

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



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

ERC Case No. 2015-086 MC

**FIRST LAGUNA ELECTRIC
COOPERATIVE, INC. (FLECO),
Respondent.**

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DOCKETED
Date: JUN 27 2018
By: *[Signature]*

DECISION

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

On 16 December 2013, the Commission issued Resolution No. 24, Series of 2013, entitled "*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 PhP0.0406/kWh, effective in the January 2015 billing of all On-Grid electricity consumers. For this

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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 National Transmission Corporation (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 out that FLECO 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 FLECO, for its failure to comply with ERC Order dated 7 October 2014¹ 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 PhP0.0406/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

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*

collection systems and to remit their collections to the Administrator (TransCo) in accordance with the FIT-All Guidelines.

In its letter dated 25 June 2015, Transco submitted to the Commission a summary of actual implementation dates of the FIT-All Collection Agents in relation to its report dated 20 April 2015.

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." These reports shall be TransCo's 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 stated that it reached out to the Collection Agents for them to comply. However, despite its efforts, the Collection Agents have not complied or were unresponsive.

On 29 September 2015 the Commission issued a Show-Cause Order (SCO) directing FLECO 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 the violation of the *Guidelines* under Resolution No. 24, Series of 2013.

FLECO filed an Explanation dated 30 December 2015 alleging that it was the lack of sufficient personnel and urgency of other works which they admitted were administrative lapses on the part of their Finance Services Department which caused the delay in their remittance of the FIT-All Fund.

During the conference on 28 January 2016, FLECO reiterated the allegations in its Explanation and manifested that as of 30 December 2015 it has already remitted the FIT-All collections.

I S S U E

The sole issue for resolution of the Commission is whether or not FLECO failed to comply with Section 2.2.7.1 of the *Guidelines* by not remitting its Feed-In Tariff (FIT-All) collections to TransCo on a monthly basis, that is, on or before the 28th day of the month following the end of the relevant billing period.

THE COMMISSION'S RULING

The Commission finds the explanation of FLECO unmeritorious.

The justification posited by FLECO that it was due to the lack of sufficient personnel and the admitted lapses on the part of their Finance Services Department which caused the delay of its remittance of the FIT-All Fund cannot be given credence.

Under the *Guidelines*, remittance should be made on a monthly basis, on or before the 28th day of the month following the end of the relevant billing period.

The records show that the collections alone of FLECO for the period December 2014 – January 2015 were remitted only on 7 July 2015, only after six (6) months from the date it collected the FIT-ALL from its customers, a clear violation of Section 2.2.7.1 of the *Guidelines*.

In the case of *Syki vs. Begasa*², the Supreme Court held that employers are presumed negligent and are liable for damages caused by their employees, to wit:

X X X

It should be emphasized that the legal obligation of employers to **observe due diligence in the selection and supervision of their employees** provided in Article 2180 of the Civil Code is not an empty provision or a mere formalism since the non-observance thereof actually becomes the basis of the employers' vicarious liability. **Employers should thus seriously observe such a degree of diligence (and must prove it in court by sufficient and concrete evidence) that would exculpate them from liability.**

(emphasis supplied)

It is clear from the foregoing that the mistakes or inefficiency of the employees would make the employer liable therefor. Corollarily, the lapses on the part of FLECO's personnel would make the former administratively liable particularly on its failure to comply with the *Guidelines*.

² GR. No. 149149, October 23, 2003

Pertinently, Sections 2.2.6, 2.2.7 and 2.2.7.1 of the *Guidelines* state, thus:

“2.2.6. Transparency and Audit Trail of Collection Process

For purposes of monitoring and verifying and accounting of the accounts collected from the FIT-All and ACRR and remitted to the Administrator, on the 5th day of every month, all Collection Agents shall be required to render to the ERC and Administrator, a statement of account of the FIT-All and ACRR collected from the respective Consumers for the preceding Billing Period. x x x”

“2.2.7. Liability for Partial and/or Delayed Payment of FIT-All/Actual Cost Recovery Revenue to the FIT-All Fund

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

x x x

The ERC may 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.”

Furthermore, it is noteworthy to emphasize that Section 2.2.7.1 of the *Guidelines* used the words “mandated” and “shall”. In *Enriquez v. Enriquez*,³ 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:

x x x

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

³ GR No. 139303, August 25, 2005

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4

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. (emphasis supplied)

X X X

Given the above-cited pronouncements and applying the same to the instant case, FLECO has no valid excuse for not complying with Section 2.2.7.1 of the *Guidelines* as compliance therewith is imperative or mandatory and the failings of their employees can not exculpate it from liability.

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

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 pursuant to Resolution No. 3, Series of 2009” provides, to wit:

Section 5: Non Compliance with the provisions of the Acts 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 (PGDC), rules, regulations 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 sanctions:

X X X

No. of Violation	Basic Amount of Penalty	Additional Penalty shall be imposed for any willful delay in the Implementation
1 st and 2 nd violation	100,000.00	a) x x x b) x x x c) x x x

No compromise agreement shall be allowed in cases where the same violation was committed more than once.

Based on the above table of penalties, FLECO 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*.

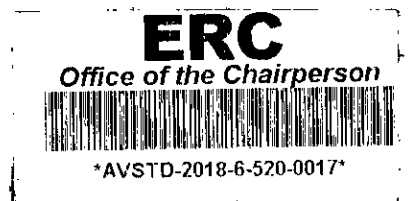
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WHEREFORE, respondent First Laguna Electric Cooperative, Inc. (FLECO) is hereby **DIRECTED TO PAY** the amount of **One Hundred Thousand Pesos (PHP 100,000.00)** within fifteen (15) days from receipt hereof for violating Section 2.2.7.1 of Resolution No. 24, Series of 2013, entitled "A Resolution Adopting 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 DE VANADERA
Chairperson and CEO




ALFREDO J. NON
Commissioner


GLORIA VICTORIA C. YAP-TARUC
Commissioner


JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Commissioner


GERONIMO D. STA. ANA
Commissioner


ebc/bcs/fb

✓

Copy Furnished:

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208