

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. 2016-092SC  
For: Failure to File the  
Certificate of Compliance  
Application Three (3)  
Months Before its Targeted  
Date of Test and  
Commissioning**

**FIRST CABANATUAN  
RENEWABLE VENTURES,  
INC.,**

**Respondent.**

X-----X

**D O C K E T E D**  
Date: **FEB 23 2018**  
By: \_\_\_\_\_

**DECISION**

On 11 February 2016, respondent First Cabanatuan Renewable Ventures, Inc. (FCRVI) filed the COC Application for its 10.26 MWp DC Solar Power Plant as a Feed-In Tariff (FIT) eligible power plant located in Sitio Mampulog, Brgy. Lourdes, Cabanatuan City, Nueva Ecija.

On 19 February 2016, respondent FCRVI commenced its Test and Commissioning for the said power plant.

On 13 April 2016, the Commission approved and issued the COC in favor of respondent FCRVI as a FIT-Eligible power plant. However, on even date, the Commission issued a Show Cause Order against respondent FCRVI 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 FCRVI filed the said COC application

only on 11 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 21 September 2016, respondent FCRVI filed its “Answer” with the Commission. In the said “Answer” respondent FCRVI, stated among others, that:

- A. Documents were only completed in February 2016 and immediately filed the said documents with the Commission to meet the 16 March 2016 deadline;
- B. The COC application could still be filed within the 3-month period immediately preceding testing and commissioning;
- C. It filed the COC application in good faith with the understanding that it was following all regulations mandated by the Commission;
- D. The solar power plant has been operational since March 2016 without any notices or reports of violations;
- E. There was no intent to disregard rules and regulations, only to meet the deadline of FIT eligibility and qualification;
- F. To be absolved from administrative and criminal sanctions resulting from the actions mentioned.

On 05 October 2016, the Commission issued an Order setting the aforesaid case for a conference on 09 November 2016 but was reset to 15 February 2017 as the Order setting for the conference was only received by respondent FCRVI on 08 November 2016.

During the said conference, respondent FCRVI representatives reiterated their explanation on the subject violation.

On 22 February 2017 respondent FCRVI submitted its “Offer of Settlement” 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 FCRVI'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 FCRVI was delayed by almost three (3) months in the filing of its COC application as a FIT-Eligible Plant. Records bear, however, that it is respondent FCRVI's first (1<sup>st</sup>) offense. Further, the Commission considers respondent FCRVI's failure to file on time the COC application which was due to the delays encountered in securing documentary requirements from other agencies which is beyond its control. Likewise, respondent FCRVI had no intent to disregard rules and regulations of the Commission.

On the offer of settlement, it is noted that respondent FCRVI, 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 FCRVI 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 VST/DEVANADERA**  
*Chairman & CEO*

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

  
**ALFREDO J. NON**  
*Commissioner*

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

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

Copy furnished:

**MR. CHRIS GIOVANNI CHIONG**

*Chairman*

**FIRST CABANATUAN RENEWABLE VENTURES, INC.**

Sitio Mampulog, Brgy. Lourdes, Cabanatuan, Nueva Ecija