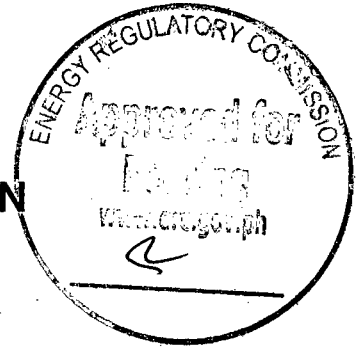


Republic of the Philippines
ENERGY REGULATORY COMMISSION
San Miguel Avenue, Pasig City



IN THE MATTER OF THE
APPLICATION FOR APPROVAL
OF THE SUPPLEMENT TO THE
ENERGY SUPPLY AGREEMENT
BETWEEN COTABATO
ELECTRIC COOPERATIVE,
INC.- MAIN (COTELCO-MAIN)
AND THERMA MARINE, INC.
(TMI), WITH MOTION FOR
PROVISIONAL AUTHORITY
AND MOTION FOR
CONFIDENTIAL TREATMENT
OF INFORMATION

ERC CASE NO. 2014-187 RC

COTABATO ELECTRIC
COOPERATIVE, INC.- MAIN
(COTELCO-MAIN) AND
THERMA MARINE, INC. (TMI),
Applicants.

X-----X

DOCKETED
Date: FEB 04 2015
[Signature]

ORDER

On December 18, 2014, Cotabato Electric Cooperative, Inc. (COTELCO-MAIN) and Therma Marine, Inc. (TMI) filed a joint application for the approval of their Supplement to the Energy Supply Agreement, with motion for provisional authority and motion for confidential treatment of information.

In the said joint application, COTELCO-MAIN and TMI alleged, among others, the following:

1. COTELCO-MAIN is a non-stock, non-profit electric cooperative, organized and existing under and by virtue of Presidential Decree No. 269, as amended, with principal office address at National Highway, Brgy. Manubuan, Matalam, North Cotabato. It holds an exclusive franchise issued by the National Electrification Commission to

operate an electric light and power distribution service in the City of Kidapawan and eleven (11) Municipalities of the Province of Cotabato, namely: Makilala, Kabacan, Carmen, M'lang, Tulunan, Matalam, President Roxas, Magpet, Antipas, Arakan, and Banisilan (Franchise Area);

2. TMI is a generation company duly organized and existing under the laws of the Republic of the Philippines with principal office address in Mobile 2, Lawis, Sta. Ana, Nasipit, Agusan del Norte. Copies of TMI's Securities and Exchange Commission Certificate of Registration, Articles of Incorporation and By-Laws, General Information Sheet and Audited Financial Statements are attached to the joint application as Annexes "A", "B", "C" and "D," respectively;
 - 2.1 TMI owns and operates the 100 MW Power Barge No. 117 (PB 117) in Nasipit, Agusan Del Norte and the 100 MW Power Barge No. 118 (PB 118) in Maco, Compostela Valley, which it acquired from the Power Sector Assets and Liabilities Management Corporation (PSALM) upon their privatization in accordance with Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001 (EPIRA); and
 - 2.2 TMI is joining COTELCO-MAIN as co-applicant in this case in order to assist it in securing approval of the terms and conditions of the Energy Supply Agreement dated 24 February 2012 (ESA), as amended by the Supplement to the Energy Supply Agreement dated 15 June 2014 (Supplement Agreement), entered into by and between COTELCO-MAIN and TMI.

NATURE OF THE APPLICATION

3. The instant joint application seeks approval by the Commission of the ESA, as amended by the Supplement Agreement, entered into by and between COTELCO-MAIN and TMI, pursuant to Rule 20 (B) of the Commission's Rules of Practice and Procedure (ERC Rules), and other pertinent rules and regulations.

Copies of the ESA and the Supplement Agreement are attached to the joint application as Annexes "E" and "F", respectively;

STATEMENT OF FACTS

4. COTELCO-MAIN currently sources the bulk of its electricity requirements from the Power Sector Assets and Liabilities Management Corporation (PSALM) and the remainder from TMI.

4.1 On February 24, 2012, COTELCO-MAIN entered into an ESA with TMI for the supply of 8MW for a term of three (3) years from Effective Date, or from May 8, 2012 (Original Term). The ESA was approved by the Commission in a Decision dated November 26, 2012 in ERC Case No. 2012-058RC, with the following applicable rates:

Cost Component		Approved Rates	
Capacity (PhP/kW/month)	Fee	2012	278
		2013	296
		2014	323
		2015	305
Fixed O&M (PhP/kW/month)	Fee	239	
Energy Fee (PhP/kWh)		0.14864	
Fuel and Lube Oil Rate		Pass thru cost based on fuel consumption rates of 0.2358 liter/kWh or actual, whichever is lower, for Heavy Fuel Oil (HFO) and 0.0024 liter/kWh or actual, whichever is lower, for Lube Oil (LO)	

4.2 Details of COTELCO-MAIN's other supply contracts are as follows:

SUPPLIER	CONTRACT CAPACITY (MW)	TERM	INDICATIVE COMMENCEMENT DATE	ERC APPROVAL
NPC/PSALM	11.98	2014-2016	Current Supplier	Current Supplier
TMI	8	2012-2015	Current Supplier	Current Supplier
TSI	10	2015-2040	Early 2015	With ERC approval
GNPOWER	5	2017-2037	2017	With PA from ERC
SEC	10	2016-2041	Late 2016	For ERC approval
SMCPC	10	2016-2026	2016	Application still on process
FDC Misamis Power Corp.	5	2016-2031	2016	Application still on process
FDC Misamis Power Corp. (M1 & M2)	5	2016-2024	2016	Application still on process

5. It is expected that the energy requirements of COTELCO-MAIN's customers will significantly increase in the next few years as demonstrated by COTELCO-MAIN's Distribution Development Plan ("DDP"), which is hereto attached as Annex "G";
6. The expiration of the Contract for the Supply of Electric Energy with PSALM in December 2016, as well as the projected increase in the energy requirements of COTELCO-MAIN's customers will result in a shortage of the energy available to it and its customers;
7. On June 15, 2014, COTELCO-MAIN and TMI executed the Supplement Agreement extending the term of the ESA for an additional period of three (3) years from the expiration of the term (Additional Term) and stipulating the rights and obligations of the Parties during the Additional Term, which shall be under the same terms and conditions of the ESA, subject to the following:

**SALIENT PROVISIONS OF THE ESA AS AMENDED BY THE
SUPPLEMENT AGREEMENT**

8. **Additional Term.** The Supplement to the ESA provides that the ESA shall remain in force for an additional period of three (3) years from the expiration of the Original Term, commencing on 9 May 2015 and shall terminate on 8 May 2018 unless either Party sends a written notice of pre-termination to the other Party at least sixty (60) days prior to the end of each contract year. The Supplement to the ESA further provides that it may be terminated effective on the Operations Effective Date defined in the Energy Supply Agreement between COTELCO-MAIN and TSI covering the supply of power from the coal-fired power plant of TSI or, if Operations Effective Date of TSI has not yet occurred by the end of the Additional Term, the ESA shall be automatically renewed on a year-to-year basis, unless earlier terminated in accordance with the provisions of the ESA. Upon expiration of the Additional Term, and any extensions thereof, the Parties may agree to further extend the term of the Agreement under the same terms and conditions of the ESA, as amended by the Supplement Agreement;
9. **Electricity Fees.** Beginning on the expiration of the Original Term, the Electricity Fees shall be computed based on the following values:¹

		2013	2014	2015	2016	2017	2018
CF	PhP/kW/mo	296	323	305	287	268	250
FOM	PhP/kW/mo	239	314	314	314	314	314
EF	PhP/kWh	0.14864	0.15245	0.15245	0.15245	0.15245	0.15245
HFCR	L/kWh	0.23580	0.23580	0.23580	0.23580	0.23580	0.23580
LOCR	L/kWh	0.00240	0.00240	0.00240	0.00240	0.00240	0.00240

¹ The CF and FOM for 2013 to 2015 and the EF for 2013 are based on the Decision of the Honorable Commission dated 26 November 2012 in ERC Case No. 2011-058 RC, while the HFCR and LOCR for 2013 to 2015 are based on the Decisions of even date in ERC Case Nos. 2012-057 RC, 2012-060 RC, 2012-058 RC, 2012-045 RC, 2012-063 RC, 2012-086 RC, 2012-039 RC, 2011-126 RC, 2011-114 RC, and 2011-087 RC, approving other ESAs executed by TMI.

9.1 The formula for FC in item 2 (Contract Energy Fee per month) of Schedule III (Contract Energy Fee) of the ESA shall be deemed amended to read as follows:²

$$FC = [CF + (FOM)(IF_f)] BC + \left[\left(\frac{INS}{12} \right) \frac{BC}{TotalBC} \right]$$

$$INS = INS_y - INS_1$$

Where:

INS_y = actual insurance cost for the two barges for the current year

INS₁ = PhP43,035,782.00 for the two barges, representing insurance cost included in the FOM

9.2 Hence, the formula for Contract Energy Fee per Month as provided in the ESA shall be:³

$$CEF = FC + VC$$

$$FC = [CF + (FOM)(IF_f)] BC + \left[\left(\frac{INS}{12} \right) \frac{BC}{TotalBC} \right]$$

$$VC = [(EF)(IF_v) + FLR]ED_m$$

For calendar month $m = 1, 2, \dots, 12$

Where:

CEF = Contract Energy Fee in Php

EF = Energy Fee (before adding the applicable VAT) for the Billing Period in Php/kWh

FC = Fixed charge per month in Pesos

VC = Variable charge per month in Pesos

² Supplement Agreement, Section 2.2

³ ESA, Schedule III, Item 2, as amended by the Section 2 of the Supplement Agreement.

CF = the Capacity fee in Php/kW/month for the current Contract Year
FOM = Fixed O&M fee in Php/kW/month
IF_f = Inflation factor for fixed O&M fee
BC = Billing Capacity in kW or 8,000kW
INS = $INS_y - INS_1$

Where:

INS_y = actual insurance cost for the two barges for the current year

INS₁ = PhP43,035,782.00 for the two barges, representing insurance cost included in the FOM

IF_v = Inflation factor for Energy Fee

TotalBC= Total Billing Capacity for all Energy Supply Agreements entered into by Supplier which have achieved effectivity date and for the duration of such effectivity, as such terms and conditions are defined under the respective Energy Supply Agreements

FLR = Fuel oil, lube oil and related fuel rate in Php/kWh

ED_m = The Sum of the hourly volumes of Contract Energy as found in the Contract Energy Schedule (or as revised by the Parties or by MSO/MSO RCC) for the Billing Period primarily associated with calendar month *m* (for example December 26-January 25 is associated with January) (and adjusted for transmission losses, if any, imputed by the transmission service provider if measured at a meter other than the Generator Metering Point), in kWh

The Fixed Charge ("FC") shall be proportionately adjusted if:

- a. The Contract Energy Delivery days in a Billing Period are less the total number of days in the Billing Period (to adjust to first and last Billing Periods of the ESA); and
- b. The non-delivery days (or fraction thereof) in any Billing Period caused by Allowed Downtime described under Section 8 of the ESA.

9.3 Finally, the base indices in Item 3 (Inflation Factor) of Schedule III (Contract Energy Fee) of the ESA shall be deemed amended to read as follows:⁴

PCPI_b = Philippine CPI of 126.4 as of June 2011

UCPI_b = US CPI of 225.722 as of June 2011

ECPI_b = EURO CPI of 113.10 as of June 2011

JCPI_b = Japan CPI of 99.9 as of June 2011

10. **Billing Capacity.** In the event that TMI is required to reduce its installed capacity in order to remain compliant with Section 45 of the EPIRA, TMI shall have the right to reduce the Billing Capacity of COTELCO-MAIN to the extent of the reduction required under Section 45 of the EPIRA, provided that, the reduction in the Billing Capacity of COTELCO-MAIN shall not exceed its pro rata share in the total Billing Capacity of TMI in relation with other offtakers of TMI⁵;
11. **Contract Energy.** Under the ESA, TMI shall make available, on a monthly basis, the capacity of 8MW, to be delivered in accordance with the Schedule of Contract of Energy under the ESA;
12. **Additional Energy.** TMI may, at its option, make available to COTELCO-MAIN such energy in excess of the contracted energy for which COTELCO-MAIN shall be liable to pay the Additional Energy Fee consisting of variable and fixed charges pro-rated for the hours of delivery of the additional energy, subject to annual adjustments. The same formula for the Additional Energy Fee Rate under the ESA shall continue to be in effect;

⁴Supplement Agreement, Section 2.3.

⁵ Supplement Agreement, Clause 2.9

13. **Load Curtailment Adjustment.** For Contract Energy subject of load curtailment, COTELCO-MAIN shall pay the Load Curtailment Adjustment in lieu of the Capacity Fee component of the electricity fees. The same formula for the Load Curtailment Adjustment Rate under the ESA shall continue to be in effect;
14. **Replacement Energy.** TMI has the option but not the obligation to source replacement or alternative supply from its own back-up facility and/or any third party to supply all or part of the Contract Energy;
15. **Security Deposit.** Before the commencement of the second (2nd) Contract Year and each Contract Year thereafter, COTELCO-MAIN shall provide TMI a Renewal Security Deposit in the form of a Standby Letter of Credit in an amount equivalent to the estimated average one month Invoice projected for the next twelve (12) months as agreed by TMI and COTELCO-MAIN or, in case of disagreement, in an amount equal to the highest Invoice issued by TMI to COTELCO-MAIN in the twelve (12) months immediately preceding the Commencement of such Contract Year;⁶
16. **Application Costs.** The Supplement Agreement provides that COTELCO-MAIN shall bear the costs of all filing fees, costs of publication, legal fees and similar costs arising from the preparation and filing of the instant application;
17. The extension of the Contract Term under the Supplement Agreement and the implementation thereof will redound to the benefit of COTELCO-MAIN's consumers which may otherwise be forced to bear the cost of 8MW purchased from the Interim Mindanao Electricity Market (IMEM) or to suffer a corresponding amount of brownouts. In undertaking the extension of the ESA under the Supplement to the ESA, COTELCO-MAIN seeks to comply with its obligation of providing stable and continuous power supply, pursuant to the Department Circular No. DC 2012-03-004 dated March 19, 2012 of the Department of Energy (DOE);

⁶ESA, Clause 6.1.2, as amended by Section 2.4 of the Supplemental Agreement.

SUBMISSIONS

18. In support of the instant application and in compliance with Rule 20 (B) of the ERC Rules of Practice and Procedure, it submits the following additional documents:
 - a. Board of Investments (BOI) Certificate of Registration of TMI (Annex "H" of the joint application);
 - b. Environmental Compliance Certificate (ECC) issued by the Department of Environment and Natural Resources (DENR) to TMI (Annex "I" of the joint application);
 - c. Certification dated March 18, 2014 issued by the National Grid Corporation of the Philippines (NGCP) (Annex "J" of the joint application);
 - d. Certificate of Compliance (COC) issued by the Energy Regulatory Commission (ERC) to TMI (Annex "K" of the joint application);
 - e. Relevant Technical and Economic Characteristics of TMI's Power Barges (Annex "L" of the joint application);
 - f. Sources of Funds/Financial Plans (Annex "M" of the joint application);
 - g. Purchased Power Rate (Annex "N" of the joint application);
 - h. Cash Flow (Annex "O" of the joint application);
 - i. Financial Model (Annex "P")
 - j. Fuel Procurement Process of TMI (Annex "Q" of the joint application);

- k. Transmission Service Agreement (TSA) executed between COTELCO-MAIN and NGCP (Annex "R" of the joint application);
 - l. Certification from PSALM of the insufficiency of its supply to meet COTELCO-MAIN's requirements (Annex "S" of the joint application); and
 - m. Procurement Process of COTELCO-MAIN (Annex "T" of the joint application);
19. In further compliance with the requirements of the Commission, they considered several scenarios and derived a Rate Impact Simulation based on the said scenarios, which is attached to the joint application as Annex "U" and may be summarized as follows:

Year	Scenario without TMI* PhP/kWh	Scenario with TMI* PhP/kWh	Increase/ (Decrease) PhP/kWh
2015	4.8334	4.6325	(0.2009)
2016	6.0739	5.8752	(0.1987)
2017	5.6161	5.4300	(0.1860)

MOTIONS FOR PROVISIONAL AUTHORITY AND CONFIDENTIAL TREATMENT OF INFORMATION

20. They move for the issuance of a provisional approval of the Supplement Agreement, pending trial on the merits thereof, upon the following reasons:
- a. **Mindanao Power Crisis.** The power shortage in Mindanao has remained a critical problem for COTELCO-MAIN which continues to suffer rotating brownouts in the grid. A bilateral agreement, such as the Supplement Agreement, will significantly aid COTELCO-MAIN in minimizing or even eliminating the rotating brownouts in its franchise area which has had a debilitating impact upon the local economy;

- b. **Insufficiency of NPC/PSALM Supply.** The reduction of the NPC/PSALM CSEE capacity from COTELCO-MAIN's portfolio renders imperative a bilateral supply contract to answer for the equivalent capacity, lest COTELCO-MAIN be compelled to resort to the unpredictable and expectedly higher prices in the IMEM or worse, be curtailed for insufficient contracted capacity; and
 - c. **Continuing Demand Growth.** As illustrated in its DDP, COTELCO-MAIN is expecting a growth in the total demand of its end-users so that, coupled with reduction of the NPC/PSALM capacity, there is a wide supply gap that urgently needs to be filled. Without the Supplement Agreement, COTELCO-MAIN will be incapable of satisfying the electricity requirements of its end-users who must be forced to suffer brownouts resulting from its curtailment;
- 21. Considering the foregoing, they request the Commission for the provisional approval of the ESA, as amended by the Supplement Agreement to enable COTELCO-MAIN to draw under the said agreement. This will avoid the power interruptions which have caused irreversible losses upon economic productivity within its franchise area. The Affidavit in support of the prayer for the issuance of Provisional Authority is attached to the joint application as Annex "V";
 - 22. Under Section 13 of the ESA, each Party undertook to keep in strict confidence and not to disclose to any third party any and all Confidential Information of the other Party;
 - 23. Under Rule 4 of the ERC Rules, the Commission may, upon request of a party and determination of the existence of conditions which would warrant such remedy, treat certain information submitted to it as confidential. Pursuant to its undertaking, COTELCO-MAIN and TMI move that Annexes "D", "M", "N", "O", "P", and "Q" not be disclosed and be treated as confidential documents in accordance with Rule 4 of the ERC Rules and accordingly, not be disclosed to persons other than the officers and staff of the Commission, as necessary.

These documents contain certain non-public information, data and calculations involving business operations and financial trade secrets reflecting TMI's investment and business calculations;

24. They submitted one (1) copy of Annexes "D", "M", "N", "O", "P" and "Q" in a sealed envelope, with the envelope and each page of the document stamped with the word "Confidential"; and
25. They pray that the Commission:
 - a. Issue an Order treating Annexes "D", "M", "N", "O", "P" and "Q" and the information contained therein as confidential, directing their non-disclosure to persons other than the officers and staff of the Commission, pursuant to Rule 4 of the ERC Rules, and prescribing the guidelines for the protection thereof;
 - b. Pending trial on the merits, provisionally approve the ESA, as amended by the Supplement Agreement, effective May 9, 2015; and
 - c. After trial on the merits, approve with finality the ESA, as amended by the Supplement Agreement, including the rates, Security Deposit and Application Costs which shall be for the account of COTELCO-MAIN.

Finding the said joint application to be sufficient in form and in substance with the required fees having been paid, the same is hereby set for jurisdictional hearing, pre-trial conference, expository presentation and evidentiary hearing on **March 4, 2015 (Wednesday) at one-thirty in the afternoon (1:30 P.M.) at the ERC Mindanao Field Office, Mintrade Building, Monteverde Avenue corner Sales St., Davao City (in view of the current peace and order situation in Mindanao).**

COTELCO-MAIN and TMI are hereby directed to cause the publication of the attached Notice of Public Hearing, at their own expense, twice (2x) for two (2) successive weeks in two (2) newspapers of general circulation in the Philippines, with the date of the last publication to be made not later than ten (10) days before the date of the scheduled initial hearing. They are also directed to inform the consumers within COTELCO-MAIN's franchise area, by any other means available and appropriate, of the filing of the instant joint application, its reasons therefor, and of the scheduled hearing thereon.

Let copies of the joint application, this Order and the attached Notice of Public Hearing be furnished the Office of the Solicitor General (OSG), the Commission on Audit (COA), and the Committees on Energy of both Houses of Congress. They are hereby requested, if they so desire, to send their duly authorized representatives at the scheduled hearing.

Likewise, let copies of this Order and the attached Notice of Public Hearing be furnished the Offices of the Governor of Cotabato and the Mayors of the City/Municipalities within the franchise area of COTELCO-MAIN for appropriate posting thereof on their respective bulletin boards.

COTELCO-MAIN and TMI are hereby directed to furnish all those making requests therefor with copies of the joint application and its attachments, subject to reimbursement of reasonable photocopying costs.

On the date of the initial hearing, COTELCO-MAIN and TMI must submit to the Commission their written Compliance with the jurisdictional requirements attaching therewith, methodically arranged and duly marked, the evidences on the actual posting and publication of the Notice of Public Hearing consisting of certifications issued to that effect, signed by the aforementioned Governor, Mayors or their duly authorized representatives, bearing the seals of their offices, and the affidavits of the Editors or Business Managers of the newspapers where the said Notice of Public Hearing were published together with the complete issues of the said newspapers, and such other proofs of compliance with the requirements of the Commission.

COTELCO-MAIN, TMI and all other interested parties are directed to submit, at least five (5) days before the date of initial hearing and pre-trial conference, their respective Pre-trial Briefs containing, among others:

- (a) a summary of admitted facts and proposed stipulation of facts;
- (b) the issues to be tried or resolved;
- (c) the documents or exhibits to be presented, stating the purposes thereof and proposed markings therefor; and
- (d) the number and names of the witnesses, with their written testimonies in an individual affidavit form, to be attached to the Pre-trial Brief.

Failure of COTELCO-MAIN and TMI to submit the required Pre-Trial Brief and Judicial Affidavits of their witnesses within the prescribed period shall be a ground for cancellation of the scheduled hearing, and the resetting of which shall be six (6) months from said date of cancellation.

As part of the pre-trial conference, COTELCO-MAIN and TMI must also be prepared to make an expository presentation of their joint application, aided by whatever communication medium that they may deem appropriate for the purpose, in order to put in plain words and explain, for the benefit of the consumers and other concerned parties, what the joint application is all about and the reasons and justifications being cited in support thereof.

SO ORDERED.

Pasig City, February 2, 2015.

FOR AND BY AUTHORITY
OF THE COMMISSION:


ZENAIDA G. CRUZ-DUCUT
Chairperson 4


LBB/NJS

Copy Furnished:

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3. **COTABATO ELECTRIC COOPERATIVE, INC. (COTELCO-
MAIN)**
Matalam, North Cotabato
4. **The Office of the Solicitor General**
134 Amorsolo Street, Legaspi Village
Makati City, Metro Manila
5. **The Commission on Audit**
Commonwealth Avenue
Quezon City
6. **The Senate Committee on Energy**
GSIS Building, Roxas Boulevard
Pasay City
7. **The House Committee on Energy**
Batasan Hills, Quezon City
8. **Office of the President of PCCI**
Philippine Chamber of Commerce and Industry (PCCI)
3rd Floor, ECC Building, Sen. Gil Puyat Avenue
Makati City
9. **Office of the Provincial Governor**
Province of North Cotabato
10. **Office of the City Mayor**
Kidapawan City, North Cotabato

- 11. Office of the Municipal Mayor**
Makilala, North Cotabato
- 12. Office of the Municipal Mayor**
Kabacan, North Cotabato
- 13. Office of the Municipal Mayor**
Carmen, North Cotabato
- 14. Office of the Municipal Mayor**
Mlang, North Cotabato
- 15. Office of the Municipal Mayor**
Tulunán, North Cotabato
- 16. Office of the Municipal Mayor**
Matalam, North Cotabato
- 17. Office of the Municipal Mayor**
President Roxas, Cotabato
- 18. Office of the Municipal Mayor**
Magpet, North Cotabato
- 19. Office of the Municipal Mayor**
Antipas, North Cotabato
- 20. Office of the Municipal Mayor**
Arakan, North Cotabato
- 21. Office of the Municipal Mayor**
Banisilan, North Cotabato