

Republic of the Philippines
ENERGY REGULATORY COMMISSION
San Miguel Avenue, Pasig City



**IN RE: Violation of 2.2.7.1 of
the Guidelines on the
Collection of the FIT-All and
Disbursement of the FIT-All
Fund**

ERC CASE NO. 2015-093 MC

**SAMAR I ELECTRIC
COOPERATIVE, INC.
(SAMELCO I),
Respondent.**

D O C K E T E D
Date: JUN 27 2015
By: _____

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D E C I S I O N

Submitted for resolution is the explanation on the Show Cause Order (SCO) dated September 29, 2015 issued to respondent Samar I Electric Cooperative, Inc. (SAMELCO I).

On 16 December 2013, the Commission issued Resolution No. 24, Series of 2013, *“A Resolution Adopting Guidelines on the Collection of the Feed-In-Tariff Allowance (FIT-All) and Disbursement of the FIT-All Fund.”* (Guidelines for brevity)

In accordance with the said Resolution, the National Transmission Corporation (TransCo) filed a FIT-All Application for approval of its FIT-All for calendar years 2014 and 2015 with the Commission on 30 July 2014 which was docketed as ERC Case No. 2014-109 RC and provisionally approved on 07 October 2014.

The dispositive portion of the Order reads:

“WHEREFORE, the foregoing premises considered, the Commission hereby PROVISIONALLY APPROVES the Feed-In-Tariff Allowance (FIT-All) of PhPo.0406/kWh, effective in the January 2015 billing of all On-Grid electricity consumers. For this purpose, all Distribution Utilities, Retail Electricity Suppliers, and

the National Grid Corporation of the Philippines, are hereby directed to adopt the necessary modifications in their respective billing and collection systems, to effect the implementation of the said FIT-All as a separate line item in their bills to end-users starting in the January 2015 billing and remit the same in accordance with the FIT-All Guidelines.”

On 20 April 2015, the Commission received a letter from the TransCo with attached Report on the First Implementation of Remittance of the FIT-All to the FIT-All Fund. The Renewable Energy – Technical Working Group (RE-TWG) reviewed the report and found that SAMELCO I failed to remit its collections in violation of Section 2.2.7.1 of the *Guidelines* on the Collection of the FIT-All and Disbursement of the FIT-All Fund.

On 3 June 2015, RE-TWG of the Commission requested the Investigation and Enforcement Division (IED), for the issuance of a Show Cause Order (SCO) to the Distribution Utilities (DUs), including respondent herein SAMELCO I, for its failure to comply with ERC Order dated 7 October 2014, provisionally approving TransCo’s FIT-All Application under ERC Case No. 2014-109 RC.¹

Due to a number of queries and requests for clarifications regarding the implementation of the Guidelines in line with the said Order, the Commission issued some clarifications.

The Order issued by the Commission directed all FIT-All Collection Agents (DUs, NGCP & RES) to start billing all on-grid electricity consumers a FIT-All charge in the amount of PhPo.0406/kWh starting January 2015 billing. Such FIT-All shall be a separate line item in the bill to end users. For the remittance schedule, Section 2.2.2.1 (Timeline) and Section 2.2.2.3 Collection by the Trustee of FIT-All/Actual Cost Recovery Revenue of the Guidelines for the Collection of the FIT-All and Disbursement of the FIT-All Fund requires the Collection Agents to remit all FIT-All collections directly to the Trustee, without deduction or set-off, on or before the twenty-eighth (28th) day of the month following the end of the relevant billing period.

The Commission likewise ordered the Collection Agents to make the necessary modifications in their respective billing and collection systems and to remit their collections to the Administrator (TransCo) in accordance with the FIT-All Guidelines.

¹ MORESCO II– *In the Matter of the Application for Approval of the Feed-In Tariff Allowance for Calendar Years 2014 and 2015 Pursuant to the Guidelines for the Collection of the Feed-In Tariff with Prayer for Provisional Authority*

On 25 June 2015, TransCo submitted to the Commission a summary of actual implementation dates of the FIT-All Collection Agents in relation to their earlier report.

In the said letter, Transco prescribed the submission of reports on energy sales and FIT-All receivables, collection and remittance monitoring under its "Guidelines Governing Remittance to the FIT-All Fund" which shall be its basis to determine the receivables of the FIT-All Fund as well as assess the compliance of the Collection Agents with their mandates to collect and remit the FIT-All. TransCo said that it reached out to the Collection Agents for them to comply. However, despite its efforts, the Collection Agents did not respond.

On 29 September 2015 the Commission issued a Show-Cause Order (SCO) directing SAMELCO I to submit within fifteen (15) days from receipt thereof, its explanation under oath why no administrative penalty shall be imposed upon it, and/or criminal action instituted against its directors and officers for violation of Resolution No. 24, Series of 2013 particularly Section 2.2.7.1 of the Guidelines.

In compliance with the SCO, SAMELCO I submitted its Explanation dated 01 February 2016, copy of which was received by the Commission on 11 February 2016, stating, among others, that:

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2. It had started billing its customers the FIT-All rate charges in the amount of PhP0.0406/kWh effective billing period of 26 January 2015 to 25 February, 2015;
3. Collection of the FIT-All charges also started on the said billing period, specifically starting 18 February 2015 which was the start of the meter reading and collection period;
4. However, collections for the months of February to April 2015 were remitted to "UC-Missionary" for the lack of guidance as to where the remittance should be made, due to the cooperative's belated receipt of the format, "Monthly FIT-All Receivable, Collection & Remittance Report;"
5. Collections for the months of May to August 2015 were already segregated to FIT-All Account but were remitted only in 04 September 2015 while subsequent collections were remitted as follows:

Date	Amount	Date Deposited
September 4, 2015	P374,436.90	LB-Sept. 23, 2015
October 15, 2015	P135,906.99	LB-Oct. 23, 2015
November 2, 2015	P166,207.27	LB-Nov. 2, 2015
November 25, 2015	P196,787.66	LB-Nov. 26, 2015

6. Unfortunately, in 2015 and up to the present the cooperative has been experiencing very low collection efficiency, more particularly from the Local Government Units (LGUs) which have sizable unpaid accounts. Consequently, remittance of FIT-All collections could not be made on time based on the Guidelines, as the cooperative is constrained to prioritize payment to power suppliers in order to avoid disconnection of service and also to avoid penalties and surcharges. Further, the cooperative has still to wait for the accomplishment of the Monthly Financial and Statistical Report (MFSR) for the determination of the total FIT-All collection as well as the rate;

7. Considering the foregoing, the cooperative begs the Honorable Commission's understanding, as it is making every effort to remit the collections as soon as the required amounts are met;

8. At present, the cooperative is making stronger moves to collect electric bill payments from the LGUs, to be able to regularize its remittance of the FIT-All collections.

In its Order dated 12 February 2016, a conference was set by the Commission on 29 February 2016.

However, SAMELCO I in its letter dated 08 March 2016 informed the Commission that it received the Order only on the same date and requested a resetting of the conference on 21 March 2016 or any day onwards.

Finding the request of SAMELCO I meritorious, the Commission, in its Order dated 15 March 2016, reset the conference on 30 March 2016, which was further reset to 13 April 2016.

During the 13 April 2016 conference, the representatives of SAMELCO I, namely: Placida P. Balios, Editha G. Biliran and Larry O. Dawisa appeared and reiterated SAMELCO I's position as stated in its explanation and further manifested that the reason for the delay in the remittances were due to misunderstanding with TransCo on the process of remitting the collections. SAMELCO I also committed to submit documents supporting its allegations and prayed for consideration and that no penalty be imposed against them.

ISSUE

The sole issue is whether or not SAMELCO I failed to comply with the *Guidelines* particularly Section 2.2.7.1, thereof by not remitting its FIT-All collections to TransCo on a monthly basis, i.e., on or before the 28th day of the month following the end of the relevant billing period.

DISCUSSION

The Commission finds the Explanation of SAMELCO I unmeritorious.

The evidence presented shows that SAMELCO I admitted that it failed to remit its collections within the required time frame.² Relative thereto, it cited reasons, which the Commission does not consider acceptable.

Further, the record also discloses that the confusion as to where the remittance should be made involved only the February to April 2015 collections.³ SAMELCO I did not offer any explanation as to why the collections from May to August 2015 were remitted only on 04 September 2015. It took SAMELCO I a considerable length of time before it remitted its collections from May to August 2015 to TransCo, a clear violation of Section 2.2.7.1 of the *Guidelines* which provides that all collections shall be remitted to the Administrator through the Trustee on a monthly basis, i.e., on or before the 28th day of the month following the end of the relevant billing period.

Moreover, the alleged “lack of guidance” as to where the remittance for the months of February to April 2015 should be made is not a convincing reason for it not to be able to remit on time. There are many ways to obtain this information had it only been more resourceful.

To reiterate the pertinent provision of the said *Guidelines* is hereby quoted, thus:

“2.2.7.1 The Collection Agents

The Collection agents are mandated to bill and collect the FIT-All and/or the Actual Cost Recovery Revenue, as may be applicable, and remit the amounts collected to the Administrator through the Trustee on a monthly basis. The failure to promptly and/or fully remit these

² Paragraph 5 of the Explanation of SAMELCO I

³ Paragraphs 4 of the Explanation of SAMELCO I

collections shall make the erring Collection Agent liable for the following:

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The ERC may also initiate administrative proceedings against the erring Collection Agents by issuing a show cause order, and after the proceedings, impose the appropriate administrative penalty if warranted under the circumstances.”

In relation to the aforementioned provision, Section 2.2.2.3 of the Guidelines provides for the deadline of remittances, to wit:

“2.2.2.3. Collection by the Trustee of FIT-All/Actual Cost Recovery Revenue

Concerned Collection Agents shall collect the FIT-All stated in their billing statements from their Consumers and remit such collections directly through the FIT-All Fund through the Trustee, without deduction or set-off via any method utilized by the Philippine banking system, in immediately available funds no later than 11:00 AM on or before the twenty-eighth (28th) day of the month following the end of the relevant Billing Period, or in the next Business Day should it fall on a non-Business Day. x x x”

It is noteworthy to emphasize that Section 2.2.7.1 of the Guidelines used the words “mandated” and “shall”. In *Enriquez v. Enriquez*,⁴ citing *Lacson v. Lacson [1968]*, directive words such as “shall” were construed as “mandatory.” In the aforesaid case, the Supreme Court interpreted the meaning of “shall” as used in Section 4, Rule 41 of the 1997 Rules of Civil Procedure, to wit:

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The 1997 Rules of Civil Procedure, as amended, which took effect on July 1, 1997, now require that appellate docket and other lawful fees must be paid within the same period for taking an appeal. This is clear from the opening sentence of Section 4, Rule 41 of the same Rules that, “Within the period for taking an appeal, the appellant **shall** pay to the clerk of the court which rendered the judgment or final order appealed from, the full amount of the appellate court docket and other lawful fees.”

The use of the word shall underscores the mandatory character of the Rule. The term shall is a word of command, and one which has always or which must be given a compulsory meaning, and it is generally imperative or mandatory.⁵ (underlining supplied)

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⁴ *Enriquez v. Enriquez*, G.R. 139303 (2005).

⁵ *Id.*, citing *Lacson v. Lacson*, G.R. L-23482 (1968)

Clearly, given the said pronouncement and applying the same to the instant case, SAMELCO I has no valid excuse for not complying with Section 2.2.7.1 of the “Guidelines” as compliance therewith is imperative or mandatory.

Accordingly, the Commission hereby finds it administratively liable and must accordingly be penalized.

In computing the penalty to be meted on the respondent, Section 5 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,*” as amended by *ERC Resolution No. 3, Series of 2009* provides, thus:

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 Codes (PDGC), rules, regulations, orders, resolutions and other laws the implementation of which are delegated to the ERC, including but not limited to the following, shall be subject to the following sanctions:

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No. of Violation	Basic Amount of Penalty	Additional Penalty Shall be Imposed for Any Willful Delay in the Implementation
1st and 2nd 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 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
3 rd and 4 th violation	PhP300,000.00	
5 th and subsequent violations	PhP500,000.00 and Cancellation of the Certificate of Public Convenience and Necessity (CPCN) License and for the Franchise for Consortium	

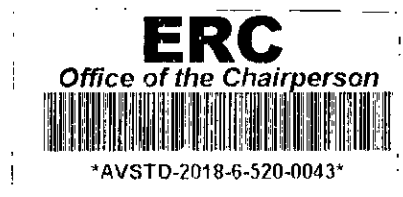
Based on the above table of penalties SAMELCO I shall be fined PhP100,000.00 representing the basic amount of penalty for failing to timely remit its collections as required under Section 2.2.7.1 of the Guidelines.

WHEREFORE, respondent Samar I Electric Cooperative, Inc. (SAMELCO I) is hereby **DIRECTED TO PAY** the amount of **ONE HUNDRED THOUSAND PESOS (PhP100,000.00)**, within fifteen (15) days from receipt hereof for violating ERC Resolution No. 24, Series of 2013 particularly Section 2.2.7.1 of the *Guidelines on the Collection of the Feed-In-Tariff Allowance (FIT-All) and Disbursement of the FIT-All Fund*.

SO ORDERED.

Pasig City, 08 May 2018.


AGNES VST DEVANADERA
Chairperson & CEO




ALFREDO J. NON
Commissioner


GLORIA VICTORIA C. YAP-TARUC
Commissioner


JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Commissioner


GERONIMO D. STA. ANA
Commissioner


rdd/bcs/fbs



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