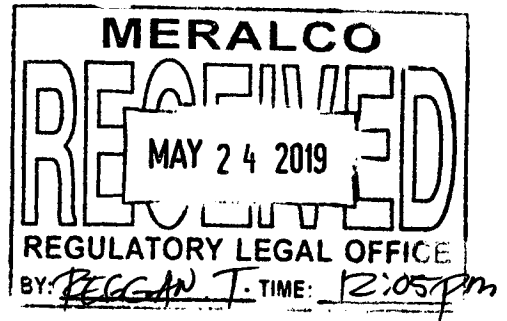


Republic of the Philippines
ENERGY REGULATORY COMMISSION
San Miguel Avenue, Pasig City

IN THE MATTER OF THE APPLICATION FOR AUTHORITY TO: (A) IMPLEMENT THE NEW LOCAL FRANCHISE TAX (LFT) RATE IN THE CITY OF PASIG; AND (B) RECOVER THE DIFFERENTIAL LFT PAID TO THE CITY OF PASIG, WITH PRAYER FOR PROVISIONAL AUTHORITY



ERC CASE NO. 2019-026 CF

**MANILA ELECTRIC COMPANY (MERCALCO),
Applicant.**

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Promulgated:

MAY 24 2019

ORDER

On 03 May 2019, Applicant Manila Electric Company (MERCALCO) filed an *Application* dated 02 May 2019, seeking the Commission's authority to implement the new Local Franchise Tax (LFT) rate in Pasig City and to recover the differential LFT for the calendar year (CY) 2018 to 2nd Quarter of CY 2019 from its customers in the said City under the Tax Recovery Adjustment Charge (TRAC) formula, with prayer for the issuance of a provisional authority.

The pertinent allegations of the said *Application* are hereunder quoted as follows:

1. Applicant is a private corporation existing under the laws of the Republic of the Philippines, with principal office located at Lopez Building, MERCALCO 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, Laguna, Quezon and Pampanga, 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), cities are authorized to impose Local Franchise Taxes (LFT) and to subsequently adjust the rates thereof, thus:

“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.

XXX

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 oftener than once every five (5) years, but in no case shall such adjustment exceed ten percent (10%) of the rates fixed under this Code.”

4. The Decision dated 20 March 2003 in ERC Case Nos. 2001-646¹ and 2001-900² 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.”³

5. Section 6.3 of the Article II of the Honorable Commission’s Resolution No. 16, Series of 2009, entitled: “*A Resolution Adopting the Rules Governing the Automatic Cost Adjustment and True-up Mechanisms and Corresponding*

¹ In the Matter of the Application for Approval of Revision of Rate Schedules and Appraisal of Properties with Prayer for Provisional Authority, Manila Electric Company, Applicant.

² 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 30 October 2001, and for Approval of Appraisal of Properties with Prayer for Provisional Authority, Manila Electric Company, Applicant.

³ Decision dated 20 March 2003, page 92.

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:

X X X

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 Assessment 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 recovery;
- f. Other relevant documents as may be required by the ERC.

X X X

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 LFT rate of fifty-five percent (55%) of one percent (1%) of its gross receipts in the City of Pasig; b) recover the differential LFT from its customers in said city under the TRAC formula; and c) pending resolution of the instant application, pay the City of Pasig using the new LFT rate for Calendar Year (CY) 2019, and allow Applicant to recover the same from customers in the City of Pasig.
7. On 29 May 2002, the Sangguniang Panlungsod of Pasig enacted Sangguniang Panlungsod Ordinance No. 16, Series of 2002, otherwise known as “An Ordinance Imposing Franchise Tax on any Person, Corporation, Partnership or Association Enjoying a Franchise and doing Business in the City of Pasig”, which provides:

“Section 2. Imposition of Tax. – Any provision of law or grant of exemption to the contrary notwithstanding, any person, corporation,

partnership or association enjoying a franchise and doing business in the City of Pasig shall pay a franchise tax at the rate of fifty percent (50%) of one percent (1%) if its gross annual receipt delivered from the operation of its business in Pasig City during the preceding calendar year.”

A copy of Ordinance No. 16, Series of 2002 is hereto attached as **Annex “A”**.

8. On the basis of the said Ordinance, Applicant filed an application, docketed as ERC Case No. 2004-11, for authority to implement said tax rate in the City of Pasig, as well as in other cities.⁴ On 19 April 2005, the Honorable Commission rendered a Decision approving the application for authority to recover LFT due from customers in the City of Pasig and in the other various cities which states that:

*“**WHEREFORE**, the foregoing premises considered, the Commission hereby **RESOLVES** that:*

xxx

4. *MERALCO is granted authority to implement the local franchise fee rate of 50% of 1% in its customer’s bills for Pasig City effective January 1, 2005, pursuant to Sangguniang Panlungsod Ordinance No. 16, Series of 2002;*

5. *The authority granted to MERALCO to collect local franchise fee rate from its customers in the Cities of Quezon, Caloocan, Calamba, Pasig and Muntinlupa is subject to the conditions imposed by Paragraph (q), Section 4, Rule 7 of the Implementing Rules and Regulations of R.A. No. 9136 which provides that a “Distribution Utility shall pay a franchise tax only on its distribution wheeling and Captive Market supply revenues.”*

- 8.1. Applicant filed a Motion for Reconsideration/ Clarification dated 5 May 2005, seeking further clarification on the implementation of the aforementioned Decision dated 19 April 2005 with particular regard to the application of Paragraph (q), Section 4, Rule of the Implement Rules and Regulations of R.A. No. 9136. However, the Honorable Commission has yet to rule upon said motion.

⁴ In the Matter of the Application for Authority to Implement/Charge the Local Franchise Fee Rate in the Cities and Municipalities of Quezon, Caloocan, Calamba, Makati, Muntinlupa, Pasig, Malabon, Navotas, Taguig and San Juan with Prayer for Provisional Authority.

9. Thereafter, on 12 October 2017, the Sangguniang Panlungsod of Pasig enacted Ordinance Number 51, Series of 2017, otherwise known as “*An Ordinance enacting the Revised Pasig Revenue Code providing Penalties for Violation Thereof*” (Ordinance), which provides:

“*Article V. Franchise Tax*

Section 89. 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 of doing business in the City of Pasig, shall pay a franchise tax at [sic] rate of fifty-five percent (55%) of one percent of its gross receipts derived from the operations of the business in Pasig during the preceding calendar year.*⁵ (Underscoring supplied)

A certified true copy of the 2017 Revised Pasig Revenue Code is hereto attached as **Annex “B”**.

- 9.1. The Notice of Ordinance Number 51, Series of 2017 was published in the 06 and 07 November 2017 issue of The Manila Times, a weekly newspaper of general circulation in Metro Manila.

Print copies of The Manila Times 06 and 07 November 2017 issues where the Ordinance was published are here to attached as **Annexes “C and D”**, respectively.

- 9.2. An Affidavit of Publication was executed by Ms. Evelyn A. Fauni, the publisher of The Manila Times newspaper, attesting to the publication of Ordinance Number 51, Series of 2017 in the 06 and 07 November 2017 issue of said newspaper.

An original notarized copy of the Affidavit of Publication is hereto attached as **Annex “E”**.

10. In view of such publication, the Ordinance became effective on 22 November 2017 pursuant to Section 380 thereof which states that “*[t]his code shall take effect within fifteen (15) days upon approval and publication in a newspaper of general circulation.*” Section 90 of the same Ordinance also provides that the payment for the LFT shall be due on the 20th day of January every year.
11. The amount of LFT due based on the old and new rates for the City of Pasig are as follows:

⁵ 2017 Revised Pasig Revenue Code, page 42.

Taxable Year	Gross Revenue of the Preceding Year	Amount due based on the previous LFT rate (50% of 1% of the annual gross receipts of the preceding calendar year)	Amount due based on the previous LFT rate (55% of 1% of the annual gross receipts of the preceding calendar year)	Local Franchise Tax for Recovery
1 st Qtr 2018	PhP2,916,353,410.03	PhP14,581,767.05	PhP16,039,943.75	PhP1,458,176.70
2 nd Qtr 2018	PhP2,916,353,410.03	PhP14,581,767.05	PhP16,039,943.75	PhP1,458,176.70
3 rd Qtr 2018	PhP2,916,353,410.03	PhP14,581,767.05	PhP16,039,943.75	PhP1,458,176.70
4 th Qtr 2018	PhP2,916,353,410.03	PhP14,581,767.05	PhP16,039,943.75	PhP1,458,176.70
			(2018) Total	PhP5,832,706.80
1 st Qtr 2019	PhP3,115,486,445.78	PhP15,577,432.23	PhP17,135,175.45	PhP1,557,743.22
2 nd Qtr 2019	PhP3,115,486,445.78	PhP15,577,432.23	PhP17,135,175.45	PhP1,557,743.22
			(2019) Total	PhP3,115,486.44
			Grand Total	PhP8,948,193.24

Copies of the Official Receipts with Official Receipt Nos. 3878440, 4344095, 4654408 and 4913244 showing Applicant's payment of the foregoing LFTs for the taxable year 2018 and Official Receipt Nos. 5252153 and 5616235 for the first and second quarters of taxable year 2019 are hereto attached as **Annexes "F, F-1, F-2 and F-3"** and **Annex "G and G-1"**, respectively.

CARRYING COSTS (LFT differential)

12. The Decision dated 27 February 2012 of the Honorable Commission in ERC Case No. 2011-045 RC⁶ states:

“Carrying Charge

MERALCO started remitting its LFT payments as early as 1993. In this regard, the Commission deem [sic] 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%

⁶ *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, Manila Electric Company, Applicant.*

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”⁷

13. The proposed treatment for said carrying costs is justified considering that Applicant paid the LFT in full. Therefore, Applicant had incurred an opportunity cost for the money that was used to advance the payment to the City of Pasig. Furthermore, the customers in Pasig City shall benefit from the proposed refund of carrying costs.
14. The computed carrying cost for the said LFT differential is in the amount of **PhP851,908.40**.
15. Hence, Applicant seeks authority to recover the differential LFT in the amount of **PhP8,948,193.24** at a rate of **PhPo.0047/kWh** and the carrying cost in the amount of **PhP851,908.40** at a rate of **PhPo.0005/kWh**, or a total amount of **PhP9,800,101.64** at a rate of **PhPo.0052/kWh** from customers in the City of Pasig over a period of **twelve (12) months**.
16. Further, Applicant seeks authority to recover any amount of LFT that will be paid to the City of Pasig during the period that the Application shall be pending for resolution before the Honorable Commission.

**ALLEGATIONS SUPPORTING THE
ISSUANCE OF PROVISIONAL AUTHORITY**

17. 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 the City of Pasig pursuant to the provisions of the Ordinance. Considering that Applicant already paid in full the increased LFT imposed by the City of Pasig, the issuance of a PA is proper since the same is consistent with, and will maintain the neutral position of the applicant.
18. Also, the amount of the total differential LFT for the City of Pasig that are covered by the Application is only until June 2019. However, Applicant is mandated by the pertinent laws to pay for the new LFT rates for the succeeding taxable periods to the City of Pasig. Thus, the grant of a PA in favor of Applicant will prevent the accumulation of additional differential LFT to the City of Pasig while the instant case is pending before the Honorable Commission.
19. In support of this Application and the prayer for the issuance of a PA, Applicant hereto attaches the Judicial Affidavit of **MR. JOSE ROEL M. GARCIA**, Manager, Tax

⁷ Decision dated 27 February 2012 in ERC Case No. 2011-045 RC, p. 18.

Management and Reporting Office of the Applicant as
Annex "H".

PRAYER

WHEREFORE, premises considered, it is respectfully prayed that after notice and hearing, an Order be issued **GRANTING** Applicant the authority to:

1. Implement the collection from its customers of the: (i) LFT equivalent to the new rate (55% of 1% of the gross annual receipts) from approval of the Application;
2. Recover the following from customers in the City of Pasig over a period of **twelve (12) months**:

	Amount Due (CY2018 to 2 nd Quarter of CY2019)	Rate per kWh
Differential LFT	PhP8,948,193.24	PhPo.0047
Carrying Costs	PhP851,908.40	PhPo.0005
Total	PhP9,800,101.64	PhPo.0052

3. It is likewise prayed that, pending hearing, a **PROVISIONAL AUTHORITY** be issued by the Honorable Commission, effective on the aforesaid date, to implement the aforesaid LFT.

Applicant further prays for such other reliefs as may be deemed just and equitable under the premises.

Finding the said *Application* to be sufficient in form and substance, with the required fees having been paid, the same is hereby set for determination of compliance with the jurisdictional requirements, expository presentation, pre-trial conference, and presentation of evidence on **25 June 2019 (Tuesday) at nine o'clock in the morning (9:00 A.M.) at 15th Floor, ERC Hearing Room, Pacific Center Building, San Miguel Avenue, Pasig City.**

Accordingly, MERALCO is hereby directed to:

- 1) Cause the publication of the attached *Notice of Public Hearing* in two (2) newspapers of nationwide circulation in the Philippines at its own expense, twice (2x) within two (2) successive weeks, the dates of publication not being less than seven (7) days apart and the date of the last publication to be made not later than ten (10) days before the date of the scheduled initial hearing;

affected franchise area for the appropriate posting thereof on their respective bulletin boards;

- 3) Inform the consumers within the affected franchise area of the filing of the *Application*, the reasons therefor, and of the scheduled hearing thereon, by any other means available and appropriate;
- 4) Furnish with copies of this *Order* and the attached *Notice of Public Hearing*, 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 hearing; and
- 5) Furnish with copies of the *Application* and its attachments all those making requests therefor, subject to reimbursement of reasonable photocopying costs.

On the date of the initial hearing, MERALCO must submit to the Commission its written compliance with the aforementioned jurisdictional requirements attaching therewith, methodically arranged and duly marked the following:

- 1) The evidence of publication of the attached *Notice of Public Hearing* consisting of affidavits of the Editors or Business Managers of the newspapers where the said *Notice of Public Hearing* were published, and the complete issues of the said newspapers;
- 2) The evidence of actual posting of this *Order* and the attached *Notice of Public Hearing*, consisting of certifications issued to that effect, signed by the City and the Local Government Unit (LGU) legislative bodies or their duly authorized representatives, bearing the seals of their offices;
- 3) The evidence of other means employed by MERALCO to inform the consumers within the affected area of the filing of the *Application*, its reasons therefor, and of the scheduled hearing thereon;
- 4) The evidence of receipt of copies of this *Order* and the attached *Notice of Public Hearing* by the OSG, the COA, and the Committees on Energy of both Houses of Congress;

- 4) The evidence of receipt of copies of this *Order* and the attached *Notice of Public Hearing* by the OSG, the COA, and the Committees on Energy of both Houses of Congress;
- 5) The evidence of receipt of copies of the *Application* and its attachments by all those making requests therefor, if any; and
- 6) Such other proofs of compliance with the requirements of the Commission.

Applicant and all interested parties are also required 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:

- 1) A summary of admitted facts and proposed stipulation of facts;
- 2) The issues to be tried or resolved;
- 3) The documents or exhibits to be presented, stating the purposes and proposed markings therefore; and
- 4) The number and names of the witnesses, with their written testimonies in a Judicial Affidavit form attached to the Pre-trial Brief.

Failure of Applicant to comply with the above requirements 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 the said date of cancellation.

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Applicant must also be prepared to make an expository presentation of the instant *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, the nature of the *Application* with relevant information and pertinent details substantiating the reasons and justifications being cited in support thereof.

SO ORDERED.

Pasig City, 21 May 2019.

FOR AND BY AUTHORITY
OF THE COMMISSION:


JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Commissioner

LS:  RSPV/ARC/GLD

COPY FURNISHED:

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