

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. 2017-011SC
For: Operating a Generation
Facility without a valid COC**

**PANGEA GREEN ENERGY
PHILIPPINES, INC.,
Respondent.**

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DOCKETED
Date: JUL 11 2018
By: [Signature]

DECISION

On 19 July 2017, respondent Pangea Green Energy Philippines, Inc. (PGEP) filed the Certificate of Compliance (COC) Application for Units 4 and 5 of its Payatas Biomass Power Plant as a Feed-In Tariff (FIT) eligible power plant with aggregated rated capacity of 640 kW located in 68 Zamboanga Street, Area B, Brgy. Payatas, Quezon City.

The Commission conducted the technical inspection on the 640 kW Expansion of the Payatas Biomass Power Plant of PGEP on 31 August 2017.

Based on the data gathered from the Spot Market Division, respondent PGEP has been offering in the Wholesale Electricity Spot Market (WESM) more than its registered capacity since 28 October 2016.

The said act is in violation of Section 6 of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA); paragraph 2, Section 1, Rule 5 of the EPIRA Implementing Rules and Regulations (IRR); and Section 2(i), Article I, of the Commission's 2014 Revised Rules for the Issuance of COCs for Generation Companies, Qualified End-Users and Entities with

Self-Generation Facilities (2014 Revised Rules), hereunder quoted as follows:

A. Section 6 of the EPIRA:

“x x x

“Upon the effectivity of this Act, any new generation company shall, before it operates, secure from the Energy Regulatory Commission (ERC) a Certificate of Compliance x x x.

x x x.”

B. Paragraph 2, Section 1, Rule V of the IRR of EPIRA:

“No Person may engage in the Generation of Electricity as a new Generation Company unless such person has received a COC from the ERC to operate facilities used in the Generation of Electricity. x x x.”

C. Section 2(i), Article I of the 2014 Revised Rules:

“No Person may engage in the Generation of Electricity as a Generation Company, Qualified End-user, or Entity with Self-Generation Facilities unless it has secured a COC from the ERC to operate Generation Facilities used in the Generation of Electricity.”

On 25 October 2017, the Commission issued a COC in favor of respondent PGEP and likewise, a Show Cause Order directing the respondent to submit to the Commission its explanation why it should not be penalized for operating its Generation Facility without a valid COC since 28 October 2016.

On 20 December 2017, respondent PGEP filed its Motion For Extension of Time to File Answer/Explanation.

On 04 January 2018, respondent PGEP filed its “Answer/Explanation” with the Commission. In the said “Answer/Explanation”, respondent PGEP stated among others, that:

- A. It most respectfully takes exception and submits that it did not in any deliberate and conscious manner violate said law and its implementing rules and regulations;
- B. The apparent absence of a COC was occasioned when PGEP added two (2) 320 kW engines to increase its generation capacity to 1.516 MW. The increase in said capacity was necessitated by PGEP's contractual obligation under its Biomass Renewable Operating Contract (BREOC) with the Department of Energy (DOE);
- C. It's Application for Amendment was returned by the MOS for respondent PGEP to file an application for a new COC for the additional units 4 and 5;
- D. MOS did not accept the application of the respondent PGEP due to the lack of the required documents from the DOE such as the Certificate of Confirmation of Commerciality (COCOC) and the Amended Memorandum of Agreement (MOA) between PGEP and DOE for the establishment of a Trust Account;
- E. It respectfully submits that it had acted in good faith in its earnest efforts to comply with all legal requirements;
- F. It humbly begs the indulgence of the Commission to consider its good faith in this case;
- G. To evince it utmost respect for this Honorable Commission and to show its readiness to submit to its authority and comply with existing rules and regulations respondent PGEP expresses its willingness to enter into an amicable settlement of this case.

On 13 February 2018, the Commission issued an Order setting the aforesaid case for a conference on 28 February 2018.

During the said conference, respondent PGEP representatives reiterated their explanation on the subject violation.

On 26 March 2018, respondent PGEP 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 PGEP'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.

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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 finds PGEP to have operated units 4 and 5 of its generation facility without a valid COC. Based on the data culled from the National Transmission Corporation (TransCo), the administrator of FIT-All Fund, disclosed that it has been injecting power generated from units 1 to 5 into the grid since January 2017. Thus, the Commission finds respondent PGEP to have acted in bad faith and to have violated violation of Section 6 EPIRA; paragraph 2, Section 1, Rule 5 of its IRR; and Section 2(i), Article I, of the 2014 Revised Rules, hereunder quoted as follows:

A. Section 6 of the EPIRA:

“x x x

“Upon the effectivity of this Act, any new generation company shall, before it operates, secure from the Energy Regulatory Commission (ERC) a Certificate of Compliance x x x.

x x x.”

B. Paragraph 2, Section 1, Rule V of the IRR of EPIRA:

“No Person may engage in the Generation of Electricity as a new Generation Company unless such person has received a COC from the ERC to operate facilities used in the Generation of Electricity. x x x.”

C. Section 2(i), Article I of the 2014 Revised Rules:

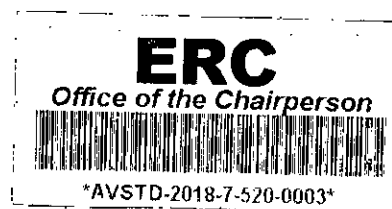
“No Person may engage in the Generation of Electricity as a Generation Company, Qualified End-user, or Entity with Self-Generation Facilities unless it has secured a COC from the ERC to operate Generation Facilities used in the Generation of Electricity.”

WHEREFORE, the foregoing premises considered, respondent PGEP's offer of settlement in the amount of PhP50,000.00 is hereby DENIED. Accordingly, respondent PGEP 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 imposable penalty for a first (1st) violation pursuant to Section 5, Article III of the Guidelines.

SO ORDERED.

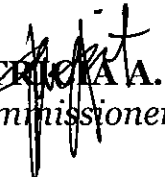
Pasig City, 19 June 2018.


AGNES VST DEVANADERA
Chairman & CEO

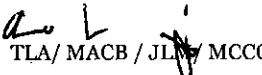



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