

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 BUKIDNON SECOND
ELECTRIC COOPERATIVE, INC.
(BUSECO) AND THERMA
MARINE, INC. (TMI), WITH
MOTION FOR PROVISIONAL
AUTHORITY AND MOTION FOR
CONFIDENTIAL TREATMENT
OF INFORMATION

ERC CASE NO. 2015-096 RC

BUKIDNON SECOND
ELECTRIC COOPERATIVE, INC.
(BUSECO) AND THERMA
MARINE, INC. (TMI),
Applicants.

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DOCKETED
Date: JUN 29 2015
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ORDER

On May 14, 2015, Bukidnon Second Electric Cooperative, Inc. (BUSECO) 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, BUSECO and TMI alleged, among others, the following:

1. BUSECO is a non-stock, non-profit electric cooperative, organized and existing under and by virtue of Presidential Decree No. 269, as amended, with principal address at Poblacion, Manolo Fortich, Bukidnon. It holds an exclusive franchise issued by the National Electrification Commission to operate an electric light and power distribution service in the City of Malaybalay and the

Municipalities of Baungon, Cabanglasan, Impasug-ong, Lantapan, Libona, Malitbog, Manolo Fortich, Sumilao and Talakag, and in Barangay Lilingayon of Valencia City, all in the Province of Bukidnon (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 BUSECO 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 October 7, 2011 (ESA), as supplemented by the Supplement to the Energy Supply Agreement dated March 27, 2015 (Supplement Agreement), entered into by and between BUSECO and TMI;

COMPLIANCE WITH PRE-FILING REQUIREMENTS

3. In compliance with the pre-filing requirements under Section 2, Rule 6 of the Commission's *Rules on Practice and Procedure*, the applicants furnished copies of this Application together with all its annexes the legislative bodies of the Municipality of Manolo Fortich, Bukidnon where its office is principally located, as well as the Provincial Board of the Province of Bukidnon, as

evidenced by the certifications issued by the Legislative Bodies aforementioned, herewith attached as Annex "E";

4. Further, said applicants have caused the publication of the instant Application in the Gold Star Daily, a newspaper of general circulation in the franchise area of BUSECO, as evidenced by the *Affidavit of Publication* executed by the Editor, and original copy of the issue showing the published application, copies of which are attached hereto as Annexes "F" and "G", respectively;

NATURE OF THE APPLICATION

5. The instant joint application seeks approval by the Commission of the ESA, as supplemented by the Supplement Agreement, entered into by and between BUSECO and TMI, pursuant to Rule 20 (B) of the Commission's Rules of Practice and Procedure (ERC Rules).

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

STATEMENT OF FACTS

6. BUSECO currently sources its electricity requirements from the Power Sector Assets and Liabilities Management Corporation (PSALM), and the remainder from FDC MISAMIS Power Corporation and TMI.
 - 6.1 On March 5, 2012, BUSECO entered into an ESA with TMI for the supply of 5 MW for a term of three (3) years from Effective Date (Original Term). The ESA was approved by the Commission in a Decision dated 26 November 2012 in ERC Case No. 2012-057 RC, 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)	

6.2 Details of BUSECO's other ERC approved supply contracts are as follows:

SUPPLIER	CONTRACT CAPACITY	DATE OF EXECUTION OF SUPPLY CONTRACT	TERM
PSALM	6 MW (Depends on Availability)	26 December 2012	4 years
FDC MISAMIS	10 MW	26 December 2015	2 years
TSI	2MW	2015	25 years

7. It is expected that the energy requirements of BUSECO's customers will significantly increase in the next few years as demonstrated by BUSECO's Distribution Development Plan (DDP), and Historical and Forecasted Load Data, which is hereto attached as Annexes "J" and "K", respectively;
8. The expiration of the Contract for the Supply of Electric Energy with PSALM, as well as the projected increase in the energy requirements of BUSECO's customers will result in a shortage of the energy available to it and its customers;
9. On March 25, 2015, BUSECO 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 salient provisions described below. Copies of the Board Resolutions attesting to the authority of BUSECO to enter into the Supplement Agreement is attached as Annexes "L" and "L-1";

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

10. **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 May 18, 2015 and shall terminate on May 18, 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 BUSECO and Therma South, Inc. ("TSI") covering the supply of power from the coal-fired power plant of TSI or, if Operations Effective Date of the power plant 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 supplemented by the Supplement Agreement;

11. **Electricity Fees.** Beginning on the expiration of the Original Term, the Electricity Fees shall be computed based on the following values:

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

11.1 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:¹

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

$$INS = INS_y - INS_1$$

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

Total BC= Total Billing Capacity for the two barges under the existing energy supply agreements and existing ancillary service procurement agreements

11.2 Hence, the formula for Contract Energy Fee per Month as provided in the ESA shall be:²

$$CEF = FC + VC$$

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

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

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

¹ Supplement Agreement, Section 2.1

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

FC = Fixed charge per month in Pesos
VC = Variable charge per month in Pesos
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 5,000kW
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.

11.3 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:³

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 BUSECO to the extent of the reduction required under Section 45 of the EPIRA, provided that, the reduction in the Billing Capacity of BUSECO shall not exceed its pro rata share in the total Billing Capacity of TMI in relation with other off takers of TMI⁴;
11. **Contract Energy.** Under the ESA, TMI shall make available, on a monthly basis, the capacity of 5 MW, 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 BUSECO such energy in excess of the contracted energy for which BUSECO 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;
13. **Load Curtailment Adjustment.** For Contract Energy subject of load curtailment, BUSECO shall pay the Load Curtailment Adjustment in lieu of the Capacity Fee component of the electricity fees. The same formula for

³Supplement Agreement, Section 2.3.

⁴Supplement Agreement, Clause 2.9

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.** No later than thirty (30) days before the commencement of the second (2nd) Contract Year and every year thereafter, BUSECO 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 (1) month Invoice projected for the next twelve (12) months as agreed by TMI and BUSECO or, in case of disagreement, in an amount equal to the highest Invoice issued by TMI to BUSECO in the twelve (12) months immediately preceding the commencement of such Contract Year;⁵
16. **Application Costs.** The Supplement Agreement provides that BUSECO 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 BUSECO's consumers which may otherwise be forced to bear the cost of 5 MW 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, BUSECO 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);

⁵ESA, 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 "M" of the joint application);
 - b. Environmental Compliance Certificate (ECC) issued by the Department of Environment and Natural Resources (DENR) to TMI (Annex "N" of the joint application);
 - c. Certification by the National Grid Corporation of the Philippines (NGCP) (Annex "O" of the joint application);
 - d. Certificate of Compliance (COC) issued by the Energy Regulatory Commission (ERC) to TMI (Annex "P" of the joint application);
 - e. Relevant Technical and Economic Characteristics of TMI's Power Barges (Annex "Q" of the joint application);
 - f. Sources of Funds/Financial Plans (Annex "R" of the joint application);
 - g. Purchased Power Rate (Annex "S" of the joint application);
 - h. Cash Flow (Annex "T" of the joint application);
 - i. Financial Model (Annex "U");
 - j. Fuel Procurement Process of TMI (Annex "V" of the joint application);
 - k. Letter from BUSECO to the NGCP regarding their Transmission Service Agreement (Annex "W" of the joint application); and
 - l. Procurement Process of BUSECO (Annex "X" of the joint application);

19. In further compliance with the requirements of the Commission, they considered BUSECO's supply scenario. The Rate Impact Simulation based on these considerations is attached to the joint application as Annex "Y" and may be summarized as follows:

BUSECO's Existing Generation Rate with TMI	Php 4.7277 /kWh
BUSECO's Generation Rate Upon Renewal of TMI	4.7593 /kWh
Rate Impact	Php0.0316/kWh ⁶

**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 BUSECO, which continues to suffer rotating brownouts in the grid, with each outage lasting three to four (3-4) hours. A bilateral contract, such as the Supplement Agreement, will significantly aid BUSECO in minimizing the rotating brownouts in its franchise area to one to two (1-2) hours as well as limit the debilitating impact these outages have upon the local economy;
 - b. **Insufficiency of NPC/PSALM Supply.** The reduction of the NPC/PSALM CSEE capacity from BUSECO's portfolio renders imperative a bilateral supply contract to answer for the equivalent capacity, lest BUSECO be compelled to resort to the unpredictable and expectedly higher prices in the IMEM or worse, be curtailed for insufficient contracted capacity. Copies of the PSALM certification of insufficiency of supply and the letter of PSALM manifesting reduction of BUSECO CSEE are attached hereto as Annexes "Z" and "AA", respectively; and

⁶ The Applicants note that if the PSA between TMI and BUSECO is not renewed and taking into consideration the reduced contracted capacity with NPC/PSALM, the BUSECO's member-consumer and customers will be exposed to constant brownouts lasting for three to four (3-4) hours each.

- c. **Continuing Demand Growth.** As illustrated in its DDP, BUSECO 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, BUSECO 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 supplemented by the Supplement Agreement to enable BUSECO 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 "BB";
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, BUSECO and TMI move that Annexes "R", "S", "T", "U", and "V" 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 "R", "S", "T", "U" and "V" 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 "R", "S", "T", "U", and "V" 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 supplemented by the Supplement Agreement, effective May 18, 2015; and
 - c. After trial on the merits, approve with finality the ESA, as supplemented by the Supplement Agreement, including the rates, Security Deposit and Application Costs which shall be for the account of BUSECO.

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 **July 23, 2015 (Thursday) at nine o' clock in the morning (9:00 A.M.) at BUSECO's Principal Office, Poblacion, Manolo Fortich, Bukidnon.**

BUSECO 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 BUSECO'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 the Province of Bukidnon and the Mayors of the Cities/Municipalities within the franchise area of BUSECO for appropriate posting thereof on its bulletin board.

BUSECO 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, BUSECO 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 Mayors and Governor 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.

BUSECO, 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 BUSECO 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, BUSECO 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, June 22, 2015.

FOR AND BY AUTHORITY
OF THE COMMISSION:


ZENAIDA G. CRUZ-DUCUT
Chairperson *per 4*


LEB/NJS

Copy Furnished:

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3. **Bukidnon Second Electric Cooperative, Inc.
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Poblacion, Manolo Fortich, Bukidnon
4. **The Office of the Solicitor General**
134 Amoroso 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)
9. **Office of the Governor**
Province of Bukidnon
10. **Office of the City Mayor**
Malaybalay City, Bukidnon
11. **Office of the Municipal Mayor**
Baungon, Bukidnon

12. **Office of the Municipal Mayor**
Malitbog, Bukidnon
13. **Office of the Municipal Mayor**
Libona, Bukidnon
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Lantapan, Bukidnon
18. **Office of the Municipal Mayor**
Cabanglasan, Bukidnon
19. **Office of the Municipal Mayor**
Talakag, Bukidnon
20. **Office of the City Mayor**
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