NATIONAL ADMINISTRATIVE REGISTER · JANUARY 11, 2006

GUIDELINES PRESCRIBING THE TAX RECOVERY ADJUSTMENT MECHANISM IN THE RATES OF ELECTRIC COOPERATIVES (ECS)

ERC RESOLUTION NO. 02, S. 2006, January 11, 2006

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WHEREAS, Section 43 (f) of Republic Act No. 9136 (The Electric Power Industry and Reform Act of 2001 or the EPIRA) provides that the rates must be such as to allow the recovery of just and reasonable costs to enable the distribution utilities to operate viably;

WHEREAS, on October 24, 2005 the Commission conducted a public consultation for the adoption and promulgation of a set of guidelines prescribing the Tax Recovery Adjustment Mechanism that includes a Tax Recovery Adjustment Charge (TRAC) formula in the rates of Electric Cooperatives (ECs) for the recovery of taxes imposed by the local government unit;

WHEREAS, the TRAC seeks to ensure: (1) transparent and reasonable prices of electric power service in a regime of a free and fair competition and to achieve greater operational and economic efficiency; (2) full recovery of all just and reasonable costs to enable the ECs to operate viably; and (3) maintain the quality, reliability, security and affordability of the supply of electric power.

NOW THEREFORE, the Commission, after thorough and due deliberation, RE- SOLVED as it hereby RESOLVES, to APPROVE and ADOPT, as it hereby APPROVES and ADOPTS, the set of guidelines prescribing the Tax Recovery Adjustment Mechanism that includes a Tax Recovery Adjustment Charge (TRAC) formula into the rates of Electric Cooperatives (ECs) for the recovery of taxes imposed by a local government unit hereby attached as “ANNEX A” and made an integral part of this Resolution.

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

Adopted: 11 Jan. 2006

(SGD.) RODOLFO B. ALBANO, JR.

Chairman

(SGD.) OLIVER B. BUTALID

(SGD.) JESUS N. ALCORDO

Commissioner

Commissioner

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(SGD.) RAUF A. TAN

(SGD.) ALEJANDRO Z. BARIN

Commissioner

Commissioner

ANNEX "A"

GUIDELINES PRESCRIBING THE TAX RECOVERY ADJUSTMENT
MECHANISM IN THE RATES OF ELECTRIC COOPERATIVES (ECs)

ERC CASE NO. 2005-18 RM

Pursuant to Section 43 (f) of Republic Act No. 9136, Otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA), the Energy Regulatory Commission (ERC) hereby adopts and promulgates these guidelines prescribing the tax recovery adjustment mechanism in the rates of Electric Cooperatives (ECs) for the taxes imposed by the local government units.

ARTICLE I
GENERAL PROVISIONS

1.1 Objectives

1.1.1 To ensure transparent and reasonable prices of electric power service in a regime of free and fair competition and to achieve greater operational and economic efficiency;

1.1.2. To ensure full recovery of all just and reasonable costs to enable the ECs to operate viably;

1.1.3 To ensure and maintain the quality, reliability, security and affordability of the supply of electric power.

1.2 Scope

These Guidelines shall apply to all Electric Cooperatives (ECs) registered under Presidential Decree 269 where local franchise and business taxes are levied within their franchise area.

1.3 Definition of Terms

Act Republic Act No. 9136, otherwise known as the

"Electric Power Industry Reform Act of 2001";

Energy Regulatory The regulatory agency created under Section 38 of the Act;

Commission or ERC

Electric Cooperatives or ECs Distribution utilities organized and incorporated pursuant to

Presidential Decree No. 269, as amended by Presidential Decree

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No. 1645 and Republic Act No. 6938, otherwise known as the Cooperative Code of the Philippines;

Gross Receipts The total amount paid for the distribution charges.

For purposes of these guidelines, gross receipt shall refer to the total amount representing the distribution charges from the time the unbundled rates were approved. Otherwise, gross receipt shall refer to the total customer's bill excluding receipts from NPC/ TransCO and universal charges.

Distribution Charges Distribution, supply, metering and other charges/adjustments, i.e. subsidy on lifeline charge, lifeline subsidy discount and inter class cross subsidy charge;

Local Franchise Tax Rate Franchise tax rate imposed by the province and cities on businesses enjoying a franchise pursuant to Sections 137 and 151 of Republic Act No. 7160, otherwise known as the Local Government Code of 1991;

Business Tax Rate Business tax rate imposed by the cities and municipalities pursuant to Sections 143 and 151 of Republic Act No. 7160

ARTICLE II
CALCULATION OF THE TAX RECOVERY ADJUSTMENT MECHANISM

2.1 Adjustment Formulae

Electric Cooperatives (ECs) shall calculate the Franchise Tax and Business Tax Recovery Adjustment Charge based on the following formula:

2.1.1 Franchise Tax and Business Tax Formula

FT = DC of the customer bill x (Ft + Bt)

Where:

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FT = Amount of taxes to be recovered in PhP
DC = Distribution Charges in customer bill in PhP
Ft = Local Franchise Tax Rate in % Bt = Business Tax Rate in %

2.1.1.1 The computation of local franchise tax and business tax shall be based on the total distribution charges of the customers' bill.

2.1.1.2 The franchise and business tax rates imposed by the LGUs on the electric cooperatives shall require the ERC's approval prior to the recovery of the tax from their customers. A formal request should be filed with the Commission together with the certified true copy of a valid tax ordinance and other relevant data for purposes of verification. Thereafter, the Commission shall issue an order authorizing the ECs to recover from their customers the tax rates. The same procedure shall be required in case a new rate for franchise and business taxes shall be imposed by the LGUs.

2.1.1.3 Within thirty (30) days from submission of the complete documents as required under Article IV (4.1), the Commission shall verify the accuracy and validity of the taxes imposed by the local government units for recovery from the consumers. Upon completion of the verification process, the Commission shall issue an order confirming the franchise and business tax rates to be levied to its customers.

2.1.1.4 Should the ERC fail to verify the franchise and business tax rates imposed by the LGUs on the electric cooperatives within the period prescribed in the preceding paragraph, the submitted franchise and business tax rates shall be deemed final and confirmed.

2.1.1.5 ECs shall calculate and recover from their customers the franchise tax and business tax from the effectivity of this guidelines.

2.1.1.6 The franchise and business tax arrearages paid prior to the implementation of this formula shall be recovered using the Tax Recovery Adjustment Charge (TRAC) formula prescribed in the succeeding Section.

2.1.2 Tax Recovery Adjustment Charge (TRAC) Formula

The Tax Recovery Adjustment Charge formula shall apply to franchise and business taxes paid prior to the implementation or effectivity of the franchise and business taxes formula under Article II (2.1.1) of these guidelines.

2.1.2.1 Within sixty (60) days from the effectivity of these guidelines, ECs shall calculate Tax Recovery Adjustment Charge based on the following formula:

TRAC = Lfta+ Bta
S

Where:

TRAC - Tax Recovery Adjustment Charge in PhP per kWh applied to the Customer's monthly billing until such time the total franchise and business taxes paid to the local government shall have been fully recovered.

Lfta - Local franchise tax arrearages (excluding penalty and surcharge) paid prior to the implementation of the

approved franchise tax formula.

Bta - Business Tax arrearages (excluding penalty and surcharges) paid prior to the implementation of the approved franchise tax formula.

S - Projected kWh sales for a particular proposed recovery period or as determined by ERC.

This calculation shall require prior verification of the Commission.

2.1.2.2 The ECs shall only be allowed to recover franchise and business tax arrearages paid and computed based on the TRAC formula: provided, that the payment of franchise and business tax arrearages are in accordance with a valid local tax ordinance; provided further, that in no case shall consumers be charged with taxes imposed prior to the effectivity of the contract of service with the electric cooperative.

2.1.2.3 The TRAC formula shall operate until such time the franchise and business tax arrearages have been fully recovered.

2.1.2.4 For purposes of these guidelines, the ECs shall only be allowed to recover franchise and business tax arrearages computed on the basis of distribution charges.

2.1.2.5 Within six (6) months from the submission of the complete documents as required under Article lV (4.2), the Commission shall verify the accuracy and validity of the taxes imposed by the local government units and paid by the ECs. Upon completion of the verification process , the Commission shall issue an Order establishing the amount per kilowatthour to be recovered by the ECs for taxes computed in accordance with Section 2.1.2.

2.1.2.6 Should the ERC fail to issue an Order within the period prescribed in the preceding Section, the Tax Recovery Adjustment charge (TRAC) as computed by the electric cooperatives shall be deemed final and confirmed.

ARTICLE III

3.1 Billing of Franchise and Business Taxes

3.1.1 The ECs shall bill their customers with the corresponding franchise and business tax charges from the effectivity of the Commission Order.

3.1.2 Franchise and Business taxes shall be reflected as a separate line item in the customer’s bill in the areas where said taxes are levied, to wit:

Amount

l. Generation Charge x x x

Power Act Reduction x x x

Transmission Charge x x x

System Loss x x x

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sub-total xxx

ll. Distribution Charge x x x

Supply Charge x x x

Metering Charge x x x

Distribution connection charge x x x

Final Loan Condonation x x x

sub-total x x x

lll. Other Charges/Adjustments: x x x

Lifeline subsidy/(Discount) x x x

Inter Class Cross Subsidy x x x

sub-total x x x

lV. Government Revenues: x x x

Local Franchise Tax (% of sub-total ll & lll) x x x

Business Tax (% of sub-total ll & lll) x x x

Tax Recovery Adjustment Charge x x x

Value Added Tax x x x

Universal Charges x x x

sub-total x x x

Total Bill x x x

ARTICLE IV
SUPPORTING DOCUMENTS

4.1. For Franchise and Business taxes imposed in accordance with Section 2.1.1, the EC shall provide the Commission with the following documents:

a. Certified true copy of the local tax ordinance;
b. Other relevant documents as may be required by the ERC.

Within fifteen (15) days upon receipt, the ERC shall issue Notice of Complete Submission (NCS) to inform ECs of their complete submission. Otherwise, ERC shall notify the ECs of the deficiency in their submissions.

4.2. For Franchise and Business taxes computed in accordance with Section 2.1.2, the EC shall submit to the Commission its proposed computations and the period of recovery together with the following documents:

a. Certified true copy of prior years Tax Assessment issued by the local government units;

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b. Certified true copies of Local Tax Ordinances;
c. Certified true copies of Official Receipts;
d. Projected kilowatt-hours sales for the particular proposed recovery period; and
e. Other relevant documents as may be required by the ERC.

Within fifteen (15) days upon receipt, the ERC shall issue Notice of Complete Submission (NCS) to inform ECs of their complete submission. Otherwise, ERC shall notify the ECs of the deficiency in their submissions.

ARTICLE V
REPORTORIAL REQUIREMENTS, VERIFICATION
AND CONFIRMATION PROCESS

5.1 Franchise Tax Formula

5.1.1 On or before the twenty-fifth day (25) day of the month, the ECs shall submit sample bills of its customers' class and summary of the tax imposition and collection for every locality within its franchise area relative to taxes computed in accordance with Article 2.1.1.

5.1.2 Any over/under recovery incurred by ECs as a result of the verification process shall be collected or refunded on the next billing cycle.

5.2 Tax Recovery Adjustment Charge (TRAC)

5.2.1 On or before the twenty-fifth day (25) day of the month, the ECs shall provide the ERC with all collections related to Article 2.1.2 for the prior month.

5.2.2 If the total TRAC collection resulted in an over recovery, the amount of over recovery will be subjected to carrying charge. The carrying charge shall be based on the 91-day T-bill rates plus 300 points that will be refunded to the consumers within the period prescribed by the Commission.

ARTICLE VI

6.1 FINES AND PENALTIES

Violation of any provision of these Guidelines shall be subject to the imposition of fines and penalties in accordance with the Guidelines to Govern the Imposition of Administrative Sanctions in the Form of Fines and Penalties Pursuant to Section 46 of Republic Act No. 9136 promulgated by the Commission on May 17, 2002.

ARTICLE VII

7.1 EXCEPTION

Where good cause appears, the ERC may allow an exception from any provisions of these Guidelines, if such exception is found to be in the public interest and is not contrary to any law, rules and regulations. Should there be any valid reason for an EC not to strictly comply with these Guidelines, the concerned EC shall submit, within fifteen (15) days from the effectivity of these Guidelines, its proposed alternative mechanism/ formula. It is only after the Commission's approval of said mechanism/formula will re- covery/refund resulting therefrom will be allowed.

ARTICLE VIII

8.1 SEPARABILITY

If for any reason any provision of these Guidelines is declared unconstitutional or invalid by final judgment of a competent court, the other parts or provisions hereof which were not affected thereby shall continue to be in full force and effect.

ARTICLE IX

9.1 EFFECTIVITY

These Guidelines shall take effect on the fifteenth (15th) day upon publication in a newspaper of general circulation in the country.

(SGD.) RODOLFO B. ALBANO, JR.

Chairman

(SGD.) OLIVER B. BUTALID

(SGD.) JESUS N. ALCORDO

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