

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



**IN THE MATTER OF THE
APPLICATION FOR THE
APPROVAL OF
ADJUSTMENT IN RATES
PURSUANT TO THE TARIFF
GLIDE PATH RULES, WITH
PRAYER FOR PROVISIONAL
AUTHORITY**

ERC CASE NO. 2018-071 RC

**LEYTE III ELECTRIC
COOPERATIVE, INC.
(LEYECO III),
Applicant.**

Promulgated:
FEB 21 2019

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ORDER

On 05 July 2018, Leyte III Electric Cooperative, Inc. (LEYECO III) filed an *Application* dated 21 June 2018, seeking the approval of an adjustment in rates based on the Tariff Glide Path (TGP) Rules, with prayer for provisional authority.

The pertinent portions of the said *Application* are hereunder quoted as follows:

1. It is a non-stock, non-profit electric cooperative duly organized and existing under and by virtue of Presidential Decree 269, as amended, with capacity to sue and be sued, with principal office at Brgy. San Roque, Tunga, Leyte, where it may be served with summons and other legal processes, represented in this instance by its General Manager, ALLAN L. LANIBA, who was authorized to represent and file this application per Board Resolution **nos. 2018-05-064 dated May 11, 2018**. Likewise, its counsel, was authorized to appear on its behalf through **Board Resolution no. 2018-05-067**.
2. It is a holder of exclusive franchise issued by National Electrification Administration (NEA) to operate an electric light and power distribution service in the north-eastern part of Leyte covering nine (9) municipalities, namely: Capoocan, Carigara, Barugo, San Miguel, Tunga, Alangalang, Jaro, Santa Fe and Pastrana;

II. THE ANTECEDENT FACTS

3. In 2009, the Commission promulgated the Rules for Setting the Electric Cooperatives' Wheeling Rates (RSEC-WR);
4. The RSEC-WR envisioned a regulatory framework whereby an Initial Tariff and a Tariff Glide Path shall be developed for each Electric Cooperative (EC) Group for a Regulatory Period;
5. Pursuant to the RSEC-WR, in 2009, it filed with the Commission an application for approval of proposed adjustment in its rates, docketed as ERC Case No. 2009-108RC;
6. In the said application, the Commission granted the cooperative provisional authority to implement the proposed rates in three-year tranches, with the following rate caps or initial tariffs on the Distribution, Supply and Metering (DSM) Charges being implemented starting at the end of the transition period, *to wit*:

CHARGES	UNITS	CUSTOMER TYPE	
		Residential	Low Voltage
Distribution Charges:			
Demand Charge	PhP/kW		
Distribution System Charge	PhP/kWh	1.0557	1.1577
Supply Charges:			
Retail Customer Charge	PhP/Customer/ Mo		42.82
Supply System Charge	PhP/kWh	1.0282	
Metering Charges:			
Retail Customer Charge	PhP/Meter/Mo	5.0000	29.12
Metering System Charge	PhP/kWh	0.5792	

7. It is provided under Article 7 of the RSEC-WR that during the regulatory period, the rate of the ECs per group shall be adjusted using the following formula, *to wit*:

$$\text{Tariff} \times (1 + \text{index "I"} - \text{Efficiency Factor "X"} + \text{Performance Incentive "S"})$$

The Index "I", shall be an escalation factor to be used in adjusting the rates to reflect the combined impact of inflation and load factor. There shall be an efficiency factor "X" to account for the operational efficiency of the ECs in setting their rates. There shall be a performance incentive "S" which shall reward or penalize the EC for above or below standard performance, respectively.

The TGP is intended as a cap and the EC may move up to the cap, if it is a positive adjustment. If the cap is lower than the current average tariff, a reduction may be implemented.

8. On 02 May 2011, the Commission promulgated the Tariff Glide Path (TGP) Rules pursuant to Article 7 of the RSEC-WR. And under this rule ECs have to adjust their rates once every three (3) years. The rate adjustments may occur at the start of the fourth year of the first Regulatory Period and every three years;
9. Indeed, it had complied its periodic adjustment in rates pursuant to TGP Rules, when it filed its **previous application docketed as ERC CASE No. 2015-164 RC on 15 September 2015**, with the proposed DSM Rate adjustment, *to wit*:

A.)WITH PERFORMANCE INCENTIVE “S”

	UNITS	CUSTOMER TYPE	
		Residential	Low Voltage
Distribution Charges:			
Demand Charge	PhP/kW		
Distribution System Charge	PhP/kWh	1.3716	1.5041
Supply Charges:			
Retail Customer Charge	PhP/Customer/Mo		55.63
Supply System Charge	PhP/kWh	1.3358	
Metering Charges:			
Retail Customer Charge	PhP/Meter/Mo.	6.50	37.83
Metering System Charge	PhP/kWh	0.7525	

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B.) EXCLUDING PERFORMANCE INCENTIVE “S”

	UNITS	CUSTOMER TYPE	
		Residential	Low Voltage
Distribution Charges:			
Demand Charge	PhP/kW		
Distribution System Charge	PhP/kWh	1.3504	1.4809
Supply Charges:			
Retail Customer Charge	PhP/Customer/Mo		54.78
Supply System Charge	PhP/kWh	1.3153	
Metering Charges:			
Retail Customer Charge	PhP/Meter/Mo.	6.40	37.25
Metering System Charge	PhP/kWh	0.7409	

- A. Thereafter, hearings had been conducted in which LEYECO III presented all its witnesses and documentary evidence. Subsequently, after compliance of all submissions required by the Commission, it had rested its case and filed its *Formal Offer of Documentary Exhibits* on 19 May 2017. However, until this date, it is still awaiting for the final resolution of the said previous Application docketed as ERC CASE No. 2015-164;

III.LEGAL BASES FOR THE APPLICATION

A. The Tariff Glide Path Rules

11. The TGP Rules which were promulgated by the Commission 02 May 2011, is a rate adjustment mechanism which provides an opportunity for the ECs to adjust their rates once every three (3) years. The rate adjustments may occur at the start of the fourth year of the First Regulatory Period and every three years thereafter;
12. Under the TGP, the regulatory period is six (6) years for each entrant group. For the Third Entrant Group, the first regulatory period is from 01 January 2013 to 31 December 2018. LEYECO III belongs to the Third Entrant Group;
13. Further under the TGP Rules, the concerned EC shall use the following formula in determining the TGP for the first to third years of the Regulatory Period, *to wit*:

$$TGP_A = TGP_n + TGP_{n+1} TGP_{n+2} \text{ where}$$

$$TGP_n = I_n - X_n + S_n$$

N= the first year of their Regulatory Period and succeeding Regulatory Periods

Except that for the first two years of the First Regulatory Period, "X" will be equal to zero and thereafter shall not be less than zero. The TGP calculated for each of the three years will be summed to determine the possible rate adjustment the starting on the Fourth Year of the current Regulatory Period

B. The RSEC-WR

14. Under Article 3.1 of the RSEC-WR, for electric cooperatives belonging to Group A to which it belongs, the Initial DSM Tariffs for Higher Voltage Customers are as follows, *to wit*:

Particulars	Units	Distribution	Supply	Metering
Higher Voltage	PhP/kW PhP/cust/mo.	302.51	42.82	29.12

15. As noted in Paragraph 6 above however, the rates granted to it do not include rates for Higher Voltage Customers;
16. The reason for the non-inclusion was that, at the time of filing said application, it did not have any existing customers which could be classified as Higher Voltage Customers, and the cooperative was not expecting to have in the near future, any customers which would fall within the category of Higher Voltage hence, the exclusion in said application for approval of rates for higher voltage customers;

IV. NEWLY PROPOSED RATE ADJUSTMENT

17. Pending approval of previously applied DSM rates under ERC CASE No. 2015-164, it is again proposing newly adjusted DSM Rates for the next 3-year tranches following the Tariff Glide Path Rule, *to wit*:

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A.) WITH PERFORMANCE INCENTIVE “S”

	UNITS	CUSTOMER TYPE	
		Residential	Low Voltage
Distribution Charges:			
Demand Charge	PhP/kW		
Distribution System Charge	PhP/kWh	1.2180	1.3356
Supply Charges:			
Retail Customer Charge	PhP/Customer/Mo		49.40
Supply System Charge	PhP/kWh	1.1862	
Metering Charges:			
Retail Customer Charge	PhP/Meter/Mo.	5.77	33.60
Metering System Charge	PhP/kWh	0.6682	

B.) EXCLUDING PERFORMANCE INCENTIVE “S”

	UNITS	CUSTOMER TYPE	
		Residential	Low Voltage
Distribution Charges:			
Demand Charge	PhP/kW		
Distribution System Charge	PhP/kWh	1.1384	1.2484
Supply Charges:			
Retail Customer Charge	PhP/Customer/Mo		46.18
Supply System Charge	PhP/kWh	1.1088	
Metering Charges:			
Retail Customer Charge	PhP/Meter/Mo.	5.39	31.40
Metering System Charge	PhP/kWh	0.6246	

18. Juxtaposed with the pending approval of DSM rates proposed under ERC CASE No. 2015-164, LEYECO III is likewise praying for the approval of the above calculated newly proposed DSM rates;

V. MOTION FOR THE ISSUANCE OF PROVISIONAL AUTHORITY

19. All the forgoing allegations are repleaded by reference in support of the instant Motion for the issuance of provisional authority;

20. Applicant's current DSM rates for Residential and Lower Voltage Customers as granted by the Commission based on the RSEC-WR, were implemented by the cooperative in three (3) yearly tranches, which started way back in January 2010;
21. Over the years, the cost of its operations has significantly increased, not only as a logical effect of inflation as well as certain governmental requirements, but likewise due to the inevitable expansion of its distribution network brought about by the extension of its services to remote areas. More significantly, the cooperative has been implementing the Sitio Energization Program (SEP) of the Aquino government, such that the massive expansion of its distribution lines up to the remotest areas has considerably increased its operational and maintenance costs, not to mention the increased system loss which the cooperative is likely to absorb. All these costs were not duly provided for in its current rates and the general funds being generated from its DSM revenues as granted under the RSEC-WR are no longer sufficient to cover these inevitable costs;
22. Thus, it urgently needs additional funds to be able to cope with the rising costs of its operations;
23. Further, based on the provisions of the TGP Rules, for cooperatives belonging to the Third Entrant Group, their initial tariff shall be adjusted at the start of the fourth regulatory year of the First Regulatory Period, which is 01 January 2019;
24. Considering the foregoing, it respectfully prays that while the instant application is pending, it be granted a provisional authority to implement the proposed rates effective 01 January 2019. In support to the prayer for Provisional Authority, the Judicial Affidavit of its Finance Department Manager is attached and made integral part of this application.

VI. COMPLIANCE WITH PRE-FILING REQUIREMENTS

25. Finally, it has duly complied with the pre-filing requirements as required in Section 2, Rule 6, of ERC Rules of Practice and Procedure, by furnishing copies of the application together with its supporting annexes to the Sangguniang Bayan of Municipality of Tunga, Leyte where its principal office is located and in the Sangguniang Panlalawigan of the Province of Leyte where its franchise area is located. It likewise published the Application in its entirety in a newspaper of general circulation in the Province of Leyte, where it is operating. Proofs of pre-filing compliance were likewise attached to the Application.

PRAYER

26. It prays to the Commission that pending evaluation of the instant application or after due notice and hearing, as the case may be, it be allowed to implement, effective 01 January 2019, either of the two (2) alternative proposed new rates for DSM Charges for Residential, Low Voltage Customers, *to wit*:

A.) WITH PERFORMANCE INCENTIVE “S”

	UNITS	CUSTOMER TYPE	
		Residential	Low Voltage
Distribution Charges:			
Demand Charge	PhP/kW		
Distribution System Charge	PhP/kWh	1.2180	1.3356
Supply Charges:			
Retail Customer Charge	PhP/Customer/Mo		49.40
Supply System Charge	PhP/kWh	1.1862	
Metering Charges:			
Retail Customer Charge	PhP/Meter/Mo.	5.77	33.60
Metering System Charge	PhP/kWh	0.6682	

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B.) EXCLUDING PERFORMANCE INCENTIVE “S”

	UNITS	CUSTOMER TYPE	
		Residential	Low Voltage
Distribution Charges:			
Demand Charge	PhP/kW		
Distribution System Charge	PhP/kWh	1.1384	1.2484
Supply Charges:			
Retail Customer Charge	PhP/Customer/Mo		46.18
Supply System Charge	PhP/kWh	1.1088	
Metering Charges:			
Retail Customer Charge	PhP/Meter/Mo.	5.39	31.40
Metering System Charge	PhP/kWh	0.6246	

Finding the said *Application* to be sufficient in form and in substance, with the required fees having been paid, the Commission issued an *Order* and a corresponding *Notice of Public Hearing* dated 01 August 2018 setting the same for jurisdictional hearing, expository presentation, pre-trial conference, and evidentiary hearing on 24 October 2018.

During the hearing held on 24 October 2018, the Clerk of the Commission manifested that upon perusal of the documents submitted, Applicant LEYECO III was not able to comply with the publication requirement, an indispensable requisite pursuant to the Commission’s *Order* dated 01 August 2018.

Accordingly, the Commission sets anew the instant *Application* for determination of compliance with the jurisdictional requirements, expository presentation, pre-trial conference, and presentation of evidence on **04 April 2019 (Thursday) at nine o’clock in the morning (9:00 A.M.), at LEYECO III’s Principal Office at Brgy. San Roque, Tunga, Leyte.**

Accordingly, LEYECO III is hereby directed to:

- 1) Cause the publication of the attached Notice of Public Hearing in two (2) newspapers of nationwide circulation in the Philippines at its own expense, twice (2x) within two (2) successive weeks, the dates of publication not being less than seven (7) days apart, and the date of the last publication to be made not later than 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 Governor, the 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 the consumers within the affected franchise area of the filing of the *Application*, its reasons therefor, and of the scheduled hearing thereon, 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 its attachments all those making requests therefor, subject to reimbursement of reasonable photocopying costs.

On the date of the initial hearing, LEYECO III 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 affidavits of the Editors or Business Managers of the newspapers where the said Notice of Public Hearing were published, and the complete issues 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 Governor, Mayors, LGU legislative body, or their duly authorized representatives, bearing the seals of their offices;
- 3) The evidence of other means employed by LEYECO III to inform the consumers within the affected franchise area of the filing of the *Application*, its reasons therefor, and of the scheduled hearing thereon;
- 4) The evidence of receipt of copies of this Order and the attached Notice of Public Hearing by the OSG, COA, and the Committees on Energy of both Houses of Congress;
- 5) The evidence of receipt of copies of the *Application* and its attachments by all those making requests therefor, if any; and
- 6) Such other proof of compliance with the requirements of the Commission.

LEYECO III and all interested parties are also required to submit, at least five (5) days before the date of the 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 therefor; 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 LEYECO III 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.

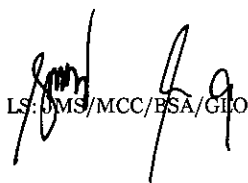
LEYECO III must also be prepared to make an expository presentation of the instant *Application*, aided by whatever communication medium that it may deem appropriate for the purpose, in order to put in plain words and explain, for the benefit of the consumers and other concerned parties, the nature of the Application with relevant information and pertinent details substantiating the reasons and justifications being cited in support thereof.

SO ORDERED.

Pasig City, 12 February 2019.

FOR AND BY AUTHORITY
OF THE COMMISSION:


JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Oversight Commissioner for Legal Services


LS: DMS/MCC/BSA/GLO

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Copy Furnished:

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7. Office of the Provincial Governor
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8. Office of the Sangguniang Panlalawigan
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10. Office of the Sangguniang Bayan
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