

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



**IN THE MATTER OF THE
APPLICATION FOR
APPROVAL OF REGULATED
ENTITIES' CAPITAL
EXPENDITURE PROJECTS
DUE TO FORCE MAJEURE
(TYPHOON GLENDA),**

ERC CASE NO. 2014-151 RC

**FIRST LAGUNA ELECTRIC
COOPERATIVE, INC.
(FLECO),**

Applicant.

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D O C K E T E D
Date: **AUG 31 2017**
By: **[Signature]**

DECISION

THE CASE

Before the Commission for resolution is the Application filed on 3 October 2014 by First Laguna Electric Cooperative, Inc. (FLECO) for approval of its capital expenditure (CAPEX) projects due to force majeure, which pertain to the repair and restoration of distribution lines and other related facilities damaged by Typhoon Glenda.

THE FACTUAL AND PROCEDURAL ANTECEDENTS

FLECO is an electric cooperative duly organized and existing under and by virtue of the laws of the Philippines, with principal office at Barangay Lewin, Lumban, Laguna. It is the exclusive holder of the franchise issued by the National Electrification Administration (NEA) to operate electric light and power services in the Municipalities of Pagsanjan, Cavinti, Lumban, Kalayaan, Paete, Pakil, Pangil, Siniloan, Famy, Mabitac, and Sta. Maria, all in the Province of Laguna.

On 15 July 2014, Typhoon Glenda hit the Luzon area, including the Province of Laguna. As a consequence, the distribution lines of FLECO were partially damaged, causing a brownout in its entire coverage area.

On 3 October 2014, FLECO filed the instant Application seeking the Commission's approval of its CAPEX projects due to force majeure.

In its Application, FLECO alleged that for its CAPEX projects, it had incurred expenses amounting to **Five Million One Hundred Thirty Thousand Three Hundred Ten and 30/100 Pesos (PhP5,130,310.30)**. FLECO further asserted that its CAPEX projects were consistent with its Distribution Development Plan (DDP), the Philippine Grid Code (PGC), the Philippine Distribution Code (PDC), the Commission's Resolution No. 26, Series of 2009,¹ and with other relevant government issuances.

In support of its Application, FLECO enumerated the following:

1. Project description;
2. Justification or benefits to be delivered;
3. Estimated project costs; and
4. Project Schedule.

In compliance with the pre-filing requirements of the Commission, FLECO filed its Application with the following attachments:

1. An Affidavit of Service stating that FLECO furnished the Office of the Sangguniang Bayan of Lumban, the legislative body of the municipality where it principally operates, a copy of the Application and its annexes;²
2. A letter from FLECO to the Sangguniang Bayan of Lumban likewise stating that FLECO furnished it with a copy of the Application and the relevant attachments, which was stamped "Received" by the Sanggunian;³
3. A Certification from the Sangguniang Panlalawigan of Laguna showing that the

¹ Entitled, "Resolution Amending the Rules for Approval of Regulated Entities' Capital Expenditure Projects."

² Sworn Statement of Richard B. Mondez dated 30 September 2014.

³ Letter from Belinda A. Lugmao, Office-in-Charge of FLECO, to the Sanggunian Bayan of Lumban dated 17 September 2014.

Application had been furnished to it with all supporting documents;⁴

4. An affidavit attesting to the fact of publication;⁵ and
5. An issue of a newspaper of general circulation in Laguna containing the published Application in its entirety.⁶

In its Application, FLECO prayed that the CAPEX projects be approved as implementation of the said projects is necessary to maintain efficient, reliable, and safe delivery of power to FLECO's existing and future consumers.

Finding the said Application to be sufficient in form and substance, with the required fees having been paid, the Commission issued an Order and a corresponding Notice of Public Hearing dated 2 February 2015, setting the case for initial hearing on 10 March 2015 at two o'clock in the afternoon (2:00 P.M.) at FLECO's Main Office in Barangay Lewin, Lumban, Laguna.

On 5 March 2015, FLECO filed a *Motion to Reset* praying that the hearing scheduled on 10 March 2015 be reset to another date. The Commission set anew the Application for jurisdictional hearing, expository presentation, pre-trial conference, and evidentiary hearing on 23 September 2015 at ten o'clock in the morning (10:00 A.M.) at the same office.

Pursuant to Section 3, Rule 16 of the 2006 Rules of Practice and Procedure,⁷ (2006 RPP) FLECO filed its *Pre-Trial Brief* on 22 September 2015.

⁴ Certification issued by the Sanggunian Panlalawigan of Laguna dated 1 October 2014.

⁵ Affidavit of Publication by Rebecca C. Martinez dated 29 September 2014.

⁶ The Laguna Bulletin, 27 September 2014 issue, Vol. XVII, No. 31.

⁷ Section 3. Pre-Trial Brief. - The Commission may require any one or all of the parties to a proceeding to file at least five (5) days before the date of initial hearing or date set for pre-trial conference a pre-trial brief 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 purpose thereof and proposed markings therefor; and

(d) the number and names of the witnesses, with their written testimony in affidavit form, if already available, to be attached to the pre-trial brief.

Failure to file the pre-trial brief shall have the same effect as failure to appear at the pre-trial conference.

During the hearing on 23 September 2015, FLECO submitted its compliance with the Commission's jurisdictional requirements. Finding the submission to be fully compliant with Section 4, Rule 14 of ERC Rules of Practice and Procedure,⁸ as well as with the Order dated 2 February 2015 issued by the Commission, the Commission proceeded with the expository presentation. FLECO's presentation was conducted by Mr. Aries M. Llanes and Engr. Enrico P. Benitez, its Finance Services Department Manager and Technical Services Manager, respectively. Upon its conclusion, the Commission found that there were no intervenors or oppositors; hence, the Commission adopted the allegations contained in FLECO's *Pre-Trial Brief*. FLECO then presented the same witnesses, Mr. Llanes and Engr. Benitez, to testify on the Application. The technical representative of the Commission propounded questions to both, which were addressed accordingly. The hearing was terminated thereafter.

Subsequently, on 22 October 2015, FLECO filed its *Formal Offer of Evidence* dated 13 October 2015. The Commission issued an Order admitting the exhibits contained in the *Formal Offer of Evidence* submitted by FLECO, to wit:

The exhibits contained in the Formal Offer of Evidence of Applicant FLECO have been relevant and material in the evaluation of this case. The proceedings having been terminated, the application of FLECO is now submitted for resolution.

SO ORDERED.⁹

THE ISSUE

The issue to be resolved in this case is whether the Commission should approve Applicant FLECO's capital expenditure projects due to force majeure.

THE COMMISSION'S RULING

On 17 August 2016, the Commission deliberated and approved the instant Application with modification. However, due to

⁸ Section 4. Publication and Other Requirements. - The notice of hearing for any application or petition for rate adjustment or for any relief affecting the consumers shall be published by the applicant or petitioner, at its own expense, at least twice for two (2) successive weeks in two (2) newspapers of nationwide circulation, the last day of publication not to be later than ten (10) days before the scheduled hearing. In all other applications or petitions, the publication of the notice shall only be once in a newspaper of general circulation in the locality or localities where the applicant or petitioner operates its business, if there be any such local newspaper, or in a newspaper of nationwide circulation, at least ten (10) days before the scheduled hearing.

⁹ Order dated 5 August 2016.

supervening events¹⁰, the Decision could no longer be promulgated without undergoing reconfirmation by the Commission *En Banc*.

Thus, the Commission resolved to reconfirm the Decision on 15 June 2017.

The factors used by the Commission in its evaluation of the Application will be discussed in seriatim.

DISCUSSION

I. PROJECT DESCRIPTION

The project is for the repair and restoration of the distribution lines and other related facilities damaged by Typhoon Glenda on 15 July 2014.

II. PROJECT JUSTIFICATION

The damaged distribution lines had to be restored at the soonest possible time in order to lessen the impact of the typhoon and the resultant absence of electric service on the residential consumers in the affected area, as well as on the business establishments inconvenienced.

It is likewise expected that the repair of the distribution lines would improve the system's reliability. The existing lines were already dilapidated and had required repair even prior to the typhoon striking the franchise area.

III. PROJECT SCHEDULE

The rehabilitation and reconstruction project commenced on 16 July 2014 and was subsequently completed on 8 August 2014.

IV. EVALUATION OF THE COMMISSION

FLECO implemented the instant force majeure CAPEX projects to comply with its obligation to restore service in the shortest possible

¹⁰ The Chairman was placed on preventive suspension as per Order of the Office of the President (OP-DC Case No. 17-D-094) dated 2 May 2017 and received on 04 May 2017.

time, as provided by Section 1.2.1 of ERC Resolution No. 12, Series of 2006:¹¹

“Each Distribution Utility shall make reasonable efforts to avoid and prevent Interruptions of service. However, when Interruptions occur, service shall be reestablished within the shortest time practicable.”

Moreover, Section 3.3 of ERC Resolution No. 26, Series of 2009¹² provides as follows:

“If a Force Majeure or Fortuitous event, as the case may be, occurs, the affected Regulated Entity shall seek the ERC's confirmation of the implementation of capital expenditure projects arising from such event xxx.”

“To seek the ERC's confirmation, the affected Regulated Entity must give the ERC a Force Majeure or Fortuitous Event Notice within three (3) months from the occurrence of the Force Majeure or Fortuitous Event xxx.”

FLECO fully complied with the above-quoted provision, as it gave notice to the Commission that a force majeure event had occurred requiring the implementation of its CAPEX project. FLECO filed its Notice of Force Majeure Event with the Commission on 4 September 2014. FLECO then filed the instant Application on 3 October 2014 to seek confirmation of the implemented CAPEX project.

V. PROJECT COST

FLECO incurred a total of **Five Million One Hundred Thirty Thousand Three Hundred Ten and 30/100 Pesos (PhP5,130,310.30)** in material and labor costs for the rehabilitation and reconstruction of the damaged facilities.

However, the Commission noted that some of FLECO's equipment is salvageable. Poles, line hardware, wires, and various electrical equipment may be sold, with possible sales amounting to

¹¹ Entitled, “Guidelines for Monitoring of Reliability Standards for Distribution Utilities.”

¹² Entitled, “Resolution Amending the Rules for Approval of Regulated Entities' Capital Expenditure Projects.”

One Hundred Eighteen Thousand Four Hundred Seventy-One and 95/100 Pesos (PhP118,471.95).

The amount collected from the sale of scrap materials may then be deducted from the total cost. Hence, the net CAPEX cost of the project is now pegged at **Five Million Eleven Thousand Eight Hundred Thirty-Eight and 35/100 Pesos (PhP5,011,838.35)**. The details are summarized in the table below:

Particulars	Actual Cost (PhP)
Materials/Labor/Other Expenses	5,130,310.30
Scrap value of various equipment	(118,471.95)
Total Cost (PhP)	5,011,838.35

In analyzing the reasonableness of FLECO's proposed unit costs, the Commission compared the unit costs of the major materials used in FLECO's CAPEX projects, as listed in its Application, with the listed costs in the 2015 NEA Price Index. The results are as follows:

No.	Equipment	Unit Cost (PhP/unit)	
		Proposed	NEA Index
1	Conductor, ACSR #1/0	30.14	31.00
2	Conductor, ACSR #4/0	56.72	65.00
3	Conductor, Duplex #1/0	63.90	75.00
4	Conductor, Duplex #6	15.43	22.00
5	Guy Wire, 7 Strands	9.00	15.00
6	15 kVA Transformer	41,390.00	58,600.00
7	25 kVA Transformer	63,000.00	83,000.00
8	37.5 kVA Transformer	69,685.84	102,500.00
9	25 footer Steel Pole	5,300.00	7,750.00
10	35 footer Steel Pole	14,980.00	14,000.00
11	40 footer Steel Pole	19,890.00	19,150.00

It can be observed that almost every item in FLECO's proposed unit costs is less than the unit cost listed in the 2015 NEA Price Index. FLECO was thus able to incur less material costs, redounding to the benefit of its member-consumers.

VI. PROJECT FINANCING

The project was financed through its Reinvestment Fund for Sustainable CAPEX (RFSC).

FLECO requested for a subsidy from the government to cover the project costs. It submitted a report to the NEA detailing the cost of the damages it had sustained from Typhoon Glenda. However, the said request was not granted.

FLECO thus followed the procedure prescribed by existing NEA guidelines in the sale or disposal of the scrap materials. The salvaged materials shall be subjected to inspection and costing by the NEA before the same can be declared for sale or disposal. The revenue from the sale or disposal of scrap materials shall become part of FLECO's Other Revenue Items (ORI).

VII. PERMIT FEE

The Application requires approval of the CAPEX projects intended to rehabilitate the distribution lines damaged by Typhoon Glenda. In this regard, the Commission believes that the provision for permit fees related to the issuance of authority to construct CAPEX projects should also be imposed consistent with the provision of Commonwealth Act No. 146, as amended, and the Revised Schedule of ERC Fees and Charges. The formula in computing the required permit fee is as follows:

$$\begin{aligned} \text{Permit Fee} &= \frac{\text{PhP}5,011,838.35}{100} \times 0.75 \\ &= \text{PhP}37,588.79 \end{aligned}$$

A perusal of the evidence presented by FLECO showed that its CAPEX projects are primarily intended to rehabilitate the transmission network facilities that were heavily damaged due to force majeure. Such rehabilitation will redound to the benefit of its customers in terms of continuous, reliable, and efficient power supply as mandated by Republic Act No. 9136¹³ and will strengthen its social commitment to its customers, thereby, promoting public interest.

WHEREFORE, the foregoing premises considered, the Force Majeure Event Capital Expenditure Project, relating to the repair of the damaged distribution lines damaged by the typhoon Glenda, in the amount of **FIVE MILLION ELEVEN THOUSAND EIGHT-HUNDRED THIRTY-EIGHT and 35/100 PESOS (PhP5,011,838.35)** of First Laguna Electric Cooperative, Inc. (FLECO) is hereby **APPROVED WITH MODIFICATIONS**.

¹³ Section 2 (b) "to ensure the quality, reliability, security and affordability of the supply of electric power."

Relative thereto, FLECO is hereby directed to pay a permit fee in the amount of **THIRTY-SEVEN THOUSAND FIVE-HUNDRED EIGHTY-EIGHT and 79/100 PESOS (PhP37,588.79)** within fifteen (15) days from receipt hereof, computed as follows:

Project Cost	Permit Fee	Due Date
PhP5,011,838.35	PhP37,588.79	15 days upon receipt of order

SO ORDERED.

Pasig City, 15 June 2017.

JOSE VICENTE B. SALAZAR*

Chairman



ALFREDO J. NON
Commissioner



GLORIA VICTORIA C. YAP-TARUC
Commissioner



JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Commissioner



GERONIMO D. STA. ANA
Commissioner

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* On preventive suspension as per Order of the Office of the President (OP-DC Case No. 17-D-094) dated 02 May 2017 and received on 04 May 2017.

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6. **House Committee on Energy**
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9. **Office of the Municipal Mayor**
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10. **Office of the Municipal Mayor**
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11. **Office of the Municipal Mayor**
Lumban, Laguna
12. **Office of the Municipal Mayor**
Kalayaan, Laguna
13. **Office of the Municipal Mayor**
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14. **Office of the Municipal Mayor**
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15. **Office of the Municipal Mayor**
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16. **Office of the Municipal Mayor**
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17. **Office of the Municipal Mayor**
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18. **Office of the Municipal Mayor**
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