

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

IN THE MATTER OF THE  
APPLICATION FOR  
AUTHORITY TO: (A)  
IMPLEMENT THE NEW  
LOCAL FRANCHISE TAX  
(LFT) RATES IN THE  
CITIES OF MANILA AND  
QUEZON; AND (B)  
REFUND/RECOVER THE  
DIFFERENTIAL LFT FOR  
2014 TO 2016 TO/FROM  
CUSTOMERS IN SAID  
CITIES UNDER THE TAX  
RECOVERY ADJUSTMENT  
CHARGE (TRAC)  
FORMULA, WITH PRAYER  
FOR PROVISIONAL  
AUTHORITY,

ERC CASE NO. 2016-036 CF

MANILA ELECTRIC  
COMPANY (MERALCO),  
Applicant.

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DOCKETED  
Date: MAR 20 2017  
By: M

NOTICE OF PUBLIC HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 05 December 2016, Manila Electric Company (MERALCO) filed an *Application* seeking authority from the Commission to implement the new Local Franchise Tax (LFT) rates in Manila City and Quezon City; and refund or recover the differential LFT for the years 2014 to 2016 to or from its customers in the aforementioned cities.

MERALCO, likewise, alleged the following in its *Application*:

1. Applicant 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. It may be served with notices and other

processes of this Honorable Commission at its principal office address or through its counsel at the address indicated herein.

2. Pursuant to Republic Act No. 9209, Applicant 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 Honorable Commission.

3. Under Republic Act No. 7160, otherwise known as the Local Government Code (LGC), provinces and cities are authorized to impose local franchise taxes (LFTs) and to adjust subsequently the rates thereof, thus:

“Article One – Provinces

Section 134. *Scope of Taxing Powers.* – Except as otherwise provided in this Code, the province may levy only the taxes, fees and charges as provided in this Article.

xxx

Section 137. *Franchise Tax.* – Notwithstanding any exemption granted by any law or other special law, the province may impose a tax on businesses enjoying a franchise, at a rate not exceeding fifty percent (50%) 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.

In the case of a newly started business, the tax shall not exceed one-twentieth (1/20) of one percent (1%) of the capital investment. In the succeeding calendar year, regardless of when the business started to operate, the tax shall be based on the gross receipts for the preceding calendar year, or any fraction thereof, as provided herein.

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Article Three – *Cities*

Section 151. *Scope of Taxing Powers.* – Except as otherwise provided in this Code, the city, may levy the taxes, fees, and charges which the province or municipality may impose:

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The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%) except the rates of professional and amusement taxes.

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Section 191. *Authority of Local Government Units to Adjust Rates of Tax Ordinances-* Local government units shall have the authority to adjust the tax rates as prescribed herein not often than once every five (5)

years, but in no case shall such adjustment exceed ten percent (10%) of the rates fixed under this Code.”

xxx”

4. The Decision rendered by the Honorable Commission in ERC Case Nos. 2001-646<sup>1</sup> and 2001-900<sup>2</sup> provides that:

“MERALCO is not authorized to unilaterally change the franchise fee rate component on customer’s bills. If MERALCO needs to change the franchise fee rate component due to any changes in franchise fee obligations, it shall petition the ERC for such authority and include in its filing all documentation necessary to verify the changes.”<sup>3</sup>

5. Section 6.3 of Article II of the Honorable Commission’s Resolution 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*,” likewise states that:

“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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Before including the TRAC in its customers’ bill, the DU shall submit to the ERC its calculation thereof using the TRAC formula provided above, together with the following information and supporting documents:

- (a) Proposed recovery period;
- (b) Certified true copy of prior years Tax Assessments issued by the concerned LGU/s;
- (c) Certified true copy of Local Tax Ordinance/s;
- (d) Certified true copies of Official Receipts;
- (e) Projected kilowatt-hours sales for the particular proposed recovery;
- (f) Other relevant documents as may be required by the ERC.

Upon receipt of the complete documents, the ERC shall verify and determine from the submissions the appropriate TRAC that the DU shall be allowed to impose on its customers.

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<sup>1</sup> In the Matter of the Application for Approval of Revision of Rate Schedules and Appraisal of Properties with Prayer for Provisional Authority.

<sup>2</sup> In the Matter of the Application for Approval of Revised Rate Schedules in Compliance with Section 36 of Republic Act No. 9136 and ERC Order dated October 30, 2001, and for Approval of Appraisal of Properties with Prayer for Provisional Authority.

<sup>3</sup> Decision dated 20 March 2003, page 92.

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."

6. Pursuant to the above-mentioned laws and rulings by the Honorable Commission, Applicant seeks authority to: (a) implement the new Local Franchise Tax (LFT) rates in the City of Manila and Quezon City; and (b) refund/recover any differential LFT to/from customers in said cities under TRAC formula.

#### LFT FOR MANILA

7. The Sanggunian Panlungsod of City of Manila enacted Ordinance No. 7794, entitled: "An Ordinance Enacting a Revenue Code for the City of Manila", which provides that:

"Section 9. Franchise Tax.

Notwithstanding any exemption granted by any law or other special law, a tax on business 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, is hereby imposed."<sup>4</sup>

A copy of the Ordinance No. 7794 is attached as Annex "A".

8. The Honorable Commission rendered a Decision dated 27 February 2012 in ERC Case 2011-045 RC<sup>5</sup> approving MERALCO's application for authority to recover the LFT due from customers in various cities, which include the City of Manila.

9. Subsequent thereto, on 26 November 2013, the Sangguniang Panlungsod of the City of Manila enacted City Ordinance No. 8331 entitled: "An Ordinance enacting the 2013 Omnibus Revenue Code of the City of Manila". The Ordinance increased the LFT rate at eighty two and one half percent (82.5%) of one percent (1%) of the gross annual receipts for the preceding calendar year based on the incoming receipt, or realized, within the territorial jurisdiction of the City, thus:

"Section 96. Franchise Tax

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<sup>4</sup> Ordinance No. 8331, 2013, Omnibus Revenue Code of the City of Manila page 24.

<sup>5</sup> In the Matter of the Application for Authority to Recover the Local Franchise Tax (LFT) paid to Bulacan Province, Batangas Province, Cavite Province, Laguna Province, Rizal Province, San Jose Del Monte City, Batangas City, San Pablo City, Tagaytay City, Lucena City, Mandaluyong City, Marikina City, Quezon City, Caloocan City, Pasay City, Las Piñas City, City of Manila, Pasig City and Calamba City, with Prayer for Provisional Authority.

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Notwithstanding any exemption granted by any law or other special law, a tax on business enjoying a franchise, at a rate of Eighty-Two and One Half percent (82.5%) of One percent (1%) of the gross annual receipts for the preceding calendar year based on the incoming receipt, or realized, within the territorial jurisdiction of the City, is hereby imposed.”<sup>6</sup>

A Certified True Copy of said Ordinance is attached as ANNEX “B”.

10. The said Ordinance was approved on 03 December 2013, and took effect immediately upon approval and after publication thereof.<sup>7</sup>

11. The Ordinance was published in The Manila Times Newspaper on 06 December 2013. A copy of the said newspaper and Affidavit of Publication of Ms. Evelyn S. Arevalo, Accounting Supervisor of the Manila Times Newspaper are attached as Annexes “C” and “D” respectively.

12. The amount of LFT due based on the old and new rates are as follows:

Taxable Year	Amount due based on Previous LFT rate (75% of 1% of gross annual receipts of preceding calendar year)	Amount due based on New LFT Rate (82.5% of 1 % of gross annual receipts of preceding calendar year)
2014	P183,719,978.11	P202,091,975.92
2015	P160,929,926.71	P177,022,919.38
2016	P151,077,859.24	P166,185,645.16
Total	P495,727,764.06	P545,300,540.46

13. It may be gleaned from the foregoing that for the taxable periods 2014 to 2016, the total LFT due based on new rate amounts to P545,300,540.46. However, local government of City of Manila gave a 10% discount for the franchise tax. Applicant only paid the total amount of PhP492,641,238.70.

*Copies of the Official Receipts bearing OR Nos. 2528665, 2969561, 3792360, 3792362 and 5020115 are attached as Annexes “E” to “E-4” hereof.*

14. Accordingly, a comparison of the amount collected based on the old LFT rate with the amount actually paid by Applicant, reveals an excess collection in the amount of PhP3,086,525.36. The details of the amount paid and collected for the said taxable periods are shown below:

Taxable	Amount Paid	Amount Recovered	Differential LFT
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<sup>6</sup> Ordinance No. 8331, 2013 Omnibus Revenue Code of the City of Manila page 24.

<sup>7</sup> Ibid, page 112.

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Period	(based on new LFT rate)	(based on old LFT rate)	
2014	P183,719,978.11	P183,719,978.11	0.00
2015	P159,354,179.94	P160,929,926.71	1,575,746.77
2016	P149,567,080.65	P151,077,859.24	1,510,778.59
<b>TOTAL</b>	<b>P492,641,238.70</b>	<b>P495,727,764.06</b>	<b>P3,086,525.36</b>

15. The computed carrying cost for the said differential LFT is in the amount of PhP223,055.65.

16. Hence, Applicant seeks authority to refund the differential the differential LFT in the amount of PhP3,086,525.36 at a rate of PhPo.0020/kWh and carrying cost in the amount of PhP223,055.65 at a rate of PhPo.0001/kWh, or a total amount of PhP3,309,581.01 at a rate of PhPo.0021/kWh to customers in the City of Manila over a period of six (6) months.

A copy of document entitled "Computation of Tax Recovery Adjustment Charge-Manila" which shows the computed differential LFT rate for City of Manila and carrying cost is hereto attached as Annex "F".

**LFT FOR QUEZON CITY**

17. The Sanggunian Panlungsod of Quezon City enacted Ordinance SP-1189, S-2002 entitled, "An Ordinance Amending Quezon City Revenue Code," that imposed, among other things, the LFT rate of 57% of 1% of gross receipts and sales derived from the operation of the business in the Quezon City during the preceding calendar year.

A copy of the Ordinance is attached as Annex "G".

18. In the Decision dated 27 February 2012 in ERC Case 2011-04 RC, the Honorable Commission approved, among other things, MERALCO's implementation of said LFT rate in Quezon City.

19. Thereafter, on 20 December 2013, the Sanggunian Panlungsod of Quezon City enacted Ordinance No. 2236, "An Ordinance entitled "An Ordinance Further Amending the Tax Rate of Certain Items under Chapter Three (Tax on Business ) and Chapter Four (Other Taxes) of the Quezon City Revenue Code in Accordance with the Limitations Set-Forth in the Local Government Code". The Ordinance increased the LFT rate at 62.7% of 1% of the gross receipts and sales derived from the operation of the business in Quezon City during the preceding calendar year, thus:

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“Chapter Four of the Quezon City Revenue Code is hereby amended as follows:

Section 31. Imposition of Tax –Any provision of special laws or grant of exemption to the contrary notwithstanding, any person, corporation, partnership or association enjoying a franchise whether issued by the national government or local government and doing business in Quezon City, shall pay a franchise tax at the rate of 62.7% of 1% of the gross receipts and sales derived from the operation of the business in Quezon City during the preceding calendar year, unless granted by the City Government a special permit for such undertaking, in such case the rate provided in the special permit shall be applicable.”<sup>8</sup>

A certified copy of the Ordinance is attached as Annex “H”.

20. The aforesaid Ordinance No. 2236 of Quezon City was published in the 28 December 2013 issue of the Manila Bulletin. Copies of the newspaper and Affidavit of Publication of Ms. Katherine So-Chua, Assistant Vice President –Display Advertising of Manila Bulletin are attached as Annexes “I” and “J”, respectively.

21. The amount of LFT due to Applicant based on the old rate and new rate imposed by the Quezon City, and the difference between the total amount for the said rates are as follows:

Taxable Year	Amount due to Applicant based on Old LFT rate (57% of 1% of the gross receipts and sales derived from the operation of the business during the preceding calendar year)	Amount due to Applicant based on New LFT Rate (62.7% of 1 % of the gross receipts and sales derived from the operation of the business during the preceding calendar year)
2014	P219,522,334.91	P241,474,568.40
2015	P199,401,153.53	P219,341,268.90
2016	P187,343,041.24	P 206,079,853.36
Total	P606,266,529.68	P666,895,690.66

22. Applicant paid the total LFT amounting to PhP 666,895,690.66 for the taxable periods 2014, 2015 and 2016 to Quezon City based on the new LFT rate.

*Copies of the Official Receipts bearing OR Nos. A3COR2909699 -3, A5COR2978082-5, A1COR3418112-1, A2COR3282904-2, A0COR3623344-0, A8COR4039045-8, A1COR4147293-1, A3COR4214646 -3, A0COR4410805-0, A1COR4762251-1,*

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<sup>8</sup> Ordinance No. 2236, “An Ordinance entitled an “Ordinance Further Amending the Tax Rate of Certain Items under Chapter Three (Tax on Business) and Chapter Four (Other Taxes) of the Quezon City Revenue Code in Accordance with the Limitations Set-Forth in the Local Government Code”, page 11.

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*A2COR4840781-2, and A9COR4822629-9 are attached as Annexes "K" to "K-11" hereof.*

23. A comparison of the LFT payments that Applicant paid under the new rate vis-à-vis the old rate will reveal that Applicant needs to recover a differential LFT in the amount of PhP60,629,160.98. The details of the amount paid and collected for the said taxable periods including the differential LFT is shown below:

Period Covered	Amount Paid (based on new rate)	Amount Recovered (based on old rate)	LFT Differential
2014	P241,474,568.40	P219,522,334.91	P(21,952,233.49)
2015	P219,341,268.90	P199,401,153.53	P(19,940,115.37)
2016	P 206,079,853.36	P187,343,041.24	P(18,736,812.12)
TOTAL	P666,895,690.66	P 606,266,529.68	P(60,629,160.98 )

24. The computed total amount of carrying cost for the said total differential LFT is PhP5,657,899.14.

25. Thus, Applicant seeks for authority from the Honorable Commission to recover the differential LFT in the amount of PhP60,629,160.98 at a rate of PhP0.0124/kWh and carrying cost in the amount of PhP5,657,899.14 at a rate of PhP0.0012/kWh for the taxable periods 2014, 2015 and 2016, or a total amount of PhP66,287,060.11 at a rate of PhP0.0136/kWh from the customers in Quezon City over a period of twelve (12) months

A copy of the document entitled "Computation of Tax Recovery Adjustment Charge- Quezon City" which shows the computed differential LFT rate and carrying cost for said city is hereto attached as Annex "L".

**CARRYING COSTS (LFT differential for Manila and QC)**

26. Further, the Decision dated 27 February 2012 of the Honorable Commission in ERC Case 2011 -045 RC also states that:

**"Carrying Charge**

MERALCO started remitting its LFT payments as early as 1993. In this regard, the Commission deem it prudent to allow MERALCO to recover carrying charge for advancing the payments of its LFT. However, the Commission disagrees with MERALCO on the applicability of the BSP-established 91-day Treasury Bill rates plus 3% considering that



Resolution No.16 did not expressly provide for the use of this as basis for computing the carrying charge. Instead, the legal interest rate of 6% will be used as it is more reasonable under the circumstances. The recovery of carrying charge shall only be up to the end of December 2009, the period when it should have filed the instant application.”<sup>9</sup>

27. The proposed treatment for said carrying costs is justified considering that Applicant paid in full the LFT; and therefore, the same had incurred an opportunity cost for the money that was used to advance and pay to the said cities. Also, the customers in Manila will benefit from the proposed refund of carrying costs.

28. Also, Applicant seeks authority to recover any amount of LFT that will be paid to said cities during the period that the Application is pending for resolution before the Honorable Commission.

#### ISSUANCE OF PROVISIONAL AUTHORITY

29. The issuance of a Provisional Authority (PA) in favor of the Applicant is warranted so that the appropriate increased LFT rates may be implemented in the customer bills for said cities pursuant to the provisions of the aforesaid Ordinances. Considering that Applicant paid in full the increased LFT in said cities, the issuance of PA is proper since the same is consistent with and will maintain the neutral position of Applicant.

Also, the amount of total differential LFT for Manila and Quezon City that are covered by the Application is only until December 2016. However, Applicant is mandated by the pertinent laws to pay for the new LFT rates for the succeeding taxable periods to said cities. Thus, the grant of PA in favor of Applicant will prevent the accumulation of additional differential LFT to said cities while the case is pending before the Honorable Commission.

30. In support of this Application and the prayer for the issuance of a provisional authority, hereto attached as ANNEX “M” and made an integral part hereof is the Judicial Affidavit of MR. GENER R. MONTEMAYOR, Manager, Tax Management and Reporting Office of the Applicant.

#### PRAYER

WHEREFORE, it is respectfully prayed to this Honorable Commission that the Application be approved and that Applicant be granted the authority to:

1. Implement the new local franchise tax rate of 82.5% of 1%, of gross annual receipts for the preceding calendar year based on the incoming receipt, or realized receipts, in the City of Manila pursuant City Tax Ordinance

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<sup>9</sup> Decision, page 18.

No. 8331, beginning on the date of effectivity thereof, or on 12/21/2013;

2. Refund the differential LFT in the amount of PhP3,086,525.36 and carrying cost in the amount of PhP223,055.65 for the taxable periods 2014, 2015 and 2016, or a total amount of PhP3,309,581.01 at a rate of PhP0.0021/kWh to customers in the City of Manila over a period of six (6) months.

3. Recover any additional amount of LFT that will be subsequently paid to City of Manila while this case is pending for resolution before the Honorable Commission, upon submission of proof of payment and details of computation of Tax Recovery Adjustment Charge thereof by Applicant;

4. Implement the new local franchise tax rate of 62.7% of 1% of the gross receipts and sales derived from the operation of the business in Quezon City during the preceding calendar year, beginning on the date of effectivity thereof, or on 01/12/2014;

5. Recover the differential LFT in the amount of PhP60,629,160.98 and carrying cost in the amount of PhP5,657,899.14 for the taxable periods 2014, 2015 and 2016, or a total amount of PhP66,287,060.11 at a rate of PhP0.0136/kWh from the customers in Quezon City over a period of twelve (12) months; and

6. Recover any additional amount of LFT that will be subsequently paid to Quezon City while the case is pending before the Honorable Commission, upon submission of proof of payment and details of computation of Tax Recovery Adjustment Charge thereof by Applicant.

It is further prayed that pending hearing, a PROVISIONAL AUTHORITY be issued by the Honorable Commission to implement the new LFT rates and recover/refund the differential LFT for 2014 to 2016 from/to customers in said cities.

Other relief as may be deemed just and equitable under the premises.

The Commission has set the said *Application* for determination of compliance with the jurisdictional requirements, expository presentation, Pre-trial Conference, and presentation of evidence on **24 May 2017 at three thirty in the afternoon (3:30 P.M.), at the ERC Hearing Room, 15<sup>th</sup> Floor, Pacific Center, 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:

- i. The petitioner's name and address;
- ii. 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
- iii. 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 Applicants rest their 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 they be furnished with the same, prior to the date of the initial hearing. Applicants are 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 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 6<sup>th</sup> day of March 2017 at Pasig City.

**ATTY. NATHAN J. MARASIGAN**  
*Chief of Staff*  
Office of the Chairman and CEO

LS: ICQ/RM/APV