

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City

**IN THE MATTER OF THE
APPLICATION FOR THE
APPROVAL OF THE POWER
SUPPLY AGREEMENT
BETWEEN THERMA LUZON,
INC. (TLI) AND SUBIC
ENERZONE CORPORATION
(SEZ), WITH MOTION FOR
CONFIDENTIAL TREATMENT
OF INFORMATION**

ERC CASE NO. 2024-032 RC

**THERMA LUZON, INC. (TLI)
AND SUBIC ENERZONE
CORPORATION (SEZ),**

Applicants.

X-----X

Promulgated:

March 22, 2024

ORDER

On 07 March 2024, Subic Enerzone Corporation (SEZ) and Therma Luzon, Inc. (TLI) filed their *Joint Application*, dated 27 February 2024, seeking the Commission's approval of their Power Supply Agreement (PSA), with motion for confidential treatment of information.

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

I. APPLICANTS

1. Applicant SEZ is a corporation existing under the laws of the Republic of the Philippines, with business address at Canal Road corner Labitan Street, Central Business District, Subic Bay Freeport Zone, Olongapo City. It is the duly authorized operator of the power distribution system of the Subic Bay Freeport Zone located in the Provinces of Zambales and Bataan by virtue of the Distribution Management Service Agreement (DMSA) entered into with the Subic Bay Metropolitan Authority (SBMA) on May 15, 2003.

2. Applicant TLI is a private corporation duly organized and existing under and by virtue of 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 with notices, orders, and other processes of this Honorable Commission through their respective counsel at the addresses indicated below.

II. STATEMENT OF FACTS

4. Section 23 of the EPIRA mandates that a distribution utility has the obligation to supply electricity in the least cost manner to its captive market, subject to collection of retail rate duly approved by this Honorable Commission. In relation to this, Section 45 (b) of the EPIRA expressly allows distribution utilities to enter into bilateral power supply contracts subject to the review of this Honorable Commission. The same are consistent with the State's policy to ensure the quality, reliability, security, and affordability of the supply of electric power.
5. Power Supply and Demand Situation in SEZ's Franchise Area. Applicant SEZ is in need of supply of electricity for its power requirements to meet the demand of its captive customer. In particular, SEZ sought the supply of 12 MW intermediate power.
6. The Competitive Selection Process. To address this need, SEZ conducted a Competitive Selection Process (CSP) to procure power supply for a period of three (3) years, based on the Department of Energy (DOE) Department Circular No. DC2018-02-0003¹, as amended by DOE DC2021-09-0030².
7. Accordingly, on May 3, 2023 the DOE issued a Certificate of Posting (COP) in favor of SEZ pursuant to Department Circular No. DC2018-02-0003³, as amended by DOE DC2021-09-0030, and as approval for posting of Invitation to Bid for the conduct of a CSP for the procurement of the following power supply requirements:

¹ 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".

² Amending Certain Provisions of and Supplementing Department Circular No. DC2018-02-0003 on the Competitive Selection Process in the Procurement by the Distribution Utilities of Power Supply Agreement for the Captive Market.

³ 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".

Particulars	Details
Capacity/Energy	12 MW Minimum Monthly Energy Offtake of 30% Capacity Factor Maximum Contract Energy: 105,120 MWh/year
Supply Type	Firm
Supply Requirements	Intermediate
Purpose of Procurement	For Regular CSP

8. On May 10, 2023 and May 17, 2023, SEZ published in The Philippine Star its Invitation to Submit Proposal for supply of power with contract capacity of 12 MW for three (3) years from commencement date.
9. On May 31, 2023, SEZ's Third Party Bids and Awards Committee (TPBAC) conducted a Pre-Bid Conference for the first round of bidding where only one (1) prospective bidder, i.e. GN Power Dinginin LTD. Co. (GNPD), attended. However, GNPD did not proceed with the submission of its bid.
10. Thus, SEZ's TPBAC declared failure of bidding on June 23, 2023 in accordance with DC2018-02-0003, as amended by DOE DC2021-09-0030.
11. On August 11 and 18 2023, SEZ caused again the publication in The Philippine Star of its Invitation to Submit Proposal for its second round of CSP.
12. On September 1, 2023, SEZ's TPBAC conducted another Pre-Bid Conference for the second round of bidding where only one (1) prospective bidder, i.e. GN Power Dinginin LTD. Co. (GNPD), attended.
13. During the Bid Opening for the second round of CSP, SEZ only received one (1) offer from generation company, i.e., GNPD on the second round of CSP.
14. For having received only one (1) bid offer, SEZ's TPBAC, declared the failure of the second round of CSP on September 22, 2023, in accordance with DC2018-02-0003, as amended by DOE DC2021-09-0030. Considering that there was failure of bidding, SEZ no longer opened GNPD's bid and returned the same.
15. Consequently, in light of two (2) failed CSPs, and there being no outstanding dispute with regard to either, SEZ proceeded to conduct direct negotiations for the procurement of its power supply requirements in accordance with DOE DC2018-02-0003, as amended by DOE DC2021-09-0030.

16. On October 2, 2023, SEZ's Board of Directors, through a Secretary Certificate dated October 3, 2023, authorized SEZ to conduct direct negotiations.
17. SEZ's TPBAC sent Letters of Invitation dated November 17, 2023 with Terms of Reference for Negotiation to previous bidders, inviting the latter to participate in the direct negotiations. Only two (2) offers were received, including TLI's.
18. After a careful review of the offers, SEZ declared TLI as the proponent that submitted the most competitive offer to fully satisfy the parameters for SEZ's power supply requirements. Thus, TLI was chosen to provide SEZ's power supply requirements for a period of three (3) years.
19. On 6 February 2024, SEZ and TLI executed the Physical Power Supply Agreement (PSA) with a term of three (3) years, with capacity of 12MW.
20. Hence, this instant *Joint Application* for the approval of the Physical PSA between SEZ and TLI.

SALIENT TERMS OF THE PHYSICAL PSA

21. The Physical PSA between SEZ and TLI, a copy of which is attached as ANNEX "O", contains the following salient features:

21.1. Contract Period. Three (3) years from Commencement Date.

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

21.2. Contract Capacity. Refers to the capacity that the TLI shall make available to the SEZ per Interval as set out in item 2 of Schedule 3 (Conditions).

Capacity: 12,000 kW

Monthly Minimum Energy Off-take: 30% Capacity Factor

Maximum Contract Energy: Contracted Capacity x Number of days x number of hours in a day in MWh/year (Equivalent MWh at 100% availability per annum less the allowance for Forced and Scheduled outages)

Minimum Capacity per interval: 30% of the Contracted Capacity

21.3. Scheduled Outages. TLI shall be allowed Scheduled Outages not to exceed the Allowable Scheduled Outage Days each

Contract Year during the Contract Period, during which times reduced or no supply of Contract Capacity will be available to the SEZ.

“Allowable Scheduled Outage Days” means fifteen (15) days and shall be computed annually and shall be prorated for purposes of the Contract Term.

21.4. “Forced Outage” means (a) any interruption of the Plant’s generating capability resulting in an unplanned reduction or suspension of the electrical output from the Plant and/or unavailability of capacity in whole or in part from the Plant; (b) any automatic shutdown of any part of the Plant; and (c) any other unavailability of the Plant for operation (in whole or in part), maintenance and/or repair, and in each of (a), (b) or (c), that is not a Scheduled Outage and not the result of an event of Force Majeure, and that affects the Plant’s ability to generate and export all or any portion of the Contract Capacity or Associated Energy. Any interruption, reduction or suspension of the Plant’s output as instructed by the System Operator shall not be considered as a Forced Outage, provided, that, such interruption, reduction or suspension does not arise, directly or indirectly, from any fault or negligence of the Supplier.

“Allowable Forced Outage Days” means thirty (30) days and shall be computed annually and shall be prorated for purposes of the Contract Term.

21.5. Replacement Power. In the event that an insufficient amount of Contract Capacity and Associated Energy (or no Contract Capacity and Associated Energy) is made available to the SEZ, SEZ may obtain Replacement Power. Any quantities of Replacement Power procured under this Article 7.8 shall be paid for in accordance with Article 7.9.

If, at any time after the occurrence of the Commencement Date, TLI fails to make Contract Capacity and Associated Energy available or to deliver Replacement Power to the SEZ:

(a) SEZ shall be entitled to directly procure its own Replacement Power and TLI shall be liable to pay SEZ an amount equal to the difference between: (i) the cost of such Replacement Power, and (ii) the amount SEZ would have paid for the Replacement Power had it been paid at the Contract Price (the “Differential”). For the avoidance of doubt, if the Differential is a negative number, SEZ shall have no liability whatsoever to TLI.

(b) SEZ shall be entitled to invoice TLI for payment of the Differential after it receives the invoice or other acceptable documentation from the WESM or its third-party suppliers. TLI shall credit the Differential to SEZ immediately on the next Billing Statement following receipt of such invoice. In the event TLI fails to credit SEZ the Differential in the next Billing Statement as prescribed in this Article 7.9 (b), SEZ shall be entitled to offset the Differential against the Contract Price payable under succeeding Billing Statements.

(c) In the event that TLI fails to make Contract Capacity and Associated Energy or Replacement Power, as the case may be, available to SEZ after the occurrence of the Commencement Date for at least thirty (30) consecutive Days, or for an aggregate period of at least sixty (60) Days within any Contract Year, SEZ may terminate this Agreement in accordance with Article 17.4 and exercise its remedies and rights in accordance with Article 17.3, without prejudice to any other rights SEZ may have under law, contract or otherwise.

(d) TLI shall ensure that its daily declaration of BCQs reported to the Market Operator, as required by the WESM Rules, exactly reflects the nominations, including any revisions thereto, furnished by SEZ. Any amounts assessed by the Market Operator against the Parties, including amounts for energy imbalances, as a result of an erroneous declaration by TLI of its BCQs shall be borne by TLI, and TLI shall indemnify and hold SEZ harmless from any loss, cost, expense or penalty incurred or paid by SEZ as a result of any such erroneous declaration. If the Market Operator invoices SEZ for any such amounts, TLI shall credit the same to SEZ in the immediately succeeding Billing Statement. Further, in the same Billing Statement, TLI shall credit SEZ an administrative fee of Php50,000.00 for each incident of erroneous BCQ declaration which is due to TLI's fault.

21.6. Payment of Fees. TLI shall deliver to SEZ 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, subject to the conditions under item 4 of Schedule 3.1. The energy levels per interval 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 TLI in accordance with Schedule 7.3 (Nomination Procedure).

21.7. Supply of Capacity and Energy. The Supplier shall make Contract Capacity available and Deliver Associated Energy to SEZ from the Commencement Date until the end of the Contract Period, at the Delivery Point specified in item 3 of Schedule 3 (Conditions), and at the Contract Price specified in Schedule 7.1 (Rates Schedule).

Schedule 7.1 – Rates Schedule

$$\text{Contract Price} = A + B + C + D + E$$

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.

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

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CRF = 1,328 Php/kW/mo

CC = the contracted capacity of 12,000 kW

$$\text{Adj} = \sum_{j=1}^n \sum_{i=1}^{\text{Int}} \frac{ACC_{ij}}{CC \times \text{Int} \times n}$$

ACC_{ij} = CC less affected capacity due to either Force Majeure and/or outages within outage allowance for interval i and day j

Int = the number of Trading Intervals per day

n = the number of days per Billing Period

B = FOM x CC x Adj

$$\text{FOM} = \text{Base FOM} \times \frac{RPCPI_m}{RPCPI_o}$$

Base FOM=172 Php/kW/mo

RP CPI_m = The Philippine Consumer Price Index for All Income Households in the Philippines - All Items (2018=100) published as of the end of December for year y-1, the year prior the invoice is being prepared

RP CPI_o = the Philippine Consumer Price Index for All Income Households in the Philippines - All items (2018=100) of 119.4 as of Dec. 2022

CC = as previously defined

Adj = as previously defined

C = VOM x TED

$$\text{VOM} = \text{Base VOM} \times \frac{RPCPI_m}{RPCPI_o}$$

Base VOM = 0.0752 Php/kWh

RP CPI_m = as previously defined

RP CPI_o = as previously defined

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

TED = as previously defined

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E = all existing and future taxes, fees and imposts (and any increase or adjustments thereon), real property taxes, local business taxes, transmission charges, and other charges imposed on the Power Plant, including the Pass-through Charges, in Philippine Pesos as specified in item 5 of Schedule 3.

22. The Applicants submit the following documents for the evaluation of the Joint Application:

Description of Document	Annex
SEZ's Articles of Incorporation (AOI), (b) Bylaws, and (c) latest General Information Sheet (GIS)	"A", "A-1", and "A-2"
SEZ's Verified Certification showing list of Board of Directors and Board Members of the Ultimate Parent Company, its Subsidiaries, and all its affiliates.	"B"
TLI's (a) Articles of Incorporation (AOI) and Bylaws, and (b) latest General Information Sheet (GIS)	"C", and "C-1"
TLI's Verified Certification showing list of Board of Directors and Board Members of the Ultimate Parent Company, its Subsidiaries, and all its affiliates.	"D"
TLI's Certificate of Registration with attached Terms and Conditions issued by the DTI – Board of Investments (BOI)	"E"
TLI's Environmental Compliance Certificate (ECC) issued by the Department of Environment and Natural Resources (DENR)	"F"
TLI's Certificate of Compliance (COC) pursuant to the Guidelines for the issuance of COC for Generation Companies/Facilities including Annexes	"G"
TLI's Write-up on Inconsistency in Capacity	"G-1"
TLI's Certificate of Endorsement (COE) from the Department of Energy (DOE) regarding Philippine Development Plan (PDP)	"H"
SEZ's Demand Side Management (DSM) program	"I"
SEZ's Write-up on National Power Corporation (NPC) Transition Supply Contract (TSC)	"J"
SEZ Supply and Demand Scenario	"K"
TLI's Single Line Diagram and SEZ's Single Line Diagram	"L" and "L-1"

SEZ's Performance Assessment of the System: <ul style="list-style-type: none"> ● SAIDI and SAIFI ● Historical [Five (5) Years] ● Current Year (January 2019 to present). 	"M"
SEZ's estimation of the potential for a reduction in load supplied by the DU due to retail competition	"N"
Physical Power Supply Agreement (PSA)	"O"
TLI's Transmission Service Agreement (TSA), Connection Agreement (CA), and Metering Service Agreement (MSA)	"P" "P-1" and "P-2"
Executive Summary of the Physical PSA	"Q"
TLI's Sources of Funds (Confidential)	"R"*
TLI's Generation Rate and Derivation and Financial model (Confidential)	"S and Series"*
Sample Bill	"T"
TLI's Cash Flow (Confidential)	"U"*
TLI's Coal Supply Agreement (Confidential)	"V"*
TLI's Sworn Statement on the procurement of Coal Supply Agreement (Confidential)	"W"*
All relevant technical and economic characteristics of TLI	"X"
TLI's Write-up on non-applicable documents	"Y"
Other Documents: a. TLI's 2022 Audited Financial Statement b. TLI's Certification of Net Heat Rate (Confidential) c. TLI's WESM Registration d. SEZ's Market Participation Agreement	"Z", "Z-1"*, "Z-2", and "Z-3"
SEZ's Rate Impact Analysis	"AA"
SEZ's Competitive Selection Process (CSP) Documents	"BB and series"

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

**MOTION FOR CONFIDENTIAL TREATMENT OF
ANNEXES "R", "S and series", "U", "V", "W", and "Z-1"**

23. Under the ERC Rules of Practice and Procedure, a party to any proceeding before the Honorable Commission may request that certain information not be disclosed and be treated as

confidential.⁴ Pursuant to this, TLI prays for the confidential treatment of the information contained in the following annexes:

Documents and/or Information	Annex
TLI's Sources of Funds (Confidential)	"R"*
TLI's Generation Rate and Derivation and Financial model (Confidential)	"S and Series"*
TLI's Cash Flow (Confidential)	"U"*
TLI's Coal Supply Agreement (Confidential)	"V"*
TLI's Sworn Statement on the procurement of Coal Supply Agreement (Confidential)	"W"*
TLI's Certification of Net Heat Rate (Confidential)	"Z-1"*

24. On 13 November 2023, the Honorable Commission released an *Advisory* entitled "Treatment of Documents and Information with Motion for Confidentiality Filed before the Energy Regulatory Commission." Under the *Advisory*, the Honorable Commission provided the Matrix of Confidential and Non-Confidential Documents and Information ("Matrix of Confidential and Non-Confidential").

25. Under the Matrix of Confidential and Non-Confidential, Annexes "R", "S and series", "U", "V" and "Z-1" are covered under the Matrix of Confidential and Non-Confidential Documents and Information as documents that are Confidential, to wit:

Annex	Matrix of Confidential and Non-Confidential (<i>Nature of Document</i>)
TLI's Sources of Funds - Annex "R"	Financial Model
TLI's Generation Rate and Derivation and Financial Model - Annex "S and series"	Computation/Calculation for Rate Determination and Cost Components
TLI's Cash Flow - Annex "U"	Financial Model
TLI's Coal Supply Agreement - Annex "V"	Contracts and Agreements with Third Parties not Privy to the Case
TLI's Certification of Net Heat Rate - Annex "Z-1"	Computation/Calculation for Rate Determination and Cost Components

26. Further, Annexes "R", "S and series", "U", "V", "W", and "Z-1" 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

⁴ Section 1, Rule 4, Rules of Practice and Procedure of the Energy Regulatory Commission.

protection under the Constitution, statutes, and rules and regulations of this Honorable Commission.

26.1. The foregoing annexes contain non-public, proprietary information and data involving TLI's investments, business operations, and financial calculations. TLI determines its competitive rates through its power rate calculations and its financial model through these information, thus, the methodology thereof is privileged and confidential in nature. Furthermore, these information and data are not generally available to the public. TLI's competitiveness will seriously be prejudiced if these information are unduly disclosed.

27. Moreover, Annexes "R", "S and series", "U", "V", "W", and "Z-1" contain information and data that TLI treats as confidential and which TLI has no authority to disclose. These documents 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.

28. In the case of *Air Philippines Corporation vs. Pennswell, Inc.*,⁵ 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 machine or formula, but can be a price list or catalogue or specialized SEZ list. It is indubitable catalogue or specialized SEZ list. It is indubitable that trade secrets constitute proprietary rights." (Emphasis supplied.)

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

28.1. Moreover, the Honorable Commission categorically acknowledged in its Decision in ERC Case No. 2015-111 RC⁶ 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 TLI, 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).

28.2. 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.

29. Applicants hereby submit one (1) copy of their respective confidential documents in a sealed envelope, with the envelope and each page of the document stamped with the word “Confidential”.⁷

30. SEZ calculated the rate impact of the subject Physical PSA with TLI and compared it with the generation rate if SEZ sources the same power supply requirements from WESM, MPPCL, other TLI as follows:

(This space is intentionally left blank.)

⁶ 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).”*

⁷ Soft copies of the same to be provided to this Honorable Commission are password protected.

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SUBIC ENERZONE CORPORATION RATE COMPUTATION SIMULATION WITH TLI		
	ACTUAL RATES	RATE SIMULATION with TLI 12MW
GENERATION		
MPPCL		
Generation Cost (PHP)	33,391,265.00	33,391,265.00
Total Kwh Purchased and Generated (kWh)	3,803,100	3,803,100.00
PPD	1,005,077.08	1,005,077.08
WESM		
Generation Cost (PHP)	57,175,772.76	1,675,381.96
Total Kwh Purchased and Generated (kWh)	9,197,510	269,510.00
PPD	-	-
SUPPLIER 4 (IMPORTED / NET METERING)		
Generation Cost (PHP)	180,968.68	180,968.68
Total Kwh Purchased and Generated (kWh)	24,486	24,486
PPD	-	-
TLI (new)		
Generation Cost (PHP)		47,139,840.00
Total Kwh Purchased and Generated (kWh)		8,928,000
PPD		-
TOTAL GENERATION COST NET OF 50 % PPD	90,245,467.90	81,884,917.10
TOTAL KWH PURCHASED (based on NGCP BDE)	13,107,651.20	13,107,651.20
GENERATION RATE	6.8849	6.2471
Increase / (Decrease in Rates)		(0.6378)
Assumptions		
1. TLI with 12MW capacity		
2. Power cost used is based on Actual rates		
3. TLI will cater the demand growth and to lessen the WESM exposure		
4. Billing period used was May 26 - June 25, 2023		

31. As shown in the comparative scenario of the Rate Impact Simulation, the Physical PSA between SEZ and TLI will benefit SEZ and its consumers with an estimated generation rate reduction of Php 0.6378/kWh, subject to the foregoing assumptions, versus SEZ's generation rate if it purchases its power supply requirements without TLI.

PRAYER

WHEREFORE, premises considered, Applicants, THERMA LUZON, INC. (TLI) AND SUBIC ENERZONE CORPORATION (SEZ) respectfully pray that the Honorable Commission:

- (i) ISSUE an Order treating Annexes "R", "S and series", "U", "V", "W", and "Z-1" 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) After hearing on the merits, ISSUE a Final Approval or Decision APPROVING the Joint Application and Physical PSA between SEZ and TLI, including all the rates, fees, charges, and tariff adjustment mechanisms set out therein at the rates provided in the Physical PSA, and authorizing SEZ to charge and collect such rates, fees, charges, and tariff adjustments therein from its SEZs reckoned from the start of the supply by TLI to SEZ under the Physical 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 platform for the conduct thereof, pursuant to Resolution No. 09, Series of 2020⁸ and Resolution No. 01, Series of 2021⁹ (ERC Revised Rules of Practice and Procedure):

Date	Platform	Activity
08 May 2024 (Wednesday) at two o'clock in the afternoon (2:00 PM)	Microsoft Teams Application	Determination of compliance with the jurisdictional requirements and expository presentation
15 May 2024 (Wednesday) at two o'clock in the afternoon (2:00 PM)		Pre-Trial Conference and presentation of evidence

Accordingly, SEZ and TLI are hereby directed to host the virtual hearings at **SEZ's Principal Office at Canal Road corner Labitan Street, Central Business District, Subic Bay Freeport Zone, Olongapo City**, as the designated venue for the conduct thereof, and ensure that the same is open to the public. Moreover, SEZ and TLI shall guarantee that, during the conduct of the expository presentation, the participation of the public shall not be impaired.

RELATIVE THERETO, SEZ 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;
- 2) Furnish with copies of this *Order* and the attached *Notice of Virtual Hearing* the Offices of the Administrator, Mayor

⁸ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.

⁹ A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

and Local Government Unit (LGU) legislative body within SEZ's franchise area for the appropriate posting thereof on their respective bulletin boards;

- 3) Inform the consumers within SEZ's franchise area, by any other means available and appropriate, of the filing of the *Joint Application*, the 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 and attend the scheduled hearings; 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 before the date of the initial virtual hearing, SEZ and TLI 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 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 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 Administrator, Mayor and LGU legislative body or their duly authorized representatives, bearing the seals of their offices;
- 3) The evidence of other means employed by SEZ and TLI to inform the consumers within SEZ's franchise area of the

filing of the *Joint Application*, the 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, by all those making requests therefor, if any; and
- 6) Such other proof of compliance with the requirements of the Commission.

Moreover, SEZ and TLI are hereby required to post on their bulletin boards, the scanned copies of the foregoing jurisdictional requirements, together with the newspaper publications and certifications issued by the concerned Offices of the Administrator, Mayor, and Local Legislative Body, and to submit proof of posting thereof.

Joint Applicants SEZ and TLI 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.

Joint Applicants SEZ 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 virtual hearing and Pre-Trial Conference pursuant to the preceding paragraph.

Failure of SEZ and TLI to comply with the above requirements within the prescribed period shall be a ground for cancellation of the scheduled hearings.

Joint Applicants SEZ 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 SEZ and TLI 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. SEZ 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 SEZ and TLI are further 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 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.


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Finally, SEZ and TLI, including their 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 hearings.

SO ORDERED.

Pasig City, 22 March 2024.

FOR AND BY AUTHORITY
OF THE COMMISSION:


MONALISA C. DIMALANTA
Chairperson and CEO

LS: /RBC/ARC/LSP

ERC

Office of the Chairperson and CEO



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