

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



**IN THE MATTER OF THE
APPLICATION FOR APPROVAL
OF RECOVERY OF FRANCHISE
TAX PAYMENTS TO THE
PROVINCE OF BATANGAS FOR
YEARS 2007 TO 2012, CITY OF
LIPA FOR YEARS 1997 TO 2013
AND CITY OF TANAUAN FOR
YEARS 2004 TO 2013**

ERC CASE NO. 2014-065 CF

**BATANGAS II ELECTRIC
COOPERATIVE, INC.
(BATELEC II),**

Applicant.

X ----- X

BOOKED
Date: JAN 26 2015

ORDER

On October 9, 2014, Batangas II Electric Cooperative, Inc. (BATELEC II) filed an application for approval of recovery of Franchise Tax payments to the Province of Batangas for years 2007 to 2012, City of Lipa for years 1997 to 2013 and City of Tanauan for years 2004 to 2013.

In the said application, BATELEC II alleged, among others, that:

1. It is a non-stock, non-profit electric cooperative duly organized and existing under and by virtue of Philippine laws, with principal office address at Brgy. Antipolo del Norte, Lipa City, Batangas;
2. It holds an exclusive franchise from the National Electrification Commission, to operate an electric light and power distribution service in the cities of Lipa and Tanauan, and the Municipalities of Alitagtag, Balete, Cuenca, Laurel, Lobo, Mabini, Malvar, Mataas na Kahoy, Padre Garcia, Rosario, San Jose, San Juan, Taysan, Talisay and Tingloy, all in the Province of Batangas;

NATURE OF THE APPLICATION

- Pursuant to ERC Resolution No. 02, Series of 2006 and ERC Resolution No. 16, Series of 2009, this application is being submitted for review and approval of the Commission of its proposed recovery of payments of franchise tax to the Province of Batangas and the Cities of Lipa and Tanauan, respectively;

STATEMENT OF FACTS

- The Office of the Provincial Treasurer of Batangas levies, assesses and collects franchise tax on all businesses enjoying a franchise in any municipality within the territorial jurisdiction of the Province of Batangas pursuant to Article III, Section 13 of the Provincial Tax Ordinance No. 4, Series of 1992, which imposes a franchise tax at the rate of fifty percent of one percent (50% of 1%) upon the franchisee's gross receipts during the preceding calendar year;
- By virtue of the said tax ordinance, it was assessed by the said office basic franchise tax based on gross receipts of municipalities within its territorial jurisdiction in the Years 2007 to 2012, respectively, as follows:

Assessment Year	Distribution Revenue from Preceding Year (PhP)	Franchise Tax Rate	Franchise Tax Assessed(PhP)	Franchise Tax Paid (PhP)
2007	182,781,511.51	0.005	913,907.56	913,907.41
2008	198,375,440.88	0.005	991,877.20	991,877.20
2009	222,917,050.55	0.005	1,114,585.25	1,114,585.24
2010	264,677,693.84	0.005	1,323,388.47	1,323,388.47
2011	251,622,073.17	0.005	1,258,110.37	1,258,110.53
2012	179,900,357.51	0.005	899,501.79	899,501.79
Total	1,300,274,127.46		6,501,370.64	6,501,370.64

- On various dates, it paid the above mentioned franchise taxes to the Province of Batangas;
- In the same manner, the City Government of Lipa levies, assesses and collects franchise tax on every person, partnership or corporation enjoying a franchise to operate

within the territorial jurisdiction of the City of Lipa by virtue of its City Ordinance No. 16, Series of 1993, which imposes a franchise tax at the rate of fifty percent of one percent (50% of 1%) upon the franchisee's gross receipts during the preceding calendar year;

8. By virtue of said tax ordinance, it was assessed by the said city government, franchise tax based on its gross receipts in Years 1997 to 2013, which it paid, as follows:

Assessment Year	Distribution Revenue from Preceding Year (PhP)	Franchise Tax Rate	Franchise Tax Assessed (PhP)	Franchise Tax Paid (PhP)
1997	410,250,427.10	0.005	1,367,501.43	1,367,501.43
1998	542,698,811.50	0.005	2,713,494.06	2,713,494.06
1999	606,740,494.85	0.005	3,033,702.47	3,033,702.47
2000	708,930,534.01	0.005	3,544,652.67	3,544,652.67
2001	916,100,790.93	0.005	4,580,503.95	4,580,503.95
2002	167,505,052.49	0.005	837,525.26	837,525.26
2003	156,822,593.25	0.005	784,112.97	784,112.97
2004	211,214,976.27	0.005	1,056,074.88	1,056,074.88
2005	242,410,422.09	0.005	1,212,052.11	1,212,052.11
2006	311,252,972.89	0.005	1,556,264.86	1,556,264.86
2007	339,140,733.50	0.005	1,695,703.67	1,695,703.67
2008	256,887,386.00	0.005	1,284,436.93	1,284,436.93
2009	321,892,630.00	0.005	1,609,463.00	1,609,463.00
2010	390,812,063.00	0.005	1,954,060.32	1,954,060.00
2011	345,262,984.00	0.005	1,726,314.92	1,726,315.00
2012	257,688,576.48	0.005	1,288,442.88	1,288,442.88
2013	209,914,885.27	0.005	1,049,574.43	1,049,574.43
Total	6,395,526,333.63		31,293,880.81	31,293,880.57

9. In the same manner, the City Government of Tanauan levies, assesses and collects franchise tax on every person, partnership or corporation enjoying a franchise to operate within its territorial jurisdiction;

10. For the years 2004-2010, by virtue of the Local Government Code of 1991, it was also assessed by the said city government, franchise tax based on its gross receipts which it paid, as follows:

Assessment Year	Distribution Revenue from Preceding Year (PhP)	Franchise Tax Rate	Franchise Tax Assessed (PhP)	Franchise Tax Paid (PhP)
2004	36,086,588.00	0.005	180,433.00	180,433.00
2005	41,920,368.00	0.005	209,602.00	209,602.00
2006	48,242,234.00	0.005	241,211.00	241,211.00
2007	47,636,843.00	0.005	238,184.00	238,184.00
2008	59,270,950.00	0.005	296,355.00	296,355.00
2009	55,177,232.00	0.005	275,886.00	275,886.00
2010	67,502,956.00	0.005	337,515.00	337,515.00
Total	355,837,171.00		1,779,186.00	1,779,186.00

11. Subsequently in 2011, the City of Tanauan adopted and implemented a new tax ordinance, "Tanauan City Tax Ordinance No. 2011-01", increasing the franchise tax rate from fifty percent of one percent (50% of 1%) to seventy five percent of one percent (75% of 1%). Hence, for the years 2011-2013 said city assessed it on the increased franchise tax rate based on its gross receipts which it paid, as follows:

Assessment Year	Distribution Revenue from Preceding Year (PhP)	Franchise Tax Rate	Franchise Tax Assessed (PhP)	Franchise Tax Paid (PhP)
2011	56,887,328.98	0.0075	426,654.00	426,654.00
2012	41,461,041.73	0.0075	310,957.81	310,957.81
2013	36,187,917.13	0.0075	271,409.37	271,409.37
Total	134,536,287.84		1,009,021.18	1,009,021.18

12. In summary, the franchise tax assessments of the City of Tanauan covering Years 2004 to 2013, which it paid, are as follows:

Assessment Year	Distribution Revenue from Preceding Year (PhP)	Franchise Tax Rate	Franchise Tax Assessed (PhP)	Franchise Tax Paid (PhP)
2004-2010	355,837,171.00	.0050	1,779,186.00	1,779,186.00
2011-2013	134,536,287.84	.0075	1,009,021.18	1,009,021.18
TOTAL	490,373,458.84		2,788,207.18	2,788,207.18

13. Having paid the franchise taxes due for each corresponding year, it now seeks approval from the Commission to pass on to its customers in Alitagtag, Balete, Cuenca, Laurel, Lobo, Mabini, Malvar, Mataas na Kahoy, Padre Garcia, Rosario, San Jose, San Juan, Talisay, Taysan and Tingloy the franchise tax paid to the Province of Batangas, and to its customers in the cities of Lipa and Tanauan the franchise tax paid to the City Governments of Lipa and Tanauan respectively, applying the formula provided under ERC Resolution No. 16, Series of 2009;

14. With respect to the franchise tax paid to the Province of Batangas or the Years 2007 to 2012 in the total amount of PhP6,501,370.64 based on kWh sold in Years 2007 to 2011

and projected kWh sales of 324,027,185, it proposes to recover the said franchise tax payments from its customers in the municipalities of Alitagtag, Balete, Cuenca, Laurel, Lobo, Mabini, Malvar, Mataas na Kahoy, Padre Garcia, Rosario, San Jose, San Juan, Talisay, Taysan and Tingloy over a period of twelve (12) months or until the said amount is fully recovered, at the rate of PhP0.0201/kWh;

15. With respect to the franchise tax paid to the City of Lipa for Years 1997 to 2013 in the amount of PhP31,293,880.57, based on kWh sold in Years 1997 to 2013 and projected kWh sales of 725,139,484 (for 5 years) in Lipa City, it proposes to recover from its customers in the city of Lipa, the said franchise tax payments over a period of sixty (60) months or until the said amount is fully recovered, at the rate of PhP0.0432/kWh;

16. With respect to the franchise tax paid to the city of Tanauan for the Years 2004 to 2013 in the amount of PhP2,788,207.18, based on kWh sold in years 2004 to 2013, and projected kWh sales of 68,796,516 in Tanauan City, it proposes to recover the franchise tax payments from its customers in the city of Tanauan over a period of twelve (12) months or until the said amount is fully recovered, at the rate of PhP0.0405/kWh;

17. In support of this application, it is submitting herewith the following documents which are being made integral parts hereof, to wit:

ANNEX	NATURE OF DOCUMENT
Annex "B"	Excerpt from Provincial Tax Ordinance No. 4, Series of 1992 of the Province of Batangas.
Annex "C"	Bureau of Local Government Finance Circular No. 1-07 dated June 28, 2007
Annex "D"	Lipa City Ordinance No. 16, Series of 1993
Annex "E"	Excerpt from the Local Government Code of 1991
Annex "F"	Tanauan Tax Ordinance No. 2011 – 01

Annexes "G" to "G-1"	Batangas Provincial Treasurer's Statement of Account for Franchise Tax Due for taxable years 2007 to 2012 which includes 2007 to 2012 Franchise Tax computation
Annexes "H" to "H"-6	Lipa City Treasurer's Statement of Account for Franchise Tax Due for taxable years 1996 to 2013 which includes 1996 to 2013 Franchise Tax computation
Annexes "I" to "I-5"	Tanauan City Treasurer's Statement of Account for Franchise Tax Due for taxable years 2004 to 2013 which includes 2004 to 2013 Franchise Tax computation
Annexes "J" to "J-11"	Official Receipts issued by the Office of the Provincial Treasurer for franchise tax payments to the Province of Batangas for Years 2007-2011
Annexes "K" to "K-2"	Official Receipts issued by the Office of the Provincial Treasurer for franchise tax payments to the Province of Batangas for Year 2012
Annexes "L" to "L-2"	Official Receipts issued by the Office of the City Treasurer of Lipa for franchise tax payments to the City of Lipa for Years 1996-2007
Annex "M"	Official Receipt No. 0831929 dated May 24, 2009 for franchise tax payment to the City of Lipa for Year 2008
Annex "N"	Official Receipt No. 09995132 dated March 2, 2010 for franchise tax payment to the City of Lipa for Year 2009
Annex "O"	Official Receipt No. 1160644 dated January 18, 2011 for franchise tax payment to the City of Lipa for Year 2010
Annex "P"	Official Receipt No. 1459551 dated January 26, 2012 for franchise tax payment to the City of Lipa for Year 2011
Annex "Q"	Official Receipt No. 1682260 dated January 18, 2013 for franchise tax payment to the City of Lipa for Year 2012

Annex "R"	Official Receipt No. 1938075 dated January 30, 2014 for franchise tax payment to the City of Lipa for Year 2013
Annex "S"	Official Receipt No. 6375789 dated March 5, 2010 for franchise tax payment to the City of Tanauan for Years 2004-2008
Annex "T"	Official Receipt No. 0735616 dated May 7, 2010 for franchise tax payment to the City of Tanauan for Year 2009
Annex "U"	Official Receipt No. 0985949 dated January 18, 2011 for franchise tax payment to the City of Tanauan for Year 2010
Annex "V"	Certification issued by the City of Tanauan for franchise tax payment for the Year 2011
Annex "W"	Official Receipt No. 4317047 dated January 31, 2012 for franchise tax payment to the City of Tanauan for Year 2011
Annex "X"	Official Receipt No. 1210927 dated January 18, 2013 for franchise tax payment to the City of Tanauan for Year 2012
Annexes "Y" to "Y-1"	Official Receipt Nos. 1513525 and 1513526 dated February 5, 2014 for franchise tax payment to the City of Tanauan for Year 2013
Annexes "Z" to "Z-2"	Calculations of TRAC in Php/kWh with the proposed recovery period and projected kWh sales for the recovery period
Annexes "AA" to "AA-2"	Actual Distribution Revenue per BATELEC II's District Areas subjected for Franchise Tax Recovery
Annex "BB"	Actual kWh Sales for the period 2007 – 2012 of the 15 municipalities covered by BATELEC II
Annex "CC"	Actual kWh Sales in Lipa City covering the period 1997 – 2013
Annex "DD"	Actual kWh Sales in Tanauan City covering the period 2004 – 2013

Annex "EE"	Projected kWh Sales for the 15 municipalities, Lipa City and Tanauan City
Annex "FF"	Table of Payments made to the Provincial Treasurer of Batangas
Annex "GG"	Table of Payments made to the Treasurer's Office of Lipa City
Annex "HH"	Table of Payments made to the Treasurer's Office of Tanauan City
Annex "II"	MFSR – Section B representing the Years 1997 – 2007
Annex "JJ"	DU MOO1 – MOO2 representing the Years 2008 – 2013
Annex "KK"	National Power Corporation – Small Power Utility Group Bills for 1997-2013
Annex "LL"	National Power Corporation Bills for 1997-2009
Annex "MM"	TransCo/NGCP Bills for 2002-2013
Annex "NN"	Other Sources: Aboitiz Power Renewables Inc. Bills for 2009-2011
Annex "OO"	Other Sources: Trans Asia/BacMan/NGCP Bills for 2011-2013
Annex "PP"	Other Sources: Lima Utilities Corporation Bills for 2008-2013
Annex "QQ"	Other Sources: Philippine Electricity Market Corporation (PEMC) Bills for 2010-2013
Annex "RR"	Audited Financial Statements for 1997-2013

COMPLIANCE WITH PRE-FILING REQUIREMENTS

18. In compliance with the pre-filing requirements for the instant application, it is submitting herewith the following documents, which are being made integral parts hereof as follows, to wit:

ANNEX	NATURE OF DOCUMENT
Annex "A"	BATELEC II Board Resolution No. 024 dated March 15, 2014 authorizing the filing of the instant application
Annexes "SS" to "SS-2"	Proof of furnishing copies of the Application to the Sangguniang Panlungsod of Lipa, Sangguniang Panlungsod of Tanauan and Sangguniang Panlalawigan of Batangas

19. It prays that the Commission that after due notice and hearing, it be authorized:

- a) To recover from its customers in the following municipalities of the Province of Batangas, namely: Alitagtag, Balete, Cuenca, Laurel, Lobo, Mabini, Malvar, Mataas na Kahoy, Padre Garcia, Rosario, San Jose, San Juan, Talisay, Taysan and Tingloy the franchise tax paid to the Provincial Government of Batangas covering the Years 2007-2012 in the total amount of PhP6,501,370.64, over a period of twelve (12) months or until the said amount is fully recovered, at the rate of PhP0.0201/kWh;
- b) To recover from its customers in Lipa City the franchise tax paid to the city government of Lipa covering Years 1997-2013, in the total amount of PhP31,293,880.57, over a period of sixty (60) months or until the said amount is fully recovered, at the rate of PhP0.0432/kWh;
- c) To recover from its customers in Tanauan City the franchise tax paid to the city government of Tanauan covering Years 2004-2013, in the total amount of PhP2,788,207.18, over a period of twelve (12) months or until the said amount is fully recovered, at the rate of PhP0.0405/kWh; and

- d) To include the amounts of recovery as separate Line Items in the electric bills to be respectively issued to its customers in the cities of Lipa and Tanauan and the municipalities of Alitagtag, Balete, Cuenca, Laurel, Lobo, Mabini, Malvar, Mataas na Kahoy, Padre Garcia, Rosario, San Jose, San Juan, Talisay, Taysan and Tingloy.

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 jurisdictional hearing, expository presentation, pre-trial conference and evidentiary hearing on **February 16, 2015 (Monday) at two o'clock in the afternoon (2:00 P.M.) at the ERC Hearing Room, 15th Floor, Pacific Center Building, San Miguel Avenue, Pasig City.**

BATELEC II 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, 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 hearings.

Likewise, let copies of this Order and the attached Notice of Public Hearing be furnished the Offices of the Governor of Batangas and the Mayors of the Municipalities/Cities within the franchise area of BATELEC II for the appropriate posting thereof on their respective bulletin boards.

BATELEC II 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, BATELEC II must submit to the Commission its written Compliance with the jurisdictional requirements attaching therewith, methodically arranged and duly marked, the evidence of 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 Mayor or their duly authorized representatives, bearing the seals of their offices, and the affidavit of the Editor or Business Manager of the newspaper where 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.

BATELEC II 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 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.

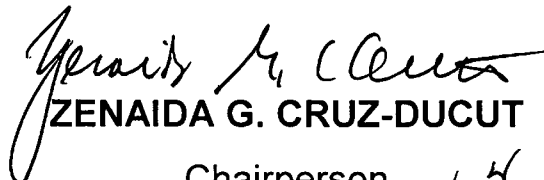
Failure of BATELEC II to submit the required Pre-Trial Brief and Judicial Affidavits of its witnesses within the prescribed period shall be a ground for cancellation of the scheduled hearing, and the resetting of which shall be six (6) months from said date of cancellation.

As part of the pre-trial conference, BATELEC II 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, January 20, 2015.

FOR AND BY AUTHORITY
OF THE COMMISSION:


ZENAIDA G. CRUZ-DUCUT
Chairperson *per 4*


ABB/NJS

Copy Furnished:

1. **LERIOS-AMBOY PINGOL & GONZALES LAW OFFICES**
Counsels for BATELEC II
Units 1609-1610, Tycoon Centre
Pearl Drive, Ortigas Avenue, Pasig City
2. **BATANGAS II ELECTRIC COOPERATIVE, INC. (BATELEC II)**
Barangay Antipolo del Norte, Lipa City
3. **The Office of the Solicitor General**
134 Amorsolo Street, Legaspi Village, Makati City
Metro Manila
4. **The Commission on Audit**
Don Mariano Marcos Avenue
Diliman, Quezon City, Metro Manila
5. **The Senate Committee on Energy**
Senate of the Philippines
GSIS Building, Roxas Blvd., Pasay City, Metro Manila
6. **The House Committee on Energy**
House of Representatives
Batasan Hills, Quezon City, Metro Manila
7. **Office of the President of PCCI**
Philippine Chamber of Commerce and Industry (PCCI)
3rd Floor, ECC Building, Sen. Gil Puyat Avenue
Makati City
8. **Office of the City Mayor**
Lipa City, Batangas
9. **Office of the City Mayor**
Tanauan City, Batangas
10. **Office of the Municipal Mayor**
San Jose, Batangas
11. **Office of the Municipal Mayor**
Alitagtag, Batangas

12. **Office of the Municipal Mayor**
Cuenca, Batangas
13. **Office of the Municipal Mayor**
Mataas na Kahoy, Batangas
14. **Office of the Municipal Mayor**
Mabini, Batangas
15. **Office of the Municipal Mayor**
Tingloy, Batangas
16. **Office of the Municipal Mayor**
Rosario, Batangas
17. **Office of the Municipal Mayor**
San Juan, Batangas
18. **Office of the Municipal Mayor**
Padre Garcia, Batangas
19. **Office of the Municipal Mayor**
Lobo, Batangas
20. **Office of the Municipal Mayor**
Taysan, Batangas
21. **Office of the Municipal Mayor**
Malvar, Batangas
22. **Office of the Municipal Mayor**
Balete, Batangas
23. **Office of the Municipal Mayor**
Laurel, Batangas
24. **Office of the Municipal Mayor**
Talisay, Batangas
25. **Office of the Governor**
Province of Batangas