

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



**IN THE MATTER OF THE
APPLICATION FOR
AUTHORITY TO RECOVER
LOCAL FRANCHISE TAXES IN
THE PROVINCE OF CEBU**

**ERC CASE NO. 2015-198 RC
(Redocketed as ERC CASE
No. 2015-044 CF)**

**VISAYAN ELECTRIC
COMPANY, INC. (VECO),
Applicant.**

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D O C K E T E D
Date: JUN 21 2016
By: W

ORDER

On 09 November 2015, Visayan Electric Company, Inc. (VECO) filed with the Commission an Application for Authority to Recover Local Franchise Taxes in the Province of Cebu.

In the said Application, VECO alleged, among others, that:

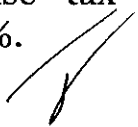
1. VECO is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office address at J. Panis Street, Banilad, Cebu City. It is a duly authorized distribution utility providing electric light and power distribution service in the Municipalities of San Fernando, Minglanilla, Consolacion and Liloan and the Cities of Naga, Talisay, Cebu and Mandaue, all in the province of Cebu (the "Franchise Area") pursuant to its franchise under Republic Act No. 9339. It may be served with the orders, notices and processes of the Honorable Commission through its counsel at the address indicated in its Application.
2. On September 22, 2008, the Sangguniang Panlalawigan of Cebu promulgated Provincial

Ordinance No. 2008-10, otherwise known as the "Revenue Code of Cebu of 2008" (Revenue Code of Cebu), which took effect in the year 2009. Under Section 117 of the Revenue Code of Cebu, the local franchise tax imposed is at the rate of 55% of 1% on the gross receipts which shall include both cash sales and sales on account realized during the preceding calendar year within the territorial jurisdiction of the province. Section 120 of the Revenue Code of Cebu provides for the time of payment. The pertinent provisions of the Provincial Ordinance reads, thus:

Section 117. Imposition of Tax – There is hereby levied on tax at the rate of fifty-five (55%) of one percent (1%) on businesses enjoying a franchise based on the gross receipts which shall include both cash sales and sales on account realized during the preceding calendar year within the territorial jurisdiction of the province.

Section 120. Time of Payment. The tax shall be paid to the Provincial Treasurer or his deputy within the first twenty (20) days of January of the ensuing year or of each subsequent quarter, as the case may be.

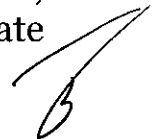
Copies of the Provincial Ordinance and the Certification dated February 18, 2014 issued by the Office of the Provincial Secretary attesting to the rate of franchise tax imposed by the Province of Cebu starting 2009 are attached, respectively, as Annexes "A" to "A-2" and "B" hereof.

3. Before Provincial Ordinance No. 2008-10 took effect in the year 2009, VECO has been paying local franchise taxes to the Province of Cebu at the previous rate of 0.500% based on gross receipts. Accordingly, VECO has been recovering only the local franchise tax payments at the previous rate of 0.500%.
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4. From the time that the Provincial Ordinance became effective in 2009 up until 2014, VECO has been remitting franchise taxes at the increased rate of 55% of 1% on the gross receipts. VECO, in compliance with ERC Case Nos. 2001-891 and 2002-06, has only been recovering local franchise tax payments at the previous rate of 0.500% during the same time period.
5. Thus, while VECO has paid the Provincial Government of Cebu the amount PhP55, 944,828.27, it has only recovered PhP50, 858,934.79 covering years 2009 to 2014. This represents a differential of PhP5, 085,893.48 local tax payments that have not yet been recovered by VECO for the same period.

Copies of the official receipts issued by the Provincial Government of Cebu for payments in the period covered are attached as Annexes "C" to "C-27" hereof.

6. Given the foregoing, VECO submits the instant Application seeking authority from the Honorable Commission to:
 - (i) grant VECO the authority to collect/recover from its end-users in the Province of Cebu, through automatic recovery scheme, the total amount of PhP 5,085,893.48, representing the difference between the amount of local franchise tax that VECO has paid to the Provincial Government of Cebu and the amount of local franchise tax collected/recovered from its end-users from 2009 to 2014, over a period of twenty four months, or at the estimated rate of PhP 0.0090/kWh,
 - (ii) authorize VECO to implement the collection/recovery of the local franchise tax from its customers residing in the Province of Cebu, at the rate of 55% of 1% on gross receipts, which includes both cash sales and sales on account, pursuant to the Revenue Code of Cebu, beginning on 1 January 2015, and at such rate



as may thereafter be imposed under said Revenue Code, if amended.

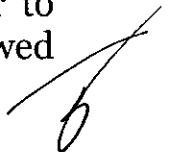
7. VECO's recovery of the local franchise tax, which is in the nature of a pass-through charge, from its customers residing within the Province of Cebu is in line with the cases, which involved similar applications, decided by the Honorable Commission.
8. In ERC Case No. 2004-11, the Honorable Commission recognized, as valid pass-through charges, the recovery of local franchise taxes to the end-users by the distribution utilities. It also ruled that the collection of the same from its customers is reasonable because these were impositions of the LGUs exercising their authority to tax, thus:

"xxxThe 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)"
[Emphases supplied]

9. Moreover, in ERC Case No. 2013-038 CF, April 28, 2014, which, likewise, involved a petition similar to the present case, the Honorable Commission allowed



recovery of the local franchise tax as a pass-through charge **based on gross receipts**, thus:

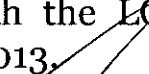
“Consistent with the foregoing, the Commission, in its Decision dated May 28, 2004 in ERC Case Nos. 2001-898 [In the Matter of the Application for Approval of the Revised Rate Schedules in Compliance with Section 36 of R.A. 9136 and ERC Order Dated October 30, 2001, with Prayer for Provisional Authority, Cotabato Light and Power Company (CPLC) - Applicant] and 2001-503 [In the Matter of the Application for Approval of the Sound Value Appraisal of Applicant's Properties and Equipment, CLPC - Applicant] already ruled that a ***LFT is a valid pass-through charge.***”

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It bears stressing that the LFTs levied by the LGUs and subsequently remitted by MERALCO are legitimate expenses, which the law allows to be recovered from the customers, the same being a pass-through cost.”

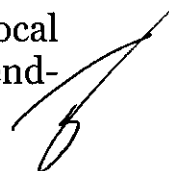
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As such, ***MERALCO prayed that it be authorized to implement the LFT rate on the customers' bills in the City of Bacoor separate from the previous authority granted to it for the Province of Cavite at the rate of fifty percent (50%) of one percent (1%) of the gross annual receipts which include both cash sales and sales on account realized during the preceding calendar year***, pursuant to the City of Bacoor City Ordinance No. 39, Series of 2012 and computed in accordance with the LGC beginning the 1st quarter of 2013.



The Commission deems it prudent to allow MERALCO to recover the LFT rate of fifty percent (50%) of one percent (1%) in the City of Bacoor pursuant to its City Ordinance No. 39, Series of 2012 and the proceeds thereof to be remitted already to the said City and no longer to the Province of Cavite.” [Emphases supplied]

10. Moreover, moving forward and given the authority of the Province of Cebu to impose local franchise taxes under the Local Government Code, VECO seeks the continuing authority of the Honorable Commission to implement the collection and recovery of the local franchise tax from its customers in the Province of Cebu, at the rate of 55% of 1% on gross receipts which includes both cash sales and sales on account, pursuant to the Revenue Code of Cebu, beginning on 1 January 2015, and at such rate as may thereafter be imposed by said Revenue Code, if amended. Considering that the rates charged are unbundled and that any increase in the franchise fee rate is categorically displayed in its monthly statements of accounts to its customers, it will be less tedious and will ultimately aid the Commission in unclogging its dockets if the Honorable Commission allows VECO an automatic adjustment mechanism, in the event that the franchise fee is adjusted by the Province of Cebu.
11. Considering the foregoing, VECO respectfully prayed that the Commission will:
 - a) Issue an Order granting applicant VECO the authority to collect/recover from its end-users in the Province of Cebu, through automatic recovery scheme, the total amount of PhP 5,085,893.48, representing the difference between the amount of local franchise tax that VECO has paid to and the amount of local franchise tax collected/recovered from its end-



users from 2009 to 2014, over a period of twenty four months, or at the estimated rate of PhP 0.0090/kWh; and

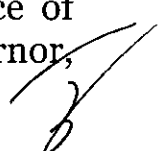
- b) Issue an Order authorizing VECO to implement the collection/recovery of the local franchise tax from its customers residing in the Province of Cebu, at the rate of 55% of 1% on gross receipts, which includes both cash sales and sales on account pursuant to the Revenue Code of Cebu, beginning on 1 January 2015, and at such rate as may thereafter be imposed under said Revenue Code, if amended.
- c) Grant such other reliefs just and equitable under the premises.

Finding the said Application sufficient in form and in substance with the required fees having been paid, the same is hereby set for initial hearing, expository presentation, pre-trial conference and evidentiary hearing on **19 July 2016 (Tuesday) at two o'clock in the afternoon (2:00 P.M.) at the ERC Hearing Room, 15th Floor, Pacific Center Building, San Miguel Avenue, Pasig City.**

VECO is hereby directed to cause the publication of the attached Notice of Public Hearing, at its own expense, once (1x) in a newspaper of nationwide circulation in the Philippines, with the date of the publication to be made not later than ten (10) days before the scheduled date of initial hearing. It is 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.

Let copies of the Application, this Order and the attached Notice of Public Hearing be furnished the Office of the Solicitor General (OSG), the Commission on Audit (COA), and the Committees on Energy of both Houses of Congress. They are hereby requested, if they so desire, to send their duly authorized representatives at the scheduled hearing.

Likewise, let copies of this Order and the attached Notice of Public Hearing be furnished the Offices of the Provincial Governor,



the Mayors of the cities or municipalities and the Local Government Unit (LGU) Legislative Bodies within VECO's franchise areas for the appropriate posting thereof on their respective bulletin boards.

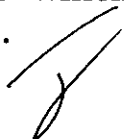
VECO is directed to furnish all those making requests therefor with copies of the application and its attachments, subject to reimbursement of reasonable photocopying costs.

On the date of the initial hearing and Pre-trial Conference, VECO must submit to the Commission its written Compliance with the jurisdictional requirements attaching therewith, methodically arranged and duly marked, the evidences on the actual posting and publication of the Notice of Public Hearing consisting of certifications issued to that effect, signed by the aforementioned Governor, Mayor, and LGU Legislative Body, or their duly authorized representatives, bearing the seals of their offices, and the affidavit of the Editor or Business Manager of the newspaper where the said Notice of Public Hearing was published together with the complete issue of the said newspaper, and such other proofs of compliance with the requirements of the Commission.

VECO and all interested parties are directed to submit, at least five (5) days before the date of initial hearing and Pre-trial Conference, their respective Pre-trial Briefs containing, among others:

- a) a summary of admitted facts and proposed stipulation of facts;
- b) the issues to be tried or resolved;
- c) the documents or exhibits to be presented, stating the purposes and proposed markings thereof; and
- d) the number and names of the witnesses, with their written testimonies in an individual affidavit form, to be attached to the Pre-trial Brief.

Failure of VECO to submit the required Pre-trial Brief and Judicial Affidavits of its witnesses within the prescribed period shall be a ground for the cancellation of the scheduled hearing, and the resetting of which shall be six (6) months from said date of cancellation.



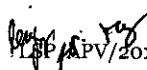
As part of the Pre-trial Conference, VECO must also be prepared to make an expository presentation of its Application, aided by whatever communication medium that it may deem appropriate for the purpose, in order to put in plain words and explain, for the benefit of the consumers and other concerned parties, what the Application is all about and the reasons and justifications being cited in support thereof.

SO ORDERED.

Pasig City, 31 May 2016.

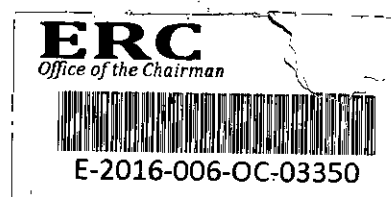
FOR AND BY AUTHORITY
OF THE COMMISSION:


JOSE VICENTE B. SALAZAR
Chairman

 PV/2015-198 RC/ VECO ORD.doc.

Copy Furnished:

- 1. Garcia Quijano and Associates**
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J. Panis Street, Banilad, Cebu City
- 3. Office of the Solicitor General**
134 Amorsolo Street, Legaspi Village
Makati City, Metro Manila
- 4. Commission on Audit**
Commonwealth Avenue
Quezon City, Metro Manila
- 5. Senate Committee on Energy**
GSIS Bldg. Roxas Blvd., Pasay City
Metro Manila



6. **House Committee on Energy**
Batasan Hills, Quezon City, Metro Manila
 7. **Office of the President**
Philippine Chamber of Commerce and Industry
(PCCI)
3rd Floor, Chamber and Industry Plaza (CIP)
1030 Campus Avenue corner Park Avenue
McKinley Town Center, Fort Bonifacio, Taguig City
 8. **Office of the City Mayor and the**
Office of the Sangguniang Panglungsod
Cebu City, Cebu
 9. **Office of the City Mayor and the**
Office of the Sangguniang Panglungsod
Mandaue City, Cebu
 10. **Office of the City Mayor and the**
Office of the Sangguniang Panglungsod
Naga City, Cebu
 11. **Office of the City Mayor and the**
Office of the Sangguniang Panglungsod
Talisay City, Cebu
 12. **Office of the Municipal Mayor**
Office of the Sangguniang Bayan
San Fernando, Cebu
 13. **Office of the Municipal Mayor**
Office of the Sangguniang Bayan
Minglanilla, Cebu
 14. **Office of the Municipal Mayor**
Office of the Sangguniang Bayan
Consolacion, Cebu
 15. **Office of the Municipal Mayor**
Office of the Sangguniang Bayan
Liloan, Cebu
 16. **Office of the Provincial Governor and the**
Office of the Sangguniang Panlalawigan
Province of Cebu
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