

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 ZAMBOANGA DEL
NORTE ELECTRIC
COOPERATIVE, INC. (ZANECO)
AND THERMA MARINE, INC.
(TMI), WITH MOTION FOR
PROVISIONAL AUTHORITY
AND MOTION FOR
CONFIDENTIAL TREATMENT
OF INFORMATION

ERC CASE NO. 2014-192 RC

ZAMBOANGA DEL NORTE
ELECTRIC COOPERATIVE, INC.
(ZANECO) AND THERMA
MARINE, INC. (TMI),

Applicants.

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BOOKED
Date: FEB. 5, 2015
By: *M*

NOTICE OF PUBLIC HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on December 23, 2014, Zamboanga Del Norte Electric Cooperative, Inc. (ZANECO) 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, ZANECO and TMI alleged, among others, the following:

1. ZANECO 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 General Luna St., Central Barangay, Dipolog City, Zamboanga del Norte. It holds an exclusive franchise issued by the National Electrification Administration (NEA) to operate an electric light and power distribution service in the City of Dapitan, City of Dipolog and the following municipalities of the province of Zamboanga del Norte, namely: Kalawit, Katipunan, Labason, La Libertad, Liloy, Manukan, Mutia, Pres. M. A. Roxas, Piñan, Polanco, Rizal, Salug, Sergio Osmeña, Siayan, Sibutad, Sindangan, Godod, Tampilisan, L. Postigo, J. Dalman, and Gutalac (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 ZANECO 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 9 June 2011 (ESA), as amended by the Supplement to the Energy Supply Agreement dated 28 November 2014 (Supplement Agreement), entered into by and between ZANECO and TMI.

NATURE OF THE APPLICATION

3. The instant joint application seeks approval by the Commission of the ESA, as amended by the Supplement Agreement, entered into by and between ZANECO 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. ZANECO currently sources the bulk of its electricity requirements from the Power Sector Assets and Liabilities Management Corporation (PSALM) and the remainder from TMI and Mapalad Power Corporation (MPC).
 - 4.1 On June 9, 2011, ZANECO entered into an ESA with TMI for the supply of 5MW for a term of three (3) years from Effective Date, (Original Term);
 - 4.2 On April 16, 2012, they filed with the Commission a Joint Manifestation notifying the same of their agreement to supplement and modify the ESA by increasing the Billing Capacity to 9,000 kW;
 - 4.3 The Commission took note of the said Joint Manifestation in an Order dated 11 May 2012;
 - 4.4 The ESA was approved by the Commission in a Decision dated October 1, 2012 in ERC Case No. 2011-087 RC as amended through an Order dated January 7, 2013¹, with the following applicable rates:

¹ The Order dated 7 January 2013 revised the Decision dated 1 October 2012 with regard to the approved rates for Capacity Fee for 2011, 2012, and 2013.

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

4.5 Details of ZANECO's other supply contracts are as follows:

SUPPLIER	CONTRACT CAPACITY (MW)	TERM	INDICATIVE/ COMMENCEMENT DATE	ERC APPROVAL
PSALM	10.97 (Average)	2014-2016		
Mapalad Power Corp.	5	2014-2016	January 2014	Order dated 23 June 2014, ERC Case No. 2014-043RC
Therma South, Inc.	5	2015-2039	January 2015	Decision dated 2 December 2013, ERC Case No. 2013-098RC
GN Power	25	2017-2036	Last quarter of 2017	Order dated 28 April 2014, ERC Case No. 2014-011RC
Sarangani Energy Corp.	5	2017-2041	August 2016	Joint Application for the Approval of the Power Supply Contract filed with ERC on 24 November 2014

5. It is expected that the energy requirements of ZANECO's customers will significantly increase in the next few years as demonstrated by ZANECO's Distribution Development Plan ("DDP"), which is hereto attached as Annex "G";
6. The expiration of the Contract for the Supply of Electric Energy with PSALM in 2016, as well as the projected increase in the energy requirements of ZANECO's

customers will result in a shortage of the energy available to it and its customers;

7. On November 28, 2014, ZANECO and TMI executed the Supplement Agreement extending the term of the ESA for an additional period of three (3) years from the expiration of the term (Additional Term) and stipulating the rights and obligations of the Parties during the Additional Term, which shall be under the same terms and conditions of the ESA, subject to the following:

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

8. **Additional Term.** The Supplement to the ESA provides that the ESA shall remain in force for an additional period of three (3) years from the expiration of the Original Term, commencing on January 2, 2015 and shall terminate on January 2, 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 ZANECO and TSI covering the supply of power from the coal-fired power plant of TSI located in Toril Davao; provided that if Operations Effective Date has not yet occurred by the end of the Additional Term, the ESA shall be automatically renewed on a year-to-year basis, unless earlier terminated in accordance with the provisions of the ESA. Upon expiration of the Additional Term, and any extensions thereof, the Parties may agree to further extend the term of the Agreement under the same terms and conditions of the ESA, as amended by the Supplement Agreement;

9. **Electricity Fees.** Beginning on the expiration of the Original Term, the Electricity Fees shall be computed based on the following values:²

		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

- 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:³

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

$$INS = INS_y - INS_1$$

Where:

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

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

² The CF and FOM for 2013 to 2015 and the EF for 2013 are based on the Decision of the Honorable Commission dated 26 November 2012 (see par. 6.1 on date of decision and the Order amending such decision) in ERC Case No. 2011-087 RC, while the HFCR and LOCR for 2013 to 2015 are based on the Decisions of even date in ERC Case Nos. 2012-057 RC, 2012-060 RC, 2012-058 RC, 2012-045 RC, 2012-063 RC, 2012-086 RC, 2012-039 RC, 2011-126 RC, 2011-114 RC, and 2011-087 RC, approving other ESAs executed by TMI.

³ Supplement Agreement, Section 2.1

9.2 Hence, the formula for Contract Energy Fee per Month as provided in the ESA shall be:⁴

$$CEF = FC + VC$$

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

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

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

Where:

- CEF = Contract Energy Fee in Php
- EF = Energy Fee (before adding the applicable VAT) for the Billing Period in Php/kWh
- FC = Fixed charge per month in Pesos
- VC = Variable charge per month in Pesos
- 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 9,000kW
- INS = INS_y - INS₁

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

⁴ ESA, Schedule III, Item 2, as amended by the Section 2 of the Supplement Agreement.

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

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

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

9.3 Finally, the base indices in Item 3 (Inflation Factor) of Schedule III (Contract Energy Fee) of the ESA shall be deemed amended to read as follows:⁵

$PCPI_b$ = 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 ZANECO to the extent of the reduction required under Section 45 of the EPIRA, provided that, the reduction in the Billing Capacity of ZANECO shall not exceed its pro rata share in the total Billing Capacity of TMI in relation with other offtakers of TMI⁶;

⁵Supplement Agreement, Section 2.9.

⁶ Supplement Agreement, Clause 2.9

11. **Contract Energy.** Under the ESA, TMI shall make available, on a monthly basis, the capacity of 9MW, 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 ZANECO such energy in excess of the contracted energy for which ZANECO 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, ZANECO shall pay the Load Curtailment Adjustment in lieu of the Capacity Fee component of the Contract Energy Fee. The same formula for the Load Curtailment Adjustment Rate under the ESA shall continue to be in effect;
14. **Replacement Energy.** TMI has the option but not the obligation to source replacement or alternative supply from its own back-up facility and/or any third party to supply all or part of the Contract Energy;
15. **Security Deposit.** Before the commencement of the second (2nd) Contract Year and each Contract Year thereafter, ZANECO 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 ZANECO or, in case of disagreement, in an amount equal to the highest Invoice issued by TMI to ZANECO in the twelve (12) months immediately preceding the Commencement of such Contract Year;⁷
16. **Application Costs.** The Supplement Agreement provides that ZANECO shall bear the costs of all filing fees, costs of publication, legal fees and similar costs

⁷ESA, Clause 6.1.2, as amended by Section 2.4 of the Supplemental Agreement.

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 ZANECO's consumers which may otherwise be forced to bear the cost of 9MW 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, ZANECO 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

18. In support of the instant application and in compliance with Rule 20 (B) of the ERC Rules of Practice and Procedure, it submits the following additional documents:
 - a. Board of Investments (BOI) Certificate of Registration of TMI (Annex "H" of the joint application);
 - b. Environmental Compliance Certificate (ECC) issued by the Department of Environment and Natural Resources (DENR) to TMI (Annex "I" of the joint application);
 - c. Certification dated March 18, 2014 issued by the National Grid Corporation of the Philippines (NGCP) (Annex "J" of the joint application);
 - d. Certificate of Compliance (COC) issued by the Energy Regulatory Commission (ERC) to TMI (Annex "K" of the joint application);

- e. Relevant Technical and Economic Characteristics of TMI's Power Barges (Annex "L" of the joint application);
 - f. Sources of Funds/Financial Plans (Annex "M" of the joint application);
 - g. Purchased Power Rate (Annex "N" of the joint application);
 - h. Cash Flow (Annex "O" of the joint application);
 - i. Financial Model (Annex "P")
 - j. Fuel Procurement Process of TMI (Annex "Q" of the joint application);
 - k. Transmission Service Agreement (TSA) executed between ZANECO and NGCP (Annex "R" of the joint application);
 - l. Certification from PSALM of the insufficiency of its supply to meet ZANECO's requirements (Annex "S" of the joint application); and
 - m. Procurement Process of ZANECO (Annex "T" of the joint application);
19. In further compliance with the requirements of the Commission, they considered several scenarios and derived a Rate Impact Simulation based on the said scenarios, which is attached to the joint application as Annex "U" and may be summarized as follows:

Year	Scenario without TMI* PhP/kWh	Scenario with TMI** PhP/kWh	Increase/ (Decrease) PhP/kWh
2015	5.79	5.22	(0.57)
2016	8.36	6.99	(1.37)
2017	10.34	8.61	(1.73)

**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 ZANECO which continues to suffer rotating brownouts in the grid. A bilateral agreement, such as the Supplement Agreement, will significantly aid ZANECO 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 ZANECO's portfolio renders imperative a bilateral supply contract to answer for the equivalent capacity, lest ZANECO 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, ZANECO 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, ZANECO 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 ZANECO 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, ZANECO and TMI move that Annexes "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 "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 "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 January 2, 2015; and

- c. After trial on the merits, approve with finality the ESA, as amended by the Supplement Agreement, including the rates, Security Deposit and Application Costs which shall be for the account of ZANECO.

The Commission has set the said application for jurisdictional hearing, pre-trial conference, expository presentation and evidentiary hearing on **March 13, 2015 (Friday) at nine o' clock in the morning (9:00 A.M.) at ZANECO's Principal Office, General Luna St., Central Barangay, Dipolog City, Zamboanga del Norte.**

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 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 application may request the applicants, prior to the date of the initial hearing, that they be furnished with a copy of the application. The applicants are hereby directed to furnish all those making a request with copies of the application and its attachments, subject to reimbursement of reasonable photocopying costs. Likewise, any such person may examine the 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**, **GLORIA VICTORIA C. YAP-TARUC**, and **JOSEFINA PATRICIA A. MAGPALE-ASIRIT**, Energy Regulatory Commission, this 3rd day of February, 2015 at Pasig City.


ATTY. FRANCIS SATURNINO C. JUAN
Executive Director III


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