

ADMINISTRATIVE ORDER NO. 381

PROVIDING FOR THE FULFILLMENT BY THE NATIONAL POWER CORPORATION OF ITS OBLIGATIONS UNDER THE AGREEMENT FOR THE SALE AND PURCHASE OF NATURAL GAS DATED DECEMBER 30, 1997 WITH SHELL PHILIPPINES EXPLORATION B.V./OCCIDENTAL PHILIPPINES, INC. AND THE COMPLIANCE OF THE NATIONAL GOVERNMENT, THROUGH THE DEPARTMENT OF FINANCE AND THE DEPARTMENT OF ENERGY WITH ITS PERFORMANCE UNDERTAKING THEREFOR AND OTHER PURPOSES

WHEREAS, the Government of the Republic of the Philippines, represented by the Office of Energy Affairs (now the Department of Energy or "DOE"), and Shell Exploration B.V./Occidental Philippines, Inc., their assignees and successors-in-interest (hereinafter alternatively called the "Service Contractor", the "Sellers" or "Shell/Oxy" for brevity) entered into a Service Contract ("SC 38") on December 11, 1990 as clarified by a Memorandum of Clarification between the same parties of the same date, covering the Camago-Malampaya Reservoir, among others, located offshore Northwest Palawan, Philippines (hereinafter called the "Natural Gas Project");

WHEREAS, Shell Exploration B.V. has assigned on December 11, 1990 its rights and obligations under SC 38, as clarified, to Shell Philippines Exploration B.V.; LexLib

WHEREAS, under SC 38, as clarified, a production sharing scheme has been provided whereby the Government is entitled to receive an amount equal to sixty percent (60%) of the net proceeds from the sale of Petroleum (including Natural Gas) produced from Petroleum Operations (all as defined in SC 38) while Shell/Oxy, as Service Contractor is entitled to receive an amount equal to forty percent (40%) of the net proceeds;

WHEREAS, Section 7.3(b) of SC 38, as clarified, provides that the Office of Energy Affairs, now the DOE, shall be entitled to receive in kind Petroleum, including Natural Gas, equal in value to sixty percent (60%) of net proceeds;

WHEREAS, the Service Contractor has also been authorized to market to the National Power Corporation ("NPC") on behalf of the Government, the Government's share of Natural Gas produced and saved from the Contract Area (as defined in SC 38) and to market additional volumes to other domestic buyers;

WHEREAS, based on seismic surveys and exploration and appraisal well drilling, Shell/Oxy have established the presence, in the Camago-Malampaya Reservoir in the Contract Area, of Natural Gas in quantities estimated to be sufficient to justify the pursuit of gas-to-power projects having an aggregate power generating capacity of approximately 3,000 MW operating at baseload for twenty years;

WHEREAS, NPC's 1,200 MW Ilijan Power Plant located in the province of Batangas is one of the natural gas-fired plants that will utilize, as its main fuel, Natural Gas produced from the Contract Area and provide a ready market for the Natural Gas Project;

WHEREAS, the Service Contractor, as the Sellers, and the NPC, as the Buyer entered into an Agreement for the Sale and Purchase of Natural Gas (hereinafter called the "GSPA") on December 30, 1997, relating to the sale and purchase of Natural Gas from the Camago-Malampaya Reservoir for the Ilijan Power Plant and other purposes;

WHEREAS, in accordance with the GSPA, the Start Date for the Sellers to tender for delivery and for the Buyer to take Natural Gas shall be on January 2, 2002 subject to the Sellers or the Buyer being ready, respectively, to tender for delivery or receive Natural Gas;

WHEREAS, in the event of a low growth scenario, it is forecasted that there may be an excess in the capacity to supply electricity which may affect the capability of NPC to take the full Take-or-Pay Quantity (the "TOPQ") under clause 9 of the GSPA in the early Contract Years of the GSPA;

WHEREAS, under clause 9 of the GSPA, Natural Gas not taken but paid for by NPC (hereinafter called "Annual Deficiencies") will be made available to NPC without additional charge subject to the GSPA;

WHEREAS, Section 88(1) of P.D. No. 1445 prohibits the Government from making advance payment for supplies and materials not yet delivered under any contract, except with the prior approval of the President of the Republic of the Philippines; cdasia

WHEREAS, under Section 44, Chapter 5, Book VI, of the Revised Administrative Code of 1987 (Executive Order No. 292) amounts received in trust and from the business-type activities of Government may be separately recorded and be disbursed in accordance with such rules and regulations as may be determined by the Permanent Committee created under the same Code;

WHEREAS, under Section 8 of R.A. No. 6395 (Revised NPC Charter), as amended, the National Government is authorized to guarantee the loans, credits and indebtedness of NPC;

WHEREAS, the Government has determined that it can derive the following economic and social benefits from the Natural Gas Project:

1. the use of Natural Gas for power generation will effect lower electricity rates resulting in savings estimated at about US\$2.2 billion;
2. based on the estimated production level and Natural Gas pricing formula between the Sellers and the Buyers of such Natural Gas, the estimated Government revenues for the 20-year contract period will be around US\$8.1 billion; this includes estimated revenues to be generated from the available oil and condensate reserves of the Camago-Malampaya Reservoir; the province of Palawan is expected to receive about US\$2.1 billion from the total Government share of US\$8.1 billion;
3. the Natural Gas Project represents the single largest and most significant investment in the history of Philippine business, with a total private investment portfolio of about US\$4.8 billion: it includes investment in both upstream and downstream operations which in turn will create new job opportunities requiring engineering, technical, professional and skilled manpower;
4. the utilization of Natural Gas will displace imported fuels, in the process releasing valuable foreign exchange for other productive uses thereby improving the Philippines' trade balance; the estimated foreign exchange savings that will be realized will be around US\$4.5 billion;
5. in addition to triggering an inflow of the latest oil and gas technology and skills in the country, the introduction of Natural Gas as an environment-friendly fuel for power generation will have a positive major environment impact; natural gas is a clean fuel for power generation compared to coal and oil and the environmental benefits have been quantified to amount to an estimated savings of about US\$1.1 billion;
6. the Natural Gas Project offers the opportunity of increasing the country's energy self-reliance; with the substantial realization of this indigenous resource in the energy mix, the country can look forward to gradually veering away from heavily using imported oil and coal in the power generation sector.

WHEREAS, the Government's share in Petroleum (including Natural Gas) produced under SC 38, as clarified, will be reduced (i) by the share of concerned local government units pursuant to the Local Government Code and (ii) by amounts of income taxes due from and paid on behalf of the Service Contractor (the resulting amounts hereinafter called the "Net Government Share");

WHEREAS, to support the development of the Natural Gas Project, the National Government through the DOE, has agreed, with the conformity of the Department of Finance (the "DOF"), to provide assistance to NPC by utilizing the Net Government Share to satisfy the TOPQ provisions of the GSPA in respect of the part of such TOPQ that is in excess of NPC's Planned Generation Consumption as specified in Table 1 hereof, in consideration of the DOE's being subrogated to NPC's right to recover the corresponding Annual Deficiencies to be supplied by the Sellers under clause 9 of the GSPA;

WHEREAS, the Net Government Share during the early Contract Years of the GSPA may not be sufficient to pay for the Natural Gas payable but not taken by NPC under the TOPQ provisions of the GSPA;

WHEREAS, the Sellers have offered to NPC a Deferred Payment Facility (the "Facility") to finance, under terms to be agreed upon, payment for the Natural Gas not taken but payable by NPC under the TOPQ provisions of the GSPA, after the application of the Net Government Share, to the extent of the difference between the TOPQ and the greater of: (i) NPC's Planned Generation Consumption and (ii) the quantities of Natural Gas actually taken by NPC, for each relevant Contract Year under the GSPA;

WHEREAS, in view of the socio-economic and environmental advantages to the country of the Natural Gas Project, full Government support for NPC's fulfillment of its obligations under the GSPA is imperative;

NOW, THEREFORE, I, FIDEL V. RAMOS, President of the Philippines, by virtue of the powers vested in me by law, do hereby order:

SECTION 1. NPC is hereby authorized to make payments under the Take-or-Pay Quantity provisions in clause 9 of the GSPA for Natural Gas, whether delivered and taken or tendered for delivery and not taken. NPC shall adopt all necessary measures to maximize utilization of the TOPQ within the earliest possible period. LibLex

SECTION 2. The National Government, through the DOF, shall guarantee, under the terms of a "Performance Undertaking" to the Sellers, the payment of NPC's financial obligations under the GSPA (or under the Facility to the extent such obligations are financed under the Facility) in consideration of fees to be paid by the Sellers to the DOF under such Performance Undertaking.

SECTION 3. The National Government, through the DOE, shall utilize the Net Government Share to satisfy the TOPQ provisions of the GSPA in respect of the part of such TOPQ that is in the excess of NPC's Planned Generation Consumption as specified in Table 1 hereof.

SECTION 4. In the event that the Net Government Share from the DOE in a given Contract Years as defined in the GSPA is insufficient to pay for the Natural Gas not taken but payable under the TOPQ provisions of the GSPA that is in excess of NPC's Planned Generation Consumption, NPC is hereby authorized to avail itself of the Deferred Payment Facility. In addition to the purposes set out in Section 3 hereof, the Net Government Share for the succeeding Contract Years shall be used to pay the Sellers for any amounts outstanding under the Facility.

SECTION 5. Pursuant to Section 44, Chapter 5, Book VI, of the Revised Administrative Code of 1987 (Executive Order No. 292), a Special Net Government Share Account (the "Account") is

hereby created with the Bureau of the Treasury to be sourced from Net Government Share in the proceeds of all petroleum, natural gas and geothermal service contracts, and coal operating contracts of the Government, other than SC 38, under P.D. No. 87, as amended, and other pertinent legislation.

SECTION 6. The Account shall be used to pay the Sellers any amounts outstanding under the Facility or due under the Performance Undertaking in respect of Natural Gas not taken that is in excess of NPC's Planned Generation Consumption but payable by NPC under the TOPQ provisions of the GSPA.

SECTION 7. In the event that (i) the Net Government Share, (ii) the Facility and (iii) the funds contained in the Account are insufficient or not available for the purposes set forth in Sections 3, 4, and 6 hereof, or other obligations arise under the Performance Undertaking, the balance of the amounts due to the Sellers under the Performance Undertaking shall be paid from other available government sources or funds.

SECTION 8. As soon as NPC is able to utilize Annual Deficiencies, NPC shall pay the DOE the value of the Annual Deficiencies so utilized by NPC to the extent such Annual Deficiencies have been paid by the DOE from the Net Government Share.

SECTION 9. The DOF, DOE and NPC are hereby authorized to enter into any agreements necessary to implement the provisions of this Order.

SECTION 10. The DOF and DOE shall have joint primary jurisdiction over any issue or controversy which may arise from the interpretation of this Order and of other inter-agency agreements which may be executed pursuant hereto, without prejudice to the dispute resolution provisions contained in the GSPA, the Facility and the Performance Undertaking.

SECTION 11. Should any portion or provision of this Order be declared unconstitutional, illegal or contrary to law, the remaining portions or provisions unaffected by such a ruling shall continue to remain in force and in effect.

SECTION 12. This Order shall take effect immediately upon issuance.

DONE in the City of Manila, this 17th day of February, in the year of Our Lord, nineteen-hundred and ninety-eight.