

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City

**IN THE MATTER OF THE
APPLICATION FOR:**

**(A) CONFIRMATION OF THE
TRUE-UP CALCULATION OF
THE ACTUAL WEIGHTED
AVERAGE TARIFF (AWAT)
VIS-À-VIS ERC-APPROVED
AVERAGE RATE
IMPLEMENTED FOR THE
LAPSED REGULATORY
YEARS; AND**

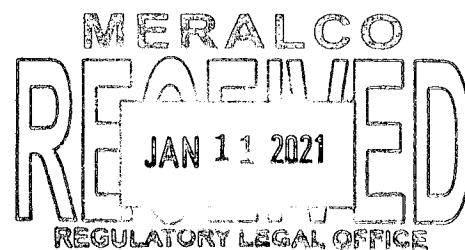
**(B) APPROVAL OF THE FINAL
REFUND SCHEME TO
ACCOUNT FOR THE LAPSED
REGULATORY YEARS,**

**WITH PRAYER FOR
PROVISIONAL AUTHORITY**

ERC CASE NO. 2020-043 RC

**MANILA ELECTRIC
COMPANY (MERALCO),**
Applicant.

X-----X



By: Allan Time:

Promulgated:
January 11, 2021

ORDER

On 23 December 2020, Manila Electric Company (MERALCO) filed an *Application* dated 18 December 2020 for (1) confirmation of the true-up calculation of the Actual Weighted Average Tariff (AWAT) vis-à-vis the Commission-approved Average Rate implemented for the Lapsed Regulatory Years; and (2) approval of the final refund scheme to account for the Lapsed Regulatory Years, with prayer for provisional authority.

The pertinent portions of the said *Application* are hereunder quoted as follows:

1. Applicant MERALCO is a private corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office located at Lopez Building, Ortigas Avenue, Pasig City. It may be served with notices and other processes of this Honorable Commission through its undersigned counsel at the address indicated herein.
2. Pursuant to Republic Act No. 9209, MERALCO has a legislative franchise to construct, operate and maintain an electric power distribution system for the conveyance of electric power to the end-users in the cities and municipalities of Metro Manila, Bulacan, Cavite and Rizal, and certain cities/municipalities/barangays in Batangas, Laguna, Quezon and Pampanga.
3. MERALCO, along with Cagayan Electric Power and Light Company (CEPALCO) and Dagupan Electric Corporation (DECORP) comprise the First Entrants "Group A" of Distribution Utilities ("DUs") that entered Performance Based Regulation ("PBR"). PBR is the rate-setting methodology adopted by the Honorable Commission to set the distribution wheeling rates of private DUs.
4. Pursuant to the Rules for Setting Distribution Wheeling Rates for Privately Owned Electricity Distribution Utilities Operating under Performance Based Regulation (First Entry Group: Third Regulatory Period) dated 1 December 2009 ("3RP RDWR"), the First Entry Group completed the Regulatory Reset Process for the Third Regulatory Period ("3RP") covering the period from 1 July 2011 to 30 June 2015. As such, in MERALCO's Final Determination dated 6 June 2011 in ERC Case No. 2010-069 RC, the Honorable Commission set out its final position on the price control arrangements that would apply to MERALCO for the 3RP.
5. Under the 3RP RDWR, the "Regulatory Reset Process" is defined as "the actions prior to the start of any Regulatory Period, through which the price control arrangements are established that will apply to a Regulated Entity regarding the provision of Regulated Distribution Services in each Regulated Distribution System for the next Regulatory Period". As such, to commence the Regulatory Reset Process, the Honorable Commission must publish a Regulatory Reset Issues Paper within twenty-one (21) months prior to the end of the Regulatory Period.
6. On 14 October 2013, the Honorable Commission posted the "Issues Paper on the Implementation of Performance Based Regulation (PBR) for Privately-Owned Electricity Distribution Utilities under the Rules for Setting Distribution Wheeling Rates (RDWR)" for comments of all interested parties. This was the starting point so that the Fourth Regulatory Period ("4RP") for the First Entry Group could have commenced on 1 July 2015 and to have ended on 30 June 2019. However, the

Issues Paper was not officially released within the timeframe prescribed under the 3RP RDWR.

7. Thus, as MERALCO would not have a rate to govern the 4RP, on 15 June 2015, MERALCO filed an application, docketed as ERC Case No. 2015-112 RC, for the approval of: (a) an interim average rate; and (b) translation of the interim average rate into distribution rates for its various customer classes. In an Order dated 10 July 2015, the Honorable Commission provisionally approved an Interim Average Rate (IAR) of PhP1.3810/kWh and the translation into distribution rates. Since then, Applicant has been implementing the IAR up to this time.
8. At present, the reset for the 4RP for MERALCO and other private DUs under PBR has not commenced and is not expected to commence pending issuance by the Honorable Commission of the relevant rules after due notice and public consultation.
9. As stated above, the IAR was issued through provisional authority. Under Rule 14, Section 3 of the ERC Rules of Procedure, in the event that a provisional authority is issued, the main application should be resolved within twelve (12) months from the issuance of the provisional authority.
10. The IAR was also approved by the Honorable Commission based on a specific determination of the applicable rate after considering a certain set of facts presented by MERALCO. The IAR was adopted to address the apparent delay in the process. As a sort of a “rate freeze”, the IAR is supposed to protect consumers from volatile pricing of electricity during the transition, or the time when the regulator is modifying the appropriate PBR for its jurisdiction.¹ However, due to the considerable lapse of time, the IAR has already been relied on not only by MERALCO but also its customers during the regulatory lag covering the period starting from 1 July 2015 up to the present. Forward-looking decisions have been made by MERALCO as well as its customers based on the presumption that the IAR is a stable and reliable rate determined by the Honorable Commission.
11. Considering therefore: (a) the non-implementation of a reset for the 4RP; (b) the lapse of more than twelve (12) months from the issuance of the provisional authority for the IAR; and (c) that the IAR is meant to take the place of the actual rates only for the 4RP, such IAR should already be deemed final considering the lapse of the period intended to be the 4RP. This IAR should likewise apply as MERALCO’s final rates from July 2015 until such time that a new rate is determined by the Honorable Commission in accordance with the RDWR, after due notice and hearing.

¹ Pinjani, Amit and Trinidad, Ma. Cherrylin, *Literature Review: Regulatory Economics and Performance-Based Ratemaking*, London Economics, LLC, p. 82.

12. To fully resolve these issues, Applicant proposes to true-up its Actual Weighted Average Tariff (AWAT) as against its approved IAR for the period from July 2015 to November 2020 (the “Lapsed Period”). The difference between the AWAT and IAR will be the amount to be refunded to the customers.
13. It is submitted that the true-up of the AWAT as against the approved IAR is the most efficient way for the Honorable Commission to settle the unresolved issues which plagued and delayed the 4RP reset. This will allow the Honorable Commission to commence the next regulatory period prospectively, under a new set of RDWR to be determined after due notice and public consultation. This new set of rules can then be the basis for the determination of the relevant rates for the next regulatory period, thereby returning MERALCO to the regular PBR rate-setting methodology as envisioned by the Honorable Commission, considering that the RDWR cannot legally be applied retroactively to determine the rates of MERALCO for the Lapsed Period due to the continued delay in the reset process. The return of MERALCO to the reset process will allow electricity consumers to reap the benefits envisioned under the PBR.
14. The Honorable Commission is authorized to grant MERALCO’s instant application. Under Article 4.3.1.a. of the 3RP RDWR pertaining to the Over/Under Recovery Formula, the AWAT is calculated based on the actual revenues and actual kWh sales for the period. The actual revenues come from distribution, supply and metering charges of MERALCO. Added to this revenue will be the plowback of 50% of related business net income, in accordance with the mandate under Section 26 of the EPIRA, which shall be used to reduce the distribution wheeling charges.
15. MERALCO proposes to adopt the calculation in Article 6.2 of the 3RP RDWR, related to the Annual Verification and Adjustment of Distribution Tariffs, and the implementation of the K Factor. However, instead of annual rate setting, the process is proposed to apply to the Lapsed Period.
16. Shown in the table below are the details of the Distribution, Supply and Metering (DSM) revenues, Net Income from Related Business and Actual Energy Sales for the Lapsed Period from July 2015 to November 2020:

	DSM Revenues	Net Income from Related Business (RBR)	50% of RBR	DSM + 50% of RBR	Actual Energy Sales (kWh)
RY 2016	54,753,443,647	160,112,198	80,056,099	54,833,499,746	38,559,183,670
RY 2017	57,188,787,178	154,160,058	77,080,029	57,265,867,207	40,191,289,159
RY 2018	60,747,692,382	179,095,251	89,547,625	60,837,240,007	42,879,578,323
RY 2019	63,275,585,064	232,465,909	116,232,955	63,391,818,019	44,916,977,776
RY 2020	66,269,602,774	170,170,007	85,085,004	66,354,687,777	44,645,432,502
RY 2021 (July 2020-Nov 2020)	28,427,374,867	191,574,028	95,787,014	28,523,161,881	18,583,373,984
Lapsed Period (July 2015-Nov 2020)	330,662,485,911	1,087,577,451	543,788,725	331,206,274,637	229,775,835,413

17. The table below shows the computation of the AWAT for the Lapsed period of PhP1.4414/kWh. This was compared to the Applicant’s last approved rate of PhP1.3810/kWh. MERALCO proposes to refund the difference between the AWAT and the IAR in the total amount of Thirteen Billion Eight Hundred Eighty-five Million Eight Hundred Forty-five Thousand and Nine Hundred Thirty-one Pesos (PhP13,885,845,931) over a twenty-four (24)-month period, or until fully refunded, as follows:

DSM Revenues + 50% of RBR	a	331,206,274,637
Actual Energy Sales	b	229,775,835,413
AWAT for the Lapsed Period (July 2015 - November 2020)	c = a/b	1.4414
Interim Average Rate (IAR)	d	1.3810
Difference in Rate (July 2015 - November 2020)	e = d - c	(0.0604)
Actual Sales of Lapsed Period (July 2015 - November 2020)	f	229,775,835,413
Difference in Amount (July 2015 - November 2020)	g = e * f	(13,885,845,931)
Forecast Sales* (for 24 months)	h	90,900,747,330
Average Refund Rate (for 24 months)	i = g/h	(0.1528)

**Based on latest MERALCO sales forecast*

18. This average refund rate of PhP0.1528 per kWh is proposed to be allocated among MERALCO’s customer classes as follows:

Customer Class	Refund Rate (PhP/kWh)
Residential & General Service A	0.2761
General Service B	0.1811
General Power	0.0789
GHMSCI	0.1165
Flat Streetlights	0.2870
Generator – Wheeling	0.0366
TOTAL	0.1528

The refund rate will be reflected as a separate line item in the bills of customers during the refund period.

19. The Honorable Commission has the authority to grant the AWAT and direct the issuance of a refund in favor of Applicant’s customers. Under Section 4 of Rule 14 of the Honorable Commission’s Rules of Practice and Procedure, the interim rate/relief granted by the Honorable Commission shall be subject to a refund:

“Section 4. Refund. - The interim relief granted by the Commission shall be subject to refund if the Commission finds after the hearing on the application or petition that the applicant or petitioner was not entitled thereto or to the full amount of any provisional rate adjustment allowed and to such other conditions that the Commission may impose.”

20. Based on the foregoing, the directive to issue a refund makes the Honorable Commission's approval of the IAR a final determination of MERALCO's applicable rate for the Lapsed Period.
21. A regulator's ability to implement interim rates and impose a refund are remedies to cure the disruptions caused by a regulatory lag. At the end of a suspension period or lag, in the absence of a stipulated extension or waiver as to the interim rate imposed, **the utility's proposed rates may immediately become effective subject to conditions, such as a refund which is dependent upon the regulator's final determination.** Thus, following the refund of the difference between MERALCO's AWAT as against its IAR, this will serve as the final determination of the applicable rate that should have governed during the Lapsed Period.

Allegations in Support of the Prayer for Provisional Authority

22. Pending final approval of the instant application, the issuance of a provisional authority will allow MERALCO's customers to immediately enjoy the benefits of the refund sought to be implemented, providing welcome relief to consumers during this time.
23. In support of the foregoing allegations, MERALCO hereby submits the Judicial Affidavit of Mr. Roderick Dennison N. Nacu, Head of Tariff Management, attached hereto as Annex "B".

PRAYER

WHEREFORE, premises considered, Manila Electric Company (MERALCO) respectfully prays that, after due notice and hearing, a Decision be rendered:

- a. APPROVING MERALCO's proposed mechanism to address the issue of the rates governing the Lapsed Period from July 2015 to November 2020 through the true-up mechanism between MERALCO's AWAT and IAR;
- b. CONFIRMING MERALCO's resulting calculation of the total amount to be refunded from its customers in the total amount of Thirteen Billion Eight Hundred Eighty-five Million Eight Hundred Forty-five Thousand and Nine Hundred Thirty-one Pesos (PhP13,885,845,931);
- c. APPROVING MERALCO's proposed refund scheme and refund period, within twenty-four (24) months or until fully refunded, to its customers, as follows:

Customer Class	Refund Rate (PhP/kWh)
Residential & General Service A	0.2761
General Service B	0.1811
General Power	0.0789
GHMSCI	0.1165
Flat Streetlights	0.2870
Generator – Wheeling	0.0366
TOTAL	0.1528

- d. DECLARING all issues relating to MERALCO’s Lapsed Period (and until a new rate has been determined by the ERC for the next regulatory period), as resolved, closed and terminated with prejudice

Pending the hearing on the merits of the case, a Provisional Authority be issued to immediately implement the refund to customers.

MERALCO prays for such other relief just and equitable under the premises.

Finding the said *Application* to be sufficient in substance with the required fees having been paid, the same is hereby set for the determination of compliance with the jurisdictional requirements, expository presentations, pre-trial conference, and presentation of evidence on the following dates and online platform for the conduct thereof, pursuant to Resolution No. 09, Series of 2020², dated 24 September 2020:

Date	Platform	Activity
16 February 2021 (Tuesday) at nine o’clock in the morning (9:00 A.M.)	Zoom Application	Determination of compliance with jurisdictional requirements and Expository Presentation
23 February 2021 (Tuesday) at nine o’clock in the morning (9:00 A.M.)		Pre-trial Conference and Presentation of Evidence
02 March 2021 (Tuesday) at nine o’clock in the morning (9:00 A.M.)		Presentation of Evidence

² A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.

RELATIVE THERETO, MERALCO is hereby directed to:

- 1) Cause the publication of the attached *Notice of Virtual Hearing* in two (2) newspapers of nationwide circulation in the Philippines at its own expense, twice (2x) within two (2) successive weeks, the dates of publication not being less than seven (7) days apart, and the date of the last publication to made not later than ten (10) days before the date of the scheduled initial hearing;
- 2) Furnish with copies of this *Order* and the attached *Notice of Virtual Hearing* the Offices of the Provincial Governors, City and the Municipal Mayors, and the Local Government Unit (LGU) legislative bodies within its franchise area for the appropriate posting thereof on their respective bulletin boards;
- 3) Inform the consumers within the franchise area, by any other means available and appropriate, of the filing of the *Application*, its reasons therefor, and of the scheduled virtual hearings thereon;
- 4) Furnish with copies of this *Order* and the attached *Notice of Virtual Hearing*, the Office of the Solicitor General (OSG), the Commission on Audit (COA), and the Committees on Energy of both Houses of Congress. They are hereby requested, if they so desire to send their duly authorized representatives and attend the scheduled hearings; and
- 5) Furnish with copies of the *Application* and its attachments all those making requests therefor, subject to reimbursement of reasonable photocopying costs.

Within five (5) calendar days prior to the date of the initial virtual hearing, MERALCO must submit to the Commission via electronic mail (e-mail) at docket@erc.ph and records@erc.gov.ph, copy furnish the Legal Service through legal@erc.ph, the scanned copies of its written compliance with the aforementioned jurisdictional requirements attaching therewith, methodically arranged and duly marked the following:

- 1) The evidence of publication of the attached *Notice of Virtual Hearing* consisting of affidavits of the Editor or

Business Manager of the newspapers where the said *Notice of Virtual Hearing* were published, and the complete issue of the said newspapers;

- 2) The evidence of actual posting of this *Order* and the attached *Notice of Virtual Hearing* consisting of certifications issued to that effect, signed by the aforementioned Governors, Mayors, and LGU legislative bodies or their duly authorized representatives, bearing the seals of their offices;
- 3) The evidence of other means employed by MERALCO to inform the consumers affected of the filing of the *Application*, its reasons therefor, and of the scheduled hearings thereon;
- 4) The evidence of receipt of copies of this *Order* and the attached *Notice of Virtual Hearing* by the OSG, COA, and the Committees on Energy of both Houses of Congress;
- 5) The evidence of receipt of copies of the *Application* and its attachments by all those making requests therefor, if any; and
- 6) Such other proof of compliance with the requirements of the Commission.

Moreover, MERALCO is hereby required to post on its bulletin boards, the scanned copies of the foregoing jurisdictional requirements, together with the newspaper publications and certifications issued by the concerned Office of the Mayors, Governors and Local Legislative Bodies, and to submit proof of its posting thereof.

MERALCO and all interested parties are also required to submit via e-mail at docket@erc.ph and records@erc.gov.ph, copy furnish the Legal Service through legal@erc.ph, at least five (5) calendar days before the date of the scheduled initial virtual hearing and Pre-trial Conference, their respective Pre-Trial Briefs containing, among others:

- 1) A summary of admitted facts and proposed stipulation of facts;
- 2) The issues to be tried or resolved;

- 3) The documents or exhibits to be presented, stating the purposes and proposed markings therefor, which should also be attached to the Pre-trial Brief; and
- 4) The number and names of the witnesses, with their written testimonies in a Judicial Affidavit form attached to the Pre-trial Brief.

MERALCO must ensure that all the documents or exhibits proposed to be presented have already been duly submitted to the Commission at least five (5) calendar days before the date of the scheduled initial virtual hearing and Pre-trial Conference pursuant to the preceding paragraph.

Failure of MERALCO to comply with the above requirements within the prescribed period shall be a ground for cancellation of the scheduled hearings, and the resetting of which shall be six (6) months from the said date of cancellation.

MERALCO must also be prepared to make an expository presentation of the instant *Application*, aided by whatever communication medium that it may deem appropriate for the purpose, in order to put in plain words and explain, for the benefit of the consumers and other concerned parties, the nature of the *Application* with relevant information and pertinent details substantiating the reasons and justifications being cited in support thereof.

MERALCO is hereby directed to file a copy of its Expository Presentation via e-mail at doCKET@erc.ph and records@erc.gov.ph, copy furnish the Legal Service through legal@erc.ph, at least five (5) calendar days prior to the scheduled initial virtual hearing. MERALCO shall also be required, upon the request of any stakeholder, to provide an advance copy of its expository presentation, at least five (5) calendar days prior to the scheduled initial virtual hearing.

Any interested stakeholder may submit its comments and/or clarifications at least one (1) calendar day prior to the scheduled initial virtual hearing, via e-mail at doCKET@erc.ph and records@erc.gov.ph, copy furnish the Legal Service through legal@erc.ph. The Commission shall give priority to the stakeholders who have duly submitted their respective comments and/or clarifications, to discuss the same and propound questions during the course of the expository presentation.

MERALCO is hereby directed to submit, either through personal service, registered or ordinary mail/private courier, one (1) set of the original or certified true hard/printed copy/ies of its Jurisdictional Compliance, Expository Presentation, Pre-trial Brief, and Judicial Affidavit/s of witness/es, within five (5) working days from the date that the same were electronically submitted, as reflected in the acknowledgment receipt e-mail sent by the Commission. Similarly, all interested parties who filed their Petition for Intervention or Opposition are required to submit the hard/printed copy thereof within the same period through any of the available modes of service.

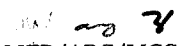
Finally, Applicant, including its authorized representative/s and witness/es, are hereby directed to provide the Commission, through legal.virtualhearings@erc.ph, with their respective e-mail addresses upon receipt of this *Order*. The Commission will send the access link/s to the aforementioned hearing platform within five (5) working days prior to the scheduled hearings.

SO ORDERED.

Pasig City, 08 January 2021.

FOR AND BY AUTHORITY
OF THE COMMISSION:


AGNES VST DEVANADERA
Chairperson and CEO


LS: MFD/ARG/MCCG

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City of Muntinlupa

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22. Office of the LGU Legislative Body
City of Muntinlupa
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City of Navotas
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Norzagaray, Bulacan
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71. Office of the Municipal Mayor
Pandi, Bulacan
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San Ildefonso, Bulacan
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San Ildefonso, Bulacan
81. Office of the City Mayor
San Jose del Monte, Bulacan
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San Miguel, Bulacan
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San Rafael, Bulacan
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Alfonso, Cavite
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Carmona, Cavite

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Dasmariñas, Cavite
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Dasmariñas, Cavite
101. Office of the Municipal Mayor
General Emilio Aguinaldo, Cavite
102. Office of the LGU Legislative Body
General Emilio Aguinaldo, Cavite
103. Office of the Municipal Mayor
General Mariano Alvarez, Cavite
104. Office of the LGU Legislative Body
General Mariano Alvarez, Cavite
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General Trias, Cavite
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- 249. Office of the President of PCCI
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