

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 CITY OF TALISAY,
PROVINCE OF CEBU**

**ERC CASE NO. 2015-197 RC
(Redocketed as ERC CASE
No. 2015-043 CF)**

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

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

NOTICE OF PUBLIC HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 09 November 2015, Visayan Electric Company, Inc. (VECO) filed with the Commission an Application for Authority to Recover Local Franchise Taxes in the City of Talisay, 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, June 7, 2011, the Sangguniang Panglungsod of Talisay enacted City Ordinance No. 2011-14 (the "Ordinance"). The Ordinance raised the rate of the Local Franchise Tax in the City of Talisay, effective from year 2012, to fifty-seven percent of one percent (57% of 1%) or (.570%) of gross receipts and sales derived from the operation of the business during the preceding calendar year. Section 30 of the Ordinance reads, thus:

Section 30. Imposition of Tax – Any provisions of special laws or grant of exemption to the contrary notwithstanding, any person, corporation, partnership or association, enjoying a franchise whether issued by the national government or local government and doing business in Talisay City, shall pay a franchise tax at the rate of 57% of 1% of gross receipts and sales derived from the operation of the business in Talisay City during the preceding calendar year.

Copies of the City Ordinance No. 2011-14, otherwise known as the Revised Revenue Code 2011 and the Certification dated February 27, 2014 issued by the Office of the City Mayor of Talisay attesting to the rate of franchise tax imposed by the City Government of Talisay starting 2012 are attached, respectively, as Annexes "A" to "A-1" and "B" hereof.

3. Before City Ordinance No. 2011-14 took effect in the year 2012, VECO has been paying and remitting local franchise taxes to the City of Talisay 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%.

ERC CASE NO. 2015-197 RC
(Redocketed as ERC CASE NO. 2015-043 CF)
Notice of Public Hearing/31 May 2016
Page 3 of 9

4. From the time that the Ordinance became effective in 2012 up until 2014, VECO has paid and remitted franchise taxes at the increased rate of 55% of 1% on the gross receipts. In compliance with ERC Case Nos. 2001-891 and 2002-06 however, it has been recovering only the local franchise tax payments at the previous rate of 0.500 %.
5. VECO has paid local franchise tax in the amount of PhP19, 052,408.96 to the City of Talisay from 2011 to 2014. In turn, it has only recovered PhP16, 712,639 in the same period. There is thus a differential of PhP2, 339,770.00 that has not yet been recovered by VECO.

Copies of the official receipts issued by the City of Talisay for payments in the period covered are attached as Annexes "C" to "C-25" 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 City of Talisay, through automatic recovery scheme, the total amount of PhP2, 339,769.52, representing the difference between the amount of local franchise tax that VECO has paid to the City of Talisay and the amount of local franchise tax collected/recovered from its end-users from 2011 to 2014, over a period of twenty four months, or at the estimated rate of PhP 0.0090/kWh, implement the franchise fee rate of 57% of 1% of gross receipts and sales on its customer's bills in the City of Talisay as computed in the Revised Revenue Code of 2011 of Talisay and to recover payments made in furtherance thereof following 31 December 2014; and
 - (ii) authorize VECO to implement the collection/recovery of the local franchise tax from its customers residing in the City of

Talisay, at the rate of 57% of 1% of the gross receipts and sales, pursuant to the Revised Revenue Code of 2011 of Talisay, 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 City of Talisay 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.***”

xxx

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.”

xxx

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 City of Talisay 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 City of Talisay, at the rate of 57% of 1% on gross receipts and sales, pursuant to the Revised Revenue Code of Talisay, beginning on 1 January 2015, and at such rate as may thereafter be imposed under 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 Talisay City.
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 City of Talisay, through automatic recovery scheme, the total amount of PhP2,339,769.52, 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 2011 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 City of Talisay, at the rate of 57% of 1% of the gross receipts and sales, pursuant to the Revised Revenue Code of 2011 of Talisay, beginning on 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.

The Commission has set the Application for initial hearing, expository presentation, pre-trial conference and evidentiary hearing on **19 July 2016 (Tuesday) at ten o'clock in the morning (10:00 A.M.) at the ERC Hearing Room, 15th Floor, Pacific Center Building, San Miguel Avenue, Pasig City.**

All persons who have an interest in the subject matter of the proceeding may become a party by filing, at least five (5) days prior to the initial hearing and subject to the requirements in the ERC's Rules of Practice and Procedure, a verified petition with the Commission giving the docket number and title of the proceeding and stating: (1) the petitioner's name and address; (2) the nature of petitioner's interest in the subject matter of the proceeding, and the way and manner in which such interest is affected by the issues involved in the proceeding; and (3) a statement of the relief desired.

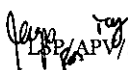
All other persons who may want their views known to the Commission with respect to the subject matter of the proceeding may file their opposition to the Application or comment thereon at any stage of the proceeding before the applicant concludes the presentation of its evidence. No particular form of opposition or comment is required, but the document, letter or writing should contain the name and address of such person and a concise statement of the opposition or comment and the grounds relied upon.

ERC CASE NO. 2015-197 RC
(Redocketed as ERC CASE NO. 2015-043 CF)
Notice of Public Hearing/31 May 2016
Page 8 of 9

All such persons who wish to have a copy of the Application may request from the applicant that they be furnished with the same, prior to the date of the initial hearing. The applicant is hereby directed to furnish all those making such request with copies of the Application and its attachments, subject to the reimbursement of reasonable photocopying costs. Any such person may likewise examine the Application and other pertinent records filed with the Commission during the standard office hours.

WITNESS, the Honorable Chairman, **JOSE VICENTE B. SALAZAR**, and the Honorable Commissioners, **ALFREDO J. NON**, **GLORIA VICTORIA C. YAP-TARUC**, **JOSEFINA PATRICIA A. MAGPALE-ASIRIT**, and **GERONIMO D. STA. ANA**, Energy Regulatory Commission, this 31st day of May, 2016 at Pasig City.


ATTY. NATHAN J. MARASIGAN
Chief of Staff
Office of the Chairman and CEO

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Copy Furnished:

- 1. Garcia Quijano and Associates**
Counsel for Applicant VECO
Suite No. 703, 7th Floor, AppleOne Equicom Tower,
Mindanao Ave., Cor. Biliran Road, Cebu Business Park, Cebu City
- 2. Visayan Electric Company, Inc. (VECO)**
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

ERC CASE NO. 2015-197 RC
(Redocketed as ERC CASE NO. 2015-043 CF)
Notice of Public Hearing/31 May 2016
Page 9 of 9

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