

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City



**IN THE MATTER OF THE
PETITION TO INITIATE RULE-
MAKING FOR THE
AMENDMENT OF ERC
RESOLUTION NO. 14, SERIES
OF 2015, ENTITLED
"RESOLUTION ADOPTING
THE WIND FEED-IN TARIFF
(WIND FIT2) RATE", WITH
MOTION FOR CONFIDENTIAL
TREATMENT OF
INFORMATION**

ERC CASE NO. 2016-002 RM

**ALTERNERGY WIND ONE
CORPORATION (AWOC),
PETROWIND ENERGY, INC.
(PWEI) AND TRANS-ASIA
RENEWABLE ENERGY
CORPORATION (TAREC),
*Petitioners.***

Promulgated:
July 26, 2021

X-----X

ORDER

Before the Commission for resolution is the *Motion for Reconsideration* to the *Order* dated 18 February 2020 (Motion), filed by EDC Burgos Wind Power Corporation (EBWPC) on 30 June 2020.

On 12 March 2020, the Commission issued the *Order* dated 18 February 2020, denying the Motion for Confidential Treatment of Information of EBWPC included in its *Submission* dated 26 July 2019.

On 30 June 2020, EBWPC filed the said *Motion* wherein it prayed for the following:

WHEREFORE, premises considered, it is respectfully prayed that the Order of this Honorable Commission dated February 18, 2020 be reconsidered and set aside and that a new one be issued granting EBWPC's Motion for Confidential Treatment of Information.

Other reliefs just and equitable under the premises are likewise prayed for.

In its *Motion*, EBWPC reiterated its claim that the EPC Cost, Total Project Cost, Operations and Maintenance Cost, Transmission Line Cost per Kilometer and Transmission Line Distance, and Access Road Distance and cost of the EBWPC contain information about business calculations, assumptions and projections, as well as indicate financial and marketing strategies of EBWPC. According to EBWPC, if the said information containing the business, financial and marketing strategies, as well as calculations of a corporation is obtained by any of its competitor, a competitor can use such information to its advantage in order to have a business or marketing upper hand and eliminate competition in the industry, to the detriment of the corporation.¹

In addition, EBWPC pointed out that it is not a petitioner nor a party to the case, and the information submitted by EBWPC was only done in compliance with and pursuant to the Commission's request in the *Order* dated 03 July 2019.²

The Commission notes that EBWPC did not raise a new basis to claim confidentiality of the information in its *Motion*. Nevertheless, the Commission deemed it prudent to review the position of EBWPC.

The Commission maintains that the information does not warrant treatment of confidentiality.

A blanket claim that information is a trade secret cannot be upheld. In *Cocoland Development Corporation v. NLRC*, the Supreme Court stated, as to the determination what is trade secret, that:

"Any determination by management as to the confidential nature of technologies, processes, formulae or other so-called trade secrets must have a substantial factual basis which can pass judicial scrutiny."³

While Rule 4 of the Commission's Revised Rules of Practice and Procedure (Revised RPP) recognizes confidentiality of information, a

¹ *Motion for Reconsideration*, 30 June 2020, Allegation No. 09.

² *Id.*, Allegation No. 11.

³ G.R. No. 98458, 17 July 1996.

claim of the confidential nature of trade secrets by a movant must pass judicial scrutiny.⁴

Relative to the foregoing, Sections 1 and 2, Rule 4 of the Commission's Revised RPP⁵ provide that:

"Section 1. Motion for Confidential Treatment of Information. – A party to a proceeding before the Commission may move for information to be treated as confidential.

xxx

The movant has the burden to establish that the information is entitled to such confidentiality.

Section 2. Resolution on the Motion. – For the purpose of determining whether or not to accord confidential treatment to information, the Commission may review the information claimed to be confidential.

xxx"

Pursuant to Section 2 quoted above, the Commission may review the information to determine whether or not to approve said motion. Accordingly, the Commission, in resolving motions of this nature, has set standards to make a sound, fair and consistent ruling.

Further, in recognition of the people's Constitutional right to information vis-à-vis the Supreme Court's affirmation of the right of an owner to guard its trade secrets, the Commission has set standards in granting confidential treatment to information, considering the applicable laws, rules, jurisprudence, previous decisions and policies of the Commission.

Upon revisiting the document sought to be treated as confidential, the Commission maintains its previous ruling that the data and information provided therein are insufficient to be considered trade secrets as discussed in the case of *Air Philippines Corporation vs. Pennswell, Inc.*⁶ In view of thereof, the Commission finds no cogent reason to reconsider its *Order* dated 18 February 2020.

⁴ *Ibid.*

⁵ Energy Regulatory Commission, A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission, Resolution No. 01, Series of 2021 [Revised Rules of Practice and Procedure] (17 December 2020).

The Resolution became effective on 04 April 2021.

⁶ G.R. No. 172835, 13 December 2007.

Only the total values and costs were presented in the said document, and no proprietary value can be considered therein to deserve the mantle of protection requested to be provided. Thus, based on the foregoing, the information cannot be accorded confidential treatment.

EBWPC also raised in its *Motion* that it is neither a petitioner nor a party in the instant case, and that the document was only submitted in pursuance to the Commission's *Order* dated 03 July 2019.

While it is true that the document was submitted by EBWPC by reason of the Commission's *Order* and that it is not a petitioner in this case, the Commission has the power to determine the propriety of the request for confidential treatment since it was made pursuant to the Commission's RPP. Thus, the denial of treating the information confidential was but a necessary consequence when such motion was presented before the Commission.

WHEREFORE, the foregoing premises considered, the Commission hereby **DENIES** the *Motion for Reconsideration* to the *Order* dated 18 February 2020, filed by EDC Burgos Wind Power Corporation (EBWPC).

SO ORDERED.

Pasig City, 16 June 2021.




AGNES VST DEVANADERA
Chairperson and CEO


ALEXIS M. LUMBATAN
Commissioner


CATHERINE P. MACEDA
Commissioner


FLORESINDA G. BALDO-DIGAL
Commissioner


MARKO ROMEO L. FUENTES
Commissioner


LS: IHH/ARG/MCCG

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