

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
NUEVA ECIJA II ELECTRIC
COOPERATIVE, INC. –
AREA 2 (NEECO II – AREA
2), WITH PRAYER FOR
PROVISIONAL AUTHORITY
OR INTERIM RELIEF AND
MOTION FOR
CONFIDENTIAL
TREATMENT OF
INFORMATION**

ERC CASE NO. 2025-066 RC

**THERMA LUZON, INC. (TLI)
AND NUEVA ECIJA II
ELECTRIC COOPERATIVE,
INC. – AREA 2 (NEECO II –
AREA 2)**

Applicants.

Promulgated:
May 13, 2025

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ORDER

On 18 March 2025, Therma Luzon, Inc. (TLI) and Nueva Ecija II Electric Cooperative, Inc. – Area 2 (NEECO II – AREA 2) filed a *Joint Application*, dated 24 February 2025, seeking the Commission’s approval of their Power Supply Agreement (PSA), with prayer for provisional authority or interim relief and motion for confidential treatment of information.

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

PARTIES

1. Applicant NEECO II – AREA 2 is an electric cooperative duly organized and existing under and by virtue of the laws of the

Philippines, particularly Presidential Decree No. 269 (P.D. 269), as amended, and other laws of the Republic of the Philippines, with principal address at 57 NIA Rd, Diliman, Quezon City, Metro Manila.

2. NEECO II – AREA 2 is a duly franchised electric cooperative engaged in distribution of light and power within its franchise area covering the city of Palayan and the municipalities of San Leonardo, Santa Rosa, Peñaranda, General Tinio, General Natividad, Laur, Gabaldon, Rizal, Bongabon and Llanera, all in the province of Nueva Ecija.
3. 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 capacity of the said Power Plant.
4. Applicants may be served with notices, orders, and other processes of this Honorable Commission through their respective counsel at the addresses indicated below.

NATURE OF THE APPLICATION

5. The instant *Joint Application* for approval of the *Power Supply Agreement* entered into by and between the Joint Applicants dated 03 February 2025 (the PSA) is being submitted to the Honorable Commission for its review and approval pursuant to Sections 25¹ and 45(b)² of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA), Rule 20(B) of the Honorable Commission's Resolution No. 01, Series of 2021 (ERC RRPP),³ and Article VIII of the Honorable Commission's Resolution No. 16, Series of 2023⁴ (2023 CSP Guidelines).
6. 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

¹ SEC.25. Retail Rate. – The retail rates charged by distribution utilities for the supply of electricity in their captive market shall be subject to regulation by the ERC based on the principle of full recovery of prudent and reasonable economic costs incurred, or such other principles that will promote efficiency as may be determined by the ERC.

² Distribution utilities may enter into bilateral power supply contracts subject to review by the ERC: xxx.

³ A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

⁴ 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.

utilities to enter into bilateral power supply contracts subject to the review of this Honorable Commission. It is consistent with the State's policy to ensure the quality, reliability, security, and affordability of the supply of electric power.⁵

7. The subject PSA was procured through a Joint Competitive Selection Process (CSP) conducted by the National Electrification Administration (NEA), in accordance with Article 13.1 of the NEA Memorandum No. 2023-057 (NEA 2023 CSP Guidelines), consistent with Section 5.4 of the Department of Energy (DOE) Circular No. DC2023-06-0021 (DOE 2023 CSP Policy), whereby NEA is allowed to undertake the CSP on behalf of the Electric Cooperative (EC) in case the latter requests the NEA's assistance or is unable to complete its CSP one (1) year before the scheduled date as indicated in the Power Supply Procurement Plan (PSPP), and the 2023 CSP Guidelines.

STATEMENT OF FACTS

COMPETITIVE SELECTION PROCESS

8. The NEA 2023 CSP Guidelines were issued by the NEA pursuant to the DOE 2023 CSP Policy and in support of the Honorable Commission's 2023 CSP Guidelines, as it applies to the conduct of the CSPs for ECs.
 - 8.1. Article 13.1 of the NEA 2023 CSP Guidelines, consistent with Section 5.4 of the DOE 2023 CSP Policy, provides that if an EC requests assistance from the NEA or fails to complete the CSP at least one (1) year before the scheduled date in the PSPP, the NEA shall undertake or continue the CSP on their behalf.
9. NEECO II – Area 2 initially planned to conduct its own CSP for the period of 2024 to 2030 due to the non-implementation of its existing PSA. However, upon coordination with the NEA, NEECO II – Area 2 was informed that its planned CSP timeline coincides with the NEA's scheduled CSP for Luzon ECs that have either non-implemented PSA or failed CSP for their long-term PSAs.
10. Pursuant to the NEA 2023 CSP Guidelines, and in view of the aggregation of Luzon ECs' failure to complete the CSP at least one (1) year before the scheduled date in the PSPP, NEA intervened and conducted the joint CSP for the procurement of power supply of the aggregation of Luzon ECs.
11. The joint CSP conducted by NEA followed the policy and rules prescribed under the above-mentioned issuances of the DOE, NEA, and this Honorable Commission.
12. The NEA issued NEA Office Order No. 2024-134, as amended by NEA Office Order No. 2024-276, creating a Special Bids

⁵ EPIRA, Sec. 2 (b).

and Awards Committee (NEA-SBAC) to conduct the CSP for the procurement of power supply for the aggregation of Luzon ECs who have not yet commenced their respective CSPs within one (1) year before the expiration of their current and subsisting PSAs or projected increase in demand based on their latest and posted PSPP. Applicant NEECO II – AREA 2 is a member EC⁶ of the said aggregation of Luzon ECs.

13. On 12 August 2024, the NEA issued *Certificate of Conformity No. NEA-RAO-COC-2024-10* stating that:

“This is to certify that the contract quantities and cooperation periods for the Competitive Selection Process (CSP) of the Luzon EC Aggregation power supply requirement are consistent with the latest posted 2024-2033 Power Supply Procurement Plans.”

14. Accordingly, the NEA-SBAC commenced and conducted the Joint CSP for the procurement of the aggregated baseload supply of the member ECs of the said aggregation of Luzon ECs, including applicant NEECO II – AREA 2. A *CSP Report* prepared by the NEA-SBAC is attached hereto as **Annex “MM-1”**. A summary of the key dates and events of the Joint CSP is provided below:

14.1. The *Invitation to Bid* for the Joint CSP was published in the Philippine Daily Inquirer newspaper on 17 August 2024 and 24 August 2024. Six (6) prospective bidders manifested their intention to participate in the Joint CSP, namely: Masinloc Power Co. Ltd., Sual Power Inc., Therma Visayas Inc., AP Renewables Inc., GN Power Dinginin Ltd. Co., and applicant TLI.

14.2. On 30 August 2024, Invitations to CSP Observers were sent inviting certain groups to participate as CSP Observers in the Pre-Bid Conference, including the DOE, consumer representatives, community representatives, interested civil society organizations and consumers, and the regional development council for Luzon.

14.3. On 12 September 2024, the Pre-Bid Conference for the Joint CSP was held at the Honesty, Efficiency and Solidarity Auditorium 2nd Floor, NEA Building, 57 NIA Road, Government Center, Diliman, Quezon City (the “NEA HESA”). The Pre-Bid Conference was attended by the NEA-SBAC, NEA SBAC Technical

⁶ The Member ECs refer to the ECs included in the aggregation of Luzon ECs for the conduct of NEA’s Joint CSP, namely: Albay Electric Cooperative Inc., Benguet Electric Cooperative, Camarines Sur I Electric Cooperative Inc., Camarines Sur II Electric Cooperative Inc., Central Nueva Ecija Electric Cooperative Inc., Ilocos Norte Electric Cooperative Inc., Ilocos Sur Electric Cooperative Inc., Isabela I Electric Cooperative Inc., Isabela II Electric Cooperative, Kalinga-Apayao Electric Cooperative Inc., Mountain Province Electric Cooperative Inc., Nueva Ecija II Electric Cooperative Inc. – Area 2, Nueva Ecija III Electric Cooperative, Pampanga I Electric Cooperative Inc., Pampanga Rural Electric Service Cooperative Inc., Sorsogon I Electric Cooperative Inc., Tarlac I Electric Cooperative Inc., and Tarlac II Electric Cooperative Inc.

Working Group (TWG), NEA-SBAC Secretariat, CSP Observers, and the six (6) prospective bidders, including applicant TLI.

14.4. The following Bid Bulletins (“BB”) were issued by the NEA-SBAC throughout the Joint CSP process:

BB No.	Date Issued	Description
1	04 September 2024	Announcing the venue of the Pre-Bid Conference, among others.
2	14 October 2024	Announcing the revised schedule of the succeeding bidding activities for the Joint CSP.
3	15 October 2024	Providing official responses to bidder inquiries and issuing the revised transaction documents.
4	06 November 2024	Announcing the revised schedule of bidding activities, setting the bid submission, opening, and evaluation for 03 December 2024.
5	14 November 2024	Addressing further bidder queries and issuing the final terms of reference and final transaction documents.
6	20 November 2024	Change of venue for the submission, opening, and evaluation of bids.
7	26 November 2024	Correcting Schedule 13 (Technical Bid Form 2) of the final transaction documents.

These BBs were also posted on the NEA website.

- 14.5. On 03 December 2024, the bid submission date, Sual Power, Inc., Masinloc Power Co. Ltd., and applicant TLI timely submitted their proposals. Therma Visayas, Inc., AP Renewables, Inc., and GNPower Dinginin Ltd. Co. submitted letters withdrawing participation from the Joint CSP. These letters were read aloud at the start of the bid opening process.
- 14.6. On the same date, the respective proposals of Sual Power, Inc., Masinloc Power Co. Ltd., and applicant TLI were evaluated based on the parameters outlined in the final transaction documents issued by the NEA-SBAC, with applicant TLI emerging as one of two (2) bidders with the Lowest Calculated Bid for 50% of the aggregated contract capacity of the Member ECs.
- 14.7. The post-qualification process was conducted from 04 to 06 December 2024. On 17 December 2024, NEA-SBAC TWG submitted its report dated 16 December 2024 to the NEA-SBAC confirming the authenticity, validity, and accuracy of applicant TLI’s submitted legal, technical, and financial documents. The NEA-SBAC TWG recommended the declaration of applicant TLI as one of two (2) bidders with the lowest calculated bid for the Joint CSP.
- 14.8. On 19 December 2024, the NEA-SBAC issued Resolution No. 04, series of 2024, declaring applicant TLI as one of the two Lowest Calculated and Responsive Bidders and awarding it 50% of the aggregated contract capacity of the Member ECs.

In accordance with NEA Memorandum 2023-057, the NEA-SBAC endorsed the said resolution to the NEA Office of the Administrator for the issuance of a Notice of Award in favor of TLI.

- 14.9. The Notice of Award was issued by NEA and accepted by TLI on 27 December 2024.
- 14.10. On 29 January 2025, the duly authorized representatives of the Member ECs submitted the finalized PSA with TLI to the NEA-SBAC for approval.
- 14.11. On 31 January 2025, the NEA issued the Notice to Execute Agreement, directing the Member ECs to execute the NEA-approved PSAs within three (3) calendar days or until 03 February 2025.
- 14.12. On 03 February 2025, in compliance with the Notice to Execute Agreement issued by NEA,⁷ Joint Applicants NEECO II – AREA 2 and TLI executed the PSA, subject of this instant *Joint Application*, for a contracted capacity of 24 MW to 40.5 MW, with supply commencing on the later of either: (a) 26 November 2024; or (b) the next immediate 26th day of the month following the ERC's issuance of a Provisional Authority or Interim Relief (as applicable) or Final Authority (if neither Provisional Authority or Interim Relief was issued by the ERC) for the implementation of this Agreement.
- 14.13. Notably, since the PSA was a result of a joint CSP conducted by NEA itself, and the PSA being subject to a separate review by the NEA, it may be presumed that the subject PSA, including all terms and conditions therein, is in accordance with all the relevant policies and rules of the DOE, NEA, and the Honorable Commission.
15. Hence, this instant *Joint Application* for the approval of the PSA between NEECO II – AREA 2 and TLI.

SALIENT TERMS OF THE PSA

16. The PSA between NEECO II – AREA 2 and TLI, a copy of which is attached as **Annex “A”**, contains the following salient features:
 - 16.1. **Contract Term.** This Agreement shall take effect immediately from Effective Date, and from such date shall remain in force and effect for fifteen (15) years from Delivery Date unless sooner terminated in accordance with this Agreement and upon approval by the ERC.
 - 16.2. **Delivery Date.** TLI shall commence delivery of the Contract Capacity to NEECO II - AREA 2 on Delivery Date. The Delivery Date shall be the later of either: (a) 26 November

⁷ Annex “MM-23”

2024 or (b) the next immediate 26th day of the month following the ERC’s issuance of a Provisional Authority or Interim Relief (as applicable) or Final Authority (if neither Provisional Authority or Interim Relief was issued by the ERC) for the implementation of this Agreement.

16.3. **Contract Capacity.** Beginning on the Delivery Date until the termination or expiration of the PSA, TLI shall supply and deliver Contract Capacity to NEECO II – AREA 2 at the Delivery Point, and NEECO II – AREA 2 shall purchase and pay TLI the Contract Capacity as provided in Table 1:

CY	26 Dec to 25 Jan	26 Jan to 25 Feb	26 Feb to 25 Mar	26 Mar to 25 Apr	26 Apr to 25 May	26 May to 25 Jun	26 Jun to 25 Jul	26 Jul to 25 Aug	26 Aug to 25 Sep	26 Sep to 25 Oct	26 Oct to 25 Nov	26 Nov to 25 Dec
2024												24.00
2025	26.00	26.00	26.00	26.00	26.00	26.00	26.00	26.00	26.00	26.00	26.00	26.00
2026	27.50	27.50	27.50	27.50	27.50	27.50	27.50	27.50	27.50	27.50	27.50	27.50
2027	29.50	29.50	29.50	29.50	29.50	29.50	29.50	29.50	29.50	29.50	29.50	29.50
2028	31.00	31.00	31.00	31.00	31.00	31.00	31.00	31.00	31.00	31.00	31.00	31.00
2029	33.00	33.00	33.00	33.00	33.00	33.00	33.00	33.00	33.00	33.00	33.00	33.00
2030	34.50	34.50	34.50	34.50	34.50	34.50	34.50	34.50	34.50	34.50	34.50	34.50
2031	36.00	36.00	36.00	36.00	36.00	36.00	36.00	36.00	36.00	36.00	36.00	36.00
2032	37.50	37.50	37.50	37.50	37.50	37.50	37.50	37.50	37.50	37.50	37.50	37.50
2033	39.00	39.00	39.00	39.00	39.00	39.00	39.00	39.00	39.00	39.00	39.00	39.00
2034	40.50	40.50	40.50	40.50	40.50	40.50	40.50	40.50	40.50	40.50	40.50	40.50
2035	40.50	40.50	40.50	40.50	40.50	40.50	40.50	40.50	40.50	40.50	40.50	40.50
2036	40.50	40.50	40.50	40.50	40.50	40.50	40.50	40.50	40.50	40.50	40.50	40.50
2037	40.50	40.50	40.50	40.50	40.50	40.50	40.50	40.50	40.50	40.50	40.50	40.50
2038	40.50	40.50	40.50	40.50	40.50	40.50	40.50	40.50	40.50	40.50	40.50	40.50
2039	40.50	40.50	40.50	40.50	40.50	40.50	40.50	40.50	40.50	40.50	40.50	

In the event that the Delivery Date does not coincide with the Target Date and that said Delivery Date is delayed by a certain number of Billing Period/s, such number of Billing Period/s of delay shall extend the last Billing Period contained in the table above by the same number of Billing Period/s; provided that the Contract Capacity for such extended Billing Period/s shall be exactly the same Contract Capacity for the same Billing Period/s of the previous Contract Year.

NEECO II -AREA 2 shall be allowed to nominate the entire Contract Capacity but is only obliged to utilize the Contract Capacity at the 65% Monthly Minimum Capacity Utilization Factor (“CUF”) for every Billing Period.

Notwithstanding the 65% Monthly Minimum CUF, TLI must make available for dispatch the Contract Capacity.

NEECO II -AREA 2’s Minimum Hourly Nomination shall be 35% of the Contracted Capacity for the Billing Period except in cases of Force Majeure Event.

Should NEECO II – AREA 2 fail to dispatch TLI at the Monthly Minimum CUF for a Billing Period, and TLI has made the same available for dispatch, NEECO II – AREA 2 shall pay TLI the CRR_{CUF} and $FOMR_{CUF}$ for the equivalent associated energy at 65% CUF level. The formula to calculate the equivalent associated energy is found in SCHEDULE 7 of the PSA.

- 16.4. **Scheduled and Unscheduled Outage.** TLI shall have an outage allowance for each Contract Year not exceeding:

Scheduled Outages: Zero (0) hours

Unscheduled Outages: Zero (0) hours.

- 16.5. **Replacement Power.** The procurement of any Replacement Power shall be the responsibility of TLI and TLI shall charge NEECO II – AREA 2 for the Replacement Power pursuant to Section 10.3.1 of the NEECO II – AREA 2-TLI PSA.

- 16.6. **Payment of Fees.** Commencing on Delivery Date and throughout the entire Term, NEECO II – AREA 2 shall pay to TLI each Billing Period an amount equal to the Monthly Payment in accordance with SCHEDULE 7 (Monthly Payment, Indexation and Adjustment) of the NEECO II – AREA 2 - TLI PSA.

There shall be no offsetting of payment between NEECO II – AREA 2 and TLI unless expressly provided for in the NEECO II – AREA 2 - TLI PSA.

There shall be no withholding of disputed amounts, except in cases of inadvertent errors in the amount or inadvertent errors in calculating the applicable rate.

If an invoice is not disputed by NEECO II – AREA 2 within sixty (60) Business Days of receipt or if the payment is not disputed by TLI within thirty (30) Business Days of receiving payment from NEECO II – AREA 2, the invoice and payment shall be deemed accepted, final, and binding on TLI or NEECO II – AREA 2, as applicable.

- 16.7. **Billing to NEECO II – AREA 2.** Within ten (10) Business Days from the end of each Billing Period commencing on Delivery Date, TLI shall deliver to NEECO II – AREA 2 the Seller Invoice setting forth the amount that is due to TLI for the preceding Billing Period.

TLI shall send the Seller Invoice electronically through NEECO II – AREA 2's designated electronic mail (e-mail) addresses.

The Parties shall make the necessary adjustments, if necessary, for the TLI Invoice covering the first and last Billing Periods.

16.8. **Monthly Payment.** Refers to the amount collectible from NEECO II – AREA 2 for supply of electricity for each Billing Period, to be computed in accordance with Schedule 7 (Monthly Payment, Indexation and Adjustment) of the NEECO II – AREA 2 -TLI PSA, *to wit:*

SCHEDULE 7

Total Generation Charge

Total Generation Charge = $CRF_{CUF} + FOMF_{CUF} + VOMF + FC + VAT$

A. Capital Recovery Fee (CRF)

The CRF_{CUF} shall be calculated as the product of the Capital Recovery Rate (“ CRR_{CUF} ”), in Php/kWh, and the actual energy delivered from the Facility during the Billing Period or the equivalent associated energy based on the Monthly Minimum CUF, whichever is higher.

$CRF_{CUF} = CRR_{CUF} \times \max(AED_t, AE_t)$

$CRR_{CUF} = \frac{CRR_{100\%CUF}}{CUF_t}$

CRF_{CUF}	Corresponding CRF_{CUF} to calculate the Total Generation Charge, expressed in Php
CRR_{CUF}	Billing Determinant to calculate CRF_{CUF} , expressed in Php/kWh, for a Billing Period
$CRR_{100\%CUF}$	Corresponding CRR at 100% CUF, which is 1.8192 Php/kWh. For reference, see Table 1 for the CRR per CUF.*
CUF_t	Actual CUF for a Billing Period <i>t</i> . The CUF shall be calculated in accordance with the formula below:
AE_t	Associated Energy based on the Minimum CUF in kWh for a Billing Period
AED_t	Actual Energy Delivered from the Facility during the Billing Period in kWh

*Table 1 is for reference only. The applicable CRR_{CUF} for the Billing Period shall be calculated in accordance with the formula above.

Table 1: Capital Recovery Rate per Capacity

Capacity Utilization Factor, %	CRR, Php/kWh
100%	1.8192
99%	1.8376
98%	1.8563
97%	1.8755
96%	1.8950

95%	1.9149
94%	1.9353
93%	1.9561
92%	1.9774
91%	1.9991
90%	2.0213
89%	2.0440
88%	2.0673
87%	2.0910
86%	2.1153
85%	2.1402
84%	2.1657
83%	2.1918
82%	2.2185
81%	2.2459
80%	2.2740
79%	2.3028
78%	2.3323
77%	2.3626
76%	2.3937
75%	2.4256
74%	2.4584
73%	2.4921
72%	2.5267
71%	2.5623
70%	2.5989
69%	2.6365
68%	2.6753
67%	2.7152
66%	2.7564
65%	2.7988

$$CUF = \frac{Q_t}{CC \times (H_T - H_O - H_{FM})}$$

Where

CUF	Capacity Utilization Factor
Q_t	Total Energy delivered in kWh, not exceeding the corresponding Contract Capacity, during the Billing Period, or the equivalent associated energy based on the Monthly Minimum CUF, whichever is higher.
CC	Contracted Capacity for the current Billing Period in kW as indicated in Schedule 2
H_T	Total number of hours in the Billing Period
H_O	Zero (0) for each Billing Period, as TLI has no Outage Allowance
H_O	The Equivalent Hours of Force Majeure in the Billing Period

The formula to calculate the H_{FM} shall be:

$$H_{FM} = \sum_{i=1}^n \left(1 - \frac{\text{Seller BCQ day after}}{CC} \right)$$

Where:

n – Total number of Hours in a Billing Period

Formula to calculate the Q_t :

$$Q_t = \max(AE_t, TED_t)$$
$$AE = 65\% \times CC \times (H_T - H_O - H_{FM})$$

Where:

AE_t	As previously defined
CC	As previously defined
H_T	As previously defined
H_O	As previously defined
H_{FM}	As previously defined
TED_t	Total Energy Delivered, which is Actual Energy Delivered from the Facility and replacement power energy, during the Billing Period in kWh

B. Fixed Operation and Maintenance Fee (FOMF)

The $FOMF_{CUF}$ shall be calculated as the product of the Fixed Operation and Maintenance Rate (“ $FOMR_{CUF}$ ”), in Php/kWh, and the actual energy delivered from the Facility during the Billing Period or the equivalent associated energy based on the Monthly Minimum CUF, whichever is higher.

$$FOMF_{CUF} = FOMR_{CUF} \times \max(AED_t, AE_t)$$

$$FOMR_{CUF} = \frac{FOMR_{100\%CUF}}{CUF_t} \times \left(\frac{PHCPI_{n-1}}{PHCPI_0} \right)$$

$FOMF_{CUF}$	Corresponding $FOMF_{CUF}$ to calculate the Total Generation Charge, expressed in Php
$FOMR_{CUF}$	Billing Determinant to calculate $FOMF_{CUF}$, expressed in Php/kWh, for a Billing Period
AE_t	As previously defined
AED_t	As previously defined
$FOMR_{100\%CUF}$	Corresponding FOMR at 100% CUF, which is 0.6575 Php/kWh. For reference, see Table 2 for the value of FOMR per CUF.*
$PHCPI_0$	Philippine Consumer Price Index (PHCPI) for All Income Households by Commodity Group (2018=100), September 2024, equivalent 126.3000
$PHCPI_{n-1}$	Philippine Consumer Price Index (PHCPI) for All Income Households by Commodity Group (2018=100), for the month preceding the Billing Period

*Table 2 is for reference only. The applicable $FOMR_{CUF}$ for the Billing Period shall be calculated in accordance with the formula above.

Table 2: Fixed Operations and Maintenance Rate per
Capacity Utilization

Capacity Utilization Factor, %	FOMR, Php/kWh
100%	0.6575
99%	0.6641
98%	0.6709
97%	0.6778
96%	0.6849
95%	0.6921
94%	0.6995
93%	0.7070
92%	0.7147
91%	0.7225
90%	0.7306
89%	0.7388
88%	0.7472
87%	0.7557
86%	0.7645
85%	0.7735
84%	0.7827
83%	0.7922
82%	0.8018
81%	0.8117
80%	0.8219
79%	0.8323
78%	0.8429
77%	0.8539
76%	0.8651
75%	0.8767
74%	0.8885
73%	0.9007
72%	0.9132
71%	0.9261
70%	0.9393
69%	0.9529
68%	0.9669
67%	0.9813
66%	0.9962
65%	1.0115

- Notes:
- a. If the PHCPI to be used in for the Billing Period is not published and available, within the two days from the end of the Billing Period, the most recent available published index shall be used. Once the appropriate PHCPI is published or

- made available, the parties shall adjust the affected rate accordingly.
- b. If the source of any of the foregoing indices is no longer available or has not been published or available for a prolonged period, the replacement index shall be agreed upon by the Buyer and Seller.
 - c. If any of the foregoing indices are re-based during the duration of this Agreement, the Seller shall apply the corresponding adjustment as published by the Philippine Statistics Authority to the inflation formula to conform with the re-basis of the subject indices, which must still coincide with the indices set forth in this Agreement.

C. Variable Operation and Maintenance Fee (“VOMF”)

The VOMF shall be calculated as the product of the Variable Operation and Maintenance Rate (“VOMR”), in Php/kWh, and the actual energy delivered for the Billing Period.

$$VOMF = VOMR_t \times AED_t$$

$$VOMR_t = VOMR_{Base} \times \left(\frac{PHCPI_{n-1}}{PHCPI_0} \right)$$

VOMF	Corresponding VOMF to calculate the Total Generation Charge, expressed in Php
$VOMR_t$	Billing Determinant to calculate VOMF, expressed in Php/kWh, for a Billing Period
AED_t	As previously defined
$VOMR_{Base}$	Corresponding VOMR at 0.1851 Php/kWh
$PHCPI_0$	As previously defined
$PHCPI_n$	As previously defined

Notes:

- a. If the PHCPI to be used in for the Billing Period is not published and available, within the two days from the end of the Billing Period, the most recent available published index shall be used. Once the appropriate PHCPI is published or made available, the parties shall adjust the affected rate accordingly.
- b. If the source of any of the foregoing indices is no longer available or has not been published or available for a prolonged period, the replacement index shall be agreed upon by the Buyer and Seller.
- c. If any of the foregoing indices are re-based during the duration of this Agreement, the Seller shall apply the corresponding adjustment as published by the Philippine Statistics Authority to the inflation formula to conform with the re-basis of the subject indices, which must still coincide with the indices set forth in this Agreement.

D. Fuel Cost (“FC”)

The FC shall be calculated as follows:

$$FC = \left(\frac{FP_t \times FCR_t \times FX_m}{1000} \right) \times AED_t$$

$$FP_t = FCC + NFCC + \text{Applicable Taxes}$$

Where:

FPT	Applicable Fuel Price for a Billing Month, expressed in Php
FCC	Fuel Commodity Cost in USD/MT calculated using the formula below: $75\% \times \left\{ 91.1411 \times \left[\left(\frac{NFI\ 1_{3m\ avg}}{NFI\ 1_o} \right) \right] \right\} +$ $25\% \times \left\{ 72.3500 \times \left[\left(\frac{NFI\ 2_{3m\ avg}}{NFI\ 2_o} \right) \right] \right\}$
NFI 1 _{3m avg}	the average value for the three (3) months preceding the Billing Period for which the Invoice is being prepared of the Indonesian Coal Index 2 (5800 GAR / 5500 NAR) as published by the Argus/Coalindo for Indonesian Coal Index Report, in USD/MT
NFI 2 _{3m avg}	the average value for the three (3) months preceding the Billing Period for which the Invoice is being prepared of the Indonesian Coal Index 3 (5000 GAR / 4600 NAR) as published by the Argus/Coalindo for Indonesian Coal Index Report, in USD/MT
NFI 1 _o	Value of Indonesian Coal Index 2 (5800 GAR / 5500 NAR) for the month of September 2024, which is 92.7400, in USD/MT
NFI 2 _o	Value of Indonesian Coal Index 3 (5000 GAR / 4600 NAR) for the month of September 2024, which is 72.3500, in USD/MT
NFCC	Weighted average of the actual freight, insurance, stevedoring, BOC Charges, Ferry Services, Terminal Fee, Letter of Credit Charges, Draft Survey Fee, Sampling Fee, Analysis Fee, and Service Fee that the Seller needs to recover as part of its Non-Fuel Commodity Cost for the corresponding shipments used in the current Billing Period, in USD/MT. The Seller shall bill, as Terminal Fees per shipment, the actual cost of the Terminal Fees, with the cost being subject to a cap of PhP 250,000.00 per shipment. Except for applicable taxes, Seller can only recover the NFCC items listed above and shall submit to Buyer proof of actual costs in the form of official invoices and supporting documents.
FX _m	the monthly average of the PHP/USD exchange rate for the month (i.e., first until last day of the month) for which the invoice is being prepared, as published in the Bangko Sentral ng Pilipinas website
Applicable taxes	Applicable taxes relating to FC

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, the Parties shall agree to adopt a new price index.

The FP_t to be billed by Seller shall be the lower between:

1. The sum of the (i) resulting value using the Fuel Commodity Cost Formula and (ii) the Non-Fuel Commodity Cost; or
2. The actual fuel price as billed by the fuel supplier/s (i.e., supported by actual invoices) for the relevant Billing Period.

For this purpose, the Seller’s Invoice shall include the relevant fuel supplier’s invoice, certified by Seller, which will detail the actual fuel cost incurred to produce the delivered energy to Buyer. If any index or indices are used, the Seller must provide the Buyer with a screen/snapshot of the relevant excerpt of the actual published price from the index provider for the applicable period. The Seller shall attach the monthly fuel inventory report submitted to the DOE.

Buyer reserves the right to refuse payment of the Fuel Cost if Seller fails to provide either the fuel supplier’s invoice or the monthly inventory report referred to above.

AED _t	As previously defined
FCR	<p>The computed Fuel Consumption Rate (FCR) or the actual plant FCR for the relevant Billing Period, whichever is lower, in kg/kWh.</p> <p>If the CUF is a whole number, the computed FCR is set forth in the table below:</p> <p>If the CUF is not a whole number, the formula to determine the computed FCR shall be:</p> $\frac{(FCR_{CUF2}-FCR_{CUF1}) \times (CUF - CUF1)}{(CUF2-CUF1)} + FCR_{CUF1}$ <p>If Buyer fails to utilize the Contract Capacity at the Monthly Minimum CUF, Seller may apply the higher of its actual consumption rate or the consumption rate corresponding to the Minimum CUF for that Billing Period.</p>

CUF = as previously defined
CUF2 = CUF increment of the nearest upper value, in %
CUF1 = CUF increment of the nearest lower value, in %
 FCR_{CUF2} = corresponding FCR for CUF2 set forth in the table below:
 FCR_{CUF1} = corresponding FCR for CUF1 set forth in the table below:

Illustration: CUF 65.61%

CUF2	66%
CUF1	65%
FCR_{CUF2}	0.5107

FCR _{CUF1}	0.5114
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The FCR at CUF levels 65% to 100% are as follows:

Capacity Utilization Factor (%)	FCR (kg/kWh)
100%	0.4956
99%	0.4961
98%	0.4965
97%	0.4970
96%	0.4974
95%	0.4978
94%	0.4983
93%	0.4987
92%	0.4990
91%	0.4994
90%	0.4999
89%	0.5002
88%	0.5006
87%	0.5009
86%	0.5013
85%	0.5018
84%	0.5021
83%	0.5025
82%	0.5029
81%	0.5033
80%	0.5037
79%	0.5041
78%	0.5045
77%	0.5050
76%	0.5054
75%	0.5059
74%	0.5064

Capacity Utilization Factor (%)	FCR (kg/kWh)
73%	0.5069
72%	0.5073
71%	0.5079
70%	0.5084
69%	0.5089
68%	0.5096
67%	0.5101
66%	0.5107
65%	0.5114

E. **Value-added Tax (“VAT”), if any.** VAT shall only be chargeable to the Buyer if prevailing laws expressly allow its passing on by the Seller.

17. NEECO II – AREA 2 simulated a rate impact analysis based on assumed quantities. The indicative rate impact on its overall generation rate with and without supply from TLI under the PSA are as follows:

NEECO II – AREA 2’s Generation Rate (Php/kWh)		
Without TLI PSA	With TLI PSA	Rate Impact
7.3949	6.3038	1.0911

18. As shown in the rate impact analysis, the implementation of the PSA between TLI and NEECO II – AREA 2 will benefit NEECO II – AREA 2 and its consumers with an estimated generation rate reduction of **Php 1.0911/kWh**. Thus, the PSA subject of this *Joint Application* will ultimately provide NEECO II – AREA 2’s end-users with a continuous and reliable supply of electricity at affordable rates.
19. In addition to the rate impact analysis, Joint Applicants wish to emphasize that the conduct of CSP was mandated to ensure the provision of least cost supply to consumers.
20. In the case of *Alyansa Para sa Bagong Pilipinas, Inc. vs. Energy Regulatory Commission, et. al.*⁸ (“*Alyansa Case*”), the Supreme Court held that the competitive public bidding is the most efficient, transparent, and effective guarantee that there will be no price gouging by distribution utilities, thus:

⁸ G.R. No. 227670, Decision dated 3 May 2019.

As part of its regulation of this monopoly, the State requires distribution utilities to subject to **competitive public bidding** their purchases of electricity from power generating companies. Competitive public bidding is **essential** since the power cost purchased by distribution utilities is entirely passed on to consumers, along with their operating expenses of distribution utilities. **Competitive public bidding is the most efficient, transparent, and effective guarantee that there will be no price gouging by distribution utilities.**⁹

21. In the same *Alyansa Case*, the Supreme Court pronounced that **the purpose of the CSP is to ensure transparency and competition in the procurement of power supply by distribution utilities (DUs) so as to provide the least-cost electricity to the consuming public, to wit:**

The 2015 DOE Circular recognized that under the EPIRA, the DOE has the mandate to “**formulate such rules and regulations as may be necessary to implement the objective of the EPIRA,**” where the State policy is to “[p]rotect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power.” The 2015 DOE Circular reiterated the EPIRA’s mandate that “all Distribution Utilities (DUs) shall have the obligation to supply electricity **in the least-cost manner to their Captive Market**, subject to the collection of retail rate duly approved by the [ERC].”

The 2015 DOE Circular mandated that DUs, including electric cooperatives, obtain their PSAs through CSP. Section 1 of the 2015 DOE Circular state the principles behind CSP:

Section 1. General Principles. Consistent with its mandate, the DOE recognizes that Competitive Selection Process (CSP) in the procurement of PSAs by the DUs ensures security and certainty of electricity prices of electric power to end-users in the long-term. **Towards this end, all CSPs undertaken by the DUs shall be guided by the following principles:**

(a) Increase the transparency needed in the procurement process to reduce risks;

(b) Promote and instill competition in the procurement and supply of electric power to all end-users;

(c) Ascertain least-cost outcomes that are unlikely to be challenged in the future as

⁹ Emphasis retained.

the political and institutional scenarios should change; and

(d) **Protect the interest of the general public.** (Boldfacing added)

In sum, the raison d’etre of CSP is to ensure transparency and competition in the procurement of power supply by DUs so as to provide the least-cost electricity to the consuming public.¹⁰

22. Considering that the subject PSA was a result of the conduct of a CSP facilitated by the NEA, pursuant to the prevailing CSP Rules and the *Alyansa Case*, it follows that the rates in the subject PSA and the other provisions contained therein already assure that NEECO II – AREA 2 and its customers will be provided with reliable, secure, and quality supply of power in the least-cost manner. Thus, the rates in the subject PSA should be implemented, as is, based on the subject PSA itself.
23. Furthermore, the rates provided in the subject PSA is similar to, if not lower than, the Honorable Commission’s previously approved rates of PSAs of the same technology in comparable areas, as shown in the following cases:

Case	Capital Recovery Fee (CRF)	Operation and Maintenance Fee (O&M Fee)	Fuel Cost
ERC No. 2020-031 RC ¹¹	1,671.20 Php/kW-mo	FOM: 366.16 Php/kW-mo VOM: 0.1907 Php/kWh	Pass-through subject to efficiency cap of 0.70 kg/kWh escalated at 1.5% annual degradation factor
ERC No. 2022-043 RC ¹²	1.8679 Php/kWh	FOM: 0.8475 Php/kWh VOM: 0.0812 Php/kWh	2.0976 Php/kWh

The sum of the provisionally-approved CRF and O&M Fees under ERC Case No. 2020-031 RC and ERC Case No. 2022-043 RC are Php2.816/kWh¹³ and Php2.7966/kW, respectively. The rates of the subject PSA in this application is

¹⁰ Underscoring supplied.

¹¹ “In the Matter of the Joint Application for the Approval of the Electric Power Purchase Agreement (EPPA) Entered Into By and Between Davao Del Norte Electric Cooperative, Inc. (DANECO) and FDC Misamis Power Corporation (FDCMPC), with Prayer for the Issuance of Provisional Authority”

¹² “In the Matter of the Joint Application for Approval of the Power Supply Agreement Between Bohol Light Company, Inc. and KEPCO SPC Power Corporation with Motions for Provisional Authority and Confidential Treatment of Information”

¹³ CRF and FOM converted to Php/kWh using 100% CUF.

lower. Based on Paragraph 16.8, at 100% CUF, the total CRF and O&M Fees in the subject PSA is at PhP 2.6618/kWh.

24. Since the rates provided in the subject PSA are the result of a valid CSP and similar to, if not lower than, the previously approved rates by the Honorable Commission, Applicants respectfully submit that the rates in the subject PSA should be approved by the Honorable Commission, as is and without any adjustments, because such rates will ultimately redound to the benefit of NEECO II – AREA 2’s end-users.
25. The Applicants submit the following documents for the evaluation of the *Joint Application*:

Description of Document	Annex
Power Supply Agreement (PSA) between NEECO II – Area 2 and TLI dated February 3, 2025	“A”
TLI’s Certificate of Incorporation, Amended Articles of Incorporation and By-Laws	“B” and series
TLI’s Verified Certification showing the list of Board of Directors and Board Members of the Ultimate Parent Company dated 9 August 2024	“C”
TLI’s Latest General Information Sheet (“GIS”)	“D”
TLI’s Board of Investments (“BOI”) Certificate of Registration No. 2010-052	“E”
Environmental Compliance Certificate (“ECC”) Ref. No. ECC-CO-1311-0037 for the Pagbilao 1 & 2 Coal Power Station	“F”
Provisional Authority to Operate (“PAO”) No. 24-06-28-M-PAO-E-0135L for the Pagbilao Coal Fired Thermal Power Plant	“G”
TLI’s Legal Opinion on DOE PDP and/or COE dated 24 February 2022	“H”
TLI’s Single-line Diagram Connection	“I”
TLI’s Write-up on Inconsistency in Capacity	“J”
TLI’s Transmission Service Agreement, Connection Agreement, and Metering Service Agreement with National Grid Corporation of the Philippines (“NGCP”)	“K” and series
Executive Summary of the PSA	“L”
TLI’s Sources of Funds (Confidential)*	“M”

TLI’s Generation Rate and Derivation (Confidential)*	“N* and series”
TLI’s Additional Supporting Documents for Generation Rate and Derivation (Confidential) *	“O and series*”
TLI’s Cash Flow (Confidential)*	“P*”
TLI’s Financial Model (Confidential)*	“Q*”
TLI’s Sample Bill	“R”
TLI’s Write-up on Relevant Technical and Economic Characteristics of the Generation Capacity	“S”
TLI’s Latest Audited Financial Statements	“T”
TLI’s Certification of Non-Applicability, and Write-Up on the Non-Applicability of the following: Shareholders’ Agreement; Renewable Energy Service Contract/ Operating Contract from the DOE 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 Copy of Related Agreements (such as Transmission Wheeling Contract, EPC Contract, O&M Contract, Wholesale Aggregator Agreement, Project Feasibility Study); Certification from the Bank/Lending Institution for Loans Equivalent Php/kWh with assumptions for foreign-denominated rates Potential cost (absolute amounts and Php/kWh) of Ancillary Services as when the IPP or the DU is connected to the main grid If different from previously filed PSA, updated costs Distribution Wheeling Service Agreement (for embedded generators), if applicable	“U”
TLI’s Certification of the Net Heat Rate kCal per kWh (Confidential)*	“V*”

TLI’s Coal Procurement Plan (Confidential) *	“W*”
TLI’s Coal Supply Agreement (Confidential) *	“W-1*”
Sworn Statement Re: TLI’s Explanation on Coal Procurement Process (Confidential) *	“X*”
TLI’s IPPA Agreement with PSALM (Confidential) *	“Y*”
TLI’s WESM Registration Approval Form	“Z”
NEECO II – AREA 2’s Certificate of Registration issued by NEA	“AA”
NEECO II – AREA 2’s Certificate of Franchise	“AA-1”
NEECO II – AREA 2’s Verified Certification showing the list of Board of Directors and Board Members	“BB”
NEECO II – AREA 2’s Alternative Demand Side Management Program	“CC”
NEECO II – AREA 2’s Write-up on Non-Applicability of Certain Document/s: Transition Supply Contract with the National Power Corporation	“DD”
NEECO II – AREA 2’s Supply and Demand Scenario and Average Daily Load Curve	“EE”
NEECO II – AREA 2’s PSPP	“FF”
NEECO II – AREA 2’s Distribution Development Plan	“GG”
NEECO II – AREA 2’s Single-line Diagram Connection	“HH”
NEECO II – AREA 2’s Performance Assessment of the System (SAIFI and SAIDI)	“II”
NEECO II – AREA 2’s Estimated Potential Reduction in Load Supplied by the DU due to retail competition	“JJ”
NEECO II – AREA 2’s WESM Certification	“KK”
Rate Impact Simulation	“LL”
Financial Bid Forms (Confidential)*	“MM*”
NEA-SBAC CSP Report	“MM-1”

NEA Office Order Nos. 2024-134 and 2024-276	“MM-2”
Invitations to Participate as CSP Observers	“MM-3”
Invitation to Bid (ITB) with Terms of Reference	“MM-4”
NEA Certificate of Conformity	“MM-5”
Affidavit of Publication dated September 3, 2024	“MM-6”
Philippine Daily Inquirer August 17, 2024 issue	"MM-7"
Philippine Daily Inquirer August 24, 2024 issue	"MM-8"
Proof of posting of ITB	"MM-9"
Bidding Procedures	"MM-10"
Summary of the Proceedings	"MM-11"
Bid Bulletins	"MM-12"
Eligibility Requirements	"MM-13"
Bid Security	"MM-14"
Posting of Performance Bond	"MM-15"
Draft PSA	"MM-16"
Checklists for evaluation of bids	"MM-17"
NEA-SBAC Resolution No. 04, series of 2024	"MM-18"
Abstract of Bids	"MM-19"
Bid and Post-Qualification Evaluation Report	"MM-20"
Technical Bid Forms and Standard Response Forms	"MM-21"

Notice of Award	"MM-22"
Notice to Execute Agreement	"MM-23"
Notice to Proceed	"MM-24"
NEECO II – AREA 2’s Board Resolution: a. Board Resolution No. 2024-05-01, b. Board Resolution No. 2025-01-25, c. Board Resolution No. 2025-02-17 d. Board Resolution No. 2025-02-22, e. Board Resolution No. 2025-02-24, f. Board Resolution No. 2025-02-25, g. Board Resolution No. 2025-02-26	"NN" and series
Affidavit In Support of Prayer for Provisional Authority	“OO”

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

PRAYER FOR PROVISIONAL AUTHORITY OR INTERIM RELIEF

26. Under Rule 14 of the ERC RRPP,¹⁴ 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.
27. A provisional approval (“PA”) of the NEECO II – AREA 2 - TLI PSA is necessary to ensure sufficient and reliable power supply to meet both the current and growing demands of NEECO II – AREA 2’s franchise area.
28. As shown in NEECO II – AREA 2’s Supply and Demand Scenario, its peak demand for 2024 is 48 MW. NEECO II – AREA 2’s franchise area is expected to incur a steady rise in electricity demand, with peak demand projected to grow at a rate of 6% annually. Clearly, NEECO II – AREA 2’s current supply of approximately 48 MW is insufficient to meet this demand. The NEECO II – AREA 2 - TLI PSA is urgently needed to address the power deficit and prevent service interruptions.
29. The procurement also addresses the imminent expiration of NEECO II – AREA 2’s emergency power supply agreement with GNPower Dinginin Ltd. Co. (GNPD) on 25 July 2025. Without timely replacement of these agreements, there is a

¹⁴ ERC Resolution No. 1, Series of 2021.

significant risk of NEECO II – AREA 2 being exposed to the volatile prices of the Wholesale Electricity Spot Market (“WESM”).

- 29.1. If no PA, interim relief, or decision will be issued before said expiration date, NEECO II – AREA 2’s demand of 48 MW will be exposed to WESM, having erratic power rates, to the prejudice of the consumers. Thus, the issuance of the PA, interim relief, or decision is in the best interest of NEECO II – AREA 2’s captive customers, as the NEECO II – AREA 2 -TLI PSA will provide reliable electricity service, with stable rate, which is essential for public welfare, economic stability and growth.
30. Furthermore, from the NEECO II – AREA 2’s rate impact simulation, it is clear that the implementation of the PSA with TLI would reduce NEECO II – AREA 2’s rate by **Php 1.0911/kWh**, as compared to if the same power requirements are purchased from WESM.
31. As such, the early implementation of the NEECO II – AREA 2 -TLI PSA would readily benefit NEECO II – AREA 2 and its captive customers as it will ensure the provision of reliable, secure, and quality supply of electricity in the least cost manner.
32. To support the prayer for provisional authority or interim relief, the Judicial Affidavit of Mr. Dennis Duane C. Sotto is attached hereto as **Annex “OO”** of the *Joint Application*.

MOTION FOR CONFIDENTIAL TREATMENT OF ANNEXES “M”, “N”, “O and Series”, “P”, “Q”, “V” “W” “W-1”, “X”, “Y”, and “MM”

33. Section 1, Rule 4 of the *ERC Revised Rules of Practice and Procedure* provides that a party to any proceeding before the Honorable Commission may request that certain information not be disclosed and be treated as confidential. Pursuant to this, TLI prays that the information contained in the documents enumerated below be treated as *CONFIDENTIAL* and that the same be continuously protected from public disclosure, except to the officers and staff of the Honorable Commission (collectively referred to as “Confidential Documents”):

Description of Document	Annex
TLI’s Sources of Funds (Confidential)*	“M”
TLI’s Generation Rate and Derivation (Confidential)*	“N”

TLI’s Additional Supporting Documents for Generation Rate and Derivation (Confidential) *	“O and series*”
TLI’s Cash Flow (Confidential)*	“P*”
TLI’s Financial Model (Confidential)*	“Q*”
TLI’s Certification of the Net Heat Rate kCal per kWh (Confidential)*	“V*”
TLI’s Coal Procurement Plan (Confidential) *	“W*”
TLI’s Coal Supply Agreement (Confidential) *	“W-1*”
Sworn Statement Re: TLI’s Explanation on Coal Procurement Process (Confidential) *	“X*”
TLI’s IPPA Agreement with PSALM (Confidential) *	“Y*”
Financial Bid Forms (Confidential)*	“MM*”

34. The Confidential Documents contain financial models, computation/calculation for rate determination and cost components. Hence, TLI has actual and valuable proprietary interest to protect such information and data, which fall within the bounds of “trade secrets” that are entitled to protection under the Constitution, statutes, and rules and regulations of this Honorable Commission.
- 34.1. The foregoing annexes contain non-public, proprietary information and data involving Applicants’ investments, business operations, and financial calculations. Applicants determine, among others, their 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. Applicants’ competitiveness will seriously be prejudiced if these information are unduly disclosed.
- 34.2. Moreover, the interest of applicant NEECO II – AREA 2’s consumers is sufficiently protected by the review and evaluation of the rates under the NEECO II – AREA 2-TLI PSA by the Honorable Commission, without the need to disclose the contents of the Confidential Documents.

35. In the case of *Air Philippines Corporation vs. Pennswell, Inc.*,¹⁵ 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 customer list. **It is indubitable that trade secrets constitute proprietary rights.”** (*Emphasis supplied.*)

- 35.1. Moreover, the Honorable Commission categorically acknowledged in its Decision in ERC Case No. 2015-111 RC¹⁶ 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.*)

- 35.2. 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 RRPP.

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

¹⁶ 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).*”

36. Further, the treatment of the information contained in **Annexes “M”, “N”, “O and Series”, “P”, “Q”, “V” “W”, “W-1”, “X”, “Y”, and “MM”** as confidential information is consistent with the Honorable Commission’s *Updated Matrix of Confidential and Non-Confidential Document and Information (as of 16 October 2024)* (“Matrix”). In the Matrix, financial models, computation/calculation for rate determination and cost components should be treated with confidentiality because they have proprietary value that constitute trade secrets. Therefore, as described above, since the information in the subject documents fall in these categories, **Annexes “M”, “N”, “O and Series”, “P”, “Q”, “V” “W”, “W-1”, “X”, “Y”, and “MM”** should likewise be treated with confidentiality.
37. In view of the foregoing and pursuant to Rule 4 of the *ERC Revised Rules of Practice and Procedure*, TLI respectfully requests that the attached **“Annexes M”, “N”, “O and Series”, “P”, “Q”, “V” “W”, “W-1”, “X”, “Y”, and “MM”** and the information contained therein be treated as confidential and privileged, and not be disclosed to persons other than the necessary officers and staff of this Honorable Commission.
38. TLI hereby submits **Annexes “M”, “N”, “O and Series”, “P”, “Q”, “V” “W”, “W-1”, “X”, “Y”, and “MM”** via: (i) password-protected electronic copies, and (i) one (1) physical copy each of the respective confidential documents in a sealed envelope, with the envelope and each page of the documents stamped with the word “Confidential”.

PRAYER

WHEREFORE, premises considered, Applicants **THERMA LUZON INC. (TLI)** and **NUEVA ECIJA II ELECTRIC COOPERATIVE, INC. - AREA 2 (NEECO II – AREA 2)** respectfully pray that the Honorable Commission:

1. **ISSUE** an Order treating **Annexes “M”, “N”, “O and Series”, “P”, “Q”, “V” “W”, “W-1”, “X”, “Y”, and “MM”** 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;
2. Pending trial on the merits, **GRANT** provisional authority or interim relief allowing the implementation of the PSA between **NEECO II – AREA 2** and TLI, including all the rates, fees, charges, and tariff adjustment mechanisms set out therein at the rates provided in the PSA, and authorizing **NEECO II – AREA 2** to charge and collect such rates, fees, charges, and tariff adjustment therein from its customers

reckoned from the start of the supply by TLI to NEECO II – AREA 2 under the PSA subject of this *Joint Application*; and

3. After hearing on the merits, **ISSUE** a Decision **APPROVING** the *Joint Application* and PSA between NEECO II – AREA 2 and TLI, including all the rates, fees, charges, and tariff adjustment mechanisms set out therein at the rates provided in the PSA, and authorizing NEECO II – AREA 2 to charge and collect such rates, fees, charges, and tariff adjustments therein from its customers reckoned from the start of the supply by TLI to NEECO II – AREA 2 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 2020¹⁷ and Resolution No. 01, Series of 2021¹⁸ (ERC Revised Rules of Practice and Procedure):

Date	Platform	Activity
24 June 2025 (Tuesday) at nine o'clock in the morning (9:00 A.M.)	Microsoft Teams Application	Determination of compliance with jurisdictional requirements and Expository Presentation
01 July 2025 (Tuesday) at nine o'clock in the morning (9:00 A.M.)		Pre-Trial Conference and Presentation of Evidence

Accordingly, NEECO II – AREA 2 is hereby directed to mirror the virtual hearings to be hosted by the Commission at **NEECO II – AREA 2’s Principal Office located at Maharlika Highway, Diversion, San Leonardo, Nueva Ecija** as designated venue for the conduct thereof and ensure that the same is open to the public. Moreover, NEECO II – AREA 2 and TLI shall guarantee that, during the conduct of the expository presentation, the participation of the public shall not be impaired.

¹⁷ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.
¹⁸ A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

RELATIVE THERETO, NEECO II – AREA 2 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 virtual hearing;
- 2) Furnish with copies of this *Order* and the attached *Notice of Virtual Hearing* the Offices of the Provincial Governor, the Mayors, the Local Government Unit (LGU) legislative bodies, within NEECO II – AREA 2's franchise area for the appropriate posting thereof on their respective bulletin boards;
- 3) Inform the consumers within NEECO II – AREA 2's franchise area, by any other means available and appropriate, of the filing of the *Joint Application*, their 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 prior to the date of the initial virtual hearing, NEECO II – AREA 2 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 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 NEECO II – AREA 2 and TLI to inform the consumers within NEECO II – AREA 2’s franchise area of the filing of the *Joint Application*, their 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, NEECO II – AREA 2 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 Office of the Provincial Governor, Mayors, and Local Legislative Bodies, and to submit proof of posting thereof.

NEECO II – AREA 2 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; 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 NEECO II – AREA 2 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 virtual hearing and Pre-trial Conference pursuant to the preceding paragraph.

Failure of NEECO II – AREA 2 and TLI to comply with the above requirements within the prescribed period shall be a ground for cancellation of the scheduled hearing.

Joint Applicants NEECO II – AREA 2 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* with relevant information and pertinent details substantiating the reasons and justifications being cited in support thereof.

Joint Applicants NEECO II – AREA 2 and TLI are hereby directed to file a copy of their Expository Presentations via e-mail at docket@erc.ph, copy furnish the Legal Service through legal@erc.ph, **at least five (5) calendar days** prior to the scheduled virtual hearing. NEECO II – AREA 2 and TLI shall also be required, upon the request of any stakeholder, to provide an advance copy of their expository presentations, **at least five (5) calendar days** prior to the scheduled virtual hearing.

Joint Applicants NEECO II – AREA 2 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 its 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, Joint Applicants NEECO II – AREA 2 and TLI, including their authorized representatives and witnesses, are hereby directed to provide the Commission, through legal.virtualhearings@erc.ph, with 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, 13 May 2025.

FOR AND BY AUTHORITY
OF THE COMMISSION:


ATTY. KRISHA MARIE T. BUELA
Director III, Legal Service


LS: CAB/JGGW

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ORDER/ 13 MAY 2025
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Copy Furnished:

1. Nueva Ecija II Electric Cooperative, Inc. – Area 2 (NEECO II – AREA 2)
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2. Therma Luzon, Inc. (TLI)
Applicant
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6. Commission on Audit (COA)
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7. Senate Committee on Energy
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8. House Committee on Energy
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9. Office of the Governor
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10. Office of the Local Government Unit (LGU) Legislative Body
Province of Nueva Ecija
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12. Office of the Local Government Unit (LGU) Legislative Body
Palayan City, Nueva Ecija
13. Office of the Mayor
San Leonardo, Nueva Ecija
14. Office of the Local Government Unit (LGU) Legislative Body
San Leonarda, Nueva Ecija
15. Office of the Mayor
Santa Rosa, Nueva Ecija
16. Office of the Local Government Unit (LGU) Legislative Body
Santa Rosa, Nueva Ecija
17. Office of the Mayor
Peñaranda, Nueva Ecija
18. Office of the Local Government Unit (LGU) Legislative Body
Peñaranda, Nueva Ecija
19. Office of the Mayor

General Tinio, Nueva Ecija

20. Office of the Local Government Unit (LGU) Legislative Body
General Tinio, Nueva Ecija
21. Office of the Mayor
General Natividad, Nueva Ecija
22. Office of the Local Government Unit (LGU) Legislative Body
General Natividad, Nueva Ecija
23. Office of the Mayor
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24. Office of the Local Government Unit (LGU) Legislative Body
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25. Office of the Mayor
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26. Office of the Local Government Unit (LGU) Legislative Body
Gabaldon, Nueva Ecija
27. Office of the Mayor
Rizal, Nueva Ecija
28. Office of the Local Government Unit (LGU) Legislative Body
Rizal, Nueva Ecija
29. Office of the Mayor
Bongabon, Nueva Ecija
30. Office of the Local Government Unit (LGU) Legislative Body
Bongabon, Nueva Ecija
31. Office of the Mayor
Llanera, Nueva Ecija
32. Office of the Local Government Unit (LGU) Legislative Body
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