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G.R. No. 214042 (FOUNDATION FOR ECONOMIC FREEDOM, INC., Petitioner, v. **ENERGY REGULATORY COMMISSION and NATIONAL RENEWABLE ENERGY BOARD,** Respondents);

G.R. No. 215579 (REMIGIO MICHAEL A. ANCHETA II, Petitioner, v. **ENERGY REGULATORY COMMISSION, DEPARTMENT OF ENERGY, NATIONAL TRANSMISSION COMMISSION, NATIONAL RENEWABLE ENERGY BOARD, and MANILA ELECTRUC COMPANY,** Respondents; **FOUNDATION FOR ECONOMIC FREEDOM and CITIZENWATCH, INC.,** Intervenors); **and**

G.R. No. 235624 (ALYANSA NG MGA GRUPONG HALIGI NG AGHAM AT TEKNOLOHIYA PARA SA MAMAMAYAN [AGHAM] and ANGELO B. PALMONES, Petitioners, v. **DEPARTMENT OF ENERGY, ENERGY REGULATORY COMMISSION, NATIONAL RENEWABLE ENERGY BOARD, NATIONAL TRANSMISSION CORPORATION, and MANILA ELECTRIC COMPANY,** Respondents; **DEVELOPERS FOR RENEWABLE ENERGY FOR ADVANCEMENT, INC. [DREAM],** Intervenor).

Promulgated:

August 13, 2024

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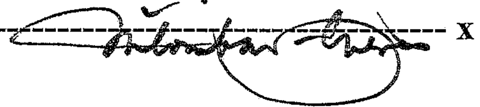

CONCURRENCE

LAZARO-JAVIER, *J.*:

As settled in the *ponencia*, the role of Feed-in-Tariff (FIT) settlement agent has been transferred by virtue of Energy Regulatory Commission (ERC) Resolution No. 15, series of 2012 to a government-owned and controlled corporation, the National Transmission Corporation (TransCo).

Perusing ERC Resolution No. 15, series of 2012, I cannot help but observe that the designation of TransCo as settlement agent was the result of proactiveness on the part of several agencies of the government (all respondents in these cases), namely: the ERC (by posting an Issues Paper soliciting comments, inputs and suggestions from electricity industry stakeholders), the Office of the Government Corporate Counsel (for issuing an opinion that the FIT is a public fund), and the National Renewable Energy

Board (for recommending the designation of TransCo as settlement agent).[1] Even without any pending legal action before the courts, respondents took the initiative to pre-empt any issues regarding the implementation of the FIT system. To my mind, this collaborative effort and self-awareness on the part of respondents should be recognized and encouraged.

That said, I now fully concur with the *ponencia*'s validation of the early collection from and payment by end-consumers of the FIT Allowance (FIT-All).

Though end-consumers of electricity are already financially burdened by the imposition of FIT-All, *Republic v. Bacolod-Murcia Milling*,[2] provides a legal cover for the FIT-All arrangement as a legitimate police power imposition:

> Under Section 6 of the said law, Commonwealth Act 567, all collections made thereunder "shall accrue to a special fund in the Philippine Treasury, to be known as the 'Sugar Adjustment and Stabilization Fund,' and shall be paid out only for any or all of the following purposes or to attain any or all of the following objectives, as may be provided by law." It then proceeds to enumerate the said purposes, among which are "to place the sugar industry in a position to maintain itself; . . . to readjust the benefits derived from the sugar industry . . . so that all might continue profitably to engage therein; to limit the production of sugar to areas more economically suited to the production thereof; and to afford laborers employed in the industry a living wage and to improve their living and working conditions."
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> The plaintiff in the above case, Walter Lutz, contended that the aforementioned tax or special assessment was unconstitutional because it was being "levied for the aid and support of the sugar industry exclusively," and therefore, not for a public purpose. In rejecting the theory advanced by the said plaintiff, this Court said:
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> > "The basic defect in the plaintiff's position is his assumption that the tax provided for in Commonwealth Act No. 567 is a pure exercise of the taxing power. Analysis of the Act, and particularly Section 6, will show that the tax is levied with a regulatory purpose, to provide means for the rehabilitation and stabilization of the threatened sugar industry. In other words, the act is primarily an exercise of the police power.
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> > "This Court can take judicial notice of the fact that sugar production is one of the great industries of our nation, sugar occupying a leading position among its export products; that it gives employment to thousands of laborers in fields and factories; that it is a great source of the state's wealth, is one of the important source of foreign exchange needed by our government, and is thus pivotal in the plans of a regime committed to a

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[1] ERC Resolution No. 15, series of 2012, Annex A.

[2] 124 Phil. 27 (1966) [Per J. Regala, *En Banc*].

> policy of currency stability. Its promotion, protection and advancement, therefore redounds greatly to the general welfare. Hence it was competent for the legislature to find that the general welfare demanded that the sugar industry should be stabilized in turn; and in the wide field of its police power, the law-making body could provide that the distribution of benefits therefrom be readjusted among its components to enable it to resist the added strain of the increase in taxes that it had to sustain (Sligh vs. Kirkwood, 237 U.S. 52, 59 L. Ed. 835; Johnson vs. State ex rel. Marey, 99 Fla. 1311, 128 So. 853; Maxcy Inc. vs. Moyo, 103 Fla. 552, 139 So. 121)
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> "As stated in Johnson vs. State ex rel. Marey, with reference to the citrus industry in Florida —
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> > 'The protection of a large industry constituting one of the great source of the state's wealth and therefore directly or indirectly affecting the welfare of so great a portion of the population of the State is affected to such an extent by public interests as to be within the police power of the sovereign." (128 So. 857)
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> "Once it is conceded, as it must that the protection and promotion of the sugar industry is a matter of public concern, it follows that the Legislature may determine within reasonable bounds what is necessary for its protection and expedient for its promotion. Here, the legislative discretion must be allowed full play, subject only to the test of reasonableness; and it is not contended that the means provided in Section 6 of the law (above quoted) bear no relation to the objective pursued or are oppressive in character. If objective and methods are alike constitutionally valid, no reason is seen why the state may not levy taxes to raise funds for their prosecution and attainment. Taxation may be made the implement of the state's police power. (*Great Atl. & Pac. Tea Co. vs. Grosjean*, 301 U.S. 412, 81 L. Ed. 1193; *U.S. vs. Butler*, 237 U.S. 1, 30 L. Ed. 477; *M'callock vs. Maryland*, 4 Wheat. 316, 4 L. Ed. 579)."

> On the authority of the above case, then, We hold that the special assessment at bar may be considered similarly as the above, that is, that the levy for the Philsugin Fund is not so much an exercise of the power of taxation, nor the imposition of a special assessment, but, the exercise of the police power for the general welfare of the entire country. It is, therefore, an exercise of a sovereign power which no private citizen may lawfully resist.

Elsewhere, FIT schemes are also in place, and end-users are also made to shoulder the cost of incentivizing renewable energy generation companies. Under Japan's FIT system, "electric utilities and merchants purchase renewable-generated electricity at prices and contract durations set by the Ministry of Economy, Trade and Industry [and] end-users pay a

surcharge to help cover the renewable portion of the total power supply."[3] In Germany too, "the extra cost of [Renewable Energy] is shared among all energy [end-users] by the [German FIT] meaning that [end-users are expected] to pay a specific amount for each kWh used."[4]

Be that as it may, I submit my observation that the balance is tilted too much against the end-consumers. Why should the big businesses of a select few be treated delicately but the burden is passed on to end-consumers? Why not disincentivize instead the use of fossil fuel as sources of electricity by cutting into their profits in a way that cannot be passed on to end-consumers? Of course, this is matter of wisdom which I concede is not for the Court to inquire into. But I cannot help expressing my opinion as a citizen of the Republic whose fervent wish is to be exempt, even just once, from a burden merely passed on.

AMY C. LAZARO-JAVIER
Associate Justice

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3 About Japan's Feed-In Tariff, https://www.ichigo-green.co.jp/en/operation/purchase/ last accessed on April 10, 2023.

4 The German Feed-In Tariff, https://www.futurepolicy.org/climate-stability/renewable-energies/the-german-feed-in-tariff/ last accessed on April 10, 2023.