

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 SOUTH COTABATO  
II ELECTRIC COOPERATIVE,  
INC. (SOCOTECO II) AND  
THERMA MARINE, INC. (TMI)**

**ERC CASE NO. 2014-081 RC**

**SOUTH COTABATO II  
ELECTRIC COOPERATIVE, INC.  
(SOCOTECO II) AND THERMA  
MARINE, INC. (TMI),**

**Applicants.**

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**BOOKED**  
Date: JUL 28 2014  
By: [Signature]

**ORDER**

On June 9, 2014, the South Cotabato II Electric Cooperative, Inc. (SOCOTECO II) filed an application for the approval of the Supplement to the Energy Supply Agreement (Supplement Agreement) it executed with Therma Marine, Inc. (TMI).

In the said application, SOCOTECO II alleged, among others, the following:

1. It is a non-stock, non-profit electric cooperative organized and existing under the laws of the Republic of the Philippines with office address at J. Catolico Avenue, Lagao, General Santos City. It is the grantee of a franchise from the National Electrification Administration (NEA) to maintain and operate an electric light and power distribution system in the Province of South Cotabato, General Santos City and the Municipalities of Alabel,

- Glan, Malapatan, Malungon, Polomolok, Tupi, Kiamba, Maitum and Maasim, all in the Province of South Cotabato;
2. The instant application seeks approval by the Commission of the Supplement Agreement entered into on December 3, 2013 with TMI, which is a generation company duly organized and existing under the laws of the Republic of the Philippines with principal office address in Aboitiz Corporate Center, Gov. Manuel A. Cuenco Avenue, Kasambagan, Cebu City. It 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, upon their privatization by the Power Sector Assets and Liabilities Management Corporation (PSALM) under Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001 (EPIRA)";
  3. In November 24, 2010, it entered into an ESA with TMI for the supply of 18 MW<sup>1</sup> for a term of one (1) year from Effective Date. The ESA was approved by the Commission in a Decision dated November 26, 2012 in ERC Case No. 2011-057 RC. In accordance with the provisions of the ESA, SOCOTECO II and TMI agreed to a renewal of the terms and conditions of the ESA for an additional period of one (1) year or until September 25, 2013 (Renewal Term). The said renewal is the subject of a manifestation before the Commission in the same ERC Case No. 2011-057 RC;
  4. On March 1, 2013, it executed with TMI an Amendment to the ESA, stipulating that the ESA shall remain in force for an additional period of three (3) years from the expiration of the Renewal Term (Additional Term), 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. Upon expiration of the Additional Term and any extension thereof, the Parties may agree to further extend the term of the Agreement and/or revise the Billing Capacity and/or make such other modifications on the

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<sup>1</sup> The Contracted Capacity was increased to 23 MW in February 2012 and was further increased to 30 MW in April 2012.

terms and conditions of the Agreement as may be agreed upon by the Parties;

5. On December 3, 2013, it executed with TMI a Supplement to the ESA (Supplement Agreement), stipulating that the rights and obligations of the Parties during the Additional Term shall be under the same terms and conditions of the ESA, subject to the following:

**SALIENT PROVISIONS OF THE SUPPLEMENT AGREEMENT**

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

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

Furthermore, 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:

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

$$INS = INS_y - INS_1$$

Where:

INS<sub>y</sub> = Actual insurance cost for the two barges for the current year

INS<sub>1</sub> = PhP43,035,782.00 for the two barges, representing insurance cost included in the FOM

Hence, the formula for Contract Energy Fee per Month shall be:

**Contract Energy Fee per Month**

$$CEF = FC + VC$$

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

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

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

CF = Capacity Fee in PhP/kW/month for the Current Contract Year

FOM = Fixed O&M Fee in PhP/kW/month

IF<sub>f</sub> = Inflation Factor for Fixed O&M Fee

BC = Billing Capacity in kW

INS =  $INS_y - INS_1$

Where:

INS<sub>y</sub> = Actual Insurance Cost for the Two Barges for the Current Year

INS<sub>1</sub> = PhP43,035,782.00 for the Two Barges, Representing Insurance Cost Included in the FOM

IF<sub>v</sub> = Inflation Factor for Energy Fee

Total BC = 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<sub>m</sub> = The Sum of the Hourly Volumes of Contract Energy as found in the Schedule of Contract Energy (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.

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

PCPI<sub>b</sub> = Philippine CPI of 126.4 as of June 2011

UCPI<sub>b</sub> = US CPI of 225.722 as of June 2011

ECPI<sub>b</sub> = EURO CPI of 113.10 as of June 2011

JCPI<sub>b</sub> = Japan CPI of 99.9 as of June 2011

7. **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 SOCOTECO II to the extent of the reduction required under Section 45 of the EPIRA,

provided that the reduction in the Billing Capacity of SOCOTECO II shall not exceed its pro rata share in the total Billing Capacity of TMI in relation with its other offtakers;

8. Considering that under the Supplement Agreement, the rights and obligations of the Parties during the Additional Term shall continue to be governed by the ESA, the following salient terms and conditions of the ESA shall continue to be in effect:
  
9. **Contract Energy.** Under the ESA, TMI shall make available, on a monthly basis, the capacity of 18 MW, to be delivered in accordance with the Schedule of Contract Energy of the ESA. The Contracted Capacity was increased to 23 MW in February 2012 and was further increased to 30 MW in April 2012;
  
10. **Purchased Power Rate.** For 2013 to 2015, it shall be liable to pay such electricity fees, as follows:

Cost Component	Rates	
Capacity Fee (PhP/kW/Month) <sup>2</sup>	2013	296
	2014	323
	2015	305
Fixed O&M Fee (PhP/kW/Month)	239	
Energy Fee (PhP/kWh)	0.14891	
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)	

11. **Additional Energy.** TMI may, at its option, make available to it such energy in excess of the contracted energy for which it shall be liable to pay the *Additional Energy Fee* consisting of variable and fixed charges prorated for the hours of delivery of the additional energy, subject to annual adjustments. The same formula for the

<sup>2</sup> Based on the Decision dated November 26, 2012 in ERC Case No. 2011-057 RC

Additional Energy Fee Rate under the ESA shall continue to be in effect;

12. **Load Curtailment Adjustment.** For Contract Energy subject of load curtailment, it 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;
13. **Replacement Power.** 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;
14. The extension of the Contract Term under the Amendment Agreement and Supplement Agreement and the implementation thereof will redound to the benefit of its consumers which may otherwise be forced to bear the cost of 30 MW purchased from the Interim Mindanao Electricity Market (IMEM). In undertaking the extension of the ESA under the Supplement Agreement, it seeks to comply with its obligation of providing stable and continuous power supply, pursuant to the Department Circular No. DC 2012-12-0011 dated December 10, 2012 of the Department of Energy (DOE);

### **SUBMISSIONS**

15. 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:
  - a. Supplement to the ESA dated December 3, 2013 entered into with TMI (Annex "A" of the Application);
  - b. Amendment to the ESA dated March 1, 2013 entered into with TMI (Annex "B" of the Application);
  - c. ESA dated November 24, 2010 entered into with TMI (Annex "C" of the Application);

- d. Securities and Exchange Commission (SEC) Certificate of Registration of TMI (Annex "D" of the Application);
- e. Articles of Incorporation of TMI (Annex "E" of the Application);
- f. General Information Sheet (GIS) of TMI (Annex "F" of the Application);
- g. Board of Investments (BOI) Certificate of Registration of TMI (Annex "G" of the Application);
- h. Environmental Compliance Certificate (ECC) issued by the Department of Environment and Natural Resources (DENR) to TMI (Annex "H" of the Application of the Application);
- i. Sources of Funds/Financial Plans (Annex "I" of the Application);
- j. Purchased Power Rate (Annex "J" of the Application);
- k. Fuel Procurement Process of TMI (Annex "K" of the Application);
- l. Transmission Service Agreement (TSA) it executed with the National Grid Corporation of the Philippines (NGCP) (Annex "L" of the Application of the Application);
- m. Transmission Service Agreement (TSA) between TMI and NGCP (Annex "M" of the Application);
- n. Certificate of Compliance (COC) issued to TMI (Annex "N" of the Application);
- o. Certification from the PSALM of the insufficiency of its supply to meet its requirements (Annex "O" of the Application);
- p. Relevant technical and economic characteristics of the TMI Power Barges (Annex "P" of the Application);



- q. Its Distribution Development Plan (DDP) (Annex "Q" of the Application);
  - r. Cash Flow of TMI (Annex "R" of the Application); and
  - s. Latest Audited Financial Statement (AFS) of TMI (Annex "S" of the Application);
16. In further compliance with the requirements of the Commission, it considered several scenarios based on the number of running hours TMI. The Rate Impact Simulation based on these scenarios is attached to the application as Annex "T" and may be summarized as follows:

	<b>Condition (Running Hours)</b>	<b>Rate Impact/ Increase</b>
Case 1	6 hours	0.2478
Case 2	12 hours	0.4946
Case 3	16 hours	0.6047
Case 4	20 hours	0.7222

**MOTIONS FOR PROVISIONAL AUTHORITY AND  
NON-DISCLOSURE OF CONFIDENTIAL INFORMATION**

17. It moves 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 it which continues to suffer rotating brownouts in the grid. A bilateral agreement, such as the Supplement Agreement, will significantly aid it 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 the National Power Corporation (NPC)/PSALM Supply.** The reduction of the

NPC/PSALM Contract for the Supply of Electric Energy (CSEE) capacity from its portfolio renders imperative a bilateral supply contract to answer for the equivalent capacity, lest it 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, it 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, it will be incapable of satisfying the electricity requirements of its end-users who must be forced to suffer brownouts resulting from its curtailment;
18. Considering the foregoing, it requests the Commission for the provisional approval of the Supplement Agreement to enable it 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 application as Annex "U";
  20. Under Article 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<sup>3</sup> of the other Party;
  21. 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

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<sup>3</sup> Confidential Information means all information relating to or concerning such other Party, its subsidiaries, affiliates, associates, associated companies or customers which by reason of [the ESA], are made known to the receiving Party or its subsidiaries and affiliated companies, or directors, trustees, employees and representatives, including, without limitation attorneys and outside legal counsel, accountants, consultants and professional advisers to whom such Confidential Information is disclosed, including but not limited to, any business, technical, marketing, operational, organizational, financial or other information, and trade secrets, whether in electronic, oral or written form, and all notes analyses, compilations, studies or other information which contain or reflect such information.

confidential. Pursuant to its undertaking, it moves that Annexes "I", "J", "R" and "S" not be disclosed and be treated as confidential documents in accordance with Rule 4 of the ERC Rules. These documents contain certain non-public information, data and calculations involving business operations and financial trade secrets reflecting TMI's investment and business calculations;

22. It submitted one (1) copy of Annexes "I", "J", "R" and "S" in a sealed envelope, with the envelope and each page of the document stamped with the word "Confidential";
23. It prays that the Commission:
  - a. Issue an Order treating Annexes "I", "J", "R" and "S" and the information contained therein as confidential, directing their non-disclosure 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 Supplement Agreement effective September 26, 2013; and
  - c. after trial on the merits, approve with finality the Supplement Agreement, including the rates set out in paragraphs 6 and 10 to 13 thereof.

On July 4, 2014, TMI filed a "Motion to be Admitted as Co-Applicant with Entry of Appearance" alleging, among others, that it has an interest in the subject matter and outcome of the instant application considering that it is a party to the ESA and the Supplement Agreement. It further alleged that it is in a position to provide pertinent information and evidence required by the Commission, particularly on matters relating to the rate charged by TMI under the Supplement Agreement. It prayed that it be granted leave to participate in the instant application as a party co-applicant.

TMI's motion being meritorious, the same is hereby GRANTED. Accordingly, TMI shall be considered as a co-applicant in the instant application.

Finding the said 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 **August 19, 2014 (Tuesday) at two o' clock in the afternoon (2:00 P.M.) at SOCOTECO II's Main Office, J. Catolico Avenue, Lagao, General Santos City, South Cotabato.**

SOCOTECO II 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 SOCOTECO II's franchise area, by any other means available and appropriate, of the filing of the instant application, its reasons therefor, and of the scheduled hearing thereon.

Let copies of the 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 South Cotabato and the Mayors of the City and the Municipalities within the franchise area of SOCOTECO II for appropriate posting thereof on their respective bulletin boards.

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

On the date of the initial hearing, SOCOTECO II 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.

SOCOTECO II, 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 therefore; 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 SOCOTECO II 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, SOCOTECO II and TMI must also be prepared to make an expository presentation of their application, aided by whatever communication medium that it 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 application is all about and the reasons and justifications being cited in support of the rate adjustments prayed for.

**SO ORDERED.**

Pasig City, July 21, 2014.

FOR AND BY AUTHORITY  
OF THE COMMISSION:

  
**ZENAIDA G. CRUZ-DUCUT**  
Chairperson H

  
IVANJS

Copy Furnished:

1. **Atty. Virgilio P. Alconera**  
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3. **South Cotabato II Electric Cooperative, Inc.**  
**(SOCOTECO II)**  
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4. Office of the Solicitor General  
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5. Commission on Audit  
Commonwealth Avenue  
Quezon City, Metro Manila
6. Senate Committee on Energy  
GSIS Bldg. Roxas Blvd., Pasay City  
Metro Manila
7. House Committee on Energy  
Batasan Hills, Quezon City, Metro Manila
8. Office of the Provincial Governor  
Province of South Cotabato
9. Office of the City Mayor  
General Santos, South Cotabato
10. Office of the Municipal Mayor  
Alabel, South Cotabato
11. Office of the Municipal Mayor  
Glan, South Cotabato

- 12.** Office of the Municipal Mayor  
Malapatan, South Cotabato
- 13.** Office of the Municipal Mayor  
Malungon, South Cotabato
- 14.** Office of the Municipal Mayor  
Polomolok, South Cotabato
- 15.** Office of the Municipal Mayor  
Tupi, South Cotabato
- 16.** Office of the Municipal Mayor  
Kiamba, South Cotabato
- 17.** Office of the Municipal Mayor  
Maitum, South Cotabato
- 18.** Office of the Municipal Mayor  
Maasim, South Cotabato
- 19.** President  
Philippine Chamber of Commerce and Industry (PCCI)  
3<sup>rd</sup> Floor, ECC Building, Sen. Gil Puyat Avenue  
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