

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 DAVAO ORIENTAL  
ELECTRIC COOPERATIVE, INC.  
(DORECO) AND THERMA  
MARINE, INC. (TMI), WITH  
MOTION FOR PROVISIONAL  
AUTHORITY

ERC CASE NO. 2014-143 RC

DAVAO ORIENTAL ELECTRIC  
COOPERATIVE, INC. (DORECO)  
AND THERMA MARINE, INC.  
(TMI),

Applicants.

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DOCKETED  
Date: NOV 10 2014  
By: M

**ORDER**

On September 23, 2014, Davao Oriental Electric Cooperative, Inc. (DORECO) 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.

In the said joint application, DORECO and TMI alleged, among others, the following:

1. DORECO 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, Madang, Mati, Province of Davao Oriental. It holds an exclusive franchise issued by the National Electrification Commission (NEC) to operate an electric light and power distribution service in the Province of Davao Oriental, particularly, in the City of

address at National Highway, Madang, Mati, Province of Davao Oriental. It holds an exclusive franchise issued by the National Electrification Commission (NEC) to operate an electric light and power distribution service in the Province of Davao Oriental, particularly, in the City of Mati<sup>1</sup> and the Municipalities of Banaybanay, Baganga, Boston, Caraga, Cateel, Governor Generoso, Lupon, Manay, San Isidro and Tarragona (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 at the Aboitiz Corporate Center, Gov. Manuel A. Cuenco Avenue, Kasambagan, Cebu City. Copies of its Securities and Exchange Commission (SEC) Certificate of Registration, Articles of Incorporation, General Information Sheet (GIS) and Audited Financial Statements (AFS) 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 DORECO as a co-applicant in the instant joint application in order to assist it in securing approval of the terms and conditions provided in the Energy Supply Agreement (ESA) dated March 25, 2011 (ESA), as amended by the Supplement to the Energy Supply Agreement dated May 16, 2014 (Supplement Agreement), entered into by and between DORECO and TMI;

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<sup>1</sup> The Municipality of Mati was converted into a component city pursuant to Republic Act No. 9408

**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 DORECO 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 "E" and "F", respectively;

**STATEMENT OF FACTS**

4. DORECO currently sources the bulk of its electricity requirements from PSALM and the remainder from TMI.

4.1 On March 25, 2011, DORECO entered into an ESA with TMI for the supply of 6 MW<sup>2</sup> for a term of three (3) years from Effective Date, or from September 26, 2011 to September 25, 2014 (Original Term). The ESA was approved by the Commission in a Decision dated November 19, 2012 in ERC Case No. 2011-079 RC, with the following applicable rates:

Cost Component	Approved Rates	
Capacity Fee (PhP/kW/month) <sup>3</sup>	2011	344
	2012	278
	2013	296
Fixed O&M Fee (PhP/kW/month)	239	
Energy Fee (PhP/kWh)	0.14864	
Fuel and Lube Oil Rate	Pass thru cost based on fuel consumption rates of 0.2210 liter/kWh or actual, whichever is	

<sup>2</sup> This was originally 3MW before being subsequently increased to 6 MW on January 2012

<sup>3</sup> The Commission further calculated the Capital Recovery Fee (CRF) for the years 2014 (PhP323/kWh/month) and 2015 (PhP305/kWh/month) in connection with its determination of the Capacity Fee under the ESA (Cf/Decision, page 25)

	lower, for Heavy Fuel Oil (HFO) and 0.00313 liter/kWh or actual, whichever is lower, for Lube Oil (LO)
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4.2 The details of DORECO's other supply contracts are as follows:

SUPPLIER	CONTRACT CAPACITY	TERM	INDICATIVE COMMENCEMENT DATE	ERC APPROVAL
Therma South, Inc. (TSI)	5 MW	Twenty-five (25) years from Operations Effective Date	2015	Decision dated September 2, 2013 in ERC Case No. 2013-029 RC
FDC Misamis Power Corporation	6 MW	Fifteen (15) years from Commercial Operation Date	2016	Joint Application filed on September 1, 2014 docketed as ERC Case No. 2014-129 RC
GNPower Ltd. Co.	7 MW	Two Hundred Forty (240) months from date specified in the Commencement Date Notice	2017	Provisional Approval issued under Order dated April 28, 2014 in ERC Case No. 2014-011 RC

5. It is expected that the energy requirements of DORECO's customers will significantly increase in the next few years as demonstrated by DORECO's Distribution Development Plan (DDP), which is attached to the joint application as Annex "G";
6. The expiration of DORECO's Contract for the Supply of Electric Energy (CSEE) with PSALM in December 2016 as well as the projected increase in the energy requirements of its customers will result in a shortage of the energy available to it and its customers;



The CF and FOM for 2013 to 2015 and the EF for 2013 are based on the Decision of the Commission dated November 19, 2012 in ERC Case No. 2011-064 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<sup>4</sup>, 2012-060 RC<sup>5</sup>, 2012-058 RC<sup>6</sup>, 2012-045 RC<sup>7</sup>, 2012-063 RC<sup>8</sup>, 2012-086 RC<sup>9</sup>, 2012-039 RC<sup>10</sup>, 2011-126 RC<sup>11</sup>, 2011-114 RC<sup>12</sup> and 2011-087 RC<sup>13</sup>;

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<sup>14</sup>:

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<sup>4</sup> In the Matter of the Application for Approval of the Energy Supply Agreement (ESA) Between Bukidnon Second Electric Cooperative, Inc. (BUSECO) and Therma Marine, Inc. (TMI), With Prayer for Provisional Authority, BUSECO - Applicant

<sup>5</sup> In the Matter of the Application for Approval of the Energy Supply Agreement (ESA) Between Camiguin Electric Cooperative, Inc. (CAMELCO) and Therma Marine, Inc. (TMI), With Prayer for Provisional Authority, CAMELCO - Applicant

<sup>6</sup> In the Matter of the Application for Approval of the Energy Supply Agreement (ESA) Between Cotabato Electric Cooperative, Inc. (COTELCO) and Therma Marine, Inc. (TMI), With Prayer for Provisional Authority, COTELCO - Applicant

<sup>7</sup> In the Matter of the Application for Approval of the Energy Supply Agreement (ESA) Between Misamis Occidental I Electric Cooperative, Inc. (MOELCI I) and Therma Marine, Inc. (TMI), With Prayer for Provisional Authority, MOELCI I - Applicant

<sup>8</sup> In the Matter of the Application for Approval of the Energy Supply Agreement (ESA) Between Misamis Occidental II Electric Cooperative, Inc. (MOELCI II) and Therma Marine, Inc. (TMI), With Prayer for Provisional Authority, MOELCI II - Applicant

<sup>9</sup> In the Matter of the Application for Approval of the Energy Supply Agreement (ESA) Between Sultan Kudarat Electric Cooperative, Inc. (SUKELCO) and Therma Marine, Inc. (TMI), With Prayer for Provisional Authority, SUKELCO - Applicant

<sup>10</sup> In the Matter of the Application for Approval of the Energy Supply Agreement (ESA) Between Zamboanga City Electric Cooperative, Inc. (ZAMCELCO) and Therma Marine, Inc. (TMI), With Prayer for Provisional Authority, ZAMCELCO - Applicant

<sup>11</sup> In the Matter of the Application for Approval of the Energy Supply Agreement (ESA) Between Zamboanga Del Sur II Electric Cooperative, Inc. (ZAMSURECO II) and Therma Marine, Inc. (TMI), With Prayer for Provisional Authority, ZAMSURECO II - Applicant

<sup>12</sup> In the Matter of the Application for Approval of the Energy Supply Agreement (ESA) Between Zamboanga Del Sur I Electric Cooperative, Inc. (ZAMSURECO I) and Therma Marine, Inc. (TMI), With Prayer for Provisional Authority, ZAMSURECO I - Applicant

<sup>13</sup> In the Matter of the Application for Approval of the Energy Supply Agreement (ESA) Between Zamboanga Del Norte Electric Cooperative, Inc. (ZANECO) and Therma Marine, Inc. (TMI), With Prayer for Provisional Authority, ZANECO - Applicant

<sup>14</sup> Supplement Agreement, Clause 2

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

$$INS = INS_y - INS_1$$

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

9.2 Hence, the formula for Contract Energy Fee per Month as provided in the ESA shall be<sup>15</sup>:

$$CEF = FC + VC$$

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

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

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

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<sup>15</sup> ESA, Schedule III, Item 2, as amended by the Clause 2 of the Supplement Agreement

BC = Billing Capacity in kW or 6,000 kW

INS =  $INS_y - INS_1$

Where:

$INS_y$  = Actual Insurance Cost for the Two Barges for the Current Year

$INS_1$  = PhP43,035,782.00 for the Two Barges, Representing Insurance Cost Included in the FOM

$IF_v$  = 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

$ED_m$  = 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.



9.3 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<sup>16</sup>:

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

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 DORECO to the extent of the reduction required under Section 45 of the EPIRA, provided that, the reduction in the Billing Capacity of DORECO shall not exceed its pro rata share in the total Billing Capacity of TMI in relation with other offtakers of TMI<sup>17</sup>;
11. **Contract Energy.** Under the ESA, TMI shall make available, on a monthly basis, the capacity of 6 MW, to be delivered in accordance with the Schedule of Contract Energy under the ESA;
12. **Additional Energy.** TMI may, at its option, make available to DORECO 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 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, DORECO shall pay the Load Curtailment Adjustment in lieu of the Capacity Fee

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<sup>16</sup> Supplement Agreement, Section 2.3

<sup>17</sup> Supplement Agreement, Section 2.9

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 (2<sup>nd</sup>) Contract Year and every Contract Year thereafter, DORECO 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 DORECO or, in case of disagreement, in an amount equal to the highest Invoice issued by TMI to DORECO in the twelve (12) months immediately preceding such Renewal Term<sup>18</sup>;
16. **Application Costs.** The Supplemental Agreement provides that DORECO 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 joint application;
17. The extension of the Contract Term under the Amendment to the ESA and Supplement Agreement and the implementation thereof will redound to the benefit of DORECO's consumers which may otherwise be forced to bear the cost of 6 MW purchased from the Interim Mindanao Electricity Market (IMEM). In undertaking the extension of the ESA under the Amendment to the ESA, DORECO 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);

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<sup>18</sup> ESA, 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" of the joint application);
  - j. Fuel Procurement Process of TMI (Annex "Q" of the joint application);
  - k. Transmission Service Agreement (TSA) executed between DORECO and NGCP (Annex "R" of the joint application);

- l. Certification from PSALM of the insufficiency of its supply to meet DORECO's requirements (Annex "S" of the joint application); and
  - m. Procurement Process of DORECO (Annex "T" of the joint application);
19. In further compliance with the requirements of the Commission, they considered several scenarios. The Rate Impact Simulation based on the said scenarios 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	6.8690	6.3811	(0.4878)
2016	7.1888	6.6233	(0.5655)
2017	5.7962	5.5146	(0.2816)

\*The calculation assumes that the deficit will be augmented through modular gensets.

### 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 DORECO which continues to suffer rotating brownouts in the grid. A bilateral agreement, such as the Supplement Agreement, will significantly aid DORECO 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

DORECO's portfolio renders imperative a bilateral supply contract to answer for the equivalent capacity, lest DORECO 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, DORECO 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, DORECO 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 DORECO 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, DORECO 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 September 26, 2014; 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 DORECO.

The Commission has set the said joint application for jurisdictional hearing, pre-trial conference, expository presentation and evidentiary hearing on **December 9, 2014 (Tuesday) at nine o' clock in the morning (9:00 A.M.) at DORECO's Principal Office, National Highway, Madang, Mati, Province of Davao Oriental.**


All persons who have an interest in the subject matter of the proceeding may become a party by filing, at least five (5) days prior to the initial hearing and subject to the requirements in the ERC's Rules of Practice and Procedure, a verified petition with the Commission giving the docket number and title of the proceeding and stating: (1) the petitioner's name and address; (2) the nature of petitioner's interest in the subject matter of the proceeding, and the way and

manner in which such interest is affected by the issues involved in the proceeding; and (3) a statement of the relief desired.

All other persons who may want their views known to the Commission with respect to the subject matter of the proceeding may file their opposition to the joint application or comment thereon at any stage of the proceeding before the applicants conclude the presentation of their evidence. No particular form of opposition or comment is required, but the document, letter or writing should contain the name and address of such person and a concise statement of the opposition or comment and the grounds relied upon.

All such persons who may wish to have a copy of the joint application may request the applicants, prior to the date of the initial hearing, that they be furnished with a copy of the joint application. The applicants are hereby directed to furnish all those making a request with a copy of the joint application and its attachments, subject to reimbursement of reasonable photocopying costs. Likewise, any such person may examine the joint application and other pertinent records filed with the Commission during the usual office hours.

**WITNESS**, the Honorable Chairperson, **ZENAIDA G. CRUZ-DUCUT**, and the Honorable Commissioners, **ALFREDO J. NON**, and **JOSEFINA PATRICIA A. MAGPALE-ASIRIT**, Energy Regulatory Commission, this 3rd day of November, 2014 at Pasig City.

  
**ATTY. NOEL J. SALVANERA**  
Director III, Legal Service