

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. No. 2016-076 SC**  
Re: Failure to Comply with  
Commission's Resolution No. 16,  
Series of 2009, as Amended by  
Resolution No. 21, Series of 2010

**BOHOL LIGHT COMPANY,  
INC. (BLCI),**

**Respondent.**

X ----- X

D O C K E T E D

Date: MAR 27 2016

By: \_\_\_\_\_

**D E C I S I O N**

On 22 February 2016, the Commission issued a Show Cause Order (SCO) to Bohol Light Company, Inc. (BLCI) requiring it to submit its explanation under oath why no administrative penalty should be imposed upon it, and/or criminal action instituted against its directors and officers for its failure to file its consolidated applications for compliance filing on or before 31 March 2015 pursuant to the Commission's Resolution No. 16, Series of 2009<sup>1</sup>, as amended by Resolution No. 21, Series of 2010<sup>2</sup>, and Resolution No. 23, Series of 2010<sup>3</sup>.

On 04 August 2016, BLCI filed its *Verified Explanation (re: Order dated February 22, 2016)* dated 3 August 2016.

In its *Explanation*, BLCI alleged, among others, the following:

1. BLCI sincerely apologizes for its failure to file the Application on or before 31 March 2015; such failure,

<sup>1</sup> Entitled, "A Resolution Adopting the Rules Governing the Automatic Cost Adjustment and True-Up Mechanisms and Corresponding Confirmation Process for Distribution Utilities."

<sup>2</sup> Entitled, "A Resolution Amending Section 4 of Article 4 and Section 1 of Article 5 of the Rules Governing the Automatic Cost Adjustment and True-Up Mechanisms and Corresponding Confirmation Process for Distribution Utilities."

<sup>3</sup> Entitled, "A Resolution Adopting the Rules Implementing the Discounts to Qualified Senior Citizen End-Users and Subsidy from the Subsidizing End-Users on Electricity Consumption Under Sections 4 and 5 of Republic Act No. 9994."

however, was without any intention of violating ERC Resolution No. 16, Series of 2009, as amended by ERC Resolution No. 21, Series of 2010;

2. BLCI management was able to prepare the Application in time. However, anticipating that it would not be able to have a board approval on the Application on or before 31 March 2015, BLCI, through its General Manager submitted to the Commission on March 20, 2015 a letter dated 10 March 2015 informing the Commission that its Board lacked the requisite quorum to meet in time for the 31 March 2015 deadline and thus, it was requesting for more time or until 30 April 2015 within which to file the Application;
3. The Board was able to meet only on 20 April 2015 and it was at that time that the Application was approved;
4. Immediately after the meeting of 20 April 2015, BLCI complied with the pre-filing requirements and it was able to have the Application published in the Bohol Chronicle on 23 April 2015; it was only that the required certifications were obtained and the pre-filing requirements complied with and submitted;
5. BLCI admitted the late filing of the Application on **04 May 2015**; however, sought the kind understanding of the Commission that the delay was not due to negligence or to any intention to violate the relevant ERC resolution; and
6. Thus, it prayed that the instant explanation be accepted as satisfactory and the directors and officers be excused from the penalty. However, in the event that the Commission finds the explanation insufficient and imposes a penalty, BLCI offers to pay a compromise penalty of 50% of the imposable penalty.

On 15 August 2016, the Commission issued an Order noting the *Verified Explanation* of BLCI, and setting the case for conference on 07 September 2016.

During the conference on 07 September 2016, representatives of BLCI together with its counsel appeared. BLCI reiterated its position as stated in its submitted *Verified Explanation*. Likewise, BLCI manifested that should the Commission find BLCI's explanation unacceptable, BLCI is willing to compromise by offering to pay fifty percent (50%) of the imposable penalty.

## **ISSUE**

The sole issue to be resolved is whether BLCI committed a violation of the Commission's Orders, Rules and Regulations for its failure to file on time its consolidated applications within the period prescribed under Commission's Resolution No. 16, Series of 2009<sup>4</sup>, as amended by Resolution No. 21, Series of 2010<sup>5</sup>, and Resolution No. 23, Series of 2010<sup>6</sup>.

## **COMMISSION'S RULING**

On 29 November 2016, the Commission deliberated and resolved the instant case and found that BLCI had committed a violation of Resolution No. 16, Series of 2009<sup>7</sup>, as amended by Resolution No. 21, Series of 2010<sup>8</sup>, and Resolution No. 23, Series of 2010<sup>9</sup> for BLCI's failure to file on time its consolidated applications within the period prescribed therein.

However, due to supervening events<sup>10</sup>, the Decision could no longer be promulgated without undergoing reconfirmation by the Commission *En Banc*. Thus, the Commission resolved to reconfirm the Decision on 20 February 2018.

## **DISCUSSION**

Section 1, Article 5 of Commission's Resolution No. 16, Series of 2009<sup>11</sup>, provides:

### **ARTICLE 5 FILING AND RESOLUTION OF THE APPLICATIONS**

Section 1. Filing. The DUs shall file their respective consolidated applications within the period as prescribed hereunder:

X X X

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<sup>4</sup> *Supra*, Note 1.

<sup>5</sup> *Supra*, Note 2.

<sup>6</sup> *Supra*, Note 3.

<sup>7</sup> *Supra*, Note 1.

<sup>8</sup> *Supra*, Note 2.

<sup>9</sup> *Supra*, Note 3.

<sup>10</sup> The previous chairman was dismissed as per Decision of the Office of the President (OP-DC Case No. 17-D-094)

<sup>11</sup> *Supra*, Note 1.

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Thereafter, the DU shall file their respective consolidated applications within the period as prescribed hereunder:

<b>Distribution Utilities</b>	<b>Period of Filing</b>	<b>Covered Adjustments</b>
Luzon DUs	October 30, 2012	Jan. 2009-Dec. 2011
Visayas DUs	October 30, 2013	Jan. 2010-Dec. 2012
Mindanao DUs	October 30, 2014	Jan. 2011-Dec. 2013

x x x

While Section 1, Article 5 of Commission's Resolution No. 21, Series of 2010<sup>12</sup>, provides:

**ARTICLE 5**  
**FILING AND RESOLUTION OF THE**  
**APPLICATIONS**

Section 1. Filing. The DUs shall file their respective consolidated applications within the period as prescribed hereunder:

x x x

Thereafter, the DU shall file their respective consolidated applications within the period as prescribed hereunder:

<b>Distribution Utilities</b>	<b>Period of Filing</b>	<b>Covered Adjustments</b>
Luzon DUs	March 31, 2014	Jan. 2011-Dec. 2013
Visayas DUs	March 31, 2015	Jan. 2012-Dec. 2014
Mindanao DUs	March 31, 2016	Jan. 2013-Dec. 2015

Subsequently, the DUs shall file their respective consolidated applications every three (3) years following the sequence of period of filing prescribed above.

BLCI explained that its delay on the filing of the application was due to the lack of quorum of its Board of Directors for purposes of approving the application.

The Commission finds the justification offered by BLCI to be insufficient as to excuse BLCI from filing its consolidated applications for over or under recoveries in the implementation of all pass-through charges within the period prescribed by the rules.

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<sup>12</sup> *Supra*, Note 2.

As early as 2012, after its first compliance filing, BLCI should have started gathering data and securing the appropriate board approvals and certifications to avoid delay. Likewise, BLCI should have already prepared and consolidated all documents necessary and relevant to its application.

Considering that this is the subsequent period of filing of the application, it is expected that all Visayas DUs, including BLCI, must already be aware and mindful of the requirements and procedures appurtenant thereto, including the period of filing.

Prior to the 31 March 2015 deadline, the Commission through its Investigation and Enforcement Division (IED) conducted several public information disseminations to repeatedly inform the DUs, including BLCI, on the deadline of filing of their consolidated applications. Likewise, DUs were advised to coordinate with the Commission's IED for any further clarification on the filing of their applications.

Article 6, Section 1 of Resolution No. 16, Series of 2009<sup>13</sup> clearly states that any violation of these rules shall be subject to the imposition of fines and penalties in accordance with its Rules for the Imposition of Administrative Sanctions in the Form of Fines and Penalties.

**WHEREFORE**, the foregoing premises considered, Respondent Bohol Light Company, Inc. (BLCI) is hereby declared to have committed a violation of the Commission's orders, rules and regulations for its failure to file on time its consolidated applications within the period prescribed under Commission's Resolution No. 16, Series of 2009<sup>14</sup>, as amended by Resolution No. 21, Series of 2010<sup>15</sup>, and Resolution No. 23, Series of 2010<sup>16</sup>.

**ACCORDINGLY**, pursuant to Section 5 Resolution No. 03, Series of 2009<sup>17</sup>, an administrative penalty is hereby imposed against BLCI in the amount of **ONE HUNDRED TEN THOUSAND PESOS (PhP110,000.00)**, computed as follows:

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<sup>13</sup> *Supra*, Note 1.

<sup>14</sup> *Supra*, Note 1.

<sup>15</sup> *Supra*, Note 2.

<sup>16</sup> *Supra*, Note 3.

<sup>17</sup> Resolution Amending 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.

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<b>PARTICULARS</b>	<b>AMOUNT (PhP)</b>
• Basic Amount of Penalty	100,000.00
• Plus 10% of the basic amount of penalty if the compliance was made after one (1) month from the notice	10,000.00
<b>TOTAL</b>	<b>110,000.00</b>

Relative thereto, Respondent BLCI is hereby **DIRECTED** to pay the foregoing penalty **within fifteen (15) days** from receipt hereof.

**SO ORDERED.**

Pasig City, 20 February 2018.

  
**AGNES VST DEVANADERA**  
*Chairman and CEO*



  
**ALFREDO J. NON**  
*Commissioner*

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

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

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

  
IED: JML/JACF/NDC/FGBD

  
LS: LSP/APV

Copy Furnished:

Bohol Light Company, Inc.  
BLCI Building, Ramon Enerio Street,  
Tagbilaran City, Bohol

