

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City

IN THE MATTER OF THE
APPLICATION FOR THE
APPROVAL OF THE POWER
SUPPLY AGREEMENT
BETWEEN DAVAO LIGHT
AND POWER COMPANY,
INC. AND THERMA
MARINE, INC., WITH
MOTION FOR
CONFIDENTIAL
TREATMENT OF
INFORMATION AND
PRAYER FOR
PROVISIONAL AUTHORITY
OR INTERIM RELIEF

ERC CASE NO. 2023-026 RC

DAVAO LIGHT AND POWER
COMPANY, INC. (DAVAO
LIGHT) AND THERMA
MARINE, INC. (TMI),

Applicants.

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Promulgated:

April 26, 2023

ORDER

On 30 March 2023, Davao Light and Power Company, Inc. (“Davao Light”) And Therma Marine, Inc. (“TMI”), filed a *Joint Application* dated 08 February 2023, seeking the Commission’s approval of the power supply agreement between Davao Light and Power Company, Inc. and Therma Marine, Inc., with motion for confidential treatment of information and prayer for provisional authority or interim relief.

The pertinent allegations of the *Joint Application* are hereunder quoted as follows:

PARTIES

1. Davao Light is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the

Philippines, with office address at C. Bangoy, Sr. St., Davao City. It is a grantee of a legislative franchise under Republic Act No. 8960¹ to construct, operate, and maintain an electric light and power system in Davao City and Panabo City, and the Municipalities of Carmen, Dujali, and Santo Tomas in the Province of Davao del Norte (the “Franchise Area”).

2. TMI is a generation company duly organized and existing by and under the laws of the Republic of the Philippines, with office address at Barangay Nasipit, Agusan del Norte. It owns and operates the 100MW power barge located in Brgy. San Roque, Maco, Davao de Oro and the 100MW power barge located in Brgy. Sta. Ana, Nasipit, Agusan Del Norte that were acquired from the Power Sector Assets and Liabilities Management Corporation (PSALM) upon their privatization, in accordance with Republic Act No. 9136, also known as the Electric Power Industry Reform Act of 2001 (EPIRA).
3. Applicants may be served with notices, orders, and other processes of this Honorable Commission through their respective counsel at the addresses indicated below.

STATEMENT OF FACTS

4. Davao Light is in need of a qualified supplier that can supply 50 MW of power for a period of three (3) years. Consequently, Davao Light conducted a Competitive Selection Process (“CSP”), in compliance with the requirements of the Department of Energy (“DOE”) Department Circular No. DC2018-02-0003².
5. On 25 April 2022, the Third Party Bids and Awards Committee (“TPBAC”) of Davao Light evaluated the bids submitted in the first round of CSP. Out of the five (5) qualified generation companies, namely, TMI, Mapalad Power Corporation (MPC), Southern Philippines Power Corporation (SPPC), GNPower Kauswagan Ltd. Co. (GNPK), and FDC Misamis Power Corporation, only TMI and MPC proceeded to submit their bids before the deadline on 9:00 a.m. of 22 April 2022.
6. Upon opening the first set of documents, the Secretariat cited that MPC failed to submit its 2019 Audited Financial Statement, which was explicitly required in the Terms of Reference (“TOR”). Hence, MPC was disqualified. Considering that TMI was the only remaining qualified bidder, TPBAC declared a failure of bidding for the first round of CSP, and commenced the second round of CSP.
7. On 22 August 2022, the TPBAC of Davao Light evaluated the bids submitted in the second round of the CSP. Out of the two (2) qualified generation companies, namely, TMI and MPC, only TMI timely submitted its bid during the second round of

¹ Extended by operation of Republic Act No. 11515.

² Adopting and Prescribing the Policy for the Competitive Selection Process in the Procurement by the Distribution Utilities of Power Supply Agreement for the Captive Market otherwise known as “CSP Rules”.

CSP. Hence, TPBAC declared a failure of bidding for the second round of CSP. Thereafter, Davao Light proceeded to directly negotiate with the sole bidder, TMI.

8. Accordingly, Davao Light and TMI executed a Power Supply Agreement (PSA) for a period of three (3) years. Hence, this instant *Joint Application* for the approval of the PSA between Davao Light and TMI.

SALIENT TERMS OF THE PSA

9. The PSA between Davao Light and TMI, a copy of which is attached as ANNEX "A", contains the following salient features:

- 9.1 **Contract Period.** From the date of this Agreement until three (3) years after the Commencement Date, unless otherwise extended or earlier terminated in accordance with the provisions of this Agreement.

"Commencement Date" means the date on which TMI first makes the Contract Capacity available and Delivers Associated Energy to Davao Light in accordance with this Agreement.

- 9.2 **Contracted Capacity and Associated Energy.**

Contracted Capacity: 50,000 kW

"Associated Energy" means the energy generated by the Plant and Delivered by TMI to Davao Light at the Delivery Point, or in the event of establishment of the WESM, the BCQ declared by TMI for Davao Light for any Interval.

- 9.3 **Additional Energy.** Davao Light may request for temporary delivery of Additional Energy in respect of a particular Billing Period by delivery of written notice thereof at least thirty (30) Days before the date on which such adjustment is proposed to take effect, which shall be without prejudice to the right of TMI to waive the thirty (30) Day notice period, setting out the reasons therefor and providing all documents necessary to support the request. Any such request shall be subject to approval by TMI in its sole discretion (which approval shall not be unreasonably withheld), which Additional Energy shall be paid for by Davao Light at the Additional Energy Charges specified in Schedule 7.1 (*Rates Schedule*).

9.4 **Payment of Fees.** TMI shall deliver to Davao Light an itemized Billing Statement setting out the Contract Price due on account of the Contract Capacity made available and the Associated Energy (or Replacement Power, as the case may be) Delivered during each Billing Period on or before the fifth (5th) Day of the Payment Month. The hourly energy levels that will be used for purposes of the Billing Statement will be based on the levels of Associated Energy (or Replacement Power, as the case may be) Delivered by the Supplier in accordance with Schedule 7.3 (*Nomination Procedure*).

“Billing Period” means the period commencing at 00:00 hours on the twenty-sixth (26th) Day of each calendar month, and ending at 24:00 hours on the twenty-fifth (25th) Day of the following calendar month.

“Payment Month” means the calendar month immediately following the month on which a Billing Period ends and on which the Contract Price in respect of Associated Energy or Replacement Power Delivered during that Billing Period is due.

9.5 **Penalties.** If Davao Light fails to pay the Contract Price or any other amounts payable by it under this Agreement in full on the due date, it shall pay a penalty of two percent (2%) per month (a fraction of a month to be considered one (1) month) based on the amount due, from the date when such payment is due until the date such amount is received in full by TMI.

9.6 **Taxes, Fees and Costs.** The following amounts shall form part of the price that Davao Light will charge to its customers, including:

(a) cost of Replacement Power (including VAT, if any VAT is payable); and

(b) WESM line rental charges applicable to Replacement Power procured in accordance with Articles 8.3.1 and 8.3.2.

9.7 **Contract Price.** Refers to the price to be paid by Davao Light to TMI for the purchase of Contract Capacity and Associated Energy during a Billing Period as specified in Schedule 7.1 (*Rates Schedule*).

Electricity Fees = A + B + C + D + E

$$\begin{aligned}
 A &= \text{CRF} \times \text{CC} \times \text{Adj} \\
 B &= \text{FOM} \times \text{CC} \times \text{Adj} \\
 \text{FOM} &= \text{FOM base} \times \left(0.25 + \left(0.75 \times \frac{\text{RPCPI}_m}{\text{RPCPI}_0} \right) \right) \\
 C &= \text{VOM} \times \text{TED} \\
 \text{VOM} &= \text{VOM base} \times \left(0.13746 + \left(0.12348 \times \frac{\text{RPCPI}_m}{\text{RPCPI}_0} \right) + \left(0.15426 \times \frac{\text{PUX}_m}{\text{PUX}_0} \times \frac{\text{USCPI}_m}{\text{USCPI}_0} \right) \right) \\
 &\quad + \left(0.22556 \times \frac{\text{PEX}_m}{\text{PEX}_0} \times \frac{\text{ECPI}_m}{\text{ECPI}_0} \right) + \left(0.35924 \times \frac{\text{PYX}_m}{\text{PYX}_0} \times \frac{\text{JPCPI}_m}{\text{JPCPI}_0} \right) \\
 D &= \text{Fuel} \times \text{TED} \\
 \text{Fuel} &= (\text{HFCR} \times P_{\text{HFO}}) + (\text{LOCR} \times P_{\text{LO}}) + \text{related actual fuel cost} \\
 E &= \text{all future taxes, fees and imposts (including increases, or adjustments thereon and increases or adjustments on existing taxes, fees, and imposts), such as but not limited to real property taxes, excise taxes, and other future charges imposed on the Power Plant for the generation of electricity, in Philippine Pesos.}
 \end{aligned}$$

Where:

$$\begin{aligned}
 \text{CRF} &= \text{Capital Recovery Fee of Php 110/kW/month} \\
 \text{CC} &= \text{Contracted Capacity in kW for the Billing Period as indicated in the attached Delivery Schedule} \\
 \text{Adj} &= \sum_{j=1}^n \sum_{i=1}^{\text{int}} \frac{\text{ACC}_{ij}}{\text{CC} \times \text{int} \times n} \\
 \text{ACC}_{ij} &= \text{CC less affected capacity due to Force Majeure for interval } i \text{ and day } j \\
 \text{Int} &= \text{the number of Trading intervals per day} \\
 n &= \text{the number of days for the current Billing Period} \\
 \text{FOM base} &= 398.956 \text{ Php/kW-mo} \\
 \text{VOM base} &= 0.16466 \text{ Php/kWh} \\
 \text{TED} &= \text{Total Energy Delivered (in kWh) within CC per Trading Interval and within Maximum Contract Energy per Billing Period during the current Billing Period} \\
 \text{RPCPI}_m &= \text{Philippine CPI of the current billing month} \\
 \text{RPCPI}_0 &= \text{Philippine CPI of 110.60 as of December 2021 [2018 = 100]}
 \end{aligned}$$

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USCPI _m	=	US CPI of the current billing month
USCPI _o	=	US CPI of 278.80 as of December 2021
ECPI _m	=	EURO CPI of the current billing month
ECPI _o	=	EURO CPI of 110.37 as of December 2021
JPCPI _m	=	Japan CPI of the current billing month
JPCPI _o	=	Japan CPI of 100.10 as of December 2021 [2020 = 100]
PUX _m	=	Peso to US Dollar exchange rate at the end of the current billing month
PUX _b	=	Peso to US Dollar exchange rate of 50.12 PHP/USD as of 24 December 2021
PEX _m	=	Peso to EURO exchange rate at the end of the current billing month
PEX _b	=	Peso to EURO exchange rate of 56.79 PHP/EUR as of 24 December 2021
PYX _m	=	Peso to Yen exchange rate at the end of the current billing month
PYX _b	=	Peso to Yen exchange rate of 0.44 PHP/JPY as of 24 December 2021
HFCR	=	Heavy Fuel Oil consumption rate of 0.23580 liters/kWh or actual, whichever is lower
P _{HFO}	=	the monthly actual cost per liter of heavy fuel oil (HFO), calculated based on weighted average procedure using the data of actual monthly invoices of deliveries, inventories and consumption.
LOCR	=	Lube Oil consumption rate of 0.0024 liters/kWh or actual, whichever is lower
P _{LO}	=	the monthly actual cost per liter of lube oil (LO), calculated based on weighted average procedure using the data of actual monthly invoices of deliveries, inventories and consumption.

10. Davao Light simulated a rate impact analysis based on assumed quantities, the indicative rate impact on its overall generation rate with and without supply from TMI under the PSA are as follows:

Davao Light Blended Generation Rate (P/kWh)		
With TMI EPSA	With new TMI PSA	Rate Impact
7.7981	7.7926	-0.0055

11. Likewise, the Applicants provide the following documents for the evaluation of the *Joint Application*:

Annex	Documents/Information
A	Power Supply Agreement between Davao Light and TMI, signed by Davao Light and TMI
B and B-1	Davao Light's Amended Articles of Incorporation and By-Laws
C	Davao Light's Latest General Information Sheet
C-1	Davao Light's Verified Certification showing the list of Board of Directors
C-2	Davao Light's Conglomerate Map
D	TMI's Amended Articles of Incorporation and By-Laws
E	TMI's Verified Certification showing the list of Board of Directors TMI's
E-1	TMI's Conglomerate Map
F	TMI's Certificate of Incorporation issued by the Securities and Exchange Commission (SEC)
G	TMI's General Information Sheet
H and H-1	TMI's Certificates of Registration issued by the BOI, with Number 2010-106 and 2010-107
I	ECC issued by the DENR to TMI's Plants with ECC Transfer of Ownership No. ECC-CO-9206-018-120.
J	Certification issued by the ERC dated 29 July 2022
K and K-1	Certificate of Endorsement from DOE with DOE-EPIMB-ERC No. 2020-06-001 dated 14 August 2020 for TMI's plant in San Roque, Maco, Davao de Oro; and Certificate of Endorsement DOE-EPIMB-ERC No. 2020-06-002 dated 14 August 2020 for TMI's plant in Brgy. Sta. Ana, Nasipit, Agusan del Norte, regarding the consistency of the TMI's Plants with the PDP
L	Davao Light's Demand Side Management Program
M	Davao Light's Distribution Development Plan 2022 and Power Supply Procurement Plan 2022

N	Davao Light's Supply and Demand Scenario, Details of Existing Suppliers, Contract Utilization, Average Daily Load Curves, Forecasted Ave Daily Load Curve and Forecasted Peak Demand Load Curve
O	TMI's Single-line Diagram Connection
P	Davao Light's Performance Assessment of the System (SAIFI and SAIDI)
Q	Davao Light's Contestable Report for the month of November 2022
R	Davao Light's Invitation to Submit Bid Proposals (1 st Round), as published in the 18 February 2022 issue of the Daily Tribune
R-1	Davao Light's Invitation to Submit Bid Proposals (2 nd Round), as published in the 8 July 2022 issue of The Philippine Star
S	Davao Light's Terms of Reference ("TOR") (1 st Round)
S-1	Davao Light's Terms of Reference ("TOR") (2 nd Round)
S-2	DOE Certification DOE-EPIMB-CSP-COP-2022-01-005
T	TPBAC Letter to Davao Light's Board of Directors dated 25 April 2022 declaring the failure of the 1 st Round of bidding
T-1	TPBAC Letter to Davao Light's Board of Directors dated 29 August 2022 declaring the failure of the 2 nd Round of bidding
T-2	DOE Email acknowledgment on Davao Light's Request for Certificate of Completion
T-3	DOE Certification on CSP dated 18 November 2022
T-4	CSP Timeline
U	Davao Light's Secretary Certificate dated 29 July 2022
U-1	Davao Light's Secretary Certificate dated 21 September 2022
U-2	Davao Light's Write-up Board Resolution Requirement
V	Davao Light Letter to TMI (Re: Notice of Failed Bidding (1 st Round) and Request for Direct Negotiation) dated 4 May 2022
V-1	Davao Light Letter to TMI (Re: Notice of Failed Bidding (2 nd Round) and Request for Direct Negotiation) dated 23 August 2022

W	DOE Certification of Posting dated 2 February 2022
X	Davao Light Certification from the COO (Conduct of the CSP)
Y	TMI's Transmission Service Agreement with National Grid Corporation of the Philippines ("NGCP")
Z	TMI's Metering Service Agreement with NGCP
AA	Executive Summary of the Davao Light and TMI PSA
BB*	TMI's Sources of Funds (Confidential) *
CC*	TMI's Generation Rate and Derivation (Confidential) *
DD*	TMI's Cash Flow (Confidential) *
EE*	TMI's Details of the Fuel and Lube Procurement Process (Confidential) *
FF*	TMI's Fuel Agreement (Confidential) *
GG*	TMI's Financial Model (Confidential) *
HH	TMI's Sample Bill
HH-1	Davao Light's Sample Bill
II	Relevant technical and economic characteristics of generation capacity, installed capacity, dependable capacity, and outages
JJ	TMI's 2021 Audited Financial Statements (AFS), Balance Sheet, Income Statement, and Statement of Cash Flows
KK*	TMI's Plant Performance Test Result (Confidential) *
LL	TMI's WESM Registration Approval Form
LL-1	Davao Light's WESM Registration Approval Form
MM	Rate Impact Simulation
NN	Write up on Non-Applicability of the following documents for Davao Light: <ul style="list-style-type: none"> • NPC Supply Contract (TSC) Capacity • CSP-Related Documents • Inconsistencies/Differences from documents presented shall be supported by relevant analysis.
OO	Write up on Non-Applicability of the following documents for TMI: <ul style="list-style-type: none"> • Shareholders' Agreement • Renewable Energy Service Contract/ Operating Contract from the DOE

	<ul style="list-style-type: none"> • Certificate of Registration or Certification of Confirmation of Commerciality by an RE Developer and after due confirmation by the DOE • Water Permit from the National Water Resources Board (NWRB) • Certification from the Bank/Lending Institution Specifying the principal amortization, term and interest during the cooperation period of the loan agreement • Life of Asset vs. Term of Loan • Bank Certification of Long-term Loans • Updated cost of BIR Receipts, Seller's Receipt, Purchase Orders, Deeds of Sale • Other documents needed by ERC in the course of evaluation, particularly on the simulation of units to meet MEOT or additional energy/demand requirements • Potential Cost of Ancillary Services and when the IPP or DU is connected to the main grid • Distribution Wheeling Service (DWS) Agreement
PP	Judicial Affidavit of Annie C. Magno

** Subject of the Motion for Confidential Treatment of Information*

MOTION FOR CONFIDENTIAL TREATMENT OF ANNEXES "BB", "CC", "DD", "EE", "FF", "GG", and "KK"

12. Section 1, Rule 4, of the ERC Revised Rules of Practice and Procedure provides that a party to a proceeding before the Honorable Commission may move for information to be treated as confidential.
13. Pursuant thereto, TMI prays that the information contained in the documents attached as annexes be treated as confidential and that the same be continuously protected from public disclosure, except to the officers and staff of the Honorable Commission, as follows:

Annex	Documents/Information
BB*	TMI's Sources of Funds (Confidential) *
CC*	TMI's Generation Rate and Derivation (Confidential) *
DD*	TMI's Cash Flow (Confidential) *
EE*	TMI's Details of the Fuel and Lube Procurement Process (Confidential) *
FF*	TMI's Fuel Agreement (Confidential)*
GG*	TMI's Financial Model (Confidential) *
KK*	TMI's Plant Performance Test Result (Confidential) *

14. **Annexes “BB”, “CC”, “DD”, “EE”, “FF”, “GG”, and “KK”** contain information and data where TMI has actual and valuable proprietary interest to protect with respect to such information, which fall within the bounds of “trade secrets”, which are entitled to protection under the Constitution, statutes, and rules and regulations of this Honorable Commission.
- 14.1 The foregoing annexes contain non-public, proprietary information and data involving TMI’s source of funds, generation rate calculations, cash flow, financial model, and plant performance. TMI determines its competitive rates through these data, thus, the information contained in these documents are privileged and confidential in nature.
- 14.2 Likewise, the details of TMI’s fuel procurement process contain information pertaining to the core of TMI’s business operations and any disclosure thereof will affect TMI’s competitiveness in the industry. As such, the information contained in these documents are likewise privileged and confidential in nature.
- 14.3 Furthermore, the information and data in the aforementioned annexes are not generally available to the public.
15. In the case of *Air Philippines Corporation vs. Pennswell, Inc.*,³ the Supreme Court defined “trade secrets” and explained that:

“A trade secret is defined as a plan or process, tool, mechanism or compound known only to its owner and those of his employees to whom it is necessary to confide it. The definition also extends to a secret formula or process not patented, but known only to certain individuals using it in compounding some article of trade having a commercial value. A trade secret may consist of any formula, pattern, device, or compilation of information that: (1) is used in one's business; and (2) gives the employer an opportunity to obtain an advantage over competitors who do not possess the information. Generally, a trade secret is a process or device intended for continuous use in the operation of the business, for example, a

³ 564 Phil. 774 (2007), G.R. No. 172835.

machine or formula, but can be a price list or catalogue or specialized customer list. **It is indubitable that trade secrets constitute proprietary rights.**” (*Emphasis supplied.*)

16. Moreover, the Honorable Commission categorically acknowledged in its Decision in ERC Case No. 2015-111 RC⁴ that formulas and pricing structures of a generation company must be accorded confidential protection, to *wit*:

“In the case of PNOC RC, the documents sought to be protected from disclosure contain formula and pricing structures used in arriving at their proposed tariff. In fact, all three (3) documents were used by the Commission in evaluating the reasonableness of the proposed rate. **In the electric power industry w(h)ere prices is[sic] a major consideration in selecting one’s supplier, it is apparent that the assumptions used in arriving at one’s proposed tariff is considered a competitive leverage by one player against its competitors.**

Thus, the Commission resolves to treat the said documents confidential and may not be publicly disclosed.” (*Emphasis supplied.*)

17. Clearly, the Honorable Commission recognizes the importance of treating pricing structures as confidential in order to ensure competitiveness of the generation sector. This information, which falls within the definition of a trade secret as defined by jurisprudence, merits the confidential treatment provided for under Rule 4 of the ERC Rules of Practice and Procedure.
18. TMI hereby submits one (1) copy of its confidential documents in a sealed envelope, with the envelope and each page of the document stamped with the word “Confidential”.⁵

ALLEGATIONS IN SUPPORT OF THE PRAYER FOR PROVISIONAL AUTHORITY OR INTERIM RELIEF

19. Under Rule 14 of the ERC Rules of Practice and Procedure, the Honorable Commission is authorized to issue provisional authority or interim relief prior to a final decision, provided the facts and circumstances alleged warrant such remedy.

⁴ Decision, ERC Case No. 2015-111 RC dated 30 May 2017 entitled “*In the Matter of the Application for Approval of the Power Supply Agreement Between Nueva Ecija II Electric Cooperative, Inc.- Area 2 (NEECO II – Area 2) and PNOC Renewables Corporation (PNOC RC).*”

⁵ Soft copies of the same to be provided to this Honorable Commission are password protected.

20. As shown from the comparative scenarios of the Estimated Rate Impact Analysis/Calculation, the PSA between Davao Light and TMI reflects the most beneficial and cheapest generation charges with a resultant estimated generation rate reduction of Php 0.0055 Php/kWh.
21. The implementation of the PSA with TMI will afford Davao Light's end-users with a reliable supply of electricity at affordable rates.
22. The grant of a provisional authority or interim relief will allow Davao Light to have a steady, continuous, guaranteed and reliable source of electricity, which will immediately redound to the benefit of Davao Light's end-users in terms of providing a more affordable rate. To support the Motion for Provisional Authority, the Affidavit of Davao Light's Ms. Annie Magno is attached as **Annex "PP"** of the Application.

PRAYER

WHEREFORE, premises considered, it is respectfully prayed that the Honorable Commission:

- (i) **ISSUE** an Order treating "BB", "CC", "DD", "EE", "FF", "GG", and "KK" as confidential in perpetuity, directing their non-disclosure to persons other than the officers and staff of the Honorable Commission, perpetually protecting the said information from public disclosure by maintaining the same separate and apart from the records of the case, and ensuring that these are not divulged to unauthorized persons, pursuant to Rule 4 of its Rules of Practice and Procedure;
- (ii) Pending trial on the merits, **GRANT** provisional authority or interim relief allowing the implementation of the PSA including all the rates, fees, charges, and tariff adjustment mechanisms set out therein at the rates provided in the PSA and authorizing Davao Light to charge and collect such rates, fees, charges, and tariff adjustment therein from its customers reckoned from the start of the supply by TMI to Davao Light under the PSA subject of this application; and
- (iii) After hearing on the merits, **ISSUE** a Decision approving the Joint Application and PSA between Davao Light and TMI, including all the rates, fees, charges, and tariff adjustment mechanisms set out therein at the rates provided in the PSA, and authorizing Davao Light to charge and collect such rates, fees, charges, and tariff adjustments therein from its customers reckoned from the start of the supply by TMI to Davao Light under the PSA.

Other relief just and reasonable are likewise prayed for.

Finding the said *Joint Application* to be sufficient in form and with the required fees having been paid, the Commission hereby sets the same for determination of compliance with the jurisdictional requirements, expository presentation, Pre-Trial Conference, and presentation of evidence on the following dates, and online platforms for the conduct thereof, pursuant to Resolution No. 09, Series of 2020⁶ and Resolution No. 01, Series of 2021⁷ (ERC Revised Rules of Practice and Procedure):

Date	Platform	Activity
6 June 2023 (Tuesday) at nine o'clock in the morning (9:00 AM)	Microsoft Teams or Zoom Application	Determination of compliance with jurisdictional requirements and expository presentation
13 June 2023 (Tuesday) at nine o'clock in the morning (9:00 AM)		Pre-Trial Conference and Presentation of Evidence

Accordingly, Davao Light and TMI are hereby directed to host the virtual hearings at **Davao Light's principal office located at C. Bangoy, Sr. St., Davao City**, as the designated venue for the conduct thereof, and ensure that the same is open to the public and the community quarantine guidelines are observed at all times. Moreover, Applicants shall guarantee that, during the conduct of the expository presentation, the participation of the public shall not be impaired.

RELATIVE THERETO, Davao Light and TMI are hereby directed to:

- 1) Cause the publication of the attached *Notice of Virtual Hearing* in two (2) newspapers of nationwide circulation in the Philippines at its own expense, twice (2x) within two (2) successive weeks, the dates of publication not being less than seven (7) days apart, and the date of the last publication to be made not later than ten (10) days before the date of the scheduled initial virtual hearing;
- 2) Furnish with copies of this *Order* and the attached *Notice of Virtual Hearing* the Offices of the Provincial Governors,

⁶ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.

⁷ A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

the City and Municipal Mayors, and their respective Local Government Unit (LGU) legislative bodies within Davao Light's franchise area for the appropriate posting thereof on their respective bulletin boards;

- 3) Inform the consumers within Davao Light's franchise area, by any other means available and appropriate, of the filing of the *Joint Application*, its reasons therefor, and of the scheduled virtual hearings thereon;
- 4) Furnish with copies of this *Order* and the attached *Notice of Virtual Hearing*, 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; and
- 5) Furnish with copies of the *Joint Application* and its attachments, except those subject of a motion for confidential treatment of information, all those making requests therefor, subject to reimbursement of reasonable photocopying costs.⁸

Within five (5) calendar days prior to the date of the initial virtual hearing, Davao Light and TMI must submit to the Commission via electronic mail (e-mail) at doCKET@erc.ph, and copy furnish the Legal Service through legal@erc.ph, the scanned copies of its **written compliance** with the aforementioned jurisdictional requirements, attaching the following methodically arranged and duly marked documents:

- 1) The evidence of publication of the attached *Notice of Virtual Hearing* consisting of affidavits of the Editors or Business Managers of the newspaper where the said *Notice of Virtual Hearing* was published, and the complete issues of the said newspapers;
- 2) The evidence of actual posting of this *Order* and the attached *Notice of Virtual Hearing* consisting of certifications issued to that effect, signed by the aforementioned Governor, Mayors and LGU legislative bodies or their duly authorized representatives, bearing the seals of their offices;

⁸ For the e-mail address of the applicant, please see page 17.

- 3) The evidence of other means employed by Davao Light and TMI to inform the consumers within its franchise area of the filing of the *Joint Application*, its reasons therefor, and of the scheduled hearings thereon;
- 4) The evidence of receipt of copies of this *Order* and the attached *Notice of Virtual Hearing* by the OSG, the COA, and the Committees on Energy of both Houses of Congress;
- 5) The evidence of receipt of copies of the *Joint Application* and its attachments, except those subject of a motion for confidential treatment of information, if any, by all those making requests therefor; and
- 6) Such other proof of compliance with the requirements of the Commission.

Moreover, Davao Light and TMI are hereby required to post on their bulletin boards, the scanned copies of the foregoing jurisdictional requirements, together with the newspaper publication and certifications issued by the concerned Offices of the Governor, Mayors and Local Legislative Bodies, and to submit proof of posting thereof.

Davao Light, TMI, and all interested parties are also required to submit via e-mail at docket@erc.ph, and copy furnish the Legal Service through legal@erc.ph, at least five (5) calendar days before the date of the scheduled virtual hearing and Pre-trial Conference, their respective **Pre-Trial Briefs** containing, among others:

- 1) A summary of admitted facts and proposed stipulation of facts;
- 2) The issues to be tried or resolved;
- 3) The documents or exhibits to be presented, stating the purposes and proposed markings therefor, which should also be attached to the Pre-trial Brief; and
- 4) The number and names of the witnesses, with their written testimonies in a Judicial Affidavit form attached to the Pre-trial Brief.

Davao Light and TMI must ensure that all the documents or exhibits proposed to be presented have already been duly submitted to

the Commission at least five (5) calendar days before the date of the scheduled initial virtual hearing and Pre-Trial Conference, pursuant to the preceding paragraph.

Failure of Davao Light and TMI to comply with the above requirements within the prescribed period shall be a ground for cancellation of the scheduled hearings, and the resetting of which shall be six (6) months from the said date of cancellation.

Davao Light and TMI must also be prepared to make an expository presentation of the instant *Joint Application*, aided by whatever communication medium that they 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, the nature of the *Joint Application*. Relevant information and pertinent details substantiating the reasons and justifications for the Application must be cited in support thereof.

Davao Light and TMI are hereby directed to file a copy of their **Expository Presentation** via e-mail at docket@erc.ph, and copy furnish the Legal Service through legal@erc.ph, at least five (5) calendar days prior to the scheduled virtual hearing. Applicants shall also be required, upon the request of any stakeholder, to provide an advance copy of their expository presentation, at least five (5) calendar days prior to the scheduled virtual hearing.

Any interested stakeholder may submit its comments and/or clarifications at least one (1) calendar day prior to the scheduled virtual hearing, via e-mail at docket@erc.ph, copy furnish the Legal Service through legal@erc.ph. The Commission shall give priority to the stakeholders who have duly submitted their respective comments and/or clarifications, to discuss the same and propound questions during the course of the expository presentation.



Davao Light and TMI are hereby directed to submit, either through personal service, registered mail or ordinary mail/private courier, one (1) set of the original or certified true hard copies of their Jurisdictional Compliance, Expository Presentation, Pre-trial Brief, and Judicial Affidavit/s of witness/es, within five (5) working days from the date that the same were electronically submitted, as reflected in the acknowledgment receipt e-mail sent by the Commission. Similarly, all interested parties who filed their Petition for Intervention or Opposition are required to submit the hard copy thereof within the same period through any of the available modes of service.

Finally, Davao Light and TMI, including its authorized representatives and witnesses, are hereby directed to provide the Commission, through legal.virtualhearings@erc.ph, their respective e-mail addresses upon receipt of this *Order*. The Commission will send the access link/s to the aforementioned hearing platform within five (5) working days prior to the scheduled hearing.

SO ORDERED.

Pasig City, 26 April 2023.

FOR AND BY AUTHORITY
OF THE COMMISSION:


MONALISA C. DIMALANTA
Chairperson and CEO 

  
LS: EDR/BJVG/JGGW/MCCG

ERC
Office of the Chairperson and CEO



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