

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 MISAMIS
OCCIDENTAL I ELECTRIC
COOPERATIVE, INC. (MOELCI I)
AND THERMA MARINE, INC.
(TMI), WITH MOTION FOR
PROVISIONAL AUTHORITY
AND MOTION FOR
CONFIDENTIAL TREATMENT
OF INFORMATION

ERC CASE NO. 2015-092 RC

MISAMIS OCCIDENTAL I
ELECTRIC COOPERATIVE, INC.
(MOELCI I) AND THERMA
MARINE, INC. (TMI),

Applicants.

X-----X

DOCKETED

Date: JUN 29 2015

NOTICE OF PUBLIC HEARING

TO ALL INTERESTED PARTIES

Notice is hereby given that on May 6, 2015, Misamis Occidental I Electric Cooperative, Inc. (MOELCI I) 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, MOELCI I and TMI alleged, among others, the following:

1. MOELCI 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 Magcamiguing, Calamba, Misamis Occidental. It was granted a franchise by the National Electrification Commission to operate an electric light and power distribution service in the province of Misamis Occidental, particularly in the City of Oroquieta and the Municipalities of Aloran, Lopez Jaena, Plaridel, Calamba, Baliangao, Sapang Dalaga and Concepcion (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 MOELCI I as co-applicant in this case in order to assist it in securing approval of the terms and conditions of the Energy Supply Agreement dated October 7, 2011 (ESA), as supplemented by the Supplement to the Energy Supply Agreement dated March 27, 2015 (Supplement Agreement), entered into by and between MOELCI I 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 MOELCI I 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. MOELCI I currently sources its electricity requirements from the Power Sector Assets and Liabilities Management Corporation (PSALM), King Energy Generation, Inc. (KEGI) and the remainder from TMI.

- 4.1 On October 7, 2011, MOELCI I entered into an ESA with TMI for the supply of 2MW for a term of three (3) years from Effective Date (Original Term). The ESA was approved by the Commission in a Decision dated 26 November 2012 in ERC Case No. 2012-045 RC, with the following applicable rates:

Cost Component		Approved Rates	
Capacity Fee (PhP/kW/month)	2012	278	
	2013	296	
	2014	323	
	2015	305	
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 0.2358 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)		

5. It is expected that the energy requirements of MOELCI I's customers will significantly increase in the next few years as demonstrated by MOELCI I'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 on December 25, 2016, as well as the projected increase in the energy requirements of MOELCI I's customers will result in a shortage of the energy available to it and its customers;
7. On March 17, 2015, MOELCI I 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 SUPPLEMENTED 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 May 8, 2015, and shall terminate on May 8, 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 Agreement further provides that it may be terminated effective on the Operations Effective Date defined in the Energy Supply Agreement between MOELCI I and Therma South, Inc. (TSI), covering the supply of power from the coal-fired power plant of TSI or, if Operations Effective Date of the power plant of TSI has not yet occurred by the end of the Additional Term, the ESA shall be automatically renewed on a year-to-year basis, unless earlier terminated in accordance with the provisions of the ESA. Upon expiration of the Additional Term, and any extensions thereof, the Parties may agree to further extend the term of the Agreement under the same terms and conditions of the ESA, as supplemented by the Supplement Agreement;
9. **Electricity Fees.** Beginning on the expiration of the Renewal Term, the Electricity Fees shall be computed based on the following values:

		2015	2016	2017	2018
CF	PhP/kW/mo	305	287	268	250
FOM	PhP/kW/mo	314	314	314	314
EF	PhP/kWh	0.15245	0.15245	0.15245	0.15245
HFCR	L/kWh	0.23580	0.23580	0.23580	0.23580
LOCR	L/kWh	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:¹

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

$$INS = INS_y - INS_1$$

Where:

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

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

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

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

$$CBF = FC + VC$$

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

¹ Supplement Agreement, Section 2.1

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

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

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 2,000kW
- INS = $INS_y - INS_1$

Where:

- INS_y = actual insurance cost for the two barges for the current year
- INS₁ = PHP43,035,782.00 for the two barges, representing insurance cost included in the FOM
- IF_v = Inflation factor for Energy Fee
- TotalBC = Total Billing Capacity for all Energy Supply Agreements entered into by Supplier which have achieved effectivity date and for the duration of such effectivity, as such terms and conditions are defined under the respective Energy Supply Agreements
- FLR = Fuel oil, lube oil and related fuel rate in Php/kWh
- ED_m = The Sum of the hourly volumes of Contract Energy as found in the Contract Energy Schedule (or as revised by the Parties or by MSO/MSO RCC) for the Billing Period primarily associated with calendar month m (for example December 26-January 25 is associated with January) (and adjusted for transmission losses, if any, imputed by the transmission service provider if measured at a meter other than the Generator Metering Point), in kWh

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

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

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:³

PCPI_b = Philippine CPI of 126.4 as of June 2011

UCPI_b = US CPI of 225.722 as of June 2011

ECPI_b = EURO CPI of 113.10 as of June 2011

JCPI_b = Japan CPI of 99.9 as of June 2011

10. **Billing Capacity.** In the event that TMI is required to reduce its installed capacity in order to remain compliant with Section 45 of the EPIRA, TMI shall have the right to reduce the Billing Capacity of MOELCI I to the extent of the reduction required under Section 45 of the EPIRA, provided that, the reduction in the Billing Capacity of MOELCI I shall not exceed its pro rata share in the total Billing Capacity of TMI in relation with other off takers of TMI⁴;
11. **Contract Energy.** Under the ESA, TMI shall make available, on a monthly basis, the capacity of 2MW, 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 MOELCI I such energy in excess of the contracted energy for which MOELCI I shall be liable to pay the Additional Energy Fee consisting of variable and

³Supplement Agreement, Section 2.3.

⁴ Supplement Agreement, Clause 2.9

- 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, MOELCI 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;
 14. **Replacement Energy.** TMI has the option but not the obligation to source replacement or alternative supply from its own back-up facility and/or any third party to supply all or part of the Contract Energy;
 15. **Security Deposit.** No later than thirty (30) days before the commencement of the second (2nd) Contract Year and every year thereafter, MOELCI 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 (1) month Invoice projected for the next twelve (12) months, as agreed by TMI and MOELCI I or, in case of disagreement, in an amount equal to the highest Invoice issued by TMI to MOELCI I in the twelve (12) months immediately preceding the commencement of such Contract Year;⁵
 16. **Application Costs.** The Supplement Agreement provides that MOELCI 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 application;
 17. The extension of the Contract Term under the Supplement Agreement and the implementation thereof will redound to the benefit of MOELCI I's consumers which may otherwise be forced to bear the cost of 2 MW purchased from the Interim Mindanao Electricity Market (IMEM) or to suffer a corresponding amount of brownouts. In undertaking the extension of the ESA

⁵ESA, Clause 6.1.2, as amended by Section 2.4 of the Supplemental Agreement.

under the Supplement to the ESA, MOELCI 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

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 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) between MOELCI I and NGCP (Annex "R" of the joint application);
 - l. Certification from the PSALM of the insufficiency of its supply to meet MOELCI I's requirements (Annex "S" of the joint application); and
 - m. Procurement Process of MOELCI I (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	6.55	5.76	(0.79)
2016	5.5271	5.37	(0.15)
2017	5.48	5.31	(0.17)

*assumes that there will be deficiency in supply and that MOELCI I will resort to power curtailment

MOTIONS FOR PROVISIONAL AUTHORITY AND CONFIDENTIAL TREATMENT OF INFORMATION

20. They move for the issuance of a provisional approval of the ESA, as supplemented by 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 MOELCI I which continues to suffer rotating brownouts in the grid. A bilateral agreement, such as the Supplement Agreement, will significantly aid MOELCI 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 MOELCI I's portfolio renders imperative a bilateral supply contract to answer for the equivalent capacity, lest MOELCI 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, MOELCI 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, MOELCI I will be incapable of satisfying the electricity requirements of its end-users who must be forced to suffer brownouts resulting from its curtailment;

21. Considering the foregoing, they request the Commission for the provisional approval of the ESA, as supplemented by the Supplement Agreement to enable MOELCI 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 "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, MOELCI I 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 supplemented by the Supplement Agreement, effective May 8, 2015; and
 - c. After trial on the merits, approve with finality the ESA, as supplemented by the Supplement Agreement, including the rates, Security Deposit and Application Costs which shall be for the account of MOELCI I.

The Commission has set the said application for jurisdictional hearing, pre-trial conference, expository presentation and evidentiary hearing on **July 29, 2015 (Wednesday) at nine o' clock in the morning (9:00 A.M.) at MOELCI I's Principal Office, Magcamiguing, Calamba, Misamis Occidental.**

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**, **JOSEFINA PATRICIA A. MAGPALE-ASIRIT**, and **GERONIMO D. STA. ANA**, Energy Regulatory Commission, this 22nd day of June, 2015 at Pasig City.


ATTY. FRANCIS SATURNINO C. JUAN
Executive Director III


LBB/NJS