



SENATE

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P. S. RES. NO. 531

Introduced by Senator Antonio "Sonny" F. Trillanes IV

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RESOLUTION

DIRECTING THE COMMITTEE ON ENERGY OF THE SENATE TO CONDUCT AN INQUIRY IN AID OF LEGISLATION INTO THE ALLEGED ANOMALOUS CONTRACTS AND/OR AGREEMENTS ENTERED INTO BY FIRST CATANDUANES ELECTRIC COOPERATIVE WITH POWER ONE CORPORATION AND/OR CATANDUANES POWER GENERATION, INC., WHICH HAS RESULTED TO THE CONTINUED UNSTABLE POWER SUPPLY SITUATION IN THE ISLAND PROVINCE OF CATANDUANES AS WELL AS THE CHARGING OF BLOATED POWER RATES AND UNDUE PAYMENT OF FOREGONE ENERGY CHARGES BY CONSUMERS OF THE PROVINCE PURPORTEDLY WITH THE CONNIVANCE OF OFFICIALS OF THE NATIONAL POWER CORPORATION AND THE ENERGY REGULATORY COMMISSION, IN ORDER TO ESTABLISH THE TRUE AND REAL EXTENT OF SAID ANOMALY AND DETERMINE WHETHER OR NOT THE REGULATORS ARE ACTUALLY INVOLVED AND IN ORDER TO DETERMINE WHETHER OR NOT THERE IS A NEED FOR REMEDIAL LEGISLATION IN THIS REGARD.

WHEREAS, under Section 2 of Republic Act No. 9136 otherwise known as the *Electric Power Industry Reform Act of 2001* or EPIRA Law, it is the *Declare Policy of the State*:

- (a) Xxx;
- (b) To ensure the quality, reliability, security and affordability of the supply of electric power;
- (c) To ensure transparent and reasonable prices of electricity in a regime of free and fair competition and full public accountability to achieve greater operational and economic efficiency and enhance the competitiveness of Philippine products in the global market;
- (d) To enhance the inflow of private capital and broaden the ownership base of the power generation, transmission and distribution sectors;
- (e) Xxx;
- (f) To protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric

power;

(g) Xxx;

(h) Xxx;

(i) To provide for an orderly and transparent privatization of the assets and liabilities of the National Power Corporation (NPC);

(j) To establish a strong and purely independent regulatory body and system to ensure consumer protection and enhance the competitive operation of the electricity market; and

(k) Xxx.

[Emphasis supplied]

WHEREAS, instead of working to achieve these declared policies of the State, a series of contracts and/or agreements purportedly entered into and/or signed by **First Catanduanes Electric Cooperative ("FICELCO")** with **Power One Corporation ("Power One")** and/or **Catanduanes Power Generation, Inc. ("CPGI")** has actually resulted to a more unstable power situation in the Island Province of Catanduanes, as well as the charging of bloated power rates and undue payment of "*foregone energy*" or "*standby charges*" by consumers of the province purportedly with the connivance of officials of the **National Power Corporation ("NPC")** and the **Energy Regulatory Commission ("ERC")**, to the grave and utter prejudice of the consumers and people of Catanduanes;

WHEREAS, by way of background, FICELCO began operations in the Island Province of Catanduanes in 1972. From 1974 to 1988, FICELCO assumed both the power distribution and generation functions in Catanduanes. In 1988, **National Power Corporation-Small Power Utilities Group (NPC-SPUG)** re-assumed the power generation functions in the said province. Hence, it was expected then that the power situation in the province would start to improve. From 1998 onwards, however, the power supply situation in Catanduanes hardly changed even if the NPC-SPUG commissioned new medium and high-speed generating sets as demand outstripped supply. FICELCO was forced in 2000 to construct and eventually operate its own diesel power plant, a 2.1 MW plant. Despite the plant's operations, however, acute power shortages continued to hound Catanduanes as NPC-SPUG's diesel generating sets proved unreliable.

WHEREAS, based on records, on November 15, 2003, purportedly after a competitive selection process, FICELCO entered into an **Electricity Supply Agreement (ESA)** with Power One. Under the ESA, Power One has agreed to undertake the following *principal obligations*:

1. Supply all power needs to FICELCO and to construct, operate and maintain the needed power generation plant on build-own-operate (BOO) basis; .
2. Build a Base-Load Diesel Power Plant, fueled with diesel, bunker C or a combination of both; and –



3. Assure provision of power and adequate standby power needed to reasonably assure a 24/7 electric service to the consumers in FICELCO's franchise area, Power One shall deliver as least 13.2 kV of power.

Under **Section 16** of the ESA, otherwise known as the "*Accession Undertaking Provision*", Power One was given the unilateral authority to form a project company that will undertake the project and perform Power One's principal obligations under the ESA. Hence, on July 11, 2007, **Catanduanes Power Generation Incorporated (CPGI)** was formed as Power One's **project company**<sup>1</sup> for the supply of power needs of FICELCO and to construct, operate and maintain the needed power generation plant(s) on build-own-operate basis as contemplated in the ESA beginning with the lease, rehabilitation, operation and maintenance of the Marinawa Diesel Power Plant as Phase I Project. The principal obligations of Power One under the ESA<sup>2</sup> were assumed by CPGI through an *Assignment and Assumption Agreement* executed between them on 25 January 2008.<sup>3</sup>

**WHEREAS**, instead of complying with their principal obligations under the ESA to: (1) supply all power needs of FICELCO and to construct, operate and maintain the needed power generation plant on a build-own-operate (BOO) basis; (2) build a Base-Load Diesel Power Plant, fueled with diesel, bunker C or a combination of both; and (3) assure provision of power and adequate standby power needed to reasonably assure a 24/7 electric service to the consumers in FICELCO's franchise area by delivering 13.2 kV of electricity. Power One and/or CPGI entered into a series of anomalous contracts with FICELCO which allowed Power One and CPGI to do away with their principal obligations and to just lease power generation units from FICELCO itself, which in turn FICELCO leased from the NPC, and which enabled Power One/CPGI to collect payments for the electricity generated from said power generation units with exorbitant mark-ups and even to collect "*foregone electricity charges*" or stand-by, all of which are being charged against the hapless consumers and people of Catanduanes;

**WHEREAS**, the alleged anomalous transactions outlined above are borne out by the facts, as reflected on available records, to wit:

1. Power One incorporated CPGI in July 2007;
2. Within ten (10) days from said incorporation, on July 21, 2007, a Contract of Lease between NPC and FICELCO was executed over the 3.6 MW Marinawa Daihatsu Diesel Power Plant (MDDPP) purportedly for the purpose of facilitating FICELCO's urgent implementation of its power development program and for NPC to relinquish its generation function to FICELCO in line with the Government's thrust towards privatization and missionary subsidy reduction. FICELCO leased the power plant from NPC at the rate of **P1,000,000.00 per year.**<sup>4</sup>
3. However, instead of operating the subject power plant (MDDPP) itself, on the same day, July 21, 2007, FICELCO merely turned around and entered into a Lease Contract subleasing the same 3.6 MW Marinawa Daihatsu Diesel Power Plant

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<sup>1</sup> In joint venture with the *FLG Management and Development Corporation* and *THETA Petroleum Corporation*.

<sup>2</sup> See: *Energy Supply Agreement (ESA)* between FICELCO and Power One Corporation dated 15 November 2003.

<sup>3</sup> See: *Assignment and Assumption Agreement* between Power One Corporation and Catanduanes Power Generation, Inc. (CPGI) dated 25 January 2008.

<sup>4</sup> See: *Contract of Lease* between FICELCO and NPC dated 21 July 2007.



(MDDPP) to CPGI, purportedly in order for CPGI to implement its own land-based power development program by making the operation of the Daihatsu engines commercially viable. FICELCO subleased the 3.6MW diesel generators to CPGI at the anomalous rate of P500,000.00 per year or P27,000.00 per megawatt per month.<sup>5</sup>

4. Likewise, also on the same day, July 21, 2007, FICELCO entered into another Contract of Lease, this time with Power One, leasing FICELCO's 2.3 MW Diesel Power Plant located at its compound in Marinawa, Bato, Catanduanes, for an annual lease fee of P500,000.00.<sup>6</sup>
5. On August 28, 2009, FICELCO and Power One entered into another anomalous *Agreement* wherein parties agreed on the following terms, to wit: (1) Phases 2 and 3 of their ESA are mutually rescinded as of August 28, 2009; (2) All other claims by one party against the other respecting Phases 2 and 3 of the ESA are "waived".<sup>7</sup> This mutual rescission completely freed Power One and/or CPGI of their obligation to build the power plants and only worked to ensure the failure and inability of said companies to provide sufficient power supply to the province of Catanduanes.
6. Worse, despite the said rescission of Phases 2 and 3 of the ESA, FICELCO and CPGI even executed another *Addendum* for the purpose of establishing a rate formula which enabled them to even increase the rates they charged for power generated from the 3.6 MW Power Plant.<sup>8</sup>

**WHEREAS**, despite of the clearly dubious and anomalous maneuverings of Power One and/or CPGI with the connivance of FICELCO, the **Energy Regulatory Commission ("ERC")**, the governmental regulatory agency granted with the *motu proprio* power to monitor and penalize any market power abuse or anti-competitive or discriminatory act or behavior by any participant in the electric power industry<sup>9</sup>, issued an **Order** dated 09 May 2011 provisionally approving FICELCO's and CPGI's ESA with provisional authority to collect increased charges.<sup>10</sup> In fact, on 03 July 2012, the ERC subsequently issued a **Decision** approving the ESA between FICELCO and CPGI and allowing them to collect increased charges and even allowing them to ridiculously collect "foregone energy" or "standby capacity".<sup>11</sup>

**WHEREAS**, as can be seen from the foregoing, by using the diesel generators owned by NPC and FICELCO which they are merely sub-leasing from FICELCO at the concessional rate of a total of P1,000,000.00 per year, and without investing their own money nor building the base-load power plants they were supposed to finance and construct, Power One and/or CPGI are able to generate electricity which they sell to FICELCO for some P15,000,000.00 per year, thus, ensuring a profit of P14,000,000.00 per year. Likewise, as permitted by the **Decision**

<sup>5</sup> See: *Lease Contract* where FICELCO subleased the 3.6 MW Marinawa Daihatsu Diesel Power Plant (MDDPP) it leased to CPGI also dated 21 July 2007.

<sup>6</sup> See: *Lease Contract* between FICELCO and Power One leasing FICELCO's 2.3 MW Diesel Power Plant to Power One dated 21 July 2007.

<sup>7</sup> See: *Agreement* between FICELCO and Power One dated 28 August 2009.

<sup>8</sup> See: *ESA Amendment No. 8*, between FICELCO and CPGI for the purpose of establishing a rate formula which enabled them to increase the rates charged for power generated from the 3.6 MW Power Plant dated 05 February 2010.

<sup>9</sup> See: *7<sup>th</sup> Paragraph, Section 45, RA 9136* otherwise known as the EPIRA Law.

<sup>10</sup> See: ERC *Order* dated 09 May 2011 in **ERC Case No. 2011-030 RC**.

<sup>11</sup> See: ERC *Decision* dated 03 July 2012 in **ERC Case No. 2011-030 RC**.

dated July 3, 2012 of the ERC, CPGI/Power One has been likewise able to collect *foregone energy* or *standby capacity* charges when in fact there is no foregone energy or standby capacity to speak of since they never built the power plants that they were supposed to finance and build in the first place.

**WHEREAS**, there is an imperative necessity to conduct an inquiry and/or investigation in aid of legislation into these apparently anomalous contracts and/or agreements entered into by FICELCO and/or CPGI which has resulted to the continued unstable power supply situation in the Island Province of Catanduanes, as well as the charging of bloated power rates and undue payment of foregone energy charges by the consumers of the province purportedly with connivance of officials of the NPC and/or the ERC in order to establish the true and real extent of said anomaly and determine whether or not the regulators are actually involved and in order to determine whether or not there is a need for remedial legislation in this regard.

**WHEREAS**, the instant inquiry/investigation is made more imperative because of persistent reports that **Power One** and/or its affiliates purportedly are using the same formula, format or *modus operandi* in bilking the consumers of other power cooperatives in other provinces like Palawan, among others, where it has existing *Electricity Supply Agreements (ESAs)*.

NOW, **THEREFORE**, BE IT **RESOLVED**, as it is hereby **RESOLVED**, by the Philippine Senate to direct the Committee on Energy to conduct an inquiry and/or investigation in aid of legislation into the apparently anomalous contracts and/or agreements entered into by **FICELCO** with **Power One** and/or **CPGI**, which have resulted to the continued unstable power supply situation in the Island Province of Catanduanes, as well as the charging of bloated power rates and undue payment of *foregone energy* and/or *stand-by charges* by consumers of the province purportedly with connivance of officials of the NPC and/or the ERC, in order to establish the true and real extent of said anomaly and determine whether or not the regulators are actually involved, as well as to determine whether or not there is a need for remedial legislation in this regard.

**RESOLVED, FURTHER**, for the Committee to recommend the prosecution of any public officials and/or private individuals, who may be proven to be involved in the said anomaly, or who may have failed to perform their duties to protect the public, whether directly or indirectly, through fraud, negligence, connivance or otherwise.

*Adopted,*

  
ANTONIO "SONNY" F. TRILLANES IV  
Senator