

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City



**IN THE MATTER OF THE
PETITION FOR DISPUTE
RESOLUTION AND
RECOVERY OF
UNAUTHORIZED
DEDUCTIONS FROM THE
NATIONAL POWER
CORPORATION (NPC),**

**MID-ISLAND POWER
GENERATION
CORPORATION (MIPGC),**
Petitioner,

-versus-

ERC CASE NO. 2015-001 MC

**NATIONAL POWER
CORPORATION (NPC),**
Respondent.

X-----X

D O C K E T E D
Date: JUL 27 2017
By: [Signature]

ORDER

This treats the Motion to Dismiss filed by Respondent National Power Corporation (NPC) as contained in its “*Answer ad Cautelam*” filed last 6 April 2015, as well as the “*Motion to Drop PSALM as Party to the Proceedings*” filed by Power Sector Assets and Liabilities Management Corporation (PSALM) on 22 April 2015.

Motion to Dismiss filed by NPC

Respondent NPC, in its “*Answer ad Cautelam*”, prayed for the dismissal on the case on the ground that the Commission lacks jurisdiction over the subject matter of the instant application.

Citing the case of *Mactan Electric Company, Inc. v. National Power Corporation (NPC) et al.*¹, NPC argued that the Commission by virtue of Section 43 (u) of the EPIRA does not have an automatic jurisdiction over disputes between and among participants or players in the energy sector. In order for the Commission to have original and

¹ G.R. No. 172960, March 26, 2010

exclusive jurisdiction, the issue and subject matter of the dispute must and should be related to its powers, functions and responsibilities like those arising from cross-ownership, abuse of market power, cartelization and anti-competitive or discriminatory behaviour by any electric power industry participant.

Motion to Drop PSALM as Party to the Proceedings

On the other hand, in its “*Motion to Drop PSALM as Party to the Proceedings*”, PSALM alleged the following and prayed that it to be dropped as a party to the proceedings:

1. PSALM is not privy to the agreements on which the claims are based;
2. Claims are related to the missionary electrification function, which is exclusively NPC’s

As PSALM is not a party to the disputed contracts (GCPA and its Supplementary Agreement), it cannot be bound by the terms and conditions stipulated therein. Moreover, stranger as it is, to said agreements, PSALM claimed that it cannot be held liable under the same.

Furthermore, PSALM explained that its principal purpose, as provided for under Section 50 of EPIRA, is limited to privatization of NPC generation assets, to wit:

SEC. 50. Purpose and Objective, Domicile and Term of Existence. – The principal purpose of the PSALM Corp. is to manage the orderly sale, disposition, and privatization of NPC generation assets, real estate and other disposable assets, and IPP contracts with the objective of liquidating all NPC financial obligations and stranded contract costs in an optimal manner.

Neither does PSALM exercise power or control over NPC. PSALM and NPC are two (2) different entities with their respective functions as mandated under the EPIRA.

On the other hand, MIPGC, in its “*Comment [Re: Motion to Drop PSALM as Party to the Proceedings]*”, argued that PSALM is a necessary party to the instant Petition.

MIPGC contends that while missionary electrification function is vested in the NPC, the same is, however, funded among others, by universal charge that is being administered by PSALM pursuant to Section 70 of EPIRA and its IRR:

SEC. 70. Missionary Electrification.

xxxxx

The missionary electrification function shall be funded from the revenues from sales in missionary areas and from the universal charge to be collected from all electricity end-users as determined by the ERC.

Rule 18, EPIRA IRR

Section 6. Administration of the Universal Charge.

(a) Pursuant to the last paragraph of Section 34 of the Act, PSALM shall act as the administrator of the funds generated from the Universal Charge. xxxxx

MIPGC further asserted that the instant petition calls for the recovery from NPC of erroneous deductions made from MIPGC billings in the course of the implementation of their agreement for the purchase of generated power. The deductions made by NPC are actually deductions from the generation charge. The full amount of which, MIPGC is entitled to receive under the provisions of the ERC-approved GCPA and its Supplementary Agreement.²

Moreover, MIPGC elucidates that in case of a favourable judgment, NPC would be made to refund specified amounts thereto. It is in this context that PSALM becomes a necessary party thereto. PSALM, being the designated administrator of the collected universal charge, would ultimately be required to disburse an amount equivalent to the erroneous deductions of the NPC, to be determined by the Honorable Commission.³

Almost a month after the filing of MIPGC's *Comment [Re: Motion to Drop PSALM as Party to the Proceedings]*, PSALM filed a *Reply* thereto. In the said *Reply*, PSALM countered MIPGC's claim that the former is a necessary party in the following guise:

² *Comment [Re: Motion to Drop PSALM as Party to the Proceedings]*, par. 5

³ *Id.*

The Guidelines and Procedures Governing Remittances and Disbursements of the Universal Charge issued by the Honorable Commission provides the process for which disbursement of the funds actually collected and remitted by the collecting entities tated in the EPIRA.

Hence, Section 7 (d) states that:

XXXXX

- d) To facilitate close monitoring of disbursements from the STFs and their use for the intended purpose:
- (1) Each Beneficiary shall promptly furnish PSALM with a certified true copy of the order (or other relevant ruling) issued by the ERC setting out the Beneficiary's entitlement to the Universal Charge in respect of each year or each calendar month, as the case may be.

Applying the above-cited provision, PSALM asseverated that in case MIPGC is awarded favourable judgment in the instant case, NPC must strictly comply with the procedures in order that the Universal Charge may be disbursed for missionary electrification. Foremost, it is essential that the Decision/Order in the instant case should not only make a finding that NPC did in fact make erroneous deductions, thus, order the payment of the amounts deducted, but must plainly state NPC's entitlement to Universal Charge which corresponds to the amounts erroneously deducted. It is only then that NPC can request for the disbursement of the Universal Charge from PSALM.⁴

COMMISSION'S RULING

The Commission resolves to deny NPC's prayer for the dismissal and grant PSALM's *Motion to Drop PSALM as Party to the Proceedings*

Commission's Jurisdiction over dispute resolution cases

In the 2016 case of *Power Sector Assets And Liabilities Management Corporation v. Sem-Calaca Power Corporation*,⁵ the

⁴ Reply (To MIPGC's Comment dated 28 April 2015), par. 7

⁵ G.R. No. 204719, December 05, 2016

Supreme Court upheld the jurisdiction of the Commission over disputes between and among participants or players in the energy sector, to wit:

On the contrary, We find the ERC to have acted **within its statutory powers as defined in Section 43 (u), RA 9136, or the EPIRA Law, which grants it original and exclusive jurisdiction "over all cases involving disputes between and among participants or players in the energy sector."**⁷⁶ Jurisprudence also states that administrative agencies like the ERC, which were created to address the complexities of settling disputes in a modern and diverse society and economy, count among their functions the interpretation of contracts and the determination of the rights of parties, which traditionally were the exclusive domain of the judicial branch.⁷⁷ Such broadened quasi-judicial powers of administrative agencies are explained in the case of *Antipolo Realty Corporation v. NHA*,⁷⁸ which states:

In this era of clogged court dockets, the need for specialized administrative boards or commissions with the special knowledge, experience and capability to hear and determine promptly disputes on technical matters or essentially factual matters, subject to judicial review in case of grave abuse of discretion, has become well nigh indispensable. Thus, in 1984, the Court noted that "between the power lodged in an administrative body and a court, the unmistakable trend has been to refer it to the former. x x x."

In general, the quantum of judicial or quasi-judicial powers which an administrative agency may exercise is defined in the enabling act of such agency. In other words, the extent to which an administrative entity may exercise such powers depends largely, if not wholly, on the provisions of the statute creating or empowering such agency. **In the exercise of such powers, the agency concerned must commonly interpret and apply contracts and determine the rights of private parties under such contracts. One thrust of the multiplication of administrative agencies is that the interpretation of contracts and the determination of private rights thereunder is no**

longer a uniquely judicial function, exercisable only by our regular courts.

As the foregoing imply, the **ERC merely performed its statutory function of resolving disputes among the parties who are players in the industry, and exercised its *quasi-judicial* and administrative powers** as outlined in jurisprudence by interpreting the contract between the parties in the present dispute, the so-called APA and specifically its Schedule W. (emphasis supplied)

The dispute subject of the above-cited jurisprudence originally emanated from the Commission under ERC Case No. 2010-058MC. ERC Case No. 2010-058MC is a petition for dispute resolution filed by Sem-Calaca Power Corporation (SCPC) against Power Sector Assets and Liabilities Management Inc. (PSALM)

The main issue in ERC Case No. 2010-058MC is the proper interpretation of Schedule W of the Asset Purchase Agreement (APA) executed by PSALM and DMCI, predecessor of SCPC. SCPC contested PSALM's interpretation of the APA which is the basis of the latter's the deductions on SCPC's billing.

The Commission ruled in favour of SCPC.⁶ The said ruling was upheld by the Court of Appeals, as well as the Supreme Court which resulted to the above-mentioned jurisprudence.

In the same manner, the instant Petition of MIPGC involves a dispute over the proper interpretation of Generating Capacity Purchase Agreement (GCPA) and Supplemental Agreement thereto. These are contracts between and among *players in the energy sector*. Similar to SCPC, MIPGC also disputed the unauthorized deductions made by NPC to its payment to MIPGC for generated electricity.

Considering the foregoing jurisprudence, the Commission's jurisdiction over dispute resolutions among participants and players in the electric power industry is settled.

⁶ ERC Case No. 2010-058, Decision dated 11 July 2011

PSALM need not be impleaded in the instant case.

While PSALM is the authorized repository and disbursing agent of the Universal Charge (UC), the process of disbursement is properly outlined in the decision of the Commission dated 5 January 2006 approving the Revised Guidelines and Procedures Governing Remittances and Disbursement of the Universal Charge.

Section 7 (d) thereof states that:

xxxxxx

d) To facilitate close monitoring of disbursements from the STFs and their use for the intended purpose:

(2) Each Beneficiary shall promptly furnish PSALM with a certified true copy of the order (or other relevant ruling) issued by the ERC setting out the Beneficiary's entitlement to the Universal Charge in respect of each year or each calendar month, as the case may be.

In addition to the Commission's approval that the UC beneficiary is indeed entitled to a portion thereof, the beneficiary still had to undertake the steps provided in the said guidelines.

Moreover, other case types which involve the utilization of the universal charge for missionary electrification, like applications for approval power supply agreement, do not implead PSALM as a party thereto.

Significantly, while the instant case is a dispute resolution, it emanated from the GCPA which was duly approved by the Commission pending the approval of the ESA between ORMECO and Power One (MIPGC's predecessor).

The application for the approval of the ESA did not implead PSALM. Notwithstanding that the approval of the ESA would essentially require the disbursement of the UC for missionary electrification being that the DU-Party for the ESA is located in the SPUG Area.

Hence, the Commission finds it unnecessary to implead PSALM in this case as there exists a duly approved procedure for the disbursement of the Universal Charge which must be complied with.

WHEREFORE, premises considered, the Commission hereby **DENIES** NPC's "*Motion to Dismiss*" and **GRANTS** PSALM's "*Motion to Drop PSALM as Party to the Proceedings*".

SO ORDERED.

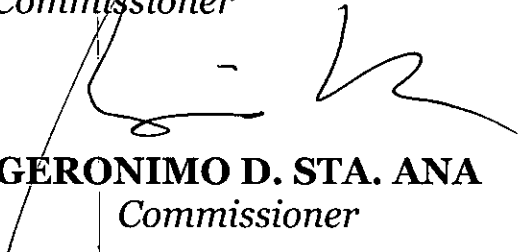
Pasig City, 6 July 2017

JOSE VICENTE B. SALAZAR*
Chairman and CEO


ALFREDO J. NON
Commissioner


GLORIA VICTORIA O. YAP-TARUC
Commissioner


JOSEFINA PATRICIA A. MAGPALE-ASIRIT
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* The Chairman was placed on preventive suspension as per Order of the Office of the President (OP-DC Case No. 17-D-094) dated 2 May 2017 and received on 04 May 2017.

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