

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



**IN THE MATTER OF THE
APPLICATION FOR THE
APPROVAL OF CAPITAL
EXPENDITURE PROJECTS OF
LEYTE III ELECTRIC
COOPERATIVE, INC.
(LEYECO III) DISTRIBUTION
DEVELOPMENT PLAN (DDP)
2011-2015, WITH MOTION
FOR THE ISSUANCE OF
PROVISIONAL AUTHORITY,**

ERC CASE NO. 2011-156 RC

**LEYTE III ELECTRIC
COOPERATIVE, INC.
(LEYECO III),
Applicant.**

X ----- X

D O C K E T E D
Date: AUG 31 2017
By: W

ORDER

Before this Commission for resolution is the *Verified Motion for Reconsideration of the Commission's Decision dated April 27, 2015* (Motion for Reconsideration) dated 22 July 2015 filed by Applicant Leyte III Electric Cooperative, Inc. (LEYECO III) on 23 July 2015.

FACTS

In its Motion for Reconsideration, LEYECO III raised the following allegations, among others:

xxx

3. xxx Applicant is respectfully and humbly requesting the Honorable Commission to reconsider the following:

- (a) The supposed Yolanda Restoration and Rehabilitation Plan (YRRP) projects (considered as confirmed projects in the Decision), in actual, did not cover/finance/subsidize all projects included in the plan. The actual subsidy under YRRP was

PhP136,143,425.00 instead of the requested amount of PhP154,929,215.00; thus, the YRRP of LEYECO III was short of fund subsidy in the amount of PhP18,785,790.00. xxx

With this fund subsidy shortage, four (4) of the confirmed projects were not implemented under the YRRP subsidy, to wit:

- ❖ Under Safety Projects – the amount of PhP12,331,445.00 is still needed to implement Projects 1 & 2 xxx.
Project 1: Replacement of Old/Dilapidated Distribution Poles
Project 2: Rehab/Revamp of Distribution Lines
- ❖ Under Power Quality Project – the amount of PhP24,957,713.00 is still needed to implement Project 5 xxx.
Project 5: Primary Extensions and Additional Distribution Transformers
- ❖ Under System Loss – the amount of PhP39,163,378.00 is still needed to implement Project 7 xxx
Project 7: Replacement and Clustering of Old and Defective Kilowatt-Hour Meter

(b) xxx LEYECO III is in need of Boom-truck with auger, bucket, puller and other accessories. Though, the approved project cost under the ERC Decision is PhP23,441,304.00 (Project no. 20), with the recent price index, additional PhP5,546,200.00 is needed to augment the budget in acquiring the aforementioned Boom-truck. xxx

(c) Based on the ERC Decision dated April 27, 2015 it deferred twelve projects. Herein applicant LEYECO III is respectfully and humbly requesting for consideration of nine (9) projects from the deferred, to be approved under this CAPEX 2011-2015, for the same are urgently needed because power demands and number of consumers are increasing, as residential and industrial establishments are transferring into the franchise area of LEYECO III, year after super typhoon struck the coastal area of Leyte. Non-implementation of these identified projects would greatly affect the power distribution services of LEYECO III by late quarter of 2015 and onwards, with respect to safety, power quality, reliability and efficiency. Thus, the following deferred projects are being sought to be reconsidered, to wit:

- ❖ Project 16: Acquisition of New Materials for Connection
xxx
- ❖ Project 17: Acquisitions of Supervisory Control and Data
Acquisition (SCADA)
xxx
- ❖ Project 18: Acquisition of Software Distribution System
xxx
- ❖ Project 19: Acquisition of Maintenance Vehicles
xxx
- ❖ Project 21: Acquisition of Communication Equipment and
Accessories
xxx
- ❖ Project 22: Acquisition of Monitoring Equipment
xxx
- ❖ Project 23: Lineman's Tools and Accessories
xxx
- ❖ Project 24: Testing Equipment
xxx
- ❖ Project 25: Upgrading of Meter Reading and Billing
xxx

4. In summary, the total cost of CAPEX projects sought to be reconsidered by applicant LEYECO III amounts to One Hundred Forty Million Thirty Four Thousand Four Hundred Eighty Seven Pesos (PhP140,034,487.00).

5. Considering all the projects under CAPEX 2011-2015 which are still to be implemented, its total costs amounted to One Hundred Ninety Two Million Five Hundred Six Thousand Eight Hundred Fifty Two Pesos (PhP192,506,852.00), xxx. Funding for these CAPEX Projects will be sourced from NEA/LGUGC through a loan at 8% interest rate. And the financial analysis with regard to its Rate Impact xxx showed that applicant LEYECO III will need additional Reinvestment Fund for Sustainable Capital Expenditure (RFSC) in the amount of PhPo.3812 per kWh. Thus, with the existing RFSC of PhPo.5324 per kWh, the resulting RFSC rate to be pass[ed]-on to consumers will be PhPo.9136 per Kwh.

xxx

On 04 January 2017, the Commission deliberated and decided the instant *Motion for Reconsideration*. However, due to supervening events¹, the Order resolving the same 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.

¹ 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.

ISSUE

Whether the Motion for Reconsideration filed by LEYECO III should be granted.

DISCUSSION

The Commission finds no merit in the Motion for Reconsideration filed by LEYECO III and should therefore be denied.

- I. The amount covering the difference between the approved project cost and the actual government subsidy for Projects 1, 2, 5 and 7 could be charged to the Reinvestment Fund for Sustainable Capital Expenditures (RFSC).**

In its Motion for Reconsideration, LEYECO III indicated that the actual amount of the YRRP subsidy that was released to the cooperative is not enough to cover the total cost for the confirmed projects of the DU.

LEYECO III further alleged that four (4) of the confirmed projects were not fully implemented due to lack of government subsidy. Thus, LEYECO III prayed that the remaining unsubsidized amount for the four (4) confirmed projects be charged to the RFSC. The table below provides the breakdown, as follows:

Confirmed Projects		Total Project Cost – As Filed (PhP)	Total Project Cost – As Approved (PhP)	Actual YRRP Subsidy Released (PhP)	Difference/ Remaining cost for implementation to be charged to RFSC - subject of the MR (PhP)
No.	Title				
1	Replacement of Old/Dilapidated Distribution Poles	82,859,275.00	82,859,275.00	70,527,831.00	12,331,444.00*
2	Rehab/Revamp of Distribution Lines				

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5	Primary Extension and Additional Distribution Transformers	28,217,213.00	28,217,213.00	3,259,500.00	24,957,713.00*
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sub-total (projects 1, 2, & 5)	111,076,488.00	111,076,488.00	73,787,331.00		
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7	Replacement and Clustering of Old and Defective Kilowatt-hour Meters	58,401,700.00	36,148,193.00	19,238,322.00	39,163,378.00*
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Note: *Difference/Remaining Cost = Total Project Cost (as filed) less Actual YRRP subsidy

Based on the foregoing table, the total project costs for for Projects 1, 2 and 5 “as filed” are the same as the total project costs “as approved”. Thus, it should only be emphasized that the amount covering the difference between the approved project cost and the actual government subsidy could be charged to the RFSC.

As regards Project No. 7², the total project cost “as filed” is not approved by the Commission. LEYECO III thus prayed for the approval of the cost “as filed” and charged to the RFSC the remaining unsubsidized amount based on the “as-filed” cost of the project. The breakdown is provided below:

Remaining amount to be charged to RFSC (PhP)	=	Total Project Cost - as filed	-	Actual YRRP Subsidy
Remaining amount to be charged to RFSC (PhP)	=	58,401,700.00	-	19,238,322.00
Remaining amount to be charged to RFSC (PhP)	=	39,163,378.00		

The Commission, however, denies LEYECO III’s request for the modification of the project cost for Project 7 as “approved cost” to proposed cost “as filed” in the amount of PhP58,401,700.00 due to lack of justifiable reasons. Further, LEYECO III failed to present any additional proof or documents relative to Project 7 that would comply with the requirement of Article 11 of the Magna Carta for Residential Consumers pertaining to meter clustering.

Thus, the Commission upholds its Decision as to the “as approved” project cost for Project 7 in the amount of PhP36,148,193.00. The amount that could be charged to RFSC should

² Replacement and Clustering of Old and Defective Kilowatt-hour Meters

be the difference between the “as approved” cost and the YRRP subsidy.

Shown below is a computation for the amount that should be charged to the RFSC for Project 7 “as approved” project cost:

Remaining amount to be charged to RFSC (PhP)	=	Total Project Cost as approved	-	Actual YRRP Subsidy
Remaining amount to be charged to RFSC (PhP)	=	36,148,193.00	-	19,238,322.00
Remaining amount to be charged to RFSC (PhP)	=	16,909,871.00		

In sum, the remaining amounts for Projects 1, 2, 5 and 7 that could be charged to the RFSC are as follows:

Project No.	Project Cost As approved (PhP)	Actual YRRP Subsidy Released (PhP)	Remaining cost for implementation to be charged to RFSC (PhP)
1	82,859,275.00	70,527,831.00	12,331,444.00
2			
5	28,217,213.00	3,259,500.00	24,957,713.00
7	36,148,193.00	19,238,322.00	16,909,871.00

II. Any Difference in the Actual Cost and the Approved Estimated Cost Will Be Considered Once LEYECO III Submits its Reportorial Requirements.

In the Decision dated 27 April 2015 (Decision), the Commission approved Project 20³ of LEYECO III’s Capital Expenditures Application in the amount of PhP23,441,308.00 (Approved Cost). LEYECO III originally proposed the cost to be PhP31,687,508.00 (Original Cost). The difference in the Approved Cost and the Original Cost, as applied is based on the adjustment on unit cost of the

³ Acquisition of Construction Vehicles

proposed insulated boom truck from PhP15,700,000.00 to PhP7,453,800.00.

In its Motion for Reconsideration, LEYECO III prayed for the adjustment in price of the insulated boom truck to PhP13,000,000.00 based on the recent pricing on the 2015 NEA Price Index. Since the Commission already approved the project cost in the amount of PhP7,453,800.00, there is a balance of PhP5,546,000.00.

Shown below are tables showing the details of the cost for Project 20 as proposed by the Applicant, as approved in the Decision, and as indicated in the Motion for Reconsideration:

Project 20 cost details – as proposed

Project Description	Proposed		
	Unit Cost (PhP)	Quantity	Total (PhP)
Utility truck with insulated boom	15,700,000.00	1	15,700,000.00
Utility truck with winch boom	3,996,877.00	4	15,987,508.00
Total project cost as proposed (PhP)			31,687,508.00

Project 20 cost details – as reflected in the Decision

Project Description	ROS-SCMD recommendation as reflected in the Decision		
	Unit Cost (PhP)	Quantity	Total (PhP)
Utility truck with insulated boom	7,453,800.00	1	7,453,800.00
Utility truck with winch boom	3,996,877.00	4	15,987,508.00
Total project cost as recommended (PhP)			23,441,308.00

Project 20 cost details – as indicated in the Motion for Reconsideration

Project Description	Subject of MR		
	Unit Cost (PhP)	Quantity	Total (PhP)
Utility truck with insulated boom	13,000,000.00	1	13,000,000.00
Utility truck with winch boom	3,996,877.00	4	15,987,508.00

Total project cost as proposed in the MR (PhP)	28,987,508.00
Proposed adjustment subject of the MR (PhP)	5,546,200.00

Under the amended Rules for Approval of Regulated Entities' Capital Expenditure Projects⁴ (CAPEX Guidelines), the approved cost is only an estimated cost subject to submission of actual cost, to wit:

5.1 Reportorial Requirements

“A Regulated Entity shall submit the results of the competitive bidding which shall include proposals and purchase orders, the as-built drawings and bill of materials and the actual cost incurred in the implementation of the planned capital expenditure projects not later than the 30th of January of the succeeding year”.

Considering that the Commission already approved Project 20 in its Decision, any difference in the actual cost and the approved estimated cost will be considered once LEYECO III has complied with its submission of the reportorial requirements, in accordance with Article 5.1 of the CAPEX Guidelines as quoted above.

III. The Deferment of the Nine (9) Projects Stands Without Prejudice to the Re-filing or Inclusion of the same in LEYECO III's Next Capital Expenditure Application.

In its Motion for Reconsideration, LEYECO III prayed that nine (9) of the twelve (12) deferred projects be reconsidered by the Commission for approval. Shown below are the projects of LEYECO III subject to deferment by the Commission in its Decision.

Project No.	Deferred Projects for Reconsideration
16	Acquisition of New Materials for Connection
17	Acquisitions of Supervisory Control and Data Acquisition (SCADA)

⁴ Resolution No. 26, Series of 2009, entitled “Resolution Amending the Rules for Approval of Regulated Entities' Capital Expenditure Projects”.

18	Acquisition of Software for Distribution System
19	Acquisition of Maintenance Vehicles
21	Acquisition of Communication Equipment's and Accessories
22	Acquisition of Monitoring Equipment
23	Lineman's Tools and Accessories
24	Testing Equipment
25	Upgrading of Meter Reading and Billing

LEYECO III stated that the foregoing deferred projects are vital and necessary for the operation and services of the cooperative. LEYECO III also submitted additional justifications to warrant the approval of these projects.

However, LEYECO III did not mention any justification why said details or documents were not available during the initial hearing. It could have provided the Intervenors National Association of Electricity Consumers for Reforms, Inc. (NASECORE) and Carigara Consumers Association, Inc. the opportunity to properly scrutinize every detail of the proposed projects during the initial hearing of the case and not thru the filing of a Motion for Reconsideration.

Thus, the Commission upholds its previous ruling for the deferment of the nine (9) projects as enumerated above, without prejudice to the re-filing or inclusion of the same in LEYECO III's next application for approval of its capital expenditure projects.

**IV. The Total Amount
Sought to be
Reconsidered by
LEYECO III is hereby
Denied.**

LEYECO III further prayed that the total amount of PhP140,034,488.00 be reconsidered for approval by the Commission. Shown below is the breakdown of this amount according to each project:

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Previously Approved - remaining unsubsidized cost to be included in RFSC

Project No.	Project Title	Approved Cost (PhP)	Actual Subsidy (PhP)	For Reconsideration
1	Replacement of old/dilapidated distribution poles	34,576,031.00	70,527,830.00	12,331,445.00
2	Rehab/revamp of distribution lines	48,283,244.00		
5	Primary extensions and additional distribution transformers	28,217,213.00	3,259,500.00	24,957,713.00
7	Replacement of old and defective kilowatt-hour meters	58,401,700.00	19,238,322.00	39,163,378.00

Previously Approved with Proposed Cost Adjustment

Project No.	Project Title	Approved Cost (PhP)	Implemented Cost (PhP)	For Reconsideration
20	Acquisition of construction vehicles	32,704,752.00	-	13,000,000.00

Deferred Projects for Reconsideration

Project No.	Project Title	Proposed Cost (PhP)	Implemented Cost (PhP)	For Reconsideration
16	Acquisition of new materials for connection	35,731,180.00	27,832,960.00	7,898,220.00
17	Acquisition of Supervisory Control and Data Acquisition (SCADA)	7,350,000.00	-	7,350,000.00
18	Acquisition of software for distribution system	1,770,250.00	-	1,770,250.00
19	Acquisition of maintenance vehicles	20,286,000.00	-	20,286,000.00
21	Acquisition of communication equipment's and accessories	2,238,904.00	1,084,017.00	1,154,887.00
22	Acquisition of monitoring equipment	1,824,700.00	-	1,824,700.00
23	Lineman's tools and accessories	3,015,362.00	2,068,662.00	946,700.00
24	Testing equipment	10,778,795.00	4,427,600.00	6,351,195.00
25	Upgrading of meter reading and billing	3,000,000.00	-	3,000,000.00

Total Cost sought to be reconsidered by Applicant LEYECO III (PhP)				140,034,488.00
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LEYECO III's prayer is a mere reiteration of its manifestation in its earlier arguments which were thoroughly addressed by the Commission in the discussion in items I to III. The equivalent cost being prayed by LEYECO III for reconsideration is already reflected by the Commission in its Decision. As such, the evaluation made by the Commission in its Decision applies.

Shown below is the summary of the Commission's evaluation on the first three arguments of LEYECO III:

Commission's Evaluation on Item I

Project No.	Project Title	For Reconsideration	Commission's Resolution
1	Replacement of old/dilapidated distribution poles	12,331,445.00	The amount covering the difference between the approved project cost and the actual government subsidy be charged to RFSC (Project 7 with modification)
2	Rehab/revamp of distribution lines		
5	Primary extensions and additional distribution transformers	24,957,713.00	
7	Replacement of old and defective kilowatt-hour meters	39,163,378.00	

Commission's Evaluation on Item II

Project No.	Project Title	For Reconsideration	Commission's Resolution
20	Acquisition of construction vehicles	13,000,000.00	The subject of the Motion for Reconsideration will be considered on the actual cost in accordance with Article 5.1 of the CAPEX guidelines

Commission's Evaluation on Item III

Project No.	Project Title	For Reconsideration	Commission's Resolution
16	Acquisition of new materials for connection	7,898,220.00	Maintain the Commission's
17	Acquisition of Supervisory Control and Data Acquisition (SCADA)	7,350,000.00	
18	Acquisition of software for distribution system	1,770,250.00	

19	Acquisition of maintenance vehicles	20,286,000.00	Decision to disapprove the listed projects without prejudice to re-filing or inclusion of these projects in the next CAPEX application
21	Acquisition of communication equipment's and accessories	1,154,887.00	
22	Acquisition of monitoring equipment	1,824,700.00	
23	Lineman's tools and accessories	946,700.00	
24	Testing equipment	6,351,195.00	
25	Upgrading of meter reading and billing	3,000,000.00	

V. Any Increase in the RFSC Rate of LEYECO III Must Comply with the Pertinent Provisions of the Rules for Setting the Electric Cooperatives' Wheeling Rates (RSEC-WR) and CAPEX Guidelines.

LEYECO III in its Motion for Reconsideration stated that the Commission did not provide for the corresponding additional rate of RFSC to be charged against the member-consumers to be able to implement the approved projects. Thus, it requested for the increase of its RFSC rate.

Based on the indicative rate impact simulation, the existing RFSC is not sufficient to fund the implementation of the proposed projects.

Section 5.4 of the RSEC-WR provides for the increase in the collection of RFSC of electric cooperatives, subject to certain legal procedures, to wit:

xxx In the event that the members' contribution for capital expenditure rate caps herein authorized are insufficient for its purpose, the EC may collect such additional Members' Contribution for Capital Expenditures by securing the consent of its member-consumers for such collection through existing legal procedures, provided the expenditure was approved by the Commission as part of such

EC's Capital Expenditure Plan. Provided further that the additional member contribution is obtained prior to the incurrence of the indebtedness provided finally that the collection of said additional contribution shall be subject to the principles of fairness and equity, in accordance with the objective of the EPIRA for the elimination of cross subsidy.

Collections made pursuant to this provision may be subject to the audit of the Commission at its discretion xxx.

Consequently, LEYECO III may increase its RFSC rate in accordance with the abovementioned provisions. LEYECO III may secure the consent of its member-consumers for any increase of RFSC if indeed necessary.

In addition, to safeguard the consumers' interest, the LEYECO III is required to file mandatory reports as prescribed in the RSEC-WR, to wit:

Article 9 (B) Mandatory Reports

1. The EC should file a report on each increase in member's contribution to capital expenditures supported by the minutes of the relevant general assembly. The report should describe in detail the total amount raised, the resulting increases in rates and the reason for the increased member's contribution (real property tax/capital expenditures) and how the funds were utilized; and
2. The EC should file quarterly and annual report on the collections and disbursement in members' contribution to capital expenditures using the format prescribed by the Commission (Annex C) xxx.

Further, Article 5.1 of the CAPEX Guidelines provides that:

xxx A Regulated Entity shall submit the results of the competitive bidding which shall include proposals and purchase orders, the as-built drawings and bill of materials and the actual cost incurred in the implementation of the planned capital expenditure projects not later than the 30th of January of the succeeding year xxx.

The abovementioned provisions will safeguard the interest of the consumers in the event that there is indeed a need for RFSC rate

increase, and if ever there such an increase, the said amount can be properly audited.

WHEREFORE, the foregoing premises considered, the Motion for Reconsideration filed on 23 July 2015 by Leyte III Electric Cooperative, Inc. (LEYECO III) is hereby **DENIED** and the *Decision* dated 27 April 2015 is **AFFIRMED**.

IN VIEW OF THE FOREGOING, the Commission reiterates its ruling in the 27 April 2015 *Decision* and thus clarifies that the amount covering the difference between the approved project cost and the actual government subsidy could be charged to RFSC.

FURTHER, the Commission sustains the deferment of the nine (9) projects without prejudice to the re-filing or inclusion of the same in LEYECO III's next CAPEX Application.

FINALLY, LEYECO III is directed that any RFSC rate increase must only be implemented upon prior consultation of LEYECO III with its member-consumers in accordance with Article 5.4 of the RSEC-WR.

SO ORDERED.

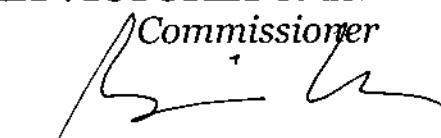
Pasig City, 15 June 2017.

JOSE VICENTE B. SALAZAR*
Chairman and CEO


ALFREDO J. NON
Commissioner


GLORIA VICTORIA C. YAP-TARUC
Commissioner


JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Commissioner


GERONIMO D. STA. ANA
Commissioner

LS: /SH/APV
ROS: /LLG/FGED

* 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.

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