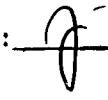




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SENATE

RECEIVED BY: 

P.S. Res. No. 39

Introduced by Senator Ralph G. Recto

A RESOLUTION

DIRECTING THE APPROPRIATE SENATE COMMITTEE TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE CONFLICTING DATA OF THE BUREAU OF THE TREASURY AND THE DEPARTMENT OF ENERGY ON REVENUES COLLECTED FROM THE MALAMPAYA NATIONAL GAS PROJECT, WITH THE END IN VIEW OF RECONCILING ALL BOOKS OF ACCOUNTS PERTAINING TO THE MALAMPAYA FUND AND COLLECTING THE CORRECT ROYALTIES DUE TO THE PHILIPPINE GOVERNMENT

WHEREAS, Presidential Decree (PD) No. 87 was promulgated to hasten the discovery and production of indigenous petroleum through the utilization of government and/or private resources, local and foreign;¹

WHEREAS, the then Office of Energy Affairs (OEA), entered into Service Contract (SC) No. 38 with Occidental Philippines Inc. and Shell Exploration BV - the predecessors-in-interest of Shell Philippines Exploration B.V., Philippine National Oil Company Exploration Corporation, Chevron Malampaya LLC, collectively referred to as the "contractors" to execute all operations in connection with searching for and obtaining petroleum in commercial quantities in the contract area;²

WHEREAS, Section 7 of SC 38 provides that sixty percent (60%) of net proceeds shall be remitted to the government through the Department of Energy (DOE), while the contractor will retain an amount equal to a service fee of forty percent (40%) of the net proceeds from the Petroleum Operations;³

WHEREAS, the Commission on Audit (COA) Annual Audit Report (AAR) of the DOE for 2009 contained an observation that the government share from the net proceeds on the sale of natural gas and condensates from the Malampaya Natural Gas Project (MNGP) was understated/under collected by a total of P53,140,304,739.86 for the years 2002 to December 2009;⁴

WHEREAS, COA has reaffirmed in the Decision No. 2015-115 dated April 6, 2015 its earlier ruling that the Shell-Chevron-PNOC consortium owes the government P53.1 billion (or \$ 1.2 billion) in royalties;

¹ Presidential Decree No. 87 or "The Oil Exploration And Development Act of 1972".

² Service Contract No. 38 (Malampaya Natural Gas Project), December, 11, 1990.

³ Sections 7.3 and 7.4 of SC No. 38.

⁴ Ruling of COA Decision No. 2015-115 dated April 6, 2015,

http://lia.coa.gov.ph/documents/13322?search_param=shell+coa+ruling (accessed on July 13, 2015).

WHEREAS, the COA instructed the DOE to collect the P53.14 billion tax which the latter assumed in behalf of the Contractor as it is in violation of the BIR rules and regulations, Section 8(k) and 12 (a) and 19 of Presidential Decree (PD) 87⁵, and Section 6.1(j) and 6.3 of Service Contract (SC) No. 38;⁶

WHEREAS, Royal Dutch Shell Co. Ltd. chief financial officer Simon Henry stated in his letter to the government that COA's claim for additional income taxes covering the years 2002-2014 was erroneous since the claimed taxes were deemed, under Service Contract No. 38 to have been paid by DOE out of the government share of the consortium's net income;⁷

WHEREAS, Shell Philippines Exploration B.V. had sought international arbitration in Singapore on the issue of the P53.14-billion unpaid tax obligations to the national government;⁸

WHEREAS, the current sharing arrangement adopted by the DOE, in effect, exempts the contractor from paying taxes as an incentive-oriented policy which has been a long cherished standard provision of all SCs⁹;

WHEREAS, records of the Bureau of the Treasury (BTr) show a total remittance of P208,627,694,440.41 from the Malampaya Natural Gas Project from January 2002 to March 2015¹⁰ while the DOE records indicate that the Net National Government Share from Malampaya for the same period amounts to P213,224,489,670.03¹¹ or a difference of P4,596,795,229.62;

WHEREAS, the COA 2009 AAR posted a total of P53,140,304,739.86 corporate income taxes deducted from the government share for the period January 2002 to 2009 while the DOE records show that a total of P54,202,055,552.83 corporate income taxes was remitted to the BIR for the same period or a difference of P1,061,750,812.97;

WHEREAS, Congress should review the current sharing arrangement adopted by the DOE which effectively exempts the contractor from paying taxes which is contrary to PD 87;

WHEREAS, the inquiry should look into the books of accounts of government agencies pertaining to the Malampaya Deepwater Gas to Power Project Fund including the royalties and taxes remitted to the national government;

RESOLVED, by the Philippine Senate, to direct the appropriate Senate Committee to conduct an inquiry, in aid of legislation, on the conflicting data of the Bureau of the Treasury and the Department of Energy on revenues collected from the Malampaya

⁵ Section 8(j) subjects the contractor to Philippine income tax while Section 12(a) exempts the contractor from all taxes – except income tax.

⁶ Section 6.1(j) of Service Contract No. 38 imposes upon the contractor the obligation to pay corporate income tax.

⁷ Rudy Romero. The Standard. <http://thestandard.com.ph/opinion/columns/business-class-by-rudy-romero/194397/malampaya-tax-case-going-to-arbitration-.html>

⁸ Alena Mae S. Flores. The Standard. Shell sues Philippines over Malampaya row. <http://manilastandardtoday.com/mobile/article/194664>

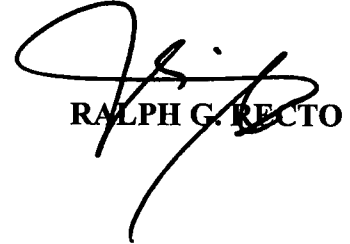
⁹ Section 6.3 of SC 38 provides that the Office of Energy Affairs shall assume and pay on behalf of Contractor and its parent company, on the first transaction in each instance where the tax is imposed, all income taxes payable to the Republic of the Philippines based on income and profits and, with respect to Contractor, on the first transaction in each instance where the tax is imposed, all dividends, withholding taxes and other taxes imposed by the Government of the Philippines on the distribution of income and profits derived from Petroleum Operations to its parent company.

¹⁰ Bureau of the Treasury Schedule of Remittances and Releases – Malampaya Special Account in the General Fund as of May 31, 2015.

¹¹ Department of Energy Status of Malampaya Deepwater Gas to Power Project Funds January 2002-March 2015.

National Gas Project, with the end in view of reconciling all books of accounts pertaining to the Malampaya Fund and collecting the correct royalties due to the Philippine government.

Adopted,



RALPH G. RECTO

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