

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



IN THE MATTER OF THE
APPLICATION FOR APPROVAL OF
ELECTRIC DISTRIBUTION CAPITAL
PROJECTS FOR THE YEARS 2005-
2006, WITH PRAYER FOR
PROVISIONAL AUTHORITY

ERC CASE NO. 2007-077 RC

PANAY ELECTRIC COMPANY
(PECO),

Applicant.

x-----x

D O C K E T E D
Date: MAY 29 2008
By: [Signature]

ORDER

The Commission takes note of the "*General Appearance and Urgent Motion for Reconsideration*" filed by the City of Iloilo through its City Legal Officer, Atty. Edgardo J. Gil, on April 2, 2008, seeking reconsideration of the Commission's Decision dated January 16, 2008.

The City of Iloilo through the City Legal Officer alleged in the instant motion that on July 19, 2007, it filed its "*Entry of Appearance*" (Annex "A" of the instant motion), and that despite its appearance, it has not received any notice of hearing. Thus, it failed to actively participate in the proceedings, or filed opposition to any of the cases filed with the Commission.

Upon verification of the records of this case, the Commission found that no such copies of the pleading "*Entry of Appearance*" were filed either in the Docket or Record Section of the Commission. Thus, the records of this case bore no copies of the same.

[Handwritten signature]

Proof that service was made by registered mail should be indicated on the copies of the pleading served, specifically the registry receipt number and the date of mailing. The ERC *Rules of Practice and Procedure* under Rule 10 Section 3, provides:

RULE 10 – SERVICE AND FILING

Section 3. *Proof of Service.* – There shall accompany and be attached to the original of each document filed with the Commission proof of service upon all other parties as required by this rule, **which shall consist of a written admission of the party served** or the certification of the party serving, containing a statement of the date, place and manner of service, and with the registry or courier delivery receipts, if service is by registered mail or express delivery, attached thereto.

Annex "A" of the instant motion bears no such entry showing written admission of the party served. Moreover, the Commission notes that the purported document allegedly filed by Iloilo City's Legal Officer bears no proof or acknowledgement of receipt by the Commission's Docket Section on the face of the document indicating the time and date of filing and receipt.

When the Commission heard this case on May 25, 2007, it was only PECO who appeared. No intervenor or oppositor appeared nor was there any intervention or opposition registered. During the continuation of hearing on July 16, 2007, where PECO presented its witnesses, no other party appeared to intervene or oppose the application.

Hence, the Commission no longer issued notices of hearing to apprise parties or those who might be minded to intervene or oppose the application.



The City of Iloilo is neither an oppositor nor intervenor in the above-captioned case before the Commission. It did not timely file the appropriate petition or motion for leave to intervene as required by the Commission's Rules of Practice and Procedure. It cannot therefore be made a party of record of the case.

Under Rule 9 Section 1 of the *ERC Rules of Practice and Procedure* states:

RULE 9 – INTERVENTION, OPPOSITION AND COMMENT

Section 1. Intervention. – Any person having an interest in the subject matter of any hearing or investigation pending before the Commission **may become a party thereto by filing a verified petition with the Commission** giving the docket number and title of the proceeding and stating: (1) the petitioner's name and address; (2) the nature of petitioner's interest in the subject matter of the proceeding, and the way and manner in which such interest is affected by the issues involved in the proceeding; and (3) statement of the relief desired.

Based on the above-quoted rule, the City of Iloilo is not technically and by statutory right, a party of record to the instant case. Not being a party of record, it is not entitled to enter appearance, introduce evidence, examine and cross-examine witnesses, make or argue motions, or generally participate in the proceedings.

Viewed from the foregoing, the Commission finds no legal reason to modify or set aside its Decision on the above-captioned case. The Decision has long attained finality. The City of Iloilo through the City Legal Officer, cannot now prod us to reconsider it, on a lame excuse that the City of Iloilo or its City Legal Officer did not receive notices of hearing.



To do so would be to go against proper procedure which the Supreme Court has, at one time, reminded the Bench and the Bar when it held in *IN THE MATTER OF PROCEEDINGS FOR DISCIPLINARY ACTION AGAINST ATTY. CLEMENTE M. SORIANO IN L-24114, People's Homesite and Housing Corporation and University of the Philippines, vs. HON. EULOGIO MENCIAS, ELPIDIO TIBURCIO, MARCELINO TIBURCIO, ET AL. G.R. No. L-24114 June 30, 1970*, that:

"The entry of appearance of a counsel in a case which has long been sealed and terminated by a final judgment, besides being an unmitigated absurdity in itself and an unwarranted annoyance to the court which pronounced the judgment, is a sore deviation from normal judicial processes. It detracts heavily from the faith which should be accorded final judgments of courts of justice, generating as it does in the minds of the litigants, as well as of the public, an illusory belief that something more can be done toward overturning a final judicial mandate.

In the incident before us, we find Atty. Soriano grossly remiss and inexcusably precipitate in putting an officious finger into the vortex of the case. He was wanting in the reasonable care which every member of the Bar must needs exercise before rushing into the midst of a case already litigated or under litigation."

Finding no merit in the urgent motion, the same is hereby **DENIED**.

Accordingly, the assailed Decision in the above-captioned case dated January 16, 2008 shall remain in full force and effect in all its parts.

SO ORDERED.

Pasig City, May 15, 2008

FOR AND BY AUTHORITY
OF THE COMMISSION


ALEJANDRO Z. BARIN
Commissioner

Copy Furnished:

1. **Panay Electric Company, Inc. (PECO)**
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2. **Atty. Salvador A. Altura, Jr.**
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8. **The Office of the City Mayor**
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9. **Atty. EDGARDO J. GIL**
The City Legal Officer
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