Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NATIONAL GRID CORPORATION OF THE PHILIPPINES,
Petitioner,

-versus-

MANILA ELECTRIC COMPANY,
Respondent.

G.R. No. 239829

Present:

GESMUNDO, *C.J., Chairperson*
HERNANDO,
ZALAMEDA,
ROSARIO, and
MARQUEZ, *JJ.*

Promulgated:

MAY 29 2024

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DECISION

ZALAMEDA, *J.*:

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assails the Amended Decision[2] dated September 15, 2017 and Resolution[3] dated May 31, 2018 of the Court of Appeals (CA) in CA-G.R.

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1 *Rollo*, vol. 1, pp. 13–62.

2 *Id.* at 63–75. The September 15, 2017 Amended Decision in CA-G.R. SP No. 140579 was penned by Associate Justice Renato C. Francisco and concurred in by Associate Justices Danton Q. Bueser, Ma. Luisa Quijano-Padilla and Jhosep Y. Lopez (now a member of the Court). With the dissent of Associate Justice Apolinario D. Bruselas, Jr. of the Division of Five of the Former Fourteenth Division, Court of Appeals, Manila.

3 *Id.* at 86–98. The May 31, 2018 Resolution in CA-G.R. SP No. 140579 was penned by Associate Justice Renato C. Francisco and concurred in by Associate Justices Danton Q. Bueser, Ma. Luisa Quijano-Padilla and Jhosep Y. Lopez (now a member of the Court). With the dissent of Associate Justice Apolinario D. Bruselas, Jr. of the Former Division of Five of the Former Fourteenth Division,

SP No. 140579. The CA granted the Motion for Reconsideration[4] filed by respondent Manila Electric Company (Meralco) and set aside the Decision and Orders of Energy Regulatory Commission (ERC).

Antecedents

On December 12, 2011, the National Transmission Corporation (TRANSCO) and Meralco entered into a Contract to Sell[5] covering the following sub-transmission lines/assets (STAs):

(a) Dasmariñas-Abubot Rosario 115 kV Line;
(b) Rosario S/S Equipment;
(c) Tayabas 115 kV Switchyard; and
(d) Ternate S/S Equipment.[6]

A Joint Application[7] was filed by TRANSCO and Meralco with the ERC on April 17, 2012. They sought for the approval of the sale of the subject STAs in favor of Meralco under the terms of their Contract to Sell.[8]

Finding the Joint Application sufficient in form and substance, the ERC issued an Order and Notice of Public Hearing setting the case for initial hearing on July 4, 2012.[9]

Petitioner National Grid Corporation of the Philippines (NGCP) filed a Petition for Intervention (With Opposition)[10] on June 29, 2015 claiming that it was not informed about the sale contract between TRANSCO and Meralco. NGCP based its cause on its authority and responsibility to operate, manage, and maintain the nationwide transmission system of the Philippines under Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2011" (EPIRA) and its implementing rules. NGCP averred that in the operation of the subject STAs, it incurred considerable improvement and upgrade costs, which were not considered and included in the sale contract. Accordingly, Meralco, as buyer of the STAs, should pay NGCP the improvement and upgrade costs as additional value to the agreed cost with TRANSCO.[11]

Court of Appeals, Manila.
4 *Id.* at 430–471.
5 *Id.* at 178–190; This was later amended, *id.* at 191–197.
6 *Id.* at 193.
7 *Id.* at 99–112.
8 *Id.* at 105.
9 *Id.* at 404.
10 *Rollo*, vol. 2, pp. 722–726.
11 *Id.* at 723.

The ERC granted NGCP's Petition for Intervention.[12] Hearings on the Joint Application were conducted.

Ruling of the ERC

On April 22, 2013, the ERC rendered a Decision[13] approving with modification the Joint Application, the *fallo* reads:

> **WHEREFORE**, the foregoing premises considered, the application for approval of the sale of various subtransmission lines/assets of the National Transmission Corporation (TRANSCO) to Manila Electric Company ([Meralco]), as covered by a Contract to Sell, with prayer for provisional authority, filed jointly by TRANSCO and [Meralco], is hereby **APPROVED with modification.**
>
> Accordingly, the sale of the following subtransmission assets of TRANSCO to [Meralco] in the amount of One Hundred Nine Million One Hundred Eighty Six Thousand Six Hundred Four and 30/100 Pesos [[PHP] 109,186,604.30], is hereby **APPROVED:**
>
> a) Tayabas 115 kV Switchyard;
>
> . . . .
>
> b) Ternate Substation Equipment.
>
> . . . .
>
> On the other hand, the sale of the following subtransmission assets of TRANSCO to [Meralco] is hereby **DISAPPROVED**:
>
> a) Dasmariñas-Abubot-Rosario 115 kV Line; and
>
> b) Rosario Substation Equipment.
>
> Upon the consummation of the sale, let a copy of the corresponding Deed of Absolute Sale between TRANSCO and [Meralco] be furnished the Commission, for record purposes.
>
> **SO ORDERED.**[14] (Emphasis in the original)

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[12] *Rollo*, vol. 1, p. 404.

[13] *Id.* at 234–247. The April 22, 2013 Decision in ERC Case No. 2012-062 RC was signed by Chairperson Zenaida G. Cruz-Ducut and Commissioners Maria Teresa A.R. Castañeda, Jose C. Reyes and Alfredo J. Non of the Energy Regulatory Commission.

[14] *Id.* at 246–247.

The ERC held that as to the Dasmariñas-Abubot-Rosario 115 kV Line and Rosario Substation (collectively, DAR Assets), Meralco is not the only distribution utility connected with them. The Cavite Economic Zone (CEZ) is also being served by the DAR Assets. Relatively, a waiver of its rights to purchase the DAR Assets was executed by the Philippine Economic Zone Authority (PEZA)[15] in favor of Meralco. However, pursuant to Section 8[16] of EPIRA,[17] a consortium or new juridical entity should be formed between Meralco and CEZ as a pre-requisite for the acquisition of the DAR Assets. The ERC ruled that in order for the acquisition of the said assets to prosper, TRANSCO and Meralco may file a new application through a consortium with CEZ.[18]

Both Meralco and TRANSCO moved for Partial Reconsideration.[19]

Meralco averred that: (1) CEZ is already a Meralco customer; (2) PEZA already waived the purchase of the DAR Assets in favor of Meralco; and (3) the sale of the DAR Assets would be in furtherance of the mandate of the EPIRA to sell and dispose of TRANSCO's subtransmission assets.

For its part, TRANSCO argued that the consortium requirement under Section 8 of EPIRA should be read in conjunction with Rule 6, Section 8(e)[20] of the EPIRA's Implementing Rules and Regulations (IRR). TRANSCO pointed out that it should be allowed to divest the DAR Assets in favor of Meralco, a willing and capable distribution utility, considering the waiver in its favor by PEZA.[21] TRANSCO added that the intention of the law on the disposition of TRANSCO assets call for the permissive character, rather than mandatory, of the word "shall" on the formation of a consortium for such purpose.[22]

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[15] PEZA is the entity managing the CEZ.

[16] SEC. 8. *Creation of the National Transmission Company. . .*
The take over by a distribution utility of any subtransmission asset shall not cause a diminution of service and quality to the end-users. *Where there are two or more connected distribution utilities, the consortium or juridical entity shall be formed by and composed of all of them and thereafter shall be granted a franchise to operate the subtransmission asset by the ERC.*

[17] Electric Power Industry Reform Act of 2001 (2001).

[18] *Rollo*, vol. 1, p. 242.

[19] *Id.* at 248–278.

[20] (e) TRANSCO shall sell its Assets to qualified Distribution Utilities pursuant to the Act and, Part IV, Section 13 of Rule 22 on National Transmission Corporation. In the event that a Distribution Utility is not qualified or a qualified Distribution Utility refuses to acquire such assets, then TRANSCO shall be deemed in compliance with this obligation.

[21] *Rollo*, vol. 1, p. 69.

[22] *Id.* at 270.

On May 5, 2014, the ERC issued the assailed *First Order*[23] denying Meralco's and TRANSCO's respective motions. The ERC ruled that if one of the distribution utilities waives its right to acquire STAs, TRANSCO cannot divest the asset to the other willing distribution utility as Section 8 of the EPIRA does not provide for the abdication of a distribution utility's right to form a consortium.[24] It opined that since the DAR Assets cannot be disposed of by TRANSCO in the absence of a consortium, the same shall be reverted to its Regulatory Asset Base.[25]

Meralco filed a Motion for Reconsideration and Clarification,[26] but it was denied by the ERC in the assailed *Second Order*[27] dated June 16, 2014.

In view of the foregoing Orders, Meralco held several meetings with PEZA representatives and proposed the formation of a consortium for the purpose of acquiring the DAR Assets.[28] However, PEZA sent a letter dated August 14, 2014 pointing out a legal impediment into entering with a consortium with Meralco. Hence, Meralco filed a Motion to Re-open Proceedings,[29] arguing that the legal impediment of PEZA to enter into a consortium is a new substantive matter which was not previously considered and passed upon by the ERC.

In the assailed *Third Order*[30] dated March 4, 2015, the ERC denied Meralco's motion maintaining its earlier ruling that the consortium requirement under Section 8 of the EPIRA does not distinguish whether CEZ has become a customer of Meralco or that PEZA has legal constraints which prevent it from entering into a consortium.

Aggrieved, Meralco filed a petition for review (Rule 43) before the CA.

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[23] *Id.* at 282–296. The May 5, 2014 Order in ERC Case No. 2012-062 RC was signed by Chairperson Zenaida G. Cruz-Ducut and Commissioners Alfredo J. Non, Gloria Victoria C. Yap-Taruc and Josefina Patricia A. Magpale-Asirit of the Energy Regulatory Commission.

[24] *Id.* at 287.

[25] *Id.*

[26] *Id.* at 302–311.

[27] *Id.* at 312–321. The June 16, 2014 Order in ERC Case No. 2012-062-RC was signed by Commissioner Josefina Patricia A. Magpale-Asirit of the Energy Regulatory Commission.

[28] *Id.* at 407.

[29] *Id.* at 322–331.

[30] *Id.* at 333–345. The March 4, 2015 Order in ERC Case No. 2012-062-RC was signed by Chairperson Zenaida G. Cruz-Ducut and Commissioners Alfredo J. Non, Gloria Victoria C. Yap-Taruc and Josefina Patricia A. Magpale-Asirit of the Energy Regulatory Commission.

Ruling of the CA

On August 12, 2016, the CA Fourteenth Division issued a Decision[31] dismissing the petition. The dispositive portion states:

> **WHEREFORE,** premises considered, the petition is hereby **DISMISSED.**
>
> **SO ORDERED.** (Emphasis in the original)

On procedural ground, the CA held that the 15-day reglementary period to file an appeal cannot be reckoned from the receipt of the First Order, as the same did not finally dispose of the case.[32] It ruled that emphasis must be made that the ERC gave due course to Meralco's Motion to Re-Open Proceedings.[33] Thus, when the assailed Third Order was issued, it was only then that the ERC can be considered to have finally disposed of the case. According to the CA, the filing of the petition was rightfully reckoned from the receipt of the ERC's Third Order.[34]

On substance, the CA affirmed the ERC that Meralco must first form a consortium with CEZ before it could be granted the right to take over the operation of the DAR STAs.[35] The mandatory character of Section 8 of the EPIRA is not contrary to the mandate of the law to dispose of STAs as it merely provides for the manner on how to dispose of a subtransmission asset in cases where there are two or more connected distribution utilities.[36] If a statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.[37]

Further, the CA declared, among others, the following: a) the waiver by PEZA is invalid considering that what is being waived is not a right but a function mandated by law for it to perform; b) PEZA still functions as a distribution utility inside CEZ; c) the filing of the Joint Application did not give Meralco the vested right to acquire STAs since it must first comply with the requirements of the law to exercise its right; d) there is no reason to disagree with the ERC reclassifying the DAR 115 kV Line into a transmission asset and therefore can no longer be subject of a sale; and e)

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[31] *Id.* at 402–429. The August 12, 2016 Decision in CA-G.R. SP No. 140579 was penned by Associate Justice Renato C. Francisco and concurred in by Associate Justices Apolinario D. Bruselas Jr. and Danton Q. Bueser of the Fourteenth Division, Court of Appeals, Manila.

[32] *Id.* at 417.

[33] *Id.* at 418.

[34] *Id.*

[35] *Id.* at 419.

[36] *Id.*

[37] *Id.* at 420.

there is no substantial basis anent Meralco's contention that reclassification of the DAR STAs to transmission assets would result in increased electricity rates not only for consumers located in CEZ but also for the consuming public who do not actually benefit from the DAR STAs.[38]

Meralco moved for reconsideration.[39]

Amended Ruling of the CA

On September 15, 2017, the CA issued the Amended Decision[40] granting Meralco's motion, the decretal portion reads:

> **WHEREFORE**, premises considered, the motion for reconsideration is hereby **GRANTED**. This Court's [August 12, 2016] Decision is **VACATED**. Accordingly, the instant petition is **GRANTED**. The assailed Decision and Orders of the ERC are **REVERSED and SET ASIDE**.
>
> Accordingly, the sale of the [Dasmariñas]-Abubot-Rosario 115 kV Line and the Rosario Substation Equipment in favor of [Meralco] is hereby **APPROVED**.
>
> **SO ORDERED**.[41] (Emphasis in the original)

The CA ratiocinated that what was waived by PEZA is the right or privilege granted to CEZ, as qualified distribution utility under Section 8 of the EPIRA, to acquire the STAs.[42] The law does not impose upon a qualified distribution utility the obligation to acquire the STAs connected to it.[43] Being a mere right or privilege, the acquisition of the DAR Assets may be validly waived, as was PEZA did, in favor of Meralco.[44] Such waiver operates to dispense with the consortium requirement under Section 8 of the EPIRA. The CA ruled that Meralco's acquisition of the DAR assets will prove to be more beneficial to the consumers rather than reverting the same to TRANSCO's Regulatory Asset Base.[45]

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[38] *Id.* at 421–428.
[39] *Id.* at 430–471.
[40] *Id.* at 63–75.
[41] *Id.* at 74.
[42] *Id.* at 67.
[43] *Id.*
[44] *Id.* at 68.
[45] *Id.* at 72.

In addition, the CA observed that while the EPIRA does not provide for an abdication of a distribution utility's right to form a consortium through waiver, it likewise does not provide for an express prohibition by a qualified distribution utility in favor of the other.[46] Hence, to insist on a consortium despite PEZA's unwillingness and non-qualification would be to ask for the impossible.[47] Taken, thus, in the light of the mandate of the EPIRA and the waivers executed by PEZA in favor of Meralco (which are not contrary to law, public order, public policy, morals, or good customs, or prejudicial to a third person), Meralco's acquisition of the DAR Assets should be affirmed.[48]

NGCP filed a Motion for Reconsideration and Supplemental Motion for Reconsideration with Motion for Inhibition,[49] but it was denied for lack of merit in the Resolution dated May 31, 2018.[50]

Hence, this Petition filed by NGCP.

Issues

NGCP submits the following issues for resolution:

1) Whether the CA has jurisdiction to entertain an appeal, much more reverse, a final and executory Decision of the ERC.

2) Assuming for the sake of argument that the CA correctly assumed jurisdiction over Meralco's petition for review, whether the CA patently erred in ruling that the consortium and franchise requirements under Section 8 of the EPIRA may be the subject of waiver by a distribution utility.

3) Whether the ruling of the CA in interpreting Section 8 of the EPIRA is tantamount to judicial legislation.

4) Whether the CA erred in overturning a well-settled ruling of the ERC, a specialized quasi-judicial agency, which ruling has been repeatedly and consistently applied to the

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[46] *Id.*
[47] *Id.*
[48] *Id.* at 73.
[49] *Id.* at 667–680.
[50] *Id.* at 97.

entire power industry since the enactment of the EPIRA in 2001.

5) Whether the DAR Assets are transmission assets and may no longer be divested to any other entity.[51]

Ruling of the Court

The Petition is meritorious.

The CA had jurisdiction over Meralco's Petition for Review

Preliminarily, the Court affirms the finding of the CA that it has jurisdiction to entertain the petition for review (Rule 43) filed by Meralco. The reckoning time to count the 15-day reglementary period to appeal should be from the receipt of the Third Order denying Meralco's Motion to Re-open Proceedings.

It should be emphasized that the ERC *gave due course* to Meralco's Motion to Re-open Proceedings and required TRANSCO, NGCP, and PEZA to file comment/opposition.[52] It did not deny outright said motion on the basis that it is a prohibited pleading. The ERC recognized the supervening matters raised in Meralco's motion and the respective comments/opposition of TRANSCO, NGCP, and PEZA. Even in its Opposition[53] to Meralco's Motion, NGCP did not raise any procedural infirmity but foremost refuted the substantial averments in said motion.

The CA was correct in holding that it was only upon the issuance of the Third Order that the ERC can be considered to have issued a judgment that finally disposed of the case, taking into consideration such supervening matters. The First and Second Orders of the ERC did not attain finality since the Motion to Re-open Proceedings is still a continuation of the proceedings in view of the supervening matters raised by Meralco.

Having been filed within the reglementary period, the CA had jurisdiction to resolve Meralco's petition.

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[51] *Id.* at 30–31.
[52] *Id.* at 408.
[53] *Rollo*, vol. 2, 747–753.

Interpretation of Section 8, paragraph 6, of the EPIRA

On June 8, 2001, Congress enacted the EPIRA which provided a framework for the restructuring of the electric power industry and defined the responsibilities of various government agencies and private entities. It introduced reforms including the restructuring and deregulation of the entire power industry and the privatization of most state-owned power generation and transmission assets. Such reforms were intended to introduce more competition and choices for consumers while leveling the playing field in the power industry in order to encourage greater private sector participation.[54] The EPIRA was passed to ensure and accelerate the total electrification of the country; ensure the quality, reliability, security, and affordability of the supply of electric power, among others.[55]

Section 8 of the EPIRA, the provision subject of interpretation, states:

> SEC. 8. Creation of the National Transmission Company.- There is hereby created a National Transmission Corporation, hereinafter referred to as TRANSCO, which shall assume the electrical transmission function of the National Power Corporation (NPC), and have the powers and functions hereinafter granted. The TRANSCO shall assume the authority and responsibility of NPC for the planning, construction and centralized operation and maintenance of its high voltage transmission facilities, including grid interconnections and ancillary services.
>
> Within six (6) months from the effectivity of this Act, the transmission and subtransmission facilities of NPC and all other assets related to transmission operations, including the nationwide franchise of NPC for the operation of the transmission system and the grid, shall be transferred to the TRANSCO. The TRANSCO shall be wholly owned by the Power Sector Assets and Liabilities Management Corporation (PSALM Corp.).
>
> The subtransmission functions and assets shall be segregated from the transmission functions, assets and liabilities for transparency and disposal: Provided, That the subtransmission assets shall be operated and maintained by TRANSCO until their disposal to qualified distribution utilities which are in a position to take over the responsibility for operating, maintaining, upgrading, and expanding said assets. All transmission and subtransmission related liabilities of NPC shall be transferred to and assumed by the PSALM Corp.

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[54] Accelerating Power Sector Reforms: Amending the EPIRA, *available at* https://legacy.senate.gov.ph/publications/PB%202008-03%20-%20Accelerating%20Power%20Sector%20Reforms.pdf (last accessed on May 10, 2024) .

[55] EPIRA, secs. 2(a) and 2(b).

> TRANSCO shall negotiate with and thereafter transfer such functions, assets, and associated liabilities to the qualified distribution utility or utilities connected to such subtransmission facilities not later than two (2) years from the effectivity of this Act or the start of open access, whichever comes earlier: Provided, That in the case of electric cooperatives, the TRANSCO shall grant concessional financing over a period of twenty (20) years: Provided, however, That the installment payments to TRANSCO for the acquisition of subtransmission facilities shall be given first priority by the electric cooperatives out of the net income derived from such facilities. The TRANSCO shall determine the disposal value of the subtransmission assets based on the revenue potential of such assets.
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> In case of disagreement in valuation, procedures, ownership participation and other issues, the ERC shall resolve such issues.
>
> The take over by a distribution utility of any subtransmission asset shall not cause a diminution of service and quality to the end-users. *Where there are two or more connected distribution utilities, the consortium or juridical entity shall be formed by and composed of all of them and thereafter shall be granted a franchise to operate the subtransmission asset by the ERC.*
>
> The subscription rights of each distribution utility involved shall be proportionate to their load requirements unless otherwise agreed by the parties.
>
> Aside from the PSALM Corp., TRANSCO and connected distribution utilities, no third party shall be allowed ownership or management participation, in whole or in part, in such subtransmission entity.
>
> TRANSCO may exercise the power of eminent domain subject to the requirements of the Constitution and existing laws. Except as provided herein, no person, company or entity other than the TRANSCO shall own any transmission facilities.
>
> Prior to the transfer of the transmission functions by NPC to TRANSCO, and before the promulgation of the Grid Code, ERC shall ensure that NPC shall provide to all electric power industry participants open and non-discriminatory access to its transmission system. Any violation thereof shall be subject to the fines and penalties imposed herein. (Emphasis supplied)

Specifically, the interpretation of *paragraph 6* of the above-quoted section is the focus of the resolution of this case.

To this Court, Section 8 of the EPIRA requiring the formation of a consortium or juridical entity where there are two or more connected distribution utilities, and to be granted a franchise to operate the STA by the

ERC is *clear and leaves no room for interpretation*. Consequently, there is a need to form a consortium between Meralco and PEZA, and to obtain a franchise from the ERC before Meralco could be granted the right to own, operate, and maintain the DAR Assets.

Meralco insists that the formation of a consortium may be dispensed with because of a legal impediment on the part of PEZA to form a consortium. Also, PEZA has already waived its right to acquire the DAR Assets in favor of Meralco, which waiver is not contrary to law, public order, public policy, morals, or good customs, or prejudicial to a third person with a right recognized by law. In addition, PEZA has entered into a Concession Agreement with Meralco, which in effect divested itself of direct participation in the distribution of power in the CEZ. Hence, Meralco should be considered as the sole distribution utility connected to the DAR STAs. Meralco, thus, claims that these special circumstances warrant the relaxation of the consortium requirement.

These contentions fail to persuade.

A cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application. As the statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is what is known as the plain-meaning rule or *verba legis*. It is expressed in the maxim, *index animi sermo*, or "speech is the index of intention." Furthermore, there is the maxim *verba legis non est recedendum*, or "from the words of a statute there should be no departure."[56]

Moreover, this Court has consistently enunciated that the use of the word *"shall"* in a statute connotes a mandatory order or an imperative obligation.[57] It indicates a word of command, and one which has always or which must be given a compulsory meaning.[58]

Here, Section 8 is unequivocal in stating that "[w]here there are two or more connected distribution utilities, the consortium or juridical entity *shall* be formed by and composed of all of them and thereafter *shall* be granted a franchise to operate the STA by the ERC." In order to legally operate the shared STA, two things must be done; (1) all connected

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[56] *Tumabini v. People*, 871 Phil. 289, 304 (2020) [Per C.J. Gesmundo, Third Division].

[57] *Power Sector Assets and Liabilities Management Corp. v. Commissioner of Internal Revenue*, 815 Phil. 966, 993 (2017) [Per J. Carpio, *En Banc*].

[58] *See UCPB General Insurance Co., Inc. v. Hughes Electronics Corp.*, 800 Phil. 67, 79 (2016) [Per J. Perez, Third Division].

distribution utilities should form a consortium and (2) the consortium, which is a new entity, must obtain a franchise from ERC to operate the said STA.

Clearly, the use of the word "shall" means that a consortium is a mandatory requirement. Since the law did not provide for any exceptions, the courts may not except something from it, unless there is compelling reason apparent in law to justify it.[59] The requirement to form a consortium between Meralco and PEZA is, thus, mandatory and imperative.

For the Court to take a contrary position and rule that the subject Section 8, paragraph 6 of the EPIRA be construed as "permissive" rather than mandatory would undoubtedly set a dangerous precedent. Distribution utilities connected to a STA subject of divestment by TRANSCO could easily circumvent the requirement of forming a consortium through the simple expedience of a waiver of one distribution utility's right to enter into such consortium.

This could not have been the intention of the legislature.

Had the legislature intended on allowing this circumvention, it could have simply worded the provision in a manner that permits one or more of the directly connected distribution utilities to waive its right to enter into a consortium and to acquire a portion of the STAs to be divested. Otherwise stated, the law could have already expressly worded the consortium requirement as optional by using the word *"may"* instead of "shall".

The Court observes that the provisions of the EPIRA already covers a situation where one of the directly connected distribution utilities may not wish to participate, or may instead wish to lessen or minimize its participation, in the operation and maintenance of divested STAs. This is found in Section 8, paragraph 7 where it is clearly stated that the "subscription rights of each distribution utility involved [in the consortium] shall be proportionate to their load requirements *unless otherwise agreed upon by the parties*."

Said paragraph expressly allowing the parties to the consortium the leeway to stipulate their respective subscription rights indicates the intention of the legislature that while it is necessary for the directly connected distribution utilities to enter into a consortium, the parties to the same are free to stipulate and agree to the participation of each of them.

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[59] *MTRCB v. ABS-CBN*, 489 Phil. 544, 555 (2005) [Per J. Sandoval-Gutierrez, Third Division].

The CA, therefore, committed an error when it ruled that to insist on a consortium despite PEZA's unwillingness to operate the asset would be to ask for the impossible. While it is true that Section 12(c)[60] of Republic Act No. 7916[61] appears to limit the PEZA Board's power to operate and maintain utilities to those "in the ECOZONE", there is nothing that prevents PEZA from entering into a consortium on the condition that it be relieved from the burden of maintaining and operating the DAR Assets outside of the CEZ.

In other words, PEZA could have entered into a consortium with Meralco without having to actually perform any maintenance or operation of STAs outside of the CEZ. We agree with NGCP's argument that in such a situation, Section 8 of the EPIRA provides Meralco and PEZA with the option of limiting the latter's subscription rights to be lower than that of its load requirements.

In this case, since PEZA is not interested in operating the DAR Assets, a consortium to be formed by Meralco and PEZA may contain an agreement that the subscription rights of PEZA be lower than its load requirements. Further, there may be a stipulation limiting PEZA's participation in the operations and maintenance of the STAs to be divested to those found only within the CEZ, if any, thereby removing any legal obstacle to the formation of the consortium and the latter's acquisition of the DAR Assets. Hence, the consortium requirement is not an impossible condition.

It is yet another cardinal rule in statutory construction that a statute must be so construed as to harmonize and give effect to all its provisions whenever possible. It is likewise a basic precept in statutory construction that the intent of the legislature is the controlling factor in the interpretation of the subject statute.[62]

Under the EPIRA, it was the intention of the legislature for TRANSCO to divest its remaining STAs to qualified distribution utilities. The fundamental mandate of the EPIRA was to dispose of the STAs. While this may be the overarching intention of Section 8, the same is not incompatible with the clear wording of paragraph 6 requiring the mandatory formation of a consortium. Section 8 merely provides for the manner on how to dispose of the STAs in cases where there are two or more connected

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[60] SECTION 12. Functions and Powers of PEZA Board. — The Philippine Economic Zone Authority (PEZA) Board shall have the following functions and powers:

. . . .

(c) Regulate and undertake the establishment, operation and maintenance of utilities, other services and infrastructure in the ECOZONE, such as heat, light and power, water supply, telecommunications, transport, toll roads and bridges, port services, etc., and to fix just, reasonable and competitive rates, fares, charges and fees therefor[.]

[61] The Special Economic Zones Act (1995).

[62] *National Tobacco Administration v. COA*, 370 Phil. 793, 808 (1999) [Per J. Purisima, *En Banc*].

distribution utilities.[63]

In keeping with the cardinal principle of interpreting statutes in a manner that would harmonize and give effect to all of its provisions, the Court upholds the mandatory nature of the consortium requirement under Section 8, paragraph 6 of the EPIRA. In cases where one of the directly connected distribution utilities wishes, or is constrained, to limit or minimize its participation in the operations and maintenance of the divested STAs, the law already provides that the parties are free to stipulate as such and reflect the same through their respective subscription rights.

The above interpretation gives effect to all of Section 8 and is consistent with the primary intention of the legislature, i.e. the divestment of STAs to qualified distribution utilities, without sacrificing the enforceability, relevance, and utility of paragraph 6.

In fact, in the event that the other connected distribution utility *refuses* to acquire the STAs, thereby precluding the formation of the required consortium, then TRANSCO shall be deemed in compliance with its obligation to sell the STAs. TRANSCO shall be relieved of its obligation to sell said assets. This is clearly provided under Rule 6, Section 8(e) of the IRR of the EPIRA, which reads:

> Section 8. *Obligations of TRANSCO.* – The TRANSCO shall have, among others, the following obligations:
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> . . . .
>
> (e) TRANSCO shall sell its Subtransmission Assets to qualified Distribution Utilities pursuant to the Act and, Part IV, Section 13 of Rule 22 on National Transmission Corporation. In the event that a Distribution Utility is not qualified or a qualified Distribution Utility refuses to acquire such assets, *then TRANSCO shall be deemed in compliance with this obligation.* (Emphasis supplied)

The above provision pertains to the obligation of TRANSCO to sell the STAs and not to the non-obligatory character of said assets' acquisition by a qualified distribution utility as ruled by the CA.[64]

Findings of facts of quasi-judicial agencies are generally accorded great weight and even finality

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[63] *Rollo*, vol. 1, p. 18.
[64] *Id.* at 67.

Generally, the "factual findings of administrative bodies charged with their specific field of expertise, are afforded great weight by the courts, and in the absence of substantial showing that such findings were made from an erroneous estimation of the evidence presented, they are conclusive, and in the interest of stability of the governmental structure, should not be disturbed."[65]

The ERC, "by reason of its official mandate and functions [has] acquired expertise in specific matters within [its] jurisdiction, and [its] findings deserve full respect. Without justifiable reason, its factual findings ought not to be altered, modified, or reversed."[66]

The ERC remained steadfast in its ruling that if one of the distribution utilities waives its right to acquire a STA, TRANSCO cannot divest the asset to the other distribution utility who is willing to buy the asset since Section 8 of the EPIRA did not provide for the abdication of a distribution utility's right to form a consortium. Simply put, the formation of a consortium or juridical entity is a strict requirement for the acquisition of STAs.

Moreover, the ERC has made a factual and technical determination that the DAR Assets "should be reclassified as transmission asset, and can no longer be subject of sale." It is to be noted that the ERC recognized the NGCP's claim that with the proposed connection of the 40 MW Solar Power Plant of Majestic Energy Corporation (MEC) to the subject DAR 115kV Line, the subject line should be reclassified as transmission asset and can no longer be the subject of sale.[67]

Relatedly, the fact that no formal reclassification of the DAR Assets has taken place does not change the physical and technical nature of the same. In other words, the connection of a generator to the DAR Assets transforms its functions from those of a STA, to that of a transmission asset, notwithstanding its formal classification. This is in accordance with Article III, Section 2 of ERC Resolution No. 15, Series of 2011[68] which distinctly provides the legal basis for the ERC's ruling:

> Section 2. *Technical and Functional Criteria.* – The assets shall be classified based on the technical and functional criteria enumerated in Section 4 and 6, Rule 6, Part II of the IRR of the Act, including, but not limited to, the following:

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[65] *Jose v. Novida*, 738 Phil. 99, 120 (2014) [Per J. Del Castillo, Second Division], *citing Sugar Regulatory Administration v. Tormon*, 700 Phil. 165, 178 (2012) [Per J. Peralta, *En Banc*].

[66] *Cabral v. Adolfo*, 794 Phil. 161, 172 (2016) [Per J. Reyes, Third Division].

[67] *Rollo*, vol. 1, pp. 333–344.

[68] Amended Guidelines Covering the Sale & Transfer of Subtransmission Assets and Franchising of Qualified Consortiums.

> a) Lines, power transformers, and other assets held by TransCo or NGCP, *which allow the transmission of electricity to a grid from one or more directly connected generators, shall be classified as transmission assets.* (Emphasis supplied)

From the foregoing, it is clear that the ERC, being the administrative body imbued with the technical expertise to determine the functions and nature of the DAR Assets and the propriety of its disposition, has already ruled that the DAR Assets, by virtue of its connection to a generator, should be reclassified as transmission asset, and cannot be the subject of acquisition by Meralco.

We deem it worthy to highlight that in ruling on applications for approval of the sale of STAs, it is precisely the duty of the ERC to determine if an asset is proper for disposition to a qualified distribution utility. Here, given its findings that the DAR Assets should be classified as transmission assets, after taking into consideration the technical and functional criteria of said assets, the ERC was well within its mandate and expertise to rule that the DAR Assets are incapable of acquisition by Meralco.

Pursuant to the provisions of Section 7 and 8 of the EPIRA, as well as Rule 6 of its IRR, the ERC promulgated its "*Guidelines to the Sale and Transfer of the TRANSCO's Subtransmission Assets and the Franchising of Qualified Consortiums*" (Subtransmission Guidelines) approved on October 17, 2003, as amended by Resolution No. 15, Series of 2011 (Amended Rules). Article V, Section 3 of the Amended Rules states that the final sale and transfer of STAs by TRANSCO to a qualified distribution utility must be approved by the ERC –

> Section 4. *Approval by ERC.* – Prior to the final sale and transfer of such subtransmission assets by TransCo to qualified buyer the parties shall jointly file with ERC an application for approval on each of the following:
>
> a) The assets meet the technical and functional criteria for subtransmission assets established in Article III hereof; and
>
> b) The distribution utility or consortium or juridical entity meets the qualifications criteria established in Article IV hereof.

Evidently, the ERC's approval of the final sale and transfer of STAs is hinged on whether such assets meet the technical and functional criteria for STAs. To rule that the ERC is bound by the formal and current classification

of an asset would effectively strip the ERC of its power to use its technical expertise in determining whether such asset may or may not be disposed of in favor of qualified distribution utilities.

The Court, thus, affirms the ruling of the ERC in its March 4, 2015 Order (Third Order) that with the connection of the 40 MW Solar Power Plant, the DAR Assets should be reclassified as transmission asset, and therefore, could no longer be the subject of sale to Meralco.

In addition, the Court notes that the ERC had ruled that the reclassification of the DAR Assets to a transmission asset would result in a reduction in electricity rates. Meralco contends that the reclassification of the DAR Assets to transmission assets would result in increased electricity rates not only for consumers located in the CEZ but also for the consuming public who do not actually benefit from the DAR Assets. To this, the CA pronounced:

> Contrary to the claim of [Meralco] the ERC did not fail to consider that the CEZ is also being serviced by FCIE-Rosario as such fact was disclosed in the assailed Order. In fact, it was mentioned by ERC that even if the DAR 115 kV [*DAR Assets*] Line be reclassified from subtransmission asset to a transmission asset, CEZ would still remain to be a customer of [Meralco]; and that CEZ had the option to be connected to NGCP or to [Meralco].
>
> Because the DAR 115 kV Line had been reclassified as transmission asset, it necessarily follows that NGCP can no longer collect residual subtransmission charge from [Meralco] for the use of DAR 115 kV Line and [Meralco], in turn, would no longer pass on any subtransmission charge, pertaining to DAR 115 kV, to CEZ. Hence, with the elimination of the subtransmission charge for the use of DAR 115 kV Line, ERC had ample basis in concluding that the reclassification of DAR 115 kV Line to a transmission asset would result in a reduction in rate.
>
> To support its claim that the reclassification of the Dasma-Rosario STAs to transmission assets would result in increased electricity rates for consumers located in the CEZ, we have to note that [Meralco] merely presented a simulated scenario. The simulated scenario is supposed to show the possible rate impact to the CEZ if the Dasma-Rosario STAs are reverted to the Regulatory Asset Base of TRANSCO or NGCP. A perusal, however, of the simulation exercise shows that [Meralco] did not even bother to present any basis on how it came up with the figures that it used in its simulation. Furthermore, it also appears that [Meralco] did not factor in the recomputation of the connection charges and the residual subtransmission charges to [Meralco] and PEZA-CEZ once the Dasma-Rosario STAs had been reclassified. Had [Meralco] considered the effect of the reclassification to the connection charges and residual subtransmission charges, the

monthly billing of PEZA-CEZ would mathematically be lower than what it provided in its simulated scenario.[69]

The ERC has been consistent in requiring a consortium in the acquisition of STAs

The ERC has consistently ruled that the creation of a consortium or juridical entity between and among the distribution utilities connected to the asset subject of the sale is an essential requirement of law prior to the approval of the divestment application.

The NGCP attached to its petition ERC Decisions to show that the ERC has been consistent in applying Section 8 of the EPIRA as to the requirement of a consortium or juridical entity in the acquisition of STAs.

It can be seen that in those cases decided by the ERC, a consortium had been formed between the connected distribution utilities; hence, the ERC granted the approval of the sale of the STAs.[70] In fact, in two cases submitted by NGCP, it involved Meralco's application for the approval of the sale of various STAs of TRANSCO.[71] In those applications, Meralco had already formed a consortium with the connected distribution utility in the affected areas.[72]

This is telling evidence that Meralco is very much aware of the consortium requirement under Section 8 of the EPIRA. It cannot now, in this particular case confronting Us, seek for an exception or relaxation of the consortium requirement when the law provides none.

A Final Word

If only to re-stress, nothing is more settled that if a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. As articulated by this Court:

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[69] *Rollo*, vol. 1, pp. 426–427.

[70] *Rollo*, vol. 3, pp. 1194–1229. *See* Annexes "HH", "II", and "JJ".

[71] *Id.* at 1230–1254. *See* Annexes "KK" and "LL".

[72] The first application is a Consortium of Meralco and Batangas II Electric Cooperative, Inc. (BATELEC). The second application is a Consortium of Meralco and First Bay Power Corporation (FBPC).

> It is a well-settled rule in statutory construction that where the words of a statute are clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.
>
> The plain meaning rule or *verba legis*, derived from the maxim *index animi sermo est* (speech is the index of intention), rests on the valid presumption that the words employed by the legislature in a statute correctly express its intention or will, and preclude the court from construing it differently. For the legislature is presumed to know the meaning of the words, to have used them advisedly, and to have expressed the intent by use of such words as are found in the statute. *Verba legis non est recedendum*. From the words of a statute there should be no departure.[73]

The Court emphasizes that the formation of a consortium or a juridical entity is a mandatory requirement under Section 8, paragraph 6 of the EPIRA. This mandatory character of Section 8 is not contrary to the mandate of the law to dispose of a STA as it merely provides for the manner on how to dispose of a STA in cases where there are two or more connected distribution utilities. As articulated by the CA in the August 12, 2016 Decision:

> The mandatory character of Section 8 is not contrary to the mandate of the law to dispose of STAs as it merely provides for the manner on how to dispose of a subtransmission asset in cases where there are two or more connected distribution utilities. In fact, it is apparent that paragraph 6, Section 8 is really a "competition-driven" provision as it seeks to prevent the monopolization by a distribution utility in cases where there are other connected distribution utilities. By encouraging competition among the electric power industry participants, the possibility of price or market manipulation is avoided, if not totally deterred. Hence, the consortium requirement is evidently more in keeping with the declared policy of the state, which is provided under Section 2 of the EPIRA, *viz*[.]:
>
> Section 2. *Declaration of Policy.* - It is hereby declared the policy of the State:
>
> . . . .
>
> (b) To ensure the quality, reliability, security and affordability of the supply of electric power;
>
> (c) To ensure transparent and reasonable prices of electricity in a regime of free and fair competition and full public accountability to achieve greater operational and economic efficiency and enhance the

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[73] *Philippine Amusement and Gaming Corp. v. Philippine Gaming Jurisdiction Inc.*, 604 Phil. 547, 553 (2009) [Per J. Carpio-Morales, Second Division].

> competitiveness of Philippine products in the global market;
>
> (d) To enhance the inflow of private capital and broaden the ownership base of the power generation, transmission and distribution sectors in order to minimize the financial risk exposure of the national government;
>
> . . . .
>
> (f) To protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power;
>
> . . . .
>
> (i) To provide for an orderly and transparent privatization of the assets and liabilities of the National Power Corporation (NPC).[74]

The solemn power and duty of the Court to interpret and apply the law does not include the power to correct by reading into the law what is not written therein.[75] As often been repeated, the intent or spirit of the law is the law itself. *Ratio legis est anima.* A statute must be read according to its spirit or intent. Withal, courts ought not to interpret and should not accept an interpretation that would defeat the intent of the law and its legislators.[76]

ACCORDINGLY, the instant Petition is **GRANTED**. The Amended Decision dated September 15, 2017 and the Resolution dated May 31, 2018 of the Court of Appeals in CA-G.R. SP No. 140579 are **REVERSED** and **SET ASIDE**. The Decision of the Court of Appeals dated August 12, 2016 is hereby **REINSTATED**.

SO ORDERED.

RODIL V. ZALAMEDA
Associate Justice

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[74] *Rollo*, vol. 1, pp. 419–420.
[75] *Chavez v. Judicial and Bar Council*, 691 Phil. 173, 209 (2012) [Per J. Villarama, Jr., *En Banc*].
[76] *See League of Cities of the Phils. v. Commission on Elections*, 623 Phil. 531, 547–548 (2009) [Per J. Velasco, Jr., *En Banc*].

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice
Chairperson

RAMON PAUL L. HERNANDO
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JOSE MIDAS P. MARQUEZ
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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's Division.

ALEXANDER G. GESMUNDO
Chief Justice