

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



IN THE MATTER OF THE
PETITION FOR THE
ADOPTION OF THE
PROPOSED RULES TO
ALLOW THE PASS-
THROUGH OF REAL
PROPERTY TAX (RPT),

ERC Case No.2018-006 RM

PHILIPPINE RURAL
ELECTRIC COOPERATIVES
ASSOCIATION INC.
(PHILRECA),

Petitioner.

x-----x

Promulgated:

FEB 19 2019

ORDER

On 31 October 2018, Philippine Rural Electric Cooperatives Association Inc. (PHILRECA) filed a Petition to Initiate Rule-Making (Petition) seeking the Commission's approval of its proposed Rules to allow the pass-through of Real Property Tax (RPT).

In the said *Petition*, PHILRECA alleged, among others, the following:

Petitioner

1. PHILRECA is a duly organized non-stock and non-profit association operating and existing by virtue of Philippine laws, with office address located at 2nd floor, PNB Building, No. 92 West Ave., Brgy. Philam, Quezon City. It may be served with notices and other processes of this Commission through its President, Mr. Presley C. de Jesus, and/or Atty. Janeene D. Colingan, Executive Director/ General Manager of PHILRECA;

Nature of the Petition

2. This *Petition* was filed pursuant to Rule 21 of ERC's Rules of Practice and Procedure for the purpose of adopting the rules allowing the pass-through of RPT;

3. PHILRECA submitted that the issuance of rules allowing the pass-through of RPT is valid and timely considering that local government units (LGU's) had assessed and collected RPT from Electric Cooperatives (ECs). The RPT should therefore be allowed to be a pass-through charge to the ECs member-consumers subject to post verification and confirmation by the Commission similar to the Local Business and Franchise Tax;
4. The need for rules to allow the pass-through of RPT became all the more urgent following the decision of the Supreme Court in the case of "Manila Electric Company vs. The City Assessor and the City Treasurer of Lucena City"¹, where it was affirmed that transformers, electric posts, transmission lines, insulators and electric meters are not exempted from RPT under the LGU;
5. The RPT is the lifeblood of the LGUs authorized by the Local Government Code of 1991 (R.A. No. 7160) and thus the collection and payment thereof can no longer be avoided by ECs. The ECs have no option but to pay the RPT otherwise the LGU can exercise its right to levy the real properties of the ECs to enforce collection thereof and thereby hamper the ECs from performing its mandate of providing electric service to its member-consumers;
6. The existing tariff of the ECs does not provide for surplus funds by ways of a return on rate base and depreciation like those of the private distribution utilities (DUs). Thus, while the private DUs can exercise certain degree of flexibility by charging the RPT against their surplus funds, the ECs are constrained to fund the same from their meagre internally generated funds and in most cases from loans obtained from the National Electrification Administration (NEA) and other financial institutions;
7. A copy of the proposed rules to allow the pass-through of RPT which contains the proposals of PHILRECA is attached to the *Petition*;
8. PHILRECA prayed for the Commission to:
 - a) Approve and promulgate the proposed rules allowing pass-through of RPT; and
 - b) It also prayed for other relief deemed just and equitable under the premises.

¹ G.R. No. 166102 dated August 5, 2012;

Finding the said *Petition* to be sufficient in form and in substance with the required fees having been paid, the same is hereby set for public consultation on the following dates and venues:

DATE and TIME	VENUE	ACTIVITY
14 March 2019 (Thursday) Nine o'clock in the morning (9:00 A.M.)	ERC Main Office 15 th Floor, Pacific Center Building, San Miguel Avenue, Pasig City	Jurisdictional Hearing and Public Consultation for Luzon Stakeholders
22 March 2019 (Friday) Nine o'clock in the morning (9:00 A.M.)	ERC Mindanao Office Mintrade Bldg., Monteverde Ave. cor Sales St., 8000 Davao City	Public Consultation for Mindanao Stakeholders
04 April 2019 (Thursday) Nine o'clock in the morning (9:00 A.M.)	ERC Visayas Office St. Mary's Drive, Banilad, Cebu City 6000	Public Consultation for Visayas Stakeholders

All interested parties may submit their comments (both in hard and soft copies) on the proposed Rules on or before **28 February 2019**. Electronic copies may be sent to tariffs@erc.gov.ph. Parties who have filed their written comments on or before the prescribed period would be given priority during the above-scheduled public consultation. The said *Petition* may be photocopied at cost, during the regular office hours at the ERC Main Office.

Accordingly, PHILRECA is hereby directed to:

- 1) Cause the publication of the attached *Notice of Proposed Rule-Making* in two (2) newspapers of nationwide circulation in the Philippines at its own expense, twice (2x) within two (2) successive weeks, 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 Proposed Rule-Making*, all Distribution Utilities (DU's)

for the appropriate posting thereof on their respective bulletin boards;

- 3) Furnish with copies of this *Order* and the attached *Notice of Proposed Rule-Making* the Offices of the Mayors of Quezon City, City of Cebu, City of Davao, and their respective local legislative bodies for the appropriate posting thereof on their respective bulletin boards;
- 4) Inform of the filing of the *Petition*, the reason therefor, and of the scheduled public consultation thereon the consumers and local government units within the affected franchise area of the DUs, by any other means available and appropriate;
- 5) Furnish with copies of this *Order* and the attached *Notice of Proposed Rule-Making* 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
- 6) Furnish with copies of the *Petition* and its attachments all those making requests therefor, subject to reimbursement of reasonable photocopying costs.

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

- 1) The evidence of publication of the attached *Notice of Proposed Rule-Making* consisting of affidavits of the Editors or Business Managers of the newspapers where the said *Notice of Proposed Rule-Making* was published, and the complete issues of the said newspapers;
- 2) The evidence of actual posting of this *Order* and the attached *Notice of Proposed Rule-Making* consisting of certifications issued to that effect, signed by the aforementioned Mayors, LGU legislative bodies, or their duly authorized representatives, bearing the seals of their offices;

- 3) The evidence of other means employed by PHILRECA to inform the consumers within the affected franchise area of the filing of the *Petition*, its reasons thereof, and of the scheduled hearing thereon;
- 4) The evidence of receipt of copies of this *Order* and the attached *Notice of Proposed Rule-Making* 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 *Petition* and its attachments by all those making requests therefor, if any; and
- 6) Such other proofs of compliance with the requirements of the Commission.

PHILRECA must also be prepared to make an expository presentation of its *Petition*, 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 *Petition* with relevant information and pertinent details substantiating the reasons and justifications being cited in support thereof.

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

SO ORDERED.

Pasig City, 18 February 2019.

FOR AND BY AUTHORITY
OF THE COMMISSION:


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

LS: BJVG/ESA/GEO


Copy Furnished:

1. Atty. Delmar O. Cariño
Counsel of Petitioner PHILRECA
BENECO, No. 4 South Drive,
Baguio City
2. Philippine Rural Electric Cooperatives Association Inc. (PHILRECA)
Petitioner
2nd floor, PNB Building, No. 92 West Ave.,
Brgy. Philam, Quezon City
3. Office of the Solicitor General (OSG)
134 Amorsolo Street, Legaspi Village
Makati City, Metro Manila
4. Commission on Audit (COA)
Commonwealth Avenue
Quezon City, Metro Manila
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. Philippine Chamber of Commerce and Industry (PCCI)
Campus Avenue corner Park Avenue,
McKinley Town Center, Fort Bonifacio, Taguig City
8. Association of Rural Mindanao Electric Cooperatives, Inc. (AMRECO)
52nd Mother Ignacia Business Center
Justo Gaerlan St., 9000 Cagayan de Oro City
Misamis Oriental
9. Philippine Independent Power Producers Association, Inc. (PIPPA)
Unit 2408 24th floor, Prestige Tower
F. Ortigas Jr. Road, Ortigas Center,
Pasig City 1605
10. Private Electric Power Operators Association Inc. (PEPOA)
7/F Strata 100 Bldg., F. Ortigas Jr. Road
Ortigas Center, Pasig City
11. All Private Distribution Utilities
12. All Electric Cooperatives
13. The City Mayor
Quezon City
14. The City Mayor
Davao City
15. The City Mayor
Cebu City

16. Regulatory Operations Service (ROS)
17/F, Energy Regulatory Commission, Pacific Center Bldg.,
San Miguel Ave., Ortigas Center, Pasig City