G.R. No. 227670 - ALYANSA PARA SA BAGONG PILIPINAS, INC. (ABP), represented by Evelyn V. Jallorina and Noel Villones, petitioners vs. ENERGY REGULATORY COMMISSION, represented by its Chairman JOSE VICENTE B. SALAZAR, DEPARTMENT OF ENERGY, represented by Secretary ALFONSO G. CUSI, MERALCO CENTRAL LUZON PREMIER POWER CORPORATION, ST. RAPHAEL POWER GENERATION CORPORATION, PANAY ENERGY DEVELOPMENT CORPORATION, MARIVELES POWER GENERATION CORPORATION, GLOBAL LUZON ENERGY DEVELOPMENT CORPORATION, ATIMONAN ONE ENERGY, INC., REDONDO PENINSULA ENERGY, INC., and PHILIPPINE COMPETITION COMMISSION, respondents.

Promulgated: May 3, 2019

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DISSENTING OPINION

A. REYES, JR., *J.*

The *ponencia* declared the first paragraph of Section 4 of Energy Regulatory Commission (ERC) Resolution No. 13, Series of 2015, and ERC Resolution No. 1, Series of 2016, as null and void. As a result, all Power Supply Agreement (PSA) applications submitted by Distribution Utilities (DUs) on or after June 30, 2015, should be subject to the Competitive Selection Process (CSP) in accordance with the Department of Energy (DOE) Circular No. DC2015-06-0008.

With due respect, I disagree with the said ruling.

The ERC did not commit grave abuse of discretion amounting to lack or excess of jurisdiction.

According to Rule 65 of the Rules of Court, for a petition for *certiorari* to lie, it must be proven that the tribunal, board, or officer exercising judicial or quasi-judicial functions has acted (1) without or in excess of its or his jurisdiction, or (2) with grave abuse of discretion amounting to lack or excess of jurisdiction.[1] In the same Rule, it was also provided for that a petition for prohibition will lie when the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are (1) without or in excess of its or his jurisdiction, or (2) with grave abuse of discretion amounting to

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1 Rules of Court (1997), Rule 65, Sec. 1.

lack or excess of jurisdiction.[2] In both instances, there should be no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.[3]

But while the Rules of Court zeroes in on tribunals, boards, or officers exercising judicial or quasi-judicial functions for petitions for *certiorari,* and tribunals, corporations, boards, officers or persons, whether exercising judicial, quasi-judicial or ministerial functions, for petitions for prohibition, the Court has, time and again, ruled that the same remedies extend to any act of grave abuse of discretion amounting to lack or excess of jurisdiction of any branch or instrumentality of the Government, even if the latter does not exercise judicial, quasi-judicial or ministerial functions.[4]

In this case, the ERC is an independent quasi-judicial body that has regulatory powers[5] for the purpose of promoting competition, encouraging market development, ensuring customer choice and penalizing abuse of market power in the restructured electricity industry.[6] In appropriate cases, the ERC is also authorized to issue cease and desist orders after due notice and hearing.[7] Indeed, any issue on ERC's action of promulgating ERC Resolution No. 1 is cognizable by the Court through a petition for *certiorari* or prohibition, but only if ERC has acted (1) without or in excess of its jurisdiction, or (2) with grave abuse of discretion amounting to lack or excess of jurisdiction.

As earlier mentioned, ERC has not committed any of these two acts.

To begin with, there is no doubt that the ERC has the power to promulgate rules and regulations that concern the exercise of its mandate. In issuing ERC Resolution No. 1, ERC acted *within* its jurisdiction.

According to the case of *Alliance for the Family Foundation, Philippines, Inc., (ALFI) v. Garin*,[8] the powers of an administrative body are classified into two fundamental powers: quasi-legislative and quasi-judicial. Quasi-legislative power—that which is relevant in this case—has been defined as "the authority delegated by the lawmaking body to the administrative body to adopt rules and regulations intended to carry out the provisions of law and implement legislative policy."[9] It is in the nature of

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2 Rules of Court (1997), Rule 65, Sec. 2.
3 Id.
4 *Umali v. JBC*, G.R. No. 228628, July 25, 2017, 832 SCRA 194, 223-224.
5 R. A. No. 9136 (2001), Sec. 38.
6 R. A. No. 9136 (2001), Sec. 43.
7 Id.
8 G.R. Nos. 217872 & 221866, April 26, 2017, 825 SCRA 191.
9 Id. at 209.

subordinate legislation, which is "designed to implement a primary legislation by providing the details thereof."[10]

The ERC is granted this quasi-legislative power by no less than Sections 43 (Functions of the ERC) and 45 (Cross Ownership, Market Power Abuse And Anti-Competitive Behavior) of R.A. No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001" (EPIRA).[11] In fact, EPIRA's implementing rules and regulations (IRR) specified this rule-making power in stating:

> **Section 4. Responsibilities of the ERC.**
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> (b) Pursuant to Sections 43 and 45 of the Act, **the ERC shall promulgate such rules and regulations as authorized thereby,** including but not limited to Competition Rules and limitations on recovery of system losses, and shall impose fines or penalties for any non-compliance with or breach of the Act, these Rules and the rules and regulations which it promulgates or administers.[12]

This rule-making power by the ERC is further defined, at least insofar as the CSP implementation is concerned, in Sections 3 and 4 of DOE Circular No. DC2015-06-0008. This circular granted unto the DOE and the ERC the power to jointly issue the "guidelines and procedures for the aggregation of the un-contracted demand requirements of the DUs and the process for the recognition or accreditation of the Third Party that conducts the CSP." It also empowered the ERC, "upon its determination and in coordination with the DOE [to] issue supplemental guidelines and procedures to properly guide the DUs and the Third Party in the design and execution of the CSP." The provisions read:

> **Section 3. Standard Features in the Conduct of CSP.** After the effectivity of this Circular, all DUs shall procure PSAs only through CSP conducted through a Third Party duly recognized by the ERC and the DOE. In the case of ECs, the Third Party shall also be duly recognized by the National Electrification Administration (NEA).
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> x x x x
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> Within one hundred twenty (120) days from the effectivity of this Circular, the ERC and DOE shall jointly issue the guidelines and procedures for the aggregation of the un-contracted demand requirements

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10 Id. at 209-210.

11 R. A. No. 9136 (2001).

12 Rules and Regulations to Implement Republic Act No. 9136, Entitled "Electric Power Industry Reform Act of 2001" (2001), Sec. 4 (b).

> of the DUs and the process for the recognition or accreditation of the Third Party that conducts the CSP as hereto provided. xxx
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> **Section 4. Supplemental Guidelines.** To ensure efficiency and transparency of the CSP Process [sic], the ERC, upon its determination and in coordination with the DOE shall issue supplemental guidelines and procedures to properly guide the DUs and the Third Party in the design and execution of the CSP. The supplemental guidelines should ensure that any CSP and its outcome shall redound to greater transparency in the procurement of electric supply, and promote greater private sector participation in the generation and supply sectors, consistent with the declared polices under the EPIRA.[13]

On October 20, 2015, almost four (4) months after the issuance of DOE Circular No. DC2015-06-0008 and pursuant to the mandate of its provisions, the DOE and the ERC issued Joint Resolution No. 1, *"A Resolution Enjoining All Distribution Utilities To Conduct Competitive Selection Process (CSP) In The Procurement of Supply For Their Captive Market."*[14] In this Joint Resolution, **the DOE and the ERC agreed that it is the ERC which shall issue the appropriate regulations to implement the CSP.** Section 1 of Joint Resolution No. 1 provides:

> **Section 1. Competitive Selection Process.** Consistent with their respective mandates, the DOE and ERC recognize that Competitive Selection Process (CSP) in the procurement of PSAs by the DUs engenders transparency, enhances security of supply, and ensures stability of electricity prices to captive electricity end-users in the long-term. **Consequently, by agreement of the DOE and ERC, the ERC shall issue the appropriate regulations to implement the same.**[15] (Emphasis supplied)

Thus, while the language of DOE Circular No. DC2015-06-0008 empowers the DOE and the ERC jointly to issue the relevant guidelines in the implementation of the CSP, in turn, the DOE, through Joint Resolution No. 1, gave its concurrence to and duly empowered the ERC to act and to issue the appropriate regulations.

On the strength of the provisions of the EPIRA, EPIRA's IRR, DOE Circular No. DC2015-06-0008, and Joint Resolution No. 1, the ERC thence promulgated ERC Resolution No. 13, as well as the assailed ERC Resolution No. 1. These resolutions contained the relevant rules and regulations that govern the implementation of the CSP policy of the government—a power which has been specifically delegated to the ERC and to no other. Notably, none of the parties in this case challenged this power.

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13 *Rollo*, Vol. I, pp. 40-43.

14 Department of Energy and Energy Regulatory Commission, October 20, 2015.

15 Id.

In fact, this authority was recognized by the DOE in its Letter dated January 18, 2016 when it requested the ERC to allow an electric cooperative to directly negotiate with a power supplier despite the CSP requirement.[16]

In the *ponencia*, however, it was stated that the ERC had no authority to issue ERC Resolution No. 1, because the ERC cannot *unilaterally* restate the effectivity of its earlier resolution for doing so violates DOE Circular No. DC2015-06-0008. It was likewise explained therein that "the DOE Circular [No. DC2015-06-0008] **specifically stated** that **the ERC's power to issue CSP guidelines and procedures should be done in coordination with the DOE."** That the ERC "restated" the date of effectivity unilaterally is, according to the *ponencia*, an "amendment" of DOE Circular No. DC2015-06-0008, which the ERC could not do. The *ponencia* further held that the ERC is empowered only to issue "supplemental guidelines and procedures" as this is the only power granted by Section 4 of DOE Circular No. DC2015-06-0008 to the ERC.

Likewise, the *ponencia* declared that ERC Resolution No. 1 is void because it was issued without the concurrence of the DOE, and as such, it was in excess of ERC's rule-making power.

Finally, the *ponencia* further launched a full discourse on the power of the DOE *vis-à-vis* the power of the ERC, such that, it argued that, it is the former which formulates the policies, rules, regulations, and circulars concerning the energy sector, and the latter should **only** enforce and implement the same. The opinion likewise quoted in its entirety Section 43 of the EPIRA (enumerating the powers of the ERC) and stated that nothing therein could "supplant" the policies, rules, regulations, or circulars prescribed by the DOE.

The *ponencia*, however, fails to consider the clear mandate of DOE Circular No. DC2015-06-0008 and Joint Resolution No. 1.

First, it is not correct to summarily state that the ERC's power is limited to the implementation of a policy dictated by the ERC. It could not be any clearer when Section 3 of DOE Circular No. DC2015-06-0008, as quoted above, specifically stated that "the ERC and DOE shall **jointly** issue the guidelines and procedures for the aggregation of the un-contracted demand requirements of the DUs and the process for the recognition or accreditation of the Third Party that conducts the CSP as hereto provided." This is not a case where the DOE issues a policy and then the ERC implements the policy. As can be read in Section 3, the matter of

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16 AIE's Manifestation and Motion for Early Resolution dated November 16, 2018, Annex 3.

formulating the guidelines, as well as the rules of procedure for its implementation, falls on **both** the DOE and the ERC.

Second, this joint authority, as it were, is further clarified by Joint Resolution No. 1 where the DOE specifically delegated unto the ERC the power to issue the appropriate regulations to implement the CSP. At the risk of sounding repetitive, this could only mean that, contrary to the *ponencia*, the DOE and the ERC already have a "coordination" with regard to their duties of implementing the CSP, and the **DOE already authorized the ERC to perform this duty.** Again, the ERC in this case is not a mere implementing agency, rather, it is the main agency tasked and empowered to lay the ground for the new selection process, the same being the agency which has the direct contact with the affected stakeholders of the energy sector.

Indeed, even the *ponencia* recognized this when it was mentioned that:

> Joint Resolution No. 1 (Joint Resolution), executed by the DOE and the ERC on 20 October 2015, reiterated that **the ERC shall issue the appropriate regulations to implement the CSP.** x x x (Emphasis and underscoring supplied)

Third, it is also misplaced to say that the ERC has no power at all to formulate the rules and regulations concerning the CSP because, according to the *ponencia*, the same power does not appear in the enumeration of the ERC's functions in Section 43 of the EPIRA. But paragraph (m) of the same section in fact authorizes the ERC to:

> (m) Take any action delegated to it pursuant to this Act;

This function, taken together with the DOE and ERC's joint authority accorded by Section 3 of DOE Circular No. DC2015-06-0008 and the specific delegation in Section 1 of Joint Resolution No.1, is more than enough to dispel any accusation of impropriety or any lack of authority to the ERC's issuance of the assailed resolution. In the language of Section 43 of the EPIRA, the ERC did not "supplant" the policies, rules, regulations, or circulars prescribed by the DOE, instead, the ERC merely accepted the action "delegated" to it pursuant to DOE Circular No. DC2015-06-0008 and Joint Resolution No. 1.

Finally, it must also be emphasized that Joint Resolution No. 1 speaks of the **"appropriate regulations,"** and not merely of "guidelines and procedures" or of "supplemental guidelines" to implement the CSP. As a regulatory agency, one which is "vested with jurisdiction to regulate,

administer or adjudicate matters affecting substantial rights and interests of private persons, the principal powers of which are exercised by a collective body, such as a commission, board or council,"[17] the ERC clearly is empowered to promulgate the assailed resolution.

To be sure, in promulgating ERC Resolution No. 13, as well as ERC Resolution No. 1, the ERC acted *within* its jurisdiction.

This said, the focus of this Dissenting Opinion now shifts to whether or not the ERC, in promulgating the assailed resolution, acted with grave abuse of discretion amounting to lack or excess of jurisdiction.

Again, the Court answers in the negative.

The term grave abuse of discretion has a specific meaning. It has been defined as the arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or capricious exercise of power that amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law.[18] According to the case of *John Dennis G. Chua v. People of the Philippines*,[19] citing *Yu v. Judge Reyes-Carpio, et al.*[20]

> [a]n act of a court or tribunal can only be considered as with grave abuse of discretion when such act is done in a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." The abuse of discretion must be so patent and gross as to amount to an "evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility."[21] (Citations omitted)

"For an act to be struck down as having been done with grave abuse of discretion, the abuse of discretion must be patent and gross."[22]

In this instance, the ERC has sufficiently established that "restating" the effectivity of ERC Resolution No. 13 at a later date is not exercised whimsically or capriciously. Neither is it an arbitrary exercise of power by reason of passion or hostility. Indeed, its issuance is clearly not without

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17 Exec. Order No. 292 (1987), Sec. 2(11).
18 *Fajardo v. Hon. Court of Appeals, et al.*, 591 Phil. 146, 153 (2008).
19 G.R. No. 195248, November 22, 2017, 846 SCRA 74.
20 667 Phil. 474 (2011).
21 Id. at 481-482.
22 Supra note 18, at 153.

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basis. In fact, the Court finds that the ratiocination put forth by the Office of the Solicitor General (OSG) is reasonable to justify ERC's action.

First, the implementation of ERC Resolution No. 13 caused an avalanche of concerns and confusion from the stakeholders of the industry regarding the actual implementation of the provisions of the resolution, so much so that a multitude of DUs, mostly electric cooperatives, sought for an exemption from the guidelines in the resolution. There was a real possibility that the implementation of ERC Resolution No. 13 would invariably render nugatory the already pending negotiations among the DUs and generation companies. This fact is proven from the letters sent by SMC Global Power dated November 25, 2015 and December 14, 2015, Philippine Rural Electric Cooperative Association, Inc. dated December 1, 2015, Agusan Del Norte Electric Cooperative, Inc. dated December 10, 2015, Camarines Sur IV Electric Cooperative, Inc. dated December 21, 2015, and Aklan Electric Cooperative, Inc. dated March 9, 2016.[23]

A reading of these letters confronted the ERC with probabilities of discontinuance in the financing of projects during their implementation stage,[24] aggravation of power shortages,[25] confusion of ERC Resolution No. 13's applicability on PSAs already filed with the ERC,[26] disenfranchisement of Power Supply Contracts (PSCs) which have already been signed but were still unfiled to the ERC prior to the effectivity of ERC Resolution No. 13,[27] and the reality of the necessity of sufficient period within which to complete the applications which are still governed by the rules prior to ERC Resolution No. 13.[28]

All these concerns were presented to the ERC, which then, by its mandate, acted accordingly. There is wisdom in the OSG's assertion that by granting a period of transition, the ERC would avoid the risk of inconsistency in resolving individual requests for exemptions sought by the DUs, generation companies, and electric cooperatives, while at the same time, it would secure the steady supply of electricity for the same period.[29]

The *ponencia* mistakenly characterizes ERC's "restatement" of the effectivity of Resolution No. 1 as an "amendment" to DOE Circular No. DC2015-06-0008. The *ponencia* stated that ERC extended the CSP's implementation twice, totaling 305 days, which should not be allowed by the Court.

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23 *Rollo*, Vol. II, pp. 1201-1206.
24 Id. at 1202.
25 Id.
26 Id. at 1203.
27 Id. at 1204, 1206.
28 Id. at 1205.
29 Id. at 1206.

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But this kind of interpretation with regard to the nature of implementing rules and regulations, specifically in this case, disavows the very purpose for which implementing rules and regulations are created.

One, it is a blatant error to state that ERC Resolution No. 13 already "amended" DOE Circular No. DC2015-06-0008 (the first "amendment" according to the *ponencia*). While it is true that DOE Circular No. DC2015-06-0008 took effect on June 30, 2015, **the enforcement of the CSP was not to take effect until after 120 days therefrom.** This is because Section 3 of the same circular categorically provided for a 120-day period for the promulgation of the CSP guidelines and procedures. It said:

> **Section 3. Standard Features in the Conduct of CSP.** After the effectivity of this Circular, all DUs shall procure PSAs only through CSP conducted through a Third Party duly recognized by the ERC and the DOE. In the case of ECs, the Third Party shall also be duly recognized by the National Electrification Administration (NEA).
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> x x x x
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> **Within one hundred twenty (120) days from the effectivity of this Circular, the ERC and DOE shall jointly issue the guidelines and procedures** for the aggregation of the un-contracted demand requirements of the DUs and the process for the recognition or accreditation of the Third Party that conducts the CSP as hereto provided. xxx (Emphasis and underscoring supplied)

By promulgating Joint Resolution No. 1 and ERC Resolution No. 13 on October 20, 2015, less than 120 days from the effectivity of DOE Circular No. DC2015-06-0008, both the DOE and ERC merely followed Section 3 thereof. There was no first "amendment" in this case as the *ponencia* concluded, and the Court should not rush into ascribing grave abuse of discretion on the part of ERC for performing its mandate.

Two, it will be absurd to require stakeholders in the energy sector to comply with a new procurement method at the very moment of the circular's promulgation when there is yet no implementing rules and regulations that would guide them on the methodologies of its implementation. In DOE Circular No. DC2015-06-0008, CSPs to be undertaken by DUs are couched in principles, rather than procedure. Section 1 states:

> **Section 1. General Principles.** Consistent with its mandate, the DOE recognizes that Competitive Selection Process (CSP) in the procurement of PSAs by the DUs ensures security and certainty of electricity prices of electric power to end-users in the long-term. Towards this end, all CSPs undertaken by the DUs shall be guided by the following principles:

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(a) Increase the transparency needed in the procurement process in order to reduce risks;

(b) Promote and instill competition in the procurement and supply of electric power to all electricity end-users;

(c) Ascertain least-cost outcomes that are unlikely to be challenged in the future as the political and institutional scenarios should change; and

(d) Protect the interest of the general public.

Section 3 of the same circular is not any clearer. It provides:

Section 3. Standard Features in the Conduct of CSP. After the effectivity of this Circular, all DUs shall procure PSAs only through CSP conducted through a Third Party duly recognized by the ERC and the DOE. In the case of ECs, the Third Party shall also be duly recognized by the National Electrification Administration (NEA).

Under this Circular, CSPs for the procurement of PSAs of all DUs shall observe the following:

(a) Aggregation for un-contracted demand requirements of DUs;

(b) Annually conducted; and

(c) Uniform template for the terms and conditions in the PSA to be issued by the ERC in coordination with the DOE.

x x x x

If the enforcement of the CSP began on June 30, 2015, as was posited in the *ponencia*, how should the Third Party mentioned in the section conduct the CSP? What are the parameters? What are the required documents/uniform templates to be submitted? What are the deadlines? More to the point, who are these Third Parties? How can they be recognized by the ERC and the DOE? By the National Electrification Administration?

This is why there was wisdom in the DOE's imposition of a period prior to the enforcement of the CSP. The reasons are obvious: (a) the agency tasked to draft the implementing rules and regulations must be accorded reasonable time within which to draft the same; and (b) the same agency must balance the implementation of the new policy over the already existing ones so as to ascertain continuous and unabated service to the public.

To this end, the action of the ERC in issuing ERC Resolution No. 1, rather than subvert the intentions of EPIRA, allowed the smooth transition of one procurement method to be utilized by the Government to another new

method. Thus, the "restatement" of the effectivity of the CSP in ERC Resolution No. 1 is not an "amendment" but a carefully studied enforcement of the very same mandate reposed upon the ERC.

Second, ERC did not "evade" its positive duty as provided for in the Constitution, the EPIRA, DOE Department Circular No. DC2015-06-0008, or ERC Resolution No. 13 as the petitioners would like the Court to believe. The petitioners stretch the interpretation of these laws and issuances by their insinuations that "restating" the effectivity of ERC Resolution No. 13 is already tantamount to evasion of duties.

I could not subscribe to this interpretation.

The petitioners did not convincingly show any action by the ERC that negated any provision of the Constitution, the EPIRA, or any of the resolutions mentioned. No action has been indicated to have disregarded CSP procedure. In fact, ERC Resolution No. 13, the very resolution that the petitioners assert to have been violated, has been in effect since April, 2016. As discussed earlier, the issuance of ERC Resolution No. 1 is a by-product of the concerns of the DUs, generation companies, and electric cooperatives. **The Court could not dictate upon the ERC the time upon which the effectivity of ERC Resolution No. 13 should begin. This is a policy decision that rests solely on the ERC.** This being the case, I find no illicit connection—as the petitioners have proved no illicit connections—between ERC Resolution No. 1 and the submission by the respondents of their PSAs prior to the given deadline.

If anything, what the petitioners ask of the Court is for the latter to substitute its own wisdom to that of ERC's actions as the main administrative agency clothed with expertise to decide on the effectivity of its own rules. This, the Court could not do. As has been repeatedly mentioned herein, ERC's action on merely "restating" the date of effectivity of ERC Resolution No. 13—its own resolution that has been in effect since April, 2016—has not been shown to have been promulgated with grave abuse of discretion amounting to lack or excess of jurisdiction.

Third, it must also be emphasized that ERC Resolution No. 1 enjoys a strong presumption of its validity. In *Spouses Dacudao v. Secretary Gonzales*,[30] Chief Justice Lucas P. Bersamin reiterated the Court's ruling in *ABAKADA Guro Party List (formerly AASJS), et al. v. Hon. Purisima, et al.*[31] where the Court extended the presumption of validity to legislative

30 701 Phil. 96 (2013).
31 584 Phil. 246 (2008).

issuances as well as to rules and regulations issued by administrative agencies. *ABAKADA Guro Party List* said:

> Administrative regulations enacted by administrative agencies to implement and interpret the law which they are entrusted to enforce have the force of law and are entitled to respect. Such rules and regulations partake of the nature of a statute and are just as binding as if they have been written in the statute itself. As such, they have the force and effect of law and enjoy the presumption of constitutionality and legality until they are set aside with finality in an appropriate case by a competent court[32].

Moreover, the ERC, being envisioned to be "a strong and purely independent regulatory body,"[33] is "vested with broad regulatory and monitoring functions over the Philippine electric industry to ensure its successful restructuring and modernization."[34] The burden of proving that the presumption of validity should be disregarded rests solely on the petitioners. For the reasons already mentioned above, I believe that the petitioners failed on this purpose. Thus, as the ERC has been "provided by the law with tools, ample wherewithal, and considerable latitude in adopting means that will ensure the accomplishment of the great objectives for which it was created [its actions should similarly be] accorded by the Court the greatest measure of presumption of regularity in its course of action and choice of means in performing its duties[.]"[35]

Finally, anent the petitioners' prayer to require the ERC to disapprove the PSAs already submitted before it for the private respondents' failure to conduct CSP or for the possibility of "freezing" the CSP procedure for 20 years, I believe that the Court must once again rule against the petitioners and for the respondents.

In truth, the approval or disapproval of the PSAs have heretofore been pending before the ERC.[36] Considering that the ERC is not guilty of any grave abuse of discretion amounting to lack or excess of jurisdiction in issuing ERC Resolution No. 1, the Court should not substitute its judgment on PSA applications which are not yet acted upon. It is worth stressing that the Court could only discharge such actions if, in approving or disapproving the PSA applications, the ERC acted (1) without or in excess of jurisdiction, or (2) with grave abuse of discretion amounting to lack or excess of jurisdiction. For the moment, such action of the ERC, if ever it would act in

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32 Id at 283.

33 Sec. 2(j), R.A. No. 9136.

34 *Chamber of Real Estate and Builders' Associations, Inc. v. Energy Regulatory Commission (ERC), et al.*, 638 Phil. 542, 546 (2010).

35 *The Province of Agusan Del Norte v. The Commission on Elections (COMELEC), et al.*, 550 Phil. 271, 281 (2007).

36 *Rollo*, Vol. II, pp. 1188-1189.

that manner, is still in the realm of conjecture and deserves scant consideration.

ACCORDINGLY, I vote to **DISMISS** the petition for *certiorari* and prohibition.

ANDRES B. REYES, JR.
Associate Justice