

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 FRANCHISE TAX PAYMENTS TO THE CITY OF OZAMIS COVERING THE YEARS 1997 TO 2017, BUSINESS TAX PAYMENTS TO THE CITY OF OZAMIS COVERING THE YEARS 2009 TO 2017 AND BUSINESS TAX PAYMENTS TO THE MUNICIPALITY OF SINACABAN COVERING THE YEARS 2006 TO 2013**

**ERC CASE NO. 2017-070 CF**

**MISAMIS OCCIDENTAL II ELECTRIC COOPERATIVE, INC. (MOELCI II),**

**Applicant.**

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**D O C K E T E D**  
Date: APR 19 2018  
By: [Signature]

**NOTICE OF PUBLIC HEARING**

**TO ALL INTERESTED PARTIES:**

Notice is hereby given that on 27 October 2017, an *Application* dated 7 July 2017 was filed by applicant Misamis Occidental II Electric Cooperative, Inc. (MOELCI II) seeking the Commission's approval of its proposed recovery of franchise tax payments to the City of Ozamis covering the years 1997 to 2017, business tax payments to the City of Ozamis covering the years 2009 to 2017 and business tax payments to the Municipality of Sinacaban covering the years 2006 to 2013.

MOELCI II alleged the following in its *Application*:

**THE APPLICANT**

1. MOELCI II is a non-stock, non-profit electric cooperative duly organized and existing under and by virtue of Philippine laws, with principal office at the Circumferential Road, Bitoon, City of Ozamiz, Misamis Occidental.

2. It holds an exclusive franchise from the National Electrification Commission, to operate an electric light and power distribution system in the cities of Ozamiz and Tangub, and certain municipalities in the province of Misamis Occidental, namely: Bonifacio, Clarin, Tudela, Sinacaban, Jimenez and Panaon.

**NATURE OF THE APPLICATION**

3. Pursuant to ERC Resolution No. 16, Series of 2009, this Application for MOELCI II's proposed recovery of franchise tax payments to the City of Ozamiz and recovery of business tax payments to the City of Ozamiz and Municipality of Sinacaban, respectively, is being submitted for review and approval of the Honorable Commission.

**FIRST CAUSE OF ACTION**

**(Franchise Tax Payments to the City of Ozamiz)**

4. Pertinent provisions of the tax ordinances of the City Ozamiz, Misamis Occidental where MOELCI II's main office is located provide, as follows:

- a) Ordinance No. 884 (Revised Revenue Code of the City of Ozamiz enacted on December 12, 2002)

*SECTION 44. FRANCHISE TAX – There is hereby levied and imposed on businesses enjoying a franchise, at a rate of seventy-five percent (75%) of one percent (1%) of the gross annual receipts for the preceding calendar year based on the incoming receipt, or realized, within its territorial jurisdiction.*

- b) Ordinance No. 1059-13 (2013 Revised Omnibus Revenue Code of the City of Ozamiz enacted on December 20, 2013)

*Article C. Franchise Tax.*

*Section 3C.01. imposition of Tax. – Any provision of special laws or exemption to the contrary notwithstanding, any person, corporation or association enjoying a franchise whether issued by the national or local government and doing business in Ozamiz City, shall pay a tax at the rate of seventy-five percent of one percent (75% of 1%) of gross sales derived from the operation of business in Ozamiz City during the calendar year.*

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5. By virtue of the above-cited tax ordinances, the City of Ozamiz assessed MOELCI II franchise tax based on its gross receipts in the preceding year, covering the years 1997 to 2017, which MOELCI II was constrained to pay the initial assessments in installments, as follows:

Assessment Year	Distribution Revenue from Preceding Year	Franchise Tax Rate	Franchise Tax Assessed	Franchise Tax Paid
1997	81,872,669.33	75% of 1%	014,045.02	614,045.02
1998	87,971,282.67	75% of 1%	659,784.62	659,784.62
1999	110,214,537.33	75% of 1%	826,609.03	826,609.03
2000	71,461,662.67	75% of 1%	535,962.47	535,962.47
2001	130,354,565.33	75% of 1%	977,659.24	977,659.24
2002	40,390,940.00	75% of 1%	302,932.05	302,932.05
2003	40,390,940.00	75% of 1%	302,932.05	302,932.05
2004	45,277,029.33	75% of 1%	339,577.72	339,577.72
2005	27,862,245.33	75% of 1%	208,966.84	208,966.84
2006	44,494,745.33	75% of 1%	333,710.59	333,710.59
2007	39,277,450.67	75% of 1%	294,580.88	294,580.88
2008	57,516,184.00	75% of 1%	431,371.38	431,371.38
2009	73,611,698.67	75% of 1%	552,087.74	552,087.74
2010	79,702,814.67	75% of 1%	597,771.11	597,771.11
2011	101,517,769.33	75% of 1%	761,383.27	761,383.27
2012	93,931,645.33	75% of 1%	704,487.34	704,487.34
2013	26,683,546.67	75% of 1%	200,126.60	200,126.60
2014	53,942,928.00	75% of 1%	404,571.96	404,571.96
2015	54,580,192.00	75% of 1%	409,351.44	409,351.44
2016	60,038,212.00	75% of 1%	450,286.59	450,286.59
2016	60,038,212.00	75% of 1%	450,286.59	450,286.59

**SECOND CAUSE OF ACTION**  
**(Business Tax Payments to the City of Ozamiz)**

6. Pertinent provisions of the tax ordinances of the City Ozamiz where MOELCI II's main office is located, provide, as follows:

- a) Ordinance No. 884 (Revised Revenue Code of the City of Ozamiz enacted on December 12, 2002)

(g) On the businesses hereunder enumerated:

xx

13. All other similar activities consisting essentially of the sales of services for a fee.

AMOUNT OF GROSS SALES/RECEIPTS FOR THE PRECEDING CALENDAR YEAR	AMOUNT OF TAX PER ANNUM
45,500.00 or more but less than 50,000.00	1,650.00
For every 1,000.00 or fraction thereof of 50,000.00	11.00

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- b) Ordinance No. 1059-13 (2013 Revised Omnibus Revenue Code of the City of Ozamiz enacted on December 20, 2013)

**CHAPTER III. CITY TAXES.**

**Article A. Business Tax.**

*Section 3A.02. Imposition of Tax. There is hereby levied imposed on the following persons who establish, operate, conduct or maintain their respective business within the City, a graduated business tax in the amount hereafter prescribed.*

xxx

*e. On Contractors and other independent contractors, in accordance with the following schedule:*

Amount of Gross Sales/Receipts  
For the Calendar Year

Amount of Tax per Annum

*P 1,000,000.00 or more but less than 2,000,000 P 20,872.60*  
*Amount in excess of P2,000,000 at the rate of seventy five percent (75%) of one percent (1%)*

7. By virtue of the above mentioned business tax ordinances, the City of Ozamiz assessed MOELCI II business tax based on its "Other Operating Revenue" in the preceding year, covering the years 2009 to 2017, which MOELCI II paid, as follows:

Assessment Year	Other Operating		Amount of Tax				Tax Rate	Tax	Mayor's Permit and other Fees	BT as per 1059-13 h-i	Business Tax as BILLED	Business Tax PAID
	Revenue from GR-P2,000	GR-P2,000	amt of Tax for 2M	of the excess of 2M	for excess	e+g						
2009	23,063,314	2,000,000	21,063,314	20,872.60	75% of 1%	157,974.86	178,847.46	41,729.50	220,576.96	5,989.50	5,989.50	
2010	25,799,352	2,000,000	23,799,352	20,872.60	75% of 1%	178,495.14	199,367.74	41,729.50	241,097.24	16,912.50	16,912.50	
2011	24,394,442	2,000,000	22,394,442	20,872.60	75% of 1%	167,958.32	188,830.92	41,729.50	230,560.42	16,912.50	16,912.50	
2012	29,826,908	2,000,000	27,826,908	20,872.60	75% of 1%	208,701.81	229,574.41	47,940.00	277,514.41	186,933.31	186,933.31	
2013	26,895,681	2,000,000	24,895,681	20,872.60	75% of 1%	186,717.61	207,590.21	47,940.00	255,530.21	841,834.72	841,834.72	
2014	30,811,047	2,000,000	28,811,047	20,872.60	75% of 1%	216,082.85	236,955.45	66,030.00	302,985.45	236,955.00	236,955.00	
2015	30,599,325	2,000,000	28,599,325	20,872.60	75% of 1%	214,494.94	235,367.54	66,030.00	301,397.54	235,367.54	235,367.54	
2016	29,594,705	2,000,000	27,594,705	20,872.60	75% of 1%	206,960.29	227,832.89	66,030.00	293,862.89	237,444.43	237,444.43	
2017	29,594,705	2,000,000	27,594,705	20,872.60	75% of 1%	206,960.29	227,832.89	66,030.00	293,862.89	237,444.43	237,444.43	
<b>TOTAL</b>											<b>2,015,793.93</b>	

**THIRD CAUSE OF ACTION**

**(Business Tax Payments to the Municipality of Sinacaban)**

8. Pertinent provisions of the tax ordinances of the Municipality of Sinacaban where MOELCI II's sub-office is located provide, as follows:

- a) Local Revenue Code of the Municipality of Sinacaban enacted on December 10, 2002

**CHAPTER II TAXES ON BUSINESS**

*Section 2A.02. Imposition of Tax. There is hereby imposed on the following persons who establish, operate, conduct or maintain their respective business within the municipality a graduated business tax in the amounts hereafter prescribed:*

XXXX

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13. All other similar activities consisting essentially of the sales of services for a fee

Gross Sales/Receipts for the Preceding Calendar Year xxx	Amount of Tax Per Annum
45,500.00 or more but less than 50,000.00	1,500.00
For every 1,000.00 or fraction thereof in excess of 50,000.00	10.00

b) Revised 2010 Local Revenue Code of the Municipality of Sinacaban enacted on December 14, 2010

**CHAPTER II. TAX ON BUSINESS**

Section 2A.02. Imposition of Tax. There is hereby imposed on the following persons who establish, operate, conduct or maintain their respective business within the municipality a graduated business tax in the amounts hereafter prescribed:

xxxx

13. All other similar activities consisting essentially of the sales of services for a fee

Gross Sales/Receipts for the Preceding Calendar Year xxx	Amount of Tax Per Annum
45,500.00 or more but less than 50,000.00	1,650.00
For every 1,000.00 or fraction thereof in excess of 50,000.00	110.00

c) Municipal Ordinance No. 003, S-2013 dated October 1, 2013, (Ordinance Interpreting Sub-Paragraph No. 13, under Chapter II, Taxes on Business, Article A. Graduated Tax on Business Section 2a. 02 on Imposition of Tax, Sub-Paragraph (g) (13), of the Revenue Code).

9. By virtue of the above cited tax ordinances, the Municipality of Sinacaban assessed MOELCI II business tax based on its gross receipts in the preceding year, covering the years 2006 to 2013, which MOELCI II paid, as follows:

	2006	2007	2008	2009	2010	2011	2012	2013	
	9,068,871.71	9,646,476.99	10,012,064.18	11,068,223.95	13,797,449.74	13,728,960.38	13,674,750.35	11,118,306.74	
GENCO	5,117,482.66	4,948,581.57	4,816,468.74	6,034,149.79	6,412,553.26	6,295,701.83	7,836,651.66	5,037,723.42	
TRANSCO	1,798,482.90	1,731,723.12	1,691,149.86	2,013,939.49	3,225,086.60	3,145,872.32	2,292,064.77	1,403,625.26	
REINVESTMENT FUND	219,390.94	319,357.60	366,322.61	396,357.70	502,393.72	564,071.24	520,582.57	377,616.52	
UNIVERSAL CHARGE	67,975.84	70,493.50	74,471.24	100,354.31	177,239.60	107,969.59	250,381.24	297,071.27	
Total Deductions	7,303,222.34	7,070,155.79	6,950,412.05	8,344,801.29	10,317,265.17	10,133,434.96	10,507,680.24	7,216,046.57	
Net Gross Receipts Subject to BT	1,835,649.37	2,576,321.20	3,061,651.13	2,723,422.66	3,480,186.57	3,595,525.40	2,717,070.11	3,902,062.17	23,791,888.61
	50,000.00	50,000.00	50,000.00	50,000.00	50,000.00	50,000.00	50,000.00	50,000.00	
	1,835,649.37	2,526,321.20	3,011,651.13	2,673,422.66	3,430,186.57	3,545,525.40	2,717,070.11	3,852,062.17	
	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	
	1,835.65	2,526.32	3,011.65	2,673.42	3,430.19	3,545.53	2,717.07	3,852.06	
	10	10	10	10	10	11	11	11	
	18,356.49	25,263.21	30,116.51	24,734.23	34,301.87	39,000.78	29,887.77	42,372.68	
	1,500.00	1,500.00	1,500.00	1,500.00	1,500.00	1,650.00	1,650.00	1,650.00	
TOTAL TAX DUE	19,856.49	26,763.21	31,616.51	26,234.23	35,801.87	40,650.78	31,537.77	44,022.68	256,483.54

**PROPOSED RECOVERY RATES**

**Franchise Tax Recovery from Customers in the City of Ozamiz**

10. Having paid the franchise tax due for each corresponding year to the City of Ozamiz, MOELCI II now seeks approval from this Honorable Commission to pass on to its customers in the City of Ozamiz the franchise tax paid to the said city, applying the formula provided under ERC Resolution No. 16, Series of 2009;

11. For the franchise taxes paid from years 1997 to 2017 in the total amount of PhP10,358,484.53, based on kWh sold in years 2014 to 2016, annual load growth of 6% and forecasted kWh sales of 80,823,881 in the City of Ozamiz for year 2018, MOELCI II proposes to recover the franchise tax payments to the city government of Ozamiz from all its customers in the said city over a period of twelve (12) months or until the said amount is fully recovered, at the rate of PhP 0.1282/kWh.

**Business Tax Recovery from Customers in the City of Ozamiz**

12. For the business tax payments to the City of Ozamiz, MOELCI II seeks approval from this Honorable Commission to pass on to its customers in the City of Ozamiz, the business taxes paid to said city, applying the formula provided under ERC Resolution No. 16, Series of 2009;

13. For the business taxes paid from years 1997 to 2017 in the total amount of PhP2,015,793.93, based on kWh sold in years 2014 to 2016, annual load growth of 6% and forecasted kWh sales of 80,823,881 in the City of Ozamiz for year 2018, MOELCI II proposes to recover the business tax payments to the City of Ozamiz from all its customers in the said city over a period of twelve (12) months or until the said amount is fully recovered, at the rate of PhP0.0249/kWh.

**Business Tax Recovery from Customers in the Municipality of Sinacaban**

14. For the business tax payments to the Municipality of Sinacaban, MOELCI II seeks approval from this Honorable Commission to pass on to its customers in Sinacaban, the business taxes paid to said municipality, applying the formula provided under ERC Resolution No. 16, Series of 2009;

15. For the business taxes paid from years 2006 to 2013 in the total amount of PhP270,510.77, based on kWh sold in years 2014 to 2016, annual load growth of 7% and forecasted kWh sales of 2,920,369 in the municipality of Sinacaban for year 2018, MOELCI II proposes to recover the business tax payments from all its customers in Sinacaban over a period of twelve (12) months or

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until the said amount is fully recovered, at the rate of PhPo.o878/kWh.

**SUBMISSION OF DOCUMENTARY REQUIREMENTS**

16. In support of the instant application, MOELCI II is submitting herewith the following documents which are being made integral parts hereof as follows, to wit:

<b>ANNEX MARKINGS</b>	<b>NATURE OF DOCUMENT</b>
A	Excerpts from the City of Ozamiz Tax Ordinance No. 884 (Revised Revenue Code of the City of Ozamiz dated December 12, 2002)
B	Excerpts from the City of Ozamiz Ordinance No. 1059-13 (2013 Revised Omnibus Revenue Code of the City of Ozamiz enacted on December 20, 2013)
C	City of Ozamiz Treasurer's Certification dated August 4, 2017
D to D-3	City of Ozamiz Treasurer's Assessments for Franchise Tax covering Years 1997 to 2017 and Business Tax covering Years 2009 to 2017
E	Summary of Ozamiz City Tax Bills for Franchise Tax and Business Tax
F to F-11	City of Ozamiz Official Receipts for Franchise Tax Payments covering Years 1997-2017 and Business Tax Payments covering Years 2009 to 2017
G	Summary of Payments of Franchise Tax and Business Tax to the City of Ozamiz
H	Computation of TRAC in PhP/kWh (Franchise Tax) with the proposed recovery period and projected kWh sales in the City of Ozamiz for the proposed recovery period
H-1	Annex "A" - TRAC (Actual kWh Sales, City of Ozamiz Area and Projected kWh Sales at 6% Load Growth)
I	Franchise Tax Summary – City of Ozamiz Area
J	Computation of TRAC in PhP/kWh (Business Tax) with the proposed recovery period and projected kWh sales in the City of Ozamiz for the proposed recovery period
K	Actual Distribution Revenue of Ozamis City Area (Gross Receipts for 2013 - 2016)
L to L-5	2007-2012 Monthly Gross Receipts for the City of Ozamiz for the computation of Franchise Tax

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M	kWh Sales – City of Ozamiz Area (2006 - 2016)
N	Pertinent portions of the Local Revenue Code of the Municipality of Sinacaban enacted on December 10, 2002
O	Pertinent portions of the Revised 2010 Local Revenue Code of the Municipality of Sinacaban enacted on December 14, 2010
P	Sinacaban Municipal Ordinance No. 003, S-2013 dated October 1, 2013
Q	Billing Statement of the Municipality of Sinacaban for Business Tax covering years 2006 to 2013
R	Official Receipt of Business Tax Payment to the Municipality of Sinacaban covering years 2006 to 2013
S	Computation of TRAC in PhP/kWh (Business Tax) with the proposed recovery period and projected kWh sales in the Municipality of Sinacaban for the proposed recovery period
T	Sinacaban Area Actual kWh Sales for 2014-2016 and Projected kWh Sales at 7% Load Growth for 2018-2022
U	Gross Receipts of Sinacaban (January-August 2013)
V	Sinacaban Area kWh Sales (2006-2016)
W	MOELCI II Franchise Area kWh Sales (2004 -2016)
X	Actual Distribution Revenue of MOELCI II Franchise Area per Audited Financial Statements (1997-2016)
Y to Y-14	Audited Financial Statements for Years 1997 to 2016
Z to Z-2	Newspaper of General Circulation together with the page of the published Application, and Affidavit of Publication
AA to AA-1	Certification from the Office of the Sangguniang Panlalawigan of Misamis Occidental and Sangguniang Bayan of Ozamiz as proof of service of the Application together with its annexes

**PRAYER**

**WHEREFORE,** premises considered, MOELCI II respectfully prays of this Honorable Commission that after due notice and hearing, it be authorized:

- 1) to recover from all its customers in the City of Ozamiz, Misamis Occidental, the franchise taxes paid to the city government of Ozamiz covering the years 1997 to 2017, in the



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total amount of PhP10,358,484.53, over a period of twelve (12) months or until said amount is fully recovered, at the rate of PhPo.1282/kWh;

- 2) to recover from all its customers in the City of Ozamiz, the business taxes paid to the city government of Ozamiz covering years 1997 to 2017, in the total amount of PhP2,015,793.93 over a period of twelve (12) months or until said amount is fully recovered, at the rate of PhPo.0249/kWh;
- 3) to recover from all its customers in the Municipality of Sinacaban, Misamis Occidental, the business taxes paid to the municipal government of Sinacaban covering the years 2006 to 2013, in the total amount of PhP256,483.54, over a period of twelve (12) months or until the said amount is fully recovered, at the rate of PhPo.0878/kWh;
- 4) to include the amount of franchise tax recovery as separate line item in the electric bills to be issued to MOELCI II's customers in the City of Ozamiz;
- 5) to include the amount of business tax recovery as separate line item in the electric bills to be issued to MOELCI II's customers in the City of Ozamis; and
- 6) to include the amount of business tax recovery as separate line item in the electric bills to be issued to MOELCI II's customers in the Municipality of Sinacaban.

Other relief, just and equitable in the premises, are likewise being prayed for.

The Commission has set the *Application* for determination of compliance with the jurisdictional requirements, expository presentation, Pre-trial Conference, and presentation of evidence on **28 May 2018 at ten o'clock in the morning (10:00 A.M.), at the ERC Hearing Room, 15<sup>th</sup> Floor, Pacific Center Building, San Miguel Avenue, Pasig City.**

All persons who have an interest in the subject matter of the instant case may become a party by filing with the Commission a verified Petition to Intervene at least five (5) days prior to the initial hearing and subject to the requirements under Rule 9 of the 2006 Rules of Practice and Procedure, indicating therein the docket number and title of the case and stating the following:

- 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

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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 case may file their Opposition or Comment thereon at any stage of the proceeding before Applicant rests its case, subject to the requirements under Rule 9 of the 2006 Rules of Practice and Procedure. No particular form of Opposition or Comment is required, but the document, letter, or writing should contain the following:

- 1) The name and address of such person;
- 2) A concise statement of the Opposition or Comment; and
- 3) The grounds relied upon.

All such persons who wish to have a copy of the *Application* may request from Applicant that it be furnished with the same, prior to the date of the initial hearing. Applicant is hereby directed to furnish all those making such request with copies of the *Application* and its attachments, subject to the reimbursement of reasonable photocopying costs. Any such person may likewise examine the *Application* and other pertinent records filed with the Commission during the standard office hours.

**WITNESS**, the Honorable Chairperson and CEO **AGNES VST DEVANADERA**, and the Honorable Commissioners **ALFREDO J. NON**, **GLORIA VICTORIA C. YAP-TARUC** and **GERONIMO D. STA. ANA**, Energy Regulatory Commission, this 26th day of March 2018 in Pasig City.

FOR AND BY AUTHORITY  
OF THE COMMISSION:

  
**JOSEFINA PATRICIA A. MAGPALE-ASIRIT**  
*Oversight Commissioner for Legal*