

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. 2016-087SC
For: Failure to File the
Certificate of Compliance
Application Three (3)
Months Before its Targeted
Date of Test and
Commissioning**

**YH GREEN ENERGY, INC.,
Respondent.**

X-----X

D O C K E T E D
Date: NOV 09 2017
By: [Signature]

DECISION

On 16 December 2015, respondent YH Green Energy, Inc. (YH Green) filed its Certificate of Compliance (COC) application for its 14.51 MWp DC Solar Power Plant as a Feed-In Tariff (FIT)-eligible power plant located in Brgy. Bacong, Hermosa, Bataan.

Subsequently, on 09 February 2016, respondent YH Green commenced its Test and Commissioning for the said power plant.

On 30 March 2016, the Commission approved and issued a COC in favor of respondent YH Green. Likewise, the Commission approved the issuance of a Show Cause Order against respondent YH Green and 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 YH Green filed the said COC application only on 16 December 2015 which is later than 3 months before its date of test and commissioning on 09 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 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.”

In compliance therewith, on 11 August 2016, respondent YH Green filed its “Verified Explanation” stating, among others, that:

1. It is a first time developer of a solar power plant and it was not aware that it has violated Section 4, Article III of the 2014 Revised Rules;
2. Due to Department of Energy’s (DOE) FIT program which is on a “first to connect and deliver power – first serve” basis, it accelerated its installation program;
3. It responded to the call of the government for power investment to address the need for additional capacity in the Luzon Grid;
4. As early as October 2015, it applied and was granted a solar energy service contract by the DOE. In the said contract it is obligated to provide electric power and deliver the same as early as possible in order to comply with the deadline for FIT program. Thus, the urgent need for early test and commissioning of its solar power plant;
5. It has no malicious intent to transgress the laws, rules and regulations of the Commission; and
6. Its submission of letters dated 14 December 2015 and 04 January 2016 to the Commission should be construed as an act of good faith to comply and obey all the laws being administered and enforced by the Commission.

On 19 August 2016, the Commission issued an Order setting the aforesaid case for a conference on 20 September 2016. During the said conference, respondent YH Green representatives reiterated their explanation on the subject violation and subsequently offered to pay Fifty Thousand Pesos (PhP50,000.00) as settlement of the said case. Respondent YH Green then requested to file its “Offer of Settlement” or “Manifestation” with the Commission upon approval

by the respondent YH Green's Board of Directors of the offer of settlement.

On 06 December 2016, respondent YH Green filed 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 YH Green'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 YH Green was delayed by less than two (2) months in the filing of its COC application as a FIT-Eligible Plant and it was its first (1st) offense. However, it claimed that there was an immediate need to conduct test and commissioning due to the “first to connect - first serve” FIT race by the DOE. As such, in the conduct of its test and commissioning, respondent YH Green was not aware that it has violated Section 4, Article III of the 2014 Revised Rules. The Commission, however, does not find merit in the said justification.

On the offer of settlement, respondent YH Green, 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 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 YH Green 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, 24 October 2017.



ALFREDO J. NON
OIC Chairman & CEO



GLORIA VICTORIA C. YAP-TARUC
Commissioner



GERONIMO D. STA. ANA
Commissioner



JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Commissioner


Est/ MCB / DATL / MCCG

Copy furnished:

MR. DERRICK N. CHUA

President

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