

Republic of the Philippines
ENERGY REGULATORY COMMISSION
San Miguel Avenue, Pasig City

IN THE MATTER OF THE
APPLICATION FOR
AUTHORITY TO: (A)
IMPLEMENT THE NEW
LOCAL FRANCHISE TAX
(LFT) RATE IN THE CITY OF
BIÑAN, PROVINCE OF
LAGUNA; AND (B) RECOVER
THE DIFFERENTIAL LFT FOR
2017 FROM CUSTOMERS IN
SAID CITY UNDER THE TAX
RECOVERY ADJUSTMENT
CHARGE (TRAC) FORMULA,
WITH PRAYER FOR
PROVISIONAL AUTHORITY



ERC CASE NO. 2017-069 CF

MANILA ELECTRIC
COMPANY (MERALCO),
Applicant.

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DOCKETED
Date: JUL 04 2018
By: 

ORDER

On 25 October 2017, Manila Electric Company (MERALCO) filed an Application to seek the Commission's authority to implement the new Local Franchise Tax (LFT) rate in the City of Biñan, Province of Laguna and to recover the differential LFT for the year 2017 from customers in the said City under the Tax Recovery Adjustment Charge (TRAC) formula, with prayer for the issuance of a provisional authority.

In its Application, MERALCO alleged the following:

1. Applicant is a private corporation existing under the laws of the Republic of the Philippines, with principal office located at Lopez Building, MERALCO Center, Ortigas Avenue, Barangay Ugong, Pasig City. It may be served with notices and other processes of this Honorable Commission at its

principal office address or through its counsel at the address indicated herein.

2. Pursuant to Republic Act No. 9209, Applicant has a legislative franchise to operate and maintain a distribution system in the cities/municipalities of Metro Manila, Bulacan, Cavite and Rizal and certain cities/municipalities/barangays in Batangas, Quezon, Pampanga and Laguna, and is authorized to charge all its customers for their electric consumption at the rates duly approved by the Honorable Commission.
3. Under Republic Act No. 7160, otherwise known as the Local Government Code (LGC), provinces and cities are authorized to impose local franchise taxes (LFTs) and to adjust subsequently the rates thereof, thus:

“Article One – Provinces

Section 134. Scope of Taxing Powers. – Except as otherwise provided in this Code, the province may levy only the taxes, fees and charges as provided in this Article.

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Section 137. Franchise Tax. – Notwithstanding any exemption granted by any law or other special law, the province may impose a tax on businesses enjoying a franchise, at a rate not exceeding fifty percent (50%) of one percent (1%) of the gross annual receipts for the preceding calendar year based on the incoming receipt, or realized, within its territorial jurisdiction.

In the case of a newly started business, the tax shall not exceed one-twentieth (1/20) of one percent (1%) of the capital investment. In the succeeding calendar year, regardless of when the business started to operate, the tax shall be based on the gross receipts for the preceding calendar year, or any fraction thereof, as provided herein.

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Article Three – Cities

Section 151. Scope of Taxing Powers. – Except as otherwise provided in this Code, the city, may levy the taxes, fees, and charges which the province or municipality may impose:

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The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%) except the rates of professional and amusement taxes.

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Section 191. Authority of Local Government Units to Adjust Rates of Tax Ordinances- Local government units shall have the authority to adjust the tax rates as prescribed herein not often than once every five (5) years, but in no case shall such adjustment exceed ten percent (10%) of the rates fixed under this Code.”

4. The Decision rendered by the Honorable Commission in ERC Case Nos. 2001-646¹ and 2001-900² provides that:

“MERALCO is not authorized to unilaterally change the franchise fee rate component on customer’s bills. If MERALCO needs to change the franchise fee rate component due to any changes in franchise fee obligations, it shall petition the ERC for such authority and include in its filing all documentation necessary to verify the changes.”³

5. Section 6.3 of Article II of the Honorable Commission’s Resolution 16, Series of 2009, entitled: “*A Resolution Adopting the Rules Governing the Automatic Cost Adjustment and True-Up Mechanisms and Corresponding Confirmation Process for Distribution Utilities*,” likewise states that:

“For Franchise and Business Taxes that a DU had already paid to the concerned LGU/s prior to the implementation of recovery of current Franchise and Business Taxes shall be allowed recovery based on the following formula:

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Before including the TRAC in its customers’ bill, the DU shall submit to the ERC its calculation thereof using the TRAC formula provided above, together with the following information and supporting documents:

- (a) Proposed recovery period;
- (b) Certified true copy of prior years Tax Assessments issued by the concerned LGU/s;
- (c) Certified true copy of Local Tax Ordinance/s;
- (d) Certified true copies of Official Receipts;
- (e) Projected kilowatt-hours sales for the particular proposed recovery;
- (f) Other relevant documents as may be required by the ERC.

Upon receipt of the complete documents, the ERC shall verify and determine from the submissions the appropriate TRAC that the DU shall be allowed to impose on its customers.

¹ In the Matter of the Application for Approval of Revision of Rate Schedules and Appraisal of Properties with Prayer for Provisional Authority.

² In the Matter of the Application for Approval of Revised Rate Schedules in Compliance with Section 36 of Republic Act No. 9136 and ERC Order dated October 30, 2001, and for Approval of Appraisal of Properties with Prayer for Provisional Authority.

³ Decision dated 20 March 2003, page 92.

The DU shall await the ERC's clearance before the inclusion and imposition of such taxes in its customer's retail rates and shall impose the TRAC allowed until such time that its franchise and business tax payments, as maybe adjusted by the ERC during its prior verification, have been fully recovered."

6. Pursuant to the above-mentioned laws and rulings by the Honorable Commission, Applicant seeks authority to: (a) implement the new Local Franchise Tax (LFT) rate in the City of Biñan, Province of Laguna; and (b) recover the differential LFT from its customers in said city under the TRAC formula; and (c) to pay the City of Biñan, Province of Laguna using the new LFT rate for year 2018, and allow Applicant to recover the same from customers in the City of Biñan pending resolution of the instant application.
7. On 12 August 2010, the Sanggunian Panlungsod of City of Biñan, Province of Laguna enacted Ordinance No.05-A (2010), entitled: "An Ordinance Levying Taxes, Fees, Charges and Other Impositions in City of Biñan, Province of Laguna, which provides that:

"Article III- Franchise Tax

Section 2.09 Franchise Tax- There is hereby imposed a tax on business enjoying a franchise tax at a rate of fifty percent (50%) of one percent (1%) of the gross annual receipts which include both cash sales and sales on account realized during the preceding calendar year within this city."⁴

A copy of the Ordinance No.05-A (2010) is attached as **Annex "A"**.

8. On the basis of the said Ordinance an application was filed by MERALCO for authority to implement the said tax rate in Biñan, Province of Laguna, docketed as ERC Case No. 2011-067 CF.⁵ On 25 February 2013, a Decision was rendered by the Honorable Commission approving MERALCO's application for authority to recover the LFT due from customers in the City of Biñan, Province of Laguna which states that:

"WHEREFORE, the foregoing premises considered the application filed by Manila Electric Company (MERALCO) for authority to implement and collect Local Franchise Tax (LFT) in the City of Biñan, Laguna, with prayer for provisional authority is hereby APPROVED.

Accordingly, MERALCO is authorized to recover the LFT at the rate of fifty percent (50%) of one percent (1%) in the City

⁴ Ordinance No.05-A (2010), page 5.

⁵ In the Matter of the Application for Authority to Implement and Collect Local Franchise Tax (LFT) in the City of Biñan, Laguna with Prayer for Provisional Authority.

of Biñan pursuant to its Tax Ordinance No. 05-A (2010) and the proceeds thereof to be remitted to the said City.”⁶

9. Thereafter, on 22 November 2016, Sanggunian Panlungsod of City of Biñan, Province of Laguna enacted Ordinance No.13- (2016), entitled: “An Ordinance Enacting the Revised Revenue Code for the City of Biñan (2016)”, which provides that:

“Article F- Franchise Tax

Section 2F.01 Imposition of Tax

There is hereby imposed a tax on business enjoying a franchise tax, at a rate of seventy five percent (75%) of one percent (1%) of the gross annual receipts which shall include both cash sales on account realized during the preceding calendar year within the city.”⁷

Certified true copies of said Ordinance No.13- (2016) and City Resolution No. 200-(2016) approving said Ordinance are attached as **ANNEXES “B” and “C”** respectively.

10. The said Ordinance was published in the 12-18 December 2016 issue of The Southern Sparkle News, and the same became effective on 1 January 2017.⁸ A copy of the said newspaper and Affidavit of Publication of Ms. Milagros L. Bagaporo, Publisher of The Southern Sparkle News are attached hereto as **Annexes “D” and “E”**, respectively.
11. Subsequently, the Office of the City Treasurer of Biñan, Province of Laguna issued a Notice of Assessment to the Applicant in the amount of PhP32,560,202.99. As MERALCO was already able to pay the amount of PhP16,280,101.49 for LFT for the 1st to 3rd Quarters of 2017 based on the old rate at the time of the assessment, MERALCO only needs to settle/pay the balance of **Sixteen Million Two Hundred Eighty Thousand One Hundred One & 50/100 Pesos (Php16,280,101.50)**, which comprises of: (a) the amount of P5,426,700.50 for the LFT due for 4th quarter of 2017 using the old rate; and (b) the amount of P10,853,401.00 representing the differential LFT or the difference between the old and the new LFT rate, on or before 20 October 2017 to avoid imposition of surcharges and penalties.

A copy of the said Notice of Assessment is attached as **Annex “F”** hereof.

⁶ Decision dated 25 February 2013 in ERC Case No. 2011-067 CF, page 13.

⁷ CY 2016 Revised Revenue Code for the City of Biñan, page 21.

⁸ Letter of Office of the City Treasurer of City of Biñan to Mr. Gerardo Espiridion, SAVP & Head, Tax Management of MERALCO.

12. On 15 September 2017, Applicant paid the total amount of Php16,280,101.50 as evidenced by the Official Receipt bearing OR No.0911476 issued by the Office of City Treasurer of Biñan, Province of Laguna attached as **Annex "G"** hereof.
13. The details of the amount due, paid and collected for each quarter of taxable period 2017 are as follows:

TAXABLE PERIOD (2017)	NEW LFT RATE <i>(75% of 1 % of gross annual receipts of preceding calendar year)</i>	<u>AMOUNT COLLECTED FROM CUSTOMERS IN CITY OF BIÑAN</u> (based on old LFT rate of 50% of 1% of gross annual receipts of preceding calendar year)	ACTUAL PAYMENT BY MERALCO TO CITY GOVERNMENT OF BIÑAN
1 st Quarter	PhP8,140,050.75	PhP5,366,414.90	PhP5,366,414.90
2 nd Quarter	PhP8,140,050.75	PhP5,486,986.09	PhP5,486,986.09
3 rd Quarter	PhP8,140,050.75	PhP5,426,700.50	PhP5,426,700.50
4 th Quarter	PhP8,140,050.75	PhP5,426,700.50 ⁹	PhP5,426,700.50
LFT Differential			PhP10,853,401.00
Total	P32,560,202.99	P21,706,801.99	P32,560,202.99

14. To ensure the revenue-neutral position in the implementation of the new LFT rate, Applicant proposes the imposition of a carrying charges. The rationale for the imposition of carrying charges was elucidated in the ERC Decision dated 27 February 2012 in ERC Case No. 2011 -045 RC¹⁰, which states that:

⁹ MERALCO will collect the amount of P5,426,700.50 using the old LFT rate for 4th Quarter of CY2017 from customers in said city.

¹⁰ In the Matter of the Application for Authority to Recover the Local Franchise Tax (LFT) paid to Bulacan Province, Batangas Province, Cavite Province, Laguna Province, Rizal Province, San Jose Del Monte City, Batangas City, San Pablo City, Tagaytay City, Lucena City, Mandaluyong City, Marikina City, Quezon City, Caloocan City, Pasay City, Las Piñas City, City of Manila, Pasig City and Calamba City, with Prayer for Provisional Authority.

“Carrying Charge

MERALCO started remitting its LFT payments as early as 1993. In this regard, the Commission deem it prudent to allow MERALCO to recover carrying charge for advancing the payments of its LFT.

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The recovery of carrying charge shall only be up to the end of December 2009, the period when it should have filed the instant application.”¹¹

15. The proposed treatment for said carrying charge is justified considering that Applicant paid in full the LFT; and therefore, the same had incurred an opportunity cost for the money that was used to advance and pay to the said city.
16. Based on the foregoing, Applicant seeks authority to recover the differential LFT in the amount of Php10,853,401 at a rate of Php0.0117/kWh and carrying cost in the amount of Php352,781 at a rate of Php0.0004/kWh, or a total amount of **Php11,206,182** at a rate of **Php0.0121/kWh** from the customers in the City of Biñan over a period of twelve (12) months.

A copy of the document entitled “Computation of Tax Recovery Adjustment Charge- City of Biñan, Province of Laguna” which shows the computed differential LFT rate for said city and carrying cost is hereto attached as **Annex “H”**.

PRAYER FOR THE ISSUANCE OF PROVISIONAL AUTHORITY

17. The issuance of a Provisional Authority (PA) in favor of the Applicant is warranted so that the appropriate increased LFT rate may be implemented in the customer bills for said city pursuant to the provision of the aforesaid Ordinance. Considering that the Applicant paid in full the increased LFT in said city, the issuance of PA is proper since the same is consistent with and will maintain the neutral position of Applicant.

It is important to consider that the amount of total differential LFT for said city that is covered by the Application is only until December 2017. However, Applicant is mandated by the pertinent laws to pay for the new LFT rate for the succeeding taxable periods to said city. Thus, the grant of PA in favor of Applicant will prevent the accumulation of additional differential LFT to said city while the case is pending before the Honorable Commission.

¹¹ Decision in ERC Case No. 2011 -045 RC, page 18.

Accordingly, the filing of another Application for the mere recovery of the accumulated LFT resulting therefrom may only unnecessarily add up to congestion of the Commission's dockets.

18. In support of this Application and the prayer for the issuance of a PA, hereto attached as **ANNEX "I"** and made an integral part hereof is the Judicial Affidavit of **MR. GENER R. MONTEMAYOR**, Manager, Tax Management and Reporting Office of the Applicant.

PRAYER

WHEREFORE, it is respectfully prayed to this Honorable Commission that the Application be approved and that Applicant be granted the authority to:

1. Implement the new local franchise tax rate of seventy-five percent (75%) of one percent (1%) of the gross annual receipts which shall include both cash sales on account realized during the preceding calendar year within the city pursuant to City Tax Ordinance No.13- (2016), beginning on the date of effectivity thereof, or on 1 January 2017;
2. Recover the differential LFT in the amount of Php10,853,401 at a rate of PhPo.0117/kWh and carrying cost in the amount of PhP352,781 at a rate of PhPo.0004/kWh, or a total amount of PhP11,206,182 at a rate of PhPo.0121/kWh from the customers in the City of Biñan over a period of twelve (12) months; and
3. Pay the City of Biñan, Province of Laguna using the new LFT rate for year 2018, and allow Applicant to recover the same from customers in the City of Biñan pending resolution of the instant application.

It is further prayed that pending hearing, a **PROVISIONAL AUTHORITY** be issued by the Honorable Commission to implement the new LFT rate and recover the differential LFT for 2017 from the customers in said city.

Other relief as may be deemed 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 presentation, Pre-trial Conference, and presentation of evidence on **20 August 2018 at two o'clock in the afternoon (2:00 P.M.) at the ERC Hearing Room, 15th Floor, Pacific Center Building, San Miguel Avenue, Pasig City.**

Accordingly, MERALCO is hereby directed to:

- 1) Cause the publication of the attached Notice of Public Hearing once (1x) in a newspaper of nationwide circulation in the Philippines at its own expense, the date of the publication to be made not later than ten (10) days before the scheduled initial hearing;
- 2) Furnish with copies of this Order and the attached Notice of Public Hearing the Offices of the Provincial Governor, the City and Municipal Mayors, and the Local Government Unit (LGU) legislative bodies within the affected franchise area for the appropriate posting thereof on their respective bulletin boards;
- 3) Inform of the filing of the Application, its reasons therefor, and of the scheduled hearing thereon, the consumers within the affected franchise area, by any other means available and appropriate;
- 4) Furnish with copies of this Order and the attached Notice of Public 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 at the scheduled hearing; and
- 5) Furnish with copies of the Application and its attachments all those making requests therefor, subject to reimbursement of reasonable photocopying costs.

On the date of the initial hearing, Applicant must submit to the Commission 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 Public Hearing consisting of affidavit of the Editor or Business Manager of the newspaper where the said Notice of Public Hearing was published, and the complete issue of the said newspaper;
- 2) The evidence of actual posting of this Order and the attached Notice of Public Hearing consisting of certifications issued to that effect, signed by the aforementioned Governor, Mayors, and LGU legislative

bodies or their duly authorized representatives, bearing the seals of their offices;

- 3) The evidence of other means employed by Applicant to inform of the filing of the Application, its reasons therefore, and of the scheduled hearing thereon, the consumers within the affected franchise area;
- 4) The evidence of receipt of copies of this Order and the attached Notice of Public Hearing by the Office of the Solicitor General (OSG), the Commission on Audit (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 proofs of compliance with the requirements of the Commission.

Applicant and all interested parties are also required to submit, at least five (5) days before the date of initial hearing and Pre-trial Conference, their respective Pre-trial Briefs containing, among others:

- (a) A summary of admitted facts and proposed stipulation of facts;
- (b) The issues to be tried or resolved;
- (c) The documents or exhibits to be presented, stating the purposes thereof and proposed markings therefore; and
- (d) The number and names of the witnesses, with their written testimonies in an individual affidavit form, to be attached to the Pre-trial Brief.

Failure of Applicant to comply with the above requirements within the prescribed period shall be a ground for cancellation of the scheduled hearing, 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

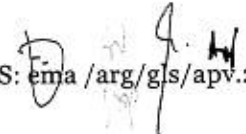
purpose, in order to put in plain words and explain, for the benefit of the consumers and other concerned parties, what the Application is all about and the reasons and justifications being cited in support thereof.

SO ORDERED.

Pasig City, 18 June 2018.

FOR AND BY AUTHORITY
OF THE COMMISSION:


JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Commissioner

 LS: ema / arg / gls / apv. 2017-069 CF MERALCO TRAC.doc

Copy furnished:

1. Attys. Francis Dino Antonio, Hazel Rose See, Monica Martin
Counsels for MERALCO
Lopez Bldg., Ortigas Ave.,
Barangay Ugong, Pasig City
2. Office of the Solicitor General
134 Amorsolo Street, Legaspi Village, Makati City
3. Commission on Audit
Commonwealth Ave., Quezon City
4. The Senate Committee on Energy
GSIS Building, Roxas Boulevard, Pasay City
5. The House Committee on Energy
Batasan Hills, Quezon City
6. MERALCO
Lopez Bldg., Ortigas Ave.,
Barangay Ugong, Pasig City
7. Office of the City Mayor
Pasig City
8. Office of the LGU Legislative Body
Pasig City
9. Office of the City Mayor
Biñan City, Laguna
10. Office of the LGU Legislative Body
Biñan City, Laguna

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11. Office of the Provincial Governor
Province of Laguna
12. Office of the LGU Legislative Body
Province of Laguna
13. Regulatory Operations Service
ERC
17/F Pacific Center Bldg., San Miguel Ave.
Ortigas, Pasig City