



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

GUIDELINES PRESCRIBING THE TAX RECOVERY ADJUSTMENT MECHANISM FORMULAE IN THE RATES OF ELECTRIC COOPERATIVES (ECs)

ERC CASE NO. 2005-18 RM

Pursuant to Section 43 (f) of Republic Act No. 9136, Otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA), the Energy Regulatory Commission (ERC) hereby adopts and promulgates these guidelines prescribing the tax recovery adjustment mechanism in the rates of Electric Cooperatives (ECs) for the taxes imposed by the local government units.

ARTICLE I

GENERAL PROVISIONS

1.1 Objectives

- 1.1.1 To ensure transparent and reasonable prices of electric power service in a regime of free and fair competition and to achieve greater operational and economic efficiency;
- 1.1.2. To ensure full recovery of all just and reasonable costs to enable the ECs to operate viably;
- 1.1.3 To ensure and maintain the quality, reliability, security and affordability of the supply of electric power.

1.2 Scope

These Guidelines shall apply to all Electric Cooperatives (ECs) registered under Presidential Decree 269 where local franchise and business taxes are levied within their franchise area.

1.3 Definition of Terms

Act	Republic Act No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001”;
Energy Regulatory Commission or ERC	The regulatory agency created under Section 38 of the Act;
Electric Cooperatives or ECs	Distribution utility organized and incorporated pursuant to Presidential Decree No. 269, as amended by Presidential Decree No. 1645;
Gross Receipts	<p>Means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value added tax.</p> <p>For purposes of these guidelines, gross receipts shall refer to the total amount representing the Distribution charges.</p>
Distribution Charges	Pertains to distribution, supply, metering charges and other charges/adjustments, i.e, power act reduction (PAR), subsidy on lifeline charge, lifeline subsidy discount and inter-class cross subsidy charge);
Local Franchise Tax Rate	Franchise tax rate imposed by the province and cities on business enjoying a franchise pursuant to Sections 137 and 151 of Republic Act No. 7160, otherwise known as the Local Government Code of 1991.
Business Tax Rate	Business tax rate imposed by the cities and municipalities pursuant to Sections 143 and 151 of Republic Act No. 7160.

ARTICLE II

CALCULATION OF THE TAX RECOVERY ADJUSTMENTS MECHANISM FORMULAE

2.1 Adjustment Formulae

Electric Cooperatives (ECs) shall calculate the Franchise Tax and Business Tax Recovery Adjustment Charge based on the following formula:

2.1.1 Franchise Tax and Business Tax Formula

$$FT = \text{Total distribution charges of the customer bill} \times (Ft + Bt)$$

Where:

Ft = Local Franchise Tax Rate

Bt = Business Tax Rate

- 2.1.1.1 The computation of local franchise tax and business tax shall be based on the total distribution charges of the customers' bill, i.e., distribution, system loss, supply, metering and other charges such as the power act reduction, subsidy on lifeline charge, lifeline subsidy discount and inter class cross subsidy charge.
- 2.1.1.2 The franchise and business tax rates imposed by the LGUs on the electric cooperatives shall require the ERC's approval prior to the recovery of the tax from their customers. A formal request should be filed with the Commission together with the certified true copy of a valid tax ordinance and other relevant data for purposes of verification. Thereafter, the Commission shall issue an order authorizing the ECs to recover from their customers the tax rates. The same procedure shall be required in case a new rate for franchise and business taxes shall be imposed by the LGUs.
- 2.1.1.3 ECs shall calculate and recover from their customers the franchise tax and business tax from the effectivity of this formula.
- 2.1.1.4 The franchise and business tax arrearages paid prior to the implementation of this formula shall be recovered using the Tax Recovery Adjustment Charge (TRAC) formula prescribed in the succeeding Section.

2.1.2 Tax Recovery Adjustment Charge (TRAC) Formula

The Tax Recovery Adjustment Charge formula shall apply to franchise and business taxes paid prior to the implementation or effectivity of the franchise and business taxes formula under Article II (2.1.1) of these guidelines and after the unbundling of the ECs' rates.

Within sixty (60) days from the effectivity of these guidelines, ECs shall calculate Tax Recovery Adjustment Charge based on the following formula:

$$\text{TRAC} = \frac{\text{Lft}_a + \text{Bt}_a}{\text{S}}$$

Where:

- TRAC - Tax Recovery Adjustment Charge per kWh applied to the Customer's monthly billing until such time the total franchise and business taxes paid to the local government shall have been fully recovered.
- Lft_a - Local franchise tax arrearages (***excluding penalty and surcharge***) paid prior to the implementation of the approved franchise tax formula and after the unbundling of the ECs' rates.
- Bt_a - Business Tax arrearages (***excluding penalty and surcharges***) paid prior to the implementation of the approved franchise tax formula and after the unbundling of the ECs' rates.
- S - Projected kWh sales for a particular period or as determined by ERC.

2.1.2.1 The ECs shall only be allowed to recover franchise and business tax arrearages paid and computed based on the TRAC formula: *provided*, that the payment of franchise and business tax arrearages are in accordance with a valid local tax ordinance; *provided further*, that in no case shall consumers be charged with taxes imposed prior to the effectivity of the contract of service with the electric cooperative.

2.1.2.2 The TRAC formula shall operate until such time the franchise and business tax arrearages have been fully recovered.

2.1.2.3 For purposes of these guidelines, the ECs shall only be allowed to recover franchise and business tax arrearages computed on the basis of distribution wheeling revenues from the effectivity of R.A. 9136 and its Implementing Rules and Regulations.

2.1.2.4 Within six (6) months from the submission of the complete documents as required under Article IV (4.2), the Commission shall verify the accuracy and validity of the taxes imposed by the local government units and recovered from the consumers. Upon completion of the verification process, the Commission shall issue an Order establishing the amount per kilowatthour to be recovered by the ECs for taxes computed in accordance with Article II (2.1.2).

ARTICLE III

3.1 Billing of Franchise and Business Taxes

3.1.1 The ECs shall bill their customers with the corresponding franchise and business tax charges on the next billing cycle as calculated in accordance with Article II (2.1.1) of these guidelines.

3.1.2 For taxes paid and computed in accordance with the TRAC formula [Article II (2.1.2)], the ECs shall bill their customers on the next billing cycle as prescribed in the Order to be issued by the Commission.

3.1.3 Franchise and Business taxes shall be reflected as a separate line item in the customer's bill in the areas where said taxes are levied, to wit:

		<u>Amount</u>
I.	Generation Charge	xxx
	Transmission Charge	xxx
II.	Distribution Charge	xxx
	System Loss Charge	xxx
	Supply Charge	xxx
	Metering Charge	xxx
	Other Charges/Adjustments:	
	Subsidy on Lifeline Charge	xxx
	Lifeline Subsidy Discount	xxx
	Inter Class Cross Subsidy Charge	<u>xxx</u>
	sub-total	xxx
III.	Local Taxes	
	Franchise Tax (% of sub-total)	xxx
	Business Tax (% of sub-total)	xxx
IV.	Tax Recovery Adjustment Charge	xxx
	(PhP/kWh)	
V.	Universal Charges	<u>xxx</u>
	Total Bill	<u>xxx</u>

ARTICLE IV

SUPPORTING DOCUMENTS

- 4.1.** For Franchise and Business taxes imposed in accordance with Section 2.1.1, the EC shall provide the Commission with the following documents:
- a. Certified true copy of the local tax ordinance;
 - b. Certification from the Secretary of the local legislative body that the required public hearings/consultations were conducted prior to the enactment of the local tax ordinance;
 - c. Other relevant documents as may be required by the ERC.
- 4.2.** For Franchise and Business taxes computed in accordance with Section 2.1.2, the EC shall submit to the Commission its proposed computations and the period of recovery together with the following documents:
- a. Certified true copy of prior years Tax Assessment issued by the local government units;
 - b. Certified true copies of Local Tax Ordinances;
 - c. Certification from the Secretary of the local legislative body that the required public hearings/consultations were conducted prior to the enactment of the local tax ordinance;
 - d. Certified true copies of Official Receipts;
 - e. Projected kilowatthours sales; and
 - f. Other relevant documents as may be required by the ERC.

ARTICLE V

REPORTORIAL REQUIREMENTS, VERIFICATION AND CONFIRMATION PROCESS

5.1 Franchise Tax Formula

- 5.1.1 On or before the twenty-fifth day (25) day of the succeeding month after each quarter, semester or year, whichever the case may be that ECs pay its franchise and business taxes to LGUs, the ECs shall submit sample bills of its customers' class and summary of the tax imposition and collection for every locality within its franchise area relative to taxes computed in accordance with Article 2.1.1.
- 5.1.2 Within six (6) months from submission of the complete documents as required under Article IV (4.1), the Commission shall verify the accuracy and validity of the taxes imposed by the local government units and recovered from the consumers. Upon completion of the verification process, the Commission shall issue an order confirming the correctness of the franchise and business taxes levied to its customers.

5.2 Tax Recovery Adjustment Charge (TRAC)

5.2.1 On or before the twenty-fifth day (25) day of the month, the ECs shall provide the ERC with all calculations and collections related to Article 2.1.2 for the prior month.

5.2.2 If the total TRAC collection resulted in an over recovery, the amount of over recovery will be subjected to carrying charge. The carrying charge shall be based on the 91-day T-bill rates plus 300 points that will be refunded to the consumers within the period prescribed by the Commission.

ARTICLE VI

6.1 FINES AND PENALTIES

Violation of any provision of these Guidelines shall be subject to the imposition of fines and penalties in accordance with the Guidelines to Govern the Imposition of Administrative Sanctions in the Form of Fines and Penalties Pursuant to Section 46 of Republic Act No. 9136 promulgated by the ERC on May 17, 2002.

ARTICLE VII

7.1 EXCEPTION

Where good cause appears, the ERC may allow an exception from any provisions of these Guidelines, if such exception is found to be in the public interest and is not contrary to any law, rules and regulations. Should there be any valid reason for an EC not to strictly comply with these Guidelines, the concerned EC shall submit, within fifteen (15) days from the effectivity of these Guidelines, its proposed alternative mechanism/formula. It is only after the Commission's approval of said mechanism/formula will recovery/refund resulting there from will be allowed.

ARTICLE VIII

8.1 SEPARABILITY

If for any reason any provision of these Guidelines is declared unconstitutional or invalid by final judgment of a competent court, the other parts or provisions hereof which were not affected thereby shall continue to be in full force and effect.

ARTICLE IX

9.1 EFFECTIVITY

These Guidelines shall take effect on the fifteenth (15th) day upon publication in a newspaper of general circulation in the country.

Pasig City, [place date here]

RODOLFO B. ALBANO, JR.
Chairman

RAUF A. TAN
Commissioner

OLIVER B. BUTALID
Commissioner

JESUS N. ALCORDO
Commissioner

ALEJANDRO Z. BARIN
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