

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

**IN THE MATTER OF THE APPLICATION  
FOR AUTHORITY TO RECOVER FROM  
CONSUMERS THE 2008 LOCAL FRANCHISE  
TAXES PAID TO THE CITY OF LAPU-LAPU  
AND TO CHARGE CONSUMERS THE NEW  
LOCAL FRANCHISE TAX RATE OF THE  
CITY OF LAPU-LAPU, WITH PRAYER FOR  
PROVISIONAL AUTHORITY**

**ERC CASE NO. 2009-\_\_\_\_\_RC**

**MACTAN ELECTRIC COMPANY, INC. (MECO),**  
*Applicant.*

x-----x

**APPLICATION**

Applicant **MACTAN ELECTRIC COMPANY, INC. (MECO)**, by counsel,  
respectfully states:

1. MECO is a private distribution utility duly organized and existing as a corporation under Philippine laws, with principal office at Sangi, Lapu-Lapu City, Cebu. It has an exclusive franchise to operate the electric light and power services in the City of Lapu-Lapu and Municipality of Cordova. It may be served with notices and other processes through the undersigned counsel.

2. In ERC Resolution No. 36, Series of 2006, the Honorable Commission directed “every private distribution utility [to] file an application for recovery of new local franchise tax rates imposed by the LGUs after the approval of its rate unbundling application.”

3. In its Decision dated December 20, 2004, the Commission approved MECO's rate unbundling application, docketed as ERC Case No. 2002-164.

4. At the time MECO's rate unbundling application was filed and when it was granted, the local franchise tax (LFT) rate of the City of Lapu-Lapu was three-fourths (3/4) of one percent (1.0%) of the gross receipts derived by the business during the preceding fiscal year (the "old LFT rate").

5. On December 26, 2008, the City of Lapu-Lapu enacted Ordinance No. 070-2007, which took effect on January 1, 2008, increasing the LFT rate to 0.85% of the gross annual receipts realized during the preceding calendar year (the "new LFT rate"). Section 2D-02 of the Ordinance states: "*There is hereby levied a tax at the rate of zero point eighty five percent (0.85%) on business 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... [a]nd shall accrue on the first (1<sup>st</sup>) day of the succeeding year.*" A certified true copy of the relevant pages of Ordinance No. 070-2007 is attached as **Annex "A."** A certified true copy of the relevant pages of the Ordinance imposing the old LFT rate is attached as **Annex "B."**

6. In view of the nature of franchise taxes as a pass-through charge, and in compliance with ERC Resolution No. 36, Series of 2006, MECO respectfully seeks from the Commission the authority to immediately pass on and charge its consumers the new LFT rate.

7. MECO also seeks authority to recover from its consumers the difference of the actual LFT paid for CY 2008 computed based on the new LFT rate and the amount of LFT computed at the old LFT rate which MECO was only able to charge its

consumers. The actual LFT paid was Php10,164,676.76 and the amount of LFT that was only passed on to MECO's consumers was Php8,968,832.44, leaving a balance of Php1,195,844.32 which MECO proposes to recover over a period of one (1) year at a monthly rate of Php0.00515/kWh. **Schedule 1** shows the summary of LFT paid for CY 2008, with copies of receipts evincing such payment attached thereto. **Schedule 2** shows the computation of the amount of LFT to be recovered and the computation of the recovery rate.

8. In the meantime that this application is being heard and so that its cash flow will not be adversely affected, MECO prays for a Provisional Authority to immediately (a) charge its consumers the new LFT rate, and (b) recover from its consumers the differential of Php1,195,844.32 at the rate it proposes above.

#### **PRAYER**

WHEREFORE, it is respectfully prayed that the Honorable Commission grant authority to MECO (a) to charge its consumers the new LFT rate of the City of Lapu-Lapu under Ordinance No. 070-2007; and (b) to recover from its consumers the differential of Php1,195,844.32 over a period of one (1) year at a monthly rate of Php0.00515/kWh. MECO also prays for a Provisional Authority to implement (a) and (b) above. MECO finally prays for other equitable relief.

Makati City for Pasig City, February 5, 2009.

**ANCHETA & ASSOCIATES**

**Attorneys-at-Law**

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**Copy furnished:**

**THE SANGGUNIANG PANLUNGSOD**

City of Lapu-Lapu, Cebu

**THE SANGGUNIANG PANLALAWIGAN**

Province of Cebu

## VERIFICATION AND CERTIFICATION AGAINST FORUM SHOPPING

I, GILBERT A. PAGOBO, of legal age, Filipino, with office address at Mactan Electric Company, Inc. (MECO), Sangi, Lapu-Lapu City, Cebu, hereby state under oath that:

1. I am the Vice-President and General Manager of MECO and the authorized representative of the latter in this Application (see attached Secretary's Certificate). In such capacities, I caused the preparation and filing of this Application.

2. I read this Application, the contents of which are true and correct based on my personal knowledge and on authentic records at hand.

3. I certify that MECO has not commenced any other action involving the same issues raised in the Application in the Supreme Court or any division thereof, in the Court of Appeals or any division thereof, in the Energy Regulatory Commission (ERC), or in any other tribunal or agency.

4. I undertake that should MECO or I learn of a similar application or proceeding filed or pending before the Supreme Court or any division thereof, before the Court of Appeals or any division thereof, before the ERC, or before any other tribunal or agency, I shall promptly inform this Honorable Commission of such application or proceeding, as well as the aforesaid courts and tribunal or agency of this Application, within five (5) days from knowledge.

**GILBERT A. PAGOBO**

*Affiant*

SUBSCRIBED AND SWORN TO before me this February \_\_\_\_, 2009 by affiant who is personally known to me and who exhibited his Philippine Driver's License No. G06-92-019177, valid until June 2, 2009.

Doc. No. \_\_\_\_\_;  
Page No. \_\_\_\_\_;  
Book No. \_\_\_\_\_;  
Series of 2009.