

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. 2015-028 MC
For: Failure to Renew the
Certificate of Compliance
(COC) within the Prescribed
Period**

**TRANS-ASIA OIL AND
ENERGY DEVELOPMENT
CORPORATION,
Respondent.**

X-----X

D O C K E T E D
Date: DEC 15 2017
By: _____

DECISION

On 27 January 2015, respondent Trans-Asia Oil and Energy Development Corporation (respondent TA Oil) filed with the Commission an application for the renewal of its Certificate of Compliance (COC) for its 3.40 MW Guimaras Diesel Power Plant located in Brgy. San Miguel, Jordan, Guimaras.

The Commission approved the renewal of respondent TA Oil's COC for the said power plant on 11 May 2015.

On 11 May 2015, the Commission likewise issued a Show Cause Order against respondent TA Oil directing it to submit to the Commission its explanation on why it should not be penalized for failure to renew the COC within the prescribed period when it filed its application for the second renewal of its COC for the said power plant only on 27 January 2015, which is less than six (6) months prior to the expiration of its COC. The said act is 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 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 29 June 2015, Attys. Alan T. Ascalon, John Henry C. Liqueste & Martessa E. Nuylan-Rodrigueza, Counsel for the respondent TA Oil filed its “Explanation”. In the said “Explanation”, respondent TA Oil, stated among others that:

1. As early as 24 September 2014, the documents for the renewal of its COC had been requested from the different functional groups of the Corporation;
2. On 14 October 2014, the 2014 Revised Rules was issued, which provided for additional requirements for renewal of COC and among the new requirements is the five year operational history of the power plant, which was previously a three (3) year period;
3. With that development, it had to coordinate with the plant personnel to retrieve the documents/data pertaining to five (5) year operational history of the Guimaras Power Plant;
4. Majority of the information/data had to be retrieved from the power plant in Guimaras while application for renewal of the COC was being undertaken at the Head Office in Makati City; and
5. Organizational Changes also contributed to the delay in the retrieval of the said information/data.

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

During the said conference, respondent TA Oil 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 TA Oil then requested for a period of fifteen (15) days or until 08 October 2015 to file its “Offer of Settlement” with the Commission.

On 01 October 2015, the Commission received respondent TA Oil's letter 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 TA Oil'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 TA Oil was delayed by less than six (6) months in the filing of its COC application and it was its first (1st) offense. Further, respondent TA Oil encountered several delays in the verification and authentication of the documents due to logistical and administrative difficulties on account of organizational changes. The Commission, however, does not find merit in the said justification.

On the offer of settlement, respondent TA Oil, 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 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 TA Oil 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



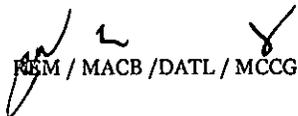
GLORIA VICTORIA C. YAP-TARUC
Commissioner



GERONIMO D. STA. ANA
Commissioner



JOSEFINA PATRICIA A. MAGPALE-ASIRIT
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REM / MACB / DATL / MCCG

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