

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



**IN THE MATTER OF THE  
APPLICATION FOR  
APPROVAL OF THE  
PROPOSED RECOVERY OF  
BUSINESS TAX PAYMENTS  
TO THE MUNICIPAL  
GOVERNMENT OF SAN  
JOSE, OCCIDENTAL  
MINDORO COVERING  
YEARS 2003 TO 2015**

**ERC CASE NO. 2015-039 CF**

**OCCIDENTAL MINDORO  
ELECTRIC COOPERATIVE,  
INC., (OMEKO),**

**Applicant.**

X ----- X

**D O C K E T E D**  
Date: MAR 16 2016  
By: W

**ORDER**

On 24 July 2015, Occidental Mindoro Electric Cooperative, Inc. (OMEKO) filed an application for approval of the proposed recovery of business tax payments to the municipal government of San Jose, Occidental Mindoro covering years 2003 to 2015.

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

1. OMEKO is a non-stock, non-profit electric cooperative duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at San Jose, Occidental Mindoro;


A handwritten signature or mark, possibly a stylized 'Y' or 'J', located below the first item of the list.

2. It holds an exclusive franchise from the National Electrification Commission, to operate an electric light and power distribution system in certain municipalities of the province of Occidental Mindoro, namely: Abra de Ilog, Calintaan, Magsaysay, Mamburao, Paluan, Rizal, Sablayan, San Jose and Santa Cruz. With respect to the municipality of Paluan, its power distribution service is being provided by the municipal government.
3. Pursuant to ERC Resolution No. 02, Series of 2006 and Resolution No. 36, Series of 2006, in relation to Resolution 16, Series of 2009, this application is being submitted to the Commission for review and approval of OMECO's proposed recovery of payments of business tax to the municipal government of San Jose, Occidental Mindoro.
4. The municipal government of San Jose levies, assesses and collects business tax on "wholesalers, distributors, producers of, or dealers in any article of commerce of whatever kind or nature" by virtue of its Municipal Ordinance No. 98-572 Series of 1998, which imposes a business tax at the rate of fifty percent of 1%(1/2 of 1%) of the gross receipts if the latter shall exceed Php 2,000,000.00, derived by the business during the next preceding calendar year;
5. By virtue of the said tax ordinance, the municipal government of San Jose assessed OMECO's business tax based on its gross receipts in the preceding year, covering the years 2003 to 2015, which OMECO paid, as follows:

Payments for the Year	Business Tax Rate	Amount Paid (Php)	Date Paid
2003 to 2013	1/2 of 1%	380,485.36	February 28, 2014
	1/2 of 1%	403,777.57	March 07, 2014
	1/2 of 1%	401,589.81	April 14, 2014
	1/2 of 1%	434,185.26	May 13, 2014
	1/2 of 1%	453,227.88	June 10, 2014
	1/2 of 1%	519,012.46	July 08, 2014
	1/2 of 1%	341,825.68	August 06, 2014
	1/2 of 1%	326,502.30	September 05, 2014
	1/2 of 1%	330,462.55	October 14, 2014
	1/2 of 1%	369,714.89	November 03, 2014
	1/2 of 1%	364,395.73	December 11, 2014
	1/2 of 1%	473,728.35	January 14, 2015
2014	1/2 of 1%	463,689.68	January 2014
2015	1/2 of 1%	540,423.15	April 01, 2015
<b>Grand Total</b>		<b>5,803,020.67</b>	

6. Having paid the business tax due for each corresponding year to the municipal government of San Jose, OMECO now seeks approval from the Commission to pass on to its customers in San Jose the business tax paid to the municipal government of San Jose, applying the formula provided under ERC Resolution No. 16, Series of 2009;
7. For the business taxes paid from years 2003 to 2015 in the total amount of PhP5,803,020.67, based on kWh sold in year 2014, annual load growth of 10% and forecasted kWh sales in the municipality of San Jose for year 2015 of 41,276,832.85, OMECO proposes to recover the business tax payments from all its customers in the municipality of San Jose over a period of twelve (12) months or until the said amount is fully recovered, at the rate of PhP0.1406/kWh;
8. In support of this application, OMECO is submitting herewith the following documents which are being made integral parts hereof as follows, to wit:

<b>ANNEX</b>	<b>NATURE OF DOCUMENT</b>
A	Tax Recovery Adjustment Charge Computation for the Years 2003-2015
B	San Jose Tax Assessment
C	Municipal Tax Ordinance No. 98-572, Series of 1998
D	Board Resolution No. 62 Series of 2015 and Board Resolution No. 61 Series of 2015
E	Official Receipts issued by the Municipal Treasurer of San Jose covering Business Tax Payments for the years 2003 to 2015
F	KWH Sales – Historical and Projected for the years 2010 to 2017
G	KWH Purchase – Historical and Projected for the years 2010 - 2017
H	Summary of Tax Payments for Years 2003 - 2015
I	MFSR for Years 2003 - 2014



9. OMECO prays that the Commission, after due notice and hearing, authorize it to:
- a. recover from all its customers in the municipality of San Jose, Occidental Mindoro, the business tax paid to the municipal government of San Jose covering years 2003 to 2015, in the total amount of PhP5,803,020.67, over a period of twelve (12) months or until the said amount is fully recovered, at the rate of PhP 0.1406/kWh.
  - b. include the amount of business tax recovery as separate line item in the electric bills to be issued to its customers in the municipality of San Jose, Occidental Mindoro.

Finding the said application to be sufficient in form and in substance with the required fees having been paid, the same is hereby set for initial hearing, expository presentation, pre-trial conference and evidentiary hearing on **21 April 2016 (Thursday) at two o'clock in the afternoon (2:00 P.M.) at the ERC Hearing Room, 15<sup>th</sup> Floor, Pacific Center Building, San Miguel Avenue, Pasig City.**

OMECO is hereby directed to cause the publication of the attached Notice of Public Hearing once (1x) in a newspaper of general circulation in the Philippines at its own expense, at least ten (10) days before the scheduled date of 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 Provincial Governor of Occidental Mindoro and the Mayors of the Municipalities within the franchise area of OMECO for the appropriate posting thereof on their respective bulletin boards.



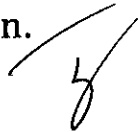
OMECO is hereby directed to furnish all those making requests therefor with copies of the application and its attachments, subject to reimbursement of reasonable photocopying costs.

On the date of the initial hearing, OMECO 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 afore-mentioned Governor and Municipal 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.

OMECO and all 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 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.

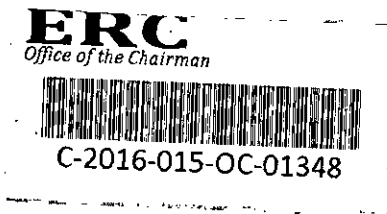
Failure of OMECO to submit the required Pre-trial Brief and Judicial Affidavits of its witnesses within the prescribed period shall be a ground for cancellation of the scheduled hearing, and the resetting of which shall be six (6) months from said date of cancellation.



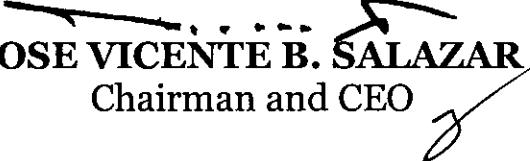
As part of the pre-trial conference, OMECO must also be prepared to make an expository presentation of its application, aided by whatever communication medium that it may deem appropriate for the purpose, in order to put in plain words and explain, for the benefit of the consumers and other concerned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

**SO ORDERED.**

Pasig City, 07 March 2016.



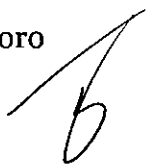
FOR AND BY AUTHORITY  
OF THE COMMISSION:

  
**JOSE VICENTE B. SALAZAR**  
Chairman and CEO

  
MLMG/APV/LS\_Initial Order-2015-039 CF

**Copy Furnished:**

- 1. LERIOS-AMBOY PINGOL & GONZALES LAW OFFICES**  
Attention: Atty. Jeremiah D. Francisco  
Counsel for Applicant OMECO  
Units 1609-1610 Tycoon Centre  
Pearl Drive, Ortigas Center, Pasig City
- 2. Occidental Mindoro Electric Cooperative, Inc. (OMECECO)**  
Attention: The General Manager  
San Jose, Occidental Mindoro
- 3. The Office of the Solicitor General**  
134 Amorsolo Street, Legaspi Village  
Makati City, Metro Manila
- 4. The Commission on Audit**  
Commonwealth Avenue  
Quezon City, Metro Manila
- 5. The Senate Committee on Energy**  
GSIS Bldg., Roxas Blvd., Pasay City  
Metro Manila
- 6. The House Committee on Energy**  
Batasan Hills, Quirino City, Metro Manila
- 7. Office of the Provincial Governor**  
Province of Occidental Mindoro
- 8. Office of the City Mayor**  
Abra De Ilog  
Province of Occidental Mindoro
- 9. Office of the Municipal Mayor**  
Municipality of Calintaan  
Province of Occidental Mindoro
- 10. Office of the Municipal Mayor**  
Municipality of Magsaysay  
Province of Occidental Mindoro
- 11. Office of the Municipal Mayor**  
Municipality of Mamburao  
Province of Occidental Mindoro
- 12. Office of the Municipal Mayor**  
Municipality of Paluan  
Province of Occidental Mindoro



13. **Office of the Municipal Mayor**  
Municipality of Rizal  
Province of Occidental Mindoro
14. **Office of the Municipal Mayor**  
Municipality of Sablayan  
Province of Occidental Mindoro
15. **Office of the Municipal Mayor**  
Municipality of San Jose  
Province of Occidental Mindoro
16. **Office of the Municipal Mayor**  
Municipality of Santa Cruz  
Province of Occidental Mindoro

