

**[ ERC RESOLUTION NO. 02, S. 2006, January 11, 2006 ]**

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

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  
*Commissioner*

(SGD.) JESUS N. ALCORDO  
*Commissioner*

(SGD.) RAUF A. TAN  
*Commissioner*

(SGD.) ALEJANDRO Z. BARIN  
*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 Commission or ERC	The regulatory agency created under Section 38 of the Act;
Electric Cooperatives or ECs	Distribution utilities organized and incorporated pursuant to Presidential Decree No. 269, as amended by Presidential Decree 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

$$FT = DC \text{ of the customer bill} \times (Ft + Bt)$$

Where:

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:

$$TRAC = \frac{Lft_a + Bt_a}{S}$$

Where: