

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



**IN THE MATTER OF THE
APPLICATION FOR
CONFIRMATION AND
APPROVAL OF
OVER/UNDER-RECOVERIES
FOR THE YEARS 2016 TO
2018 PURSUANT TO ERC
RESOLUTION NO. 16,
SERIES OF 2009, AS
AMENDED BY ERC
RESOLUTION NO. 21,
SERIES OF 2010, AND ERC
RESOLUTION NO. 23,
SERIES OF 2010 WITH
MOTION FOR
CONFIDENTIAL
TREATMENT OF
INFORMATION**

ERC CASE NO. 2019-015 CF

**DAVAO LIGHT AND POWER
COMPANY, INC. (DLPC),
Applicant.**

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Promulgated:
MAY 10 2019

ORDER

On 29 March 2019, Davao Light and Power Company, Inc. (DLPC) filed an *Application* dated 22 March 2019, seeking the Commission's approval of its over/under-recoveries for the years 2016 to 2018 pursuant to the Commission's Resolution No. 16, Series of 2009, as amended by the Commission's Resolution No. 21, Series of 2010, and the Commission's Resolution No. 23, Series of 2010 with motion for confidential treatment of information.

On 02 May 2019, the Commission issued an *Order and Notice of Public Hearing*, both dated 08 April 2019, setting the instant case for determination of compliance with the jurisdictional compliance, expository presentation, Pre-Trial Conference and presentation of evidence on 22 May 2019.

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On 07 May 2019, DLPC filed its *Manifestation with Urgent Motion to Revise Order and Notice of Public Hearing* (Manifestation with Urgent Motion). In the said Manifestation, DLPC alleged the following, among others:

1. On 2 May 2019, DLPC received this Honorable Commission's Order and Notice of Public Hearing, both dated 8 April 2019;
2. Upon perusal of the said Order and Notice of Public Hearing, it appears that there is a clerical error on page 4 of the said Order and Notice of Public Hearing;
3. Item 1 of the Prayer in the Application, as cited in the said Order and Notice of Public Hearing, reads: "CONFIRM and APPROVE Applicant's under-recoveries for January 2016 to December 2018 billing periods and authorize to collect the amount of PhP190,466,050 as net under-recovery." The amount should be stated as PhP190,466,050.97;
4. Given the foregoing and considering that the initial hearing of the instant case is scheduled on 22 May 2019, and considering further that the Honorable Commission through its Order directed Applicant to, inter alia, (i) cause the publication of the said Notice of Public Hearing once (1x) in a newspaper of nationwide circulation in the Philippines, the date of the publication to be made not later than ten days before the scheduled hearing; and (ii) furnish with copies of the Order and Notice of Public Hearing the offices enumerated in the Order, Applicant urgently requests for (i) the revision of the Order and Notice of Public Hearing, i.e., for item 1 of the Prayer cited to read:

"CONFIRM and APPROVE Applicant's under-recoveries for January 2016 to December 2018 billing periods and authorize to collect the amount of PhP190,466,050.97 as net under-recovery."

and (ii) that the revised Order and Notice of Public Hearing be immediately issued.

5. This Urgent Motion is made solely for the foregoing reasons and with no intention to delay the proceedings.

PRAYER

WHEREFORE, it is respectfully urgently prayed that the Honorable Commission make the necessary revisions in the Order and Notice of Public Hearing both dated 8 April 2019, and that the revised Order and Notice of Public Hearing be immediately issued.

Other just and equitable relief are likewise prayed for.

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Finding the said *Manifestation with Urgent Motion* in order, the same is hereby GRANTED. Accordingly, the Commission hereby revised its *Order and Notice of Public Hearing* dated 08 April 2019 to reflect the correct allegations as stated in the Applicant's *Application* dated 22 March 2019.

In view thereof, the prayer in item 1 of DLPC's *Application* should read as follows:

PRAYER

WHEREFORE, it is respectfully prayed that the Honorable Commission, after due notice, hearing and examination:

1. CONFIRM and APPROVE Applicant's under-recoveries for January 2016 to December 2018 billing periods and authorize to collect the amount of PhP **190,466,050.97** as net under-recovery.

XXX

Further, the attached *Notice of Public Hearing* which the Applicant must publish is hereby revised accordingly.

Accordingly, the Commission hereby sets anew the instant *Application* for the determination of compliance with the jurisdictional requirements, expository presentation, Pre-trial Conference, and evidentiary hearing on **05 June 2019 (Wednesday) at two o'clock in the afternoon (2:00 PM) at the ERC Hearing Room, 15th Floor, Pacific Center Building, San Miguel Avenue, Pasig City.**


DLPC is hereby directed to:

- 1) Cause the publication of the attached Notice of Public Hearing once (1x) in a newspaper of nationwide circulation in the Philippines at its own expense, the date of the publication to be made not later than ten (10) days before the scheduled initial hearing;
- 2) Furnish with copies of this Order and the attached Notice of Public Hearing the Offices of the Provincial Governor, the City and Municipal Mayors, and the Local Government Unit (LGU) legislative bodies within the affected franchise area for the appropriate posting thereof on their respective bulletin boards;



- 3) 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 aforementioned Governor, Mayors, and LGU legislative bodies or their duly authorized representatives, bearing the seals of their offices;
- 4) Inform the consumers within the affected areas, by any other means available and appropriate, of the filing of the *Application*, its reasons therefor, and of the scheduled hearings thereon;
- 5) 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
- 6) 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, DLPC 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 affidavit of the Editor or Business Manager of the newspaper where the said Notice of Public Hearing was published, and the complete issues of the said newspaper;
 - 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 aforementioned Governor, Mayors, and LGU legislative bodies or their duly authorized representatives, bearing the seals of their offices;
 - 3) The evidence of other means employed by DLPC to inform the consumers affected of the filing of the *Application*, its reasons therefor, and of the scheduled hearing thereon;
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- 4) The evidence of receipt of copies of this Order and the attached Notice of Public Hearing by the OSG, 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.

DLPC and all interested parties are also required to submit, at least five (5) days before the date of the 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 DLPC 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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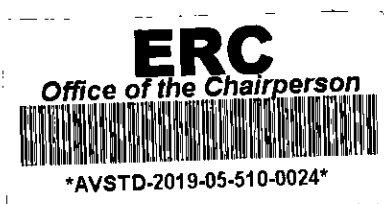
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DLPC must also be prepared to make an expository presentation of the instant *Application*, aided by whatever communication medium that it may deem appropriate for the purpose, in order to put in plain words and explain, for the benefit of the consumers and other concerned parties, what the *Application* is all about and the reasons and justifications being cited in support thereof.

SO ORDERED.

Pasig City, 08 May 2019.

FOR AND BY AUTHORITY
OF THE COMMISSION:




AGNES VST DEVANADERA
Chairman and CEO

LS: LVB/137/GLO

Copy Furnished:

1. Attys. Katrina M. Platon, Paul B. Soriño, Ma. Margarita S. Lim, and Celeni Kristine G. Guinto
Counsels for Applicant
16th Floor NAC Tower, 32nd St. Bonifacio Global
Taguig City
2. DAVAO LIGHT AND POWER COMPANY, INC (DLPC)
C. Bangoy Sr. St., Davao City
3. The Office of the Solicitor General
134 Amorsolo Street, Legaspi Village
Makati City, Metro Manila
4. The Commission on Audit
Commonwealth Avenue
Quezon City, Metro Manila
5. The Senate Committee on Energy
GSIS Bldg., Roxas Blvd., Pasay City
Metro Manila
6. The House Committee on Energy
Batasan Hills, Quezon City, Metro Manila
7. Philippine Chamber of Commerce and Industry (PCCI)
3rd floor, Chamber and Industry Plaza (CIP)
1030 Campus Avenue corner Park Avenue
McKinley Town Center, Fort Bonifacio, Taguig City
8. Office of the City Mayor
City of Davao, Davao del Norte

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9. Office of the Local Government Unit (LGU) legislative body
City of Davao, Davao del Norte
 10. Office of the City Mayor
City of Panabo, Davao del Norte
 11. Office of the Local Government Unit (LGU) legislative body
City of Panabo, Davao del Norte
 12. Office of the Municipal Mayor
Carmen, Davao del Norte
 13. Office of the Local Government Unit (LGU) legislative body
Carmen, Davao del Norte
 14. Office of the Municipal Mayor
Sto. Tomas, Davao del Norte
 15. Office of the Local Government Unit (LGU) legislative body
Sto. Tomas, Davao del Norte
 16. Office of the Municipal Mayor
Braulio Dujali, Davao del Norte
 17. Office of the Local Government Unit (LGU) legislative body
Braulio Dujali, Davao del Norte
 18. Office of the Provincial Governor
Province of Davao del Norte
 19. Office of the Local Government Unit (LGU) legislative body
Province of Davao del Norte
 20. Regulatory Operations Service (ROS)
17th Floor, Pacific Center Bldg., San Miguel Ave., Pasig City
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