

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. 2016-129SC  
For: Failure to File the  
Certificate of Compliance  
Application Three (3)  
Months Before its Targeted  
Date of Test and  
Commissioning**

**BULACAN SOLAR ENERGY  
CORP.,**

**Respondent.**

X-----X

**DOCKETED**  
Date: **FEB 23 2018**  
By: \_\_\_\_\_

**DECISION**

On 29 February 2016, respondent Bulacan Solar Energy Corp. (BSEC) filed the Certificate of Compliance (COC) Application for its 15 MWp DC Solar Power Plant as a Feed-In Tariff (FIT) eligible power plant located in Brgy. Casalat, San Ildefonso, Bulacan.

On 12 March 2016, respondent BSEC commenced its Test and Commissioning for the said power plant.

On 08 December 2016, the Commission approved and issued a Provisional Authority to Operate (PAO) in favor of respondent BSEC pending approval by the Commission of its dedicated point-to-point limited facilities to connect to the transmission system under ERC Case No. 2015-097 MC. However, on even date, the Commission issued a Show Cause Order against respondent BSEC directing it to submit to the Commission its explanation why it should not be penalized for failure to file the COC application three (3) months before its targeted date of test and commissioning. Respondent

BSEC filed the said COC application only on 29 February 2016 which is later than 3 months before its date of test and commissioning. Said act is deemed in violation of Section 4, Article III of the 2014 Revised Rules for the Issuance of COC for Generation Companies, Qualified End-Users and Self-Generation Facilities (2014 Revised COC Rules), hereunder quoted as follows:

*“The application for COC for IPPs Generation Facilities shall be filed not later than three (3) months before the targeted date of Test and Commissioning of the said facilities. x x x.”*

On 20 December 2016, the Commission approved and issued the COC in favor of BSEC as a FIT-eligible power plant after its dedicated point-to-point limited facilities to connect to the transmission system under ERC Case No. 2015-097 MC was approved by the Commission on 13 December 2016.

On 09 February 2017, respondent BSEC filed a “Motion for Additional of Time” with the Commission requesting for an additional period of fifteen (15) days or until 21 February 2017 within which to file its explanation.

On 21 February 2017, respondent BSEC filed its “Verified Explanation” with the Commission. In the said “Verified Explanation” respondent BSEC, stated among others, that:

- A. It sought leniency considering that it attempted to timely file its COC application, but was unable to do so due to extraordinary circumstances beyond its control;
- B. The requirements which were necessary to establish that it was qualified to be issued a FIT-eligible COC, were not available before February 2016;
- C. Its power plant was designed and planned for inclusion in the FIT system, otherwise, the financial viability of the plant would be put into issue;
- D. It could not conduct test and commissioning at a later date than 15 March 2016;
- E. Any delay would put at risk its FIT entitlement, since the Department of Energy (DOE) issues Certificates of Endorsement (COEs) for FIT eligibility on a “first-come-

first-serve basis” pursuant to Section 6 of DOE Department Circular No. Dc 2013-05-0009; and

F. The Commission considers the said “Verified Explanation” as sufficient compliance with the Commission’s rules and regulations.

On 01 March 2017, the Commission issued an Order setting the aforesaid case for a conference on 31 March 2017 and was later reset to 05 April 2017.

During the 05 April 2017 conference, respondent BSEC representatives reiterated their explanation on the subject violation.

On 19 April 2017 respondent BSEC submitted its “Verified 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 BSEC’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 No. 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

<b>No. of Violation</b>	<b>Basic Amount of Penalty</b>	<b>Additional Penalty Shall be Imposed for Any Willful Delay in the Implementation</b>
1 <sup>st</sup> and 2 <sup>nd</sup> violation	PhP100,000.00	a) 10% of the basic amount of penalty if the compliance was made after one (1) month from notice

3 <sup>rd</sup> and 4 <sup>th</sup> violation	PhP300,000.00	b) 50% of the basic amount of penalty if the compliance was made after two (2) months from notice.
5 <sup>th</sup> 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.”*

Based on the records of the Commission, respondent BSEC was delayed by less than three (3) months in the filing of its COC application as a FIT-Eligible Plant. Records bear, however, that it is respondent BSEC’s first (1<sup>st</sup>) offense. Further, the Commission considers respondent BSEC’s failure to file on time the COC application was due to the delays encountered in securing documentary requirements in order for it to be qualified as a FIT-eligible solar power plant which is beyond respondent BSEC’s control.

On the offer of settlement, it is noted that respondent BSEC filed the same before a decision could have been rendered by the Commission. 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 the first offense, is found to be just and acceptable.

**WHEREFORE,** the foregoing premises considered and pursuant to Section 11, Article V of the Guidelines, respondent BSEC 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.**

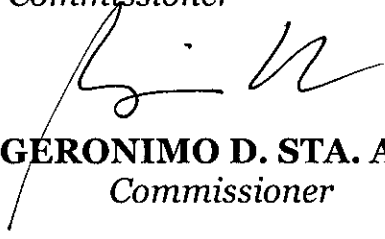
Pasig City, 20 February 2018.


  
**AGNES VSI DEVANADERA**  
*Chairman & CEO*

  
**GLORIA VICTORIA C. YAP-TARUC**  
*Commissioner*

  
**ALFREDO J. NON**  
*Commissioner*

  
**JOSEFINA PATRICIA A. MAGPALE-ASIRIT**  
*Commissioner*

  
**GERONIMO D. STA. ANA**  
*Commissioner*

  
CES/ MACB /JIM/MCCG

Copy furnished:

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