

## THIRD DIVISION

[ G.R. No. 204719, December 05, 2016 ]

### **POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION, PETITIONER, V. SEM-CALACA POWER CORPORATION, RESPONDENT.**

#### **DECISION**

##### **PERALTA, J.:**

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to annul and set aside the Court of Appeals Decision<sup>[1]</sup> dated September 4, 2012 and Resolution<sup>[2]</sup> dated November 27, 2012 in CA-G.R. SP No. 123997, which affirmed the rulings of the Energy Regulatory Commission (ERC) specifying respondent's capacity allocation as a power producer.

The facts of the case follow.

The Electric Power Industry Reform Act of 2001 (EPIRA), or Republic Act (R.A.) No. 9136, which was signed into law by then President Gloria Macapagal Arroyo on June 8, 2001, was intended to provide a framework for the restructuring of the electric power industry, including the privatization of the assets of the National Power Corporation (NPC), the transition to the desired competitive structure and the definition of the responsibilities of the various government agencies and private entities with respect to the reform of the electric power industry.<sup>[3]</sup>

The EPIRA also provided for the creation of petitioner Power Sector Assets and Liabilities Management Corporation (PSALM), a government-owned and controlled corporation which took over ownership of the generation assets, liabilities, independent power producer (IPP) contracts, real estate and other disposable assets of the NPC.<sup>[4]</sup> PSALM's principal purpose under the law is to "manage the orderly sale, disposition, and privatization of NPC generation assets, real estate and other disposable assets, and IPP contracts with the objective of liquidating all NPC financial obligations and stranded contract costs in an optimal manner."<sup>[5]</sup>

Among the assets put on sale by PSALM was the 600-MW Batangas Coal-Fired Thermal Power Plant in Calaca, Batangas (*Calaca Power Plant*).<sup>[6]</sup> In July 2009, DMCI Holdings, Inc. (DMCI) was declared the highest bidder in the sale.<sup>[7]</sup> The sale was effected through an Asset Purchase Agreement (APA) executed by PSALM and DMCI on July 29, 2009, and became effective on August 3, 2009.<sup>[8]</sup>

On December 2, 2009, DMCI transferred all of its rights and obligations under the APA and the Land Lease Agreement (also called Final Transaction Documents) to herein respondent SEM-Calaca Power Corporation (SCPC) by entering into an Amendment, Accession and Assumption Agreement that was signed by PSALM, DMCI and SCPC.<sup>[9]</sup> Under the agreement, SCPC took over all the rights and obligations of DMCI under the said documents. SCPC also alleged that on that same date, it took over the physical possession, operation and maintenance of the Calaca Power Plant.<sup>[10]</sup>

Also on the same date, SCPC started providing electricity to customers listed in Schedule W of the APA, among which is MERALCO.<sup>[11]</sup>

Schedule W is partially reproduced hereunder:

SCHEDULE W<sup>[12]</sup>  
POWER SUPPLY CONTRACTS

Part I: Description of the PSC

CUSTOMERS	POWER SUPPLY CONTRACT				REMAINING CONTRACT VOLUME as of 26 June 2009		
	Contract Duration		Monthly Average		Energy (Mwh)	Demand (kW)	Average (MWh/mo)
	Effectivity	Expiration	Energy (MWh)	Demand (kW)			
Meralco (10.841%)	6 Nov 2006	25 Nov 2011	69,256	169,000	1,517,414	169,000	69,256
PEZA-Cavite Ecozone	26 June 2006	25 June 2011	34,038	55,420	623,320	80,800	24,933
BATELEC I	26 Dec 2006	25 Dec. 2010	16,450	42,000	334,586	42,000	17,610
Sunpower Philippines	18 Aug 2004	17 Aug 2019	5,500	8,955	676,500	8,970	5,500
Steel Asia	26 Mar 2008	25 Dec 2009	5,263	8,000	57,770	10,000	8,253
SteelCorp	26 June 2009	25 Dec 2009	2,500	8,000	15,000	8,320	2,500
Puyat Steel Corp.	26 Nov 2008	25 Nov 2009	194	1,300	3,260	2,150	543
ECSCO, Inc.	26 Dec 2005	25 Dec 2010	206	450	4,445	440	234
Lipa Ice Plant	26 Jan. 2005	25 Jan. 2010	220	400	4,650	520	245
BCFTPP Contractor							
<i>Semirara Mining</i>	NA	NA	291	1450	NA	NA	Actual Consumption
<i>Pozzolanic Industries Inc.</i>	NA	NA	11	50	NA	NA	Actual Consumption
TOTAL		MWh	703,506		3,236,945		129,056
		MW		295		322	

Notes:

- All figures mentioned above are only indicative and will be based on the hourly/daily/monthly nominated volume as per average monthly contract level. A typical hourly customer's load profile for Calaca is demonstrated in the attached Figure 1 of this Schedule J (sic) (Power Supply Contract).
- The special conditions governing the assumption by the Buyer of the assignment of a portion of the Contract Energy under Meralco TSC are contained in Part II of this Schedule J (sic) (Power Supply Contract).

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Furthermore, in the event that the Purchased Assets (sic) is not able to supply the contracted power under the aforesaid contracts due to the unavailability of coal or other causes, the Buyer may enter into a back-to-back supply contract with other generators or buy directly from the market for the deficiency.

Part II: Special Conditions of the MERALCO TSC

The following conditions, unique to the MERALCO-NPC contract, shall apply to the assigned portion of the Contract Energy from the MERALCO TSC.

1. Neither the MERALCO TSC nor any portion thereof shall be assigned to the Buyer. It is the Contract Energy specified in part I that is the subject of the assignment.

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SCPC contends that it is obliged to supply 10.841% of MERALCO's total requirement but not to exceed 169,000 kW in any hourly interval.<sup>[13]</sup> However, PSALM holds a different view and contends that SCPC is bound to supply the entire 10.841% of what MERALCO requires, without regard to any cap or limit.<sup>[14]</sup>

Thus, during a period of high demand, specifically in the summer of the year 2010, when SCPC fell short of supplying the entire 10.841% of MERALCO's requirements, the deficiency was filled by supply from the Wholesale Electricity Spot Market (*WESM*).<sup>[15]</sup> SCPC contends that this was the consequence of NPC's and PSALM's nominations in excess of what SCPC claims to be the 169,000 kW cap or limit in its supply.<sup>[16]</sup> PSALM disputes that there is such a cap or limit, noting that SCPC was obligated to supply the entire 10.841% under Schedule W of the APA.<sup>[17]</sup> Thus, NPC and PSALM, who contend that they were merely following the Transition Supply Contract (*TSC*) with MERALCO, billed the latter for the electricity delivered by SCPC and that supplied through *WESM*.<sup>[18]</sup> SCPC claims, however, that PSALM withheld MERALCO's payments even for the electricity that SCPC supplied without the latter's knowledge nor consent.<sup>[19]</sup> NPC also allegedly replaced SCPC Power Bills to MERALCO with PSALM Power Bills, with instructions that payments be remitted directly to PSALM instead of SCPC.<sup>[20]</sup>

On March 16, 2010, SCPC wrote a letter to PSALM insisting that the 169,000 kW supplied to MERALCO "should be treated as the maximum limit of the MERALCO allocation which SCPC is bound to supply under the APA in accordance with Schedule W."<sup>[21]</sup> On April 20, 2010, SCPC wrote a demand letter formally asking both PSALM and NPC to release MERALCO's payments for the period of January 26, 2010 to February 25, 2010 amounting to Php451,450,889.13 and to directly remit to SCPC all subsequent amounts due from MERALCO.<sup>[22]</sup>

On May 13, 2010, PSALM replied through a letter reiterating that SCPC assumed the obligation to supply 10.841% of MERALCO's TSC and that the latter's payments would be remitted to SCPC only after deducting the cost of power supplied by *WESM*.<sup>[23]</sup>

Thus, PSALM proceeded to deduct from its remittances to SCPC the cost of the power that NPC allegedly purchased from *WESM*.<sup>[24]</sup> SCPC claims that for the months of January 2010 to June 2010, the amounts due it was Php1,894,028,305.00. Instead, PSALM paid it the amount of only Php934,114,678.04, or short of Php959,913,626.96, which allegedly represents the cost of electricity that PSALM charged against SCPC representing the power NPC supposedly obtained from *WESM* to fill the alleged deficiency in SCPC's supply to MERALCO.<sup>[25]</sup>

Eventually, following negotiations between the parties, PSALM agreed, through a letter dated June 21, 2010, to cap MERALCO's nominations from the Calaca Power Plant "in any hour up to 169MWh or 10.841% of each hourly energy nomination submitted by MERALCO to NPC under the MERALCO TSC effective June 26, 2010."<sup>[26]</sup>

However, as SCPC was insisting that the MERALCO cap should have taken effect much earlier, or on December 2, 2009, i.e., the date of effectivity of the APA, and as the parties failed to execute the Implementation, Agreement and Protocol (Implementation Agreement) covering the parties' responsibilities with regards to the supply of power to MERALCO, SCPC made an offer to PSALM for the issues to be brought to the ERC for arbitration.<sup>[27]</sup> The proposal, however, was rejected by PSALM.<sup>[28]</sup>

Hence, SCPC initiated the instant case by filing a Petition for Dispute Resolution (with Prayer for Provisional Remedies) before the Energy Regulatory Commission (ERC) against NPC and PSALM.<sup>[29]</sup>

In its Decision<sup>[30]</sup> dated July 6, 2011, the ERC ruled in favor of SCPC and against NPC and PSALM, with the following dispositive portion:

WHEREFORE, the foregoing premises considered, the Commission hereby resolves the issues raised in this instant dispute as follows:

1. SCPC's obligation under Schedule W of the APA is to deliver 10.841% of MERALCO's energy requirements but not to exceed 169,000 kW capacity allocation, at any given hour;
2. The obligation to deliver 10.841% of MERALCO's energy requirements, but not to exceed 169,000 kW capacity, at any given hour, shall commence from December 2, 2009 when the physical possession, occupation and operation of the Calaca Power Plant was formally turned over to SCPC;
3. The NPC and PSALM have no basis, in fact and in law, to charge against SCPC the nominations beyond the 169,000 kW capacity which NPC allegedly purchased for MERALCO from the WESM. There being no basis to charge SCPC, PSALM must return all the payments of MERALCO which were withheld by PSALM, including the amount representing the cost of electricity nominated and purchased by NPC beyond the 169,000 kW from the WESM for the period January 2010 to June 25, 2010;
4. The payment of interests on the amount to be returned by PSALM to SCPC is in order. However, in the absence of a stipulation, the amount of interest shall be pegged at 6% per annum; and
5. NPC shall continue to nominate for MERALCO's energy requirements, in accordance with the TSC between them. However, in nominating for MERALCO's contract energy under the APA, NPC shall consider the 169,000 kW capacity limit, in accordance with Schedule W of the APA, considering the generating capacity of the Calaca Power Plant. In the absence of an Implementation Agreement and Protocol, all nominations made for MERALCO by SCPC in accordance with the APA, shall henceforth be billed through NPC and payment thereof shall be collected directly from MERALCO by SCPC.

Accordingly, the NPC is hereby enjoined from making nominations beyond the 169,000 kW of MERALCO's allocation. On the other hand, PSALM is hereby directed to (1) refrain from charging against SCPC the cost of power beyond the 169,000 kW of MERALCO's allocation and to (2) refrain from withholding all MERALCO payments for electricity supplied by SCPC.

The NPC, PSALM and SCPC are further directed to account for and reconcile the amounts charged against the SCPC by PSALM, on account of the NPC's nominations and purchases from the WESM beyond the 169,000 kW capacity allocation during the period January 2010 to June 25, 2010. Thereafter, the parties are directed to submit to the Commission the reconciled computation of the over-nominations and other MERALCO payments withheld by PSALM for the said period, within ten (10) days from receipt of this Decision. Further, PSALM is hereby directed to return to SCPC, the amount as computed and reconciled, including the interests thereon at the rate of 6% per annum, within ten (10) days from the parties' submission of the reconciled computation to the Commission. Finally, the parties are directed to submit their Compliance with the foregoing dispositions within thirty (30) days from receipt of this Decision.

SO ORDERED.<sup>[31]</sup>

PSALM filed a motion for reconsideration of the above decision. However, in an Order<sup>[32]</sup> dated February 13, 2012, the ERC denied the said motion.

Aggrieved, PSALM filed a Petition for Review of the ERC decision to the Court of Appeals (CA).  
[33]

In its assailed Decision<sup>[34]</sup> dated September 4, 2012, the CA denied PSALM's petition and upheld the findings of the ERC. The dispositive portion of the decision states:

WHEREFORE, premises considered, the petition is DENIED. The Decision dated July 6, 2011 and the Order dated February 13, 2012 of the Energy Regulatory Commission in ERC Case No. 2010-058 are hereby AFFIRMED.

SO ORDERED.<sup>[35]</sup>

The CA sustained the ERC's interpretation of the APA that SCPC's obligation was to supply 10.841% of MERALCO's energy requirement, but not to exceed 169,000 kW at any given hour, as such interpretation would reconcile the presence of the two figures in Schedule W and harmonize the provisions of the said contract.<sup>[36]</sup> Likewise, the appellate court upheld ERC in explaining why a cap of 169,000 kW is placed on SCPC's obligation to supply electricity to MERALCO, the explanation being: unlike before the privatization when NPC, with all its generation assets, was the sole supplier of MERALCO and, therefore, could obtain electricity from any of those assets, in the current situation, SCPC is just one of many suppliers and SCPC's asset is only the Calaca Power Plant, which has a limited capacity.<sup>[37]</sup> The CA likewise stated that the findings of administrative or regulatory agencies on matters within their technical area of expertise are generally accorded not only respect but finality if such findings are supported by substantial evidence.<sup>[38]</sup>

PSALM filed a Motion for Reconsideration of the decision above, but the same was likewise denied in a Resolution of the CA, dated November 27, 2012.<sup>[39]</sup>

Hence, PSALM goes to this Court via the present Petition for Review on *Certiorari*.

PSALM contends that the CA erred in placing a cap of 169,000 kW on SCPC's obligation to supply 10.841% of MERALCO's requirement. It insists that SCPC stepped into the shoes of NPC and PSALM in terms of the fulfillment of the obligation of the latter to supply 10.841% of MERALCO's nominated volume.<sup>[40]</sup> In PSALM's view, SCPC is deemed to have assumed PSALM's rights and obligations under the Power Supply Contracts (*PSCs*) subject to the conditions specified in Schedule W.<sup>[41]</sup>

Further, it adds that Schedule W is unambiguous and requires no construction or interpretation.<sup>[42]</sup> Allegedly, the figure 169,000 kW is not meant to qualify the 10.841% of MERALCO's energy requirement; instead, Schedule W's "Notes" portion supposedly explains that 169,000 kW and all the other figures mentioned therein are only "indicative" and the supply of MERALCO's energy requirement "will still be based on the hourly/daily/monthly nominated volume per average monthly contract level."<sup>[43]</sup> Thus, for PSALM, it was error for the ERC and CA to conclude that a cap exists as to the 10.841% energy requirement of MERALCO.<sup>[44]</sup>

Petitioner PSALM additionally holds that the ERC erred in harmonizing only two figures in Schedule W: the 10.841% and the 169,000 kW, since it claims that such figures are not the only stipulations in the said Schedule, there being special conditions such as the Notes which, had it been read together with the rest of the conditions, should have led the ERC to a different conclusion.<sup>[45]</sup> PSALM also cites additional stipulations such as the so-called Special Conditions of the MERALCO TSC, the Calaca Typical Hourly Customer's Load Profile and the Nomination Protocol between MERALCO and NPC of TSC Contract Energy.<sup>[46]</sup> Then, there is also a provision supposedly in Schedule W in which SCPC has the option to enter into back-to-back supply contracts with other generators or purchase directly from the market should it become unable to supply the contracted power under the contracts in Schedule W.<sup>[47]</sup> According to PSALM, these are clear indications that a cap on SCPC's supply had not been intended by the parties.  
[48]