



Republic of the Philippines  
**CENTRAL BOARD OF ASSESSMENT APPEALS**  
Manila

**NATIONAL POWER CORPORATION and  
KEPCO ILIJAN CORPORATION,**  
*Petitioners-Appellants,*

-versus-

**CBAA CASE NO. L-43**  
(LBAA Case No. 03-005)  
City of Batangas

**LOCAL BOARD OF ASSESSMENT  
APPEALS OF THE PROVINCE OF THE  
CITY OF BATANGAS,**  
*Appellee,*

-and-

**EMELINDA C. ATIENZA, CITY  
ASSESSOR, and BENJAMIN S. PARGAS,  
CITY TREASURER OF THE CITY OF  
BATANGAS,**  
*Respondents-Appellees.*

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## **ORDER**

For resolution by this Board are the following petitions/motions, to wit:

1. PETITION FOR RECONSIDERATION AND CLARIFICATION received by this Board on February 24, 2012 from Appellant KEPCO ILIJAN CORPORATON; and
2. MOTION FOR RECONSIDERATION received by this Board on February 29, 2012 from Appellant NATIONAL POWER CORPORATION.

Both petition/motion seek a reconsideration and/or clarification of this Board's Decision dated December 12, 2011, the dispositive portion of which reads as follows:

*“WHEREFORE, premises considered, and pursuant to the Decision of the Supreme Court in the Pagbilao case, the Appeal is hereby DISMISSED for lack of merit.”*

Admitting that it received a copy of the assailed Decision of this Board on February 9, 2012, Kepco Ilijan Corporation (KEILCO), in its Petition for Reconsideration and Clarification, stated that:

“For the sake of clarity and to put the case, in so far as appellant KEILCO is concerned, in its proper perspective, KEILCO never claimed nor invoked that it is tax exempt with respect to the real property tax issue. For KEILCO, the main issue is the nature and validity of NPC’s assumption, pursuant to relevant agreements, to pay the real property tax for the Ilijan Project. Unfortunately, the Honorable Board did not rule upon this issue.”

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“From the abovementioned precedents, the sole issue for KEILCO is whether it is liable to pay the real property tax notwithstanding the valid agreements it has entered into with the NPC, the Republic of the Philippines and the City of Batangas. KEILCO, as will be explained herein, respectfully submits that it is not liable to pay the real property tax in the light of the assumption by NPC to pay the same.”

Section 198(b) of R.A. 7160, otherwise known as the “Local Government Code or 1991” (the “Code”) dictates that “real property shall be classified for assessment purposes on the basis of its actual use.” Thus, Section 217 of the Code provides:

*“SEC. 217. Actual Use of Property as Basis for Assessment.-* Real property shall be classified, valued and assessed on the basis of its actual use regardless of where located, whoever owns it, and whoever uses it.”

In *Testate Estate of Concordia T. Lim v. City of Manila* (182 SCRA 482 [1990]), the Supreme Court ruled: “In real estate taxation, therefore, **the unpaid tax attaches to the property and is chargeable against the taxable person who had actual or beneficial use and possession of it regardless of whether or not he is the owner.**”

In the instant case, it is the KEPCO ILIJAN CORPORATION (KEILCO) which has the actual use and possession of the subject properties. KEILCO, therefore, is the one directly liable for the real property tax on the subject properties. Of course, pursuant to the provisions of Article 7.5 of the Energy Conversion Agreement (ECA), KEILCO may immediately seek reimbursement from NPC for the taxes paid by KEILCO on subject properties. Article 7.5 of the ECA provides:

“7.5 Payment by NPC of Certain Taxes

“a. NPC shall be responsible for the payment of all real estate taxes and rates levied on the NPC Site (including by reference to buildings and other improvements thereon [including the Power Station] x x x”

To be sure, Respondents-Appellees would not be concerned whether or not KEILCO is refunded by NPC for the real property taxes paid by the former (KEILCO). The ECA is a private agreement or arrangement between the NPC and the KEILCO.

It does not really matter who or which entity is liable or pays for the realty taxes on the subject properties since, as aforesaid, the said tax is against, and attaches to, the real property assessed. If nobody pays, the Local Government Unit (LGU) concerned, through its treasurer, would just avail of the remedies provided for by the Code for collection of the real property taxes under Section 256 of the Code.

In view thereof, this Board holds that, pursuant to the pertinent provisions of the Code, KEILCO is directly liable for the payment of the real property taxes on the subject properties as long as the actual, direct and exclusive use and possession thereof are with KEILCO. This Board does not

have the power rule on the implications of the (a) Energy Conversion Agreement; (b) Agreement as to the Fundamental Rights with the Republic of the Philippines dated January 28, 1998; and (c) Memorandum of Agreement among NPC, City of Batangas, and KEILCO dated June 1999. The Central Board of Assessment Appeals is not the proper forum where these agreements may be ventilated.

WHEREFORE, the Motion for Reconsideration and Clarification filed by Kepco Ilijan Corporation (KEILCO) is hereby DENIED for lack of merit.

Alleging that it received a copy of this Board's Decision dated December 12, 2011 on 14 February 2012, Appellant NPC filed its Motion for Reconsideration for the following reasons:

- "1. THE HONORABLE BOARD ERRED IN NOT RULING THAT LBAA OF BATANGAS CITY DISREGARDED THE PROVISIONS OF THE LOCAL GOVERNMENT CODE AND APPLICABLE JURISPRUDENCE ON PROCEDURAL DUE PROCESS REQUIREMENTS IN RENDERING ITS ASSAILED DECISION.**
- "2. THE HONORABLE BOARD ERRED WHEN IT RULED AND AFFIRMED THE NON-BINDING EFFECT OF THE ECA BETWEEN KEILCO AND NPC WITH RESPECT TO THE CITY OF BATANGAS**
- "3. THE HONORABLE BOARD GRAVELY ERRED WHEN IT RULED THAT NPC IS NOT THE ACTUAL, DIRECT AND EXCLUSIVE USER OF THE ILIJAN POWER PLANT**
- "4. THE HONORABLE BOARD ERRED IN NOT EXEMPTING THE ENVIRONMENTAL AND ANTI-POLLUTION DEVICES OF THE PLANT"**

The above-listed "reasons" for NPC's Motion for Reconsideration are not new. The same "reasons" were assigned as "errors" in Petitioners-Appellants' Appeal before this Board. All such "reasons", except the fourth, were dealt with by this Board in its Decision of December 12, 2011.

The fourth reason or ground for the Motion for Reconsideration was not touched by this Board because, except for including it as the fourth error in Petitioners-Appellants' Appeal to this Board, Petitioners-Appellants said nothing about it in said Appeal. At any rate, KEILCO – which has the actual, direct and exclusive use and possession of subject properties and is the owner thereof – did not apply for tax exemption in accordance with Section 206 of the Code.

**WHEREFORE**, premises considered, the instant Motion for Reconsideration by National Power Corporation (NPC) is hereby denied for lack of merit.

SO ORDERED.

Manila, Philippines, April 24, 2012.

SIGNED  
**OFELIA A. MARQUEZ**  
Chairman

**ROBERTO D. GEOTINA**  
Member  
(Declined to Sign)

SIGNED  
**CAMILO L. MONTENEGRO**  
Member