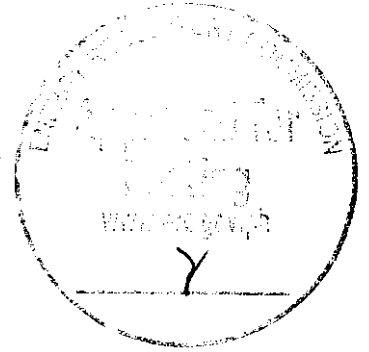


Republic of the Philippines
ENERGY REGULATORY COMMISSION
San Miguel Avenue, Pasig City



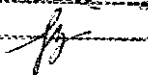
IN THE MATTER OF THE
APPLICATION FOR AUTHORITY TO
IMPLEMENT THE NEW LOCAL
FRANCHISE TAX RATES IN THE
NEWLY CREATED CITY OF TAGUIG,
METRO MANILA, WITH PRAYER
FOR PROVISIONAL AUTHORITY

ERC CASE NO. 2008-006 RC

MANILA ELECTRIC COMPANY
(MERALCO),

Applicant.

x ----- x

DOCKETED
Date: OCT. 14, 2008
By: 

DECISION

Before this Commission for resolution is the application filed by the Manila Electric Company (MERALCO) on January 16, 2008 for authority to implement the new local franchise tax rates in the City of Taguig, Metro Manila, with prayer for provisional authority.

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

1. The Municipality of Taguig became a chartered city by virtue of Republic Act No. 8487 dated February 11, 1998 which was ratified by majority of its electorate in a plebiscite on April 25, 1998 as enunciated by the Commission of Elections (COMELEC) in its *En Banc* Decision dated December 8, 2004;

2. Republic Act No. 7160 otherwise known as the "Local Government Code of 1991" authorizes the cities and provinces to impose franchise taxes depending on the applicable rate adopted by said local government units (LGU) in their ordinances/ resolutions/ revenue codes;
3. Pursuant thereto, the Sangguniang Panlungsod of Taguig City enacted City Ordinance No. 82, Series of 2006, dated November 22, 2006 entitled, "AN ORDINANCE ADOPTING AND AMENDING CHAPTER 19 SECTION 93-FRANCHISE TAX OF MUNICIPAL ORDINANCE NO. 24, SERIES OF 1993 OTHERWISE KNOWN AS THE REVENUE CODE OF MUNICIPALITY OF TAGUIG" imposing a tax on business enjoying a franchise at a rate of fifty percent (50%) of one percent (1%) of the gross annual receipts, *to wit*:

"SECTION 4. IMPOSITION OF FRANCHISE TAX-
There is hereby imposed a tax on business enjoying a franchise, at a rate of fifty percent (50%) of one percent (1%) of the gross annual receipts, which shall include both cash sales and sales on account realized during the preceding calendar year within the territorial limits of the City."

4. The said Ordinance took effect on January 1, 2007 following its full and complete publication as appearing in the January 16-22, 2007, January 22-29, 2007 and January 30-February 5, 2007 issues of the *Konneksyon* newspaper;
5. It received a copy of the Ordinance only on November 15, 2007 from the Legal Counsel of Taguig City;
6. It intends to implement Ordinance No. 82, Series of 2006, retroactively beginning January 1, 2007;



7. The application is consistent with the principle laid down in Section 43(f) of R.A. No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA) 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"; and
8. It prayed that it be authorized to implement the new local franchise tax rates on customers' bills in the City of Taguig at 50% of 1% pursuant to Ordinance No. 82, Series of 2006, beginning on the effectivity of the Ordinance on January 1, 2007.

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 18, 2008, were issued setting the same for jurisdictional hearing and pre-trial conference on March 5, 2008. However, by reason of MERALCO's "Motion To Reset Public Hearing" filed on February 29, 2008, which was granted by the Commission in an Order dated March 3, 2008, the initial hearing and pre-trial conference was reset to April 15, 2008.

In both Orders, 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 within its franchise area, 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 21, 2008, MERALCO filed an "Urgent Motion for the Issuance of a Provisional Authority".

On April 10, 2008, MERALCO filed its "Pre-Trial Brief".

During the April 15, 2008 initial hearing of this case, MERALCO appeared. Atty. Eleno P. Malesido of the Commission on Audit (COA) entered his appearance merely as an observer. Nevertheless, he reserved the right of COA to file pleadings and cross-examine the witness if necessary. The COA was given ten (10) days to file any pleading it deemed appropriate. Considering that there were no intervenors or oppositors who entered their appearance, nor any intervention or opposition registered, the Commission issued a declaration of general default.

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 S-1", inclusive. Thereafter, it conducted an expository presentation of its application.

Subsequently, upon motion, MERALCO presented its evidence and witness, Mr. Gener Montemayor, Manager and Head of Tax Management- Tax Accounting, who testified on MERALCO's basis to implement the new local franchise tax rates as a component of its customers' bills in Taguig City. In the course thereof, additional documents were presented and marked as Exhibits "T" to "Y-3", inclusive. The direct examination having been terminated, the Commission propounded clarificatory questions and directed MERALCO to submit its proposed computation methodology.

On May 13, 2008, MERALCO filed its "Formal Offer of Evidence" which is hereby admitted for being relevant and material to the resolution of this application.

On May 19, 2008, MERALCO filed its "Submission" attaching therewith a Local Franchise Tax Backbilling for Taguig (from non-charging to 0.5%): Sample Computation for Residential - Lifeline, Industrial and Commercial 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. On September 15, 2008, MERALCO filed a "Motion for Extension" 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".



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.

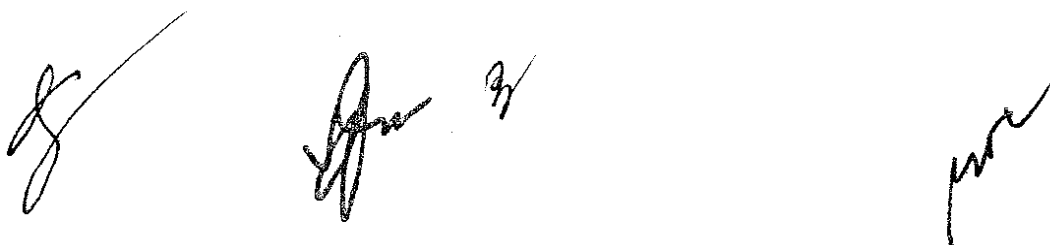
The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%) except the rates of professional and amusement taxes."

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.

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

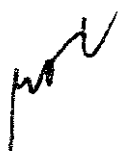
“Section 4. Obligations of a Distribution Utility. x x x

(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.”*

Evidence shows that MERALCO has not paid the subject local franchise tax to the City of Taguig since the effectivity of the new local franchise tax on January 1, 2007.

Thus, the billing, collection and recovery by MERALCO from affected customers must be confined to that stated under Section 4(q) of the IRR of the EPIRA.

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.



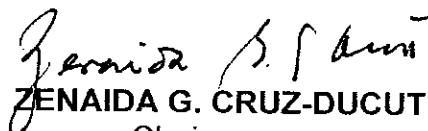
WHEREFORE, the foregoing premises considered, the application for authority to implement the new local franchise tax rates in the City of Taguig, Metro Manila, with prayer for provisional authority, filed by the Manila Electric Company (MERALCO) is hereby **APPROVED**.

Accordingly, MERALCO is hereby authorized to implement the new local franchise tax at the rate of 50% of 1% on its customers' bills based on its distribution revenues in the City of Taguig pursuant to the Sangguniang Panlungsod of Taguig City, Ordinance No. 82, Series of 2006, starting the next billing cycle from receipt hereof.

MERALCO is directed to submit a scheme for the recovery of paid taxes from the January 1, 2007 until the implementation of this Decision subject to confirmation and verification.

SO ORDERED.

Pasig City, September 22, 2008.

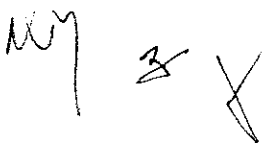

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