

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. 2017-002SC
For: Constructing its
Dedicated Point-to-Point
limited Transmission
Facilities Without Prior
Authorization from the
Commission**

**GREEN INNOVATIONS FOR
TOMORROW CORP.,
Respondent.**

X-----X

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

DECISION

On 09 September 2015, respondent Green Innovations for Tomorrow Corp. (GIFT) filed its application for the issuance of a Certificate of Compliance (COC) for its 12 MW biomass power plant as a Feed-in Tariff (FIT) eligible renewable power plant located in Brgy. Bacal II, Talavera, Nueva Ecija.

On 19 June 2016, respondent GIFT filed its application for authority to develop, own and operate dedicated point-to-point limited Transmission Facilities to connect the 12 MW Biomass Power Plant to the Pantabangan-Cabanatuan 69 kV Line of the Luzon Grid with Prayer for Provisional Authority, docketed as ERC Case No. 2016-022MC.

On 27 to 28 October 2016, a technical inspection was conducted by the Commission on the aforesaid plant.

On 16 January 2017, the Commission approved the request of respondent GIFT for the issuance of Provisional Authority to Operate (PAO) pending approval by the Commission of its dedicated point-to-point limited transmission facilities under ERC Case No. 2016-022MC.

On 16 January 2017, the Commission issued a Show Cause Order against respondent GIFT directing it to submit to the Commission its explanation why it should not be penalized for constructing its dedicated point-to-point limited transmission facilities without prior authorization from the Commission. The said act is deemed in violation of Section 9 of the EPIRA and Section 1, Article IV of the 2014 Revised Rules, which provides as follows:

“A Generation Company which develops and owns or operates a dedicated point-to-point limited transmission or distribution facilities for the purpose of connecting to the transmission or distribution system, respectively, said Generation Company should secure prior authorization by the ERC.”

On 23 March 2017, respondent GIFT filed its “Explanation” with the Commission. In the said “Explanation” respondent GIFT, stated among others, that:

- A. It would like to extend its sincerest apologies for the oversight of the construction of the connection facility prior to its approval by the Commission;
- B. It has no intention to violate the EPIRA;
- C. The oversight was due to the fact that the Renewable Energy Industry in the country is relatively new and it lacks established precedents upon which it may base its actions for the construction of the connection facility; and
- D. It is taking full responsibility for the oversight and humbly apologizes to the Commission and pleads for clemency for its Officers and Directors for whatever penalties that the Commission may impose against them.

On 04 April 2017, the Commission issued an Order setting the aforesaid case for a conference on 23 May 2017.

During the 23 May 2017 conference, respondent GIFT representatives reiterated their explanation on the subject violation.

On 05 June 2017, the Commission approved and issued the COC in favor of respondent GIFT as a FIT-eligible power plant after its dedicated point-to-point limited facilities to connect to the transmission system under ERC Case No. 2016-022 MC was approved by the Commission on 02 May 2017.

On 27 June 2017 respondent GIFT submitted its “Manifestation of Availment of 50% Penalty for First Violation” 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 GIFT’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 GIFT constructed its dedicated point-to-point limited transmission facilities without prior authorization from the Commission. Respondent GIFT asserted that the oversight on the construction of the connection facility was due to the fact that the Renewable Energy Industry in the country is relatively new and respondent GIFT lacks established precedents upon which it may base its actions for the construction of the connection facility. The Commission, however, does not find merit in the said justification.

On the offer of settlement, it is noted that respondent GIFT 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 GIFT 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. ERNESTO T. VENDIVIL
President
GREEN INNOVATIONS FOR TOMORROW CORP.
Brgy. Bacal II, Talavera, Nueva Ecija

ATTY. CARLO MARCO M. BAUTISTA
Counsel for Respondent GIFT
15 Pascual St., Brgy. F.E. Marcos, San Jose City, Nueva Ecija