

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.

BOOKED
Date: JAN 26 2015
By: *CR*

X ----- X

NOTICE OF PUBLIC HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that 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

3. 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

4. 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;
5. 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 |

6. On various dates, it paid the above mentioned franchise taxes to the Province of Batangas;
7. 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 | Batangas Provincial Treasurer's Statement of Account for |

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|-----------------------|--|
| "G" to "G-1" | 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 |

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| 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 |

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| 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.

The Commission has set the application 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.**

All persons who have an interest in the subject matter of the proceeding may become a party by filing, at least five (5) days prior to the initial hearing and subject to the requirements in the ERC's Rules of Practice and Procedure, a verified petition with the Commission giving the docket number and title of the proceeding and stating: (1) the petitioner's name and address; (2) the nature of petitioner's interest in the subject matter of the proceeding, and the way and manner in which such interest is affected by the issues involved in the proceeding; and (3) a statement of the relief desired.

All other persons who may want their views known to the Commission with respect to the subject matter of the proceeding may file their opposition to the application or comment thereon at any stage of the proceeding before the applicant concludes the presentation of its evidence. No particular form of opposition or comment is required, but the document, letter or writing should contain the name and address of such person and a concise statement of the opposition or comment and the grounds relied upon.

All such persons who may wish to have a copy of the application may request the applicant, prior to the date of the initial hearing, that they be furnished with a copy of the application. The applicant is hereby directed to furnish all those making such request with copies of the application and its attachments, subject to reimbursement of reasonable photocopying costs. Likewise, any such person may examine the application and other pertinent records filed with the Commission during the usual office hours.

WITNESS, the Honorable Chairperson, **ZENAIDA G. CRUZ-DUCUT**, and the Honorable Commissioners, **ALFREDO J. NON**, and **GLORIA VICTORIA C. YAP-TARUC**, Energy Regulatory Commission, this 20th day of January, 2015 at Pasig City.


ATTY. FRANCIS SATURNINO C. JUAN
Executive Director III


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