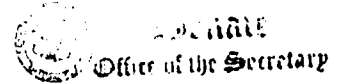


EIGHTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
Second Regular Session)



20 OCT -5 A9:18

SENATE
P.S. RES. No. 533

RECEIVED BY: _____

Introduced by Senators VICENTE C. SOTTO III, PANFILO "PING" M. LACSON, and
WIN GATCHALIAN

A RESOLUTION DIRECTING THE SENATE COMMITTEE ON ENERGY TO CONDUCT AN INQUIRY IN AID OF LEGISLATION ON THE ISSUES SURROUNDING SERVICE CONTRACT 38 OR THE MALAMPAYA DEEP WATER GAS-TO-POWER PROJECT, AND ITS COMPLIANCE WITH PRESIDENTIAL DECREE NO. 87 OTHERWISE KNOWN AS THE OIL EXPLORATION AND DEVELOPMENT ACT OF 1972, WITH THE END IN VIEW OF SAFEGUARDING THE COUNTRY'S ENERGY SECURITY

1 WHEREAS, the State considers the discovery and development of the
2 country's indigenous petroleum resources as vital to the country's national
3 development,¹ and places paramount importance on an integrated and intensive
4 exploration, development, and utilization of the country's indigenous energy
5 resources to achieve continuous and economic supply of energy and safeguard the
6 country's energy security;²

7 WHEREAS, towards the achievement of these policies, Presidential Decree No.
8 87 (PD 87), otherwise known as the Oil Exploration and Development Act of 1972,
9 was promulgated and lays down a policy and regulatory framework to encourage
10 investments and provide incentives for the exploration, exploitation, and
11 development of the country's oil and gas reserves, while ensuring that oil and gas
12 developers are held to the highest standards of operational efficiency, corporate
13 responsibility, and public accountability;

¹ Presidential Decree No. (PD) 87, otherwise known as the Oil Exploration and Development Act of 1972. (1972). Section 2.

² Republic Act No. (RA) 7638 otherwise known as the Department of Energy Act. (1992). Section 5(a).

14 WHEREAS, since the promulgation of PD 87, a total of twenty-three (23)
15 active petroleum service contracts have been awarded by the government, with
16 Service Contract No. 38 (SC 38) or the Malampaya Deep Water Gas-to-Power Project
17 (Malampaya) being the most significant upstream development to date;

18 WHEREAS, since commencing its commercial operations in 2001, SC 38 was
19 held by a consortium composed of Shell Philippines Exploration, B.V. (SPEX) with a
20 45% share, Chevron with a 45% share, and PNOC Exploration Corporation with a
21 10% share;

22 WHEREAS, Malampaya plays an important role in the Philippines' energy
23 security as it accounts for 21.08% of power generation in the entire country, and
24 29.3% of power generation in Luzon,³ and has likewise provided the government a
25 total revenue of Php 261,681,610,752.59⁴ from January 2002 to 31 December 2019
26 proving to be a crucial source of funding for various energy resource development
27 programs⁵ and initiatives;⁶

28 WHEREAS, Malampaya faces a number of issues specifically: *First*, the lack of
29 direction from the government on SC 38 given its expiration in 2024, specifically
30 whether there will be an extension, and if not, whether government will operate and
31 manage Malampaya and how it will do so; *Second*, the low growth of production as
32 shown by Malampaya's 1.45% annual average growth rate from 2009 to 2019, and
33 the projected 4.49% decline in natural gas production from 2019 to 2020;⁷ and
34 *Third*, the compliance with the requirements of technical competence of the
35 contractor and prior approval of the Department of Energy (DOE) under Sections 4⁸
36 and 11⁹ of PD 87, and Section 16.4¹⁰ of SC 38 given the sale of Chevron's 45%

³ Department of Energy (DOE). (2020). Power Statistics.

⁴ Submission of DOE entitled Malampaya Fund (2002-2019) as of 31 December 2019.

⁵ PD 910, entitled Creating an Energy Development Board, Defining Its Powers and Functions, Providing Funds, Therefor, and for other Purposes. (1976). Section 8.

⁶ RA 11371 otherwise known as Murang Kuryente Act. (2018).

⁷ Natural Gas Production/Consumption as of 25 August 2020. Accessed at: <https://www.doe.gov.ph/natgas> accessed on 4 October 2020; DOE (2019) Natural Gas Situationer Report; OSSTG Internal Computations (2020).

⁸ Section 4 of PD 87 states: Subject to the existing private rights, the Government may directly explore for and produce Indigenous petroleum. It may also indirectly undertake the same under service contracts as hereinafter provided. These contracts may cover free areas, national reserve areas and/or petroleum reservations, as provided for in the Petroleum Act of 1949, whether on-shore or off-shore. In every case, however, the contractor must be technically competent and financially capable as determined by the Board to undertake the operations required in the contract. (Emphasis supplied)

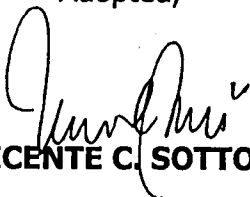
⁹ Section 11 of PD 87 states: The rights and obligations under a contract executed under this Act shall not be assigned or transferred without the prior approval of the Petroleum Board: Provided, That with respect to the transfer or assignment of contractual rights and obligations under this Act to an affiliate of the transferor, the approval thereof by the Petroleum Board shall be automatic, if the transferee is as qualified as the transferor to enter into such contract with the Government: Provided, further, That the affiliate relationships between the original transferor or a company which holds at least fifty percent of the contractor's outstanding shares entitled to vote and each transferee shall be maintained during the existence of the contract. (Emphasis supplied)

37 interest to UC Malampaya Philippines Pte Ltd. in 2019,¹¹ and the impending sale of
38 SPEX's 45% stake;¹²

39 WHEREAS, given the critical role of Malampaya in the country's energy
40 security and overall national development, it is imperative for Congress and the
41 Filipino public to be apprised of the (1) plans of government for SC 38 given its
42 looming expiration, and Malampaya's declining output, and (2) compliance of
43 government and the consortium with PD 87 and SC 38;

44 RESOLVED BY THE SENATE, as it is hereby resolved, to direct the Senate
45 Committee on Energy to conduct an inquiry in aid of legislation on the issues
46 surrounding Service Contract 38 or the Malampaya Deep Water Gas-to-Power
47 Project, and its compliance with Presidential Decree No. 87, otherwise known as The
48 Oil Exploration and Development Act of 1972, with the end in view of safeguarding
49 the country's energy security.

Adopted,


VICENTE C. SOTTO III


PANFILO "PING" M. LACSON


WIN GATCHALIAN

¹⁰ Section 16.4 of SC 38 states: The rights and obligations of Second Party under this Contract shall not be assigned or transferred without the prior approval of the OFFICE OF ENERGY AFFAIRS which shall not be unreasonably withheld and shall be without fee or other consideration; provided, that with respect to the assignment or transfer of such rights and obligations to an Affiliate of the transferor, the approval thereof by the OFFICE OF ENERGY AFFAIRS shall be automatic and without fee or other consideration, if the transferee is as qualified as the transferor to enter into such contract with the Government; provided, further, that the Affiliate relationship between the original transferor or a company which holds at least fifty percent (50%) of the CONTRACTOR's outstanding shares entitled to vote and each transferee shall be maintained during the existence of the Contract. (Emphasis supplied)

¹¹ Chevron-Malampaya stake sale to Udenna with PCC. Business Mirror. 12 December 2019. Available at: <https://businessmirror.com.ph/2019/12/12/chevron-malampaya-stake-sale-to-udenna-with-pcc/>. Accessed on 30 September 2020.

¹² San Miguel Interested in Shell's Stake In Philippine Gas to Power Project. Bloomberg. 24 September 2020. Available at: <https://www.bloomberg.com/news/articles/2020-09-24/shell-to-sell-malampaya-gas-to-power-project-in-philippines>. Accessed on 30 September 2020.