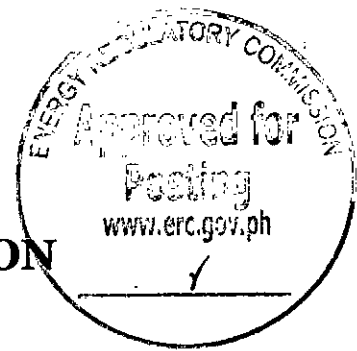


Republic of the Philippines  
**ENERGY REGULATORY COMMISSION**  
San Miguel Avenue, Pasig City



**IN THE MATTER OF  
VIOLATION OF ERC  
ORDERS, RULES AND  
REGULATIONS,**

**ERC CASE NO. No. 2016-102 SC**  
Re: For Failure to Implement On  
Time the ERC Decision dated 09  
December 2013

**PAMPANGA III ELECTRIC  
COOPERATIVE, INC. (PELCO  
III),**

**Respondent.**

X ----- X

**D O C K E T E D**  
Date: SEP 29 2017  
By: [Signature]

**DECISION**

On 08 March 2016, the Commission issued a Show Cause Order (SCO) to Pampanga III Electric Cooperative, Inc. (PELCO III) requiring it to submit its explanation under oath why no administrative penalty should be imposed upon it, and/or criminal action instituted against its directors and officers for its failure to implement on time the Commission's Decision dated 09 December 2013 under ERC Case No. 2012-037 CF<sup>1</sup>, directing PELCO III to refund the confirmed net over recovery in the amount of PhP(347,269,446.64) for the period August 2004 to December 2010.

On 10 October 2016, PELCO III filed its *Explanation* dated 03 October 2016.

In its *Explanation*, PELCO III alleged the following:

1. On 18 March 2014, PELCO III received this Honorable Commission's Decision in ERC Case No. 2011-022 CF dated 09 December 2013, directing the cooperative among others, to refund the following amounts of determined over recoveries, starting on the next billing cycle, to wit:

<sup>1</sup> In the Matter of the Application for Approval of Over/Under Recoveries in the Implementation of Automatic Cost Adjustments and True Up Mechanisms and Corresponding Confirmation Process Pursuant to ERC Resolution No. 16, Series of 2009, as Amended by Resolution No. 21, Series of 2010, - Pampanga III Electric Cooperative, Inc. (PELCO III), Applicant.

**ERC CASE NO. 2016-102 SC**  
**DECISION/27 JUNE 2017**  
**PAGE 2 OF 6**

Particulars	Amount for Refund (Php)	Equivalent PhP/kWh	Equivalent PhP/kWh
1. Generation Cost	[21,237,502.84]	[0.0229]	
2. Transmission Cost	[259,946,209.17]		
Residential		[0.2801]	
Low Voltage		[0.2805]	
Higher Voltage			[12.3433]
3. System Loss	[8,955,086.28]	[0.0097]	
4. Lifeline Subsidy	[49,255,416.68]	[0.0757]	
5. Inter-Class Cross Subsidy	[7,875,231.67]	[0.0855]	

2. Applying the above rates, the amount of refund that PELCO III should make on the first year of implementation would be SIXTY MILLION ONE HUNDRED TWENTY NINE THOUSAND AND NINETY THREE PESOS & 40/100 (PhP60,129,093.40);
3. Considering the amount required to be refunded, on April 3, 2014, PELCO III filed a "*Motion to Implement Refund Over a Longer Period*", on the following grounds, to wit:
  - a. PELCO III is not in a financial position to comply with the directive considering that starting 2014 and in the years to come, the cooperative is expected to experience negative cash flow, as shown in the Statement of Cash Flow covering the Years 2012 to 2022, which forms part of its ICPM submitted to the National Electrification Administration (NEA) and Department of Energy (DOE) (copy was submitted together with the Motion)
  - b. The contributory factors to the cooperative's negative cash flow are its loan restructuring with PSALM in the amount of PhP1.7 billion and with NEA in the amount of PhP173 million, as well as its System Loss of 16.75% as of 2013;
4. Considering the above predicament, PELCO III humbly prayed that it be allowed to implement the refund for a longer period, preferably twenty (20) years, to enable it viably pursue its operations. Copy of its Calculated Refund Scheme for the 20-year refund period at a rate of PhPo.1124/kWh was submitted together with the above mentioned *Motion*;
5. In the said *Motion*, PELCO III likewise submitted simulations for 15 year refund period at the rate of PhPo.1499/kWh and 10-year refund period at the rate of PhPo.2249. Said 15-year and 10-year refund periods still proved to burdensome to the cooperative's financial situation.
6. In an Order dated 21 July 2014 in ERC Case No. 2011-022 CF, the Honorable Commission granted PELCO III's its *Motion to Implement Refund Over a Longer Period* with

modification, giving the cooperative an additional period of four (4) years from the previously approved refund period of six (6) years or a period of ten (10) years to refund the over recoveries except for inter-class cross subsidy which is to be refunded within two (2) years. Thus, it was directed to adopt the revised rate schedule to be implemented starting October 2014:

Particulars	No. of Months	(Over)/ Under Recoveries		
		PhP	PhP/kWh	PhP/kWh
Generation Cost	120	(21,237,502.84)	(0.0137)	
Transmission Cost	120	(259,946,209.17)		
Residential			(0.1681)	
Low Voltage			(0.1683)	
Higher Voltage				(7.4060)
System Loss	120	(8,955,086.28)	(0.0058)	
Lifeline Subsidy	120	(49,255,416.68)	(0.0454)	
Inter-Class Cross Subsidy	24	(7,875,231.67)	(0.0855)	

7. Unfortunately, PELCO III [was] not able to implement the above revised rate schedule starting October 2014 because applying the said rates, the amount of refund that PELCO III should make on the first year of implementation would be PhP 38, 140, 120.00 (see Annex-1) and as an effect PELCO III is not in the financial position to comply with the directive considering that starting 2015 and years to come PELCO III is expected to incur losses (see Annex-2)

#### **PRAYER**

Premises considered, PELCO III most respectfully prays, with sincere apologies, that this explanation be duly considered by the Honorable Commission.

On 11 October 2016, an Order was issued setting a conference on 09 November 2016. However, PELCO III failed to appear in the said conference.

On 14 February 2017, another Order was issued resetting the conference on 15 March 2017. However, the actual conference was conducted on 16 March 2017. In the said conference PELCO III appeared and reiterated its position as stated in its submitted *Explanation*.

## ISSUE

The issues to be resolved are the following:

- (a) Whether PELCO III committed a violation of the Commission's Orders, Rules and Regulations for its failure to implement on time the Commission's Decision dated 09 December 2013 in ERC Case No. 2012-037 CF<sup>2</sup>; and
- (b) Whether an administrative penalty should be imposed against PELCO III.

## COMMISSION'S RULING

The Commission finds PELCO III to have committed a violation of its orders, rules and regulations for its failure to implement on time the Commission's Decision dated 09 December 2013 in ERC Case No. 2012-037 CF<sup>3</sup>; and therefore an administrative penalty is imposed against it.

## DISCUSSION

The Commission takes into account the justification offered by PELCO III and finds the same to be insufficient to warrant the non-imposition of administrative penalty against it.

Based on PELCO's *Explanation*, on 18 March 2014, PELCO III received the copy of the Decision dated 09 December 2013. In the said Decision, PELCO was directed to refund the confirmed net over recovery in the amount of PhP(347,269,446.64) starting on the next billing from receipt of the Decision.

Hence, following the Commission's directive in the Decision dated 09 December 2013, PELCO III should have started the implementation of the refund as early as April 2014 or May 2014 billing, as the case maybe.

PELCO III also alleged in its *Explanation* that it is not in the financial position to comply with the Commission's directives as set forth in the Decision dated 09 December 2013, considering that it is

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<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

expected to experience a negative cash flow starting on the year 2014 onwards.

It is significant to note that the same issue was already raised by PELCO III in its *Motion to Implement Refund Over a Longer Period* (Motion), which it filed on 03 April 2014.

The Commission taking into account the Statement of Cash Flow of PELCO for 2011 and 2012, resolved to grant PELCO III's Motion. Thus, in an Order dated 21 July 2014, the Commission granted PELCO III a longer period to implement the refund of its confirmed over recovery. Accordingly, instead of the previously approved refund period of six (6) years, the same was modified to longer period of ten (10) years.

However, to date, PELCO III has not yet implemented the Commission's directive to refund the confirmed net over recovery in the amount of PhP(347,269,446.64). These over recoveries are all pass through charges that were promptly collected from its member-consumers. Thus, it is just fair and proper to return the same without further delay.

**WHEREFORE**, the foregoing premises considered, Respondent Pampanga III Electric Cooperative, Inc. (PELCO III) is hereby declared to have committed a violation of the Commission's orders, rules and regulations for its failure to implement the Decision dated 09 December 2013.

**ACCORDINGLY**, pursuant to *Section 5 of the Guidelines to Govern the Imposition of Administrative Sanctions in the Form of Fines and Penalties under Section 46 of Republic Act No. 9136, as amended, pursuant to Resolution No. 03, Series of 2009*, an administrative penalty is hereby imposed against PELCO III in the amount of **TWO HUNDRED THOUSAND PESOS (PhP200,000.00)**, computed as follows:

*(This space is intentionally left blank.)*

PARTICULARS	AMOUNT (PhP)
• Basic Amount of Penalty	100,000.00
• Plus 100% of the basic amount of penalty if the compliance was made after three (3) months from the notice	100,000.00
<b>TOTAL</b>	<b>200,000.00</b>

Relative thereto, Respondent PELCO III is hereby **DIRECTED** to pay the foregoing penalty **within fifteen (15) days** from receipt hereof.

**SO ORDERED.**

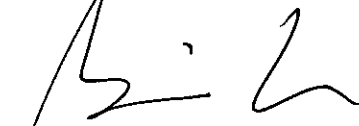
Pasig City, 27 June 2017.

**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*

IED: RIR/CISG/NDC/FGED

LS: LCSP/APV

Copy Furnished:

Pampanga III Electric Cooperative, Inc.  
Sampaloc, Apalit, Pampanga

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\* 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.