

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



**PETITION FOR RULE-
CHANGE TO AMEND
RESOLUTION ON THE
RECOVERY OF ^{PASS-}
THROUGH TAXES (REAL
PROPERTY, LOCAL
FRANCHISE, AND
BUSINESS TAXES) OF
DISTRIBUTION UTILITIES
PROMULGATED AS ERC
RESOLUTION NO. 02,
SERIES OF 2021,**

ERC Case No. 2021-002 RM

**PRIVATE ELECTRIC
POWER OPERATORS
ASSOCIATION (PEPOA),
Petitioner.**

Promulgated:
July 28, 2021

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ORDER

On 06 July 2021, Private Electric Power Operators Association (PEPOA), filed a Petition for Rule-Change to amend some provisions in the Commission-issued Resolution No. 02, Series of 2021 on the recovery of pass-through taxes (Real Property, Local Franchise, and Business Taxes) of Distribution Utilities (Petition).

The pertinent allegations of the said *Petition* are hereunder quoted as follows:

1. Petitioner PEPOA is a corporation duly organized and existing under Philippine law, with office address at 8th floor, STRATA 100 Building, F. Ortigas Jr. Road, Ortigas Center, Pasig City, with email address at pepoa2006@yahoo.com, represented here by its President, Ranulfo M. Ocampo.

2. PEPOA is an association of privately-owned distribution utilities franchised to operate an electric distribution system in various parts of the Philippines. It currently has eighteen (18) member-distribution utilities, consisting of Angeles Electric Corporation (AEC), Cabanatuan Electric Corporation (CELCOR), Clark Electric Distribution Corporation (CEDC), Dagupan Electric Corporation (DECORP), Ibaan Electric Corporation (IEC), La Union Electric Company (LUECO), Olongapo Electricity Distribution Corporation (OEDC), San Fernando Electric Light & Power Company (SFELAPCO), Subic Enerzone Company (SEZC), Tarlac Electric Inc. (TEI), Bohol Light Company Inc. (BLCI), Mactan Electric Company (MECO), MORE Electric & Power Corporation (MORE), Visayan Electric Company (VECO), Cagayan Electric Power & Light Company (CEPALCO), Cotabato Light & Power Company (CLPC), Davao Light & Power Company (DLPC) and Iligan Light & Power Inc. (ILPI).
3. This petition for rule change seeks to amend certain provisions of ERC Resolution No. 02, Series of 2021, on the recovery of pass-through of local taxes consisting of Real Property Tax (RPT), Local Franchise Tax (LFT) and Business Tax (BT) promulgated as ERC Resolution No. 02, Series of 2021. In particular, the petition is praying that-
 - a. *Local taxes (RPT, LFT, and BT) levied by LGUs on years prior to its issuance (ie. tax arrearages) should be fully recoverable as pass-through costs; and*
 - b. *RPT assessed by Local Government Units (LGUs) on assets located outside the Distribution Utilities' franchise area but are used to provide public service within the franchise area should also be fully recoverable as pass-through costs.*
4. On 05 August 2015, the Supreme Court issued a Decision in G.R No. 166102 entitled: "*Manila Electric Company (MERALCO) vs. The City Assessor and City Treasure of Lucena City*", wherein it ruled that MERALCO's transformers, electric posts, transmission lines, insulators, and electric meters are no longer exempted from real property tax and may qualify as a "*machinery*" subject to real property under the Local Government Code (LGC).
5. Soon thereafter, several Local Government Units (LGUs) began levying RPT for the first-time on members of PEPOA on their transformers, electric posts, transmission lines, insulators, and electric meters. The RPT levied were not only

for current year (current RPT) but also for prior years (tax arrearages), some of which went as far back as ten (10) years.

6. Since RPT on transformers, electric posts, transmission lines, insulators, and electric meters were not provided for by the Commission in the determination of the Annual Revenue Requirement (ARR) of the Distribution Utilities, PEPOA, on behalf of its members, filed on 30 January 2017, a Petition for Rulemaking proposing that RPT be allowed to be recovered as a pass-through cost to consumers. This PEPOA petition was docketed as ERC Case No. 2017-002 RM.
7. After conducting several public consultations, the Commission, on 17 December 2020, promulgated ERC Resolution No. 02, Series of 2021 entitled: *A Resolution on the Recovery of Pass-Through Taxes (Real Property, Local Franchise, and Business Taxes) of the Distribution Utilities*.
8. While the Commission allowed Distribution Utilities to automatically recover current RPT, LFT and BT as a pass-through cost, payments made on tax arrearages were not allowed to be recovered. No explanation was offered in the resolution why payments made on tax arrearages are not recoverable.
9. One of the objectives of ERC Resolution No. 02, Series of 2021 is to allow the full recovery of all just and reasonable components of the taxes levied by Local Government Units (LGUs) against the DU to enable the latter to operate viably.¹
10. Notably, the Commission previously allowed DU payments of tax arrearages on LFT and BT as a recoverable pass-through cost under 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 Utilities*.
11. Distribution utilities cannot be faulted for not being able to pay these tax arrearages on time as the LGUs levied them for the first time only after the Supreme Court promulgated its ruling in the aforementioned *Meralco case*.
12. PEPOA therefore submits that payments made by Distribution Utilities on local tax arrearages should be

¹ Section 1.1. b of ERC Res. 02, Series 2021.

treated as just and reasonable costs and should be fully recoverable as pass-through costs.

13. ERC Resolution No. 02, Series of 2021 also limited the recovery of RPT paid on assets located within the franchise area. RPT levied on assets located outside the franchise area are therefore not recoverable. No explanation was also offered in the resolution why RPT levied on assets located outside the franchise area are not recoverable.
14. Distribution Utilities also have assets that are located outside their franchise area but are nonetheless used to provide public service within the franchise area. An example of these kind of assets are Sub-Transmission Assets (STAs) and its accessories purchased by qualified Distribution Utilities from the National Transmission Corporation (TransCo) pursuant to Section 8 of the EPIRA (R. A. No 9136).
15. Since the qualified Distribution Utilities are now the operator of these STAs acquired from TransCo, PEPOA submits that RPT levied on these assets located outside the franchise area but are used to render public service within the franchise area should be treated as just and reasonable costs and should therefore be fully recoverable as pass-through costs.

PRAYER

WHEREFORE, Petitioner PEPOA pray that after due public consultations, the Honorable Commission issue a Resolution amending ERC Resolution No. 02, Series of 2021, allowing Distribution Utilities full recovery of local taxes paid as pass-through costs, more particularly described as follows:

1. Local tax arrearages (RPT, LFT and BT);
2. RPT levied on assets located outside the franchise area but are used to render public service within the franchise area.

The language of the proposed amendments² to ERC Resolution No. 02, Series of 2021, are hereto attached as Annex "A" of this Petition.

PEPOA also pray for such relief or remedy as may be just and equitable under the premises.

² Language of proposed amendments to ERC Res. 02, Series of 2021 are highlighted in red font.

Finding the said *Petition* to be sufficient in form and substance, with the required fees having been paid, the same is hereby set for public consultation on the following dates and online platform for the conduct thereof, pursuant to Resolution No. 09, Series of 2020³ dated 24 September 2020 and Resolution No. 01, Series of 2021, dated 17 December 2020 (ERC Revised Rules of Practice and Procedure):⁴

Date and Time	Platform	Activity
28 September 2021 (Tuesday) at two o'clock in the afternoon (2:00 P.M.)	Microsoft Teams	Determination of compliance with jurisdictional requirements and Expository Presentation.
12 October 2021 (Tuesday) at two o'clock in the afternoon (2:00 P.M.)	Microsoft Teams	Public Consultations for Luzon, Visayas and Mindanao stakeholders.

Accordingly, PEPOA is hereby directed to:

- 1) Cause the publication of the attached *Notice of Proposed Rule-Making* in two (2) newspapers of nationwide circulation in the Philippines at their own expense, twice (2x) within two (2) successive weeks, the dates of publication not being less than seven (7) days apart, and the date of the last publication to be made not later than ten (10) days before the date of the scheduled hearing;
- 2) Furnish with copies of this *Order* and the attached *Notice of Proposed Rule-Making* all Distribution Utilities (DU's) for the appropriate posting thereof on their respective bulletin boards;

³ Entitled: *A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.*

⁴ Entitled: *A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.*

- 3) Inform of the filing of the *Petition*, the reason/s therefor, and of the scheduled public consultation thereon, the consumers within the affected franchise area of the DUs, by any other means available and appropriate;
- 4) Furnish with copies of this *Order* and the attached *Notice of Proposed Rule-Making* the Offices 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; and
- 5) Furnish with copies of the *Petition* and its attachments all those making requests therefor, subject to the resolution of the prayer for confidential treatment of information, if any, and reimbursement of reasonable photocopying costs.⁵

Within five (5) calendar days prior to the date of the virtual hearing, PEPOA must submit to the Commission via electronic mail (e-mail) at docket@erc.ph, copy furnish the Legal Service through legal@erc.ph, the scanned copies of their written compliance with the aforementioned jurisdictional requirements attaching therewith, methodically arranged and duly marked the following:

- 1) The evidence of publication of the attached *Notice of Proposed Rule-Making* consisting of the affidavit of the Editor or Business Manager of the newspapers where the said *Notice of Virtual Hearing* was published, and the complete issues of the said newspaper;
- 2) The evidence of other means employed by PEPOA to inform the consumers within the affected area of the filing of the *Petition*, its reasons therefor, and of the scheduled hearings thereon;
- 3) The evidence of receipt of copies of this *Order* and the attached *Notice of Proposed Rule-Making* by the OSG, the COA, and the Committees on Energy of both Houses of Congress;

⁵ For the e-mail address of the applicant, please see page 9.

- 4) The evidence of receipt of copies of the *Petition* and its attachments by all those making requests therefor, except those covered by any motion for confidential treatment of information, if any; and
- 5) Such other proof of compliance with the requirements of the Commission.

PEPOA is hereby required to post on its bulletin boards, the scanned copies of the foregoing jurisdictional requirements, and to submit proof of its posting thereof.

PEPOA must ensure that all the documents or exhibits proposed to be presented have already been duly submitted to the Commission at least five (5) calendar days before the date of the scheduled virtual hearing.

Failure of PEPOA to comply with the above requirements 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 the said date of cancellation.

PEPOA must also be prepared to make an expository presentation of the instant *Petition*, aided by whatever communication medium that they 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, the nature of the *petition* with relevant information and pertinent details substantiating the reasons and justifications being cited in support thereof.

PEPOA is further directed to file a copy of its Expository Presentation via e-mail at doCKET@erc.ph, copy furnish the Legal Service through legal@erc.ph, at least five (5) calendar days prior to the scheduled virtual hearing. PEPOA shall also be required, upon the request of any stakeholder, to provide an advance copy of its expository presentation, at least five (5) calendar days prior to the scheduled virtual hearing.

All interested stakeholder may submit its comments and/or clarifications (both in hard and soft copies) on the proposed Rule-change on or before **15 September 2021**. Electronic copies may be sent to docket@erch.ph and tariffs@erc.gov.ph. The Commission shall give priority to the stakeholders who have duly submitted their respective comments and/or clarifications, to discuss the same and propound questions during the course of the expository presentation.

PEPOA is further directed to submit, either through personal service, registered or ordinary mail/private courier, one (1) set of the original or certified true hard/printed copy/ies of its Jurisdictional Compliance and Expository Presentation, within five (5) working days from the date that the same were electronically submitted, as reflected in the acknowledgment receipt e-mail sent by the Commission.

Finally, PEPOA, including its authorized representative/s and witness/es, are hereby directed to provide the Commission, thru legal.virtualhearings@erc.ph, with their respective e-mail addresses upon receipt of this *Order*. The Commission will send the access link/s to the aforementioned hearing platform within five (5) working days prior to the scheduled hearing.

SO ORDERED.

Pasig City, 13 July 2021.

FOR AND BY AUTHORITY
OF THE COMMISSION:




AGNES VST DEVANADERA
Chairperson and CEO


LS: BJVG/MCCG


ROS: ABS/AJMO/LLG

Copy Furnished:

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6. House Committee on Energy
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7. All Private Distribution Utilities
8. All Electric Cooperatives