

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




IN THE MATTER OF THE APPLICATION: (A) TO CONFIRM THE GENERATION RATE OVER/UNDER RECOVERY (GOUR); TRANSMISSION RATE OVER/UNDER RECOVERY (TOUR); SYSTEM LOSS RATE OVER/UNDER RECOVERY (SLOUR); LIFELINE SUBSIDY OVER/UNDER RECOVERY (LSOUR); SENIOR CITIZEN DISCOUNT AND SUBSIDY OVER/UNDER RECOVERY (SRDSOUR) PASS-THROUGH CHARGES FROM JANUARY 2014 TO DECEMBER 2016; AND REAL PROPERTY TAX PAYMENTS FROM JUNE 2014 TO DECEMBER 2016; AND (B) FOR AUTHORITY TO REFUND/RECOVER CONFIRMED OVER/UNDER RECOVERIES AND REAL PROPERTY TAX PAYMENTS, WITH PRAYER FOR PROVISIONAL AUTHORITY,

ERC CASE NO. 2017-060 CF

MANILA ELECTRIC COMPANY (MERALCO),
Applicant.

X-----X

DOCKETED
Date: MAY 15 2017
By: 

ORDER

On 31 March 2017, Manila Electric Company (MERALCO) filed an *Application* seeking the following actions from the Commission:

- 1) Confirm MERALCO's submitted amount representing the following pass-through charges incurred from January 2014 to December 2016:
 - a. Generation Rate Over/Under Recovery (GOUR);
 - b. Transmission Rate Over/Under Recovery (TOUR);
 - c. System Loss Rate Over/Under Recovery (SLOUR);
 - d. Lifeline Subsidy Over/Under Recovery (LSOUR); and
 - e. Senior Citizen Discount and Subsidy Over/Under Recovery (SRDSOUR).
- 2) Confirm MERALCO's submitted amount representing Real Property Tax payments incurred from June 2014 to December 2016;
- 3) Upon confirmation of its submitted amount, grant MERALCO the authority to refund or recover confirmed Over/Under Recoveries and Real Property Tax Payments; and
- 4) Pending evaluation of the *Application*, grant MERALCO provisional authority to refund or recover the submitted amounts.

On 2 May 2017, the Commission deliberated and granted MERALCO's prayer for provisional authority. However, due to supervening events¹, the Commission cannot promulgate the said Order without undergoing a reconfirmation by the Commission En Banc. The Commission reconfirmed the Order on 11 May 2017.

The instant Order is being issued in light of the requirement under Section 4 (e), Rule 3 of the *Implementing Rules and Regulations of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001* (EPIRA IRR), as further clarified by the Supreme Court in the case of *National Association of Electricity Consumers for Reforms vs. Energy Regulatory Commission*², for the Commission to conduct a public hearing not later than thirty (30) days from its grant of provisional authority.

In its *Application*, MERALCO alleged the following:

1. MERALCO is a private corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office located at Lopez Building, Ortigas Avenue,

¹ The Chairman was placed on preventive suspension as per Order of the Office of the President (OP-DC Case No. 17-D-094) dated 2 May 2017 and received on 4 May 2017.

² G.R. No. 163935, 02 February 2006.

Barangay Ugong, Pasig City. It may be served with notices and other processes of this Honorable Commission through its undersigned counsel at the address indicated herein.

2. MERALCO has a legislative franchise to construct, operate and maintain an electric power distribution system for the conveyance of electric power to the end-users in the cities and municipalities of Metro Manila, Bulacan, Cavite and Rizal, and certain cities/municipalities/barangays in Batangas, Laguna, Quezon and Pampanga, pursuant to Republic Act No. 9209.

3. Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 ("EPIRA"), allows Distribution Utilities (DUs), such as MERALCO, to recover just and reasonable costs to enable them to operate viably.

4. Under Article 5, Section 1 of ERC Resolution No. 16, Series of 2009, Distribution Utilities (DUs) must file their consolidated application to confirm their over/under recoveries on pass-through charges for the period January 2014 to December 2016 on or before 31 March 2017.³

5. This Application includes over/under recoveries of the following pass-through costs: (a) Generation Rate Over/Under Recovery (GOUR); (b) Transmission Rate Over/Under Recovery (TOUR); (c) System Loss Rate Over/Under Recovery (SLOUR); (d) Lifeline Subsidy Over/Under Recovery (LSOUR); (e) Senior Citizen Discounts and Subsidy Over/Under Recovery (SrDSOUR) for the period January 2014 to December 2016 and (f) payments on real property taxes, for the period June 2014 to December 2016.

6. Generation Charge over/under recovery occurs due to the lag in the recovery of generation costs from consumers. Basically, the rate used to compute for the generation charge in a current billing month is based on the generation cost incurred during the previous billing month, which is the supply month. Given the recovery lag and the monthly changing generation costs, over/under recoveries are expected as the generation cost for the current month is compared to the recoveries of the same month.

7. Using the formula provided in Section 2, Article 4 of Resolution No. 16, Series of 2009, MERALCO determined that it has net over recoveries in the Generation Charge in the amount of PhP4,919,162,892.94 for the period January 2014 until December 2016. The computation details of the Generation Over Recovery (GOR) are shown in ANNEX "B", and made an integral part hereof.

8. The over/under recovery in Transmission Charge occurs because of the lag in the pass-on of transmission costs.

³ Article 5, Section 1 of ERC Resolution No. 16, Series of 2009 provides:
The period for filing of DUs for true-up adjustments for the period January 2011 to December 2013 is on March 31, 2014. Subsequently, the DUs shall file their respective consolidated applications every three (3) years following the sequence of period of filing prescribed above.

When the actual transmission cost of the current month is compared to the transmission recoveries of the current month, which rates are computed based on previous month's cost, either an over or under recovery will result.

9. Using the formula provided in Section 3, Article 4 of Resolution No. 16, Series of 2009, MERALCO determined that it has net over recoveries in the Transmission Charge in the amount of Php632,210,115.96 for the period January 2014 until December 2016. The computation details of the Transmission Over Recovery (TOR) are shown in ANNEX "C" and made an integral part hereof.

10. System Loss over/under recovery mainly occurs due to the difference between the actual average cost of system loss for a given year and the sum of the actual monthly system loss billings for that same year. As MERALCO's system loss percent (%) is already below the cap set by this Honorable Commission, the basis of its allowable cost of system loss is its actual system loss for a given year. Since the monthly system loss charge rates were computed using the previous month's average generation and transmission costs, and the latest 12 month moving system loss percentage (%), any difference from the actual annual data will result either in an over or under recovery in system loss.

11. Applying the formula contained in Section 4, Article 4 of Resolution No. 21, Series of 2010, MERALCO determined that it has a System Loss net Over Recovery in the amount of Php1,242,760,988.35 covering the period January 2014 until December 2016. The computation details of the System Loss Over Recovery (SLOR) are shown in ANNEX "D", and made an integral part hereof.

12. MERALCO incurred a net over recovery in the Lifeline Subsidy rate, given the lag in the billing of lifeline rate subsidies to non-lifeline consumers. The lifeline discount of the previous month is used to compute for the lifeline subsidy charge in the current billing month. Consequently, when the actual lifeline discount amount for the current month is compared to the lifeline subsidy amount for the same month, either an over or under recovery will result.

13. Applying the formula specified in Section 5, Article 4 of Resolution 16, Series of 2009, MERALCO determined a Lifeline Subsidy net over recovery in the amount of Php130,627,106.04 covering the period January 2014 to December 2016. The computation details of the Lifeline Subsidy Over Recovery (LSOR) are shown in ANNEX "E", and made an integral part hereof.

14. Relative to the Senior Citizen Subsidy and Discount, MERALCO incurred a net over recovery thereof due to the lag in the billing of senior citizen subsidy to non-senior citizen consumers. The senior citizen discount for the previous month is used to compute for the senior citizen subsidy charge in the current billing month. Consequently, when the actual senior citizen discount amount of the current month is compared to the senior citizen

subsidy amount for the same month, either an over or under recovery will result.

15. Applying the formula provided under Article 7 of Resolution No. 23, Series of 2010, MERALCO determined a Senior Citizen Subsidy net over recovery in the amount of PhP2,325,583.09 covering the period January 2014 to December 2016. The computation details of the Senior Citizen Over Recovery (SrDSOR) are shown in ANNEX "F", and made an integral part hereof.

16. The refund/collection of the over/under recoveries shall be made to both captive and contestable customers in accordance with ERC Resolution No. 16, Series of 2012.⁴ Insofar as contestable customers are concerned, any generation over/under recoveries for the billing periods when they were still captive customers, will be refunded to and/or collected from them. These over/under recoveries shall be part of the DU's bill, as a separate line item, through the RES/Local RES/SOLR currently serving the contestable customers. Considering that the eligible customers opted for contestability on different dates starting July 2013, such is taken into consideration in the determination of the refundable generation cost to these customers.

17. In MERALCO's Application for the approval of its Annual Revenue Requirement (ARR) and Performance Incentive Scheme (PIS) for the Third Regulatory Period,⁵ MERALCO proposed the forecasted real property tax to be paid during said period. In its Final Determination dated 6 June 2011, the Honorable Commission excluded real property tax payments from the ARR as follows:

"The annual provision for real property tax that relates to poles and transformers, as shown in Table 4.6 above, is excluded from the annual revenue requirement. Taxes for which MERALCO's liability has not been confirmed should not be included. In the event of future imposition of additional real property taxes or should MERALCO become liable for taxes that are not included in the annual revenue requirement, Article XI of the RDWR allows for unexpected tax liabilities imposed during the Third Regulatory Period be means of a "Tax Event Pass Through".

18. Hence, while the Honorable Commission recognized the pass-through nature of real property taxes, it directed MERALCO to comply with the Tax Event Pass Through provision of the Rules for Setting Distribution Wheeling Rates (RDWR).

19. At the time the Final Determination was rendered, MERALCO's case relative to real property tax assessment was still pending before the appellate courts.

⁴ Entitled "A Resolution Adopting the Transitory Rules for the Implementation of Open Access and Retail Competition".

⁵ Docketed as ERC Case No. 2010-069 RC.

20. Thereafter, in 2014, citing the Local Government Code as basis, the City of Taguig assessed and imposed real property taxes on MERALCO's substations. MERALCO paid such assessment on 30 June 2014. Thereafter, the City of Valenzuela made a similar imposition on MERALCO's substation within its jurisdiction.

21. Subsequently, MERALCO received a Decision dated 5 August 2015 in G.R. No. 166102, entitled, Manila Electric Company v. The City Assessor and City Treasurer of Lucena City rendered by the Supreme Court which ruled that transformers, electric posts, transmission lines, insulators, and electric meters of MERALCO are no longer exempted from real property tax and may qualify as "machinery" subject to real property tax under the Local Government Code. Nevertheless, the Supreme Court declared null and void the appraisal and assessment of said properties of MERALCO by the City Assessor in 1997 for failure to comply with the requirements of the Local Government Code and, thus, violating the right of MERALCO to due process. A copy of the Decision dated 5 August 2015 in G.R. No. 166102 is attached hereto as ANNEX "G", and made an integral part hereof.

22. Hence, MERALCO intends to recover the payments it has made with respect to Real Property Tax (RPT) assessments for the afore-mentioned substations, and RPT assessments in accordance with the Supreme Court Decision. Copies of the assessment and official receipts evidencing payments are attached hereto as ANNEXES "H and Series", and made integral parts hereof. However, MERALCO has no means of recovering said amount in the absence of the applicable rules to govern recovery. Thus, MERALCO deems it prudent to incorporate the recovery of its real property tax payments in the instant Application.

23. Applicant proposes that: (a) GOR, TOR, SLOR and LSOR be refunded to the customers for a period of thirty-six (36) months; (b) SrDSOR be refunded to the customers for a period of one (1) month; and (c) RPT payments be recovered from customers for a period of thirty-six (36), or until fully refunded/collected. This is consistent with previous decisions of the Honorable Commission wherein the recovery/refund period was equivalent to the period that the over/under recoveries were accumulated.

24. The computed total amount of the net over/under recoveries and proposed refund/recovery rates is summarized below:

BILL COMPONENT	AMOUNT OF (OVER)/UNDER RECOVERY	PROPOSED (REFUND)/RECOVERY RATE (PHP/KWH)*	AMORTIZATION PERIOD
GOUR	(4,919,162,892.94)	(0.0502)	36 months
TOUR	(632,210,115.96)	(0.0051)	36 months
SLOUR	(1,242,760,988.35)	(0.0099)	36 months
LSOUR	(130,627,106.04)	(0.0017)	36 months

SrDSOUR	(2,325,583.09)	(0.0011)	1 month
Real Property Tax Payments	1,089,707,397.13	0.0087	36 months

25. Attached hereto as ANNEXES "I", "J", "K", "L", "M" and "N" are the detailed computation on how the amounts were translated into rates per kilowatt-hour.

26. In support of the instant Application, attached hereto as ANNEXES "O" and "P" and made integral parts hereof are the Judicial Affidavits of MS. ARLYN I. DELA CRUZ, Specialist, MERALCO's Purchased Power Pricing - Rates and Pricing, Regulatory Management Office (RMO) and MR. GERARDO E. ESPIRIDION, Head of MERALCO's Tax Management and Reporting Office.

PRAYER

WHEREFORE, it is respectfully prayed to this Honorable Commission that, the instant Application be APPROVED authorizing MERALCO to refund/recover to/from its customers, as applicable, the following amounts which represent the over/under recoveries for the generation, transmission, system loss, lifeline subsidy, senior citizen discount and subsidy, and real property tax payments as pass-through charges at the corresponding rate/kWh indicated in the table below and the proposed refund/recovery period.

BILL COMPONENT	AMOUNT OF (OVER)/UNDER RECOVERY	PROPOSED (REFUND)/RECOVERY RATE (PHP/KWH)*	AMORTIZATION PERIOD
GOUR	(4,919,162,892.94)	(0.0502)	36 months
TOUR	(632,210,115.96)	(0.0051)	36 months
SLOUR	(1,242,760,988.35)	(0.0099)	36 months
LSOUR	(130,627,106.04)	(0.0017)	36 months
SrDSOUR	(2,325,583.09)	(0.0011)	1 month
Real Property Tax Payments	1,089,707,397.13	0.0087	36 months

Pending hearing, MERALCO prays that a provisional authority be issued authorizing MERALCO to collect/refund the over/under recoveries.

MERALCO prays for such other relief just and equitable under the premises.

Finding the said *Application* sufficient in substance with the required fees having been paid, the same is hereby set for determination of compliance with jurisdictional requirements, expository presentation, Pre-trial Conference, and presentation of evidence on **2 June 2017 at two o'clock in the afternoon (2:00**

P.M.), at the ERC Hearing Room, 15th Floor, Pacific Center, San Miguel Avenue, Pasig City.

Accordingly, MERALCO is hereby directed to:

- 1) Cause the publication of the attached Notice of Public Hearing, once (1x) in a newspaper of nationwide circulation in the Philippines at its own expense, at least ten (10) days before the date of the scheduled initial hearing;
- 2) Furnish with copies of this Order and the attached Notice of Public Hearing the Offices of the Provincial Governors, the City and Municipal Mayors, and the Local Government Unit (LGU) legislative bodies within the affected franchise area for the appropriate posting thereof on their respective bulletin boards;
- 3) Inform of the filing of the *Application*, the reasons therefor, and of the scheduled hearing thereon, the consumers within the affected franchise area, by any other means available and appropriate;
- 4) Furnish with copies of this Order and the attached Notice of Public Hearing, 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; and
- 5) Furnish with copies of the *Application* and the attachments all those making requests therefor, subject to reimbursement of reasonable photocopying costs.

On the date of the initial hearing, Applicant must submit to the Commission its written compliance with the aforementioned jurisdictional requirements attaching therewith, methodically arranged and duly marked the following:

- 1) The evidence of publication of the attached Notice of Public Hearing consisting of affidavit of the Editors or Business Managers of the newspaper where the said Notice of Public Hearing was published, and the complete issue of the said newspapers;
- 2) The evidence of actual posting of this Order and the attached Notice of Public Hearing consisting of certifications issued to that effect, signed by the aforementioned Governors, Mayors, and LGU legislative

bodies or their duly authorized representatives, bearing the seals of their offices;

- 3) The evidence of other means employed by Applicant to inform of the filing of the *Application*, the reasons therefore, and of the scheduled hearing thereon, the consumers within the affected franchise area;
- 4) The evidence of receipt of copies of this Order and the attached Notice of Public Hearing by the Office of the Solicitor General (OSG), the Commission on Audit (COA), and the Committees on Energy of both Houses of Congress;
- 5) The evidence of receipt of copies of the *Application*, and the attachments by all those making requests therefor, if any; and
- 6) Such other proofs of compliance with the requirements of the Commission.

Applicant and all interested parties are also required 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:

- 1) A summary of admitted facts and proposed stipulation of facts;
- 2) The issues to be tried or resolved;
- 3) The documents or exhibits to be presented, stating the purposes and proposed markings therefore; and
- 4) The number and names of the witnesses, with their written testimonies in a Judicial Affidavit form attached to the Pre-trial Brief.

Failure of Applicant to comply with the above requirements within the prescribed period shall be a ground for cancellation of the scheduled hearing, and the resetting of which shall be six (6) months from the said date of cancellation.

MERALCO must also be prepared to make an expository presentation of the instant *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 its 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, 11 May 2017.

FOR AND BY AUTHORITY
OF THE COMMISSION:



ALFREDO J. NON
Officer-in-Charge of the ERC

LS: /RFM/ APV

Copy furnished:

1. Attys. Francis Dino S. Antonio
Counsel for MERALCO
7th Floor, Lopez Building, Ortigas Avenue, Pasig City
2. Office of the Solicitor General (OSG)
134 Amorsolo Street, Legaspi Village, Makati City
3. Commission on Audit (COA)
Commonwealth Avenue, Quezon City
4. Senate Committee on Energy
GSIS Bldg. Roxas Blvd., Pasay City
5. House Committee on Energy
Batasan Hills, Quezon City
6. Department of Energy (DOE)
Rizal Drive, Bonifacio Global City, Taguig City
6. Philippine Chamber of Commerce and Industry (PCCI)
Campus Avenue corner Park Avenue,
McKinley Town Center, Fort Bonifacio, Taguig City
7. The City Mayor
City of Manila
8. LGU Legislative Body
City of Manila
9. The City Mayor
Quezon City
10. LGU Legislative Body
Quezon City
11. The City Mayor
City of Caloocan
12. LGU Legislative Body
City of Caloocan
13. The City Mayor
City of Makati

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14. LGU Legislative Body
City of Makati
15. The City Mayor
City of Malabon
16. LGU Legislative Body
City of Malabon
17. The City Mayor
City of Mandaluyong
18. LGU Legislative Body
City of Mandaluyong
19. The City Mayor
City of Muntinlupa
20. LGU Legislative Body
City of Muntinlupa
21. The City Mayor
City of San Jose del Monte, Bulacan
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City of San Jose del Monte, Bulacan
23. The City Mayor
City of Valenzuela
24. LGU Legislative Body
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25. The City Mayor
City of Pasig
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City of Parañaque
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31. The City Mayor
Cavite City
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33. The City Mayor
Trece Martirez City
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35. The City Mayor
Las Piñas City
36. LGU Legislative Body
Las Piñas City
37. The City Mayor
San Juan City
38. LGU Legislative Body
San Juan City
39. The City Mayor
Lucena City
40. LGU Legislative Body
Lucena City
41. The City Mayor
Batangas City

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42. LGU Legislative Body
Batangas City
43. The City Mayor
San Pablo City, Laguna
44. LGU Legislative Body
San Pablo City, Laguna
45. The City Mayor
City of Marikina
46. LGU Legislative Body
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47. The City Mayor
Antipolo City, Rizal
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Tagaytay City, Cavite
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51. The City Mayor
Calamba, Laguna
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Sta. Rosa, Laguna
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Sta. Rosa, Laguna
55. The City Mayor
Biñan, Laguna
56. LGU Legislative Body
Biñan, Laguna
57. The City Mayor
Navotas, Metro Manila
58. LGU Legislative Body
Navotas, Metro Manila
59. The Municipal Mayor
Taguig, Metro Manila
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Taguig, Metro Manila
61. The Municipal Mayor
Pateros, Metro Manila
62. LGU Legislative Body
Pateros, Metro Manila
63. The Municipal Mayor
General Aguinaldo, Cavite
64. LGU Legislative Body
General Aguinaldo, Cavite
65. The Municipal Mayor
Magallanes, Cavite
66. LGU Legislative Body
Magallanes, Cavite
67. The Municipal Mayor
Amadeo, Cavite
68. LGU Legislative Body
Amadeo, Cavite
69. The Municipal Mayor

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- Indang, Cavite
70. LGU Legislative Body
Indang, Cavite
 71. The Municipal Mayor
Mendez, Cavite
 72. LGU Legislative Body
Mendez, Cavite
 73. The Municipal Mayor
Alfonso, Cavite
 74. LGU Legislative Body
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 75. The Municipal Mayor
Imus, Cavite
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 77. The Municipal Mayor
Kawit, Cavite
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 79. The Municipal Mayor
Noveleta, Cavite
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 81. The Municipal Mayor
Bacoor, Cavite
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 83. The Municipal Mayor
Maragondon, Cavite
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 85. The Municipal Mayor
Ternate, Cavite
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 87. The Municipal Mayor
Gen. Trias, Cavite
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Naic, Cavite
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Rosario, Cavite
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 93. The Municipal Mayor
Tanza, Cavite
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 95. The Municipal Mayor
Dasmariñas, Cavite
 96. LGU Legislative Body
Dasmariñas, Cavite

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97. The Municipal Mayor
Gen. Mariano Alvarez, Cavite
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Gen. Mariano Alvarez, Cavite
99. The Municipal Mayor
Silang, Cavite
100. LGU Legislative Body
Silang, Cavite
101. The Municipal Mayor
Carmona, Cavite
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103. The Municipal Mayor
Cainta, Rizal
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105. The Municipal Mayor
Taytay, Rizal
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107. The Municipal Mayor
Teresa, Rizal
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Jala-jala, Rizal
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111. The Municipal Mayor
Cardona, Rizal
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Baras, Rizal
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Angono, Rizal
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Morong, Rizal
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123. The Municipal Mayor
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Meycauayan, Bulacan
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Obando, Bulacan
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Angat, Bulacan
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141. The Municipal Mayor
Doña Remedios Trinidad, Bulacan
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Plaridel, Bulacan
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Malolos, Bulacan
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Calumpit, Bulacan
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Pulilan, Bulacan
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Guiguinto, Bulacan
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Pandi, Bulacan
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San Rafael, Bulacan
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San Ildefonso, Bulacan
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San Ildefonso, Bulacan
175. The Municipal Mayor
Victoria, Laguna
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177. The Municipal Mayor
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Pila, Laguna
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Sta. Cruz, Laguna
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Liliw, Laguna
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San Pedro, Laguna
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San Pedro, Laguna
191. The Municipal Mayor
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192. LGU Legislative Body
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194. LGU Legislative Body
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195. The Municipal Mayor
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197. The Municipal Mayor
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198. LGU Legislative Body
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199. The Municipal Mayor
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200. LGU Legislative Body
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201. The Municipal Mayor
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202. LGU Legislative Body
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203. The Municipal Mayor
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204. LGU Legislative Body
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205. The Municipal Mayor
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206. LGU Legislative Body
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207. The Municipal Mayor
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211. The Municipal Mayor
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212. LGU Legislative Body
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213. The Municipal Mayor
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214. LGU Legislative Body
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215. The Municipal Mayor
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219. The Municipal Mayor
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221. The Municipal Mayor
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223. The Municipal Mayor
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224. LGU Legislative Body
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225. The Municipal Mayor
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227. The Municipal Mayor
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230. LGU Legislative Body
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232. LGU Legislative Body
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234. LGU Legislative Body
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235. Office of the Governor

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246. LGU Legislative Body
Province of Quezon
247. Office of the Governor
Province of Bulacan
248. LGU Legislative Body
Province of Bulacan
252. Investigation and Enforcement Division
Energy Regulatory Commission
17th Floor, Pacific Center, San Miguel Avenue
Pasig City