

NATIONAL POWER CORPORATION, PETITIONER, VS. SOUTHERN PHILIPPINES POWER CORPORATION, RESPONDENT.

G.R. No. 219627. July 04, 2016

Ponente: LEONEN, J.

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LEONEN, J.:

This Petition for Review on Certiorari [1] assails the Court of Appeals' (a) February 20, 2015 Decision [2] affirming the Energy Regulatory Commission's Decision, [3] and (b) July 24, 2015 Resolution [4] denying reconsideration.

On October 26, 1996, the consortium of ALSONS Power Holdings Corporation and TOMEN Corporation entered into an Energy Conversion Agreement[5] with the National Power Corporation for a 50-megawatt bunker- C fired diesel-generating power project in General Santos City.[6]

Under the Energy Conversion Agreement, the consortium will design, build, and operate a bunker-C fired diesel-generating power station (Power Station),[7] which will convert the fuel supplied by the National Power Corporation into electricity that will, in turn, be delivered to National Power Corporation.[8]

On January 31, 1997, Southern Philippines Power Corporation assumed the obligations of the consortium to the Energy Conversion Agreement through the Accession Undertaking.[9]

The cooperation period between Southern Philippines Power Corporation and the National Power Corporation started on the day after March 18, 1998, when the Power Station was declared completed.[10] Since then until 2004, Southern Philippines Power Corporation consistently nominated 50 megawatts of the Power Station's capacity to the National Power Corporation.[11]

On February 2, 2005, Southern Philippines Power Corporation informed the National Power Corporation that it installed an additional engine with a five (5)-megawatt generating capacity.[12] Thus, from April 2005, Southern Philippines Power Corporation guaranteed to the National Power Corporation a total capacity of 55 megawatts, equivalent to 110% of the nominal capacity allowed under the Energy Conversion Agreement.[13]

In a letter dated March 24, 2008, Southern Philippines Power Corporation requested payment in the amount of P45,840,673.22, attributable to the additional 10% capacity made available to the National Power Corporation since 2005.[14]

In a letter-reply dated April 21, 2008, the National Power Corporation manifested its refusal to pay for the additional 10% capacity.[15] It claimed that it had the discretion to accept or reject Southern Philippines Power Corporation's capacity nomination if it exceeds 100% of the nominal capacity.[16]

On August 25, 2008, the parties executed a Terms of Reference and mutually agreed to submit the resolution of their dispute to the Energy Regulatory Commission.[17]

On January 6, 2009, Southern Philippines Power Corporation filed before the Energy Regulatory Commission a Petition for Dispute Resolution[18] praying that:

it be allowed to declare a capacity nomination of 110% of the nominal capacity without the consent of N[ational] P[ower] Corporation; that it be allowed to supplement the energy sources of the Power Station with additional engines as may be necessary without the consent of N[ational] P[ower] Corporation; and that N[ational] P[ower] Corporation be ordered to pay unpaid fees from 2005 to 2008.[19]

The; National Power Corporation filed an Answer praying for the dismissal of the Petition, contending that:

it can accept capacity nominations of up to 110% of the Nominal Capacity but the same should only come from the five (5) 18V38 Stork-Wartsila engines provided for in the E[nergy] Conversion] A[greement]; that S[outhern] Philippines] P[ower] Corporation] is not allowed to install additional units to meet its Contracted Capacity; and that N[ational] P[ower] Corporation] can only be held liable to pay for generated energy beyond 50 MW when the same comes from the five (5) generating units under the E[nergy] Conversion] Agreement]. [20]

On December 14, 2009, Southern Philippines Power Corporation filed a Supplemental Petition praying for payment of the unpaid fees for the period of 2005 to 2010.[21]

The Energy Regulatory Commission, in its Decision[22] dated April 1, 2013, granted Southern Philippines Power Corporation's Petition and Supplemental Petition:

WHEREFORE, the foregoing premises considered, the petition and supplemental petition both filed by Southern Philippines Power Corporation (SPPC) are hereby GRANTED.

Accordingly, the National Power Corporation (NPC) should pay SPPC for the contracted capacity of 55,000 kW from 2005 until 2010.

Relative thereto, SPPC and NPC are directed to reconcile their accounts and submit the same, including the proposed payment scheme, within thirty (30) days, from receipt hereof.

SO ORDERED.[23] (Emphasis in the original)

The Commission's Order [24] date June 3, 2013 denied the National Power Corporation's Motion for Reconsideration for being filed out of time.

The Court of Appeals, in its Decision [25] dated February 20, 2015, denied the National Power Corporation's Petition for Review and affirmed the Energy Regulatory Commission's April 1, 2013 Decision and June 3, 2013 Order. [26] It also denied reconsideration.[27]

Hence, this Petition was filed.

Petitioner National Power Corporation argues that the Energy Regulatory Commission should not have denied its Motion for Reconsideration. [28] Petitioner was under the honest impression that filing its motion by private courier was sufficient compliance with Rule 23, Section 1 and Rule 10, Section 4 of Resolution No. 38. [29] Unfortunately, the Energy Regulatory Commission received the Motion four (4) days after its due date and considered it filed out of time. [30]

Petitioner argues that courts should not be too strict with procedural technicalities when these do not impair the proper administration of justice, and courts should rule on the merits as much as possible.[31] Petitioner quotes Rule 1, Sections 3 and 4 of the Energy Regulatory Commission Rules, which provide for the Commission's power to issue procedural directions and the liberal construction of the rules "consistent with the requirements of justice." [32]

Petitioner explains that this case involves government funds amounting to not less than P400,000,000.00, and the Energy Regulatory Commission's late receipt of its Motion for Reconsideration should not have been sufficient reason to deny it.[33]

On the merits, petitioner argues that it should not be held liable for the dispatch of the 55-megawatt contracted capacity from 2005 to 2010.[34] Petitioner disagrees with the Court of Appeals' statement that Section 3.3 of the First Schedule of Energy Conversion Agreement does not limit Southern Philippines Power Corporation to the original five (5) generating units.[35] Petitioner contends that the provision of the First Schedule of the Agreement clearly provides for five (5) Stork-Wartsila engines as comprising the Power Station. Thus, respondent Southern Philippines Power Corporation's unilateral installation of an additional sixth engine constitutes an amendment of the Energy Conversion Agreement.[36] The provision of the First Schedule provides:

1. Project Scope:

The Contractor shall be responsible for the design, engineering, supply, construction, installation and erection, including civil works, testing and commissioning of a bunker-C fired diesel generating power station.

....

3. Extent of Works/Supply

In pursuance of its obligation under Section 1, the Contractor shall be responsible for:

3.1. Complete design, development and construction of the Power Station, consisting of 5 x 18V38 Stork-Wartsila engines with Black Start capability.

....

3.3. Electro-Mechanical Works

Supply, installation/erection, tests and commissioning to put into operation the required number of generation units and its corresponding minimum net capacity of 50,000 kW. [37]

Petitioner argues that the installation of the sixth engine changes the definition of nominal capacity under Article I of the Energy Conversion Agreement, "which is 50,000 [kilowatts] measured at the high voltage side of the main power transformers." [38] The additional engine would make the nominal capacity equivalent to 55 megawatts and would result in a distortion of the formula since the 110% nomination would then be based on the increased nominal capacity, and 110% of 55 megawatts or 60.5 megawatts is way beyond what the Energy Conversion Agreement provides.[39]

Petitioner likewise submits that:

Thus, the original five (5)-engine configuration of the power station is more than sufficient to produce 50 MW or to nominate 110% thereof which is 55 MW since the combined name plate rating of the 5 engines is 56.7 MW. To unilaterally add a 6th engine seven (7) years after the execution of the E[nergy] Conversion] Agreement] just to make certain that it can produce 110% of the nominal capacity is definitely not contemplated by the E[nergy] Conversion] Agreement].[40]

Petitioner argues that it is only liable to pay for energy beyond 50 megawatts when the additional five (5) megawatts comes from the five (5) generating units under the Energy Conversion Agreement that has a total capacity of 56.7 megawatts. Further, this is an added incentive for respondent to keep these engines in good running order and to comply with the operating parameters provided by the Energy Conversion Agreement Schedules.[41]

From 1998 to 2004, respondent consistently nominated and demonstrated 50-megawatt nominal capacities, which is petitioner's main requirement. It was only in 2005 when respondent unilaterally installed a sixth engine, without

petitioner's prior consent, that it began nominating a 55-megawatt nominal capacity. Petitioner accepted the nomination, but on the condition that it be tested using the original five (5)-engine configuration of the plant.[42]

Petitioner prays for the reversal of the Court of Appeals Decision and Resolution, and "that judgment be rendered ordering NPC to pay only for the tested capacity actually demonstrated using the original five engines for the period 2005 to 2010 as shown in the joint test certificates issued for said periods." [43] It submits that the "amount should be based on the actual net kW capability of the power station actually demonstrated and tested based on its original configuration of five engines":[44]

Test Period

Tested Capacity For Five (5) Engines

April 19, 2005

52,754.94 kW

December 28, 2006

51,517.81 kW

April 27, 2007

51,558.40 kW

November 4, 2008

50,943.37 kW

October 22, 2009

52,882.83 kW

June 16, 2010

49,989.45 kW[45]

In its Comment, [46] respondent submits that the Petition is "an obvious attempt by the N[ational] P[ower] Corporation] to have this Honorable Court review or re-examine the factual findings and resulting conclusions of the E[nergy] R[egulatory] C[ommission] (which has been affirmed by the Court of Appeals) in a Rule 45 petition." [47]

Respondent argues that the Petition, even if considered, should still be denied for lack of merit.[48] The Motion for Reconsideration before the Energy Regulatory Commission was filed out of time—that is, four (4) days after the deadline—rendering the Energy Regulatory Commission Decision final and executory. [49] Outright dismissing the Petition would be in line with the immutability of judgments. [50] Respondent contends that justice would be best served if petitioner were ordered to satisfy its contractual obligations, and not evade them by merely invoking that over P400,000,000.00 in government funds are involved. [51]

Respondent asserts that even assuming that the Energy Regulatory Commission Decision has not attained finality, the Petition still does not merit its reversal.[52] It argues that it is "not contractually prohibited under the E[nergy] Conversion] Agreement] to supplement the energy sources of the Power Station with additional engines." [53]

Respondent quotes provisions from the Energy Conversion Agreement to support its contention that it "may

nominate a Contracted Capacity of up to, but not exceeding, 55,000 [kilowatts] in any year without securing [petitioner] 's consent." [54] As found by the Energy Regulatory Commission, "it is not incumbent upon [petitioner] to decide on the number of engines that will be utilized in producing the required capacity, for so long as the same produces the required capacity." [55] Moreover, "Section 3.3 of the First Schedule of the E[nergy] Conversion] Agreement] clearly does not limit [respondent] to the original five (5) generating units but in fact allows it to put up the required number of units capable of generating a minimum net capacity of 50,000 [kilowatts]." [56]

Respondent argues that:

The installation of the 6[th] engine would not change the definition of Nominal Capacity because it has a definite value. Regardless of whether [respondent] SPPC uses 5, or 6, or 7 engines, the Nominal Capacity will always be at 50,000 kW and 110% of the Nominal Capacity will always still be 55,000 kW. [57]

Further, this case only involves Capacity Fee; thus, Capacity Fee should be paid whether or not standby electricity is actually used. Respondent contends that petitioner cannot renege from its contractual obligations and argue unjust enrichment. [58]

The issues for resolution are as follows:

First, whether the Court of Appeals erred in affirming the Energy Regulatory Commission's denial of petitioner's Motion for Reconsideration, which was filed by private courier and received by the Energy Regulatory Commission four (4) days after due date; and

Second, whether under the Energy Conversion Agreement, petitioner is obliged to accept a capacity nomination of up to 110% and, thus, liable to pay respondent for the additional capacity supplied.

I

The Court of Appeals erred in upholding the denial by the Energy Regulatory Commission of petitioner's Motion for Reconsideration purely on a technicality.

It is a basic tenet that procedural rules are necessary to facilitate an orderly and speedy adjudication of disputes. [59] Thus, courts and litigants alike are enjoined to strictly abide by the rules. Nonetheless, this Court has, in exceptionally meritorious cases, suspended the technical rules of procedure "in order that litigants may have ample opportunity to prove their respective claims, and that a possible denial of substantial justice, due to legal technicalities, may be avoided. [60]

In *Philippine Bank of Communications v. Yeung*, [61] this Court adopted a liberal approach to procedural rules and considered the petitioner's motion for reconsideration as having been properly filed before the Court of Appeals, though it was filed beyond the 15-day reglementary period. [62] The seven (7)-day delay in filing the motion for reconsideration was found to be excusable in light of the merits of the case and because the delay was not entirely attributable to the fault or negligence of the petitioner. [63] The Court cited *Sanchez v. Court of Appeals* [64] among other cases, [65] which sets forth a number of reasons to be considered in suspending procedural rules:

Aside from matters of life, liberty, honor or property which would warrant the suspension of the Rules of the most mandatory character and an examination and review by the appellate court of the lower court's findings of fact, the other elements that should be considered are the following: (a) the existence of special or compelling circumstances, (b) the merits of the case, (c) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, (d) a lack of any showing that the review sought is merely

frivolous and dilatory, and (e) the other party will not be unjustly prejudiced thereby.[66]

Here, petitioner has shown a clear and persuasive reason for this Court to relax the rules. The Energy Regulatory Commission previously allowed petitioner to file its other pleadings through a private courier (such as LBC) despite its prescribed mode on the filing of pleadings being either personally or by registered mail.[67] This liberality extended by the Commission on petitioner's earlier filings gave it a reasonable ground to believe that its filing of a motion for reconsideration through the same private courier would be considered sufficient compliance with the Energy Regulatory Commission Rules of Practice and Procedure. Unfortunately, the Motion for Reconsideration reached the Commission four (4) days beyond the due date.

Petitioner's delay in filing the motion for reconsideration was far from being intentional and dilatory. Petitioner simply followed its usual mode of filing its pleadings, which had been previously acceptable to the Commission. The Energy Regulatory Commission itself adopts a liberal policy in the construction of its Rules of Practice and Procedure "to secure the most expeditious and least expensive determination of every proceeding . . . on its merits." [68] Hence, the Commission should have given due course to petitioner's Motion for Reconsideration, given petitioner's satisfactory explanation for missing the deadline.

This notwithstanding, we rule for respondent on the substantive issue.

II

Under the Eighth Schedule of the Energy Conversion Agreement, petitioner is obliged to pay for the amount of contracted capacity, which is determined by the "actual net [kilowatt] capability of the Power Station nominated and demonstrated by [respondent],[69] subject only to the following limitations:

2.1 such Contracted Capacity may not exceed 110% of the nominal capacity unless NPC so agrees at its sole option and terms; and

2.2 if at the beginning of any Contract Year the Contractor nominates and demonstrates a Contracted Capacity less than ninety-five (95%) of the Nominal Capacity, such Contracted Capacity shall be applied for the Contract Year, unless the Contractor subsequently requests for another test to nominate and demonstrate an increased amount in which case such increased amount shall be the Contracted Capacity for the remainder of such Contract Year.[70]

Referred to in the Agreement as the Capital Recovery Fee, it pertains simply to the amount which petitioner pays for the availability of electricity at an agreed level, whether the electricity is actually used or not.[71]

The dispute in this case arose in 2005 when respondent installed an additional engine in the Power Station.[72] From 2005 to 2010, respondent nominated and demonstrated a capacity of 55 megawatts.[73] Petitioner refused to pay for the additional five (5)-megawatt contracted capacity because it allegedly came from the additional sixth engine, which was outside the; coverage of the Energy Conversion Agreement.

Contrary to petitioner's stance, a reading of the entire Energy Conversion Agreement and its Schedules reveals no express prohibition against respondent's installation of a sixth engine in its Power Station.

While paragraph 3.1 of the Agreement's First Schedule states that respondent is responsible for the "complete design, development and construction of the Power Station, consisting of 5 x 18V38 Stork-Wartsila engines with Black Start capability,"[74] nothing in the Agreement restricts respondent from replacing or adding engines after the Completion Date. [75] Rather, what is clear from the Project Scope and Specifications enumerated in the First Schedule is respondent's obligation to generate a minimum net capacity of 50 megawatts:

3.3 Electro-Mechanical Works

Supply, installation/erection, tests and commissioning to put into operation the required number of generation units and its corresponding minimum net capacity of 50,000 kW.

....

4. Design Criteria

4.1 Engine-generator Units

The engine-generator units with an aggregate capacity of not less than 50,000 kW (subject to the provisions of Article 5.04) shall be capable of delivering the said output at the following site and design conditions:

....

Furthermore, from the Completion Date, respondent, at its own cost, is "responsible for the management, operation, maintenance and repair of the Power Station [and] . . . ensure that the Power Station is in good operating condition and capable of converting Fuel supplied by [petitioner] into electricity in a safe and stable manner within the Operating Parameters." [76] These parameters include ensuring that the "capacity of the Power Station shall not be less than 50,000 [kilowatts] as measured at the high side of the main output transformers at the site and design conditions provided in Section 4.1 of the First Schedule." [77]

Thus, the Agreement does not limit respondent to the five (5) generating units initially required to be installed, and that what is of prime importance is that respondent makes available to petitioner electricity no less than 50,000 kilowatts.

Section 3.1 of the Agreement's First Schedule, which provides for the construction of a five (5)-engine Power Station, cannot be construed alone. Various stipulations of a contract must be interpreted or read together [78] to arrive at its true meaning. The legal effect of a contract is not determined by any particular provision alone, disconnected from all others, but from the language used and gathered from the whole instrument. [79]

We likewise consider that the Energy Conversion Agreement was executed under a Build-Operate-Own arrangement. [80] Under this arrangement, respondent is authorized to finance, construct, own, and operate the Power Station to supply petitioner with electricity. Thus, subject only to the limitations expressed in the Agreement, respondent has a free hand not only in the "design, construction, engineering, supply and installation of equipment, testing and commissioning of the Power Station[,]" [81] but more significantly, in the "management, operation, maintenance and repair of the Power Station." [82]

Specifically, respondent is given the right to "do all other things necessary or desirable for the completion of the Power Station" [83] under the specifications set forth in the First Schedule, as well as to "do all other things necessary or desirable for the running of the Power Station within the Operating Parameters." [84]

Undeniably, with respect to contracted capacity, there are only two requirements under the Agreement:

(1) Respondent must nominate or guarantee, at the beginning of every year of the cooperation period, [85] the availability of electricity to petitioner at the contracted capacity of not less than 50,000 kilowatts (or 50 megawatts) nor more than 110% or 55,000 kilowatts (or 55 megawatts); [86] and

(2) Respondent must be able to demonstrate that the Power Station has the technical capability of producing and delivering to petitioner the contracted capacity. [87] Subsequently, petitioner and respondent will issue a joint test certificate stating whether the Power Station has satisfactorily completed the test or has successfully demonstrated its ability to deliver the contracted capacity. [88]

Although it is clear that respondent is given an allowance of five (5)- megawatt contracted capacity or up to a maximum of 55 megawatts, it is not specified in the Agreement that the additional five (5)-megawatt contracted

capacity must be produced only from the original five (5) generating units. This omission in the Agreement binds petitioner.

We resort to the fundamental principle that a contract is the law between parties. Absent any showing that its provisions are contrary to law, morals, good customs, public order, or public policy, it should be enforced to the letter.[89] Contracts cannot be altered for the benefit of one party and to the detriment of another. Neither can this Court, by construction, "relieve [a] party from the terms to which [it] voluntarily consented, or impose on [it] those which [it] did not." [90]

Hence, we uphold the Court of Appeals' affirmation of the Energy Regulator/ Commission's Decision holding petitioner National Power Corporation liable to pay respondent Southern Philippines Power Corporation for the contracted capacity of 55 megawatts from 2005 to 2010.

WHEREFORE, the Petition is DENIED.

SO ORDERED.

Carpio, (Chairperson), Brion, and Del Castillo, JJ., concur.

Mendoza, J., on official leave.

[1] Rollo, pp. 24^8.

[2] Id. at 49-58. The Decision was penned by Associate Justice Rosmari D. Carandang and concurred in by Associate Justices Romeo F. Barza and Agnes Reyes-Carpio of the Third Division, Court of Appeals, Manila.

[3] Id. at 81-97. The Decision dated April 1, 2013 was signed by Chairperson Zenaida G. Cruz-Ducut and Commissioners Maria Teresa A.R. Castaneda, Jose C. Reyes, Alfredo J. Non, and Gloria Victoria C. Yap-Taruc.

[4] Id. at 59.

[5] Id. at 102-190.

[6] Id. at 49-50 and 83, Energy Regulatory Commission Decision.

[7] Id. at 108, Energy Conversion Agreement, art. 2, par. 2.01.

[8] Id. at 111, Energy Conversion Agreement, art. 2, par. 2.08.

[9] Id. at 50, 84, and 191-193, Accession Undertaking.

[10] Id. at 84.

[11] Id. at 50 and 84.

[12] Id. at 84.

[13] Id. at 50 and 84. The Energy Regulatory Commission Decision states that the additional capacity was made available since April 2005.

[15] Id.

[16] Id. at 84

[17] Id. at 51 and 85.

- [18] Id.
- [19] Id. at 51.
- [20] Id.
- [21] Id.
- [22] Id. at 81-97.
- [23] Id. at 96.
- [24] Id. at 98-101.
- [25] Id. at 49-58.
- [26] Id. at 58.
- [27] Id. at 59.
- [28] Id. at 32.
- [29] Id.
- [30] Id.
- [31] Id.
- [32] Id. at 32-33.
- [33] Id. at 33.
- [34] Id. at 38.
- [35] Id. at 38-39.
- [36] Id. at 39-40.
- [37] Id. at 39.
- [38] Id. at 40-42.
- [39] Id. at 42.
- [40] Id.
- [41] Id.
- [42] Id.
- [43] Id. at 44.
- [44] Id. at 43-44.
- [45] Id.
- [46] Id. at 454-473.

[47] Id. at 455.

[48] Id. at 457.

[49] Id. at 458.

[50] Id. at 462.

[51] Id. at 463.

[52] Id.

[53] Id. at 466.

[54] Id. at 467.

[55] Id. at 468.

[56] Id.

[57] Id. at 468-469.

[58] Id. at 470.

[59] Fortich v. Corona, 359 Phil. 210,220 (1998) [Per J. Martinez, Second Division].

[60] Bagalanon v. Court of Appeals, 166 Phil. 699, 702 (1977) [Per J. Martin, First Division], citing Quibuyen v. Court of Appeals, 119 Phil. 48, 55 (1963) [Per J. Paredes, En Banc]; Luzteveco Employees Association, CCLU v. Luzteveco, Inc., 122 Phil. 1037, 1048-1049 (1965) [Per J. J. P. Bengzon, En Banc]; Arches vs. Bellosillo, 126 Phil. 426, 428-429 (1967) [Per J. J. P. Bengzon, En Banc].

[61] G.R. No. 179691, December 4, 2013, 711 SCRA490 [Per J. Brion, Third Division].

[62] Id. at 500-501.

[63] Id.

[64] 452 Phil. 665 (2003) [Per J. Bellosillo, En Banc].

[65] See Barnes v. Padilla, 482 Phil. 903, 915 (2004) [Per J. Austria-Martinez, Second Division]; Republic v. Court of Appeals, 379 Phil. 92, 98-99 (2000) [Per J. Mendoza, Second Division]; Olacao v. National Labor Relations Commission, 257 Phil. 878, 889 (1989) [Per J. Melencio-Herrera, Second Division]; Siguenza v. Court of Appeals, 222 Phil. 94, 99 (1985) [Per J. Gutierrez, Jr., First Division]; Ramos v. Bagasao, 185 Phil. 276, 278 (1980) [Per J. Abad Santos, Second Division].

[66] Sanchez v. Court of Appeals, 452 Phil. 665, 674 (2003) [Per J. Bellosillo, En Banc].

[67] Res. No. 38 (2006), A Resolution Promulgating the Energy Regulatory Commission's Rules of Practice and Procedure, rule 10, sec. 4 provides:

Rule 10, Section 4. Filing of Pleadings and Other Papers. - The filing of pleadings and other papers shall be made by presenting the original and two (2) copies of any pleading or other papers, together with the diskettes or compact discs containing the electronic files of the same, personally to the Docket Section of the Commission, or by sending them by registered mail addressed to the Docket Section.

[68] Res. No. 38 (2006), rule 1, sec. 4.

[69] Rollo, p. 161, Energy Conversion Agreement.

[70] Id. at 161, Energy Conversion Agreement, Eighth Schedule. See rollo, p. 106, Energy Conversion Agreement, art. 1, which provides: Art. 1, Definition of Terms

....

"Nominal Capacity" shall mean 50,000 kW, measured at the high voltage side of the main power transformers.

[71] Id. at 161, Energy Conversion Agreement, art. 1.

[72] Id. at 90, ERC Decision.

[73] Id. at 90-93, ERC Decision.

[74] Id. at 138, Energy Conversion Agreement, First Schedule, par. 3.1. Id. at 104. Energy Conversion Agreement, art. 1 provides: Article 1. Definition of Terms.

....

"Completion Date" means the day upon which the Contractor certifies, as concurred by NPC, that the Power Station has successfully completed its testing and guarantees that the Power Station is capable of operating in accordance with the Operating Parameters specified in the Second Schedule.

[76] Id. at 120, Energy Conversion Agreement, art. 8, par. 8.01.

[77] Id. at 144, Energy Conversion Agreement, Second Schedule, par. 1.1.

[78] CIVIL CODE, art. 1374. See *Philippine National Construction Corp. v. Mars Construction Enterprises, Inc.*, 382 Phil. 510, 518 (2000) [Per J. Panganiban, Third Division]; *HDMF v. Court of Appeals*, 351 Phil. 858, 864 (1998) [Per J. Purisima, Third Division].

[79] *Angeles v. Philippine National Railways*, 532 Phil. 147, 156 (2006) [Per J. Garcia, Second Division]; *Rivera v. Espihtu*, 425 Phil. 169, 184 (2002) [Per J. Quisumbing, Second Division].

[80] Rollo, p. 103, Energy Conversion Agreement, Recitals.

[81] Id. at 112, Energy Conversion Agreement, art. 3, par. 3.01.

[82] Id. at 120, Energy Conversion Agreement, art. 8, par. 8.01.

[83] Id. at 113, Energy Conversion Agreement, art. 3, par. 3.02.

[84] Id. at 121, Energy Conversion Agreement, art. 8, par. 8.04.

[85] Id. at 105. Energy Conversion Agreement, art. 1 provides: Article 1. Definition of Terms

....

"Cooperation Period" means the period of eighteen (18) years from the Target Completion Date or Completion Date whichever is later, as the same may be extended pursuant to the terms hereof.

[86] Id. at 161, Energy Conversion Agreement, Eighth Schedule, par. 2.

[87] Id.

[88] Id. at 117, Energy Conversion Agreement, art. 6, par. 6.06.

[89] See *Metropolitan Bank and Trust Co. v. Wong*, 412 Phil. 207, 216 (2001) [Per J. Sandoval Gutierrez, Third Division].

[90] *Spouses Cabahug v. National Power Corporation*, 702 Phil. 597, 604 (2013) [Per J. Perez, Second Division];

Bautista v. Court of Appeals, 379 Phil. 386, 399 (2000) [Per J. Puno, First Division].

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