

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. 2016-003 SC
For: Failure to secure prior
authorization of its
dedicated point-to-point
limited transmission facility**

**UNIVERSAL ROBINA CORP.,
Respondent.**

X-----X

D O C K E T E D
Date: DEC 13 2017
By: W

DECISION

On 14 July 2014, respondent Universal Robina Corporation (URC) filed its application for the issuance of a Certificate of Compliance (COC) for its 46 MW Bagasse-Fired Kabankalan Biomass Power Plant.

On 19 January 2016, the Commission approved the issuance of a Provisional Authority to Operate (PAO) in favor of respondent URC for its 46 MW Bagasse-Fired Kabankalan Biomass Power Plant. The PAO was granted in the meantime that the dedicated point-to-point limited transmission application of URC is pending approval by the Commission.

On 15 October 2015, respondent URC filed the said application for the Commission's consideration and approval. Said application is in compliance with Section 9 (f) of Republic Act No. 9136 (R.A. 9136) and Section 1, Article IV of the 2014 Revised COC Rules which provide as follows:

Section 9(f) of R.A. 9136:

“x x x

A generation company may develop and own or operate dedicated point-to-point limited transmission facilities that are consistent with the TDP: Provided, that such facilities are required only for the purpose of connecting to the transmission system, and are used solely by the generating facility, subject to prior authorization by the ERC. x x x.”

Section 1, Article IV of the 2014 Revised COC Rules:

“x x x

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, should secure prior authorization by the ERC.”

On 19 January 2016, the Commission likewise issued a Show Cause Order against respondent URC directing it to submit to the Commission its explanation for failure to secure prior authorization of its dedicated point-to-point limited transmission facility.

On 19 April 2016, respondent URC filed its “Answer”. In the said “Answer” respondent URC stated, among others, that:

1. NGCP sent a communication dated 25 June 2015 which provided with the operation and maintenance cost for Transmission Facility. In good faith, it proceeded with the development of the generation facility with the understanding that the transmission facility will be under the development and maintenance of NGCP. It believed that the authority to develop and own and operate the transmission facility was not required;
2. It voluntarily initiated the application for the authority to develop and own/or operate the dedicated point-to-point limited transmission facility;

3. It has entered the power generation industry in formal partnership with the Department of Energy (DOE) and other agencies to assist in addressing the inadequacy of electricity across the country. It coordinated and sought advice and guidance with the concerned agencies to pursue operation under the Renewables Energy Act (RE Law);
4. Hence, in good faith, it undertook the completion of its generation and connection facilities in compliance with law.

Respondent URC prayed that no criminal action should be instituted against respondent URC's officers or directors for failure to secure prior authorization of its dedicated point-to-point limited transmission facility.

On 12 May 2016, The Commission issued an Order setting the aforesaid case for a conference on 31 May 2016.

During the said conference, respondent URC 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 URC then requested to file its "Offer of Settlement" or "Manifestation" with the Commission on or before 07 June 2016.

On 07 June 2016, respondent URC 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 URC'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 respondent URC appears to have no ill intention to violate the provisions of the EPIRA or any law, rules and/or regulations in relation to the operation of its facility. The inadvertence in complying with the requirements for the transmission facility is considered to be in good faith as it endeavored to comply with all of the requirements

and conditions called for under existing statutes. The Commission, however, does not find merit in the said justification.

On the offer of settlement, respondent URC, applying the foregoing provisions of the Guidelines, filed its offer of settlement before a decision was rendered. Further, its offer of settlement in the amount of PhP50,000.00 which is 50% of the computed basic penalty of PhP100,000.00 for its 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 URC 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, 17 November 2017.



ALFREDO J. NON
OIC Chairman & CEO






GLORIA VICTORIA C. YAP-TARUC
Commissioner



GERONIMO D. STA. ANA
Commissioner



JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Commissioner

  
REM / MACB / DATL / MCCG

Copy furnished:

- MR. LANCE Y. GOKONGWEI**
President / CEO
UNIVERSAL ROBINA CORPORATION
43/F Robinsons Equitable Tower
ADB Avenue corner Poveda St.
Ortigas Center, Pasig City