

[OP ADMINISTRATIVE ORDER NO. 381, February 17, 1998]

PROVIDING FOR THE FULFILLMENT BY THE NATIONAL POWER CORPORATION OF ITS OBLIGATIONS UNDER THE AGREEMENT FOR THE SALE AND PURCHASE OF NATURAL GAS DATED DECEMBER 30, 1997 WITH SHELL PHILIPPINES EXPLORATION B.V./OCCIDENTAL PHILIPPINES, INC. AND THE COMPLIANCE OF THE NATIONAL GOVERNMENT, THROUGH THE DEPARTMENT OF FINANCE AND THE DEPARTMENT OF ENERGY WITH ITS PERFORMANCE UNDERTAKING THEREFOR AND OTHER PURPOSES

WHEREAS, the Government of the Republic of the Philippines, represented by the Office of Energy Affairs (now the Department of Energy or "DOE"), and Shell Exploration B.V./Occidental Philippines, Inc., their assignees and successors-in-interest (hereinafter alternatively called the "Service Contractor", the "Sellers" or "Shell/Oxy" for brevity) entered into a Service Contract ("SC 38") on December 11, 1990 as clarified by a Memorandum of Clarification between the same parties of the same date, covering the Camago-Malampaya Reservoir, among others, located offshore Northwest Palawan, Philippines (hereinafter called the "Natural Gas Project");

WHEREAS, Shell Exploration B.V. has assigned on December 11, 1990 its rights and obligations under SC 38, as clarified, to Shell Philippines Exploration B.V.;

WHEREAS, under SC 38, as clarified, a production sharing scheme has been provided whereby the 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 (all as defined in SC 38) while Shell/Oxy, as Service Contractor is entitled to receive an amount equal to forty percent (40%) of the net proceeds;

WHEREAS, Section 7.3(b) of SC 38, as clarified, provides that the Office of Energy Affairs, now the DOE, shall be entitled to receive in kind Petroleum, including Natural Gas, equal in value to sixty percent (60%) of net proceeds;

WHEREAS, the Service Contractor has also been authorized to market to the National Power Corporation ("NPC") on behalf of the Government, the Government's share of Natural Gas produced and saved from the Contract Area (as defined in SC 38) and to market additional volumes to other domestic buyers;

WHEREAS, based on seismic surveys and exploration and appraisal well drilling, Shell/Oxy have established the presence, in the Camago-Malampaya Reservoir in the Contract Area, of Natural Gas in quantities estimated to be sufficient to justify the pursuit of gas-to-power projects having an aggregate power generating capacity

of approximately 3,000 MW operating at baseload for twenty years;

WHEREAS, NPC's 1,200 MW Ilijan Power Plant located in the province of Batangas is one of the natural gas-fired plants that will utilize, as its main fuel, Natural Gas produced from the Contract Area and provide a ready market for the Natural Gas Project;

WHEREAS, the Service Contractor, as the Sellers, and the NPC, as the Buyer entered into an Agreement for the Sale and Purchase of Natural Gas (hereinafter called the "GSPA") on December 30, 1997, relating to the sale and purchase of Natural Gas from the Camago-Malampaya Reservoir for the Ilijan Power Plant and other purposes;

WHEREAS, in accordance with the GSPA, the Start Date for the Sellers to tender for delivery and for the Buyer to take Natural Gas shall be on January 2, 2002 subject to the Sellers or the Buyer being ready, respectively, to tender for delivery or receive Natural Gas;

WHEREAS, in the event of a low growth scenario, it is forecasted that there may be an excess in the capacity to supply electricity which may affect the capability of NPC to take the full Take-or-Pay Quantity (the "TOPQ") under clause 9 of the GSPA in the early Contract Years of the GSPA;

WHEREAS, under clause 9 of the GSPA, Natural Gas not taken but paid for by NPC (hereinafter called "Annual Deficiencies") will be made available to NPC without additional charge subject to the GSPA;

WHEREAS, Section 88(1) of P.D. No. 1445 prohibits the Government from making advance payment for supplies and materials not yet delivered under any contract, except with the prior approval of the President of the Republic of the Philippines;

WHEREAS, under Section 44, Chapter 5, Book VI, of the Revised Administrative Code of 1987 (Executive Order No. 292) amounts received in trust and from the business-type activities of Government may be separately recorded and be disbursed in accordance with such rules and regulations as may be determined by the Permanent Committee created under the same Code;

WHEREAS, under Section 8 of R.A. No. 6395 (Revised NPC Charter), as amended, the National Government is authorized to guarantee the loans, credits and indebtedness of NPC;

WHEREAS, the Government has determined that it can derive the following economic and social benefits from the Natural Gas Project:

1. the use of Natural Gas for power generation will effect lower electricity rates resulting in savings estimated at about US\$2.2 billion;
2. based on the estimated production level and Natural Gas pricing formula between the Sellers and the Buyers of such Natural Gas, the estimated Government revenues for the 20-year contract period will be around US\$8.1 billion; this includes estimated revenues to be generated from the available oil and condensate reserves of the Camago-Malampaya Reservoir; the province of Palawan is expected to receive