

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City

**IN THE MATTER OF THE
APPLICATION FOR
CONFIRMATION AND
APPROVAL OF
CALCULATIONS OF OVER OR
UNDER RECOVERIES IN THE
IMPLEMENTATION OF
AUTOMATIC COST
ADJUSTMENTS AND TRUE-UP
MECHANISMS FOR THE
PERIOD OF YEARS 2020 TO
2022, PURSUANT TO ERC
RESOLUTION NO. 16, SERIES
OF 2009 AS AMENDED BY
RESOLUTION NO. 21, SERIES
OF 2010, RESOLUTION 23,
SERIES OF 2010, and
RESOLUTION NO. 02, SERIES
OF 2021**

ERC CASE NO. 2023-040 CF

**PENINSULA ELECTRIC
COOPERATIVE, INC.
(PENELCO),**

Applicant.

Promulgated:
October 02, 2023

X-----X

ORDER

On 31 May 2023, Peninsula Electric Cooperative, Inc. (PENELCO) filed an *Application* dated 12 May 2023, seeking the Commission's approval of its calculations of over or under recoveries in the implementation of automatic cost adjustments and true-up mechanisms for the period of years 2020 to 2022, pursuant to the Commission's Resolution No. 16, Series of 2009,¹ as amended by

¹ A Resolution Adopting the Rules Governing the Automatic Cost Adjustment and True-up Mechanisms and Corresponding Confirmation Process for Distribution Utilities.

Resolution No. 21, Series of 2010,² Resolution 23, Series of 2010,³ and Resolution No. 02, Series of 2021.⁴

On 27 June 2023, the Commission issued an *Order and Notice of Virtual Hearing*, both of even date, setting the case for determination of compliance with the jurisdictional requirements and expository presentation, Pre-Trial Conference and presentation of evidence through virtual hearings on 17 August 2023 and 24 August 2023, respectively.

However, on 06 July 2023, PENELCO filed a *Motion for Leave to Amend the Application and to Admit the Attached Amended Application* dated 05 July 2023, and *Amended Application* dated 23 June 2023. In the said *Motion for Leave to Amend the Application*, PENELCO alleged that there are errors in the computation of the System Loss Rate (SLR) over or under recovery for the year 2021.

Subsequently, on 10 July 2023, PENELCO filed a *Motion for Cancellation of the Hearings Set on August 17 and 24, 2023*, of even date.

Finding the said *Motions* meritorious, the Commission hereby grants the same. In view thereof, the hearings set on 17 August 2023 and 24 August 2023 are hereby **cancelled**.

ACCORDINGLY, the Commission hereby sets anew the instant *Application* for hearing for determination of compliance with the jurisdictional requirements, expository presentation, Pre-trial Conference, and presentation of evidence on the following dates and online platforms for the conduct thereof, pursuant to Resolution No. 09, Series of 2020⁵ and Resolution No. 01, Series of 2021 (ERC Revised Rules of Practice and Procedure):⁶

² A Resolution Amending Section 4 of Article 4 and Section 1 of Article 5 of the Rules Governing the Automatic Cost Adjustment and True-up Mechanisms and Corresponding Confirmation Process for Distribution Utilities.

³ A Resolution Adopting the Rules Implementing the Discounts to Qualified Senior Citizen End-Users and Subsidy from the Subsidizing End-Users on Electricity Consumption Under Section 4 & 5 of Republic Act No. 9994.

⁴ A Resolution on the Recovery of Pass-Through Taxes (Real Property, Local Franchise and Business Tax) of the Distribution Utilities

⁵ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.

⁶ A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

Date	Platform	Activity
08 November 2023 (Wednesday) at two o'clock in the afternoon (2:00 P.M.)	Microsoft Teams or Zoom Application	Determination of compliance with the jurisdictional requirements and expository presentation
15 November 2023 (Wednesday) at two o'clock in the afternoon (2:00 P.M.)		Pre-trial Conference and presentation of evidence

RELATIVE THERETO, PENELCO is hereby directed to:

- 1) Cause the publication of the attached *Notice of Virtual Hearing* once (1x) in a newspaper of nationwide circulation in the Philippines at its own expense, at least ten (10) days before the date of the scheduled initial hearing;
- 2) Furnish with copies of this *Order* and the attached *Notice of Virtual Hearing* the Offices of the Provincial Governor, the Mayors, and the Local Government Unit (LGU) Legislative Bodies within PENELCO's franchise area for the appropriate posting thereof on their respective bulletin boards;
- 3) Inform the consumers within PENELCO's franchise area, by any other means available and appropriate, of the filing of the *Application*, its reasons therefor, and of the scheduled virtual hearings thereon;
- 4) Furnish with copies of this *Order* and the attached *Notice of Virtual Hearing*, 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 and attend the scheduled hearing; and
- 5) Furnish with copies of the *Application* and its attachments, except those subject of a motion for confidential treatment of information, all those making requests therefor, subject to reimbursement of reasonable photocopying costs.

Within five (5) calendar days before the date of the virtual hearing, PENELCO must submit to the Commission via electronic mail (e-mail) at docket@erc.ph, and copy furnish the Legal Service through legal@erc.ph, the scanned copies of its written compliance with the aforementioned jurisdictional requirements, attaching the following methodically arranged and duly marked documents:

- 1) The evidence of publication of the attached *Notice of Virtual Hearing* consisting of an affidavit of the Editor or Business Manager of the newspaper where the said *Notice of Virtual Hearing* was published, and the complete issue of the said newspaper;
- 2) The evidence of the actual posting of this *Order* and the attached *Notice of Virtual Hearing* consisting of certifications issued to that effect, signed by the aforementioned Governor, Mayors, and LGU legislative body or their duly authorized representatives, bearing the seals of their offices;
- 3) The evidence of other means employed by PENELCO to inform the consumers within its franchise area of the filing of the *Application*, its reasons therefor, and of the scheduled hearing thereon;
- 4) The evidence of receipt of copies of this *Order* and the attached *Notice of Virtual Hearing* by the OSG, the COA, and the Committees on Energy of both Houses of Congress;
- 5) The evidence of receipt of copies of the *Application* and its attachments, except those subject of a motion for confidential treatment of information, if any, by all those making requests therefor; and
- 6) Such other proof of compliance with the requirements of the Commission.

Moreover, PENELCO is hereby required to post on its bulletin boards, the scanned copies of the foregoing jurisdictional requirements, together with the newspaper publications and certifications issued by the concerned Offices of the Governor, Mayors, and Local Legislative Bodies, and to submit proof of posting thereof.

Applicant PENELCO and all interested parties are also required to submit via e-mail at docket@erc.ph, and copy furnish the Legal Service through legal@erc.ph, **at least five (5) calendar days** before the date of the scheduled virtual hearing and Pre-trial Conference, their respective Pre-Trial Briefs containing, among others:

- 1) A summary of admitted facts and proposed stipulation of facts;
- 2) The issues to be tried or resolved;
- 3) The documents or exhibits to be presented, stating the purposes and proposed markings therefor, which should also be attached to the Pre-trial Brief; and
- 4) The number and names of the witnesses, with their written testimonies in a Judicial Affidavit form attached to the Pre-trial Brief.

Applicant PENELCO must ensure that all the documents or exhibits proposed to be presented have already been duly submitted to the Commission **at least five (5) calendar days** before the date of the scheduled initial virtual hearing and Pre-trial Conference, pursuant to the preceding paragraph.

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

Applicant PENELCO must also be prepared to make an expository presentation of the instant *Application*, 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 *Application*. Relevant information and pertinent details substantiating the reasons and justifications for the *Application* must be cited in support thereof.

Applicant PENELCO is hereby directed to file a copy of its Expository Presentation via e-mail at docket@erc.ph, and copy furnish the Legal Service through legal@erc.ph, **at least five (5) calendar days** prior to the scheduled virtual hearing. PENELCO shall also be required, upon the request of any stakeholder, to provide an advance

copy of its expository presentation, at least five (5) calendar days prior to the scheduled virtual hearing.

Applicant PENELCO is further directed to submit, through personal service, PENELCO mail or ordinary mail/private courier, one (1) set of the original or certified true hard copies of its Jurisdictional Compliance, Expository Presentation, Pre-trial Brief, and Judicial Affidavits of witnesses, **within five (5) working days** from the date that the same were electronically submitted, as reflected in the acknowledgment receipt e-mail sent by the Commission.

Finally, PENELCO, including its authorized representatives and witnesses, is hereby directed to provide the Commission, through legal.virtualhearings@erc.ph, their respective e-mail addresses upon receipt of this *Order*. The Commission will send the access link/s to the aforementioned hearing platform within five (5) working days prior to the scheduled hearing.

SO ORDERED.

Pasig City, 02 October 2023.

FOR AND BY AUTHORITY
OF THE COMMISSION:


MONALISA C. DIMALANTA
Chairperson and CEO


LS: EDR/BJVG/MCCG

ERC
Office of the Chairperson and CEO



MCD2023-009962

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Copy Furnished:

1. Peninsula Electric Cooperative, Inc. (PENELCO)
Applicant
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Balanga City, Bataan
Email address: energytrading@penelco.com; penelco.energytrading@gmail.com
2. Atty. Ditas A. Leros-Amboy
Counsel for PENELCO
Unit 2008, Tycoon Centre
Pearl Drive, Ortigas Center, Pasig City
Email address: powerlawfirm@gmail.com
3. Office of the Solicitor General (OSG)
134 Amorsolo Street, Legaspi Village, Makati City
Email address: docket@osg.gov.ph
4. Commission on Audit (COA)
Commonwealth Avenue, Quezon City
Email address: citizensdesk@coa.gov.ph
5. Senate Committee on Energy
GSIS Building, Roxas Boulevard, Pasay City
Email address: senateenergycommittee@gmail.com
6. House Committee on Energy
Batasan Hills, Quezon City
Email address: committee.energy@house.gov.ph
9. Office of the City Mayor
Balanga City, Bataan
10. Office of the Sangguniang Panlungsod
Balanga City, Bataan
11. Office of the Municipal Mayor
Abucay, Bataan
12. Office of the Sangguniang Bayan
Abucay, Bataan
13. Office of the Municipal Mayor
Bagac, Bataan
14. Office of the Sangguniang Bayan
Bagac, Bataan
15. Office of the Municipal Mayor
Dinalupihan, Bataan
16. Office of the Sangguniang Bayan
Dinalupihan, Bataan
17. Office of the Municipal Mayor
Hermosa, Bataan
18. Office of the Sangguniang Bayan
Hermosa, Bataan
19. Office of the Municipal Mayor
Limay, Bataan
20. Office of the Sangguniang Bayan
Limay, Bataan

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21. Office of the Municipal Mayor
Mariveles, Bataan
22. Office of the Sangguniang Bayan
Mariveles, Bataan
23. Office of the Municipal Mayor
Morong, Bataan
24. Office of the Sangguniang Bayan
Morong, Bataan
25. Office of the Municipal Mayor
Orani, Bataan
26. Office of the Sangguniang Bayan
Orani, Bataan
27. Office of the Municipal Mayor
Orion, Bataan
28. Office of the Sangguniang Bayan
Orion, Bataan
29. Office of the Municipal Mayor
Pilar, Bataan
30. Office of the Sangguniang Bayan
Pilar, Bataan
31. Office of the Municipal Mayor
Samal, Bataan
32. Office of the Sangguniang Bayan
Samal, Bataan
33. Office of the Governor
Province of Bataan
34. Office of the Sangguniang Panlalawigan
Province of Bataan
35. Regulatory Operations Service (ROS)
Energy Regulatory Commission
14th Floor, Exquadra Tower, 1 Jade Drive,
Ortigas Center San Antonio, Pasig City