

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. 2016-132SC
**For: Failure to File The
Certificate of Compliance
Application Three (3)
Months Before its Targeted
Date of Test and
Commissioning**

**PACERM-1 ENERGY
CORPORATION**
Respondent.

X- ----- X

DOCKETED
Date: JUL 06 2018
By: W

DECISION

On 14 September 2016, respondent PACERM-1 Energy Corporation (PACERM-1) filed the Certificate of Compliance (COC) Application for its 3 x 3.5 MW Bunker-C Fired Power Plant located in Zone-1, Brgy. Quibonbon, El Salvador City, Misamis Oriental.

On 19 August 2016, respondent PACERM-1 commenced its Test and Commissioning for the said power plant.

On 20 December 2016, the Commission approved and issued a COC in favor of respondent PACERM-1. It likewise issued a Show Cause Order against respondent PACERM-1 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 it filed the said COC application only on 14 September 2016 which is later than 3 months before its date of test and commissioning on 19 August 2016. The said act is 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 02 March 2018, respondent PACERM-1 filed its “Compliance” with the Commission. In the said “Compliance” respondent PACERM-1, stated among others, that:

- A. At the very onset, Engr. Bernard R. Benavidez, President of PACERM-1, begs the kind indulgence and magnanimity of the Honorable Commission to see this Compliance most especially so that the case at hand involves the operation of PACERM-1, and the new PACERM-1 present officers and staff would not, in any way intentionally violate the ERC Rules;
- B. On 29 January 2018, respondent PACERM-1, through Engr. Ian C. Luis, received a copy of the Order dated 20 December 2016 directing respondent PACERM-1 to explain under oath why no administrative penalty should be imposed upon it, and/or criminal action instituted against its directors and officers for the violation aforesaid committed;
- C. That Engr. Benavidez, upon receipt of the Order, immediately checked the records available at the office. The respondent PACERM-1 has a new set of management upon the resignation of Engr. Edelesio M. Arcol as the President/General Manager of PACERM-1 last May 2017. The Administrative Staff, Technical Staff and the Accounting Staff rendered their resignation effective 2017, without formally turning over incoming communication, orders or resolutions from other line agencies or other offices;
- D. The new set of respondent PACERM-1 management was assembled to replace the administrative, technical and accounting staff. They had officially started last 01 July 2017. The COC was turned-over by then President Arcol to Engr. Benavidez, thus the new management believed with all good faith that the respondent PACERM-1 has already complied the necessary documents and fulfilled all the requisites under the Revised Rules for the Issuance of COC for Generation Companies, etc.;

- E. To the present officers' dismay, they discovered through this ERC Case that the previous management with the leadership of President Arcol had commenced its commissioning prior to its application for COC because of reasons the present management do not know;
- F. Engr. Benavidez assures the Commission that this failure to comply was neither intentional, nor meant to trifle with the regulations/orders of the Commission;
- G. Respondent PACERM-1 will always be compliant to the regulatory requirements of the Commission and it has no intention to evade any of its orders;
- H. Lastly, it prayed that the Commission consider and excuse respondent PACERM-1 from any penalty resulting from the said violation.

On 07 March 2018, the Commission issued an Order setting the aforesaid case for a conference on 17 April 2018.

During the said conference, respondent PACERM-1 representatives reiterated their explanation on the subject violation.

On 04 May 2018 respondent PACERM-1 submitted its "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.

ISSUE

Whether respondent PACERM-1'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).

DISCUSSION

Section 11, Article V of the Guidelines 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 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

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	PhP100,000.00	a) 10% of the basic amount of penalty if the compliance was made after one (1) month from notice
3 rd and 4 th violation	PhP300,000.00	b) 50% of the basic amount of penalty if the compliance was made after two (2) months from notice.
5 th and subsequent violations	PhP500,000.00 and Cancellation of the Certificate of Public Convenience and Necessity (CPCN), License and the Franchise for Consortium	c) 100% of the basic amount of penalty if the compliance was made after three (3) months from notice.

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 Commission, recognizes the new management’s alleged lack of knowledge. However, respondent PACERM-1 should have exercised due diligence in the previous management’s business affairs. Hence, respondent PACERM-1’s alleged good faith in believing that the

previous management has already complied the necessary documents and fulfilled all the requisites under the Revised Rules for the Issuance of COC for Generation Companies is untenable. As such, the Commission finds the circumstances surrounding said action by the new management of respondent PACERM-1 lacking in good faith. Hence, the violation by respondent PACERM-1 of the provisions of Section 4, Article III of the 2014 Revised COC Rules, hereunder quoted as follows:

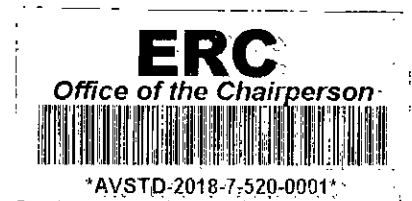
“The application for COC for IPPs Generation Facilities shall be filed not later than three (3) months before the targeted date of Test and Commissioning of the said facilities. x x x.”

WHEREFORE, the foregoing premises considered, respondent PACERM-1’s offer of settlement in the amount of PhP50,000.00 is hereby DENIED. Accordingly, respondent PACERM-1 is hereby directed to remit, within fifteen (15) days from receipt hereof, the amount of ONE HUNDRED THOUSAND PESOS (PhP100,000.00), representing the basic amount of impossible penalty for a first (1st) violation pursuant to Section 5, Article III of the Guidelines.

SO ORDERED.

Pasig City, 05 June 2018.


AGNES VST DEVANADERA
Chairman & CEO





GLORIA VICTORIA C. YAP-TARUC
Commissioner


ALFREDO J. NON
Commissioner


JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Commissioner

(On Leave)
GERONIMO D. STA. ANA
Commissioner


TLA/MACB/JJM/MCCG

ERC CASE NO. 2016-132SC
DECISION/ 05 June 2018

Copy furnished:

ENGR. BERNARD R. BENAVIDEZ

President

PACERM-1 ENERGY CORPORATION

Zone 1, Brgy. Quibonbon, El Salvador City, Misamis Oriental