

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. 2016-0111 SC
For: Failure to File the
Certificate of Compliance
Application Three (3)
Months Before its Targeted
Date of Test and
Commissioning**

**NEGROS ISLAND SOLAR
POWER, INC.,**

Respondent.

X-----X

D O C K E T E D
Date: NOV 03 2017
By: [Signature]

DECISION

On 17 February 2016, respondent Negros Island Solar Power, Inc. (ISLASOL) filed the COC Application for its 48.0 MWp DC Manapla Solar Power Plant (ISLASOL III) as a Feed-In Tariff (FIT) eligible power plant located in Brgy. Sta. Teresa, Manapla, Negros Occidental.

On 25 February 2016, respondent ISLASOL commenced its Test and Commissioning for the said power plant.

On 14 July 2016, the Commission issued a Provisional Authority to Operate (PAO) in favor of respondent ISLASOL for its ISLASOL III and likewise, issued a Show Cause Order against respondent ISLASOL 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 ISLASOL filed the said COC application only on 17 February 2016 which is later than 3 months before its date of test and commissioning on 25 February 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 22 September 2016, respondent ISLASOL filed its “Compliance” with the Commission. In the said “Compliance” respondent ISLASOL, stated among others, that:

- A. It was constrained to file its application in early February 2016 as it was only then able to compile most of the required documents to be used for the evaluation upon filing of the application. It made the decision to file the application later instead of submitting a pro-forma application to the Commission;
- B. It filed the application for ISLASOL III on 17 February 2016, and on the same date, it also requested for authority to test and commission the plant for sixty (60) days from the date of issuance thereof;
- C. The testing and commissioning was conducted on 08 March 2016 after obtaining all the required provisional certificates of approval to connect ISLASOL III;
- D. Its failure to comply with Section 4, Article 3 of the 2014 Revised Rules was not done purposefully to violate this Commission’s instruction but in fact was results of its prudence in filing a substantially compliant application rather than a pro-forma one; and
- E. It prayed that no penalty be imposed upon it for its failure to file an application within the reglementary period under Resolution No. 16, series of 2014.

On 30 September 2016, the Commission issued an Order setting the aforesaid case for a conference on 08 November 2016.

On 11 October 2016, respondent ISLASOL filed its “Answer” with the Commission reiterating their explanation on the subject violation.

On 13 January 2017, the Commission granted the extension of the Provisional Authority to Operate (PAO) in favor of respondent ISLASOL for its ISLASOL III.

On 25 January 2017 respondent ISLASOL submitted its "Offer of Settlement" offering voluntary compliance by paying the amount of Ten Thousand Pesos (PhP10,000.00) as a compromise penalty for the settlement of this case. The said amount represents 10% of the computed penalty taking into consideration among others, the good faith of the party.

In its "Manifestation" filed with the Commission on 25 January 2017, respondent ISLASOL requested the indulgence of the Commission by considering the following circumstances:

- a. ISLASOL's submission of its application later than three (3) months before its targeted date of test and commissioning was done in good faith. It was caused by its utmost intent to file an application that substantially complies with the full requirements, including documentary and technical, of the 2014 Revised Rules rather than comply with its provision on the period for filing only.
- b. ISLASOL has never been charged of any offense against or any violation of the rules and regulations of the Commission.
- c. The rate of return on the investment on the solar power plant is still uncertain, considering that its eligibility for Feed-In-Tariff is still in dispute.

On 04 April 2017, the ISLASOL III's dedicated point-to-point limited transmission facilities under ERC Case No. 2015-057 MC.

On 10 July 2017, the Commission approved the conversion of the Provisional Authority to Operate (PAO) to a Certificate of Compliance (COC) in favor of respondent ISLASOL for its ISLASOL III.

ISSUE

Whether respondent ISLASOL'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.”

Upon evaluation and thorough review of the records of the case, particularly the facts as stated in its manifestation, the Market Operations Service (MOS) found that respondent ISLASOL was delayed by almost three (3) months in the filing of its COC application as a FIT-Eligible Plant and it was its first (1st) offense. Further, respondent ISLASOL’s failure to file on time the COC application was due to its utmost intent to substantially comply with the full requirements of the 2014 Revised COC Rules which includes, documentary and technical. Likewise, respondent ISLASOL has never been charged of any offense against or any violation of the rules and regulations of the Commission.

On the offer of settlement, respondent ISLASOL, applying the foregoing provisions of the Guidelines, filed its offer of settlement before a decision was rendered. The amount offered for settlement of the case, however, is lower than PhP50,000.00 of the computed penalty which is PhP100,000.00.

Although the aforesaid provisions of the Guidelines allows an offer of settlement lower than the fifty percent (50%) of the computed basic penalty of PhP100,000.00, Section 11 of the Guidelines allows the acceptance of an offer of compromise lower than fifty percent (50%) of the computed penalty only in exceptional cases and at the full discretion of the Commission.

The reason brought forward by respondent ISLASOL were the same grounds presented in its 22 September 2016 “Compliance”. There are no remarkable circumstances or conditions that would justify the acceptance of an amount lower than 50% of the computed penalty of PhP100,000.00.

Thus, the MOS finds respondent ISLASOL’s offer of settlement in the amount of PhP10,000.00 which is lower than 50% of the computed penalty of PhP100,000.00 to be not acceptable.

WHEREFORE, the foregoing premises considered and pursuant to Section 11, Article V of the Guidelines, respondent ISLASOL offer of settlement is *Denied* and is hereby directed to remit, within fifteen (15) days from receipt hereof, the amount of

ONE HUNDRED THOUSAND PESOS (Php100,000.00),
representing the basic computed penalty for first (1st) violation.

SO ORDERED.

Pasig City, 09 August 2017.

JOSE VICENTE B. SALAZAR*
Chairman & CEO

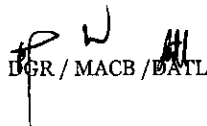

GLORIA VICTORIA C. YAP-TARUC
Commissioner


ALFREDO J. NON
Commissioner


JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Commissioner


GERONIMO D. STA. ANA
Commissioner

*Suspended by virtue of a Decision issued by the Office of the President (OP-DC Case No. 17-D-094) dated 02 Aug. 2017


DGR / MACB / DATL

Copy furnished:

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