

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



**IN THE MATTER OF THE  
APPLICATION FOR  
APPROVAL OF THE  
AMENDMENT TO THE  
POWER SUPPLY  
AGREEMENT BETWEEN  
MANILA ELECTRIC  
COMPANY (MERALCO) AND  
THERMA MOBILE, INC.  
(TMO), WITH PRAYER FOR  
PROVISIONAL AUTHORITY,**

**ERC CASE NO. 2015-011 RC**

**MANILA ELECTRIC  
COMPANY (MERALCO) AND  
THERMA MOBILE, INC.  
(TMO),**

**Applicants.**

X-----X

**D O C K E T E D**

Date: AUG 31 2017

By: W

**ORDER**

For the Commission's consideration is the *Manifestation with Motion* filed by Manila Electric Company (MERALCO) on 3 January 2017 seeking the Commission's confirmation of the one (1) year extension of MERALCO's PSA with TMO. The extension sought by Applicants covers the period 26 June 2017 to 25 June 2018

**FACTUAL AND PROCEDURAL ANTECEDENTS**

By way of background, Applicants MERALCO and Therma Mobile, Inc. (TMO) executed a Power Supply Agreement on 27 September 2013 (2013 PSA). The 2013 PSA provided for a contract capacity of 234 MW and a contract term of three (3) years and nine (9) months, or from 27 September 2013 to 25 June 2017. MERALCO

and TMO sought the Commission's approval for the 2013 PSA under ERC Case No. 2013-196 RC<sup>1</sup>.

However, on 17 December 2014, both parties executed an *Amendment to the Power Supply Agreement (2014 Amended PSA)*, which among others increased the Maximum Monthly Capacity Factor provided in the PSA to 25%. Notably, the 2014 Amended PSA did not disturb the provisions on contract term indicated in the 2013 PSA.

On 21 January 2015, MERALCO and TMO filed the instant Application seeking the Commission's approval for their 2014 Amended PSA.

On 6 April 2015, pursuant to the Commission's power to provisionally approve Power Supply Agreements (PSAs) as provided under Section 4 (e), Rule 3 of the Implementing Rules and Regulations of Republic Act No. 9136, or the *Electric Power Industry Reform Act of 2001 (EPIRA IRR)*, it granted Applicants provisional authority to implement their PSA subject to certain conditions.

The dispositive portion of the Order granting the said provisional authority is quoted below:

WHEREFORE, the foregoing premises considered, the Commission hereby PROVISIONALLY APPROVES the application filed by Manila Electric Company (MERALCO) and Therma Mobile, Inc. (TMO) for the approval of the Amendment to their Power Supply Agreement (PSA), subject to the following base rates and conditions:

1. Applicable Rates:

CHARGES		BASE RATES	
Annual Fixed O&M Fee (Annual FOM)		PhP/kW/Year	2,810.00

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<sup>1</sup> Entitled "*In the Matter of the Application for Approval of the Power Supply Agreement (PSA) Between Manila Electric Company (MERALCO) and Therma Mobile, Inc. (TMO).*"

Variable O&M Fee (VOM)	PhP/kWh	0.4000
Interconnection Annual Fixed O&M Fee	PhP/kW/Year	5.00
Monthly Fuel Payment (MFP)	Pass-through Calculated using a 0.003 li/kWh consumption rate or actual consumption, whichever is lower	

2. The base rates shall be subject to adjustment based on the economic indices provided in Schedule "D" of the PSA;
3. The Excess Energy shall be charged at variable costs only;
4. MERALCO is directed to submit a copy of TMO's 2014 AFS and the Results of the Performance Tests conducted in accordance with Section 6.5.1 of the PSA, as soon as they become available; and
5. The final generation cost that can be recovered shall be determined by the Commission in its Final Decision in the instant application.

In the event that the final rates are higher than that provisionally granted, the resulting additional charges shall be collected by TMO from MERALCO and the latter shall pass it on to its customers. On the other hand, if the final rates are lower than that provisionally granted, the amount corresponding to the reduction shall be refunded by TMO to MERALCO and the latter shall pass it on to its customers.

SO ORDERED.

On 1 June 2015, Applicant MERALCO filed a *Motion for Clarification* on the said Order granting provisional authority. MERALCO sought to clarify if the Commission's grant of provisional authority also applies to Section 4 of the Amendment Agreement dated 17 December 2014 included in their Application.

Relative thereto, the Commission issued an Order dated 1 July 2015, the dispositive portion of which reads:

Accordingly, the Commission hereby CLARIFIES that the provisional approval covers the increase in outage allowance and the minor change in operating procedures in the Amendment Agreement save those provisions which are subject to certain conditions as stated in the Order dated April 6, 2015.

SO ORDERED.

Subsequently, on 5 April 2016, the Commission issued an Order extending the Provisional Authority granted to MERALCO and TMO. The Order contained the following pronouncements:

Considering that the Commission is still in the process of evaluating the instant application, the provisional authority granted to Applicants MERALCO and TMO in the Order dated 06 April 2015 is hereby EXTENDED until revoked or made permanent by the Commission.

SO ORDERED.

On 3 January 2017, MERALCO filed a *Manifestation with Motion* containing the following prayer:

WHEREFORE, Applicant MERALCO respectfully prayed to this Honorable Commission that the instant Manifestation with Motion be NOTED and, accordingly, it be CONFIRMED that the extension of the PSA from 26 June 2017 until 25 June 2018 is consistent with and valid under Section 2.2.3 of the 2013 PSA.

#### ISSUE

For the Commission's resolution is whether or not Applicants have satisfied the requirements for extension as indicated in their 2013 PSA, as amended by the 2014 Amended PSA, and in the relevant rules and regulations promulgated by the Commission.

#### RULING

The Commission allows the extension.

- A. MERALCO AND TMO'S  
2016 SUPPLEMENTAL  
AGREEMENT  
EXTENDING THE  
TERM OF THE 2013  
PSA, AS AMENDED BY  
THE 2014 AMENDED  
PSA IS COMPLIANT  
WITH THE  
REQUIREMENTS  
PROVIDED UNDER  
SECTION 2.2 OF THE  
2013 PSA.

A perusal of the relevant portions of the 2013 PSA reveals the following:

2.2 Term of Agreement

2.2.1 Subject to Section 3.1, this Agreement shall become effective on the Effective Date.

2.2.2 The term of this Agreement ("Term") shall commence **on the Effective Date and shall expire on June 25, 2017**, unless terminated earlier in accordance with the terms of this Agreement or extended by the application of Section 2.2.3.

2.2.3 **Not later than six (6) months prior to the expiration of the Term** or any extension thereof, either Party may deliver a **written notice** of its intent to extend the Term for such period as may be agreed upon by the Parties. Unless otherwise agreed upon by the Parties, the terms and conditions of this Agreement shall continue to apply during any extension of the Term. **In the event that no agreement extending the Term is executed by the Parties not later than ninety (90) days prior to the expiration of the Term** or any extension thereof, Power Supplier shall have the right to consider this Agreement terminated as of the date of expiration of the Term or any extension thereof.

(Emphases supplied.)

Based on the foregoing provisions of the 2013 PSA, a written notice must be delivered by one party to the other, at least six (6) months prior to the expiration of the term. Likewise, an agreement extending the term of the PSA must be executed by both parties at least ninety days (90) prior to the expiration of the term.

Attached to the *Manifestation with Motion* filed by MERALCO as Annex "A" is a document entitled *Supplemental Agreement to the Power Supply Agreement dated 27 September 2013 (Extension of Term)* (2016 Supplemental Agreement).

The said 2016 Supplemental Agreement was acknowledged and notarized by TMO on 14 October 2016. On the other hand, MERALCO acknowledged the same on 18 November 2016. Aside from these two dates, the 2016 Supplemental Agreement did not contain any other date that would indicate its date of execution.

It can nonetheless be deduced from the said document that by 18 November 2016, both parties have already reached a mutual agreement to extend their PSA. Thus, the latter date of 18 November 2016 can be considered as the reckoning date from which to count the six (6) month and ninety (90) day periods required by Section 2.2.3 of the 2013 PSA, as amended by the 2014 Amended PSA.

Consequently, the 2016 Supplemental Agreement is compliant with the six (6) month period for notice, and ninety (90) day period for execution of the extension agreement requirements.

**B. MERALCO AND TMO'S  
2016 SUPPLEMENTAL  
AGREEMENT IS  
COMPLIANT WITH  
THE RELEVANT  
RULES AND  
REGULATIONS  
GOVERNING  
EXTENSION AND  
RENEWAL OF PSAS.**

Paragraph 3 of ERC Resolution No. 1, Series of 2016<sup>2</sup> limits PSAs to a one (1) time, one (1) year extension as follows:

3. In reference to PSAs with provision allowing the automatic renewal or extension of their term, whether or not such renewal or extension requires the intervention of the parties thereto, the following rules shall apply:
  - a. PSAs that were approved by the Commission or filed with the ERC before the effectivity of this Resolution **may have one (1) automatic renewal or extension for a period not exceeding one (1) year from the end of their respective terms;**
  - b. Automatic renewal clauses or extension of PSAs shall no longer be permitted upon effectivity of this Resolution.

(Emphasis supplied.)

Section 2.1 of the 2016 Supplemental Agreement entered into by MERALCO and TMO complies with the above requirement as it limits the extension of the PSA to only one (1) year. The said provision is quoted below:

2.1 It is agreed between the Parties that the term of the 2013 PSA shall be extended, in accordance with Section 2.2.3 of the 2013 PSA, **for an additional period of one (1) year under the same terms and conditions**, including the Price as set forth in the 2013 PSA as amended by the Amendment Agreement duly approved by the Energy Regulatory Commission.

(Emphasis supplied.)

Further, Section 2.3 of the 2016 Supplemental Agreement indicates that the extended term shall be from 26 June 2017 to 25 June 2018.

**WHEREFORE**, in view of the foregoing, the *Manifestation with Motion* of MERALCO is **NOTED**. The one (1) year extension of the 2013 PSA as amended by the 2014 Amended PSA is **CONFIRMED**.

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<sup>2</sup> Entitled "A Resolution Clarifying the Effectivity of ERC Resolution No. 13, Series of 2015." issued on 15 March 2016.

**FURTHER**, Applicants MERALCO and TMO are directed to **STRICTLY COMPLY** with the provisions of ERC Resolution No. 1, Series of 2016, in particular the one (1) time limit for renewal of PSA.

**SO ORDERED.**

Pasig City, 6 June 2017.


**JOSE VICENTE B. SALAZAR\***  
*Chairman and CEO*

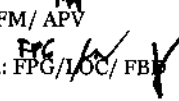
  
**ALFREDO J. NON**  
*Officer-in-Charge of the ERC*

  
**GLORIA VICTORIA C. YAP-TARUC**  
*Commissioner*

  
**JOSEFINA PATRICIA A. MAGPALE-ASIRIT**  
*Commissioner*

  
**GERONIMO D. STA. ANA**  
*Commissioner*

  
LS: ICG/RFM/APV

TWG PSA 2:  FPG/LOC/FB

Copy Furnished:

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2. Atty. Lew Carlo C. Lopez  
*Counsel for Applicant TMO*  
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32nd St., Bonifacio Global, Taguig City

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\* On preventive suspension as per Order of the Office of the President under OP-DC Case No. 17-D-094 dated 2 May 2017 and received 4 May 2017.



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3. Therma Mobile, Inc. (TMO)  
Ground Floor, Phil. Fisheries Development Authority Complex Bldg., Navotas, Metro Manila
4. Office of the Solicitor General (OSG)  
134 Amorsolo Street, Legaspi Village,  
City of Makati 1229
5. Commission on Audit (COA)  
Commonwealth Avenue,  
Quezon City 1121
6. Senate Committee on Energy  
GSIS Building, Roxas Boulevard,  
Pasay City 1300
7. House of Representatives Committee on Energy  
Batasan Hills, Quezon City 1126
8. Philippine Chamber of Commerce and Industry (PCCI)  
3<sup>rd</sup> Floor, Chamber and Industry Plaza (CIP)  
1030 Campus Avenue corner Park Avenue  
McKinley Town Center, Fort BONifacio, Taguig City
9. The City Mayor  
City of Manila
10. The City Mayor  
Quezon City
11. The City Mayor  
City of Caloocan
12. The City Mayor  
City of Makati
13. The City Mayor  
City of Malabon
14. The City Mayor  
City of Mandaluyong
15. The City Mayor  
City of Muntinlupa
16. The City Mayor  
City of San Jose del Monte, Bulacan
17. The City Mayor  
City of Valenzuela
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City of Pasig
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Pasay City
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City of Parañaque
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Cavite City
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TreceMartirez City

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Las Piñas City
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San Juan City
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Lucena City
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Batangas City
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San Pablo City, Laguna
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City of Marikina
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Antipolo City, Rizal
30. The City Mayor  
Tagaytay City, Cavite
31. The City Mayor  
Calamba, Laguna
32. The Municipal Mayor  
Navotas, Metro Manila
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Taguig, Metro Manila
34. The Municipal Mayor  
Pateros, Metro Manila
35. The Municipal Mayor  
General Aguinaldo, Cavite
36. The Municipal Mayor  
Magallanes, Cavite
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Amadeo, Cavite
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Indang, Cavite
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Mendez, Cavite
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Alfonso, Cavite
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Imus, Cavite
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Bacoor, Cavite
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- Maragondon, Cavite
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Ternate, Cavite
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Gen. Trias, Cavite
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Naic, Cavite
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Rosario, Cavite
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Tanza, Cavite
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Dasmariñas, Cavite
  52. The Municipal Mayor  
Gen. Mariano Alvarez, Cavite
  53. The Municipal Mayor  
Silang, Cavite
  54. The Municipal Mayor  
Carmona, Cavite
  55. The Municipal Mayor  
Cainta, Rizal
  56. The Municipal Mayor  
Taytay, Rizal
  57. The Municipal Mayor  
Teresa, Rizal
  58. The Municipal Mayor  
Jala-jala, Rizal
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Cardona, Rizal
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Baras, Rizal
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Pililla, Rizal
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Morong, Rizal
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Binangonan, Rizal
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Rodriguez, Rizal
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San Mateo, Rizal

68. The Municipal Mayor  
Meycauayan, Bulacan
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Obando, Bulacan
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Norzagaray, Bulacan
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Sta. Maria, Bulacan
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Angat, Bulacan
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Doña Remedios Trinidad, Bulacan
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Plaridel, Bulacan
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Pandi, Bulacan
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Bocaue, Bulacan
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Balagtas, Bulacan
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Baliwag, Bulacan
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San Rafael, Bulacan
89. The Municipal Mayor  
San Miguel, Bulacan

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90. The Municipal Mayor  
San Ildefonso, Bulacan
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Biñan, Laguna
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Sta. Rosa, Laguna
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Victoria, Laguna
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Nagcardan, Laguna
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Magdalena, Laguna
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Calauan, Laguna
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Pila, Laguna
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Sta.Cruz, Laguna
99. The Municipal Mayor  
Liliw, Laguna
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San Pedro Tunasan, Laguna
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Alaminos, Laguna
102. The Municipal Mayor  
Rizal, Laguna
103. The Municipal Mayor  
Los Baños, Laguna
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Cabuyao, Laguna
105. The Municipal Mayor  
Bay, Laguna
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Dolores, Quezon
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Sampaloc, Quezon
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Pagbilao, Quezon
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Lucban, Quezon
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Tayabas, Quezon
111. The Municipal Mayor  
Candelaria, Quezon
112. The Municipal Mayor

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- Sariaya, Quezon
113. The Municipal Mayor  
San Antonio, Quezon
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Mauban, Quezon
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Tiaong, Quezon
  116. The Municipal Mayor  
Majayjay, Quezon
  117. The Municipal Mayor  
Luisiana, Quezon
  118. The Municipal Mayor  
Sto. Tomas, Batangas
  119. The Municipal Mayor  
San Pascual, Batangas
  120. The Municipal Mayor  
Candaba, Pampanga
  121. The Municipal Mayor  
San Simon, Pampanga
  122. The Municipal Mayor  
Apalit, Pampanga
  123. Office of the Governor  
Province of Rizal
  124. Office of the Governor  
Province of Laguna
  125. Office of the Governor  
Province of Batangas
  126. Office of the Governor  
Province of Cavite
  127. Office of the Governor  
Province of Pampanga
  128. Office of the Governor  
Province of Quezon
  129. Office of the Governor  
Province of Bulacan
  130. PSA TWG-2  
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