

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. 2015-062 MC
For: Failure to Renew the
Certificate of Compliance
(COC) Within the
Prescribed Period**

**LOCAL GOVERNMENT UNIT
OF SAN LUIS, AURORA
(LGU-SAN LUIS)**

Respondent.

X-----X

D O C K E T E D
Date: DEC 11 2017
By: M

DECISION

On 06 September 2010, the Commission issued a COC in favor of respondent LGU-San Luis to operate its 800 kW San Luis Mini-Hydroelectric Power Plant for a Period of five (5) years.

On 09 March 2015, the Commission issued a Notice for Renewal of the said COC to respondent LGU-San Luis.

On 13 April 2015, LGU-San Luis filed its application for the renewal of its COC.

On 24 August 2015, the Commission approved the application for renewal of LGU-San Luis' COC. It likewise issued a Show Cause Order against respondent LGU-San Luis directing it to submit to the Commission its explanation on why no administrative penalty should be imposed upon it for failure to renew the COC within the prescribed period. Respondent LGU-San Luis filed the said COC renewal only on 13 April 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 19 October 2015, LGU-San Luis submitted its letter of explanation. In the said letter, respondent LGU-San Luis alleged among others, that in the months of February and March 2015, it was focused on desilting works and repair of the penstock for the improvement of the said power plant and its facilities.

On 21 October 2015, the Commission issued an Order setting the aforesaid case for a conference on 07 December 2015.

On 07 December 2015, representative of respondent LGU-San Luis reiterated its explanation on the subject violation. Thereafter, respondent LGU-San Luis manifested to submit its Manifestation within thirty (30) days from 07 December 2015 or until 06 January 2016.

On 11 January 2016, respondent LGU-San Luis filed its “Verified Explanation” alleging, among others, that:

1. The inability to timely file the application for the renewal of its COC was due to the following reasons:
 - a. Torrential rains sometime in February 2015 damaged the dam at the Ditumabo Falls, from where SLMHPP taps into for power generation. As such, there was an immediate need to conduct desilting operations, which lasted for more than three (3) weeks, to keep the mini-hydropower plant fully operational and in good working condition. The Plant Supervisor, who was in charge of overseeing the desilting operations, was also the same personnel responsible for filling an application for the renewal of the COC.

The sudden and unscheduled need to perform desilting operations kept the Plant Supervisor occupied and fully

engaged during the period when the COC renewal should have been sought.

- b. Further, SLMHPP experienced administrative challenges in the proper coordination and turn-over of supporting documents for the renewal of its COC, as it was then preparing for a change in personnel, with the Plant Supervisor having been promoted and to be immediately transferred to another department.
2. As soon as the inadvertence in filing the renewal of the COC was noticed, SLMHPP exerted its utmost effort and immediately filed an application for the renewal of the COC on April 13, 2015, or five (5) months before its expiration on 05 September 2015. The renewed COC was then issued on 24 August 2015.
 3. SLMHPP did not deliberately intend to disregard or defy the ERC's rules and guidelines. Its failure to renew its COC on time was solely for foregoing reasons.

Respondent LGU-San Luis respectfully prayed that its explanation be considered and no administrative penalty be imposed upon the LGU-San Luis.

ISSUE

Whether or not the respondent LGU-San Luis should be penalized for violating 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).

DISCUSSION

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 No. 9136" (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 amended 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
		a) 10% of the basic amount of

1 st and 2 nd violation	PhP100,000.00	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 LGU-San Luis was only delayed by one (1) month and seven (7) days in the filing of its COC renewal and it was its first (1st) offense. Further, the delay in the submission of respondent LGU-San Luis’ application for renewal of its SLMHPP COC was due to unavoidable circumstances brought by the damaged in the dam due to torrential rains that need to be attended by the personnel, the same people involved in the preparation of the COC renewal application. Moreover, the situation was aggravated by the change of personnel at the plant during that time adding to the delay in the preparation of technical documents required in the COC renewal application. Finally, respondent LGU-San Luis operates the SLMHPP not for profit but for the general welfare of its constituents in San Luis, Province of Aurora and acted in good faith and best of intention. Further, LGU-San Luis is not a generation company

looking for profit but LGU acting on its mandate to provide the basic needs of its constituents. It is also worthy to note that LGU-San Luis has exerted its utmost effort and immediately filed its COC application for the renewal thereof showing its intentions to comply with the Commission's rules and regulations.

Thus, considering the foregoing, the Commission believes that the instant case only warrants an admonishment or reprimand for respondent LGU-San Luis for its failure to renew the COC within the prescribed period. However, respondent LGU-San Luis is warned that the same similar offense in the future may constrain the Commission to impose the necessary fines and penalties against it.

WHEREFORE, the foregoing premises considered, respondent LGU-San Luis is hereby **REPRIMANDED** for failure to renew the COC within the prescribed period in violation of Section 4, Article V of the 2014 COC Revised Rules and **WARNED** that a similar offense in the future shall be dealt with more severely.

SO ORDERED.

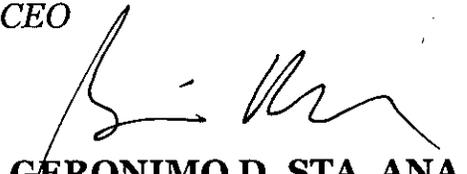
Pasig City, 17 November 2017.



ALFREDO J. NON
OIC Chairman & CEO



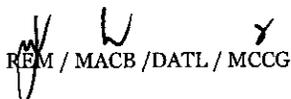
GLORIA VICTORIA C. YAP-TARUC
Commissioner



GERONIMO D. STA. ANA
Commissioner



JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Commissioner



REM / MACB / DATL / MCCG

Copy furnished:

- HON. ANNABELLE C. TANGSON**
Municipal Mayor
OFFICE OF THE MUNICIPAL MAYOR
San Luis, Aurora