of February 1996 to June 2004, and directed PRESCO "to refund the amount of ₱0.1851/kWh starting the next billing cycle from receipt of this Order until such time that the full amount shall have been refunded."[43]

Petitioners thereafter filed their respective motions for reconsideration of the foregoing Orders. On 9 May 2007, the ERC issued Orders denying the motions for reconsideration filed by the petitioners.[44]

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[42] Id. at 29-30.
[43] Id. at 30.
[44] CA *rollo* (CA-G.R. SP No. 99249), pp. 50, 66, 76; CA *rollo* (CA-G.R. SP No. 55253), p. 43.

On 28 June 2007, BATELEC I, QUEZELCO I and QUEZELCO II filed with the Court of Appeals a Petition for Review under Rule 43 of the Rules of Court, assailing the 22 March 2006 Order, 16 February 2007 Order and 7 December 2005 Order of the ERC directing the rural electric cooperatives to refund their respective over-recoveries. The petition also assailed the 9 May 2007 Orders of the ERC denying the motions for reconsideration of BATELEC I, QUEZELCO I and QUEZELCO II. The case was docketed as CA-G.R. SP No. 99249. On the same date, PRESCO also filed with the Court of Appeals a Petition for Review under Rule 43 of the Rules of Court, assailing the 27 March 2006 Order of the ERC directing the rural electric cooperative to refund its over-recoveries. The petition likewise assailed the 9 May 2007 Order of the ERC denying the motion for reconsideration of PRESCO. The case was docketed as CA-G.R. SP No. 99253. The Court of Appeals subsequently consolidated these cases with the petitions filed by other rural electric cooperatives and their associations in relation to the refund of their respective over-recoveries. The consolidated cases include CA-G.R. SP Nos. 99249, 99250,[45] 99251,[46] 99252,[47] 99253,

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[45] The case was entitled: "North Western Luzon Electric Cooperatives Association, Inc. (NWELECA), consisting of INEC, ISECO, LUELCO, PANELCO I, CENPELCO, and PANELCO III; and North Eastern Electric Cooperatives Association, Inc. (NELECA), consisting of BATANELCO, CAGELCO I, CAGELCO II, ISELCO I, ISELCO II, NUVELCO, and QUIRELCO v. Energy Regulatory Commission."

[46] The case was entitled: "Association of Mindanao Rural Electric Cooperatives, Inc. (AMRECO), consisting of MOELCI I, MOELCI II, MORESCO I, MORESCO II, FIBECO, BUSECO, CAMELCO, and LANELCO v. Energy Regulatory Commission."

[47] The case was entitled: "Western Visayas Electric Cooperatives Association, Inc. (WEVECA), consisting of AKELCO, ANTECO, CAPELCO, ILECO I, ILECO II, ILECO III, GUIMELCO, VRESCO, CENECO, and NOCECO; Central Visayas Electric Cooperatives Association, Inc. (CEVECA), consisting of NORECO I, NORECO II, BANELCO, CEBECO I, CEBECO II, CEBECO III, PROSIELCO, CELCO, BOHECO I, and BOHECO II; and Leyte Samar Electric Cooperatives Association, Inc. (LESECA), consisting of LEYECO I, DORELCO, LEYECO II, LEYECO III, LEYECO IV, LEYECO V, SOLECO, BILECO, NORSAMELCO, SAMELCO I, SAMELCO II, and ESAMELCO v. Energy Regulatory Commission."

99267,[48] 99269,[49] 99270,[50] 99271,[51] 99272,[52] 99273,[53] 99323,[54] 99462,[55] 99782,[56] 100671,[57] and 100822.[58]

The rural electric cooperatives similarly raised the following issues in the consolidated cases:

> 1. Whether the system loss caps prescribed under Section 10 of R.A. 7832 are arbitrary and violative of the non-impairment clause, therefore, invalid and unconstitutional;
>
> 2. Whether the system loss caps should still be imposed even after the effectivity of R.A. 9136;
>
> 3. Whether the ERC may validly issue rules and regulations for the implementation of the provisions of R.A. No. 7832 by way of Orders or Decisions with retroactive effect;
>
> 4. Whether petitioners were denied due process of law by the non-disclosure and non-issuance of guidelines or rules in the implementation of the alleged "Gross Up Factor Mechanism" in the "confirmation process";
>
> 5. Whether the ERC observed the proper issuance of orders and resolutions;
>
> 6. Whether the denial of petitioners' motions for reconsideration of the assailed Orders with only one Commissioner affixing his signature thereto is valid;
>
> 7. Whether the ERC has legal and factual bases to charge petitioners with over-recoveries and to order the refund thereof for having (1) implemented an "E" that is different from that imposed in the ERB

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[48] The case was entitled: "Nueva Viscaya Electric Coop., Inc. (NUVELCO) v. Energy Regulatory Commission."

[49] The case was entitled: "Nueva Ecija II Electric Coop., Inc. - Area 2 (NEECO II-Area II) v. Energy Regulatory Commission."

[50] The case was entitled: "Sultan Kudarat Electric Coop., Inc. (SUKELCO) v. Energy Regulatory Commission."

[51] The case was entitled: "Lanao Del Norte Electric Coop., Inc. (LANECO) v. Energy Regulatory Commission."

[52] The case was entitled: "Ifugao Electric Coop., Inc. (IFELCO) v. Energy Regulatory Commission."

[53] The case was entitled: "Camarines Norte Electric Coop., Inc. (CANORECO) v. Energy Regulatory Commission."

[54] The case was entitled: "South Cotabato I Electric Coop., Inc. (SOTOTECO I) v. Energy Regulatory Commission."

[55] The case was entitled: "Misamis Occidental I Electric Coop., Inc. (MOELCI I) v. Energy Regulatory Commission."

[56] The case was entitled: "Misamis Oriental I Electric Coop., Inc. (MORESCO I) v. Energy Regulatory Commission."

[57] The case was entitled: "Misamis Oriental II Electric Coop., Inc. (MORESCO II) v. Energy Regulatory Commission."

[58] The case was entitled: "Davao Oriental Electric Coop., Inc. (DORECO) v. Energy Regulatory Commission."

formula and (2) used the multiplier scheme originally approved by the NEA;

8. Whether the prompt payment discount and other discounts extended to petitioners by their power supplier, the NPC, may validly be refunded to the consumers;

9. Whether the alleged over-recoveries were arrived at without giving petitioners the opportunity to be heard.[59]

The Ruling of the Court of Appeals

In its 23 December 2008 Decision, the Court of Appeals denied the petitions for review of the rural electric cooperatives, and affirmed the Orders of the ERC directing the various rural electric cooperatives to refund their respective over-recoveries. At the outset, the Court of Appeals stated that "to the extent that the administrative agency has not been arbitrary or capricious in the exercise of its power, the time-honored principle is that courts should not interfere."[60]

With respect to the constitutionality of Section 10 of R.A. No. 7832, the Court of Appeals ruled that the challenge amounts to a collateral attack that is prohibited by public policy.[61]

With regard to the imposition of the system loss caps after the effectivity of the EPIRA, the Court of Appeals recognized the amendment to Section 10 of R.A. No. 7832. Section 43 (f) of the EPIRA provides that "the cap on the recoverable rate of system losses prescribed in Section 10 of Republic Act No. 7832, is hereby amended and shall be replaced by caps which shall be determined by the ERC based on load density, sales mix, cost of service, delivery voltage and other technical considerations it may promulgate." The Court of Appeals, however, stated:

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59 *Rollo*, pp. 45-46.
60 Id. at 46. Citation omitted.
61 Id. at 47.

> [W]hile the **EPIRA** had already specifically amended the system loss caps mandated under Section 10 of **R.A. No. 7832**, respondent **ERC** still had to go through the tedious process of determining the technical considerations in order to come up with the rate-setting methodology that shall promote the efficiency of distribution utilities as envisioned by the law. Before they could be replaced, however, the caps used in the ERB formula remain, as asserted by the **OSG**. For this reason, petitioners cannot insist that the reinforcement of said system loss caps be discontinued after the passage of the **EPIRA** on June 8, 2001. In fact, as already stated, it was only in October, 2004 that respondent **ERC** was able to promulgate the **AGRA** [or the Automatic Adjustment of Generation Rates and System Loss Rates by Distribution Utilities], which could effectively replace the **PPA**. Thus, for the periods covered by the **ERC** confirmation (February 1996 to September 2004), respondent **ERC** did not abuse its discretion in using the system loss caps in the ERB formula.[62]

The Court of Appeals likewise rejected the contention of petitioners that the ERC issued rules and regulations for the implementation of the provisions of R.A. No. 7832 by way of orders or decisions with retroactive effect. According to the Court of Appeals, the confirmation process of the ERC encompassed PPA implementation periods after the effectivity of R.A. No. 7832, particularly from February 1996 to September 2004.[63] Thus, the Court of Appeals concluded that there was no retroactive application of the law.

The Court of Appeals further rejected the claim of denial of due process. The Court of Appeals ruled:

> Petitioners likewise failed to show to Our satisfaction that the guidelines contained in the assailed Orders of respondent **ERC** went beyond merely providing for the means that can facilitate or render less cumbersome the implementation of the law. Interpretative rules give no real consequence more than what the law itself has already prescribed, and are designed merely to provide guidelines to the law which the administrative agency is in charge of enforcing.[64]

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62 Id. at 50-51.
63 Id. at 49.
64 Id. at 54. Citation omitted.

As regards the validity of the denial of petitioners' motions for reconsideration, the Court of Appeals noted that the Orders specifically indicated that the signature of the Commissioner was "FOR AND BY AUTHORITY OF THE COMMISSION."[65] The Court of Appeals stated that the ERC examined the motions for reconsideration as a collegial body.[66] It further emphasized that the interests of substantial justice prevail over the strict application of technical rules.[67]

The Court of Appeals further ruled that the ERC had legal and factual bases in charging petitioners with over-recoveries. The Court of Appeals stated:

> Prior to the enactment of **R.A. No. 7832**, petitioners used the **Multiplier Scheme** implemented by the **NEA** [National Electrification Administration] to recover incremental costs in the power purchased from **NPC** – the sole agency authorized to generate electric power before the enactment of the **EPIRA** – and consequent system losses that are not included in their respective approved basic rates. With the use of multipliers ranging from 1.2 to 1.4, depending on their actual system losses, petitioners were allowed to automatically adjust their rates when cost of power purchased from **NPC** changes, thus:
>
> > 1.2 Multiplier – For ECs with system loss of 15% and below;
> > 1.3 Multiplier – For ECs with system loss ranging from 16% to 22%; and
> > 1.4 Multiplier – For ECs with system loss ranging from 23% and above.
>
> The **NEA** likewise approved the inclusion in the basic rates of a separate item for **Loss Levy Charge** for those electric cooperatives (**EC**s) whose loan covenants with financial institutions such as the Asian Development Bank (**ADB**) limit their recoverable system loss to 15%. Thus, petitioners charged their consumers "System Loss Levy" for system losses in excess of 15%.
>
> Petitioners admitted having continued to use the pricing mechanisms authorized by the **NEA** even after the passage of **R.A. No. 7832**, which repealed the same. Needless to say, the use of said mechanisms allowed the recovery of system losses beyond the caps set by the said law. Petitioners cannot, therefore, successfully argue that respondent **ERC** had no basis in charging them of over-recoveries as a result of their failure to comply with the law.[68]

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65 Id.
66 Id.
67 Id.
68 Id. at 48. Citations omitted.

With respect to the PPD and other discounts extended by power suppliers, the Court of Appeals emphasized that rural electric cooperatives may only recover the actual cost of purchased power. The Court of Appeals stated:

> [N]o error can likewise be attributed to respondent **ERC** in directing the implementation of the respective **PPA** of the petitioners using the power cost net of discounts. As held in the case of *National Power Corporation vs. Philippine Electric Plant Owners Associaton (PEPOA), Inc.*, discounts are not amounts paid or charged for the sale of electricity, but are reductions in rates. Moreover, We emphasized here that rate fixing calls for a technical examination and specialized review of specific details which the courts are ill-equipped to enter, hence, such matters are primarily entrusted to the administrative or regulating authority. Towards this end, the administrative agency, respondent **ERC** in this case, possesses the power to issue rules and regulations to implement the statute which it is tasked to enforce, and whatever is incidentally necessary to a full implementation of the legislative intent should be upheld as germane to the law. Respondent **ERC** is mandated to prescribe a rate-setting methodology "in the public interest" and "to promote efficiency", hence its goal of fixing purchased power at actual cost should be upheld.[69]

The Court of Appeals further rejected the claim that petitioners were deprived of the opportunity to be heard. The Court of Appeals gave credence to the assertion of the Office of the Solicitor General that "petitioners were allowed to justify their **PPA** charges through the documents that they were required to file; that the technical staff of the **ERC** conducted exit conferences with petitioners' representatives to discuss preliminary figures and they were authorized to go over the working papers to check out inaccuracies; and that petitioners were allowed to file their respective motions for reconsideration after the issuance of the **PPA** confirmation Orders."[70]

The rural electric cooperatives thereafter filed their respective motions for reconsideration of the 23 December 2008 Decision of the Court of Appeals. In its 26 April 2010 Resolution, the Court of Appeals denied the

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[69] Id. at 52-53. Citations omitted.
[70] Id. at 53.

motions for reconsideration. The Court of Appeals observed that the issues raised in the motions for reconsideration were "mere reiterations" of the issues addressed in the 23 December 2008 Decision.[71] The Court of Appeals further stated:

> Nonetheless, We find that the following disquisition of the Office of the Solicitor General amply supports the affirmance of the assailed Decision, thus:
>
> > "12. Notably, respondent did not impose rules to set new rates, rather, it merely confirmed whether petitioners have faithfully complied with the requirements of recoveries under the provisionally approved PPA formula. There is therefore nothing new or novel about the confirmation policies of respondent as to give any occasion to retroactivity.
> >
> > 13. Equally significant, it should be underscored that from the beginning, petitioners' authority to recover their losses based on the PPA formula were PROVISIONAL, that is, the authority granted to petitioners for recoveries and the mode of its implementation is subject to further reconfirmation by respondent ERC. The erstwhile ERB earlier allowed electric cooperatives to implement their PPA based on the PPA formula that the ERB provisionally approved. As spelled out in the Order of approval, however, such authorization was provisional and temporary, that is, it is subject to regulation and post hoc review, verification and confirmation by the ERB.
> >
> > x x x
> >
> > 14. By its very nature, the PPA confirmation process is a post hoc review of charges already implemented. It is therefore crystal clear from the approval of the application of the PPA that such authorization was conditioned on subsequent review by the regulating body. Thus, the Order did not only approve the implementation of the PPA but also (a) directed the electric cooperatives 'to submit their monthly implementation of the PPA formula for the board's review, verification and confirmation;' and (b) directed the Commission on Audit to cause an audit of all the accounts and other records of all the electric cooperatives to aid the Board in the determination of rates.
> >
> > 15. That the electric cooperatives were allowed to implement their PPA after the provisional approval of the PPA formula did not divest the regulator of the power to

[71] Id. at 62.

> determine the reasonableness of the said charges or the electric cooperatives' entitlement thereto. Such power necessarily includes the power to adopt such policies as would assist the regulator in its determination of the 'reasonableness' of such PPA charges implemented by electric cooperatives. The implementation was provisionally approved and subject to the changes that the regulator can make, in the exercise of its rate-setting authority and subject to the 'reasonableness' standard under the law x x x."

Suffice to state that with regard to rate-determination, the government is not hidebound to apply any particular method or formula. What is a just and reasonable rate cannot be fixed by any immutable method or formula. In other words, no public utility has the vested right to any particular method of valuation. The administrative agency is not duty bound to apply any one particular formula or method simply because the same method has been previously used and applied.

The issues on the alleged retroactive application and denial of due process had been adequately addressed in the Decision dated December 23, 2008. We reiterate that the periods covered by the ERC confirmation subject of the petitions, spanning from February 1996 to September 2004, fell after the effectivity of R.A. No. 7832, the constitutionality of which petitioners continue, albeit erroneously, to assail in the instant motions. With respect to the alleged lack of trial-type hearing, it is settled that the essence of due process in administrative proceedings is merely the opportunity to explain one's side or to seek reconsideration of the action or ruling complained of. Where an opportunity to be heard is accorded, as in this case, there is no denial of due process. Neither was there a need for the assailed Orders of the ERC to be published as petitioners so adamantly insist. As pointed out by the OSG, said Orders did not create a new obligation, impose a new duty, or attach a new disability on the electric cooperatives. They merely clarified the policy guidelines adopted in the implementation of the PPA. As We have said, interpretative rules give no real consequence more than what the law itself has already prescribed.[72]

Hence, this instant petition filed by BATELEC I, QUEZELCO I, QUEZELCO II and PRESCO.

The Issues

Petitioners raise the following issues:

1. Whether the policy guidelines issued by the ERC on the treatment of discounts extended by power suppliers are

[72] Id. at 62-64. Citations omitted.

ineffective and invalid for lack of publication, non-submission to the University of the Philippines (U.P.) Law Center, and their retroactive application; and

2. Whether the grossed-up factor mechanism implemented by the ERC in the computation of the over-recoveries is ineffective and invalid for lack of publication, non-submission to the U.P. Law Center, and its retroactive application.

The Ruling of the Court

The petition is partly meritorious.

I.

Petitioners assail the validity of the 22 March 2006 Order,[73] 16 February 2007 Order,[74] 7 December 2005 Order,[75] and 27 March 2006 Order[76] of the ERC directing the refund of over-recoveries for having been issued pursuant to ineffective and invalid policy guidelines. Petitioners assert that the policy guidelines on the treatment of discounts extended by power suppliers are ineffective and invalid for lack of publication, non-submission to the U.P. Law Center, and their retroactive application.

Publication is a basic postulate of procedural due process. The purpose of publication is to duly inform the public of the contents of the laws which govern them and regulate their activities.[77] Article 2 of the Civil

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[73] The 22 March 2006 Order was issued in ERC Case No. 2001-338 regarding the monthly PPA implementation of BATELEC I.

[74] The 16 February 2007 Order was issued in ERC Case No. 2001-338 regarding the monthly PPA implementation of QUEZELCO I.

[75] The 7 December 2005 Order was issued in ERC Case No. 2001-338 regarding the monthly PPA implementation of QUEZELCO II.

[76] The 27 March 2006 Order was issued in ERC Case No. 2001-340 regarding the monthly PPA implementation of PRESCO.

[77] *Tañada v. Tuvera*, 230 Phil. 528, 534-536 (1986). In *Tañada v. Tuvera*, this Court expounded on the reason for the requirement of publication in this wise:

Code, as amended by Section 1 of Executive Order No. 200, states that "[l]aws shall take effect after fifteen days following the completion of their publication either in the Official Gazette or in a newspaper of general circulation in the Philippines, unless it is otherwise provided." Section 18, Chapter 5, Book I of Executive Order No. 292 or the Administrative Code of 1987 similarly provides that "[l]aws shall take effect after fifteen (15) days following the completion of their publication in the *Official Gazette* or in a newspaper of general circulation, unless it is otherwise provided."

Procedural due process demands that administrative rules and regulations be published in order to be effective.[78] In *Tañada v. Tuvera*, this Court articulated the fundamental requirement of publication, thus:

> We hold therefore that *all* statutes, including those of local application and private laws, shall be published as a condition for their effectivity, which shall begin fifteen days after publication unless a different effectivity date is fixed by the legislature.
>
> Covered by this rule are presidential decrees and executive orders promulgated by the President in the exercise of legislative powers whenever the same are validly delegated by the legislature or, at present, directly conferred by the Constitution. **Administrative rules and regulations must also be published if their purpose is to enforce or implement existing law pursuant also to a valid delegation**.[79] (Boldfacing supplied)

"It is not correct to say that under the disputed clause publication may be dispensed with altogether. The reason is that such omission would offend due process insofar as it would deny the public knowledge of the laws that are supposed to govern it. Surely, if the legislature could validly provide that a law shall become effective immediately upon its approval notwithstanding the lack of publication (or after an unreasonably short period after publication), it is not unlikely that persons not aware of it would be prejudiced as a result; and they would be so not because of a failure to comply with it but simply because they did not know of its existence. x x x x

We note at this point the conclusive presumption that every person knows the law, which of course presupposes that the law has been published if the presumption is to have any legal justification at all. It is no less important to remember that Section 6 of the Bill of Rights recognizes 'the right of the people to information on matters of public concern,' and this certainly applies to, among others, and indeed especially, the legislative enactments of the government." *Tañada v. Tuvera*, 230 Phil. 528, 534 (1986).

[78] *National Association of Electricity Consumers for Reforms (NASECORE) v. Energy Regulatory Commission*, 517 Phil. 23, 61-62 (2006); *Republic of the Phils. v. Express Telecommunication Co., Inc.*, 424 Phil. 372, 393 (2002).

[79] *Tañada v. Tuvera*, 230 Phil. 528, 535 (1986).

There are, however, several exceptions to the requirement of publication. First, an interpretative regulation does not require publication in order to be effective.[80] The applicability of an interpretative regulation "needs nothing further than its bare issuance for it gives no real consequence more than what the law itself has already prescribed."[81] It "add[s] nothing to the law" and "do[es] not affect the substantial rights of any person."[82] Second, a regulation that is merely internal in nature does not require publication for its effectivity.[83] It seeks to regulate only the personnel of the administrative agency and not the general public.[84] Third, a letter of instruction issued by an administrative agency concerning rules or guidelines to be followed by subordinates in the performance of their duties does not require publication in order to be effective.[85]

The policy guidelines of the ERC on the treatment of discounts extended by power suppliers are interpretative regulations. The policy guidelines merely interpret R.A. No. 7832 and its IRR, particularly on the computation of the cost of purchased power. The policy guidelines did not modify, amend or supplant the IRR.

The policy guidelines were first enunciated by the ERC in its 17 June 2003 Order. In the said Order, the ERC explained that the cost of electricity purchased and generated is computed at "gross" if the discounts extended by the power supplier are not passed on to end-users, while the cost of electricity is computed at "net" if the discounts are passed on to end-users.[86] The ERC subsequently issued its 14 January 2005 Order. It emphasized therein that rural electric cooperatives should only recover the actual costs of

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80 Id.
81 *Commissioner of Internal Revenue v. Court of Appeals*, 329 Phil. 987, 1007 (1996).
82 *The Veterans Federation of the Philippines v. Reyes*, 518 Phil. 668, 704 (2006).
83 *Tañada v. Tuvera*, supra note 79.
84 Id.
85 Id.
86 CA *rollo* (CA-G.R. SP No. 99249), p. 82.

purchased power.[87] Any discounts extended to rural electric cooperatives must therefore be extended to end-users by charging only the "net" cost of purchased power. The ERC issued the following directives in the said Order:

> A. The computation and confirmation of the PPA prior to the Commission's Order dated June 17, 2003 shall be based on the approved PPA formula;
>
> B. The computation and confirmation of the PPA after the Commission's Order dated June 17, 2003 shall be based on the power cost "net" of discount; and
>
> C. If the approved PPA formula is silent on the terms of discount, the computation and confirmation of the PPA shall be based on the power cost at "gross", subject to the submission of proofs that said discounts are being extended to the end-users.[88]

The ERC thereafter clarified its policy guidelines in the 22 March 2006 Order, 16 February 2007 Order, 7 December 2005 Order and 27 March 2006 Order. The ERC outlined the following principles governing the treatment of the PPD extended by power suppliers to distribution utilities including rural electric cooperatives:

> I. The over-or-under recovery will be determined by comparing the Allowable Power Cost with the Distribution Utility's Actual Revenue (AR) billed to end-users.
>
> II. Calculation of the Allowable Power Cost as prescribed in the PPA Formula:
>
> > a. For a Distribution Utility which PPA formula explicitly provides the manner by which discounts availed from the power supplier/s shall be treated, the allowable power cost will be computed based on the specific provision of the formula, which may either be at "net" or "gross"; and
> >
> > b. For a Distribution Utility which PPA formula is silent in terms of discounts, the allowable power cost will be computed at "net" of discounts availed from the power supplier/s, if there is any.

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87 Id. at 96.
88 Id. at 97.

> III. Calculation of the Distribution Utility's Actual Revenues/Actual Amount Billed to End-users.
>
> a. On Actual PPA Computed at Net of Discounts Availed from Power Supplier/s:
>
> a.1. If a Distribution Utility bills at net of discounts availed from the power supplier/s (i.e. Gross power cost minus discounts from power supplier/s) and the distribution utility is not extending discounts to end-users, the actual revenue should be equal to the allowable power cost; and
>
> a.2. If a Distribution Utility bills at net of discounts availed from the power supplier/s (i.e. Gross power cost minus discounts from power supplier/s) and the distribution utility is extending discounts to end-users, the discount extended to end-users will be added back to actual revenue.
>
> b. On Actual PPA Computed at Gross
>
> b.1. If a Distribution Utility bills at gross (i.e. Gross power cost not reduced by discounts from power supplier/s) and the distribution utility is extending discounts to end-users, the actual revenue will be calculated as: Gross Power Revenue less Discounts extended to end-users. The result will then be compared to the allowable power cost; and
>
> b.2. If a Distribution Utility bills at gross (i.e. Gross power cost not reduced by discounts from power supplier/s) and the distribution utility is not extending discounts to end-users, the actual revenue will be taken as is which shall be compared to the allowable power cost.
>
> IV. In calculating the Distribution Utility's actual revenues, in no case shall the amount of discounts extended to end-users be higher than the discounts availed by the Distribution Utility from its power supplier/s.[89]

The above-stated policy guidelines of the ERC on the treatment of discounts merely interpret the cost of purchased power as a component of the PPA formula provided in Section 5, Rule IX of the IRR of R.A.

[89] Id. at 34-35, 52-53, 69-70; CA *rollo* (CA-G.R. SP No. 99253), pp. 27-28.

No. 7832. The cost of purchased power is denominated as the variable "A" in the numerator of the PPA formula, particularly:

> Section 5. *Automatic Cost Adjustment Formula*. –
>
> x x x x
>
> The automatic cost adjustment of every electric cooperative shall be guided by the following formula:
>
> Purchased Power Adjustment Clause
>
> $$(\text{PPA}) = \frac{A}{B-(C+D)} - E$$
>
> Where:
>
> **A = Cost of electricity purchased and generated for the previous month**
>
> B = Total Kwh purchased and generated for the previous month
>
> C = The actual system loss but not to exceed the maximum recoverable rate of system loss in Kwh plus actual company use in Kwhrs but not to exceed 1% of total Kwhrs purchased and generated
>
> D = Kwh consumed by subsidized consumers
>
> E = Applicable base cost of power equal to the amount incorporated into their basic rate per Kwh (Boldfacing supplied)

The cost of purchased power expressed as the variable "A" in the numerator of the PPA formula is plain and unambiguous. Webster's Third New International Dictionary defines the term "cost" as "an item of outlay incurred in the operation of a business enterprise (as for the purchase of raw materials, labor, services, supplies) including the depreciation and amortization of capital assets."[90] Black's Law Dictionary defines the term "cost" as "[t]he amount paid or charged for something; price or expenditure."[91] When the policy guidelines of the ERC directed the

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[90] WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 515 (1993).
[91] BLACK'S LAW DICTIONARY 371 (8th ed. 2005).

exclusion of discounts extended by power suppliers in the computation of the cost of purchased power, the guidelines merely affirmed the plain and unambiguous meaning of "cost" in Section 5, Rule IX of the IRR of R.A. No. 7832. "Cost" is an item of outlay, and must therefore exclude discounts since these are "*not* amounts paid or charged for the sale of electricity, but are *reductions in rates*."[92]

Furthermore, the policy guidelines of the ERC uphold and preserve the nature of the PPA formula. The nature of the PPA formula precludes an interpretation that includes discounts in the computation of the cost of purchased power. The PPA formula is an adjustment mechanism the purpose of which is purely for the recovery of cost. In *National Association of Electricity Consumers for Reforms (NASECORE) v. Energy Regulatory Commission*,[93] this Court noted the explanation of the ERC on the nature and purpose of an adjustment mechanism:

> It is clear from the foregoing that "escalator" or "tracker" or any other similar automatic adjustment clauses are merely cost recovery or cost "flow-through" mechanisms; that what they purport to cover are operating costs only which are very volatile and unstable in nature and over which the utility has no control; and that the use of the said clauses is deemed necessary to enable the utility to make the consequent adjustments on the billings to its customers so that ultimately its rate of return would not be quickly eroded by the escalations in said costs of operation. The total of all rate adjustments should not operate to increase overall rate of return for a particular utility company above the basic rates approved in the last previous rate case (*Re Adjustment Clause in Telephone Rate Schedules, 3 PUR 4th 298, N.J. Bd. of Pub. Util.Comm'rs., 1973. Affirmed 66 N.J. 476, 33 A.2d 4, 8 PUR 4th 36, N.J.,1975*).[94]

Rural electric cooperatives cannot therefore incorporate in the PPA formula costs that they did not incur. Consumers must not shoulder the gross cost of purchased power; otherwise, rural electric cooperatives will unjustly profit from discounts extended to them by power suppliers. In the

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92 *National Power Corporation v. Philippine Electric Plant Owners Association (PEPOA), Inc.*, 521 Phil. 73, 88 (2006).

93 517 Phil. 23 (2006).

94 Id. at 47-48.

Consolidated Comment of the ERC, the Solicitor General correctly pointed out:

> 34.4. Second, [t]he ERC's PPA confirmation policies were in consonance with the rule that electric cooperatives may only recover costs to the extent of the amount they actually incurred in the purchase of electricity. **The PPA remained to be the difference between the electric cooperative's actual allowable power costs as translated to PhP/kWh and the electric cooperative's approved Basic Rate. This was also how the Cost Adjustment Formula was defined in the IRR of R.A. No. 7832.**
>
> 34.5. Contrary to petitioners' assertions, therefore, the policy did not deviate from the ERB's provisionally-approved PPA formula but merely implemented the policy set out in R.A. No. 7832, that is, it is *strictly for the purpose of cost recovery only.* Obviously, if the PPA is computed without factoring the discounts given by power suppliers to electric cooperatives, electric cooperatives will impermissibly retain or even earn from the implementation of the PPA.[95]

Thus, the policy guidelines of the ERC on the treatment of discounts extended by power suppliers "give[] no real consequence more than what the law itself has already prescribed."[96] Publication is not necessary for the effectivity of the policy guidelines.

As interpretative regulations, the policy guidelines of the ERC on the treatment of discounts extended by power suppliers are also not required to be filed with the U.P. Law Center in order to be effective. Section 4, Chapter 2, Book VII of the Administrative Code of 1987 requires every rule adopted by an agency to be filed with the U.P. Law Center to be effective. However, in *Board of Trustees of the Government Service Insurance System v. Velasco*,[97] this Court pronounced that "[n]ot all rules and regulations adopted by every government agency are to be filed with the UP Law Center."[98] Interpretative regulations and those merely internal in nature are not required to be filed with the U.P. Law Center.[99] Paragraph 9 (a) of the Guidelines for

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[95] *Rollo*, p. 276.
[96] *Commissioner of Internal Revenue v. Court of Appeals*, 329 Phil. 987, 1007 (1996).
[97] G.R. No. 170463, 2 February 2011, 641 SCRA 372.
[98] Id. at 383.
[99] Id.

Receiving and Publication of Rules and Regulations Filed with the U.P. Law Center[100] states:

> 9. Rules and Regulations which need not be filed with the U.P. Law Center, shall, among others, include but not be limited to, the following:
>
> a. Those which are interpretative regulations and those merely internal in nature, that is, regulating only the personnel of the Administrative agency and not the public[.]

Petitioners further assert that the policy guidelines are invalid for having been applied retroactively. According to petitioners, the ERC applied the policy guidelines to periods of PPA implementation prior to the issuance of its 14 January 2005 Order.[101] In *Republic v. Sandiganbayan*,[102] this Court recognized the basic rule "that no statute, decree, ordinance, rule or regulation (or even policy) shall be given retrospective effect unless explicitly stated so."[103] A law is retrospective if it "takes away or impairs vested rights acquired under existing laws, or creates a new obligation and imposes a new duty, or attaches a new disability, in respect of transactions or consideration already past."[104]

The policy guidelines of the ERC on the treatment of discounts extended by power suppliers are not retrospective. The policy guidelines did not take away or impair any vested rights of the rural electric cooperatives. The usage and implementation of the PPA formula were provisionally approved by the ERB in its Orders dated 19 February 1997[105] and 25 April 1997.[106] The said Orders specifically stated that the provisional approval of the PPA formula was subject to review, verification and confirmation by the ERB. Thus, the rural electric cooperatives did not acquire any vested rights

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100 Memorandum dated 21 May 1990 of Associate Dean Merlin M. Magallona, Supervisor of the U.P. Law Center, to the Acting Head, Information and Publication Division of the U.P Law Center.
101 *Rollo*, pp. 10-11.
102 355 Phil. 181 (1998).
103 Id. at 198.
104 *Castro v. Sagales*, 94 Phil. 208, 210 (1953), citing 50 Am. Jur. p. 505.
105 The Order dated 19 February 1997 was issued in ERB Case Nos. 96-35, 96-36, 96-43, 96-49.
106 The Order dated 25 April 1997 was issued in ERB Case No. 96-37.

in the usage and implementation of the provisionally approved PPA formula.

Furthermore, the policy guidelines of the ERC did not create a new obligation and impose a new duty, nor did it attach a new disability. As previously discussed, the policy guidelines merely interpret R.A. No. 7832 and its IRR, particularly on the computation of the cost of purchased power. The policy guidelines did not modify, amend or supplant the IRR.

II.

Petitioners further assail the validity of the 22 March 2006 Order, 16 February 2007 Order, 7 December 2005 Order and 27 March 2006 Order of the ERC directing the refund of over-recoveries for having been issued pursuant to an ineffective and invalid grossed-up factor mechanism. Petitioners claim that the grossed-up factor mechanism implemented by the ERC in the review, verification and confirmation of the PPA is ineffective and invalid for lack of publication, non-submission to the U.P. Law Center, and its retroactive application.

It does not appear from the records that the grossed-up factor mechanism was published or submitted to the U.P. Law Center. The ERC did not dispute the claim of petitioners that the grossed-up factor mechanism was not published, nor did the ERC dispute the claim that the grossed-up factor mechanism was not disclosed to the rural electric cooperatives prior to the review, verification and confirmation of the PPA.[107] The 22 March 2006 Order and 16 February 2007 Order merely stated that one of the bases of the over-recoveries was "[t]he **new** grossed-up factor mechanism adopted by the Commission which provided a true-up mechanism that allows the distribution utilities to recover the actual cost of purchased power."[108] The 7

[107] *Rollo*, pp. 10-11.
[108] CA *rollo* (CA-G.R. SP No. 99249), pp. 39, 55. Boldfacing supplied.

December 2005 Order similarly stated that one of the bases of the over-recoveries was "[t]he **new** grossed-up factor scheme adopted by the Commission which provided a **different result** vis-a-vis the originally approved formula."[109] The ERC did not explain or disclose in the said Orders any details regarding the grossed-up factor mechanism.

Based on the records, the first instance wherein the ERC disclosed the details of the grossed-up factor mechanism was in its comments filed with the Court of Appeals in CA-G.R. SP Nos. 99249 and 99253 on 1 August 2008 and 9 October 2007, respectively.[110] The ERC reiterated the details of the grossed-up factor mechanism in its Consolidated Comment filed with this Court on 28 February 2011.[111] The ERC illustrated the application of the grossed-up factor mechanism in the following manner:

> Given:
>
> Kwh Purchased – 100,000 Kwh
>
> Cost of Purchased Power – PhP300,000.00
>
> Kwh Sales – 89,000 Kwh
>
> Coop Use – 1,000 Kwh
>
> System Loss – 10% or 10,000 Kwh
>
> **Gross-Up Factor =** $\dfrac{\textbf{\textit{Kwh Sales}} + \textbf{\textit{Coop Use}}}{\textbf{\textit{Kwh Purchased}}\,(1 - \%\ \textbf{\textit{System Loss}})}$
>
> Gross-up Factor = $\dfrac{89{,}000 + 1{,}000}{100{,}000\,(1 - 10\%)}$
>
> Gross-up Factor = $\dfrac{90{,}000}{90{,}000} = 1$
>
> The Gross-up Factor, which [in this illustration] is equivalent to 1, will be used in determining the recoverable power cost of an [electric cooperative], such that:

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109 Id. at 68. Boldfacing supplied.

110 See CA *rollo* (CA-G.R. SP No. 99249), p. 207 n. 11; CA *rollo* (CA-G.R. SP No. 99253), pp. 144-145 n. 3.

111 *Rollo*, pp. 267-268.

> **Recoverable Cost = Gross-Up Factor x Cost of Purchased Power**
>
> Recoverable Cost = 1 x PhP300,000.00 = PhP300,000.00[112]
> (Boldfacing supplied)

In its Consolidated Comment, the ERC stated that the PPA "captures the incremental cost in purchased and generated electricity plus recoverable system loss in excess of what had already been included as power cost component in the electric cooperative's basic rates."[113] On the other hand, the grossed-up factor mechanism is a "mathematical calculation that ensures that the electric cooperatives are able to recover costs incurred from electricity purchased and generated plus system loss components within allowable limits."[114] The ERC proceeded to explain the relationship between the PPA and the grossed-up factor mechanism thus:

> 20.2 This gross-up factor mechanism did not modify the [PPA] formula or state how the PPA is to be computed. The recoverable amount derived from applying the gross-up factor is still the maximum allowable cost to be recovered from the electric cooperative's customers for a given month. **If the PPA collected exceeded the recoverable cost, the difference should be refunded back to the consumers.**[115]

This Court agrees with the ERC that the grossed-up factor mechanism "did not modify the [PPA] formula or state how the PPA is to be computed."[116] However, the grossed-up factor mechanism **amends** the IRR of R.A. No. 7832 as it serves as an **additional numerical standard** that must be observed and applied by rural electric cooperatives in the implementation of the PPA. While the IRR explains, and stipulates, the PPA formula, the IRR neither explains nor stipulates the grossed-up factor mechanism. The reason is that the grossed-up factor mechanism is admittedly "**new**" and provides a "**different result**," having been formulated only ***after*** the issuance of the IRR.

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112 Id. at 267 n.12.
113 Id. at 261.
114 Id. at 267.
115 Id. at 268.
116 Id.

The grossed-up factor mechanism is not the same as the PPA formula provided in the IRR of R.A. No. 7832. Neither is the grossed-up factor mechanism subsumed in any of the five variables of the PPA formula. Although both the grossed-up factor mechanism and the PPA formula account for system loss and use of electricity by cooperatives, they serve different quantitative purposes.

The grossed-up factor mechanism serves as a threshold amount to which the PPA formula is to be compared. According to the ERC, any amount collected under the PPA that exceeds the Recoverable Cost computed under the grossed-up factor mechanism shall be refunded to the consumers.[117] The Recoverable Cost computed under the grossed-up factor mechanism is "the maximum allowable cost to be recovered from the electric cooperative's customers for a given month."[118] **In effect, the PPA alone does not serve as the variable rate to be collected from the consumers**. The PPA formula **and** the grossed-up factor mechanism will both have to be observed and applied in the implementation of the PPA.

Furthermore, the grossed-up factor mechanism accounts for a variable that is not included in the five variables of the PPA formula. In particular, the grossed-up factor mechanism accounts for the amount of power sold in proportion to the amount of power purchased by a rural electric cooperative, expressed as the Gross-Up Factor. It appears that the Gross-Up Factor limits the Recoverable Cost by allowing recovery of the Cost of Purchased Power only in proportion to the amount of power sold. This is shown by integrating the formula of the Gross-Up Factor with the formula of the Recoverable Cost, thus:

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[117] Id.
[118] Id.

The grossed-up factor mechanism consists of the following formulas:

$$\textbf{Gross-Up Factor} = \frac{\textbf{\textit{Kwh Sales} + \textit{Coop Use}}}{\textbf{\textit{Kwh Purchased}}\,(1 - \%\ \textbf{\textit{System Loss}})}$$

Recoverable Cost = Gross-Up Factor x Cost of Purchased Power

Integrating the above-stated formulas will result in the following formula:

$$\textbf{Recoverable Cost} = \frac{\textbf{\textit{Kwh Sales + Coop Use}}}{\textbf{\textit{Kwh Purchased (1–\%System Loss)}}}\ \textbf{x Cost of Purchased Power}$$

On the other hand, the PPA formula provided in the IRR of R.A. No. 7832 does not account for the amount of power sold. It accounts for the amount of power purchased and generated, expressed as the variable "B" in the following PPA formula:

Purchased Power Adjustment Clause

$$(\text{PPA}) = \frac{A}{B-(C+D)} - E$$

Where:

A = Cost of electricity purchased and generated for the previous month

B = Total Kwh purchased and generated for the previous month

C = The actual system loss but not to exceed the maximum recoverable rate of system loss in Kwh plus actual company use in Kwhrs but not to exceed 1% of total Kwhrs purchased and generated

D = Kwh consumed by subsidized consumers

E = Applicable base cost of power equal to the amount incorporated into their basic rate per Kwh[119] (Boldfacing supplied)

[119] IRR OF R.A. NO. 7832, Rule IX, Sec. 5.

In light of these, the grossed-up factor mechanism does not merely interpret R.A. No. 7832 or its IRR. It is also not merely internal in nature. **The grossed-up factor mechanism amends the IRR by providing an additional numerical standard that must be observed and applied in the implementation of the PPA**. The grossed-up factor mechanism is therefore an administrative rule that should be published and submitted to the U.P. Law Center in order to be effective.

As previously stated, it does not appear from the records that the grossed-up factor mechanism was published and submitted to the U.P. Law Center. Thus, it is ineffective and may not serve as a basis for the computation of over-recoveries. The portions of the over-recoveries arising from the application of the mechanism are therefore invalid.

Furthermore, the application of the grossed-up factor mechanism to periods of PPA implementation prior to its publication and disclosure renders the said mechanism invalid for having been applied retroactively. The grossed-up factor mechanism imposes an additional numerical standard that clearly "creates a new obligation and imposes a new duty x x x in respect of transactions or consideration already past."[120]

Rural electric cooperatives cannot be reasonably expected to comply with and observe the grossed-up factor mechanism without its publication. This Court recognizes that the mechanism aims to reflect the actual cost of purchased power for the benefit of consumers. However, this objective must at all times be balanced with the viability of rural electric cooperatives. The ERB itself made the following observation regarding the operational and economic condition of rural electric cooperatives in its Order dated 19 February 1997:

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[120] *Castro v. Sagales*, supra note 104.

> Electric [c]ooperatives are created under Presidential Decree No. 269 in the nature of non-profit organizations. Thus, they do not have the funds they can dispose of to meet [their] future emergency obligations and operational needs. They are not entitled return on their investment as their rates are based on cash flow methodology. Hence, if the appropriate rate level x x x to keep them going or viable, shall not be provided, the finances and operations of the said cooperatives will be jeopardized which ultimately will result in inefficient electric service to their respective customers or [worse] shut down when they fail to pay the sources of their electricity (like National Power Corporation) and their loans to the NEA.[121]

Administrative compliance with due process requirements cultivates a regulatory environment characterized by predictability and stability. These characteristics ensure that rural electric cooperatives are given the opportunity to achieve efficiency, and that ultimately, consumers have access to reliable services and affordable electric rates.

WHEREFORE, we **PARTLY GRANT** the petition and rule that the grossed-up factor mechanism is **INEFFECTIVE** and **INVALID**. We further rule that the portions of the over-recoveries that may have arisen from the application of the grossed-up factor mechanism in the 22 March 2006 Order, 16 February 2007 Order, 7 December 2005 Order and 27 March 2006 Order of the Energy Regulatory Commission are **INVALID**. Respondent Energy Regulatory Commission is **DIRECTED** to compute the portions of the over-recoveries arising from the application of the grossed-up factor mechanism and to implement the collection of any amount previously refunded by petitioners to their respective consumers on the basis of the grossed-up factor mechanism. The 23 December 2008 Decision and 26 April 2010 Resolution of the Court of Appeals are hereby **MODIFIED** accordingly.

SO ORDERED.

ANTONIO T. CARPIO
Associate Justice

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121 CA *rollo* (CA-G.R. SP No. 99249), p. 257.

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

ARTURO D. BRION
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

I take no part due to prior participation in the CA

LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

ROBERTO A. ABAD
Associate Justice

(On official leave)
MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

JOSE C. MENDOZA
Associate Justice

BIENVENIDO L. REYES
Associate Justice

No part due to prior participation in the ADA decision
ESTELA M. PERLAS-BERNABE
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.

MARIA LOURDES P. A. SERENO
Chief Justice