NUCLEAR ENERGY SERIES

What Can Be Done About Bataan Nuclear Power Plant?

The options are privatization, lease, and PPP, unless Congress legislates a state operator.

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A REVIVAL IN MOTION

In October 2024 the Department of Energy announced that Korea Hydro & Nuclear Power would assess the Bataan Nuclear Power Plant, and the two-phase feasibility study, funded by KHNP itself, commenced in January 2025 (World Nuclear Association, Nuclear Power in the Philippines). In March 2026, Meralco signed a memorandum of understanding with KHNP covering feasibility work, technology transfer, workforce development, and financial support (id.). President Marcos told Congress in July that “it is time for us to revisit nuclear energy production” (SONA, 27 July 2026). But who may lawfully rehabilitate and operate BNPP? Under the law as it stands, the answer excludes the government as operator.

WHO HOLDS THE PLANT

The plant belongs to the Power Sector Assets and Liabilities Management Corporation. Upon the effectivity of the EPIRA, ownership of all existing generation assets of the National Power Corporation, BNPP among them, passed to PSALM (R.A. No. 9136 [2001], secs. 49-50), a corporation whose principal purpose is to manage the orderly sale, disposition, and privatization of those assets, not to run them. Its corporate life, originally twenty-five years, was extended by ten in 2025 (R.A. No. 12179 [2025]), so it remains the disposing entity until 2036.

NAPOCOR IS A CARETAKER

NAPOCOR, for its part, was left with missionary electrification in off-grid areas (sec. 70) and the Agus and Pulangi complexes, which the law excluded from privatization (sec. 47[f]). Its role at Bataan is that of caretaker, spending ₱40 to ₱50 million a year on preservation (Vera Files, BNPP Fact Sheet). Neither corporation has a mandate to rehabilitate a nuclear plant and sell its output, and the Department of Energy has itself acknowledged that government investment in nuclear generation would require a new legal framework (Philippine News Agency, May 2022).

OPEN TO PRIVATE CAPITAL

Power generation is not a public utility operation, so no franchise is required, and the constitutional nationality restriction on public utilities does not apply, so a generation company may be wholly foreign-owned (R.A. No. 9136, sec. 6; Const., art. XII, sec. 11). A BNPP operator would need a certificate of compliance from the Energy Regulatory Commission (sec. 6) and a license from the Philippine Atomic Energy Regulatory Authority (R.A. No. 12305 [2025]).

Given these scenarios, what can be done about BNPP?

OPTION ONE: OUTRIGHT PRIVATIZATION

PSALM may sell the plant as-is-where-is through public bidding, as it has sold the rest of the NAPOCOR fleet. A foreign buyer cannot own the site, but may lease it. The difficulty is price discovery. Rehabilitation was last estimated at US$2.3 billion (World Nuclear Association, Nuclear Power in the Philippines). The true figure depends on the condition of systems mothballed since 1986, and no rational bidder will commit before the KHNP study is released.

OPTION TWO: LEASE OR CONCESSION

PSALM is empowered to take possession of, administer, and conserve the assets transferred to it and to derive revenue from them pending disposal (R.A. No. 9136, sec. 51). A long-term lease with rehabilitation obligations would place the capital cost and the operating risk on the private operator, which recovers through the sale of output, while the State retains an asset of strategic character. The arrangement resembles the independent power producer administration contracts PSALM is already managing, and it avoids the political weight of selling BNPP outright.

OPTION THREE: PUBLIC-PRIVATE PARTNERSHIP

The PPP Code covers the power projects of implementing agencies, including government-owned or -controlled corporations, and its contractual forms include rehabilitate-operate-and-transfer and rehabilitate-own-and-operate variants, awarded by solicited tender or by unsolicited proposal subject to comparative challenge (R.A. No. 11966 [2023]). Joint ventures between a GOCC and a private partner, formerly under the NEDA guidelines, are now PPP contracts under the Code, so a PSALM joint venture with a rehabilitation consortium is available through a defined approval path. The friction lies in the Code's treatment of government support: a guarantee of loan repayment is a disfavored undertaking, prohibited altogether for unsolicited proposals, with contingent liabilities routed through the PPP Risk Management Fund (secs. 3, 10[c], 27), while nuclear projects, as discussed elsewhere in this series, do not reach financial close anywhere without sovereign support.

OPTION FOUR: A STATE OPERATOR

The fourth modality is for the government to operate the plant itself, but it requires legislation. Congress would need to charter a state nuclear operator or restore to NAPOCOR a generation mandate that EPIRA took away. State operation places a multi-billion-dollar rehabilitation, and the documented overrun history of nuclear construction, back on the national balance sheet, barely a generation after the universal charge and the Malampaya fund were consumed absorbing NAPOCOR's stranded contract costs and stranded debts (R.A. No. 9136, secs. 32, 34; R.A. No. 11371 [2019]).

THE PREREQUISITES

Whichever modality is chosen, the same prerequisites intervene. PhilATOM must organize itself and then license, as its first major case, a Westinghouse unit completed in 1984. The civil liability regime must be legislated, because the operator’s liability for a nuclear incident remains capped at US$5 million under a 1968 statute that Republic Act No. 12305 expressly continued in force (R.A. No. 5207 [1968], sec. 42; R.A. No. 12305, sec. 50).

THE BOTTOM LINE

Existing law already permits the private revival of the Bataan Nuclear Power Plant by sale, by lease, or by public-private partnership. If the government decides to operate it, Congress needs to pass a new legislation to charter the state operator.

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