A RESOLUTION MODIFYING THE TERMS MEMBERS’ CONTRIBUTION FOR CAPITAL EXPENDITURES (MCC) TO REINVESTMENT FUND FOR SUSTAINABLE CAPITAL EXPENDITURES (RFSC) AND MCC — REAL PROPERTY TA...

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WHEREAS, on September 23, 2009, the Energy Regulatory Commission (ERC) issued Resolution No. 20, Series of 2009, entitled "A Resolution Adopting the Rules for Setting the Electric Cooperatives' Wheeling Rates (RSEC-WR)";

WHEREAS, Article 5 of the RSEC-WR introduced the fund called Members' Contribution for Capital Expenditure (MCC) which is envisioned to fund the amortization or debt service of the Electric Cooperatives' (ECs) indebtedness associated with the expansion, rehabilitation or upgrading of their existing electric power system in accordance with their ERC-approved Capital Expenditure (CAPEX) Plan;

WHEREAS, the utilization of the MCC fund shall be subject to the following conditions:

- It shall be used solely for CAPEX or any other projects approved by the ERC and not for any other purpose, even on a temporary basis;

- The amounts collected for MCC fund shall be recognized as contribution from member-consumers;

- The amounts collected for MCC, including interest income, shall be put in a separate account; and

- If the member-consumer terminates his contract with the EC, the said contribution shall not be withdrawn instead the same shall be treated as Contribution in Aid of Construction (CIAC).

In the case of ECs registered under the Cooperative Development Authority (CDA), the said member-contribution shall be converted into members' share capital.

In the event that the MCC rate caps are insufficient for its purpose, the EC may collect such additional MCC by securing the consent of its member-consumers for such col-lection through existing legal procedures; Provided that, the expenditure was approved by the ERC as part of the EC's CAPEX Plan; Provided further that, the additional MCC is obtained prior to the incurrence of the indebtedness; Provided finally that, the collection of said additional MCC shall be subject to the principles of fairness and equity in accordance with the objective of Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001 (EPlRA)"for the elimination of cross-subsidy;

WHEREAS, on May 26, 2011 and May 30, 2011, the ERC received letters from Mr. Jorge Matanguihan, Jr. of the Electric Consumers Advocacy of the Philippines (ECAP) apprising the ERC regarding House Resolution No. 994, introduced by Hon. Jose R. Pin-Ay and Hon. Cresente C. Paez of the Coop-NATCCO Party List, entitled "Resolution Directing the Committee on Cooperatives to Conduct a Congressional Inquiry, in Aid of Legislation, Into the Legality and Appropriateness of Non-Stock Electric Cooperatives Collecting Capital Contributions from Member-Consumers." Thus, it was proposed that the term MCC be replaced with "Provision for Sustainability" or "Sustainability Provision" since it is being interpreted as a capital build-up or compulsory "capital contributions"from member-consumers;

WHEREAS, on July 4, 2011, the Hon. Michael Angelo C. Rivera of 1-Care Party List sought clarification from the ERC on the diverging interpretations of the MCC in the case of non-stock (NEA-registered) and stock (CDA-registered) ECs which stemmed from the specific treatment accorded to it in the ECs' books of accounts;

WHEREAS, the tariff structure prior to the implementation of the RSEC-WR is equivalent to the Distribution, Supply and Metering (DSM) Charges which consist of Operations and Maintenance Expenses (OPEX), Payroll and Other Revenue Item (ORI), CAPEX (or Reinvestment Fund) and Debt Service;

WHEREAS, in the new tariff structure under the RSEC-WR, the OPEX, Payroll and ORI are translated into DSM Charges while the Reinvestment Fund and Debt Service are translated into MCC;

WHEREAS, the MCC is not a new imposition on the electricity consumers of the ECs since before the formulation of the said MCC Charge, the rates of all the ECs already include a Reinvestment Fund provision calculated at five percent (5%) of their unbundled retail rates, inclusive of Generation, Transmission and Distribution Charges;

WHEREAS, the intent of the RSEC-WR in translating Reinvestment Fund into MCC is to recognize the fact that said MCC Charge indeed represents contributions from the member-consumers for the expansion, rehabilitation and upgrading of the ECs' distribution system which should be reflected in their bills for greater transparency;

WHEREAS, Article 4.6 of the RSEC-WR states that provisions for the payment of current Real Property Tax (RPT) may be sourced from additional contribution from member-consumers until the tax payments shall have been fully recovered while the RPT tax arrears that were paid by the ECs shall be allowed to be recovered only after securing the consent of the concerned EC's member-consumers through existing legal procedures and only until the tax payments shall have been fully recovered;

WHEREAS, the ERC deems it appropriate to modify the nomenclature of MCC under Article 5 of the RSEC-WR and MCC-RPT under Article 4.6 of the RSEC-WR to Reinvestment Fund for Sustainable CAPEX (RFSC) and Provision for RPT, respectively, but the nature and purpose remain the same;

NOW, THEREFORE, be it RESOLVED, as the ERC hereby RESOLVES to AMEND (he nomenclature of "Members' Contribution for Capital Expenditures (MCC)" and the "MCC -Real Property Tax (RPT)" to "Reinvestment Fund for Sustainable Capital Expenditures (RFSC)" and "Provision for RPT", respectively, but the nature and purpose of the same remain, to wit;

The MCC is envisioned to fund the amortization or debt service of the ECs' indebtedness associated with the expansion, rehabilitation or upgrading of their existing electric power system in accordance with their ERC-approved CAPEX Plan. The utilization of the MCC fund shall be subject to the following conditions:

- It shall be used solely for CAPEX or any other projects approved by the ERC and not for any other purpose, even on a temporary basis;

- The amounts collected for MCC fund shall be recognized as contribution from member-consumers;

- The amounts collected for MCC, including interest income, shall be put in a separate account; and

- If the member-consumer terminates his contract with the EC, the said contribution shall not be withdrawn instead the same shall be treated as CIAC.

In the ease of ECs registered under the CDA, the said member-contribution shall be converted into members' share capital,

In the event that the MCC rate caps are insufficient for its purpose, the EC may collect such additional MCC

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> by securing the consent of its member-consumers for such collection through existing legal procedures; Provided that, the expenditure was approved by the ERC as part of the EC's CAPEX Plan; Provided further that, the additional MCC obtained prior to the incurrence of the indebtedness: Provided finally that the collection of said additional MCC shall be subject to the principles of fairness and equity in accordance with the objective of the EPIRA for the elimination of cross-subsidy.

The provisions for the payment of current RPT may be sourced from additional contribution from member-consumers until the tax payments shall have been fully recovered while the RPT tax arrears that were paid by the ECs shall be allowed to be recovered only after securing the consent of the concerned EC's member-consumers through existing legal procedures and only until the tax payments shall have been fully recovered.

The provisions of the RSEC-WR making reference to MCC and MCC-RPT are likewise amended accordingly.

This Resolution shall take effect after fifteen (15) days following the completion of its publication in a newspaper of general circulation in the Philippines.

Let copies of this Resolution be furnished the University of the Philippines Law Center-Office of the National Administrative Register (UPLC-ONAR), Philippine Rural Electric Cooperatives Association, Inc. (PHILRECA) and all on-grid electric cooperatives (ECs).

Adopted: 06 July 2011

(SGD.) ZENAIDA G. CRUZ-DUCUT

Chairperson

(SGD.) RAUF A. TAN

(SGD.) ALEJANDRO Z. BARIN

Commissioner

Commissioner

(SGD.) MARIATERESA A.R. CASTANEDA (on leave)

(SGD.) JOSE C. REYES

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