

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. 2017-007SC  
For: Failure to File the  
Certificate of Compliance  
Application Three (3)  
Months Before its Targeted  
Date of Test and  
Commissioning**

**FIRST TOLEDO SOLAR  
ENERGY CORP.,  
Respondent.**

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D O C K E T E D  
Date: MAR 06 2018  
By:     

**DECISION**

On 27 May 2016, respondent First Toledo Solar Energy Corporation (FTSEC) filed the COC Application for its 59.6 MWp DC Toledo Solar Power Plant as a Feed-In Tariff (FIT) eligible power plant located in Hacienda Baltao, Talavera, Toledo City, Cebu.

On 30 June 2016, respondent FTSEC commenced its Test and Commissioning for the said power plant.

On 22 June 2017, the Commission issued a regular Certificate of Compliance (COC) under COC No. 17-06-M-00120V in favor of respondent FTSEC and likewise issued a Show Cause Order on 27 June 2017 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 when respondent FTSEC filed the said COC application only on 27 May 2016 which is later than 3 months before its date of test and commissioning on 31 May 2016, 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 30 August 2017, respondent FTSEC filed its “Verified Explanation” with the Commission. In the said “Verified Explanation” respondent FTSEC, stated among others, that:

1. The power plant was designed and planned for inclusion under the second round of the FIT system which the deadline was set on 15 March 2016;
2. It filed its application for COC as a FIT eligible plant on 27 May 2016 and commenced its test and commissioning on 30 June 2016 as per the issuance of the National Grid Corporation’s (NGCP) Provisional Certificate of Approval to Connect;
3. Since it intended to complete the power plant in time for the 15 March 2016 deadline, it secured all the necessary clearances, endorsements, and permits prior to the said cut-off date;
4. As early as 09 July 2015 and 29 September 2015, it submitted to the Department of Energy (DOE) the documents required for the declaration of Certificate of Confirmation of Commerciality (COCOC) and likewise requested for the issuance of the same;
5. It was only 11 March 2016 when the DOE issued the requested COCOC which pertained to the Phase 1 of the said power plant for 40.03 MWp DC;
6. Since the total capacity of the power plant is 60 MWp DC, it requested for an amendment of the said issued COCOC through a letter dated 31 March 2016 and the amended COCOC was only issued on 24 May 2016;
7. This caused the uncontrollable delay in the filing of the application of COC within the prescribed period, which the

COCOC is one of the essential documents for such application;

8. As soon as it became certain that the necessary milestones were reached and essential permits were substantially secured, it immediately filed for the application of its COC;
9. It respectfully manifested that the belated filing of the application of COC was made out of oversight and was done in plain good faith;
10. The necessary clearances, endorsements and permits were arduously pursued with the sheer hope of qualifying for eligibility under the second round of FIT for solar projects.
11. It was never the intention to disregard the period mandated by the rules for the filing of a COC of a new plant; and
12. It respectfully begged for the kind indulgence of the Commission to consider and accept the aforementioned explanations.

On 11 September 2017, the Commission issued an Order setting the aforesaid case for a conference on 27 October 2017.

During the 27 October 2017 conference, respondent FTSEC representative reiterated their explanation on the subject violation.

On 06 November 2017 respondent FTSEC 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.

## **I. ISSUE**

Whether respondent FTSEC'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).

## II. DISCUSSION

Section 11, Article V of the Guidelines for Fines and Penalties, 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

<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.  c) 100% of the basic amount of penalty if the compliance was made after three (3) 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	
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*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 Market Operations Service (MOS) found that respondent FTSEC was delayed by less than three (3) months in the filing of its COC application as a FIT-Eligible Plant and it was its first (1<sup>st</sup>) offense. Further, respondent FTSEC’s failure to file on time the COC application was due to the delay in the availability of documents necessary to establish its qualification as a FIT-eligible solar power plant. In addition, respondent FTSEC requested for an amendment of its COCOC on the total capacity of the subject power plant from 40.03 MWp to 60 MWp before the March 15, 2016 deadline and the amended COCOC was only issued on 24 May 2016, despite its earnest efforts. Likewise, respondent FTSEC could not conduct its test and commissioning at a later date than 15 March 2016 due to DOE’s policy on issuing certificates on a “first-come-first-serve basis”. Moreover, respondent FTSEC had no intent to disregard rules and regulations of the Commission. The Commission, however, does not find merit in the said justification.

On the offer of settlement, respondent FTSEC, applying the foregoing provisions of the Guidelines, filed its offer of settlement before a decision was rendered. Further, its offer of settlement in the amount of PhP50,000.00 which is 50% of the computed penalty of PhP100,000.00 for 1<sup>st</sup> offense, the MOS finds the offer to be just and acceptable.

**WHEREFORE,** the foregoing premises considered and pursuant to Section 11, Article V of the Guidelines, respondent FTSEC 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, 05 December 2017.

  
**AGNES VST DEVANADERA**  
Chairperson & CEO

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

  
**GERONIMO D. STA. ANA**  
Commissioner

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

  
**ALFREDO J. NON**  
Commissioner

ELA/ DGR/MCB/JDM

Copy furnished:



**MR. MICHEAL C. COSIQUEN**  
Chairman

**FIRST TOLEDO SOLAR ENERGY CORP.**

26<sup>th</sup> Flr., West Tower, Philippine Stock Exchange Center Bldg.,  
Ortigas Center, Pasig City

**ATTY. KEEL ACHERAN R. DINOY**

**ATTY. CLARENCE B. JANDOC**

**ATTY. JAIME P. DEL ROSARIO**

*Counsels for Respondent FTSEC*

9/F 45 San Miguel, San Miguel Avenue,  
Ortigas Center, Pasig City