



LEYECO III

LEYTE III ELECTRIC COOPERATIVE, INC.
Lighting Houses, Lighting Homes, Lighting Hopes



30 August 2023

Item No.: 08

Date: OCT 03 2023

**THE HONORABLE MEMBERS OF THE
SANGGUNIANG PANLALAWIGAN
PROVINCE OF LEYTE**

Office of the Vice Governor

Received

THRU: VICE GOVERNOR SANDY JAVIER
Vice Governor
Province of Leyte

By: REBECCA E.
Date: 9/27/2023
Time: 1:40 PM

**Subject: SUSPENSION OF PASSING-ON THE FRANCHISE TAX OF NGCP TO THE
ELECTRIC CONSUMERS**

Dear Sirs/Mesdames:

GREETINGS!

Allow us to extend our appreciation and thanks to your leadership by helping the electric coops achieve its goals and carry out its advocacy. The long fight against the collection of the franchise tax by the National Grid Corporation in the Philippines (NGCP) is over. We have convinced the Energy Regulatory Commission (ERC) that such pass-on charges to the electric consumers is out of bounce. Thus, the ERC recently released the Resolution No. 10 Series of 2023 dated 08 August 2023 directing the NGCP to stop passing on the franchise tax charges to the electric bills of the electric consumers. Attached is the ERC Resolution.

This franchise tax in the transmission charges of NGCP is three percent (3%) of the gross receipts collected by the transmission concessionaire.

We give thanks also the Committee on Energy in Congress for their positive action on this regard through the manifestation of the APEC Party List Representative Congressman Sergio C. Dagooc who brought this matter before the plenary for appropriate action by the national legislators. Cong. Dagooc of APEC Party List passed the House Resolutions Nos. 1138 and 1139 respectively. Attached are the House Resolutions.

While we have satiated a victory against the 3% franchise tax, we will continue to advocate social justice and people empowerment by carrying out the endeavor to protect the electric consumers' interest with fervent hope to resolve the following issues:

- a. To stop taxing the system's loss charges in the power bill,
- b. The Tax on power rates should only be one, not multiple such as: 12% vat for generation charges, 12% vat for transmission charges, 12% vat for distribution charges and 12% for system's loss, and
- c. Continue the existence of the electric coops by granting congressional franchise to sustain its mission in the electrification program.

Thank you and God bless.

Truly yours,


ALLAN L. LANIBA, OFS
General Manager

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Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City



RESOLUTION NO. 10, Series of 2023

A RESOLUTION SUSPENDING THE INCLUSION OF THE NATIONAL FRANCHISE TAX OF THE NATIONAL GRID CORPORATION OF THE PHILIPPINES (NGCP) IN THE TOTAL MONTHLY TRANSMISSION COST BILLING OF DISTRIBUTION UTILITIES

WHEREAS, Section 2 (f) of Republic Act No. 9136, otherwise known as the “*Electric Power Industry Reform Act of 2001*” (EPIRA), recognizes the policy of the State to protect the public interest affected by rates and services of electric utilities;

WHEREAS, Section 7 of the EPIRA provides that the transmission of electric power shall be a regulated common electricity carrier business, subject to the ratemaking powers of the ERC;

WHEREAS, Section 23 of the EPIRA obligates distribution utilities (DUs) to supply electricity in the least cost manner to its captive market, subject to the collection of retail rate approved by the ERC;

WHEREAS, pursuant to its authority under the EPIRA and in light of state policies enshrined therein and in the laws of the land, the ERC recognizes the need to constantly uphold and duly enforce such policies, particularly in the light of its mandate “to protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power;

WHEREAS, in consideration of the franchise granted to the National Grid Corporation of the Philippines (NGCP), Section 9 of Republic Act No. 9511 otherwise known as *An Act Granting the National Grid Corporation of the Philippines a Franchise to Engage in the Business of Conveying or Transmitting Electricity Through High Voltage Back-Bone System of Interconnected Transmission Lines, Substations and Related Facilities, and for Other Purposes*, mandated NGCP to “pay a franchise tax equivalent to three percent (3%) of all gross receipts derived by the Grantee from its operation under this franchise. Said tax shall be in lieu of income tax and any and all taxes, duties, fees and charges of any kind, nature or description levied, established or collected by any authority whatsoever, local or national, on its franchise x x x;”

WHEREAS, ERC Resolution No. 07, Series of 2011, dated 07 March 2011, otherwise known as *A Resolution Allowing the Distribution Utilities to Include in their Monthly Transmission Cost the National Grid Corporation of the Philippines’ National Franchise Tax Billing* was adopted by the then Commission, providing for “the inclusion of the three percent (3%) national franchise tax billed by NGCP as part of the DUs’ total monthly transmission cost in the Transmission Rate Adjustment Mechanism (TRAM) formula;”

WHEREAS, the Supreme Court, in the cases of *Republic v. Manila Electric Company (MERALCO)*¹ and *Maynilad Water Services, Inc. v. National Water and Resources Board, et al.*,² disallowed public utilities from passing-on certain taxes as operating expenses to the consuming public. The Supreme Court declared that such taxes must be shouldered by the income earner who receives the benefit or protection of the State and that the same cannot be unduly passed on to consumers, by way of tariff, since said tax was paid not for the consumers’ benefit but for benefit of the business entity earning the income;

A RESOLUTION SUSPENDING THE INCLUSION OF THE NATIONAL FRANCHISE TAX OF THE NATIONAL GRID CORPORATION OF THE PHILIPPINES (NGCP) IN THE TOTAL MONTHLY TRANSMISSION COST BILLING OF DISTRIBUTION UTILITIES

NOW, THEREFORE, BE IT RESOLVED, as it is hereby resolved, that the Commission **SUSPENDS** the passing-on of the 3% national franchise tax by NGCP to its customers. In relation thereto, the effectivity of Resolution No. 07, Series of 2011 is likewise **SUSPENDED**.

This Resolution shall take effect **IMMEDIATELY** following its publication in a newspaper of general circulation in the country.

Let this Resolution be posted on the ERC website and filed with the University of the Philippines Law Center – Office of the National Administrative Register (UPLC-ONAR).

Pasig City, 08 August 2023.

ERC
Office of the Chairperson and CEO



MCD2023-007665

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MONALISA C. DIMALANTA
Chairperson and CEO


ALEXIS M. LUMBATAN
Commissioner


CATHERINE P. MACEDA
Commissioner


FLORENDINA G. BALDO-DIGAL
Commissioner


MARKO ROMEO L. FUENTES
Commissioner



Republic of the Philippines
House of Representatives
Quezon City

NINETEENTH CONGRESS

Second Regular Session

House Resolution No. 1138

Introduced by

PHILRECA Party-List Representative Presley C. De Jesus
APEC Party-List Representative Sergio C. Dagoo

A RESOLUTION

**DIRECTING THE ENERGY REGULATORY COMMISSION TO ISSUE AN
AMENDED FORMAT OF ELECTRICITY BILLS TO EXCLUDE SUBSIDIES
FROM THE COMPUTATION OF VALUE-ADDED TAX ON GROSS
RECEIPTS IN THE SALE OF ELECTRICITY**

WHEREAS, it is the policy of the State under Republic Act No. 9136, also known as the Electric Power Industry Reform Act (EPIRA) of 2001, that it shall ensure transparent and reasonable prices of electricity in a regime of free and fair competition and full public accountability to achieve greater operational and economic efficiency;

WHEREAS, the electric power industry is among the sectors charged and levied with multiple taxes that are eventually passed on to the consumers;

WHEREAS, Section 108 of the National Internal Revenue Code of 1997, as amended, imposes a Value-Added Tax (VAT) on "gross receipts derived from the sale or exchange of services, including the use or lease of properties" which specifically includes "sales of electricity by generation companies, transmission by any means entity, and distribution companies, including electric cooperatives; services of franchise grantees of electric utilities;"

WHEREAS, all costs incurred by consumers in the sale of electricity are collected by distribution utilities (DUs) which includes not only the distribution charges, but also the pass-through costs, such as the generation



charges, transmission charges, system loss charges, lifeline subsidy charges, senior citizen subsidy charges, and other pass through costs as may be approved by the Energy Regulatory Commission (ERC);¹

WHEREAS, pursuant to the pass-through system, a Single Billing Scheme is being implemented wherein a consumer receives one consolidated bill containing all charges from the generation, transmission, and distribution sector;

WHEREAS, the subsidies that form part of the electricity bill include (i) Lifeline Rate or a subsidy to electricity users in the marginal sectors who consume 100kWH of electricity and below; (ii) member contribution for capital expenditures; and (iii) Inter-class subsidy;

WHEREAS, since these subsidies are included in the gross receipts of the consolidated electricity bill received by consumers, said items are collectively taxed with VAT despite not falling under transactions where there is sale or exchange of goods or services;

WHEREAS, the transmission fee charged by the National Grid Corporation of the Philippines (NGCP) to consumers is also included in the gross receipts in the sale of electricity subject to VAT;

WHEREAS, consumers are also billed with VAT imposed on system losses, universal charges, and other similar items not constituting consumption of goods or services;

WHEREAS, Section 43 of the EPIRA and Rule 7 of its Implementing Rules and Regulations (IRR) vests the ERC with the power and authority to determine, fix, and regulate the rates charged by all electric distribution utilities (DUs);

WHEREAS, pursuant to the power and authority granted by the EPIRA, the ERC issued Resolution No. 20, Series of 2005 allowing the generation companies, the National Transmission Corporation (TransCo) and all DUs to impose the appropriate VAT rate based on gross receipts in accordance to Republic Act No. 9337, *Provided* that, it shall be reflected as a separate item in the individual billing statement to the end-users, in the billing format approved by the ERC;

WHEREAS, Article 16 of the Magna Carta for Residential Electricity Consumers, as amended, provides for the consumer's right to a transparent

¹ ERC Resolution No. 11, Series of 2011

billing from their service provider which shall conform with the format as approved by ERC;

WHEREAS, Department Circular No. 2018-08-0026 issued by the Department of Energy (DOE) provides a mandatory format for all entities issuing electricity bills to reflect all corresponding charges, subject to the rules and regulations that the ERC shall promulgate for its implementation;

WHEREAS, there is a need for a regular review and evaluation of the billing format as prescribed by the ERC to safeguard consumers from unjustified charges and promote a more equitable energy market;

WHEREAS, pursuant to the objective of lowering electricity rates, it is imperative for the ERC to exercise its functions to address the multiple taxes levied on the sale of electricity that are passed on to consumers;

NOW THEREFORE, BE IT RESOLVED AS IT IS HEREBY RESOLVED, for the House of Representatives to direct the ERC to formulate and issue an amended uniform format of electricity bills based on the Single Billing Scheme that excludes subsidies from the computation of Value-Added Tax on gross receipts in the sale of electricity.



PRESLEY C. DE JESUS
PHILRECA Party-List



SERGIO C. DAGOOC
APEC Party-List



Republic of the Philippines
House of Representatives
Quezon City



NINETEENTH CONGRESS

Second Regular Session

House Resolution No. 1139

Introduced by
APEC Party-List Representative Sergio C. Dagooc
PHILRECA Party-List Representative Presley C. De Jesus

A RESOLUTION
DIRECTING THE ENERGY REGULATORY COMMISSION TO DISALLOW THE NATIONAL GRID CORPORATION OF THE PHILIPPINES FROM COLLECTING ITS FRANCHISE TAX AS A PASSED-ON CHARGE AND INITIATE THE REFUND PROCESS FOR THE OVERCHARGED AMOUNTS TO ITS CONSUMERS

WHEREAS, Republic Act No. 9511 (RA 9511) granted the National Grid Corporation of the Philippines (NGCP) a franchise to engage in the business of conveying or transmitting electricity through high voltage back-bone system of interconnected transmission lines, substations and related facilities and for other purposes;

WHEREAS, Sec. 9 of RA 9511 provides that the NGCP shall pay a Franchise Tax equivalent to three (3%) of all gross receipts derived from their operations under its franchise in lieu of all taxes, duties, fees and charges of any kind, nature or description levied, established or collected by any authority whatsoever, local or national, except realty tax;

WHEREAS, Sec. 38 of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act (EPIRA), created the Energy Regulatory Commission (ERC) as an independent quasi-judicial body;

WHEREAS, the ERC Resolution No. 07, Series of 2011 which states "the Energy Regulatory Commission approved the Final Determination for the 2011 to 2015 Regulatory Period, including the recovery of the 3% national franchise tax from its customers";

WHEREAS, ERC Resolution No. 07, Series of 2011 further states “the NGCP’s franchise tax is considered to be a pass-through cost on the part of the DUs that can be included in the determination of the total transmission cost used in the Transmission Rate Adjustment Mechanism formula”;

WHEREAS, the ERC, through Resolution No. 07, Series of 2011, allowed the recovery or collection of the three (3%) percent national franchise tax from its consumers through a separate line item in its bills

WHEREAS, the NGCP started charging its customers the three (3%) percent national franchise tax as a passed-on charge;

WHEREAS, since 2011 up to 2021, a total of PHP14.9 billion franchise tax has been paid by the NGCP by shifting the burden to the end-users following the promulgation of ERC Resolution No. 7 series of 2011 which “allows the distribution utilities to include in their monthly transmission cost of the NGCP franchise tax billing;

WHEREAS, the consumers have paid roughly PHP1.4 billion of franchise tax annually according to the report of the Congressional Policy and Budget Research Department (CPBRD)¹;

WHEREAS, the NGCP has been paying only a total annual tax of 1.1% of gross revenue on the average according to the same report by the CPBRD²;

WHEREAS, the NGCP has the obligation to pay the franchise tax out of their net income, which exceeded PHP20 billion annually starting 2011 according to CPBRD³;

WHEREAS, the NGCP declared dividends of around a total of PHP205 billion from 2011 to 2021;

WHEREAS, the NGCP charges the consumers for payment of its Franchise Tax, said charge forms part of the Gross Receipts of the NGCP;

WHEREAS, the passing on to consumers of the burden of paying the NGCP Franchise Tax subjected it to twelve (12%) percent Value-Added Tax (VAT) which amounted to around PHP1.68 billion from 2011 to 2021;

WHEREAS, the burden of the additional imposition of a twelve (12%) percent VAT on the Franchise Tax is ultimately borne by the end consumers;

¹ *Comments on the DOE-Sponsored Proposed Amendments to the Electric Power Industry Reform Act (2023)*. Congressional Policy and Budget Research Department.

² *Id.*

³ *Id.*

WHEREAS, the BIR considers as VAT-able revenues of Distribution Utilities, Transmission Companies, and Generation Companies any charges which forms part of their revenues;

WHEREAS, the VAT is being collected by the BIR based on the Gross Receipts of NGCP;

WHEREAS, the VAT, which is a consumption tax on goods and services, cannot be imposed on tax Taxes;

WHEREAS, Sec. 9 of RA 9511 established the direct responsibility of NGCP for paying the franchise tax, without any explicit provision allowing it to pass on the tax to consumers, or claim it as a tax credit or deduction;

WHEREAS, the Supreme Court decision in the case of Republic of the Philippines v. Manila Electric Company, G.R. No. 141314 in 2002 stressed that income tax is imposed on an individual or entity as a form of excise tax or a tax on the privilege of earning income and the burden should not be shifted to the consumers;

WHEREAS, the Supreme Court decision in the case of Maynilad Water Services, Inc v. National Water and Resources Board, G.R. No. 181764 in 2021 reiterated that the entity cannot recover income taxes from consumers as the privilege of earning income, which is the subject of taxation, is enjoyed by the entity and not by the consumers;

WHEREAS, since franchise tax is a direct tax, the burden of paying such is lodged with the NGCP and should not be passed on to the end-users;

WHEREAS, the tax liability or burden for payment of said tax for the privilege of conducting business within the Philippines rests solely with the NGCP from the revenue generated from operation of their franchise and should not be shouldered by the end-users as it may not be shifted;

WHEREAS, only the Bureau of Internal Revenue (BIR) has the power and authority to interpret tax laws;

WHEREAS, the BIR maintains the position that a franchise tax is clearly considered as a direct tax which is imposed in lieu of income tax;

WHEREAS, the ERC exceeded the power delegated by the Legislative Branch when it issued Resolution No. 07, Series of 2011;

WHEREAS, the ERC committed an *ultra vires* act by its wrongful interference with the State's power of taxation in modifying the nature and essence of the NGCP's Franchise Tax;

WHEREAS, *ultra vires* acts are null and void and produce no legal effect;

WHEREAS, the doctrine of unjust enrichment is a well-known and time-honored principle that no person shall unjustly enrich himself at the expense of another;

WHEREAS, NGCP has the obligation to refund the end-users for the amount of franchise tax it wrongfully passed on without authority;

NOW THEREFORE, BE IT RESOLVED AS IT IS HEREBY RESOLVED THAT, that the House of Representatives admonish the ERC for the issuance of ERC Resolution No. 7 Series of 2011;

RESOLVED FURTHER, that the House of Representatives directs the ERC is directed to disallow the NGCP to pass on the tax burden for its franchise tax to end-users;

RESOLVED FURTHER, that the House of Representatives instructs the ERC to initiate the refund process of the amount overcharged by the NGCP to end-users;

RESOLVED FINALLY, that the House of Representatives directs the NGCP to immediately cease from treating its franchise tax as a passed-on charge and refund the end-users for the overcharged amount, comprising the three (3%) percent Franchise Tax and twelve (12%) percent VAT imposed on the Franchise Tax by the BIR.

Adopted,

SERGIO C. DAGOO
APEC Party-List

PRESLEY C. DE JESUS
PHILRECA Party-List

**IMPLEMENTATION OF THE ERC RESOLUTION NO. 10, SERIES OF 2023
(SUSPENSION OF THE NATIONAL FRANCHISE TAX)
STARTING AUGUST 2023 BILLING MONTH**

The Energy Regulatory Commission (ERC) issued the Resolution No. 10, Series of 2023 on 08 August 2023 entitled, *"A Resolution Suspending the Inclusion of the National Franchise Tax of the National Grid Corporation of the Philippines (NGCP) in the Total Monthly Transmission Cost Billing of Distribution Utilities"*.

In the afore-cited Resolution, ERC resolved as follows:

***"NOW, THEREFORE, BE IT RESOLVED*, as it is hereby resolved, that the Commission **SUSPENDS** the passing-on of the 3% national franchise tax by NGCP to its customers. In relation thereto, the effectivity of Resolution No. 07, Series of 2011 is likewise **SUSPENDED**".**

*This Resolution shall take effect **IMMEDIATELY** following its publication in a newspaper of general circulation in the country."*

Prospectively, with the official publication in the Daily Tribune on 15 August 2023¹, NGCP commences the suspension of the 3% Franchise Tax effective August 2023 billing month (26 July 2023 to 25 August 2023).

Attachment: ERC Resolution No. 10, Series of 2023 dated 08 August 2023.

¹ https://tribune.net.ph/2023/08/15/erc-4/?utm_source=rss&utm_medium=rss&utm_campaign=erc-4