

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

**IN RE: APPLICATION FOR
APPROVAL OF REVISION OF
RATE SCHEDULES AND
APPRAISAL OF PROPERTIES
WITH PROVISIONAL
AUTHORITY**

**ERC CASE NO. 2001-243
(ERB Case No. 93-118)**

**MANILA ELECTRIC COMPANY,
(MERALCO)**

Applicant.

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ORDER

On September 3, 2004, applicant Manila Electric Company (MERALCO) submitted its proposed mechanism for the implementation of the refund to customers falling under Phase IV of the refund scheme.

Acting on the said proposal, the Commission on December 21, 2004 issued an Order approving it with a modification to the effect that Phase IV-A of the refund will be effected within eighteen (18) months instead of thirty six (36) months starting January 2005 until June 2006. In the same Order, MERALCO was likewise directed to submit its proposal on the implementation of Phase IV-B of the refund scheme, specifically on the refund note mode.

On January 28, 2005, MERALCO filed its "Manifestation and Motion" praying that the implementation of Phase IV-A of the refund be deferred in view of its receipt of a letter from the Bureau of Internal Revenue (BIR) informing MERALCO of BIR's intent to impose a withholding tax on the amount to be

refunded to MERALCO's customers under Phase IV. MERALCO alleged that for purposes of the orderly implementation of the refund, the issuance of the BIR regulation on the withholding tax is necessary.

On February 13, 2005, the BIR issued Revenue Regulation No. 8-2005 ordering MERALCO to withhold creditable income tax at the following rates: (1) on gross amount of refund given by MERALCO to customers with active contracts as classified by MERALCO- twenty-five percent (25%); and (2) to customers with terminated contracts – thirty-two percent (32%). Consequently, MERALCO filed on May 30, 2005 its "Submission of Amended Proposal on Phase IV".

In the said submission, MERALCO proposed the following:

I) That the refund periods be modified as follows:

Phase IV-A

Active Services	:	From January 2005 – June 2006 (ERC Order) to July 2005 – December 2006
Terminated	:	From May 2006 to November 2006

Phase IV-B

Active Services	:	From July 2005–September 2010 to October 2005 – December 2010
Terminated	:	From January 2008 to June 2008

Terminated services pertain to those services whose contracts were terminated on or before April 30, 2003.

II) That similar to the first three phases of the refund, the refund coverage is from February 1994 – May 2003 (112 months). The computation of the Gross Refund Amount (GRA) will be based on the total billed kWh during the time the customer was being served by MERALCO based on records. The *refundable amount* will be equivalent to the GRA less applicable deductions like arrears and the withholding tax imposed by BIR, which considered the refund amounts to be income payments.

III) In this phase, the refundable amount shall be refunded to the customer in equal amounts over a period of time through post-dated checks (PDCs), fixed credit to bills or cash. The registered customer must first submit the appropriate Tax Identification Number (TIN) and all other required documents before the refund can be released (MERALCO's Letter to the Commission dated June 16, 2005).

IV) That the refund scheme shall be as follows:

Phase IV-A

Active Services –

- If the GRA is P2,000 or less, the refund shall be made in full at the start of the refund period.
- Otherwise, refund mode is through PDCs, credit to bill or cash, at the option of the customer:

(1) For customers opting for the PDC mode – six (6) PDCs corresponding to the quarterly refundable amount shall be issued. The PDCs shall have sequential quarterly maturity dates beginning on the first month of the calendar quarter (6 quarters), maturing at the end of every quarter. The issuance of the PDCs will begin at the latest, two (2) months after ERC approval of the refund scheme to allow for the transmittal of the letters and give the customers ample time to reply and inform MERALCO of their preferred option and comply with the requirements. The PDCs are crossed checks for deposit to payee's account upon maturity.

(2) For customers not opting for the PDC mode, the other options are either fixed monthly credit to bill or claim in cash, except for the first month of implementation when the refundable amount will be automatically credited to bills.

- If the registered customer or his authorized representative requests the suspension of the refund for whatever reason, the refund will be released in check at the end of the refund period, i.e., June 2006.
- If the registered customer or his authorized representative requests for the termination of service for whatever reason, the customer will have the option to either receive the remaining refund through PDCs, spread over the remaining refund period or through a refund check to be released at the end of the refund period, i.e., in June 2006.

Terminated Services -

- Refund mode shall be in the form of a refund check payable to the registered customer.

Phase IV-B

Active Services –

- Twenty-one (21) PDCs corresponding to the quarterly refundable amount shall be issued. The PDCs shall have sequential quarterly maturity dates beginning on the first month of the calendar quarter (21 quarters), maturing at the end of every quarter. The issuance of the PDCs will begin at the latest, two (2) months after ERC approval of the refund scheme to allow for the transmittal of the letters and give the customers ample time to reply and inform MERALCO of their preferred option and comply with the requirements. The PDCs are crossed checks for deposit to payee's account upon maturity.
- For customers not opting for the PDC mode, the other options are either fixed monthly credit to bill or claim in cash, except for the first month of implementation when the refundable amount will be automatically credited to bills.
- If the registered customer or his authorized representative requests the suspension of the refund for whatever reason, the refund will be released in check at the end of the refund period, i.e., December 2010.
- If the registered customer or his authorized representative requests for the termination of service for whatever reason, the customer will have the option to either receive the remaining refund through PDCs, spread over the remaining refund period or through a refund check to be released at the end of the refund period, i.e., in December 2010.

Terminated Services -

- Refund mode is cash/refund check or PDC.
 - (1) A customer may opt to receive the total refundable amount through a refund check in June 2008; or
 - (2) If customer opts to receive PDCs, features and procedures will be the same as those for Phase IV-B active accounts, to start at the latest, two (2) months after ERC approval of the refund scheme.

In the same submission, MERALCO pointed out the following reasons for the adoption of the issuance of the PDCs instead of the former refund note as a mode of refund, to wit: 1) contemplated cost for issuance of PDC is lower compared to issuance of refund note; 2) issuance of PDC involves minimal administrative activities as compared to issuance of refund note; 3) issuance of PDC is more widely accepted in the commercial world than the new concept of refund note; and 4) the objective of providing liquidity and flexibility to a holder

could be met by PDC through check discounting. MERALCO likewise averred that it conducted a survey among its Phase IV customers with active accounts which disclosed a fifty percent (50%) acceptability of the PDC as a mode of refund.

As can be gleaned from the amended proposal, MERALCO seeks approval of two (2) major points on the refund implementation, that is, the refund period and the mode of refund.

Shown hereunder is the refund period as it was originally proposed by MERALCO, as approved by the ERC in its December 21, 2004 Order and the amended proposal:

	Original Proposal	ERC Approval	Amended Proposal
Phase IV-A	January 2005 to December 2007	January 2005 to June 2006	July 2005 to December 2006
Phase IV-B	July 2005 to September 2010	N/A	October 2005 to December 2010

The refund amount for Phase IV involves a significant sum of PhP18.491 Billion or sixty two percent (62%) of the total PhP30.124 Billion. Thus, in determining the period within which MERALCO should implement the refund, the Commission, as in the past, considered MERALCO's cash flow. Relative thereto, MERALCO submitted its projected cash flow which showed negative/low available cash for the years 2006-2008, with a negative cash flow projected in the first seven (7) months of 2007.

Such being the case, the Commission finds the proposal of MERALCO to revise its refund period reasonable. However, given that the refund has further been delayed, the Commission finds it equitable to increase the proposed GRA threshold for customers with active accounts under Phase IV-A from "two

thousand pesos (P2,000) or less” to “five thousand pesos (P5,000) or less” to be entitled to a full refund at the start of the refund period. Likewise, the Commission finds it necessary to include all government accounts falling under Phase IV-B within Phase IV-A, as the refund will be used for public purpose.

With regard to the mode of refund, MERALCO abandoned its proposal to issue refund notes to its eligible customers. In its stead, MERALCO now proposed to issue Post Dated Checks (PDC) for reasons already discussed above. The PDCs shall be released to the concerned customer at the start of the implementation of the refund phase bearing maturity dates at the end of each quarter. The Commission is likewise of the opinion that the amended proposal regarding mode of refund offers more flexibility in the manner in which the options in claiming the refund amount is concerned. Customers may now choose whatever mode is most convenient to them.

WHEREFORE, the foregoing premises considered, the Commission hereby **APPROVES** the Amended Proposal for Phase IV filed by applicant Manila Electric Company (MERALCO), with the following modifications:

- 1) All government accounts falling under Phase IV-B shall be reclassified to Phase IV-A; and
- 2) For customers with active services under Phase IV-A, the refund shall be made in full at the start of the refund period if the Gross Refund Amount (GRA) is five thousand pesos (P5,000) or less.

Accordingly, MERALCO is hereby directed to submit:

- 1) Refund status report upon its implementation; and
- 2) Proof of remittances (monthly alphalist required by BIR).

Lastly, to facilitate the completion of Phases I, II and III and in order to reach those customers with terminated accounts who might have changed residences and thus cannot be reached through letters sent to their last known addresses, MERALCO is hereby directed to publish a notice to all customers with terminated accounts and who have not claimed their refunds under Phases I, II and III. The publication should be made twice (2x) for two (2) successive weeks in two (2) newspapers of general circulation in the country. The notice should include the names of the customers with terminated services, their respective account ID numbers, their registered billing addresses, the amount of refund that each is entitled to, and how they could collect their refund. Likewise, MERALCO is directed to post said notice within the premises of their branches in an area accessible to their customers for the duration of the refund period.

SO ORDERED.

Pasig City, June 29, 2005.

RODOLFO B. ALBANO, JR.
Chairman

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Commissioner

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RAUF A. TAN
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