

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. 2016-091 SC
For: Operating a Generation
Facility without a valid
Certificate of Compliance
(COC)**

**MISAMIS ORIENTAL I
RURAL ELECTRIC SERVICE
COOPERATIVE, INC.,
Respondent.**

X-----X

D O C K E T T E D
Date: NOV 07 2017
By: [Signature]

DECISION

On 25 September 2014, respondent Misamis Oriental I Rural Electric Service Cooperative, Inc. (MORESCO-I) filed with the Commission its application for the issuance of Certificates of Compliance (COCs) for its 2.0 MW Modular Diesel Power Plant located in Moog, Laguindingan, Misamis Oriental. On 26 to 27 April 2015, the Commission conducted a technical inspection on the said generating facilities. During the said inspection, it was found that respondent MORESCO-I has been operating its generation facilities since 26 November 2014.

The Commission approved and issued the COCs in favor of MORESCO-I on 13 June 2016.

The Commission, then, likewise issued a Show Cause Order against respondent MORESCO-I directing it to submit to the Commission its explanation why it should not be penalized for operating a generation facility without a valid COC since 26 November 2014.

The said act is in violation of Section 6 of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA); paragraph 2, Section 1, Rule 5 of the EPIRA Implementing Rules and Regulations (IRR); and Section 2(i), Article I, of the Commission's 2014 Revised Rules for the Issuance of COCs for Generation Companies, Qualified End-Users and Entities with Self-Generation Facilities (2014 Revised Rules), hereunder quoted as follows:

A. Section 6 of the EPIRA:

“x x x

“Upon the effectivity of this Act, any new generation company shall, before it operates, secure from the Energy Regulatory Commission (ERC) a Certificate of Compliance x x x.

x x x.”

B. Paragraph 2, Section 1, Rule V of the IRR of EPIRA:

“No Person may engage in the Generation of Electricity as a new Generation Company unless such person has received a COC from the ERC to operate facilities used in the Generation of Electricity. x x x.”

C. Section 2(i), Article I of the 2014 Revised Rules:

“No Person may engage in the Generation of Electricity as a Generation Company, Qualified End-user, or Entity with Self-Generation Facilities unless it has secured a COC from the ERC to operate Generation Facilities used in the Generation of Electricity.”

On 04 October 2016, respondent MORESCO-I through its counsels, filed its “Explanation”. In the said “Explanation”, the counsel for respondent MORESCO-I, stated among others, that:

1. The island of Mindanao experienced a severe supply shortage even as the demand was steadily increasing over the years due to the lack of new generation facilities. This was principally the

result of NPC-PSALM's policy of not adding new generation plants as mandated by R.A. 9136 which requires the National Power Corporation – Power Sector Assets and Liabilities Management Corporation (NPC-PSALM) to gradually dispose of its generation assets.

2. This lack of new generation capacity was exacerbated by the El Niño phenomenon due to the island's heavy reliance on Hydropower, which accounts for about 52.49% of the overall generation mix.
3. This emergency situation has led the Department of Energy (DOE) to direct the electric cooperatives, including applicant MORESCO-1, to acquire and/or lease modular generation, with a guaranteed payment through the National Electrification Administration (NEA).
4. It has an existing Transition Supply Contract with NPC-PSALM which unilaterally reduced the committed available power supply to applicant MORESCO-1 by about thirty percent (30%) of its annual demand due to the declining dependable capacities of Pulangui and Agus hydropower plants.
5. The DOE directed the NEA to implement the Modular Generating Set Program to electric cooperatives in Mindanao to mitigate the impact of the daily rotating blackouts.
6. The generator set was delivered and installed in Laguindingan International Airport in Cagayan de Oro City on 29 August 2014 by Gendiesel Philippines, Inc., the Engineering Procurement and Construction (EPC) Contractor of MORESCO-1, and also conducted the initial test and commissioning of the said 2.0 MW modular generator set.
7. The entire island is still suffering from supply capacity shortage and the 2.0 MW Modular Generator Set cannot be left idle.
8. The 2.0 MW generator set was requested by the Civil Aviation Authority of the Philippines (CAAP) to become operational immediately to serve power and standby requirements for the daily operations of the Laguindingan International Airport, otherwise it would adversely affect air traffic in the said airport.

9. It has always been compliant with the Commission's regulatory requirements and it has no intention, whatsoever, to evade any of its order.

On 22 November 2016, the Commission issued an Order setting the aforesaid case for a conference on 10 January 2017.

During the said conference, respondent MORESCO-1 representatives reiterated their explanation on the subject violation and subsequently offered to settle and pay Fifty Thousand Pesos (PhP50,000.00) as settlement of the said case. Respondent MORESCO-1 then requested for a period of ten (10) days or until 20 January 2017 to file its "Offer of Settlement" with the Commission.

On 13 January 2017, Counsel for the respondent MORESCO-1 filed its "Manifestation to Compromise" 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 MORESCO-I'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 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 explanation, the Commission found that since 26 November 2016, respondent MORESCO-1 has been operating its 2.0 MW Modular Generator Set commercially without a valid COC. Records bear that it is its first (1st) offense. However, MORESCO-1 has shown that its 2.0 MW Modular Generator Set needs to be immediately operated as there was a demand for the CAAP to serve the required power for the daily operation of the Laguindingan International Airport, otherwise it would adversely affect air traffic in the said airport.

On the offer of settlement, respondent MORESCO-I, applying the foregoing provisions of the Guidelines, filed the same before a decision was rendered. 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 1st offense, is found to be just and acceptable.

WHEREFORE, the foregoing premises considered and pursuant to Section 11, Article V of the Guidelines, respondent

MORESCO-I 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, 25 July 2017.

JOSE VICENTE B. SALAZAR*
Chairman & CEO

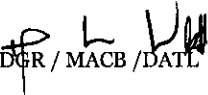

GLORIA VICTORIA C. YAP-TARUC
Commissioner


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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