

Republic of the Philippines  
**ENERGY REGULATORY COMMISSION**  
Pasig City

**IN THE MATTER OF THE  
APPLICATION FOR  
APPROVAL OF THE  
EMERGENCY POWER  
SUPPLY AGREEMENT  
(EPSA) BETWEEN  
PANGASINAN I ELECTRIC  
COOPERATIVE, INC.  
(PANELCO I) AND THERMA  
LUZON, INC. (TLI), WITH  
PRAYER FOR  
CONFIDENTIAL  
TREATMENT OF  
INFORMATION**

**ERC CASE NO. 2023-128 RC**

**PANGASINAN I ELECTRIC  
COOPERATIVE, INC.  
(PANELCO I) AND THERMA  
LUZON, INC. (TLI),**  
*Applicants.*

**Promulgated:**  
January 04, 2024

x-----x

**ORDER**

On 22 November 2023, Pangasinan I Electric Cooperative, Inc. (PANELCO I) and Therma Luzon, Inc. (TLI) filed a *Joint Application* dated 14 November 2023, seeking the Commission's approval of their Emergency Power Supply Agreement (EPSA), with prayer for confidential treatment of information.

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

The Joint Applicants

1. PANELCO I is a stock electric cooperative duly organized and registered under the Cooperative Development Authority ("CDA"), with office address at San Jose, Bani, Pangasinan. It has been granted a franchise or authority to construct, operate and maintain an electric light and power services in the City

of Alaminos and Municipalities of Agno, Anda, Bani, Bolinao, Burgos, Dasol, Infanta, and Mabini, Province of Pangasinan (the “Franchise Area”).

2. TLI is a private corporation duly organized and existing under the laws of the Philippines, with principal office at NAC Tower, 32nd Street, Bonifacio Global City, Taguig City. TLI is the Independent Power Producer Administrator (“IPPA”) for the 700 MW capacity from the Pagbilao Coal Fired Thermal Power Plant (“Power Plant”) pursuant to and in accordance with its IPPA Agreement with the Power Sector Assets and Liabilities Management Corporation (“PSALM”) with the conformity of the National Power Corporation (“NPC”). As such, TLI has the right to trade, sell, or deal with the 700 MW contracted capacity of the said Power Plant.
3. Applicants may be served notices, orders, and other processes of the Honorable Commission through their respective counsels at their addresses indicated below.

#### Statement of Facts

4. PANELCO I is part of the R1+CAR+S1 Aggregation (“Aggregation”) of distribution utilities.
5. On 03 May 2021, the Aggregation conducted a Competitive Selection Process (“CSP”) pursuant to Department of Energy (“DOE”) Department Circular No. DC2021-09-0030 (“2021 CSP Circular”) for the procurement of baseload requirements.
  - 5.1 The CSP conducted by the Aggregation had two unsuccessful rounds and was declared to have failed on 09 December 2022.
  - 5.2 Consequently, on 28 December 2022, the Aggregation’s Joint Third-Party Bids and Awards Committee (JTPBAC) proceeded to directly negotiate with bidders of the failed rounds of bidding.
  - 5.3 The JTPBAC eventually decided to accept the lower offer and to thereafter negotiate on the terms of the PSA, which will be submitted to the National Electrification Administration (NEA) for review before signing.
  - 5.4 However, on 24 April 2023, the NEA declared the CSP and Negotiated Procurement conducted by the Aggregation null and void and without effect primarily because the Aggregation only proceeded to directly negotiate with the bidders of the failed rounds of CSP bidding.

5.5 Further, the previous EPSA,<sup>1</sup> entered into between PANELCO I and TLI expired last 25 October 2023.

6. Because of the failed CSP and the failure of procurement through direct negotiation by the Aggregation, PANELCO I found a pressing need to secure dependable supply of electricity by itself, to immediately meet the demand of its end-users. Accordingly, PANELCO I was prompted to immediately procure an emergency supply of energy of 10MW for its uncontracted baseload requirements for the year 2024.

**Allegations in Support of the Emergency Procurement**

7. The 2021 CSP Circular was amended by Department Circular No. DC 2023-06-0021, entitled “Prescribing the Policy for the Mandatory Conduct of the Competitive Selection Process by the Distribution Utilities for the Procurement of Power Supply for their Captive Market” (the “2023 DOE CSP Policy”).
8. Section 2.3.5 of the 2023 DOE CSP Policy provides one of the exemptions from the conduct of CSP:

“2.3. In the following instances, the conduct of CSP shall not be required:

x x x x

2.3.5. Negotiated procurement of Emergency Power supply wherein the Emergency Power Supply Agreement (EPSA) shall be filed with the ERC within thirty (30) calendar days after the occurrence of the Force Majeure/Fortuitous Events, without need of any prior clearance or certification from the DOE, and shall have a maximum and non-extendible period of one (1) year from its execution. The EPSA shall be immediately implemented to address the emergency, subject to conditions to be defined by the ERC; Provided, that the procurement of emergency power supply shall not be entitled to any form of subsidy.”

9. Moreover, Section 6 of ERC Resolution No. 16, series of 2023, entitled “Implementing Guidelines for the Procurement, Execution, and Evaluation of Power Supply Agreements Entered into By Distribution Utilities for the Supply of Electricity to their Captive Market” (the “2023 CSP Guidelines of the Honorable Commission”), lays down the guidelines on the procurement of EPSA, to wit:

---

<sup>1</sup> As applied for in *In the Matter of the Application for Approval of the Emergency Power Supply Agreement (EPSA) Between Pangasinan I Electric Cooperative (PANELCO I) and Therma Luzon, Inc. (TLI), with Prayer for Confidential Treatment of Information*, docketed as ERC Case No. 2023-040 RC.

“Section 6. Emergency Power Supply Agreement - The DU may engage in negotiated procurement of an Emergency Power Supply Agreement (EPSA) under the circumstances contemplated in Section (*sic*) 2.3.5 of the DOE CSP Policy.

The DU and the supplier of emergency power may immediately execute and implement the said EPSA provided the following conditions are present:

- (a) the cooperation period of such EPSA shall have a maximum and non-extendible period of one (1) year from its execution;
- (b) the interim rates to be charged under the EPSA shall be capped at the latest ERC-approved generation tariff specific for the plant, if available. Otherwise, it shall be capped at the latest ERC-approved generation tariff for the same technology. Such rates shall apply until the ERC issues its approval of the EPSA;
- (c) the DU shall, within five (5) calendar days from the occurrence of the Force Majeure or Fortuitous Event, notify in writing the ERC and the DOE, as well as the NEA (in the case of Off-Grid areas), of such Force Majeure or Fortuitous Event which will require the emergency power supply; and
- (d) the DU and the Captive Market Supplier shall jointly file with the ERC the application for approval of the said EPSA in accordance with the timeline prescribed in Section 23 of these Guidelines.

Procurement of emergency power supply shall not be entitled to any form of subsidy.”

10. The following series of events lead to PANELCO I procuring emergency power supply.
  - 10.1 On 09 December 2022, the Aggregation had two (2) unsuccessful rounds of bidding. Subsequently, on 24 April 2023, the NEA declared that the CSP and Negotiated Procurement to be null and void due to the failure of bidding conducted by the Aggregation.
  - 10.2 Meanwhile, as the Aggregation was in the process of preparing new terms of reference for a new round of bid for supply for its members, the DOE issued the 2023 DOE CSP Policy.

- 10.3 Thereafter, the ERC issued Resolution No. 16, series of 2023 or the 2023 CSP Guidelines of the Honorable Commission, which necessitated the Aggregation to revise the terms of reference. To date, there is still no declaration of a winning bidder.
- 10.4 Due to the pressing necessity to secure dependable electricity due to its expired contract, PANELCO I started soliciting emergency supply offers.
- 10.5 As a member of the Aggregation, the effects of the unsuccessful rounds of CSP and the failure to secure a supplier through direct negotiations are events that, although may have been foreseen, are inevitable and independent of the will of PANELCO I even through its active intervention. Similarly, the termination of the existing EPSA and the promulgation of the 2023 CSP Guidelines of the Honorable Commission are events that, although may have been foreseen, are inevitable and independent of the will of PANELCO I even through its active intervention.
11. The series of events described above is considered a fortuitous event because while in isolation, these events are foreseeable, it is inevitable and independent of PANELCO I's participation, even with PANELCO I actively intervening. PANELCO I actively participated in the procurement activities of the Aggregation, as well as in the direct negotiations. Despite PANELCO I's efforts, the procurement activities failed and the subsequent rounds of procurement remain pending, leaving PANELCO I exposed without contracted supply.
12. The fortuitous event is in fact a series of events that started with the unsuccessful rounds of CSP, NEA's declaration of nullity of the subsequent direct negotiation process, and culminated in the effectivity of the 2023 CSP Guidelines of the Honorable Commission on 23 October 2023. PANELCO I will be unable to satisfy the requirements of the 2023 CSP Guidelines of the Honorable Commission prior to the expiration of its existing emergency power supply agreement with TLI which ended last 25 October 2023. In view of this, the date of occurrence of the fortuitous event is 23 October 2023.
13. PANELCO I respectfully manifests that it has performed all necessary and required due diligence to address the emergency situation. PANELCO I, upon realizing that the Aggregation will not be able to complete the new round of CSPs before the expiration of its EPSA, began soliciting for offers for emergency procurement, and exerted the due diligence required in complying with the 2023 CSP Guidelines of the Honorable Commission in order to avert or mitigate the consequences of the emergency situation.

14. Accordingly, on 27 October 2023, PANELCO I notified the ERC, NEA, and DOE of the fortuitous event in compliance with the 2023 CSP Guidelines of the Honorable Commission.
15. In accordance with Section 2.3.5 of the 2023 DOE CSP Policy and the Section 6 of the 2023 CSP Guidelines of this Honorable Commission, PANELCO I negotiated with TLI for the procurement of emergency power supply with a contract capacity of 10 MW Baseload Power Supply Requirements for a cooperation period of one (1) year from commencement of supply delivery.
16. Consequently, PANELCO I and TLI executed an Emergency Power Supply Agreement (EPSA) last 27 October 2023, subject of this *Joint Application*. Thereafter, the EPSA was amended through a Letter Agreement dated 13 November 2023.
17. As declared by PANELCO I through its notice dated 27 October 2023, the fortuitous event culminated on 23 October 2023. As such, based on the 2023 CSP Guidelines of the Honorable Commission, applicants have until 22 November 2023 to file the EPSA Application. Accordingly, this *Joint Application* is timely filed.
18. Thus, this instant *Joint Application* for the approval of the EPSA between PANELCO I and TLI.
19. Salient Features of the EPSA.
  - 19.1 Contract Capacity and Contract Energy. Contract Capacity refers to the estimated capacity of electricity to be made available for Delivery to each Customer Facility as provided in Schedule 4.1(Delivery Schedule). Contract Energy refers to the amount of energy nominated or taken by PANELCO I, which shall in no case exceed the Maximum Contract Energy per Billing Period or the Maximum Contract Energy per Interval, nor be less than the Minimum Contract Energy per Billing Period or the Minimum Contract Energy per Interval. Schedule 4.1 (Delivery Schedule) in turn provides:

Schedule 4.1 – Delivery Schedule

| BILLING MONTH                         | CONTRACT CAPACITY (kW) | MINIMUM CONTRACT ENERGY PER BILLING PERIOD (kWh) | MAXIMUM CONTRACT ENERGY PER BILLING PERIOD (kWh) |
|---------------------------------------|------------------------|--|--|
| October 26, 2023 - November 25, 2023  | 10,000                 | 5,208,000  | 7,440,000  |
| November 26, 2023 - December 25, 2023 | 10,000                 | 5,040,000  | 7,200,000  |
| December 26, 2023 - January 25, 2024  | 10,000                 | 5,208,000  | 7,440,000  |

**ERC CASE NO. 2023-128 RC  
ORDER/04 JANUARY 2024  
PAGE 7 OF 21**

|                                       |        |           |           |
|---------------------------------------|--------|-----------|-----------|
| January 26, 2024- February 25, 2024   | 10,000 | 5,208,000 | 7,440,000 |
| February 26, 2024 - March 25, 2024    | 10,000 | 4,872,000 | 6,960,000 |
| March 26, 2024 - April 25, 2024       | 10,000 | 5,208,000 | 7,440,000 |
| April 26, 2024 - May 25, 2024         | 10,000 | 5,040,000 | 7,200,000 |
| May 26, 2024 - June 25, 2024          | 10,000 | 5,208,000 | 7,440,000 |
| June 26, 2024 - July 25, 2024         | 10,000 | 5,040,000 | 7,200,000 |
| July 26, 2024 - August 25, 2024       | 10,000 | 5,208,000 | 7,440,000 |
| August 26, 2024 - September 25, 2024  | 10,000 | 5,208,000 | 7,440,000 |
| September 26, 2024 - October 25, 2024 | 10,000 | 5,040,000 | 7,200,000 |

Note: The Maximum Contract Capacity shall be equivalent to 833.3333333 kW per Trading Interval.

19.2 Contract Period. The EPSA shall take effect immediately from Effective Date shall remain in force and effect for one (1) year, to be reckoned from the commencement of supply, unless sooner terminated in accordance with the EPSA and upon approval by the ERC.

19.3 Electricity Fees. PANELCO I shall pay all Electricity Fees, including all applicable taxes thereon, computed as follows:

Schedule 6.1.2- Rate Schedule

$$\text{Electricity Fees} = A + B + C + D + E$$

All computations on payments to Supplier shall not be rounded off, except for the final PHP amount, which shall be rounded off to the nearest Philippine centavo.

Where:

$$A = \text{CRF} \times \text{CC}$$

CRF = Applicable CRF, in Php/Kw-mo, determined from the Capacity Utilization Factor Discount Table on Part 9 of Schedule 3.1(b)

CC = the contracted capacity in kW for the Billing Period

$$B = \text{FOM} \times \text{CC} \times \text{Adj}$$

FOM = 171 Php/kW/mo

CC = as previously defined

$$\text{Adj} = \sum_{j=1}^n \sum_{i=1}^{\text{Int}} \left( \frac{\text{ACC}_{ij}}{\text{CC} \times \text{Int} \times n} \right)$$

$\text{ACC}_{ij}$  = CC less affected capacity due to Force Majeure and/or Outage within the Allowable Downtime of Supplier for interval i and day j

Int = the number of Trading Intervals per day

n = the number of days for the current Billing Period

C = VOM x TED

VOM = 0.0752 Php/kWh

TED = the total energy delivered (in kWh) within CC per Trading Interval and within Maximum Contract Energy per Billing Period during the current Billing Period

D = Fuel x TED

Fuel = actual fuel cost of the Power Plant for the Billing Period in Php/kWh, as evidenced by a Fuel Cost Consumption Form.

If one unit of the Power Plant is on Scheduled or Unscheduled Outage, Fuel shall be computed using the actual fuel cost of the available unit. In the event that both units of the Power Plant are on Scheduled and/or Unscheduled Outages, Fuel shall be computed using the formula:

$$\text{Fuel} = \text{Base} \times \left[ (73.8\% \times \frac{N_m}{N_o}) + (9.53\% \times \frac{ICI4_m}{ICI4_o}) + 16.67\% \right] \times \left( \frac{FX_m}{FX_o} \right) \text{ Php/kWh}$$

Base = 4.6756 Php/kWh

$N_m$  = the average Newcastle index (USD/MT) for the last three calendar months prior to the Billing Period for which the Invoice is being prepared, as posted by globalCOAL on the website [www.globalcoal.com](http://www.globalcoal.com) or its successor or, if globalCOAL ceases to report the Newcastle Index, an agreed upon replacement source that reports the Newcastle Index shall be adopted by the Parties

$N_o$  = the Newcastle index of 177.50 USD/MT (March 14, 2023)

$ICI4_m$  = the average ICI4, USD/MT, for the last three calendar months prior to the current Billing Period as posted by Argus/Coalindo Indonesian Coal Index Report on the website <https://www.argusmedia.com/> or its successor or if Argus/Coalindo Indonesian Coal Index Report ceases to report the ICI4 index, an agreed upon replacement source that reports the ICI4 index shall be adopted by the Parties.

$ICI4_o$  = the ICI4 index of 73.52 USD/MT (March 14, 2023)

$FX_m$  = the average of the PHP/USD exchange rate for the last three calendar months prior to the Billing Period for which the invoice is being prepared, as published in the Bangko Sentral ng Pilipinas website



FX<sub>0</sub> = the PHP/USD exchange rate of 55.07 (March 14, 2023)

In the event that revisions are made on the above indices, including any shift made in the base year and other adjustments to such index made by the relevant authorized entity, its successor-in-interest, there shall be a corresponding change in the base index such that the use of the revised index will yield the equivalent values as the use of the original base index.

In the event that the index (a) becomes unavailable, (b) is replaced by a new benchmark rate as determined by the relevant authorized entity, its successor-in-interest, or (c) ceases to exist, or (d) in the reasonable determination of either Party, fails to reflect the real costs and forms an integral part of this price mechanism, the Parties shall agree to adopt a new price index.

TED = as previously defined

E = 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

Adjustments:

a.) Service Interruption Adjustment:

If the Customer is only able to take Energy at a level below the Contract Energy due to the failure of the Transmission System, the Minimum Contract Energy shall be adjusted to reflect the hours of such transmission service interruption. For this purpose, the Customer shall deliver to the Supplier documentation from the NGCP establishing the occurrence of the service interruption not later than five (5) days before the end of the Billing Period during which such interruption occurred. If the Customer shall be affected by any service interruption during the five-day period preceding the end of a Billing Period, the Customer shall deliver the NGCP supporting documentation to the Supplier as soon as reasonably practicable after receipt thereof, and Supplier shall credit Customer with the adjustment in the next succeeding Billing Statement.

19.4 Buy-out Charge. PANELCO I shall compensate TLI for the reduction of the Contract Energy or Maximum Contract Energy per Interval in the amount of the Buy-out Charge, which is computed as follows:

Buy-out Charge = historical load weighted average price under this Agreement x reduction in the Contract Capacity x average Capacity Utilization Factor of the twelve Billing Periods immediately preceding the effectivity of the reduction x remaining Contract Billing Periods

19.5 Other Charges. The following fees, charges, and other costs shall be for the account of PANELCO I: (a) Value-

added Tax; (b) Transmission Fees; (c) Ancillary Services Charges; (d) WESM Costs for the delivery and transmission of Energy; (e) Line Rental Charges; (f) Other transmission charges; (g) Market related fees; and (i) Charges that are not part of the generation charge.

- 19.6 Billing and Payment of Fees. TLI shall deliver to PANELCO I a Billing Statement setting out the Electricity Fees due on account of Contract Capacity and all Energy Delivered during each Billing Period on or before the tenth (10th) day of the Payment Month.

The energy levels that will be used for purposes of the Billing Statement will be based on the amount of Energy nominated by PANELCO I pursuant to Schedule 6.2 (Nomination Procedure) of the EPSA.

If PANELCO I fails to pay the Electricity Fee or any other amounts payable by it under this Agreement in full, including full payment of VAT due (if any) and all applicable taxes thereon, on the Payment Date, it shall pay a penalty of two percent (2%) per month (a fraction of a month to be considered one month) based on the amount due, from the date when such payment is due until the date such amount is received in full by TLI.

- 19.7 Discounts

a) Early Payment Discount

PANELCO I may be entitled to Early Payment Discount in the amount of Php0.30/kWh provided that PANELCO I pays the full amount of Electricity Fees due in respect of the Billing Period, together with all charges payable by it to TLI under this Agreement and all taxes due thereon, on or before the 15th day of the Payment Month. TLI shall credit through Credit Memo the discount to the Electricity Fees due on PANELCO I's next Billing Statement (but not on any taxes due thereon); provided that, for the last Billing Period, any discount shall be released through check payment.

[b] Capacity Utilization Factor Discount

PANELCO I may be entitled to a Capacity Utilization Discount as follows:

| Load Factor   | % Discount on CRF | Discounted CRF, Php/kw-mo |
|---------------|-------------------|---------------------------|
| 95%-100%      | 5.7143%           | 1,980                     |
| 90%-94.99%    | 4.7619%           | 2,000                     |
| 85%-89.99%    | 3.8095%           | 2,020                     |
| 80%-84.99%    | 2.8571%           | 2,040                     |
| 75%-79.99%    | 1.9048%           | 2,060                     |
| 70.01%-74.99% | 0.9524%           | 2,080                     |
| 0%-70%        | 0.0000%           | 2,100                     |

20. Estimated Rate Impact. The indicative rate impact on PANELCO I's overall generation rate with and without the additional supply from TLI is as follows:

| Generation Rate Impact of EPSA with TLI* |                       |
|--|-----------------------|
| Without TLI*                             | Php 6.3914/kWh        |
| With TLI**                               | Php 5.4278/kWh        |
| <i>Rate Impact</i>                       | <i>Php 0.9636/kWh</i> |

Assumptions: \*Computation of blended rate with the assumption that the 10MW baseload requirement will be obtained through WESM

\*\*Computation of blended rate with the assumption that the 10MW baseload requirement will be obtained through the emergency power supply procurement

21. Copies of the following documents and/or information are attached to the *Joint Application* as annexes:

| Annex        | Documents/Information  |
|--------------|--|
| A            | Emergency Power Supply Agreement between PANELCO I and TLI   |
| B            | Letter Agreement dated 13 November 2023  |
| C            | PANELCO I's Supply and Demand Scenario, Details of Existing Suppliers, Contract Utilization, Average Daily Load Curve, in accordance with Commission's templates under Annex "A" and "B" of the Prefiling Checklist Requirement. |
| D            | Executive Summary of the PSA   |
| E*           | TLI's Generation Rate and Derivation   |
| F*           | TLI's Financial model  |
| G            | Sample Bill  |
| H*           | Sworn Statement detailing TLI's fuel procurement process   |
| I            | Relevant technical and economic characteristics of the generation capacity, Installed Capacity, Dependable Capacity, and Scheduled and Unscheduled Outages   |
| J            | NEA's Letter Re: Nullification of the CSP conducted by the R1+CAR Aggregation dated April 24 2023  |
| K            | Rate Impact Simulation   |
| L and series | Proof of Exemption from Conduct of CSP   |
| M            | TLI Certification Re: Compliance with Res. 16, Series of 2023  |

\* Subject of the Motion for Confidential Treatment of Information

Allegations in Support of the Motion for Confidential Treatment of Information for Annexes “E”, “F”, and “H”

22. 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.
23. Pursuant thereto, TLI prays that the information contained in the documents attached as Annexes “E”, “F”, and “H” 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 and/or Information   |
|-------|--|
| E*    | TLI’s Generation Rate and Derivation ( <i>Confidential</i> ) *                     |
| F*    | TLI’s Financial model ( <i>Confidential</i> ) *                                    |
| H*    | Sworn Statement detailing TLI’s fuel procurement process ( <i>Confidential</i> ) * |

24. Annexes “E”, “F”, and “H” contain information and data where TLI has actual and valuable proprietary interest to protect with respect to such information, and fall within the bounds of “trade secrets” that are entitled to protection under the Constitution, statutes, and rules and regulations of this Honorable Commission.
- 24.1 The foregoing annexes contain non-public, proprietary information and data involving TLI’s generation rate calculations, financial model, cash flow, supply agreement, sale and purchase agreement, and procurement processes. TLI determines its competitive rates through these data, thus, the information contained in these documents are privileged and confidential in nature.
- 24.2 Likewise, TLI’s financial model, including the details of its fuel and coal procurement processes, contain information pertaining to the core of TLI’s business operations and any disclosure thereof will affect TLI’s competitiveness in the industry. As such, the information contained in the document are likewise privileged and confidential in nature.
- 24.3 Furthermore, the information and data in the aforementioned annexes are not generally available to the public.

25. In the case of the *Air Philippines Corporation v. Pennswell, Inc.*,<sup>2</sup> the Supreme Court 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 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.*)

26. Moreover, the Honorable Commission categorically acknowledged in its Decision in ERC Case No. 2015-111 RC<sup>3</sup> 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.*)

---

<sup>2</sup> 564 Phil. 774 (2007), G.R. No. 172835.

<sup>3</sup> 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).*”

27. The interest of the consuming public is sufficiently protected by the review and evaluation of the rates under the EPSA by the Honorable Commission, without the need to disclose the contents of Annexes "E", "F", and "H". The reasonableness and transparency of the prices of electricity is to be assured by the Honorable Commission through its own review and verification of TLI's operating costs and expenses.
28. More importantly, TLI's competitors, should they obtain the information in Annexes "E", "F", and "H", will gain undue advantage thereon and have the opportunity to use the same in their operations. The negotiating power of TLI with parties it plans to contract with or who it is currently doing business with, will clearly be thwarted if it is compelled to disclose such information.
29. Accordingly, one (1) copy each of Annexes "E", "F", and "H" are placed in a sealed envelope, with the said envelope and each page of the documents and/or information stamped with the word "Confidential". Further, the soft copies of the documents will be password protected.

**PRAYER**

WHEREFORE, the foregoing premises considered, applicants PANGASINAN I ELECTRIC COOPERATIVE, INC. (PANELCO I) and THERMA LUZON, INC. (TLI) most respectfully pray that the Honorable Commission:

1. ISSUE an Order treating Annexes "E", "F", and "H", and all information contained therein as confidential, directing their non-disclosure to persons other than the officers and staff of the Honorable Commission, continuously 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; and
2. ISSUE a Decision approving with finality the Joint Application and the EPSA between PANELCO I and TLI, including all the rates, fees, charges and tariff adjustment mechanisms set out therein at the rates provided in the EPSA, and authorizing PANELCO I to charge and collect the fees therein from its customers reckoned from the start of supply by TLI to PANELCO I under the EPSA.

Other reliefs just and equitable under the premises 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 platform for the conduct thereof, pursuant to Resolution No. 09, Series of 2020<sup>4</sup> and Resolution No. 01, Series of 2021<sup>5</sup> (ERC Revised Rules of Practice and Procedure):

| <b>Date and Time</b>  | <b>Platform</b>                       | <b>Activity</b>   |
|---|---------------------------------------|---|
| <b>06 February 2024</b><br><b>(Tuesday)</b><br>at two o'clock in the<br>afternoon (2:00 P.M.) | <b>MS Teams</b><br><b>Application</b> | Determination of<br>compliance with the<br>jurisdictional<br>requirements, and<br>Expository Presentation |
| <b>13 February 2024</b><br><b>(Tuesday)</b><br>at two o'clock in the<br>afternoon (2:00 P.M.) |                                       | Pre-trial Conference and<br>presentation of evidence  |

Accordingly, PANELCO I and TLI are hereby directed to host the virtual hearings at **PANELCO I's principal office located at San Jose, Bani, Pangasinan**, 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, PANELCO I and TLI shall guarantee that, during the conduct of the expository presentation, the participation of the public shall not be impaired.

**RELATIVE THERETO**, PANELCO I and TLI 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 their 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 hearing;

---

<sup>4</sup> A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.

<sup>5</sup> A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

- 2) Furnish with copies of this *Order* and the attached *Notice of Virtual Hearing* the Offices of the Provincial Governor, the City and Municipal Mayors and the respective Local Government Unit (LGU) legislative bodies within PANELCO I's franchise area for the appropriate posting thereof on their respective bulletin boards;
- 3) Inform the consumers within PANELCO I's franchise area, by any other means available and appropriate, of the filing of the *Joint Application*, their reasons therefor, and of the scheduled hearing 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 and attend 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.

**Within five (5) calendar days** prior to the date of the initial hearing, PANELCO I and TLI must submit to the Commission via electronic mail (e-mail) at [doCKET@erc.ph](mailto:doCKET@erc.ph), and copy furnish the Legal Service through [legal@erc.ph](mailto:legal@erc.ph), the scanned copies of their 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 the affidavits of the Editors or Business Managers of the newspapers 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;

- 3) The evidence of other means employed by PANELCO I 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, if any; and
- 6) Such other proof of compliance with the requirements of the Commission.

Moreover, PANELCO I and TLI 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.

Joint Applicants PANELCO I and TLI and all interested parties are also required to submit via e-mail at [docket@erc.ph](mailto:docket@erc.ph), and copy furnish the Legal Service through [legal@erc.ph](mailto: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 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.

Joint Applicants PANELCO I and TLI 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 hearing and Pre-trial Conference pursuant to the preceding paragraph.

Failure of PANELCO I and TLI to comply with the above requirements within the prescribed period shall be a ground for cancellation of the scheduled hearing, and the resetting of which shall be six (6) months from the said date of cancellation.

Joint Applicants PANELCO I and TLI 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 *Joint Application* must be cited in support thereof.

Joint Applicants PANELCO I and TLI are hereby directed to file a copy of their Expository Presentation via e-mail at [docket@erc.ph](mailto:docket@erc.ph), and copy furnish the Legal Service through [legal@erc.ph](mailto:legal@erc.ph), **at least five (5) calendar days** prior to the scheduled virtual hearing. PANELCO I and TLI 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.


Joint Applicants PANELCO I and TLI are hereby directed to submit, 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 Affidavits of witnesses, **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.

Finally, PANELCO I and TLI, including their authorized representatives and witnesses, are hereby directed to provide the Commission, thru [legal.virtualhearings@erc.ph](mailto: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 virtual hearing.

**SO ORDERED.**

Pasig City, 04 January 2024.

FOR AND BY AUTHORITY  
OF THE COMMISSION:

  
**MONALISA C. DIMALANTA**  
*Chairperson and CEO*

**ERC**

*Office of the Chairperson and CEO*



MCD2024-013118

  
LS: MVM / LSP / MCCG

**ERC CASE NO. 2023-128 RC  
ORDER/04 JANUARY 2024  
PAGE 20 OF 21**

---

**Copy Furnished:**

1. Pangasinan I Electric Cooperative, Inc. (PANELCO I)  
*Applicant*  
San Jose, Bani, Pangasinan
2. Atty. Kleider Rex C. Aoanan  
*Counsel for Applicant PANELCO I*  
[aoananlaw@gmail.com](mailto:aoananlaw@gmail.com)
3. Therma Luzon, Inc. (TLI)  
*Applicant*  
16<sup>th</sup> Floor, NAC Tower, 32<sup>nd</sup> St.,  
Bonifacio Global City, Taguig City  
[Regulatory.legal@aboitiz.com](mailto:Regulatory.legal@aboitiz.com)
4. Attys. Paul B. Sorino, Leo Angelo E. Fornesa, and Rosanne Jeli G. Magtagnob  
*Counsel for Applicant TLI*  
16<sup>th</sup> Floor, NAC Tower,  
32<sup>nd</sup> St., Bonifacio Global City, Taguig City  
[paul.sorino@aboitiz.com](mailto:paul.sorino@aboitiz.com); [leo.fornesa@aboitiz.com](mailto:leo.fornesa@aboitiz.com);  
[rosanne.magtagnob@aboitiz.com](mailto:rosanne.magtagnob@aboitiz.com); [regulatory.legal@aboitiz.com](mailto:regulatory.legal@aboitiz.com)
5. Office of the Mayor  
Taguig City
6. Office of the LGU Legislative Body  
Taguig City
7. Office of the Governor  
Province of Pangasinan
8. Office of the LGU Legislative Body  
Province of Pangasinan
9. Office of the Mayor  
Agno, Pangasinan
10. Office of the LGU Legislative Body  
Agno, Pangasinan
11. Office of the Mayor  
Alaminos City, Pangasinan
12. Office of the LGU Legislative Body  
Alaminos City, Pangasinan
13. Office of the Mayor  
Anda, Pangasinan
14. Office of the LGU Legislative Body  
Anda, Pangasinan
15. Office of the Mayor  
Bani, Pangasinan
16. Office of the LGU Legislative Body  
Bani, Pangasinan
17. Office of the Mayor  
Burgos, Pangasinan
18. Office of the LGU Legislative Body  
Burgos, Pangasinan
19. Office of the Mayor  
Dasol, Pangasinan
20. Office of the LGU Legislative Body  
Dasol, Pangasinan
21. Office of the Mayor  
Infanta, Pangasinan

**ERC CASE NO. 2023-128 RC**  
**ORDER/04 JANUARY 2024**  
**PAGE 21 OF 21**

---

22. Office of the LGU Legislative Body  
Infanta, Pangasinan
23. Office of the Mayor  
Mabini, Pangasinan
24. Office of the LGU Legislative Body  
Mabini, Pangasinan
25. Office of the Solicitor General (OSG)  
134 Amorsolo Street, Legaspi Village, Makati City  
[docket@osg.gov.ph](mailto:docket@osg.gov.ph)
26. Commission on Audit (COA)  
Commonwealth Avenue, Quezon City 1121  
[citizensdesk@coa.gov.ph](mailto:citizensdesk@coa.gov.ph)
27. Senate Committee on Energy  
GSIS Building, Roxas Boulevard, Pasay City 1307  
[senateenergycommittee@gmail.com](mailto:senateenergycommittee@gmail.com)
28. House of Representatives Committee on Energy  
Batasan Hills, Quezon City 1126  
[committee.energy@house.gov.ph](mailto:committee.energy@house.gov.ph)
29. Regulatory Operations Service (ROS)  
Energy Regulatory Commission  
14F Exquadra Tower, Jade 1 Drive, Pasig City  
[ros@erc.ph](mailto:ros@erc.ph)