Bringing In Revenues
for Nation-Building

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

BAGONG PILIPINAS

NOV 15 2024

REVENUE MEMORANDUM CIRCULAR NO. 124-2024

SUBJECT : Circularizing ERC Resolution No. 10, Series of 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"

TO : All Internal Revenue Officers and Others Concerned

For the information and guidance of all internal revenue officials, employees and others concerned, attached as Annex "A" hereof is the copy of ERC Resolution No. 10, Series of 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."

All internal revenue officials and employees are hereby enjoined to give this Circular as wide a publicity as possible.

ROMEO D. LUMAGUI, JR.
Commissioner of Internal Revenue

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ANNEX "A"

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City

ENERGY REGULATORY COMMISSION
APPROVED FOR POSTING
www.erc.gov.ph

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;

WHEREAS, upon careful deliberation and in consideration of the declarations of the Supreme Court in the decisions aforementioned, the Commission deems it consistent with established jurisprudence, and in the best interest of the public, to suspend the implementation of Resolution No. 07, Series of 2011 and the passing-on of the three percent (3%) national franchise tax of NGCP to its customers;

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1 G.R. No. 141314, November 15, 2002.
2 G.R. Nos. 181764, 187380, 207474, 208207, 210147,213277, 219362, and 239938, December 7, 2021.

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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

MONALISA C. DIMALANTA
Chairperson and CEO

ALEXIS M. LUMBATAN
Commissioner

CATHERINE P. MACEDA
Commissioner

FLORESINDA G. BALDO-DIGAL
Commissioner

MARKO ROMEO L. FUENTES
Commissioner

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