

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



**IN THE MATTER OF THE  
APPLICATION FOR THE  
AUTHORITY TO RECOVER THE  
DIFFERENCE BETWEEN THE  
PREVIOUS AND NEW LOCAL  
FRANCHISE TAX (LFT)  
RATE (CY 2012-2014) IN THE  
CITY OF TRECE MARTIRES,  
UNDER THE TAX RECOVERY  
ADJUSTMENT CHARGE (TRAC)  
FORMULA WITH PRAYER FOR  
PROVISIONAL AUTHORITY**

**ERC CASE NO. 2015-037 CF**

**MANILA ELECTRIC COMPANY  
(MERALCO),**

**Applicant.**

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**D O C K E T E D**

Date: AUG 26 2015

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**ORDER**

On July 3, 2015, Manila Electric Company (MERALCO) filed an application for authority to recover the difference between the previous and the new Local Franchise Tax (LFT) rate [Calendar Years (CYs) 2012-2014] in the City of Trece Martires under the Tax Recovery Adjustment Charge (TRAC) formula, with prayer for provisional authority.

In the said application, MERALCO alleged, among others, the following:

1. It 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;
2. Pursuant to Republic Act No. 9209, it 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 Commission;

3. On June 14, 2014, it filed an Application for Authority to Collect Local Franchise Tax (LFT) in the City of Trece Martires, with prayer for provisional authority, docketed as ERC Case 2013-037 CF, where it prayed, among others, to implement the recovery from its customers of the following: (1) LFT equivalent to the difference between the old rate (75% of 1 % of the gross annual receipts) and the new rate (82.5 % of 1% of the gross annual receipts)<sup>1</sup> from the time of the effectivity of "The 2012 Revenue Code of Trece Martires City"<sup>2</sup> on July 1, 2012 until approval of said application; and (2) LFT equivalent to 82.5% of 1% of the gross annual receipts from approval of the above-mentioned application. Copies of the newspaper containing the published "The 2012 Revenue Code of Trece Martires" and Sangguniang Resolution relevant to the enactment of said Revenue Code are attached to the application as Annexes "A" and "B", respectively;
4. On April 28, 2014, the Commission rendered a Decision in ERC Case 2013-037 CF, the dispositive portion of which provides that:

**"WHEREFORE, the foregoing premises considered, the application filed by Manila Electric Company (MERALCO) for authority to collect Local Franchise Tax (LFT) in the City of Trece Martires, with prayer for provisional authority, is hereby APPROVED WITH MODIFICATION.**

Accordingly, MERALCO is authorized to recover the new LFT at the rate of eighty-two and one-half percent of one percent (82.5%

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<sup>1</sup> The increase in the LFT rate by City of Trece Martires is allowed under Sections 137 and 151 of the Local Government Code (LGC).

<sup>2</sup> The 2012 Revenue Code of Trece Martires City was published in the Shin Era Bulletin, a weekly newspaper of general circulation in the Province of Cavite. It took effect on May 16, 2012 following Article 276 of the Implementing Rules and Regulation of (IRR) of the LGC. The LFT due accrued on July 1, 2012.

of 1%) prospectively or effective its next billing cycle.

**The difference between the previous and the new LFT rates from the time “The 2012 Revenue Code of Trece Martires City” took effect shall be considered in a separate application to be filed by MERALCO in accordance with TRAC Formula under ERC Resolution No. 16, Series of 2009.”<sup>3</sup>**

5. Thereafter, in the same case, resolving MERALCO's “Motion for Reconsideration” dated July 24, 2014, the Commission issued a subsequent Order dated September 24, 2014,<sup>4</sup> which states that:

“The Commission maintains its Decision dated April 28, 2014, granting MERALCO the authority to recover the new LFT at the rate of 82.5% of 1% from its customers in the City of Trece Martires, prospectively, or effective its next billing cycle. **The difference between the previous and the new LFT rates from the time “The 2012 Revenue Code of Trece Martires City” took effect shall be considered in a separate application to be filed by MERALCO in accordance with TRAC formula under ERC Resolution No. 16 Series of 2009.”**

6. Thus, the instant application is filed in compliance with the Decision dated April 28, 2014, Order dated September 24, 2014 in ERC Case 2013-037 CF, Rule 20 (G), Section 3 of the ERC Rules of Practice and Procedure and Article 2, Section 6.3 of ERC Resolution No. 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*”

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<sup>3</sup> Decision in ERC Case 2013-037 CF, pages 13-14. Emphasis and underscoring supplied

<sup>4</sup> ERC Order dated September 24, 2014 in ERC Case 2013-037 CF, pages 3-4. Emphasis and underscoring supplied

*Utilities*" which provides for the TRAC formula allowing the recovery of the LFT of distribution utilities<sup>5</sup>;

7. On February 23, 2015, it paid LFT in the total amount of One Million Five Hundred Sixty-Nine Thousand Nine Hundred Eighteen and 44/100 Pesos (PhP1,569,918.44) for the period 2012 to 2014. Said LFT represents the difference between the previous and the new LFT rates from the time the above-mentioned Revenue Code took effect. A copy of the Official Receipt (OR) bearing OR No.1428161 is attached to the application as Annex "C";
8. It, thus, seeks authority to be allowed to recover the above-mentioned LFT it has paid to the City of Trece Martires and to recover the appropriate carrying charges, which shall be reckoned from the time of payment of LFT until resolution of the instant application. This is to account for the delay in the recovery of the LFT that it has paid to the City and to maintain its revenue-neutral position in the recovery of LFT as a pass-through charge;
9. In particular, it seeks authority from the Commission to collect from its customers in the City of Trece Martires the LFT in the amount of **PhP1,569,918.44** and the corresponding Carrying Cost of **PhP45,337.28** over a period of six (6) months at **PhP0.0258 /kWh**. Copy of the worksheet showing the detailed computation of the Carrying Cost and the peso/kWh translation is attached to the application as Annex "D";

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<sup>5</sup> Section 6.3 of Article II of ERC Resolution 16, Series of 2009 states:

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:

xxx

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."

**ALLEGATIONS IN SUPPORT OF THE  
PRAYER FOR PROVISIONAL AUTHORITY**

9. The issuance of a provisional authority in its favor is warranted since it has already paid to the city said LFT. Further, the issuance thereof is consistent with/will maintain its neutral position in relation to the said taxes;
10. In support of the instant application and the prayer for provisional authority, attached to the application as Annex "E" is the Judicial Affidavit of Mr. Gener R. Montemayor, Manager of its Tax Management and Reporting Office; and
11. It prays that the instant application be approved and that it be granted the authority to collect from the customers in the City of Trece Martires the LFT in the amount of **PhP1,569,918.44** for 2012-2014 which it has previously paid to City of Trece Martires and the corresponding Carrying Cost of **PhP45,337.28** over a period of six (6) months at **PhP0.0258/kWh**. It further prays that, pending hearing, a provisional authority be issued by the Commission authorizing it to collect said LFT.

Finding the said application to be sufficient in form and substance with the required fees having been paid, the same is hereby set for jurisdictional hearing, expository presentation, pre-trial conference and evidentiary hearing on **September 15, 2015 (Tuesday) at ten o' clock in the morning (10:00 A.M.) at the ERC Hearing Room, 15th Floor, Pacific Center Building, San Miguel Avenue, Pasig City.**

MERALCO is hereby directed to cause the publication of the attached Notice of Public Hearing, at its own expense, once (1x) in a newspaper of general circulation in the Philippines, with the date of the publication to be made not later than ten (10) days before the date of the scheduled initial hearing. It is also directed to inform the consumers within its franchise area, by any other means available and appropriate, of the filing of the instant application, its reasons therefor and of the scheduled hearing thereon.

Let copies of the application, this Order and the attached Notice of Public Hearing be furnished 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.

Likewise, let copies of this Order and the attached Notice of Public Hearing be furnished the Offices of the Governor of the Province of Cavite and the Mayors of Pasig City and City of Trece Martires, Cavite for appropriate posting thereof on their respective bulletin boards.

MERALCO is hereby directed to furnish all those making requests therefor with copies of the application and its attachments, subject to reimbursement of reasonable photocopying costs.

On the date of the initial hearing, MERALCO must submit to the Commission its written Compliance with the jurisdictional requirements attaching therewith, methodically arranged and duly marked, the evidences on the actual posting and publication of the Notice of Public Hearing consisting of certifications issued to that effect, signed by the aforementioned Governor and Mayors or their duly authorized representatives, bearing the seals of their offices, and the affidavit of the Editor or Business Manager of the newspaper where the said Notice of Public Hearing was published together with the complete issue of the said newspaper, and such other proofs of compliance with the requirements of the Commission.

MERALCO and all other interested parties are directed 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 MERALCO to submit the required Pre-Trial Brief and Judicial Affidavits of its witnesses 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 said date of cancellation.

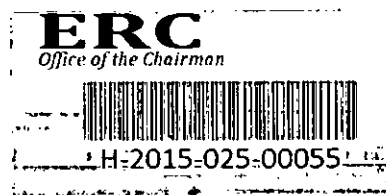
As part of the pre-trial conference, MERALCO must also be prepared to make an expository presentation of its application, aided by whatever communication medium that it may deem appropriate for the purpose, in order to put in plain words and explain, for the benefit of the consumers and other concerned parties, what the application is all about and the reasons and justifications being cited in support thereof.

**SO ORDERED.**

Pasig City, August 17, 2015.

FOR AND BY AUTHORITY  
OF THE COMMISSION:

  
**JOSE VICENTE B. SALAZAR**  
Chairman



  
MVA/NJS

Copy Furnished:

1. Attys. Francis Dino Antonio, Hazel Rose B. See, Paul B. Soriño and Monica Martin  
Counsel for Applicant MERALCO  
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2. Office of the Solicitor General (OSG)  
134 Amorsolo Street, Legaspi Village,  
City of Makati 1229
3. Commission on Audit (COA)  
Commonwealth Avenue,  
Quezon City 1121
4. Senate Committee on Energy  
GSIS Building, Roxas Boulevard,  
Pasay City 1300
5. House of Representatives Committee on Energy  
Batasan Hills, Quezon City 1126
6. President  
Philippine Chamber of Commerce and Industry (PCCI)  
1030 Campus Avenue corner Park Avenue,  
McKinley Town Center, Fort Bonifacio, Taguig City
7. The Provincial Governor  
Province of Cavite
8. The City Mayor  
City of Pasig
9. The City Mayor  
Trece Martires, Cavite