

Republic of the Philippines
ENERGY REGULATORY COMMISSION
San Miguel Avenue, Pasig City



**IN THE MATTER OF
VIOLATION OF ERC
ORDERS, RULES AND
REGULATIONS.**

**ERC CASE NO. 2016-127SC
For: Failure to File the
Certificate of Compliance
Application Three (3)
Months Before its Targeted
Date of Test and
Commissioning**

**JOBIN – SQM, INC.,
Respondent.**

X-----X

D O C K E T E D
Date: SEP 05 2017
By: [Signature]

DECISION

On 18 February 2016, respondent Jobin-SQM, Inc. (Jobin) filed the COC Application for its 7.14 MWp DC Phase 1 Solar Power Plant as a Feed-In Tariff (FIT) eligible power plant located in Mt. Sta. Rita, Subic Bay Freeport Zone, Subic, Zambales.

On 20 April 2016, respondent Jobin commenced its Test and Commissioning for the said power plant.

On 07 November 2016, the Commission approved and issued a Provisional Authority to Operate (PAO) in favor of respondent Jobin pending approval by the Commission of its dedicated point-to-point limited facilities to connect to the transmission system under ERC Case No. 2016-005 MC and likewise, issued a Show Cause Order against respondent Jobin directing it to submit to the Commission its explanation why it should not be penalized for failure to file the COC application three (3) months before its targeted date of test and commissioning when respondent Jobin filed the said COC application only on 18 February 2016 which is later than 3 months

before its date of test and commissioning on 20 April 2016, in violation of Section 4, Article III of the 2014 Revised Rules for the Issuance of COC for Generation Companies, Qualified End-Users and Self-Generation Facilities (2014 Revised COC Rules), hereunder quoted as follows:

“The application for COC for IPPs Generation Facilities shall be filed not later than three (3) months before the targeted date of Test and Commissioning of the said facilities. x x x.”

On 20 January 2017, respondent Jobin filed its “Compliance” with the Commission. In the said “Compliance” respondent Jobin, stated among others, that:

- A. The construction and equipment delivery were delayed due to the default of the Contractor for the Engineering, Procurement and Construction (EPC) of a 100 MW Solar Power Plant in anticipation of the Feed-In Tariff (FIT) deadline of 15 March 2016;
- B. On 21 January 2016, it terminated the contract of the EPC Contractor and changed its plans for the construction only of Phase 1 (7.14 MW) of the solar power plant in order to meet the FIT deadline;
- C. With the termination of the EPC Contract, replacement of supplier and change in the requirements and specifications for the inverters were made available only on 11 February 2016 and it filed the COC Application immediately on 18 February 2016;
- D. It had every intention of complying with the rules and regulation of the Commission and participated in the pre-filing conferences;
- E. It inadvertently failed to take cognizance of Section 4, Article II of the 2014 Revised COC Rules;
- F. There was no malice or bad faith as it declared of its intended date of start of test and commissioning on 01 April 2016 notwithstanding it filed its COC Application only on 18 February 2016;

G. Lastly, it prayed that the Commission waived or if not, mitigate and reduce any penalty resulting from the said violation.

On 26 January 2017, the Commission issued an Order setting the aforesaid case for a conference on 02 March 2017.

During the said conference, respondent Jobin representatives reiterated their explanation on the subject violation.

On 13 March 2017 respondent Jobin submitted its "Manifestation" offering voluntary compliance by paying the amount of Fifty Thousand Pesos (PhP50,000.00) as a compromise penalty for the settlement of this case. The said amount represents 50% of the computed penalty taking into consideration among others, the good faith of the party.

ISSUE

Whether respondent Jobin's Offer of Settlement is just, reasonable and acceptable under Section 11, Article V of the "Guidelines to Govern the Imposition of Administrative Sanctions in the Form of Fines and Penalties Pursuant to Section 46 of Republic Act No. 9136" (Guidelines).

DISCUSSION

Section 11, Article V of the Guidelines provides that:

"Section 11. Offers of Settlement. Any part to an administrative proceeding may, at any time before a decision is rendered, make an offer to the ERC conditionally or otherwise, for a consented decree, voluntary compliance or desistance and other settlement of the case. The offer and any or all of the ultimate facts upon which the offer is based shall be considered for settlement purposes only and shall not be used as evidence against any party for any other purpose and shall not constitute an admission by the party making the offer of any violation of the laws, rules, regulations, orders and resolutions of the Commission nor as a waiver to file any warranted criminal actions.

The ERC shall not accept an offer of settlement in the amount lower than 50% of the computed penalty.

However, in exceptional cases and at the full discretion of the Commission, an amount lower than 50% may be accepted taking into consideration the following circumstances:

- a) *The good faith of the offender*
- b) *The gravity of the violation*
- c) *The offense was committed for the first time*
- d) *Other reasons that the Commission en banc shall consider meritorious.”*

Further, Section 5, Article III of the Guidelines, states that:

“Section 5. Non Compliance with the provisions of the Act and its IRR, Grid and Distribution Codes, Rules, Regulations, Orders, Resolutions and Other Laws of the ERC. Any person who has been found to have committed a violation of any provisions of the Act and its IRR, the Philippine Grid and Distribution Code (PGDC), rules, regulations, orders, resolutions and other laws the implementation and enforcement of which are delegated to the ERC, including but not limited to the following, shall be subject to the following sanction:

x x x

No. of Violation	Basic Amount of Penalty	Additional Penalty Shall be Imposed for Any Willful Delay in the Implementation
1 st and 2 nd violation	PhP100,000.00	a) 10% of the basic amount of penalty if the compliance was made after one (1) month from notice
3 rd and 4 th violation	PhP300,000.00	b) 50% of the basic amount of penalty if the

		compliance was made after two (2) months from notice.
5 th and subsequent violations	PhP500,000.00 and Cancellation of the Certificate of Public Convenience and Necessity (CPCN), License and the Franchise for Consortium	c) 100% of the basic amount of penalty if the compliance was made after three (3) months from notice.

No compromise agreement shall be allowed in cases where the same violation was committed more than once.”

Based on the records of the Commission, respondent Jobin was delayed by less than three (3) months in the filing of its COC application as a FIT-Eligible Plant. Records bear, however, that it is respondent Jobin’s first (1st) offense. Further, the Commission considers respondent Jobin’s failure to file on time the COC application was due to the delays encountered in the replacement and change in requirements and specifications of its equipment such as the inverters because of the termination of its previous EPC contract which is beyond respondent Jobin’s control.

On the offer of settlement, it is noted that respondent Jobin filed the same before a decision could have been rendered by the Commission. Further, its offer of settlement in the amount of PhP50,000.00, which represents 50% of the computed basic penalty of PhP100,000.00 for the first offense, is found to be just and acceptable.

WHEREFORE, the foregoing premises considered and pursuant to Section 11, Article V of the Guidelines, respondent Jobin is hereby directed to remit, within fifteen (15) days from receipt hereof, the amount of FIFTY THOUSAND PESOS (PhP50,000.00), representing 50% of the total imposable penalty of PhP 100,000.00.

SO ORDERED.


Pasig City, 27 June 2017.

JOSE VICENTE B. SALAZAR*
Chairman & CEO

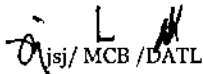

GLORIA VICTORIA C. YAP-TARUC
Commissioner


ALFREDO J. NON
Commissioner


JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Commissioner


GERONIMO D. STA. ANA
Commissioner

*On preventative suspension as per Order of the Office of the President (OP-DC Case No. 17-D-094) dated 02 May 2017.

 L / MCB / DATL

Copy furnished:

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