

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. 2015-037CF

MANILA ELECTRIC COMPANY
(MERALCO),

Applicant.

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DOCK # 1111
Date: AUG 26 2015
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NOTICE OF PUBLIC HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that 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)¹ from the time of the effectivity of "The 2012 Revenue Code of Trece Martires City"² 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.

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

² 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.

Accordingly, MERALCO is authorized to recover the new LFT at the rate of eighty-two and one-half percent of one percent (82.5% 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.”³

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, 2014,⁴ 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,

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

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

entitled "*A Resolution Adopting the Rules Governing the Automatic Cost Adjustment and True-Up Mechanisms and Corresponding Confirmation Process for Distribution Utilities*" which provides for the TRAC formula allowing the recovery of the LFT of distribution utilities⁵;

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";

⁵ 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:

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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.

The Commission has set the said application 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.**

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 the 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 Chairman, **JOSE VICENTE B. SALAZAR**, and the Honorable Commissioners, **ALFREDO J. NON**, **GLORIA VICTORIA C. YAP-TARUC**, **JOSEFINA PATRICIA A. MAGPALE-ASIRIT**, and **GERONIMO D. STA. ANA**, Energy Regulatory Commission, this 17th day of August, 2015 at Pasig City.


ATTY. FRANCIS SATURNINO C. JUAN
Executive Director III