

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



**PETITION FOR RULE-  
CHANGE TO AMEND  
RESOLUTION ON THE  
RECOVERY OF PASS-  
THROUGH TAXES (REAL  
PROPERTY, LOCAL  
FRANCHISE, AND  
BUSINESS TAXES) OF  
DISTRIBUTION UTILITIES  
PROMULGATED AS ERC  
RESOLUTION NO. 02,  
SERIES OF 2021,**

**ERC Case No.2021-002 RM**

**PRIVATE ELECTRIC  
POWER OPERATORS  
ASSOCIATION (PEPOA),  
Petitioner.**

**Promulgated:**

July 28, 2021

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**NOTICE OF PROPOSED RULE-MAKING**

**TO ALL INTERESTED PARTIES:**

Notice is hereby given that on 06 July 2021, Private Electric Power Operators Association (PEPOA) filed a Petition for Rule-Change to amend some provisions in the Commission-issued Resolution No. 02, Series of 2021 on the recovery of pass-through taxes (Real Property, Local Franchise, and Business Taxes) of Distribution Utilities (Petition).

The pertinent allegations of the said *Petition* are hereunder quoted as follows:

1. Petitioner PEPOA is a corporation duly organized and existing under Philippine law, with office address at 8<sup>th</sup> floor, STRATA 100 Building, F. Ortigas Jr. Road, Ortigas Center, Pasig City, with email address at [pepoa2006@yahoo.com](mailto:pepoa2006@yahoo.com), represented here by its President, Ranulfo M. Ocampo.

2. PEPOA is an association of privately-owned distribution utilities franchised to operate an electric distribution system in various parts of the Philippines. It currently has eighteen (18) member-distribution utilities, consisting of Angeles Electric Corporation (AEC), Cabanatuan Electric Corporation (CELCOR), Clark Electric Distribution Corporation (CEDC), Dagupan Electric Corporation (DECORP), Ibaan Electric Corporation (IEC), La Union Electric Company (LUECO), Olongapo Electricity Distribution Corporation (OEDC), San Fernando Electric Light & Power Company (SFELAPCO), Subic Enerzone Company (SEZC), Tarlac Electric Inc. (TEI), Bohol Light Company Inc. (BLCI), Mactan Electric Company (MECO), MORE Electric & Power Corporation (MORE), Visayan Electric Company (VECO), Cagayan Electric Power & Light Company (CEPALCO), Cotabato Light & Power Company (CLPC), Davao Light & Power Company (DLPC) and Iligan Light & Power Inc. (ILPI).
3. This petition for rule change seeks to amend certain provisions of ERC Resolution No. 02, Series of 2021, on the recovery of pass-through of local taxes consisting of Real Property Tax (RPT), Local Franchise Tax (LFT) and Business Tax (BT) promulgated as ERC Resolution No. 02, Series of 2021. In particular, the petition is praying that-
  - a. *Local taxes (RPT, LFT, and BT) levied by LGUs on years prior to its issuance (ie. tax arrearages) should be fully recoverable as pass-through costs; and*
  - b. *RPT assessed by Local Government Units (LGUs) on assets located outside the Distribution Utilities' franchise area but are used to provide public service within the franchise area should also be fully recoverable as pass-through costs.*
4. On 05 August 2015, the Supreme Court issued a Decision in G.R No. 166102 entitled: "*Manila Electric Company (MERALCO) vs. The City Assessor and City Treasure of Lucena City*", wherein it ruled that MERALCO's transformers, electric posts, transmission lines, insulators, and electric meters are no longer exempted from real property tax and may qualify as a "*machinery*" subject to real property under the Local Government Code (LGC).
5. Soon thereafter, several Local Government Units (LGUs) began levying RPT for the first-time on members of PEPOA on their transformers, electric posts, transmission lines, insulators, and electric meters. The RPT levied were not only for current year (current RPT) but also for prior years (tax arrearages), some of which went as far back as ten (10) years.
6. Since RPT on transformers, electric posts, transmission lines, insulators, and electric meters were not provided for by

the Commission in the determination of the Annual Revenue Requirement (ARR) of the Distribution Utilities, PEPOA, on behalf of its members, filed on 30 January 2017, a Petition for Rulemaking proposing that RPT be allowed to be recovered as a pass-through cost to consumers. This PEPOA petition was docketed as ERC Case No. 2017-002 RM.

7. After conducting several public consultations, the Commission, on 17 December 2020, promulgated ERC Resolution No. 02, Series of 2021 entitled: *A Resolution on the Recovery of Pass-Through Taxes (Real Property, Local Franchise, and Business Taxes) of the Distribution Utilities*.
8. While the Commission allowed Distribution Utilities to automatically recover current RPT, LFT and BT as a pass-through cost, payments made on tax arrearages were not allowed to be recovered. No explanation was offered in the resolution why payments made on tax arrearages are not recoverable.
9. One of the objectives of ERC Resolution No. 02, Series of 2021 is to allow the full recovery of all just and reasonable components of the taxes levied by Local Government Units (LGUs) against the DU to enable the latter to operate viably.<sup>1</sup>
10. Notably, the Commission previously allowed DU payments of tax arrearages on LFT and BT as a recoverable pass-through cost under Section 6.3 of ERC Resolution No. 16, Series of 2009 entitled: *A Resolution Adopting the Rules Governing the Automatic Cost Adjustment and True-Up Mechanisms and Corresponding Confirmation Process for Distribution Utilities*.
11. Distribution utilities cannot be faulted for not being able to pay these tax arrearages on time as the LGUs levied them for the first time only after the Supreme Court promulgated its ruling in the aforementioned *Meralco case*.
12. PEPOA therefore submits that payments made by Distribution Utilities on local tax arrearages should be treated as just and reasonable costs and should be fully recoverable as pass-through costs.
13. ERC Resolution No. 02, Series of 2021 also limited the recovery of RPT paid on assets located within the franchise area. RPT levied on assets located outside the franchise area are therefore not recoverable. No explanation was also offered in the resolution why RPT levied on assets located outside the franchise area are not recoverable.

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<sup>1</sup> Section 1.1. b of ERC Res. 02, Series 2021.

14. Distribution Utilities also have assets that are located outside their franchise area but are nonetheless used to provide public service within the franchise area. An example of these kind of assets are Sub-Transmission Assets (STAs) and its accessories purchased by qualified Distribution Utilities from the National Transmission Corporation (TransCo) pursuant to Section 8 of the EPIRA (R. A. No 9136).
15. Since the qualified Distribution Utilities are now the operator of these STAs acquired from TransCo, PEPOA submits that RPT levied on these assets located outside the franchise area but are used to render public service within the franchise area should be treated as just and reasonable costs and should therefore be fully recoverable as pass-through costs.

### **PRAYER**

WHEREFORE, Petitioner PEPOA pray that after due public consultations, the Honorable Commission issue a Resolution amending ERC Resolution No. 02, Series of 2021, allowing Distribution Utilities full recovery of local taxes paid as pass-through costs, more particularly described as follows:

1. Local tax arrearages (RPT, LFT and BT);
2. RPT levied on assets located outside the franchise area but are used to render public service within the franchise area.

The language of the proposed amendments<sup>2</sup> to ERC Resolution No. 02, Series of 2021, are hereto attached as Annex "A" of this Petition.

PEPOA also pray for such relief or remedy as may be just and equitable under the premises.

Finding the said *Petition* to be sufficient in form and substance with the required fees having been paid, the same is hereby set for public consultation on the following dates and online platform for the conduct thereof, pursuant to Resolution No. 09, Series of 2020<sup>3</sup> dated 24 September 2020 and Resolution No. 01, Series of 2021, dated 17 December 2020 (ERC Revised Rules of Practice and Procedure):<sup>4</sup>

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<sup>2</sup> Language of proposed amendments to ERC Res. 02, Series of 2021 are highlighted in red font.

<sup>3</sup> Entitled: *A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.*

<sup>4</sup> Entitled: *A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.*

<b>Date and Time</b>	<b>Platform</b>	<b>Activity</b>
<b>28 September 2021</b> <b>(Tuesday)</b> at two o'clock in the afternoon (2:00 P.M.)	Microsoft Teams	Determination of compliance with jurisdictional requirements and Expository Presentation.
<b>12 October 2021</b> <b>(Tuesday)</b> at two o'clock in the afternoon (2:00 P.M.)	Microsoft Teams	Public Consultations for Luzon, Visayas and Mindanao stakeholders.

All interested stakeholder may submit its comments and/or clarifications (both in hard and soft copies) on the proposed Rule-change on or before **15 September 2021**. Electronic copies may be sent to [docket@erch.ph](mailto:docket@erch.ph) and [tariffs@erc.gov.ph](mailto:tariffs@erc.gov.ph). The Commission shall give priority to the stakeholders who have duly submitted their respective comments and/or clarifications, to discuss the same and propound questions during the course of the public consultation.

Any interested person may access the copy of the *Petition* on the Commission's official website at [www.erc.gov.ph](http://www.erc.gov.ph).

Finally, all interested persons may be allowed to join the scheduled virtual hearing by providing the Commission, thru [legal.virtualhearings@erc.ph](mailto:legal.virtualhearings@erc.ph), with their respective e-mail addresses and indicating therein the case number of the instant *Petition*. The Commission will send the access link/s to the aforementioned hearing platform within five (5) working days prior to the scheduled hearing.

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**WITNESS**, the Honorable Commissioners **ALEXIS M. LUMBATAN, CATHERINE P. MACEDA, FLORESINDA G. BALDO-DIGAL** and **MARKO ROMEO L. FUENTES**, Energy Regulatory Commission, this 13<sup>th</sup> day of July 2021 in Pasig City.



  
**AGNES VST DEVANADERA**  
*Chairperson and CEO*

  
LS: B:VG/MCCG

  
ROS: ABS/AJMO/LLG