

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. 2015-050 MC
For: Failure to Renew the
Certificate of Compliance
(COC) within the Prescribed
Period**

**NORTHWIND POWER
DEVELOPMENT
CORPORATION,
Respondent.**

X- ----- X

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

DECISION

On 26 February 2015, respondent Northwind Power Development Corporation (Northwind) filed with the Commission on application for the renewal of its Certificate of Compliance (COC) for its 33 MW Phase I and Phase II Wind Power Plant located in Brgy. Baruyen, Bangui, Ilocos Norte, less than six (6) months prior to the expiration of its COC's term.

The Commission approved the renewal of respondent Northwind's COC for the said power plant on 15 June 2015.

On 15 June 2015, the Commission likewise issued a Show Cause Order against respondent Northwind directing it to submit to the Commission its explanation on why it should not be penalized for its 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 on 26 February 2015, 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), which is 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 04 August 2015, respondent filed an “Affidavit of Explanation”. In the said “Affidavit of Explanation”, respondent Northwind, stated among others, that:

1. On 21 January 2015, it received Notice for the Renewal of COC dated 05 January 2015. At the time of receipt of the said Notice, Northwind was in the process of reorganization and re-distribution of the functions of its Plant Manager, Segundino Tiatco, who suddenly passed away on 19 January 2015, due to heart failure;
2. It has a very small complement of only twenty-five (25) personnel for both administration and operations, and several key operational functions were performed or overseen by Mr. Tiatco;
3. The re-organization took nearly a month to implement, requiring the participation of all personnel; and
4. Its energy production was affected by the delay in the completion of the Laoag – San Esteban upgrade by the National Grid Corporation of the Philippines (NGCP), which entailed continuing meetings between and among Northwind, Department of Energy (DOE), NGCP and the other two wind energy developers in Ilocos Norte in an effort to arrive at a consensus on the use of the available transmission capacity.

On 25 August 2015, the Commission issued an Order setting the aforesaid case for a conference on 28 September 2015. During the said conference, respondent Northwind 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 Northwind then requested for a period of fifteen (15) days or until 08 October 2015 to file its “Offer of Settlement” with the Commission.

On 15 October 2015, the Commission received respondent Northwind'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 Northwind'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 | c) 100% of the basic amount of penalty if the compliance was made after three (3) months from |

| | | |
|--|--------------------------|---------|
| | Franchise for Consortium | 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 Northwind was delayed by less than six (6) months in the filing of its COC application and it is its first (1st) offense. Further, the delay in the submission of respondent Northwind's application was due to the sudden demise of its plant manager and the on-going reorganization of the company. The Commission, however, does not find merit in the said justification.

On the offer of settlement, respondent Northwind, 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 Northwind 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.

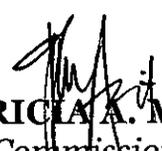
SO ORDERED.

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

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