

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



**IN THE MATTER OF THE
APPLICATION FOR APPROVAL
OF THE AMENDMENT AND
SUPPLEMENT TO THE ENERGY
SUPPLY AGREEMENT
BETWEEN SURIGAO DEL SUR I
ELECTRIC COOPERATIVE, INC.
(SURSECO I) AND THERMA
MARINE, INC. (TMI), WITH
MOTION FOR PROVISIONAL
AUTHORITY**

ERC CASE NO. 2014-140 RC

**SURIGAO DEL SUR I ELECTRIC
COOPERATIVE, INC.
(SURSECO I) AND THERMA
MARINE, INC. (TMI),**

Applicants.

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RECORDED
Date: NOV 06 2014
[Signature]

NOTICE OF PUBLIC HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on September 22, 2014, Surigao Del Sur I Electric Cooperative, Inc. (SURSECO I) and Therma Marine, Inc. (TMI) filed a joint application for the approval of their Amendment and Supplement to the Energy Supply Agreement, with motion for provisional authority.

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

1. SURSECO I is a non-stock, non-profit electric cooperative organized and existing under and by virtue of Presidential

Decree No. 269, as amended, otherwise known as the National Electrification Administration Decree, with principal office address at San Fernando, Bislig City, Surigao Del Sur. It holds an exclusive franchise issued by the National Electrification Commission (NEC) to operate an electric light and power distribution service in the City of Bislig and the Municipalities of Barobo, Hinatuan, Lianga, Lingig, San Agustin and Tagbina, all in the Province of Surigao Del Sur (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 SURSECO I 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 November 16, 2010, as amended by the Amendment to the Energy Supply Agreement dated April 4, 2013 (Amendment to the ESA) and the Supplement to Energy Supply Agreement dated December 21, 2013 (Supplement Agreement), entered into by and between SURSECO I and TMI;

NATURE OF THE APPLICATION

3. The instant joint application seeks approval by the Commission of the ESA, as amended by the Amendment to the ESA and the Supplement Agreement, entered into by and between SURSECO I and TMI, pursuant to Rule 20 (B) of the Commission's Rules of Practice and Procedure (ERC Rules), and other pertinent rules and regulations as directed by the Commission in its Order dated September 30, 2013 in ERC Case No. 2011-064 RC, entitled "In the Matter of the Application for the Approval of the Energy Supply Agreement Between Surigao Del Sur I Electric Cooperative, Inc. (SURSECO I) and Therma Marine, Inc. (TMI), with SURSECO I as applicant and TMI as Intervenor.

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

STATEMENT OF FACTS

4. On November 16, 2010, SURSECO I entered into an ESA with TMI for the supply of 3 MW¹ for a term of one (1) year from Effective Date, or from September 26, 2011 to September 25, 2012 (Original Term). The ESA was approved by the Commission in a Decision dated November 19, 2012 in ERC Case No. 2011-064 RC, with the following applicable rates:

Cost Component	Approved Rates	
Capacity Fee (PhP/kW/month) ²	2011	344
	2012	278
	2013	296
Fixed O&M Fee (PhP/kW/month)	239	
Energy Fee (PhP/kWh)	0.14864	

¹ This was temporarily increased to 5 MW from April 10 to June 26, 2012

² 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 29)

Fuel and Lube Oil Rate	Pass thru cost based on fuel consumption rates of 0.2210 liter/kWh or actual, whichever is lower, for Heavy Fuel Oil (HFO) and 0.00313 liter/kWh or actual, whichever is lower, for Lube Oil (LO)
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5. In accordance with the provisions of the ESA, SURSECO I 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. 2011-064 RC;
6. On April 4, 2013, SURSECO I and TMI executed an Amendment to the ESA extending the term of the ESA for an additional period of three (3) years from the expiration of the Renewal Term (Additional Term).
 - 6.1 On May 3, 2013, SURSECO I and TMI filed a "Joint Manifestation with Motion" (Joint Manifestation) in ERC Case No. 2011-064 RC seeking approval to implement the Amendment to the ESA. However, in an Order dated September 30, 2013, the Commission denied the Joint Manifestation stating that the Amendment to the ESA needs to be the subject of another application; and
 - 6.2 In a "Joint Manifestation (On the Order dated September 30, 2013)" dated October 16, 2013, SURSECO I and TMI expressed their willingness to file the application for the approval of the Amendment to the ESA;
7. On December 21, 2013, SURSECO I and TMI executed the 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 ESA AS AMENDED BY THE
 AMENDMENT TO THE ESA AND SUPPLEMENT AGREEMENT**

8. **Additional Term.** The Amendment to the ESA provides that the ESA shall remain in force for an additional period of three (3) years from the expiration of the Renewal Term. The Amendment to the ESA further provides that it may be terminated effective on the date of commercial operation of the coal-fired power plant of Therma South, Inc. (TSI) or, if commercial operation of the said power plant 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 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 terms and conditions of the Agreement as may be agreed upon by the Parties;

8. **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
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

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 RC³, 2012-060 RC⁴, 2012-058 RC⁵, 2012-045 RC⁶, 2012-063

³ 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

⁴ 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

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RC⁷, 2012-086 RC⁸, 2012-039 RC⁹, 2011-126 RC¹⁰,
2011-114 RC¹¹ and 2011-087 RC¹²;

8.1 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 follows¹³:

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

$$INS = INS_y - INS_1$$

Where:

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

⁵ 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

⁶ 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

⁷ 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

⁸ 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

⁹ 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

¹⁰ 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

¹¹ 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

¹² 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

¹³ Supplement Agreement, Clause 2

$INS_1 =$ PhP43,035,782.00 for the two barges, representing insurance cost included in the FOM

8.2 Hence, the formula for Contract Energy Fee per Month as provided in the ESA shall be¹⁴:

$$CEF = FC + VC$$

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

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

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_f = Inflation Factor for Fixed O&M Fee

BC = Billing Capacity in kW or 3,000 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,

¹⁴ ESA, Schedule III, Item 2, as amended by the Clause 2 of the Supplement Agreement

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.

8.3 Finally, the base indices in Item 3 (Inflation Factor) of Schedule III (Contract Energy Fee) of the ESA shall be deemed to read as follows¹⁵:

$PCPI_b$ = Philippine CPI of 126.4 as of June 2011

$UCPI_b$ = US CPI of 225.722 as of June 2011

¹⁵ Supplement Agreement, Clause 3

ECPI_b = EURO CPI of 113.10 as of June 2011

JCPI_b = Japan CPI of 99.9 as of June 2011

9. **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 SURSECO I to the extent of the reduction required under Section 45 of the EPIRA, provided that, the reduction in the Billing Capacity of SURSECO I shall not exceed its pro rata share in the total Billing Capacity of TMI in relation with other offtakers of TMI¹⁶;
10. **Contract Energy.** Under the ESA, TMI shall make available, on a monthly basis, the capacity of 3 MW, to be delivered in accordance with the Schedule of Contract Energy under the ESA;
11. **Additional Energy.** TMI may, at its option, make available to SURSECO I 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;
12. **Load Curtailment Adjustment.** For Contract Energy subject of load curtailment, SURSECO I 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 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;

¹⁶ Supplement Agreement, Clause 9

14. **Security Deposit.** Before the commencement of the second (2nd) Contract Year and every Contract Year thereafter, SURSECO I 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 SURSECO I or, in case of disagreement, in an amount equal to the highest Invoice issued by TMI to SURSECO I in the twelve (12) months immediately preceding such Renewal Term¹⁷;
15. **Application Costs.** The Supplemental Agreement provides that SURSECO I 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;
16. 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 SURSECO I's consumers which may otherwise be forced to bear the cost of 3 MW purchased from the Interim Mindanao Electricity Market (IMEM). In undertaking the extension of the ESA under the Amendment to the ESA, SURSECO I 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);

SUBMISSIONS

17. 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

¹⁷ ESA, Clause 6.1.2, as amended by Clause 4 of the Supplemental Agreement.

- 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. Fuel Procurement Process of TMI (Annex "P" of the joint application);
 - j. Soft copy of the Financial Model (Annex "Q" of the joint application);
 - k. Transmission Service Agreement (TSA) executed between SURSECO I and NGCP (Annex "R" of the joint application);
 - l. Certification from PSALM of the insufficiency of its supply to meet SURSECO I's requirements (Annex "S" of the joint application);
 - m. SURSECO I's Distribution Development Plan (DDP) (Annex "T" of the joint application); and
 - n. Procurement Process of SURSECO I (Annex "U" of the joint application);
18. 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 "V" and may be summarized as follows:

Year	Scenario Without TMI (PhP/kWh)	Scenario With TMI (PhP/kWh)	Increase (Decrease) (PhP/kWh)
2014	12.684	4.2765	(8.4075)
2015	10.936	4.0333	(6.9027)
2016	10.936	4.0327	(6.9033)

Notes:

Under the Scenario Without TMI, it was assumed that SURSECO I may source the deficiency in supply from the IMEM.

MOTIONS FOR PROVISIONAL AUTHORITY AND NON-DISCLOSURE OF CONFIDENTIAL INFORMATION

19. They move for the issuance of a provisional approval of the ESA, as amended by the Amendment to the ESA and 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 SURSECO I which continues to suffer rotating brownouts in the grid. A bilateral agreement, such as the Amendment to the ESA and Supplement Agreement, will significantly aid SURSECO I 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 SURSECO I's portfolio renders imperative a bilateral supply contract to answer for the equivalent capacity, lest SURSECO I 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, SURSECO I 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, SURSECO I will be incapable of satisfying the electricity requirements of its end-users who must be forced to suffer brownouts resulting from its curtailment;
20. Considering the foregoing, they request the Commission for the provisional approval of the ESA, as amended by the Amendment to the ESA and the Supplement Agreement to enable SURSECO I 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 "W";
21. 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;
22. 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, SURSECO I 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;
23. 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

24. 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 Amendment to the ESA and the Supplement Agreement, effective September 26, 2013; and
 - c. After trial on the merits, approve with finality the ESA, as amended by the Amendment to the ESA and Supplement Agreement, including the rates, Security Deposit and Application Costs which shall be for the account of SURSECO I.

The Commission has set the said joint application for jurisdictional hearing, pre-trial conference, expository presentation and evidentiary hearing on **December 4, 2014 (Thursday) at nine o' clock in the morning (9:00 A.M.) at SURSECO I's Principal Office, San Fernando, Bislig City, Surigao Del Sur.**


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