

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



IN THE MATTER OF THE  
APPLICATION FOR AUTHORITY TO  
IMPLEMENT THE NEW LOCAL  
FRANCHISE TAX RATES IN THE  
CITY OF MEYCAUAYAN, BULACAN,  
WITH PRAYER FOR PROVISIONAL  
AUTHORITY

ERC CASE NO. 2007-164 RC

MANILA ELECTRIC COMPANY  
(MERALCO),

Applicant.

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**DOCKETED**  
Date: NOV 03 2008  
By: [Signature]

**DECISION**

Before this Commission for resolution is the application filed by the Manila Electric Company (MERALCO) on December 21, 2007 for authority to implement the new local franchise tax rates in the City of Meycauayan, Bulacan, with prayer for provisional authority.

In its application, MERALCO alleged, among others, the following:

1. On October 10, 2007, it was furnished with a copy of City Ordinance No. 01, Series of 2006 entitled "*An Ordinance Enacting the Revised Revenue Code of City of Meycauayan, Province of Bulacan and for Other Purposes*" enacted by the Sangguniang Panlungsod of the City of Meycauayan under Resolution No. 01 Series of 2006 dated December 22, 2006 which imposes tax upon businesses enjoying a franchise at the rate of 55% of 1% based on the gross annual receipts which shall include both cash sales and sales on accounts realized during the

preceding calendar year within the territorial jurisdiction of the City, to  
wit:

“Section 113. *Imposition of Tax.* There is hereby imposed a tax at the rate of fifty-five percent (55%) of one percent (1%) on businesses enjoying a franchise based on the gross annual receipts which shall include both cash sales and sales on account realized during the preceding calendar year within the territorial jurisdiction of the City.”

2. Said Ordinance took effect after the lapse of ten (10) days from the date of the posting of its copies in the Sangguniang Panlungsod bulletin boards and was published in the January 13, 2007 issue of the *Luzon Times* newspaper.
3. It intends to implement the aforementioned Ordinance immediately upon its effectivity on December 22, 2006. However, pursuant to ERC's Decision in ERC Case Nos. 2001-646 and 2001-900 dated March 20, 2003, it is not authorized to unilaterally change the franchise fee rate component on customers' bill, the pertinent provision of which is hereto quoted as follows:

“MERALCO is not authorized to unilaterally change the franchise fee rate component on customers' 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.”

4. In a similar case docketed as ERC Case No. 2004-11, the Commission stated that:

**“The Commission recognizes that national or local franchise tax rates are billed to the end-users by the distribution utilities as pass-through charges. Thus,**



**distribution utilities should neither earn any additional revenue nor incur any additional cost from the imposition of these taxes.**

X X X

On the other hand, in areas where MERALCO intends to implement said local franchise taxes, the **Commission finds it reasonable to allow it to collect the same from its customers because these are impositions of the LGUs exercising their authority to tax. [ERC Order dated 05 February 2004] (Emphasis supplied)**"

5. Furthermore, the collection/recovery of the local franchise tax from its customers is consistent with the principle laid down in Section 43(f) of Republic Act. No. 9136 that the rates of a distribution utility must "allow the recovery of just and reasonable rate of return (RORB) to enable the entity to operate viably."

Having found said application sufficient in form and in substance with the required fees having been paid, an Order and a Notice of Public Hearing, both dated January 9, 2008, were issued setting the same for jurisdictional hearing and pre-trial conference on March 5, 2008.

MERALCO was directed to cause the publication of the Notice of Public Hearing, at its own expense, twice (2x) for two (2) successive weeks in two (2) newspapers of general circulation in the Philippines, with the date of the last publication to be made not later than ten (10) days before the scheduled date of the initial hearing. It was also directed to inform the consumers in Meycauayan

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City, Bulacan, by any other means available and appropriate, of the filing of the instant application, its reasons therefor, and of the scheduled hearing thereon.

The Office of the Solicitor General (OSG), the Commission on Audit (COA) and the Committees on Energy of both Houses of Congress were furnished with copies of the Order and the Notice of Public Hearing and were requested to have their respective duly authorized representatives present at the aforesaid initial hearing.

On February 7, 2008, MERALCO filed an "Urgent Motion for the Issuance of a Provisional Authority".

On February 29, 2008, MERALCO filed its "Pre-Trial Brief".

During the March 5, 2008 initial hearing of this case, only MERALCO appeared. No intervenor/oppositor appeared nor was there any intervention/opposition registered.

In the said hearing, MERALCO presented its proofs of compliance with the Commission's posting and publication of notice requirements which were duly marked as Exhibits "A" to R-1", inclusive. Thereafter, it conducted an expository presentation of its application.

Subsequently, MERALCO presented its sole witness, Mr. Gener Montemayor, its Manager and Head of Tax Management-Tax Accounting, who

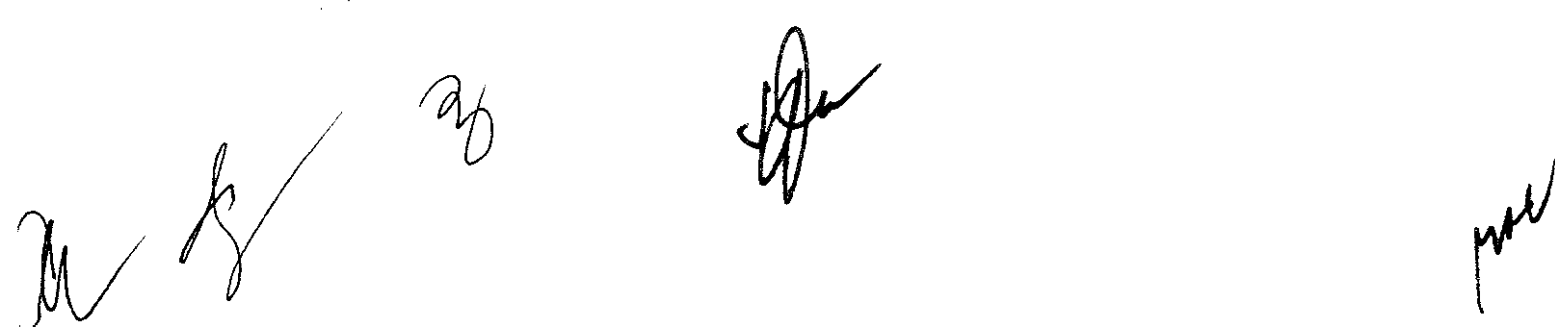
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testified on MERALCO's bases for implementing the new local franchise tax rates as a component of its customers' bills in Meycauayan City, Bulacan. In the course thereof, additional documents were presented and marked as Exhibits "V" to "W", inclusive. The direct examination having been terminated, the Commission propounded clarificatory questions and directed MERALCO to submit its proposed collection methodology.

On March 19, 2008, MERALCO filed its "Formal Offer of Evidence" which is hereby admitted for being relevant and material to the resolution of this application.

On April 3, 2008, MERALCO filed a "Supplemental Compliance" which stated *inter alia* that:

- (1) There is an uncollected difference of five percent (5%) between the old rate imposed under the ordinance of the Province of Bulacan and the new rate imposed by the City of Meycauayan for the year 2007;
- (2) The uncollected portion of the local franchise tax due to the City of Meycauayan amounts to One Million One Hundred Thirteen Thousand Eight Hundred Twenty-Two Pesos and Twenty-Four Centavos (PhP1,113,822.24);
- (3) It proposes to collect the said amount from customers of the City of Meycauayan based on their recorded consumption for the year 2007;
- (4) The recovery will appear as "Other Charges" in the electric bills of its customers in the City of Meycauayan; and

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- (5) It proposes to recover the total deficiency in the aforesaid amount within two (2) billing months.

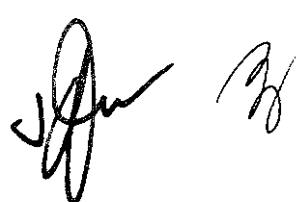
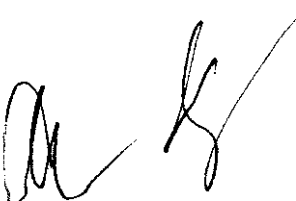
On May 19, 2008, MERALCO filed its "Submission" attaching therewith a "Local Franchise Tax Backbilling for Meycauayan (from 0.50% to 0.55%): Sample Computation for Residential, Non-Lifeline, Commercial and Industrial Customers".

In an Order dated September 3, 2008, the Commission reiterated its previous directive for MERALCO to submit its proposed collection methodology within five (5) days from receipt thereof. Relative thereto, on September 15, 2008, MERALCO filed a "Motion for Extension" dated September 14, 2008, praying for additional five (5) days or until September 19, 2008 within which to file its Compliance.

On September 19, 2008, MERALCO submitted its "Compliance and Motion" providing therein its proposed collection methodology together with a simulation of the rate-impact to its average-consumption residential customers for a period of one (1) month.

## DISCUSSION

Section 5, Article X of the 1987 Constitution of the Republic of the Philippines provides that *"Each local government unit shall have the power to*

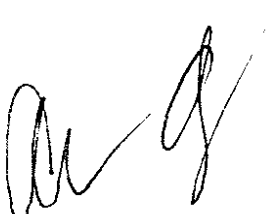


*create its own sources of revenues and to levy taxes, fees and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments.”*

In relation thereto, the Local Government Code modified the revenue raising powers of the local governments under the then Local Tax Code, pertinent portions of which are as follows:

- A. **“Section 129. Power to Create Sources of Revenue** – Each local government unit shall exercise its power to create its own sources of revenue and to levy taxes, fees, and charges subject to the provisions herein, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local government units.”
  
- B. **“Section 132. Local Taxing Authority.** The power to impose tax, fee, or charge or to generate revenue under this Code shall be exercised by the Sanggunian of the local government unit concerned through an appropriate ordinance.”
  
- C. **“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 (1%) of the gross annual receipts for the preceding calendar year based on the incoming receipt, or realized, within its territorial jurisdiction.”
  
- D. **“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; Provided, however, That the taxes, fees and charges levied and collected by highly urbanized and independent component cities shall accrue to them and distributed in accordance with the provisions of this Code.

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.”

**E. “Section 186. Power to Levy Other Taxes, Fees or Charges.**

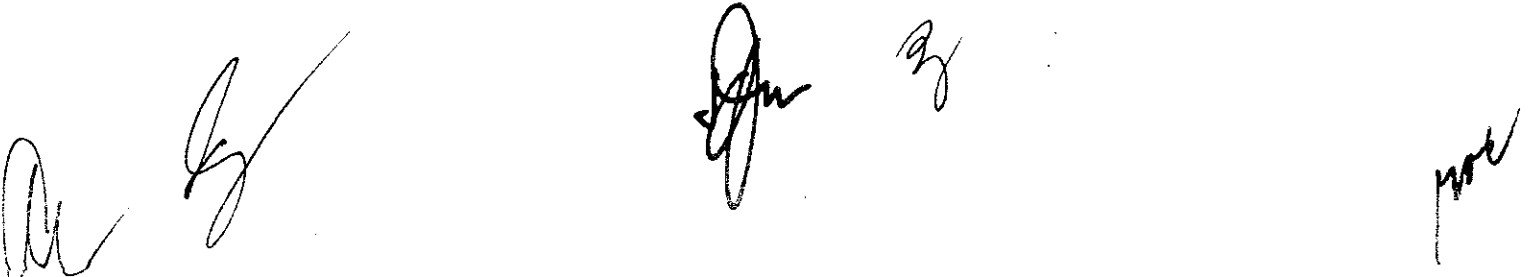
– Local government units may exercise the power to levy taxes, fees or charges on any base or subject not otherwise specifically enumerated herein or taxed under the provisions of the National Internal Revenue Code, as amended, or other applicable laws: Provided, That the taxes, fees, or charges shall not be unjust, excessive, oppressive, confiscatory or contrary to declared national policy; Provided, further, That the ordinance levying such taxes, fees or charges shall not be enacted without any prior public hearing conducted for the purpose.”

**F. “Section 191. Authority of Local Government Units to Adjust Rates of Tax Ordinance**

– 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 10% of the rates fixed under this Code.”

The Commission, in its Decision dated March 20, 2003 in ERC Case No. 2001-900 entitled, *“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 – MERALCO, Applicant”*, substantially ruled that a local franchise tax is a valid pass-through charge which may be recovered from the consumers within the franchise area of the imposing city or municipality provided that the charge is reflected as a separate line item in the bill.

National or local franchise tax rates are billed by the DUs to electricity end-users as pass-through charges. The DUs should neither earn any additional revenue nor incur any additional cost from the imposition of these charges.

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However, the foregoing provisions of law and Decision of this Commission must be read and implemented in conjunction with Rule 7, Section 4(q) of the Implementing Rules and Regulations (IRR) of the EPIRA, *to wit*:

“Section 4. Obligations of a Distribution Utility. x x x

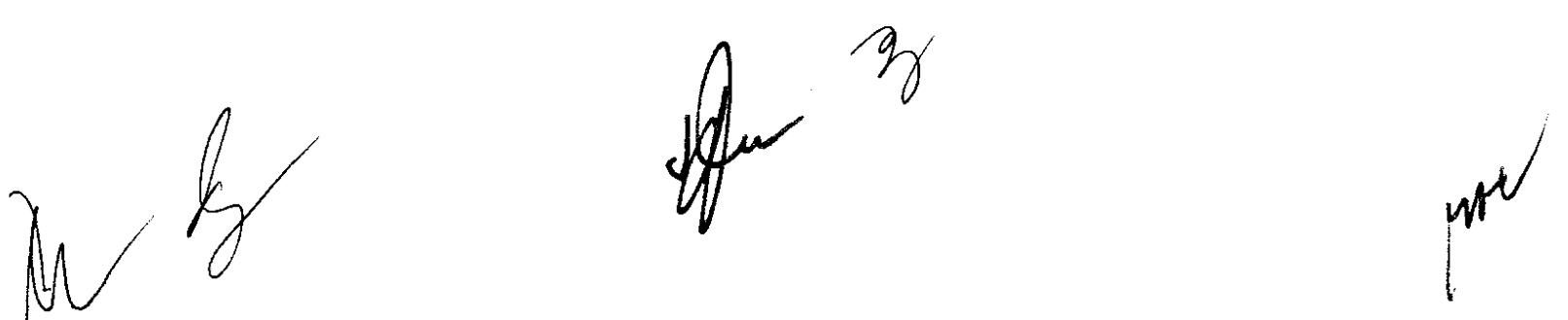
- (q) *A Distribution Utility shall pay a franchise tax only on its distribution wheeling and Captive Market supply revenues. To this end, the DOF shall issue the necessary guidelines.”*

x x x

Evidence shows that MERALCO has not paid the increment in the subject local franchise tax to the City of Meycauayan, Bulacan since the effectivity of the new local franchise tax rate on December 22, 2006. Thus, the billing, collection and recovery by MERALCO from affected customers must be confined to that stated under the aforequoted provision of the EPIRA-IRR.

After a thorough review and evaluation of the local tax ordinance and other supporting documents submitted by MERALCO, the Commission finds said submission to be in accordance with the pertinent provisions of Republic Act No. 7160.

**WHEREFORE**, the foregoing premises considered, the application for authority to implement the new local franchise tax rates in the City of Meycauayan, Bulacan, with prayer for provisional authority, filed by the Manila Electric Company (MERALCO) is hereby **APPROVED**.




Accordingly, MERALCO is hereby authorized to implement the new local franchise tax at the rate of 55% of 1% on its customers' bills based on its distribution revenues in the City of Meycauayan, Bulacan pursuant to the Sangguniang Panlungsod of Meycauayan City Ordinance No. 01, Series of 2006, starting the next billing cycle from receipt hereof.

MERALCO is, likewise, authorized to use the formula it submitted to the Commission to compute the uncollected amount of local franchise taxes paid from the effectivity of the said Ordinance until the implementation of the Decision, provided that the same is calculated based on distribution revenue and subject to the Commission's confirmation and verification.

Finally, MERALCO is hereby directed to submit the Official Receipt/s or proof of remittances (arrearages and prospective), for verification purposes, and the summary of the tax impositions and collections including sample bills within the City of Meycauayan, Bulacan, for inclusion in its M01 submissions.

**SO ORDERED.**

**Pasig City, October 20, 2008.**

  
**ZENAIDA G. CRUZ-DUCUT**  
Chairperson

  
**RAUF A. TAN**  
Commissioner

  
**ALEJANDRO Z. BARIN**  
Commissioner

  
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Commissioner

  
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Province of Bulacan