

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. 2016-079 SC  
RE: Failure to Comply  
with ERC Resolution  
No. 16, Series of  
2009, as Amended by  
ERC Resolution No. 21,  
Series of 2010**

**EASTERN SAMAR ELECTRIC  
COOPERATIVE, INC.  
(ESAMELCO),**

**Respondent.**

X ----- X

**D O C K E T E D**  
Date: APR 12 2018  
By: [Signature]

**DECISION**

Before the Commission for resolution is the imposition of an administrative penalty in the amount of Two Hundred Thousand Pesos (PhP200,000.00) to Eastern Samar Electric Cooperative, Inc. (ESAMELCO) for its failure to comply with ERC Resolution No. 16, Series of 2009, as amended by ERC Resolution No. 21, Series of 2010.

**FACTS**

On 22 February 2016, the Commission issued a Show Cause Order (SCO) against ESAMELCO for failure to comply with ERC Resolution No. 16, Series of 2009, as amended by ERC Resolution No. 21, Series of 2010. In the said Order, ESAMELCO was directed to submit its explanation on why no administrative penalty should be imposed upon it, and/or criminal action be instituted against its directors and officers for the subject violation.

In compliance therewith, on 12 August 2016, ESAMELCO filed a letter dated 09 August 2016 stating that: a) ESAMELCO was burdened by the restoration of distribution lines due to typhoon Yolanda and typhoon Ruby; and b) it overlooked the deadline brought

by the resignation of Ms. Vanessa B. Magno, who was assigned to handle the subject violation.

On 17 August 2016, the Commission issued an Order setting the case for conference on 28 September 2016.

During the 28 September 2016 conference, the counsel for respondent ESAMELCO appeared and reiterated the allegations stated in the 09 August 2016 letter, more particularly the resignation of its staff who was assigned in the preparation of the subject application.

### **ISSUE**

The issue to be resolved is whether the Commission should approve the imposition of an administrative penalty in the amount of Two Hundred Thousand Pesos (PhP200,000.00) to ESAMELCO for its failure to comply with ERC Resolution No. 16, Series of 2009, as amended by ERC Resolution No. 21, Series of 2010.

### **COMMISSION'S RULING**

On 16 March 2017, the Commission deliberated and resolved to approve the imposition of an administrative penalty in the amount of Two Hundred Thousand Pesos (PhP200,000.00) to ESAMELCO for its failure to comply with ERC Resolution No. 16, Series of 2009, as amended by ERC Resolution No. 21, Series of 2010. However, due to supervening events<sup>[1]</sup>, the Decision could no longer be promulgated without undergoing reconfirmation by the Commission *En Banc*. Thus, the Commission resolved to reconfirm the same on 20 February 2018.

### **DISCUSSION**

On 13 July 2009, the Commission issued ERC Resolution No. 16, Series of 2009 directing all Visayas Distribution Utilities (DUs) to file their respective applications for approval of the (over)/under-recoveries based on the formula on the various automatic cost adjustments and true-up mechanisms and corresponding confirmation process pursuant to the aforementioned resolution (*consolidated applications for brevity*).

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<sup>[1]</sup> The previous Chairman was dismissed as per the Decision of the Office of the President (OP-DC Case No. 17-D-094).

On 18 October 2010, the Commission issued Resolution No. 21, Series of 2010, amending Section 1, Article 5 of ERC Resolution No. 16, Series of 2009. It provides the new period of filing of the consolidated applications, as follows:

**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:*

<b>Distribution Utilities</b>	<b>Period of Filing</b>	<b>Covered Adjustments</b>
Luzon DUs	March 31, 2011	Adjustments implemented until the billing month of December 2010
<b>Visayas DUs</b>	<b>March 31, 2012</b>	<b>Adjustments implemented until the billing month of December 2011</b>
Mindanao DUs	March 31, 2013	Adjustments implemented until the billing month of December 2012

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	January 2011 – December 2013
<b>Visayas DUs</b>	<b>March 31, 2015</b>	<b>January 2012 – December 2014</b>
Mindanao DUs	March 31, 2016	January 2013 – December 2015

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

The Commission finds the justification offered by respondent ESAMELCO untenable to excuse it from filing an application. Essentially, the violation of ESAMELCO is its failure to file the mandated application on or before 31 March 2015 pursuant to ERC Resolution No. 16, Series of 2009, as amended by Resolution No. 21, Series of 2010.

ESAMELCO alleged that its failure to file the required application was due to the resignation of its Accountant, Ms. Vanessa B. Magno and her failure to turn-over the documents to the

cooperative's Finance Service Department Manager, that are not valid excuses.

It is significant to note that the show cause order referred to in this case is the second filing for the (over)/under-recoveries of pass through charges for Visayas DUs. Thus, the Commission believes that ESAMELCO is already aware of the date of filing as well as the requirements and procedures appurtenant thereto. It cannot simply evade its obligation to file the mandated application due to sudden resignation of the personnel assigned in the preparation of the application. ESAMELCO should have looked for qualified and competent personnel within its ranks, or sourced it out to fill the vacant position. The directive to file the over/under application is explicitly stated in ERC Resolution No. 16, Series of 2009 which every utility should observe and comply with.

In addition to the foregoing, ESAMELCO was reminded ahead of the schedule regarding the deadline of filing of the consolidated applications and was advised to coordinate with the Commission should there be a need for further clarification on its application wherein to date, no second application has been filed yet.

**WHEREFORE**, the foregoing premises considered, Respondent Eastern Samar Electric Cooperative, Inc. (ESAMELCO) is hereby declared to have committed a violation of the Commission's orders, rules and regulations for its failure to comply with ERC Resolution No. 16, Series of 2009, as amended by ERC Resolution No. 21, Series of 2010.

**ACCORDINGLY**, pursuant to its failure to comply with ERC Resolution No. 16, Series of 2009, as amended by ERC Resolution No. 21, Series of 2010, an administrative penalty is hereby imposed against ESAMELCO in the amount of **TWO HUNDRED THOUSAND PESOS (PhP200,000.00)**, computed as follows:

<b>Particulars</b>	<b>Amount (PhP)</b>
For Failure to comply with ERC Resolution No. 16, Series of 2009, as Amended by ERC Resolution No. 21, Series of 2010	
a) Basic amount of penalty.	100,000.00
b) Additional 100% of the basic amount of penalty if the compliance was made after three (3) months from the notice.	100,000.00
<b>TOTAL</b>	<b>200,000.00</b>

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Relative thereto, Respondent ESAMELCO 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**  
Chairperson and CEO




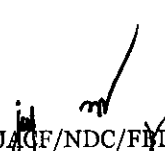
  
**ALFREDO J. NON**  
Commissioner

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

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

  
**GERONIMO D. STA. ANA**  
Commissioner

  
LS/SLAN/ARG/APV

  
IED: JAGF/NDC/FED

Copy furnished:

Eastern Samar Electric Cooperative, Inc. (ESAMELCO)  
Brgy. Cabong, Borongan, Eastern Samar

5 Feb