

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City



**PETITION FOR TRUE-UP
ADJUSTMENT OF THE
NATIONAL POWER
CORPORATION'S
STRANDED DEBTS (SD)
PORTION OF THE
UNIVERSAL CHARGE (UC)
FOR CALENDAR YEAR (CY)
2018, AND TRUE-UP
ADJUSTMENTS OF THE
NPC SD PORTION OF THE
UC FOR CYs 2011-2012,
WITH PRAYER FOR THE
ISSUANCE OF
PROVISIONAL AUTHORITY
(PA)**

ERC CASE NO. 2019-047 RC

**POWER SECTOR ASSETS
AND LIABILITIES
MANAGEMENT
CORPORATION (PSALM),**
Petitioner.

Promulgated:
March 29, 2021

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ORDER

Before the Commission for resolution is the *Motion for Reconsideration (of the Honorable Commission's 28 May 2020 Order)* dated 04 September 2020 (Motion) filed by the Power Sector Assets and Liabilities Management Corporation (PSALM) on 07 September 2020.

FACTUAL ANTECEDENTS

PSALM anchors its *Motion* on the ground that the Commission's *Order* dated 28 May 2020 is contrary to law. To substantiate this allegation, PSALM averred the following:

1. That both the Murang Kuryente Act (MKA) and its Implementing Rules and Regulations (IRR) should only be applied prospectively as this is consistent with the basic tenet that laws should have prospective and not retroactive effect so as to prejudice pending disputes and cases.¹

Considering that the instant *Petition* was already pending long before the effectivity of the said law and its IRR, PSALM alleged that neither should be applied in this case which is already pending resolution, but the laws and regulations previously in effect should govern;²

2. The utilization of the Two Hundred Eight Billion Pesos (PhP208 Billion) Malampaya Fund is subject to annual allocation, which shall be included in the National Expenditures Program, and is the basis and forms part of the annual General Appropriations Act consistent with the fiscal program of the government³. PSALM raised its concern that the Malampaya Fund may turn out to be insufficient to cover the Stranded Contract Costs (SCC), Stranded Debts (SD) and anticipated shortfall in the course of payment of all of PSALM's liabilities⁴; and
3. The provisions of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA) and its Implementing Rules and Regulations (EPIRA-IRR) relative to the subject recoveries through the Universal Charge (UC) have not been repealed by the MKA and its IRR⁵. PSALM further stated that even the MKA and its IRR explicitly allow the filing of petitions for UC SCC and SD before the Commission upon the exhaustion of the PhP208 Billion allocated amount under the said law.⁶

PSALM asserts that an outright dismissal of the *Petition* may result in its inability to apply for recovery upon the full exhaustion of

¹ Allegation No. 12 of the *Motion for Reconsideration* filed by PSALM on 07 September 2020;

² Allegation No. 15, *Id.*;

³ Allegation No. 16, *Id.*;

⁴ Allegation No. 18, *Id.*;

⁵ Allegation No. 19, *Id.*;

⁶ Allegation No. 21, *Id.*;

the allocated Malampaya Fund⁷, thus, PSALM moved for the *Petition* to be archived instead of being dismissed.

ISSUE

The issue for the Commission's resolution is whether or not to grant the *Motion* of PSALM in the instant case.

DISCUSSION

The Commission finds no merit in the *Motion*.

First, as a general rule, laws shall have no retroactive effect. It must be prospective in application⁸. However, there are exceptions to this. For instance, laws may have retroactive application if it is clearly expressed in the language of the statute.

The applicability of the MKA⁹ is clearly stated in the following provisions:

- a) The last paragraph of Section 4 of the MKA, which reads:

xxx

The universal charges for stranded contract costs and stranded debts **currently being collected** may be covered by the allocated amount from the Malampaya fund subject to the implementing rules and regulations of this Act. (*Emphasis supplied.*)

- b) The last sentence of Section 7 of the MKA, which reads:

xxx Upon the effectivity of the implementing rules and regulations of this Act, **no new universal charges for stranded contract costs and stranded debts shall be collected.** (*Emphasis supplied.*)

⁷ Allegation No. 22, *Id.*;

⁸ Article 4 of the New Civil Code;

⁹ Republic Act No. 11371, otherwise known as the MKA;

Considering that the IRR of the MKA took effect on 05 May 2020, it is axiomatic that the Commission is no longer allowed to order the collection of **NEW** UC for SCC and SD, from that time onwards.

The Supreme Court has held in the case of *Barcellano v. Bañas*¹⁰:

Time and time again, it has been repeatedly declared by this Court that where the law speaks in clear and categorical language, there is no room for interpretation. There is only room for application. **Where the language of a statute is clear and unambiguous, the law is applied according to its express terms**, and interpretation should be resorted to only where a literal interpretation would be either impossible or absurd or would lead to an injustice. (*Emphasis supplied.*)

Based on the foregoing, the MKA already expressly provided for the period wherein no **NEW** UC for SCC and SD shall be collected, which is the date of the effectivity of its IRR, and granting that this is clear from the language of the law, the Commission is no longer authorized to issue an order for the collection of the same.

Second, the contention that there is a possibility that PSALM may receive no allocation at all from the national government due to the Corona Virus 2019 (COVID-19) pandemic, which the government should address, and that the Malampaya Fund may turn out to be insufficient to cover the SCC, SD, and anticipated shortfall in the course of payment of all of PSALM's liabilities, are, at this point, mere conjectures and speculations.

Nonetheless, the MKA has explicitly provided that any anticipated shortfall shall be included in the Government Appropriations Act (GAA)¹¹.

Finally, considering the explicit provisions of Section 4 of the MKA that the Malampaya Fund shall be utilized for the payment of the remaining SCC and SD, and that any anticipated shortfall shall be included in the GAA; as well as the expressed directive under Section 7 of the same law that no new collection for a UC for SCC and SD shall be allowed, the Commission can no longer approve any application for the collection of SCCs and SDs, whether the application is pending or new. Thus, archiving the *Petition* as prayed for by PSALM is superfluous as it no longer serves a purpose.

¹⁰ Armando Barcellano *vs.* Dolores Bañas, represented by her son and Attorney-in-fact Crispino Bermillo, G.R. No. 165287, 14 September 2011;

¹¹ Section 4 (Use of the Malampaya Fund), *Supra*, note 9.

Hence, the Commission finds no cogent reason to disturb its *Order* dated 28 May 2020.

Notwithstanding such, PSALM is still reminded to submit to the Department of Finance (DOF) all the pending petitions on UC for SCC and SD filed before the Commission, including the instant *Petition*, during the first year of implementation of the MKA, pursuant to Section 5.2.1 of its IRR.

WHEREFORE, the foregoing premises considered, the *Motion for Reconsideration (of the Honorable Commission's 28 May 2020 Order)* dated 04 September 2020 filed by the Power Sector Assets and Liabilities Management Corporation (PSALM) on 07 September 2020 is hereby **DENIED** for lack of merit.

SO ORDERED.

Pasig City, 25 November 2020.



AGNES VST DEVANADERA
Chairperson and CEO




ALEXIS M. LUMBATAN
Commissioner



CATHERINE P. MACEDA
Commissioner



FLORESINDA G. BALDO-DIGAL
Commissioner



MARKO ROMEO L. FUENTES
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