

REPUBLIC OF THE PHILIPPINES
ENERGY REGULATORY COMMISSION
SAN MIGUEL AVENUE, PASIG CITY

IN THE MATTER OF THE
APPLICATION FOR AUTHORITY TO
COLLECT LOCAL FRANCHISE TAX
IN THE CITY OF MALABON, WITH
PRAYER FOR PROVISIONAL
AUTHORITY,

ERC Case No. _____

MANILA ELECTRIC COMPANY,

APPLICANT,

x-----x

APPLICATION

APPLICANT, the **MANILA ELECTRIC COMPANY**, by counsel, and to this
Honorable Commission, most respectfully states that:

I

Applicant **Manila Electric Company (MERALCO)** is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at 8th floor, Lopez Building, MERALCO Compound, Ortigas Avenue, Pasig City, Metro Manila. It may be served with notices and processes of this Honorable Commission through its counsel at the address indicated herein;

II

By virtue of **Republic Act No. 9209**, Applicant was granted a franchise to construct, operate and maintain a distribution system for the conveyance of electric power to end-users in the cities/municipalities of Metro Manila, Bulacan,

Cavite and Rizal and certain cities/municipalities/barangays in Batangas, Laguna, Quezon and Pampanga.

III

Under Republic Act No. 7160, otherwise known as the Local Government Code, provinces and cities are authorized to impose franchise taxes depending on the applicable rate adopted by the said Local Government Units (LGU's) in their Ordinances or Revenue Codes; the pertinent provisions are quoted as follows:

xxx

“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 law or any 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.

xxx

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;

xxx

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

IV

On 05 March 2001, the Municipality of Malabon became a highly-urbanized city by virtue of **Republic Act No. 9019** or an “**Act Converting the Municipality of Malabon into a Highly Urbanized City to be Known as the City of Malabon.**”

A copy of the said Republic Act is attached and marked as **ANNEX “A”** and series.

V

On 29 May 2008, **MERALCO** was furnished a copy of **City Ordinance No. A04-2007** entitled "**AN ORDINANCE IMPOSING FRANCHISE TAX FROM PERSON, CORPORATION, FIRM OR ENTITY OPERATING A BUSINESS IN THE CITY OF MALABON BY VIRTUE OF A FRANCHISE GRANTED BY THE NATIONAL GOVERNMENT THROUGH CONGRESS AT THE RATE OF SEVENTY FIVE PERCENT (75%) OF ONE PERCENT (1%) OF THE TOTAL GROSS ANNUAL RECEIPT OBTAINED FOR SUCH BUSINESS IN THE CITY OF MALABON**" enacted by the Sangguniang Panlungsod of the City of Malabon dated 26 November 2007 which imposes tax upon businesses enjoying a franchise at the rate of seventy five percent (75%) of one percent (1%) based on the total gross annual receipts obtained for such business which shall include both cash sales and amount realized during the preceding calendar year within the territorial jurisdiction of the City, to wit:

xxx

“Section 1. There is hereby imposed a franchise tax from a person, corporation, firm, or entity operating a business in the City of Malabon by virtue of a franchise granted by the National Government through Congress at the rate of SEVENTY FIVE PERCENT (75%) of ONE PERCENT (1%) of the total Gross Annual Receipts derived from its operation in the City of Malabon which shall include both cash sales and amount realized during preceding calendar year.”

xxx

A copy of the said ordinance is attached and marked as **ANNEX “B”** and series.

VI

Said ordinance was published in the February 12-18, April 8-14 and April 15-21, 2008 issues of the *Konneksyon* newspaper. Copies of the Affidavit of Publication dated 12 February 2008 executed by **MARME M. LUCAYLUCAY**, publisher of the *Konneksyon* newspaper and the February 12-18, April 8-14 and April 15-21, 2008 issues of the *Konneksyon* newspaper are hereto attached as **ANNEXES “C”, “D”, “E” and “F”**, respectively and made integral parts hereof. Thus, the aforesaid Ordinance became effective on 30 April 2008 pursuant to Sec. 4 thereof which states that “*this ordinance shall take effect fifteen (15) days after publication in a newspaper of general circulation.*”

VII

Applicant intends to implement the above-mentioned City Ordinance (**Annex "B"** and series). This is in line with the declaration of this Honorable Commission in its Decision in **ERC Case No. 2004-11**, where it stated that:

xxx

“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.

xxx

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]

xxx

It is also to be noted that the collection/recovery of the Local Franchise Tax from the Applicant’s customers in the said area is consistent with the principle laid down in **Section 43(f) of Republic Act No. 9136**, otherwise known as the EPIRA Law. The relevant provision provides:

xxx

“Section 43 (f) – xxx The rates must be such to allow the recovery of just and reasonable costs and a reasonable return on rate base (RORB) to enable the entity to operate viably.”

xxx

VIII

In addition, the Application finds support in the decisions of the Honorable Commission in **ERC Case Nos. 2001-646** and **2001-900** dated 20 March 2003, the relevant provision of which provides:

“MERALCO is not authorized to change the franchise fee rate component of 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.*” [Emphasis Supplied]

IX

Thus, in view of the foregoing, the Applicant hereby applies for an authority to implement the new local franchise tax rates and fees within the City of Malabon.

X

In support of this Application and the prayer for the issuance of a provisional authority, the Applicant is attaching herewith the affidavit of **MR. GENER MONTEMAYOR**, Manager and Head, Tax Management Office of the Applicant MERALCO, marked as **ANNEX “G”**.

PRAYER

WHEREFORE, premises considered, it is respectfully prayed that after notice and hearing, an Order be issued GRANTING the Applicant MERALCO the authority to implement the new local franchise tax rate on customer’s bills in the City of Malabon at the rate of 75% of 1% of its total gross annual receipts, pursuant to **City Ordinance No. A04-2007 (ANNEX “B”)** and computed in accordance with the Local Government Code, beginning on the date of effectivity thereof.

It is likewise prayed that a **PROVISIONAL AUTHORITY** be issued by the Honorable Commission, effective on the aforesaid date, to implement the aforesaid local franchise tax rate.

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

Pasig City. 29 July 2008.

JOSE RONALD V. VALLES
ROMMEL L. YAP
ANGELICA DIANE B. MONTEZA
Counsel for MERALCO
8th Floor, Lopez Building
Ortigas Avenue, Pasig City

By:

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VERIFICATION and CERTIFICATION
AGAINST FORUM SHOPPING

I, **RAFAEL L. ANDRADA**, Filipino, of legal age, and with office address at 13th Floor, Lopez Building, Ortigas Avenue, Pasig City, after being sworn, hereby depose and say that:

1. I am the First Vice President and Treasurer of the Applicant Manila Electric Company;

2. I have been authorized by the Board of Directors of the Applicant to cause the preparation and filing of the instant Application and to execute the necessary verification and certification against forum shopping. Attached as **ANNEX "H"** is the Secretary's Certificate authorizing the undersigned to represent the Applicant in this Application and to sign this Verification and Certification Against Forum Shopping;

3. I have read and understood the allegations contained therein and the same are true and correct based on my personal knowledge and authentic records made available to me in the ordinary course of business of the Applicant;

4. I hereby certify that Applicant has not heretofore commenced any other action or proceeding involving the same issues in the Supreme Court, the Court of Appeals, or any other tribunal or agency and to the best of my knowledge, no such action or proceeding is pending in the Supreme Court, the Court of Appeals, or any other tribunal or agency;

5. If I should hereafter learn that a similar action or proceeding is has been filed or is pending before the Supreme Court, the Court of Appeals, or any other tribunal or agency, I undertake to report such fact within five (5) days therefrom to this Honorable Commission.

IN WITNESS WHEREOF, I have hereunto affixed my signature this _____ at Pasig City, Philippines.

RAFAEL L. ANDRADA
Affiant

SUBSCRIBED and SWORN to before me this ___ day of July 2008, affiant exhibited to me his Driver's License No. N14-79-042377 issued on 04 January 2006 as his competent evidence of identity.

Doc. No. _____
Page No. _____
Book No. _____
Series of 2008.

Republic of the Philippines }
Pasig City } S.S.

AFFIDAVIT

I, **GENER R. MONTEMAYOR**, Filipino, of legal age, married and with office address at 6th Floor Lopez Building, Ortigas Avenue, Pasig City, after being sworn in accordance with law, depose and state: That –

1. I am presently the Manager and Head, Tax Management Office of MANILA ELECTRIC COMPANY (MERALCO). I was employed by MERALCO on 16 September 1987, and became the Head of Tax Management effective 01 January 2006. Previously, I was the Head, Tax Accounting of Finance Services of MERALCO;
2. As such, I direct and supervise the activities of Tax Management, which include the determination of the tax liabilities of the Company, filing of protests against illegal tax assessments, monitoring of tax cases filed by or against the company, monitoring tax laws, ordinances, rules and regulations, and representing the Company before the Bureau of Internal Revenue, Bureau of Customs, and other government offices regarding tax matters;
3. MERALCO is the grantee of a legislative franchise under **Republic Act No. 9209** entitled "**AN ACT GRANTING MANILA ELECTRIC COMPANY A FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN A DISTRIBUTION SYSTEM FOR THE CONVEYANCE OF ELECTRIC POWER TO THE END-USERS IN THE CITIES/MUNICIPALITIES OF METRO MANILA, BULACAN, CAVITE AND RIZAL, AND CERTAIN CITIES/MUNICIPALITIES/BARANGAYS IN BATANGAS, LAGUNA, QUEZON AND PAMPANGA**";
4. 05 March 2001, the Municipality of Malabon became a highly-urbanized city by virtue of **Republic Act No. 9019** or an "Act Converting the Municipality of Malabon into a Highly Urbanized City to be Known as the City of Malabon";
5. On 29 May 2008, MERALCO was furnished with a copy of **City Ordinance No. A04-2007** by Atty. Danilo T. Diaz, City Council Secretary of the City of Malabon. Said ordinance entitled "**AN ORDINANCE IMPOSING FRANCHISE TAX FROM PERSON, CORPORATION, FIRM OR ENTITY OPERATING A BUSINESS IN THE CITY OF MALABON BY VIRTUE OF A FRANCHISE GRANTED BY THE NATIONAL GOVERNMENT THROUGH CONGRESS AT THE RATE OF SEVENTY FIVE PERCENT (75%) OF ONE PERCENT (1%) OF THE TOTAL GROSS ANNUAL RECEIPT OBTAINED FOR SUCH BUSINESS IN THE CITY OF MALABON**" enacted by the Sangguniang Panlungsod of the City of Malabon dated 26 November 2007, imposed a tax upon businesses enjoying a franchise at the rate of seventy five percent (75%) of one

percent (1%) based on the total gross annual receipts obtained for such business which shall include both cash sales and amount realized during the preceding calendar year within the territorial jurisdiction of the City. The ordinance took effect on 30 April 2008, after it was published in the April 15-21, 2008 issue of the *Konneksyon* newspaper, a newspaper of general circulation;

1. MERALCO intends to implement the aforesaid City Ordinance immediately and prior authority of the Honorable Commission is required;
7. There is an urgent need for MERALCO to implement or collect the new local franchise tax rate as a component in its customers' bills in the City of Malabon. Since the City Ordinance is already effective, Applicant is therefore obligated to pay the new local franchise tax to the City of Malabon under pain of penalty as provided for in Section 1.3 of the City Ordinance. If Applicant will not be allowed to collect the herein local franchise tax, despite paying the same to the City of Malabon, the same will not be revenue-neutral to it, and in effect, would result in the impairment of its viability as a distribution utility;
8. This affidavit is being executed in support of MERALCO's application for authority to implement the local franchise tax rates in the City of Malabon with prayer for provisional authority.

IN WITNESS WHEREOF, I have hereunto affixed my signature this _____ at Pasig City, Philippines.

GENER R. MONTEMAYOR
Affiant

SUBSCRIBED AND SWORN TO before me this _____ by affiant who exhibited to me his Driver's License No. D16-92-069107 issued by the Land Transportation Office issued on 16 April 2007 with expiry date on 16 April 2010 and his ID No. 0385744405 issued by the Social Security System, as his competent evidence of identity.

Doc. No. _____;
Page No. _____;
Book No. _____;
Series of 2008.