

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. 2018-043SC
For: Failure to File the
Certificate of Compliance
(COC) Renewal Application
Six (6) Months Before its
Expiration Date**

**WESTERN MINDANAO
POWER CORPORATION,
Respondent.**

X- - - - - X

Promulgated:
OCT 16 2019

DECISION

On 08 June 2018, Respondent Western Mindanao Power Corporation (WMPC) filed the application for the renewal of its Certificate of Compliance (COC) of its ten (10) Bunker-C Fired Generating Units with an aggregate rated capacity of 112 MW and one (1) unit Black Start Diesel Generating Set with rated capacity of 160 kW located in Malasugat, Sangali, Zamboanga City which was to expire on 07 August 2018.

Section 4, Article V of the 2014 Revised Rules for the Issuance of Certificate of Compliance (COC) for Generation Companies, Qualified End-Users and Self-Generation Facilities (2014 Revised COC Rules), provides that:

“A Generation Company/Entity with Self-Generating Facility intending to continue operating beyond the term of the issued COC shall apply with the ERC for its renewal at least six (6) months prior to its expiration. x x x.”

On 04 December 2018, the Commission issued a *Show Cause Order* against WMPC directing it to submit to the Commission its explanation why it should not be penalized for failure to file the COC renewal application six (6) months before its expiration date. WMPC

filed its application on 08 June 2018 or one hundred twenty two (122) days later of what is required which was on 07 February 2018.

On 12 March 2019, Respondent WMPC filed its “*Compliance*” with the Commission. Attached to the “*Compliance*” is an “*Affidavit*” executed by Mr. Jerome Christopher G. Idio, alleging among others that:

- A. He is the current Operation/Technical Assistant of Western Mindanao Power Corporation (WMPC) who’s duties and responsibilities is monitoring WMPC’s compliance with all existing rules and regulations applicable to a company engaged in electric power generation such as WMPC, including, but not limited to, obtaining and maintaining a Certificate of Compliance (COC) issued by the Energy Regulatory Commission (ERC);
- B. Sometime in March 2018, when he was reviewing the various permits and licenses of WMPC, he learned that WMPC’s COC would expire on 07 August 2018. Thus, he inquired with WMPC’s Safety and Environmental Engineer, Mr. Jason B. Ravis (Mr. Ravis) who is also in charge of the renewal of the COC, on whether WMPC had started to process the application for the renewal of the COC. However, he was informed by Ms. Ma. Melissa Margaret A. Banaag, the HR & Admin Supervisor, that Mr. Ravis had resigned;
- C. Upon learning of the resignation of Mr. Ravis, he immediately requested the Power Plant Manager, Engr. Jose Marie T. Torrejon for the turn-over of documents in relation to the COC renewal. However, he was surprised that there was no proper turn-over of documents. Thus, sometime in April 2018, he started gathering all the documentary requirements, including application forms for the processing of the renewal of the COC;
- D. The hard copies of the documents together with attachments were submitted and the corresponding renewal fee amounting to Php 10,000.00 was paid to ERC on 08 June 2018;
- E. The failure to file the renewal for WMPC’s COC within the period allowed by ERC, which is six (6) months prior to the expiration of the COC, was mainly because of the lack of proper turn-over of documents from Mr. Ravis. This was regrettably an excusable error, and we are making sure that it is not repeated;
- F. Since, this is the first time WMPC has been late, and in any event the ERC did issue the COC, WMPC respectfully pleads for leniency.

On 15 March 2019, the Commission issued an Order setting the aforesaid case for a conference on 03 May 2019.

On 03 May 2019, the conference was held and Respondent WMPC representatives manifested its intention to submit to the Honorable Commission an *Offer of Settlement* within 10 days from even date or until 13 May 2019.

On 09 May 2019, WMPC submitted its "*Motion for Approval of Offer of Settlement*" dated 09 May 2019, 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.

On 10 May 2019, the Commission likewise received WMPC's *Letter* dated 08 May 2019, requesting to settle the case by allowing WMPC to pay 50% or less of the amount referred to in the Commission's Guidelines entitled "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). In its *Letter*, WMPC stressed the fact that the offense was committed for the first (1st) time; and that it bound itself not to make the same mistake in the future.

ISSUE

Whether or not WMPC's *Offer of Settlement* is just, reasonable and acceptable under Section 11, Article V of the Guidelines.

DISCUSSION

The Guidelines provides for the corresponding fines and penalties for any violation of the Commission's Rules and Regulations.

Section 5, Article III states:

"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:

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.”

However, the “Guidelines” likewise allow the settlement of the case under certain circumstances. Section 11, Article V of the Guidelines provides:

“Section 11. Offers of Settlement. Any party 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.”

Upon evaluation and thorough review of the records of the case, particularly the facts stated in WMPC’s explanation, the Commission finds WMPC’s reason for its failure to comply with the period for the renewal of its COC unmeritorious.

WMPC attributes its failure to comply with the period required in Section 4, Article V of the 2014 Revised COC Rules for the renewal of COCs to the lack of proper turn-over of material documents.

The Commission is not convinced. It is only reasonable to expect accountability from WMPC in the management of its business affairs. WMPC, through its Power Plant Manager, Engr. Jose Marie T. Torrejon, should have exercised due diligence in management of its regulatory requirements. It is the primary duty and responsibility of Mr. Torrejon and Engr. Idio, as WMPC’s Power Plant Manager and Operation/Technical Assistant, respectively, to monitor and ensure the filing of WMPC’s permits, licenses and regulatory compliance with pertinent government agencies, including the renewal of its COC which is indispensable in their business operations. In this case, WMPC was not able to sufficiently establish that their reason for the belated filing of the application for COC renewal is meritorious and thus warrants the acceptance of its *Offer of Settlement*.

(This space was intentionally left blank.)

WHEREFORE, the foregoing premises considered, Respondent WMPC's *Offer of Settlement* in the amount of PhP50,000.00 is NOT ACCEPTED. Accordingly, Respondent WMPC 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 first (1st) violation pursuant to Section 5, Article III of the Guidelines.

SO ORDERED.

Pasig City, 06 August 2019.





AGNES VST DEVANADERA
Chairman & CEO


JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Commissioner


ALEXIS M. LUMBATAN
Commissioner


CATHERINE P. MACEDA
Commissioner


PAUL CHRISTIAN M. CERVANTES
Commissioner


CJM/PLA/DGR/MACB/JLM/MCCG

Copy furnished:

- MR. TOMAS I. ALCANTARA**
Chairman
Western Mindanao Power Corporation
2286 Chino Roces Ave. corner EDSA
Makati City
- MR. TIRSO G. SANTILLAN, JR.**
Chief Executive Officer
Western Mindanao Power Corporation
2286 Chino Roces Ave. corner EDSA
Makati City