

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. 2016-086SC  
For: Failure to Renew the  
Certificate of Compliance  
(COC) Within the  
Prescribed Period**

**PROVINCIAL GOVERNMENT  
OF IFUGAO,**

**Respondent.**

X-----X

**D O C K E T E D**

Date: NOV 27 2017

By: M

**DECISION**

On 21 March 2011, the Commission issued a Certificate of Compliance (COC) in favor of the Provincial Government of Ifugao (PGI) for its 200 kW Ambangal Mini-Hydroelectric Power Plant (MHEPP) for a period of five (5) years.

On 15 July 2015, the Commission issued a notice to respondent PGI to renew the said COC six (6) months before 21 March 2016.

On 18 March 2016, respondent PGI filed the application for the renewal of its COC for the said power plant.

On 04 May 2016, the Commission approved and issued the renewal of COC in favor of PGI. Likewise, the Commission approved the issuance of a Show Cause Order against respondent PGI directing it to submit to the Commission its explanation why it should not be penalized for failure to renew the COC within the prescribed period when it filed its COC application for the said power plant only on 18 March 2016. The said act is deemed in violation of Section 4, Article V

of the 2014 Revised Rules for the Issuance of COCs for Generation Companies, Qualified End-Users and Entities with Self-Generation Facilities (2014 COC Revised Rules), hereunder quoted as follows:

*“A Generation Company/ Entity with Self-Generation Facility intending to continue operating beyond the term of the issued COC shall apply with the ERC for its renewal at least six (6) months prior to its expiration. x x x.”*

On 09 August 2016, respondent PGI filed its “Compliance” with the Commission. In the said “Compliance” respondent PGI, stated among others, that:

- A. The present Head of the Agency, Hon. Pedro G. Mayam-o assumed the office of the Governor only on 30 June 2016;
- B. The alleged violation was committed under the watch of the former Governor of Ifugao;
- C. The present Governor of Ifugao, its directors and officers relied on the then Governor’s commitment to file the application for the renewal of COC within the prescribed period allowed by the rules;
- D. It was only on 20 July 2016 that the office of the Governor of Ifugao Province learned of the late filing of the COC application by the former Governor;
- E. The application for the renewal of the COC filed on 18 March 2016 be admitted and granted; and
- F. The violation under Section 4, Article V of the 2014 COC Revised Rules be set aside.

On 19 August 2016, the Commission issued an Order setting the aforesaid case for a conference on 26 September 2016 and was later reset to 08 March 2017 since respondent PGI failed to appear at the original scheduled conference.

During the 08 March 2017 conference, respondent PGI representatives reiterated their explanation on the subject violation.

On 31 March 2017 respondent PGI submitted its “Motion for Reduction of Amount of Penalty” 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 PGI'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

<b>No. of Violation</b>	<b>Basic Amount of Penalty</b>	<b>Additional Penalty Shall be Imposed for Any Willful Delay in the Implementation</b>
1 <sup>st</sup> and 2 <sup>nd</sup> violation	PhP100,000.00	a) 10% of the basic amount of penalty if the compliance was made after one (1) month from notice
3 <sup>rd</sup> and 4 <sup>th</sup> violation	PhP300,000.00	b) 50% of the basic amount of penalty if the compliance was made after two (2) months from notice.
5 <sup>th</sup> and subsequent violations	PhP500,000.00 and Cancellation of the Certificate of Public	c) 100% of the basic amount of penalty if the

	Convenience and Necessity (CPCN), License and the Franchise for Consortium	compliance was made after three (3) months from notice.
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*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 PGI was delayed by almost six (6) months in the filing of its application for Renewal of COC. However, respondent PGI alleged that the violation was committed under the watch of the former Governor of Ifugao, and that he relied on the former Governor to file the application for the renewal of COC within the prescribed period. Likewise, the present Governor only learned on the late filing of the COC renewal application on 20 July 2016. Finally, the present Governor prayed and requested that the violation under Section 4, Article V of the 2014 COC Revised Rules be set aside.

However, on the offer of settlement, since the violation was committed under the watch of the former Governor of Ifugao, the Commission resolves that the instant case only warrants an admonishment or reprimand upon respondent PGI for its failure to renew the COC within the prescribed period. However, respondent PGI should be warned that the same similar offense in the future may constrain the Commission to impose the appropriate fines and penalties against it.

**WHEREFORE**, the foregoing premises considered, respondent PGI is hereby **REPRIMANDED** for failure to renew the COC within the prescribed period in violation of Section 4, Article V of the 2014 COC Revised Rules and **WARNED** that a similar offense in the future shall be dealt with more severely.

**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

  
cst/ MCB / DATL/ MCCG

Copy furnished:

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