

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. 2015-006MC  
For: Failure to Renew the  
Certificate of Compliance  
(COC) within the Prescribed  
Period**

**LUCKY PPH  
INTERNATIONAL, INC.  
Respondent.**

X-----X

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

**DECISION**

On 09 September 2009, the Commission issued a Show Cause Order (SCO) against respondent Lucky PPH International, Inc. (respondent Lucky PPH) docketed as ERC Case No. 2009-080 MC, In the Matter of Violation of ERC Orders, Rules and Regulations for Operating a Generation Facility without a Valid Certificate of Compliance (COC).

On 15 February 2010, the Commission issued the first COC in favor of respondent Lucky PPH for its 3.60 MW Biomass Power Plant.

On 08 March 2010, the Commission issued an Order declaring ERC Case No. 2009-080MC as closed and terminated with respondent Lucky PPH's payment in the amount of PhP55,000.00 as a compromise settlement for the said case.

On 22 January 2015, respondent Lucky PPH filed the application for the renewal of its COC for its 3.60 MW Biomass Power Plant located in Brgy. Antonino, Alicia, Isabela. The Commission

approved and issued the renewal of COC in favor of Lucky PPH on 09 February 2015. The Commission, likewise, issued a SCO against respondent Lucky PPH directing it to submit to the Commission its explanation why it should not be penalized for failure to renew the COC within the prescribed period when it filed its COC application for the said power plant only on 22 January 2015 while its first COC was issued on 10 February 2010, 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 11 September 2015, respondent Lucky PPH through its Counsel filed its “Explanation”. In the said “Explanation” respondent Lucky PPH, stated among others that:

- A) It ordered its staff immediately to prepare the necessary documents relative to the application for the renewal of COC upon receipt of a Notice for Renewal from the Commission on 25 September 2014;
- B) The records, however, at that time were not in order considering that the management team and majority of the employees were relatively new;
- C) Further, problems occurred particularly on the high demand for electricity in Isabela which gave respondent Lucky PPH difficulty in preparing all the documentary requirements;
- D) Respondent Lucky PPH was able to complete all the necessary documents for renewal of its COC and submitted the same to the Commission only on 22 January 2015; and
- E) Finally, respondent Lucky PPH prayed for the Commission to accept its apologies for failure to file the COC application on time and that it is willing to abide by any order from the Commission as a sanction for its late submission of the renewal of its COC.

On 13 October 2015, the Commission issued an Order setting the aforesaid case for a conference on 11 November 2015.

During the said conference, respondent Lucky PPH 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 Lucky PPH then requested for a period of fifteen (15) days or until 23 November 2015 to file its "Offer of Settlement" with the Commission.

On 16 November 2015, Counsel for the respondent Lucky PPH filed its "Manifestation to Compromise" 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 Lucky PPH'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
		b) 50% of the basic amount of

3 <sup>rd</sup> and 4 <sup>th</sup> violation	PhP300,000.00	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.”*

Upon evaluation and thorough review of the records of the case, particularly the facts as stated in its explanation, the Commission found that respondent Lucky PPH was delayed by more than five (5) months in the filing of its application for renewal of COC. The reason proffered is that, its records at that time were not in order considering that the management team and majority of the employees were relatively new. Noteworthy, however, is the fact that it is respondent Lucky PPH’s second (2<sup>nd</sup>) violation under the same COC and that the delay in the filing of its COC application was for a period of more than five (5) months. Thus, on 4 April 2017, The Commission deliberated and decided that the offer for settlement is not tenable.

On even date, this case was submitted for reconfirmation before the Commission due to circumstances that transpired<sup>1</sup> after 04 April 2017 in order to comply with promulgation requirements.

**WHEREFORE,** the foregoing premises considered, respondent Lucky PPH’s offer of settlement in the amount of PhP50,000.00 is hereby DENIED. Accordingly, respondent Lucky PPH is hereby directed to remit, within fifteen (15) days from receipt hereof, the amount of ONE HUNDRED THOUSAND PESOS (PhP100,000.00), representing the basic amount of imposable

<sup>1</sup> On preventative suspension as per Order of the Office of the President (OP-DC Case No. 17-D-094) dated 02 May 2017.

penalty for a second (2<sup>nd</sup>) violation pursuant to Section 5, Article III of the Guidelines.

**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*

  
est/ MACB / JIM/ MCGG

Copy furnished:

**MR. HENRY UY PUA**  
President  
**LUCKY PPH INTERNATIONAL, INC.**  
Barangay Antonino, Alicia, Isabela

**MR. EDWIN ASPER**  
Regulatory Compliance Officer  
**LUCKY PPH INTERNATIONAL, INC.**  
Barangay Antonino, Alicia, Isabela