

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. 2015-015 MC
For: Operating a Generation
Facility without a valid
Certificate of Compliance
(COC)**

**S. I. POWER CORPORATION,
Respondent.**

X-----X

D O C K E T E D
Date: DEC 15 2017
By: [Signature]

DECISION

On 25 November 2014, respondent S.I. Power Corporation (SIPCOR) filed with the Commission its application for the issuance of Certificates of Compliance (COCs) for its 3.23 MW Lazi Diesel Power Plant (Lazi DPP) located in Lazi, Siquijor and 3.23 MW Siquijor Diesel Power Plant (Siquijor DPP) located in Siquijor, Siquijor. On 25 to 27 February 2015, the Commission conducted a technical inspection on the said generating facilities. During the said inspection, it was found that respondent SIPCOR already commenced the commercial operations of its generation facilities after a successful conduct of test and commissioning on both sites. The Commercial Operation Dates (CODs) for the Lazi and Siquijor generation facilities were set on 10 February 2015 and 13 February 2015, respectively.

The Commission approved and issued the COCs in favor of SIPCOR on 16 March 2015.

The Commission, then, likewise issued a Show Cause Order against respondent SIPCOR directing it to submit to the Commission its explanation why it should not be penalized for operating a generation facility without a valid COC on 16 March 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-Generation Facilities (2014 Revised Rules), hereunder quoted as follows:

A. 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."

B. 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."

C. 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 Facilities unless it has secured a COC from the ERC to operate Generation Facilities used in the Generation of Electricity."

On 12 May 2015, respondent SIPCOR through its counsels, filed its "Compliance with Motion". In the said "Compliance with Motion", the counsel for respondent SIPCOR, stated among others, that:

1. While the application for issuance of COC was still pending and the site inspection has not yet conducted, it received a letter dated 16 December 2014 from the National Power Corporation (NPC), informing SIPCOR that the Contract of

Lease for the 1.50 MW generating sets of NPC in Siquijor would expire on 07 February 2015;

2. It was reminded by the NPC that the expiration of the contract coupled with budgetary constraints of NPC in extending the same would highlight SIPCOR's commitment to meet its commercial operation date;
3. Its target COD of the generating facilities in Lazi and Siquijor sites was February 2015, pursuant to the Agreement with the Province of Siquijor Electric Cooperative (PROSIELCO) and the Phase-In Phase Out Agreement (PIPO) between PROSIELCO, SIPCOR and NPC; and
4. It ensured the timely completion of the installation and testing and commissioning of its generation facilities in order to make good of its commitment with the NPC and PROSIELCO and to serve the electric power needs of the consuming public in the franchise area of the PROSIELCO in Siquijor Island.

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

Thereafter, on 25 August 2015, the Commission issued an Order setting the aforesaid case for a conference on 23 September 2015.

During the said conference, The respondent SIPCOR's representatives reiterated their explanation on the subject violation and subsequently offered to compromise and pay the total amount of PhP100,000.00 for the two (2) plants as settlement of the said case. Respondent SIPCOR then requested for a period of fifteen (15) days, or until 08 October 2015, to file its "Offer of Settlement" with the Commission.

On 02 October 2015, respondent SIPCOR filed its "Manifestation (Offer of Compromise)" offering voluntary compliance by paying the amount of PhP100,000.00 for the two (2) plants 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 SIPCOR'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 SIPCOR's operation of a generation facility without a valid COC was not attended by any intent to ignore or a willful disregard of the Commission's rules and regulations. Instead, SIPCOR's conduct was purely due to its commitment with the NPC and PROSIELCO to serve the electric power needs of the consuming public in the franchise area of the PROSIELCO in Siquijor Island. The Commission, however, does not find merit in the said justification.

On the offer of settlement, respondent SIPCOR, 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 per plant which represents 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 SIPCOR is hereby directed to remit, within fifteen (15) days from receipt hereof, the amount of ONE HUNDRED THOUSAND PESOS (Php100,000.00), representing 50% of the total imposable penalty of Php 200,000.00.

SO ORDERED.

Pasig City, 17 November 2017.



ALFREDO J. NON
OIC Chairman & CEO



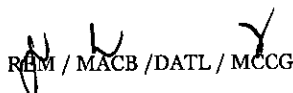
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REM / MACB / DATL / MCGG

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