

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. 2016-001 SC
For: Operating a Generation
Facility without a valid COC**

**UNIVERSAL ROBINA CORP.,
Respondent.**

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D O C K E T E D
Date: DEC 18 2017
By: 

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.

Based on the data gathered from the Spot Market Division, respondent URC has been operating commercially without a valid COC since 07 December 2015. 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-Generating Facilities (2014 Revised Rules), hereunder quoted as follows:

1. 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”

2. 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.”

3. 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 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 19 January 2016, the Commission likewise issued a Show Cause Order against respondent URC directing it to submit to the Commission its explanation for operating a generation facility without a valid COC.

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

1. It is not liable for violation because the power plant was still undergoing testing and commissioning;
2. The determination of the operational and capability criteria in accordance with the standard engineering practice is necessary to establish the commercial operations of a generation company. Thus, the NGCP's determination that respondent's biomass fired power plant is still under testing and commissioning as indicated in their 30 March 2016 communication is determinative and decisive;
3. Given the pronouncement of the NGCP, respondent's power plant has yet to achieve the operational and capability criteria necessary to meet the standard engineering practice set for a generation facility. Further, pending the full assessment of the full energization of the power plant there is yet a determination that the equipment has passed all required tests to show that the power system or equipment was erected and connected in the proper manner and can be expected to work satisfactorily;
4. In addition, the Approval of Registration of the respondent in the Wholesale Electricity Spot Market dated 09 December 2014 required that prior to commercial operations, the respondent must submit the following:
 - a. Transmission Service Agreement with NGCP;
 - b. Metering Service Agreement with the NGCP;
 - c. Certificate of Compliance from the ERC with the terms and conditions; and
 - d. ERC Certification of technical plant specifications.
5. Respondent has been consistently cooperating with the various agencies of the government to assist in alleviating the lack of energy supply across the country.

Respondent URC prayed that no criminal action should be instituted against respondent URC's officers or directors for operating without a valid COC.

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.
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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, a new player in the generation in the power industry have pursued participation in the industry imbued with public interest and necessity. The power crisis in the recent years have led the government’s crusade to encourage investments in the power industry. Respondent committed to its initiative using renewable resource from its sugar mills and have steadily coordinated with all government agencies to facilitate its compliance with the law, rules and regulations. Moreover, the respondent is aware of its obligations and acknowledges and recognizes that compliance in established policies are necessary for its successful participation in the power industry. 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 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



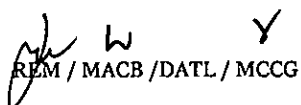
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