

Republic of the Philippines
ENERGY REGULATORY COMMISSION
San Miguel Avenue, Pasig City



**IN THE MATTER OF THE
PETITION FOR DISPUTE
RESOLUTION ON THE
POWER PURCHASE
AGREEMENT (PPA) DISPUTE
BETWEEN GBH POWER
RESOURCES, INC. AND
ORIENTAL MINDORO
ELECTRIC COOPERATIVE,
INC.**

**GBH POWER RESOURCES,
INC. (GBHPRI),**
Petitioner,

-versus-

ERC CASE NO. 2016-003 DR

**ORIENTAL MINDORO
ELECTRIC COOPERATIVE,
INC. (ORMECO),**
Respondent.

Promulgated:
OCT 07 2019

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NOTICE OF PUBLIC HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 19 July 2016, GBH Power Resources, Inc. (GBHPRI) filed a *Petition* dated 11 July 2016, for dispute resolution on the Power Purchase Agreement (PPA), against Oriental Mindoro Electric Cooperative, Inc. (ORMECO).

In the said *Petition*, GBHPRI alleged the following:

1. Petitioner GBHPRI (formerly Mirant (Philippines) Island Generation Corporation) is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal address at Barangay Papandayan, Pinamalayan, Oriental Mindoro. It is a power

generation company organized to engage in the development, engineering, financing, construction, operation and maintenance of a 2 x 3.75 MW diesel-fired power plant located in Barangay Papandayan, Pinamalayan, Oriental Mindoro.

2. Respondent Oriental Mindoro Electric Cooperative, Inc. ("ORMECO") is a non-stock, non-profit electric cooperative duly organized and existing under the laws of the Republic of the Philippines with principal address at Sta. Isabel, Calapan City, Oriental Mindoro.

Statement of Facts and of the Case

3. On 9 May 2000, ORMECO and then Southern Energy Mobile, Inc. ("SEMI") entered into the PPA for the construction, operation, and maintenance of a power plant and to supply the electricity needs of ORMECO.¹ The salient features of the PPA are indicated below:

Type of Plant	Bunker-C fired diesel power plant ("Plant") located in Pinamalayan, Oriental Mindoro
Operation Mode	Dispatchable base load plant to operate seven (7) days per week
Installed Capacity	2 x 3.75 MW
Cooperation Period	Twenty (20) years commencing on the Completion Date and ending on the twentieth anniversary thereafter
Completion Date	The day upon SEMI certifies that the Plant is capable of operating in accordance with the Operating Parameters, and has successfully completed all its tests in accordance with the Eight Schedule of the PPA
Guaranteed Minimum Energy Off-Take	4,089,600 kWh per month

4. The PPA was eventually approved by the then Energy Regulatory Board ("ERB") through its Decision dated 10 August 2001 in ERB Case No. 2000-116.² The dispositive portion of the Decision states:

"WHEREFORE, the foregoing premises considered, this Board hereby APPROVES the Power Purchase Agreement (PPA) entered into by and between applicant Oriental Mindoro Electric Cooperative, Inc. (ORMECO) and Southern Energy Mobile, Inc. (SEMI) covering specifically

¹ Attached as Annex "A" is a copy of the PPA dated 9 May 2000.

² Attached as Annex "B" is a copy of the 10 August 2001 Decision of the ERB.

the 7.5 MW power plant located in Pinamalayan, Oriental Mindoro. Accordingly, applicant is authorized to recover the corresponding additional cost of purchased power through the Board's approved Power Purchase Adjustment (PPA) formula."

4. The Plant was subsequently made commercially available in January 2001.

5. On 24 April 2001, SEMI's business name was amended to Mirant (Philippines) Mobile Corporation.³ It was further amended thereafter on 16 August 2001 to Mirant (Philippines) Energy Corporation ("MPEC").⁴

6. On 3 November 2003, MPEC sold the Plant and assigned the PPA to Mirant (Philippines) Island Generation Corporation (now GBHPRI and herein petitioner).⁵

7. From the time that the Plant became commercially viable, the terms of the PPA have only been partially implemented by ORMECO. For one, ORMECO only dispatches the Plant to supply its energy requirements during peak hours. Additionally, ORMECO purchases electricity from the Plant below the contracted MEOT of 4,089,600 kWh per month. For this Honorable Commission's easy reference, the PPA pertinently reads:

"The Power Station shall be utilized as a dispatchable base load plant and shall be expected to operate seven days per week. ORMECO shall have the responsibility in dispatching the Power Station in accordance with the Normal Operations Plan as defined in the Fourth Schedule."⁶

"ORMECO shall guarantee to purchase a minimum energy offtake of 4,089,600 kWh per month for the entire Cooperation Period."⁷

"The Power Station shall be guaranteed to operate continuously under automatic control at 50% of the rated output."⁸

³ Attached as Annex "C" is a copy of the Securities and Exchange Commission ("SEC") *Certificate of Filing of Amended Articles of Incorporation* dated 24 April 2001 showing the change in the business name of SEMI to "Mirant (Philippines) Mobile Corporation".

⁴ Attached as Annex "D" is a copy of the SEC *Certificate of Filing of Amended Articles of Incorporation* dated 16 August 2001 indicating that the business name of Mirant (Philippines) Mobile Corporation was amended to "Mirant (Philippines) Energy Corporation".

⁵ Attached as Annex "E" is a copy of the SEC *Certificate of Filing of Amended Articles of Incorporation* dated 1 October 2014 indicating that the business name of Mirant (Philippines) Island Generation was amended to "GBH Power Resources, Inc."

⁶ Clause 1.2 (Operation Mode), Second Schedule (Operating Parameters), p. 43 of the PPA.

⁷ Clause 3 (Guaranteed Minimum Offtake), Sixth Schedule (Delivery of Power and Energy), p. 52 of the PPA.

⁸ Clause 1.2 (Minimum Load Operation), Second Schedule (Operating Parameters), p. 42 of the PPA.

8. Notwithstanding Clause 19.2(f) of the PPA which states that "*ORMECO will not enter into any contract or entertain any other offer for the provision and supply of electric power to ORMECO*" during the period after the execution of the PPA and until the Effective Date, ORMECO requested for a decrease in the MEOT of the Plant considering the emergence of additional power suppliers in the area.⁹

9. GBHPRI agreed to decrease the MEOT of ORMECO from 4,089,600 kWh to 3,600,000 kWh per month until the end of the Cooperation Period, provided that ORMECO agrees not to obligate GBHPRI to supply replacement power in case GBHPRI exceeded the allowable downtime. Other changes to the PPA were proposed and were incorporated in an Amendment Agreement, which to date, however, has not been signed by the Parties.¹⁰

10. Pending the approval of the Amended Agreement by ORMECO's Board of Directors, in May 2008, ORMECO already requested [through its then General Manager, Romeo N. Cuasay] that the reduction in MEOT be implemented. Notably, the terms of the Amended Agreement, including the reduced MEOT of 3,600,000 kWh per month and that GBHPRI shall no longer be obligated to supply replacement power, were mentioned and classified as the "Existing Agreement" in ORMECO's Board of Directors Resolution No. 2012-130 dated 24 August 2012.¹¹

11. Inasmuch as the reduction in MEOT was premised on the removal of the obligation to replace power, as of said date, GBHPRI likewise ceased to be obligated to provide replacement power to ORMECO. This reduction in MEOT was implemented beginning the billing period of 25 August 2008 to 25 September 2008.¹² Consequently, GBHPRI has since been released of its obligation to provide replacement power or pay the penalty therefor.

12. While the Amendment Agreement covering these agreements has yet to be signed by ORMECO and GBHPRI, for all intents and purposes, these are already binding agreements between the parties and are conditioned upon each parties' obligations.

13. Since 2014, however, ORMECO has been disclaiming the amendments to the PPA that it has agreed to with GBHPRI and has refused to settle its payment obligations to GBHPRI.

⁹ Attached as Annex "F" is a copy of ORMECO's letter dated 6 May 2008.

¹⁰ Attached as Annex "G" is the latest draft Amendment Agreement.

¹¹ Attached as Annex "H" is a copy of the ORMECO Resolution No. 12-130.

¹² Attached as Annex "I" are copies Official Receipt Nos. 56, 60, 63, and 65 indicating that GBHPRI billed, and ORMECO paid energy fees, based on the reduced MEOT of 3,600,000kWh per month.

14. In its letter dated 8 January 2015 to GBHPRI, ORMECO indicated that it was not agreeable to GBHPRI's manner of computing the energy billed, i.e., by enforcing the reduced MEOT. ORMECO instead insisted that GBHPRI base the electricity fees on actual energy delivered based on the dispatch instructions of ORMECO.

15. GBHPRI, on the other hand, maintains that the energy billed by it to ORMECO, particularly for the period in question, 25 October 2014 to 25 November 2014, is correct and need not be rectified. The same was true for GBHPRI's past billings to ORMECO. As clearly provided in the PPA, ORMECO guaranteed to purchase from GBHPRI the MEOT, which has since been reduced to 3,600,000 kWh.

16. To date, GBHPRI continues to bill ORMECO based on the reduced MEOT (not actual energy delivered) as it is GBHPRI's position that it is entitled to bill on this basis since the PPA expressly provides that ORMECO guarantees to purchase from GBHPRI the MEOT.

17. Given the apparent disagreement it has with ORMECO on this matter, GBHPRI now comes before the Honorable Commission to resolve the apparent dispute of the Parties.

PRAYER

WHEREFORE, in view of the foregoing, it is respectfully prayed that the Honorable Commission intervene, mediate, and direct the Parties to resolve their dispute.

Other reliefs just and equitable under the premises are likewise prayed for.

The Commission has set the *Petition* for determination of compliance with the jurisdictional requirements, expository presentation, Pre-trial Conference, and presentation of evidence on **07 November 2019 (Thursday) at two o'clock in the afternoon (02:00 P.M.) at the ERC Hearing Room, 15th Floor, Pacific Center Building, San Miguel Avenue, Pasig City.**

All persons who have an interest in the subject matter of the instant case may become a party by filing with the Commission a verified Petition to Intervene at least five (5) days prior to the initial hearing and subject to the requirements under Rule 9 of the 2006 ERC Rules of Practice and Procedure, indicating therein the docket number and title of the case and stating the following:

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- 1) The petitioner's name and address;
- 2) The nature of petitioner's interest in the subject matter of the proceeding and the way and manner in which such interest is affected by the issues involved in the proceeding; and
- 3) A statement of the relief desired.

All other persons who may want their views known to the Commission with respect to the subject matter of the case may file their Opposition or Comment thereon at any stage of the proceeding before Petitioner rests its case, subject to the requirements under Rule 9 of the 2006 ERC Rules of Practice and Procedure. No particular form of Opposition or Comment is required, but the document, letter, or writing should contain the following:

- 1) The name and address of such person;
- 2) A concise statement of the Opposition or Comment; and
- 3) The grounds relied upon.

All such persons who wish to have a copy of the *Petition* may request from Petitioner that they be furnished with the same, prior to the date of the initial hearing. Petitioner is hereby directed to furnish all those making such request with copies of the *Petition* and its attachments, subject to the reimbursement of reasonable photocopying costs. Any such person may likewise examine the *Petition* and other pertinent records filed with the Commission during the standard office hours.

WITNESS, the Honorable Chairperson **AGNES VST DEVANADERA**, and the Honorable Commissioners **CATHERINE P. MACEDA**, **ALEXIS M. LUMBATAN** and **PAUL CHRISTIAN M. CERVANTES**, Energy Regulatory Commission, this 23th day of September 2019 in Pasig City.

JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Oversight Commissioner for Legal 

LS: ARG/GLO 