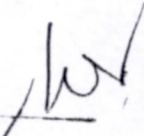


SEVENTEENTH CONGRESS OF THE]
REPUBLIC OF THE PHILIPPINES]
First Regular Session]



SENATE
Office of the Secretary

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SENATE

P.S.Res. No. 130

Introduced by SEN. WIN T. GATCHALIAN

A RESOLUTION

DIRECTING THE COMMITTEE ON ENERGY TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, AS TO THE STATUS OF THE MALAMPAYA DEEP WATER GAS-TO-POWER PROJECT CONTRACT AND OTHER ISSUES RELATED THERETO, SUCH AS THE COMMISSION ON AUDIT RULING ON THE UNDERPAYMENT OF CORPORATE INCOME TAXES BY THE CONSORTIUM

WHEREAS, Presidential Decree (PD) No. 87 or "The Oil Exploration And Development Act Of 1972" promulgated on December 31, 1972 is the law governing the regulation of petroleum exploration and production activities in the country;

WHEREAS, pursuant to PD 87, Service Contract No. 38 (SC 38) was entered into by the National Government and Shell Philippines Exploration, B.V. (SPEX) and Occidental Philippines, Inc (OXY) and later by Chevron Malampaya LLC (Chevron), and the Philippine National Oil Co.-Exploration Corp (PNOC-EC);

WHEREAS, the Malampaya Project has reserves of about 2.5-3.5 trillion cubic feet of gas, 85 million barrels of condensate, and at least 20 to 40 barrels of oil and is scheduled to produce 146 billion cubic feet of gas per year;

WHEREAS, with a total capacity of two thousand seven hundred megawatts (2,700MW), the Malampaya Project is one of the largest and most significant industrial endeavors in Philippine history which supplies up to fifty five percent (55%) of Luzon's power requirements;

WHEREAS, the license granted to SPEX, Chevron, and PNOC-EC under SC 38 for the conduct of exploration and drill activities is, however, valid only until 2024;

WHEREAS, SPEX previously sought a fifteen (15) year extension of its contract or until 2039, but according to a study commissioned by the Department of Energy (DOE), the gas field is likely to last only until 2030;

WHEREAS, also under SC 38, a production sharing scheme has been established whereby the National 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 while SPEX, Chevron, and PNOC-EC, as service contractors, are entitled to receive an amount equal to forty percent (40%) of the net proceeds;

WHEREAS, in 2009, the Commission on Audit (COA) Annual Audit Report (AAR) showed P53,140,304,739.86 in underpayment of corporate taxes by SPEX, Chevron, and PNOC-EC to the National Government;

WHEREAS, COA further broke down the under collection per year amounting to P2,409,817,191.46 in 2003; P2,335,402,961.38 in 2004; P2,832,586,038.93 in 2005; P7,901,265,361.42 in 2006; P11,272,523,434.55 in 2007; P15,826,563,356.86 in 2008 and P10,562,146,395.26 in 2009;

WHEREAS, however, SPEX, Chevron, PNOC-EC alleged that the corporate income taxes were already included in the National Government's share of sixty percent (60%) of the net proceeds;

WHEREAS, the DOE supported SPEX, Chevron, and PNOC-EC's claims and asserted that the National Government may assume and pay the tax liabilities of a service contractor consistent with the incentive-oriented policy towards investors;

WHEREAS, on 6 April 2015, COA issued Decision No. 2015-115 and upheld its findings that the income taxes of the service contractors could not be assumed by the National Government in its sixty percent (60%) share in the Malampaya proceeds and thus ordered SPEX, Chevron, and PNOC-EC to pay the National Government PP53,140,304,739.86 in taxes;

WHEREAS, on September 2015, SPEX filed an arbitration case against the National Government with the Singapore International Arbitration Center;

WHEREAS, on 20 July 2016, SPEX filed another arbitration case in the International Center for Settlement of Investment Disputes (ICSID) against the National Government regarding its tax dispute;

NOW THEREFORE, BE IT RESOLVED by the Senate of the Philippines, to direct the Committee on Energy to conduct an inquiry, in aid of legislation, as to the status of the Malampaya Deep Water Gas-To-Power Project Contract and other issues related thereto, such as the Commission on Audit ruling on the underpayment of corporate income taxes by the consortium, in order to determine the subsequent plans of the National Government given that the Malampaya Project provides substantial power requirements to the country.

Adopted,



WIN T. GATCHALIAN