

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City

**IN THE MATTER OF THE
JOINT APPLICATION FOR
APPROVAL OF THE
EMERGENCY POWER
SUPPLY AGREEMENT
BETWEEN MANILA
ELECTRIC COMPANY AND
THERMA LUZON, INC. WITH
MOTION FOR
CONFIDENTIAL
TREATMENT OF
INFORMATION AND
PRAYER FOR PROVISIONAL
AUTHORITY OR INTERIM
RELIEF**

ERC CASE NO. 2023-095 RC

**MANILA ELECTRIC
COMPANY AND THERMA
LUZON, INC.,**

Applicants.

Promulgated:
September 05, 2023

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NOTICE OF VIRTUAL HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 27 July 2023, Manila Electric Company (MERALCO) and Therma Luzon, Inc. (TLI) filed a *Joint Application* dated 25 April 2023, seeking the Commission's approval of their Emergency Power Supply Agreement (EPSA), with motion for confidential treatment of information and prayer for provisional authority or interim relief.

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

I. The APPLICANTS

A. MERALCO

1. Applicant MERALCO is a private corporation existing under the laws of the Republic of the Philippines, with principal office located at Lopez Building, Ortigas Avenue, Brgy. Ugong, Pasig City. It may be served with notices and other processes of this Honorable Commission through its counsel at the address indicated herein.
2. MERALCO has a legislative franchise to operate and maintain a distribution system in the cities/municipalities of Metro Manila, Bulacan, Cavite and Rizal and certain cities/municipalities/barangays in Batangas, Laguna, Quezon and Pampanga, pursuant to Republic Act No. 9209, and is authorized to charge all its customers for their electric consumption at the rates approved by the Honorable Commission.

B. TLI

3. Applicant TLI is a private corporation duly organized and existing under the laws of the Philippines, with principal address at NAC Tower, 32nd Street, Bonifacio Global City, Taguig City. It may be served with notices and other processes of this Honorable Commission through its counsel at the address indicated herein.
4. TLI is the Independent Power Producer Administrator (IPPA) for the 700 MW capacity from the Pagbilao Coal Fired Thermal Power Plant ("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 Plant.

II. STATEMENT OF FACTS

A. MERALCO's Power Situation Outlook for 2023

Suspension of the MERALCO-SPPC 2019 PSA involving 670 MW contract capacity

5. MERALCO's bilateral power supply contracts portfolio was reduced by 670 MW starting 07 December 2022, due to the suspension of the MERALCO and South Premiere Power Corp. ("SPPC") 670 MW power supply agreement (dated 13 September 2019; docketed as ERC Case No. 2019-081 RC) ("MERALCO-SPPC 2019 PSA") as a result of a 60-day Temporary Restraining Order ("TRO") and, subsequently, a Writ of Preliminary Injunction ("WPI") issued by the Court of Appeals on 23 November 2022 in connection with SPPC's Petition for Certiorari with application for [TRO] and [WPI] dated 4 November 2022 (docketed as CA G.R. SP No. 176036).

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6. Since then, MERALCO has been seeking proposals for emergency power supply agreement/s (EPSA/s) from various power suppliers to replace the capacity needed due to the suspension of the MERALCO-SPPC 2019 PSA. Subsequently, SPPC and TLI provided offers to MERALCO to supply 300 MW and 370 MW, respectively.
 7. Pursuant thereto and considering the urgent need to contract additional capacity so as not to be exposed to the volatile prices of the Wholesale Electricity Spot Market (“WESM”), on 8 March 2023, MERALCO filed with the Department of Energy (“DOE”) a request for certificate of exemption (“COE”) from the conduct of a competitive selection process (“CSP”) (“COE-CSP”),¹ pursuant to the DOE Department Circular No. DC2018-02-0003 (the “2018 CSP Rules”),² as amended by DOE Department Circular No. DC2021-09-0030 (the “2021 Revised CSP Rules”).³
- B. DOE-issued Certificates of Exemption from the conduct of CSP (“COE-CSP”) and Nature of the Application
8. On 10 March 2023, the DOE issued the COE-CSPs in favor of the MERALCO-TLI EPSA.⁴
 9. On 11 April 2023, MERALCO and TLI executed the MERALCO-TLI EPSA for the purchase of 370 MW capacity and associated energy from the Plant starting from Operations Effective Date until 25 March 2024, pursuant to the COE-CSP. Pursuant to Section 2.2 of the 2018 CSP Rules, as amended by the 2021 Revised CSP Rules, MERALCO started sending the corresponding nominations to TLI beginning 12:01 a.m. of 12 April 2023.
 10. Under Section 45(b) of Republic Act No. 9136 or the Electric Power Industry Reform Act of 2001 (“EPIRA”), it is provided that *"Distribution utilities ["DUs"] may enter into bilateral power supply contracts subject to review by the ERC xxx"*.
 11. Corollary to that, Section 2.2 of the 2018 CSP Rules, as amended by the 2021 Revised CSP Rules, reads as follows:

II.2. EXEMPTION FROM CSP.

2.2.1 The following instances shall warrant a [COE] from the conduct of [CSP] (COE-CSP) from the DOE:

xxx xxx xxx

2.2.1.2 Negotiated procurement of emergency power supply wherein the cooperation period of the corresponding Emergency Power Supply Agreement (EPSA) shall not exceed one (1) year.

¹ Attached as ANNEX “C” of the *Application*.

² Series of 2018 entitled “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.”

³ Series of 2021 entitled “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.”

⁴ Attached as ANNEX “C-1” of the *Application*.

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and such EPSA shall be filed immediately before the Energy Regulatory Commission (ERC) upon the issuance and within the effectivity of the COE-CSP; Provided, that the DU shall prove and certify that it has performed all the necessary and required due diligence, and solicited proposal from at least one (1) power supplier for EPSA to address the emergency situation and to avert and/or mitigate its consequences, and the offer/s from the available Power Supplier/s shall be attached in the request for COE-CSP; Provided also, that the procurement of emergency power supply shall be not be entitled to any form of subsidy. Provided finally, that the rate shall be equivalent to or lower than the latest ERC-approved generation tariff for same or similar technology in comparable areas.”

xxx xxx xxx

2.2.1 (sic) For EPSAs contemplated under Section 2.2.1.2, the grant of the COE-CSP authorizes the DU to immediately implement the EPSAs executed by virtue of such certificate, without prejudice to the evaluation and final decision of the ERC on the application for the approval of such EPSAs.

(Emphasis and underscoring supplied)

12. Likewise, the 2021 Revised CSP Rules defines emergency power as follows:

3.13 “Emergency Power” refers to the power required by the DU in the event that a DU’s actual power supply falls below its load demand due to Force Majeure or Fortuitous Events that are beyond the control of the DU, and such shortfall cannot be addressed through any reasonable means and cannot be supplied by the Wholesale Electricity Spot Market (WESM), subject to the final determination by the DOE. (Underscoring supplied)

III. SALIENT FEATURES OF THE MERALCO-TLI EPSA

13. The MERALCO-TLI EPSA, a copy of which is attached as ANNEX “D” and made an integral part hereof, contains the following salient features:

RECITALS

C. Through COE-CSP-2023-03-014, the DOE granted exemption from competitive selection process the negotiated procurement of emergency power supply agreement with Power Supplier for contract capacity of 370 MW for the period from 26 March 2023 to 25 March 2024 (the “COE-CSP”).

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1.1 Definitions

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Contract Capacity or CC shall be set at 370 MW (net), as may be adjusted from time to time in accordance with Article 8 and/or Section 18.1.

xxx

2.2. Term of Agreement

2.2.1. Subject to Article 3, this Agreement shall become effective on the Execution Date.

- 2.2.2. The term of this Agreement shall commence on the Operations Effective Date, and shall expire on March 25, 2024, pursuant to the COE-CSP, unless terminated earlier: (a) by reason of lifting of the writ of preliminary injunction granted in favor of SPPC for 670 MW contract capacity, or (b) in accordance with the terms of this Agreement (the "Term").

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3.2. Operations Effective Date

The obligations of Power Supplier with respect to the Contract Capacity and Associated Energy shall commence on April 11, 2023 (the "Operations Effective Date"); provided that, the conditions set out in Section 3.2.1 have been satisfied.

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Article 4. Sale and Purchase of Contract Capacity and Associated Energy

4.1. Supply of Power

Subject to the terms and conditions of this Agreement, from the Operations Effective Date until the expiration of the Term or earlier termination of this Agreement, Power Supplier shall:

- (a) make Available to Meralco, and Meralco shall purchase from Power Supplier, at the Price determined in accordance with Appendix C, the Contract Capacity primarily from the Plant, and, subject to Section 7.1, other available sources which supply shall be deemed delivered from the Plant; and
- (b) deliver and sell to Meralco, and Meralco shall purchase from Power Supplier, at the Price determined in accordance with Appendix C, the Associated Energy (and Replacement Power), to the extent of Meralco's relevant day-ahead nominations.

xxx

Article 7. Outages

7.1. Outages Allowances and Replacement Power

- 7.1.1. After Operations Effective Date, Power Supplier shall be allowed, on an annual basis, Scheduled Outages not exceeding 27.9 Full Load Equivalent Outage Days ("Full Load Equivalent Scheduled Outage Allowance Days") and Forced Outages not exceeding 16.8 Full Load Equivalent Outage Days ("Full Load Equivalent Forced Outage Allowance Days"). For clarity, Power Supplier shall be entitled to Full Load Equivalent Scheduled Outage Allowance Days and Full Load Equivalent Forced Outage Allowance Days, as pro-rated to the number of days of the Term, computed in accordance with Appendix C.
- 7.1.2. During Scheduled Outages within the Full Load Equivalent Scheduled Outage Allowance Days and Forced Outages within the Full Load Equivalent Forced Outage Allowance Days, Meralco shall procure Replacement Power from the WESM, Power Supplier shall not bill Meralco for these quantities, and the Minimum Associated Energy shall be correspondingly reduced in accordance with Appendix C. For clarity, the cost of Replacement Power shall form part of the price that Meralco will charge to its customers.

However, if the Plant is only on partial Outage, Power Supplier shall supply and deliver Associated Energy to Meralco from the Plant in the proportion that the Contract Capacity bears against the Plant's total offtake agreements, and such delivered Associated Energy shall be paid by Meralco at the Price, provided that, if, after prorating the supply due to a partial Outage, Power Supplier determines that the available capacity of the Plant is sufficient to supply Meralco's nominations, Power Supplier shall deliver the Associated Energy corresponding to Meralco's nominations, which shall be paid by Meralco at the Price, and the partial Outage shall not be counted against the Full Load Equivalent Scheduled Outage Allowance Days or Full Load Equivalent Forced Outage Allowance Days, as applicable.

- 7.1.3. During Scheduled Outages that exceed the Full Load Equivalent Scheduled Outage Allowance Days and Forced Outages that exceed the Full Load Equivalent Forced Outage Allowance Days, Power Supplier shall purchase Replacement Power, which shall be declared as BCQ and paid by Meralco at Contract Price.
- 7.1.4. During any period in which an Event of Force Majeure affects Power Supplier or Meralco, Meralco shall procure replacement energy from the WESM to the extent supply or offtake is so affected. For clarity, the cost of such replacement energy shall form part of the price that Meralco will charge to its customers.
- 7.1.5. The supply by Power Supplier of quantities of Replacement Power under this Section 7.1 shall be deemed fulfillment of Power Supplier's obligation to make available the Contract Capacity and to deliver the Associated Energy during such period.

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Article 9. Billing and Payment

9.1. Billing

Power Supplier shall render to Meralco an itemized Invoice for each Billing Period in accordance with the provisions of this Agreement and Appendix E. Meralco shall pay Invoices when due and payable in accordance with this Agreement and Appendix E.

9.2. Payments

- 9.2.1. Meralco shall pay the entire amount indicated in the Final Invoice (subject to Appendix E) when due and payable, provided that, Meralco shall not be required to make payment on any Invoice that is manifestly in error, apparently invalid, or not in the form or substance contemplated by this Agreement, until the same has been corrected following prompt notice by Meralco to Power Supplier of such error, invalidity or absence of proper form or substance.

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11. Charges Due to Material Adverse Government Action

- 11.1 If as a result of Material Adverse Government Action, Meralco becomes liable to pay any new charges, fees, taxes, duties, assessments or other similar amounts (the "New Charges"), or any increase in existing charges, fees, taxes, duties, assessments or other similar amounts (the "Increased Charges") becomes payable with respect to

this Agreement, the New Charges or Increased Charges shall form part of the price that Meralco will charge to its customers.

- 11.2. If as a result of a Material Adverse Government Action affecting Power Supplier, Power Supplier becomes liable to pay any New Charges or any Increased Charges or a Material Adverse Government Action materially and adversely affects the ability of Power Supplier to perform or materially increases the operating costs or capital expenditures associated with the Plant or materially and adversely affects its performance of its obligations under this Agreement, adversely affects the sale by Power Supplier of Contract Capacity and Associated Energy in accordance with this Agreement, makes Power Supplier's administration or operational aspects of such performance materially more burdensome (whether made at the direction of any Governmental Instrumentality or otherwise) or causes serious damage to, or materially and adversely affects the financial condition of Power Supplier, Power Supplier shall send a notice to Meralco of the occurrence of such Material Adverse Government Action with sufficient explanation of the nature and corresponding proof of the Material Adverse Government Action being invoked, together with an analysis of the cost impact of such Material Adverse Government Action and the proposed recovery mechanism (the "Notice of Material Adverse Government Action") xxx

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12.2. ERC Approval

- 12.2.1. Upon receipt of the ERC Final Approval, Meralco shall provide a copy of such ERC Final Approval to Power Supplier. Power Supplier shall have ten (10) Days from its receipt from ERC or from Meralco of such ERC Final Approval, whichever is earlier, to notify Meralco in writing that: (i) it accepts such ERC Final Approval or (ii) it does not accept the ERC Final Approval, stating the grounds for non-acceptance; provided that, if the ERC Final Approval does not contain any adjustment or modification of this Agreement, (a) the ERC Final Approval shall be deemed accepted by Power Supplier and (b) this Agreement shall continue to be implemented by the Parties in accordance with such ERC Final Approval. For clarity, ERC Final Approval may be promulgated subsequent to the Operations Effective Date.

- 12.2.2 In case of Power Supplier's non-acceptance, or ERC order of adjustment/disallowance in the Price and/or refund to customers, Power Supplier shall be free to file a motion for reconsideration or seek any other relief to question such ERC Final Approval or order; provided that in case of an ERC order of adjustment/disallowance in the Price and/or refund to customers, Power Supplier may likewise opt to suspend this Agreement, upon 5 days' prior written notice to Meralco, and Meralco shall source its supply from WESM in the meantime. For all other instances of non-acceptance, and Power Supplier decides to file a motion for reconsideration, the Parties shall, pending resolution thereof by the ERC, continue to implement this Agreement in accordance with the ERC Final Approval, subject to any adjustment or amendment that the ERC may direct. Any order on a motion for reconsideration or on such other relief taken by Power Supplier shall be treated as an ERC Final Approval for purposes of the

processes under this Section 12.2. If the ERC Final Approval requires any amendment to or modification of any provision of this Agreement that is not acceptable to either Party, acting reasonably, then the Parties shall cooperate in good faith to resolve the required amendment, including seeking a reconsideration by the ERC. If the Parties are unable to agree on the required amendment within thirty (30) Days from receipt of the ERC Final Approval (including following any order resolving the motion for reconsideration), or if the motion for reconsideration is not resolved by the ERC within sixty (60) Days after its filing, or the amendment is disapproved by the ERC, or approved by the ERC but still contains any material term or condition that is not acceptable to either Party, acting reasonably, then either Party may terminate this Agreement.

For clarity, if, following the ERC Final Approval, Power Supplier (i) does not file a motion for reconsideration with the ERC, (ii) does not initiate discussions with Meralco for a required amendment, and/or (iii) does not notify Meralco that it intends to terminate this Agreement, then the ERC Final Approval shall be deemed accepted by Power Supplier and this Agreement shall continue to be implemented in accordance with the ERC Final Approval.

- 12.2.3. If the ERC Final Approval requires any portion of the sum that has been paid by Meralco to Power Supplier to be adjusted, Power Supplier shall make the necessary adjustments in accordance with the direction of the ERC. In the event of any disallowance in the Price, the same shall be for the account of Power Supplier.

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Appendix C
CALCULATION OF PAYMENT

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B. MONTHLY POWER BILL

The MPB shall consist of Capacity Payments, Energy Payments and Other Payments. The Capacity Payments consist of Component A (MCP) and Component B (MFOM); Energy Payments consist of Component C (MFP), Component D (MVOM) and; Other Payments consist of Component E (BHCC). Thus, the MPB for Contract Capacity and Associated Energy for each Billing Period shall be equal to:

$$\text{MPB} = \text{MCP} + \text{MFOM} + \text{MVOM} + \text{MFP} + \text{BHCC}$$

The MPB is exclusive of the applicable Value Added Tax.

[MCP – Monthly Capacity Payment; MFOM – Monthly Fixed O&M Payment;
MVOM – Monthly Variable O&M Payment; MFP – Monthly Fuel Payment; and
BHCC – Benefits to Host Communities Charges]

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**SCHEDULE 1
TABLE 1. BASE RATES**

Component		Variable	Unit	Value
Capital Recovery Fee	1 April 2023 to 25 July 2023	CRF	PhP/kW-month	2,231.00
	26 July 2023 to 25 January 2024			1,138.00
	26 January 2024 to 25 March 2024			1,064.00
Fixed O&M Fee		FOM	PhP/kW-month	107.28
Variable O&M Fee		VOM	PhP/kWh	0.2232
Base Fuel Fee		Base	PhP/kWh	4.6756
Base Newcastle Index		No	USD/MT	177.50
Base ICI4		ICI4 ₀	USD/MT	73.52
Base Foreign Exchange Rate		FX ₀	PhP/USD	55.07
Franchise and Benefits to Host Communities Rate		FBHC	PhP/kWh	0.0100
Base Full Load Equivalent Scheduled Outage Allowance Days		BSOA	days	27.9
Base Full Load Equivalent Forced Outage Allowance Days		BFOA	days	16.8

IV. GENERATION RATE IMPACT

14. Based on the foregoing, and given a certain set of assumptions, the effective rate under the MERALCO-TLI EPSA is PhP 7.4960 per kWh (at plant gate, VAT exclusive), as shown in the RATE IMPACT ANALYSIS below:

Rate Impact of Thermo Luzon Inc. (TLI) EPSA at 100.00% pcf						
BILLING COMPONENT	UNIT	BASE RATES ^(a)	Adjustment Factor ^(b)	BILLING DETERMINANT ^(c)		AMOUNT (PHP)
A.) Monthly Capacity Payment (April 1 to July 25, 2023) ^(d)	(PhP/kW-mo)	2,231.0000	-	370,000	(kW)	2,843,202,903.23
Monthly Capacity Payment (July 26, 2023 to January 25, 2024)	(PhP/kW-mo)	1,139.0000	-	370,000	(kW)	2,526,360,000.00
Monthly Capacity Payment (January 26 to March 25, 2024)	(PhP/kW-mo)	1,064.0000	-	370,000	(kW)	767,360,000.00
B.) Monthly Fixed O&M Payment ^(e)	(PhP/kW-mo)	107.2800	-	370,000	(kW)	454,555,741.94
C.) Monthly Variable O&M Payment	(PhP/kWh)	0.2232	-	3,099,120,000	(kWh)	691,723,584.00
D.) Monthly Fuel Payment	(PhP/kWh)	4.6756	1.0967	3,099,120,000	(kWh)	15,690,839,718.03
E.) Benefits to Host Communities Charges	(PhP/kWh)	0.0100	-	3,099,120,000	(kWh)	30,991,200.00
Total Payment (VAT Exclusive)	{PhP}					28,291,093,147.19
Plant Gate Rate (VAT Exclusive)	{PhP/kWh}					7.4960
WESM Line Rental Rate ^(f)	(PhP/kWh)					0.1734
Delivered Rate (VAT Exclusive) ^(g)	{PhP/kWh}					7.6694
Effective Cost if sourced from WESM ^(h)	(PhP/kWh)					9.8523
Increase / (Decrease) over WESM	(PhP/kWh)					(2.1829)
Meralco Captive Energy Demand ⁽ⁱ⁾	(kWh)					93,939,481,220
Increase / (Decrease) in Generation Charge ^(j)	{PhP}					{6,765,107,523}
Increase / (Decrease) in Generation Charge ^(k)	{PhP/kWh}					{0.1994}

Assumptions:

- ^(a) Base Rates as indicated in Schedule 1 of Appendix C of the EPSA.
- ^(b) Adjustment factor calculated in accordance with formula indicated in Appendix C of the EPSA and assumes forecasted values for the Newcastle and ICI4 indices for the duration of the EPSA.
- ^(c) Energy billing determinant for the duration of the EPSA (349 days) based on 100.00% pcf with respect to the Contract Capacity (370 MW).
- ^(d) For the first billing period, Capacity and FOM base rates are reduced proportionately based on actual commencement date of EPSA on April 12, 2023.
- ^(e) Line Rental is a pass-through cost. Assumed line rental rate is based on average actual line rental of Pagbilao.
- ^(f) Delivered Rate and its impact to Generation Charge is computed over the Term of the EPSA.
- ^(g) Cost if equivalent volume was sourced from WESM.
- ^(h) Forecasted Meralco Captive Energy for April 12, 2023 to March 25, 2024 based on the latest Power Supply Procurement Plan as submitted to the DOE.

15. MERALCO notes that the delivered rate of PhP 7.6694 per kWh (VAT exclusive and line rental inclusive) is lower by about PhP 2.1829 per kWh than the effective cost of PhP 9.8523 per kWh, if the equivalent capacity under the MERALCO-TLI PSA is to be sourced from the WESM. In fact, by sourcing the capacity through the MERALCO-TLI EPSA, MERALCO's average blended generation rate will be reduced by about PhP 0.1994 per kWh (as seen in the RATE IMPACT ANALYSIS above), resulting in savings to consumers of about PhP 6.7 billion.

V. COMPLIANCE WITH DOCUMENTARY REQUIREMENTS

16. In support of this Joint Application with Motion for Confidential Treatment of Information, the Judicial Affidavit of ENGR. DAVIDJOHN A. ZUÑIGA, Officer of MERALCO's Energy Resource Planning - Energy Sourcing Office, is attached as ANNEX "E" and made an integral part hereof.

17. Likewise, in support of the instant Joint Application, the Applicants provide the following documents, which underwent the pre-filing conference and pre-filing marking of annexes with the Honorable Commission:

Description of Document	Annex
A. Applicants' Authority	
MERALCO's Secretary's Certificate	"A"
TLI's Secretary Certificates	"B" and "B-1"
B. MERALCO's Documents	
MERALCO Letter-Request for COE-CSP dated 8 March 2023	"C"
DOE COE-CSP released on 10 March 2023	"C-1"
MERALCO-TLI EPSA	"D"
Judicial Affidavit of Engr. Davidjohn A. Zuñiga	"E"
MERALCO's Articles of Incorporation and By-Laws	"F"
MERALCO's Latest General Information Sheet ("GIS")	"G"
Verified Certification of True Copies of MERALCO's Articles of Incorporation, By-Laws, and GIS and of MERALCO's Ultimate Parent Company, all of its subsidiaries and affiliates	"G-1"
MERALCO's Demand Side Management Program	"H"
Write-up on the non-applicability of National Power Corporation Certification regarding whether or not Transition Supply Contract capacity and energy is expected to be available during the contractual period	"I"
Excerpt of MERALCO's Distribution Development Plan – Power Supply Procurement Plan (Supply and Demand Scenario);	"J"
<ul style="list-style-type: none"> • Average Daily Load Curve scenarios • Details of Existing Suppliers • Details of Power Supply Contract Utilization • Details of SAIDI and SAIFI 	<p>"J-1"</p> <p>"J-2"</p> <p>"J-3"</p> <p>"J-4"</p> <p>"J-5"</p>

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Description of Document	Annex
<ul style="list-style-type: none"> Estimation of the potential for a reduction in load supplied by MERALCO due to RCOA Write-up of no inconsistencies/differences from documents presented 	"J-6"
C. TLI's Documents	
TLI's Amended Articles of Incorporation and By-Laws	"K"
TLI's Certificate of Incorporation issued by the Securities and Exchange Commission (SEC)	"K-1"
TLI's General Information Sheet ("GIS")	"L"
TLI's Verified Certification dated 18 November 2022, showing the list of Board of Directors and members of the Ultimate Parent Company, subsidiaries and all affiliates or Information Sheet of TLI	"M"
TLI's Diagram of Corporate Structure/Organizational Chart	"N"
TLI's Board of Investments ("BOI") Certificate of Registration No. 2010-052	"O"
Certificate of Compliance ("COC") No. 19-07-M-00040L for the Pagbilao Coal Fired Thermal Power Plant	"P"
TLI's Environmental Compliance Certificate ("ECC") Ref. No. ECC-CO-1311-0037	"Q"
TLI's Legal Opinion on DOE PDP and/or COE dated 24 February 2022	"R"
TLI's Transmission Service Agreement with NGCP	"S"
TLI's Connection Agreement with NGCP	"T"
TLI's Metering Services Agreement with NGCP	"U"
TLI's Sources of Funds (Confidential) *	"V" *
TLI's Generation Rate and Derivation (Confidential) *	"W" *
TLI's Cash Flow (Confidential) *	"X" *
TLI's Financial Model (Confidential) *	"Y" *
TLI's Sample Bill	"Z"
TLI's Write-up on Relevant Technical and Economic Characteristics of the Generation Capacity	"AA"
Executive Summary of the EPSA	"BB"
TLI's Latest Audited Financial Statements	"CC"
TLI's Certification (net heat rate) (Confidential)*	"DD"
TLI's Coal Supply Agreement (Confidential) *	"EE"
TLI's Sworn Statement detailing how the fuel was competitively procured (Confidential)*	"FF"
TLI's Explanation on Coal Procurement Process (Confidential)*	"GG"
TLI's WESM Registration Approval Form	"HH"
TLI's Single Line Diagram Connection	"II"
Write up on the non-applicability of the following requirements to TLI: <ul style="list-style-type: none"> Shareholders' Agreement Renewable Energy Service/Operating Contract and Certificate of Registration or Certification of Commerciality by an RE Developer and After Due Confirmation by the DOE 	"JJ"

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Description of Document	Annex
<ul style="list-style-type: none"> • Distribution Wheeling Service Agreement • Water Permit from the National Water Resources Board • Copy of Related Agreements (i.e., Transmission Wheeling Contract, EPC Contract, O&M Contract, Wholesale Aggregator Agreement, Project Feasibility Study, etc.). • Certification from the Bank/Lending Institution for Loans • 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.	
Verified certification that the TLI Plant is ready to deliver power to address the emergency and that the rates being charged are no more than the latest rate approved by the ERC for the same or relevant technology in the area.	"KK"

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

**ALLEGATIONS IN SUPPORT OF THE MOTION
 FOR CONFIDENTIAL TREATMENT OF INFORMATION**

18. TLI respectfully highlights that its own documentary evidence, Annexes "V", "W", "X", "Y", "DD", "EE", "FF", and "GG" 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.
19. TLI therefore respectfully submits that "V", "W", "X", "Y", "DD", "EE", "FF", and "GG" fall within the bounds of proprietary "trade secrets", which are entitled to protection under the Constitution, statutes, and rules and regulations of this Honorable Commission.
20. Under Rule 4 of the Revised ERC Rules of Practice and Procedure (the "Revised ERC Rules"), the Honorable Commission may, upon request of a party and determination of the existence of conditions, which would warrant such remedy, treat certain information submitted to it as confidential. Pursuant to such provision, TLI respectfully prays for the issuance of a protective order declaring "V", "W", "X", "Y", "DD", "EE", "FF", and "GG" as confidential information, since TLI intends to present them as evidence in the instant Application.
21. The data contained in "V", "W", "X", "Y", "DD", "EE", "FF", and "GG" constitute "trade secrets" of TLI; thus, TLI has actual and valuable proprietary interest to protect with respect to such information. If the information contained in

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these documents are unduly disclosed, it will seriously prejudice the competitiveness of TLI.

22. The Supreme Court, in the case of *Air Philippines Corporation vs. Pennswell, Inc.* (540 SCRA 215 [2007]), had the opportunity to discuss the definition of “trade secrets” and the great extent to which the same are protected under our laws. In other instances, the Supreme Court has held that the confidential nature of trade secrets protects such from disclosure even in the face of the right of inspection given to stockholders or the constitutional right to information. (*Philpotts vs. Philippine Manufacturing Company*, 40 Phil. 471 [1919]; *Garcia vs. Board of Investments*, G.R. 88637 [1989]).

23. In the *Decision* in 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)*, the Honorable Commission categorically stated that formulas and pricing structures of a generation company must be treated as confidential and may not be publicly disclosed, to wit:

In the case of PNOC RC, the documents sought to be protected from disclosure contains 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.

24. Thus, the Honorable Commission has recognized the importance of maintaining pricing structures as confidential in order to ensure the competitiveness of the generation sector. Information, which falls within the definition of a trade secret as defined by jurisprudence, is clearly information that merits the confidential treatment provided for under Rule 4 of the Revised ERC Rules. “V”, “W”, “X”, “Y”, “DD”, “EE”, “FF”, and “GG” should therefore be entitled to the protection of confidential information provided under Rule 4 of the Revised ERC Rules.

25. Accordingly, one (1) copy of each of the foregoing confidential documents is placed in a sealed envelope, with the envelope and each page of the document stamped with the word “Confidential.”

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

26. Under Rule 14 of the ERC Revised Rules of Practice and Procedure, the Honorable Commission is authorized to issue provisional authority or interim relief prior to a final decision,

provided the facts and circumstances alleged warrant such remedy.

27. As earlier stated, in light of the (i) reduction by 670 MW of MERALCO's bilateral power supply contracts portfolio starting 07 December 2022 due to the suspension of the MERALCO-SPPC 2019 PSA as a result of a TRO, and subsequently, a WPI issued by the Court of Appeals; (ii) emergency nature of the supply requirement for MERALCO to be able to replace the capacity needed due to the suspension of the MERALCO-SPPC 2019 PSA; and (iii) urgent need for MERALCO to contract the replacement capacity so as not to be exposed to the volatile prices of the WESM, there is a recognition of the peril of the deficiency of supply of 670 MW for MERALCO.
28. Considering further that: (i) the DOE's issuance of a COE-CSP authorizes the distribution utility to immediately implement the MERALCO-TLI EPSA pursuant to Section 2.2.2 of the 2021 Revised CSP Rules, which states, "[f]or EPSAs contemplated under Section 2.2.1.2, the grant of the COE-CSP authorizes the DU to immediately implement the EPSAs executed by virtue of such certificate, without prejudice to the evaluation and final decision of the ERC on the application for the approval of such EPSAs";⁵ and (ii) most importantly, in the interest of providing least cost to MERALCO's customers by averting their exposure to the high prices of the WESM, both MERALCO and TLI agreed to immediately implement the MERALCO-TLI EPSA beginning 12:01 a.m. of 12 April 2023, and file the appropriate joint application for approval of said EPSA at the soonest possible time.
29. As shown from the rate impact analysis, the MERALCO-TLI EPSA reflects the most beneficial and cheapest generation charges with a resultant estimated generation rate reduction of Php 0.1994 per kWh.
30. The implementation of the MERALCO-TLI EPSA will afford MERALCO's end-users with a reliable supply of electricity at affordable rates.
31. The foregoing notwithstanding, the grant of provisional authority and/or interim relief shall confirm the proper implementation of the MERALCO-TLI EPSA which ultimately redounds to the benefit of MERALCO's customers who stand to be exposed to the volatile prices of the WESM.
32. Pursuant to the ERC Revised Rules of Practice and Procedure, this Honorable Commission may exercise its discretion by granting provisional authority and/or interim relief prior to a final decision.
33. Therefore, MERALCO and TLI request for a provisional authority or interim relief confirming the authority of MERALCO and TLI to implement the MERALCO-TLI EPSA,

⁵ Underscoring supplied.

including the rates and tariff structure thereof, from the start of the supply by TLI to MERALCO under the subject EPSA, and authorizing MERALCO to charge and collect such rates, fees, and charges.

34. By allowing MERALCO and TLI to implement the MERALCO-TLI EPSA based on the rates indicated therein, MERALCO shall have a steady, continuous, guaranteed and reliable source of electricity, which will immediately redound to the benefit of MERALCO's end-users in terms of providing a more affordable rate. To support the Motion for Provisional Authority and/or Interim Relief, the Judicial Affidavit of ENGR. DAVIDJOHN A. ZUÑIGA, Officer of MERALCO's Energy Resource Planning - Energy Sourcing Office, is attached herein as ANNEX "E."

PRAYER

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

- a) Issue an Order TREATING "V", "W", "X", "Y", "DD", "EE", "FF", and "GG" and all other information contained therein as CONFIDENTIAL, directing their non-disclosure to persons other than officers and staff of this Honorable Commission, continuously protecting the said information from public disclosure by maintaining the same separate and apart from the records of the case, and ensuring that these are not divulged to unauthorized persons, and that the same will be returned to Applicant TLI, as applicable, pursuant to Rule 4 of the Revised ERC Rules;
- b) Issue an Order granting PROVISIONAL AUTHORITY and/or INTERIM RELIEF confirming the authority of MERALCO and TLI to implement the MERALCO-TLI EPSA, including the rates and tariff structure thereof, from the start of the supply by TLI to MERALCO under the subject EPSA, and authorizing MERALCO to charge and collect such rates, fees, and charges ;
- c) After hearing on the merits, render a Decision APPROVING the MERALCO-TLI EPSA and the terms and conditions thereunder, including the price.

Other reliefs, just and equitable under the circumstances, are likewise prayed for.

The Commission hereby sets the instant *Joint Application* 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

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thereof, pursuant to Resolution No. 09, Series of 2020⁶ and Resolution No. 01, Series of 2021⁷ (ERC Revised Rules of Practice and Procedure):

Date	Platform	Activity
18 October 2023 (Wednesday) at nine o'clock in the morning (9:00 A.M)	Microsoft Teams Application	Determination of compliance with jurisdictional requirements and Expository Presentation
25 October 2023 (Wednesday) at nine o'clock in the morning (9:00 A.M)		Pre-trial Conference and Presentation of Evidence

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

Moreover, any persons who have an interest in the subject matter of the instant case may become a party by filing with the Commission via e-mail at docket@erc.ph, and copy furnishing the Legal Service through legal@erc.ph, a verified Petition to Intervene **at least five (5) calendar days** prior to the date of the initial virtual hearing. The verified Petition to Intervene must follow the requirements under Rule 9 of the ERC Revised Rules of Practice and Procedure, indicate therein the docket number and title of the case, and state the following:

- 1) The petitioner's name, mailing address, and e-mail address;
- 2) The nature of petitioner's interest in the subject matter of the proceeding and the way and manner in which such interest is affected by the issues involved in the proceeding; and
- 3) A statement of the relief desired.

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

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

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Likewise, all other persons who may want their views known to the Commission with respect to the subject matter of the case may file through e-mail at docket@erc.ph, and copy furnish the Legal Service through legal@erc.ph, their Opposition or Comment thereon **at least five (5) calendar days** prior to the initial virtual hearing. Rule 9 of the ERC Revised Rules of Practice and Procedure shall govern. No particular form of Opposition or Comment is required, but the document, letter, or writing should contain the following:

- 1) The name, mailing address, and e-mail address of such person;
- 2) A concise statement of the Opposition or Comment; and
- 3) The grounds relied upon.

All interested parties filing their Petition to Intervene, Opposition or Comment are required to submit the hard copies thereof through personal service, registered mail or ordinary mail/private courier, **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.


Any of the persons mentioned in the preceding paragraphs may access the copy of the *Joint Application* on the Commission's official website at www.erc.gov.ph.

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Finally, all interested persons may be allowed to join the scheduled virtual hearings by providing the Commission, thru legal.virtualhearings@erc.ph, their respective e-mail addresses and indicating therein the case number of the instant *Joint Application*. The Commission will send the access link/s to the aforementioned hearing platform within five (5) working days prior to the scheduled hearings.

WITNESS, the Honorable Commissioners **ALEXIS M. LUMBATAN**, **CATHERINE P. MACEDA**, **FLORESINDA G. BALDO-DIGAL**, and **MARKO ROMEO L. FUENTES**, Energy Regulatory Commission, this 5th day of September 2023 in Pasig City.


MONALISA C. DIMALANTA
Chairperson and CEO


LS: VMA/LSP/MCCG

ERC
Office of the Chairperson and CEO



MCD2023-008595