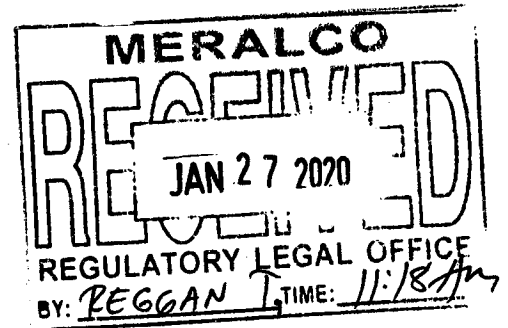


Republic of the Philippines
ENERGY REGULATORY COMMISSION
San Miguel Avenue, Pasig City

IN THE MATTER OF THE
APPLICATION FOR THE
APPROVAL OF THE POWER
SUPPLY AGREEMENT (PSA)
BETWEEN MANILA
ELECTRIC COMPANY
(MERALCO) AND THERMA
LUZON, INC. (TLI), WITH
MOTION FOR
CONFIDENTIAL
TREATMENT OF
INFORMATION



ERC CASE NO. 2019-099 RC

MANILA ELECTRIC
COMPANY (MERALCO) AND
THERMA LUZON, INC.
(TLI),

Applicants.

X-----X

Promulgated:
JAN 24 2020

ORDER

On 23 December 2019, Applicants Manila Electric Company (MERALCO) and Therma Luzon, Inc. (TLI) filed a *Joint Application* dated 20 December 2019, seeking the Commission's approval of their Power Supply Agreement (PSA), with motion for confidential treatment of information.

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

1. Applicant MERALCO is a private corporation duly organized and existing under the laws 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 below.
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.

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 below.
4. Pursuant to and in accordance with the IPPA Agreement executed between TLI and the Power Sector Assets and Liabilities Management Corporation ("PSALM"), with the conformity of National Power Corporation ("NPC"), TLI assumed management and control of the 700 MW coal-fired power generating facility in Pagbilao, Quezon, on the island of Luzon ("**Plant**"). TLI offered to supply and sell to MERALCO electric energy corresponding to 250 MW produced from said Plant.
5. Based on its power situation outlook for 2020, MERALCO foresees a capacity deficit in its portfolio, especially during the summer months. In addition, MERALCO intends to mitigate the impact of scheduled and maintenance outages (and possible occurrence of forced outages) of power plants as some of MERALCO's contracted plants are scheduled for maintenance outage as early as the first week of January.¹ Particularly, the maintenance outage of Quezon Power Ltd., a single unit 460 MW plant, is scheduled to last until the fourth week of February 2020.
6. The supply shortfall of MERALCO will be most evidenced in the summer months, which no less than the Department of Energy ("**DOE**") has recognized. MERALCO received a memorandum dated 2 December 2019 from the DOE (which memorandum is addressed to all distribution utilities and the Administrator of the National Electrification Administration) stating that it deems it "necessary and urgent to ensure that all distribution utilities plan and adopt urgent and necessary measures in anticipation of the summer months."
7. In view thereof, and in order to mitigate exposure to the Wholesale Electricity Spot Market ("**WESM**") and to source additional capacity for the year 2020 that could contribute to the availability and affordability of the supply of electricity to MERALCO's customers, there is a need for MERALCO to execute a short-term Power Supply Agreement with TLI for

¹ In January 2020 alone, among the plants contracted to MERALCO, modules/units of Sta. Rita, San Gabriel, and Quezon Power Ltd. are scheduled to be on maintenance outage.

the period of 26 December 2019 to 25 December 2020 (“**2019 PSA**”).

8. On 6 December 2019, MERALCO and TLI executed the 2019 PSA for the purchase of capacity and energy from the Plant from Operations Effective Date until 25 December 2020.
9. Under Section 45(b) of Republic Act No. 9136 (EPIRA), it is provided that "*Distribution utilities may enter into bilateral power supply contracts subject to review by the ERC xxx*".
10. Corollary to that, Section 2.2.2 of the DOE's Department Circular No. DC2018-02-0003 allows exemption from a Competitive Selection Process ("CSP") of any "[n]egotiated procurement of emergency power supply; Provided that the cooperation period of the corresponding PSA shall not exceed one (1) year; Provided further, that the rate shall not be higher than the latest ERC approved generation tariff for same or similar technology."
11. On 9 and 11 December 2019, MERALCO submitted its letters to the DOE requesting for exemption from CSP of the 2019 PSA of the Parties.² On 19 December 2019, the DOE issued a Certificate of Exemption.³
12. The 2019 PSA between MERALCO and TLI, a copy of which is attached as **ANNEX "C"** and made an integral part hereof, contains the following salient features:

"2.2 Term of Agreement

2.2.1 Subject to Section 3.1, this Agreement shall become effective on the Effective Date.

2.2.2 The term of this Agreement ("**Term**") shall commence on the Effective Date and shall expire on **December 25, 2020**, unless terminated earlier in accordance with the terms of this Agreement.

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3.2 Operations Effective Date

3.2.1 The obligations of Power Supplier and Meralco with respect to Contract Capacity and Associated Energy shall commence on **December 26, 2019** ("**Operations Effective Date**"), provided that the following conditions are satisfied:

- (a) The conditions set out in Section 3.1.1 have been fulfilled;

² Attached as ANNEX "J-1" and "J-2."

³ Attached as ANNEX "J-3."

- (b) All Governmental Authorizations which are required to have been obtained in connection with the execution, delivery and commencement of performance of this Agreement shall have been obtained and be in full force and effect, including without limitation the Relevant Permits and all other Governmental Authorizations required pursuant to EPIRA, the Public Service Act, the Energy Regulations No. 1-95 promulgated by the DOE pursuant to Executive Order No. 215 and all applicable environmental laws and regulations of the Department of Environment and Natural Resources of the Republic of the Philippines; and a certificate of exemption from conduct of a competitive selection process as required by DOE Department Circular No. DC2018-02-003, shall have been obtained and be in full force and effect;
- (c) Each Party has delivered to the other Party a closing certificate dated no earlier than two (2) Days prior to the Operations Effective Date to the effect that its representations and warranties contained herein shall be true and correct in all material respects on and as of the Operations Effective Date.

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4.1 Supply of Power

Subject to the terms and conditions of this Agreement:

4.1.1 From the Operations Effective Date until the expiration 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 D, the Contract Capacity of the Plant; and
- (b) sell and Deliver to Meralco, and Meralco shall purchase from Power Supplier, at the Price determined in accordance with Appendix D, the Associated Energy of the Plant, to the extent of Meralco's relevant day-ahead nominations,

provided that Power Supplier may make available the Contract Capacity and Deliver Associated Energy from other sources, including the WESM, at the Price; provided further that energy Delivered from such other sources shall be deemed Delivered by Power Supplier by declaration made from the Plant.

Except as otherwise provided in this Agreement, the Contract Capacity and Associated Energy shall be dedicated

exclusively to Meralco for so long as this Agreement is in force and effect.

4.1.2 Unless otherwise expressly permitted by this Agreement, Power Supplier shall not, without Meralco's prior written consent, sell, divert, grant, transfer, dedicate, reserve, or assign all or any portion of the Contract Capacity and Associated Energy to any Person other than Meralco; provided that Power Supplier shall have the right to sell the electric energy generated by the Plant to the WESM or to third parties (x) during the period when Meralco is unable to accept, for whatever reason, the Contract Capacity and/or Associated Energy, or (y) when required under the WESM Rules.

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Article 7 Outages

7.1 Outage Allowances

7.1.1 Power Supplier shall be allowed Scheduled Outages not to exceed thirty (30) Days ("**Full Load Equivalent Scheduled Outage Allowance Days**") during the Term, during which times reduced or no supply of Contract Capacity or Associated Energy will be available to Meralco; provided that for a Term which covers less than twelve (12) Billing Periods, Power Supplier shall be entitled to a pro rata portion of the Full Load Equivalent Scheduled Outage Allowance Days.

7.1.2 Power Supplier shall be allowed Forced Outages not to exceed fifteen (15) Days ("**Full Load Equivalent Forced Outage Allowance Days**") during the Term, during which times reduced or no supply will be available to Meralco; provided that for a Term which covers less than twelve (12) Billing Periods, Power Supplier shall be entitled to a pro rata portion of the Full Load Equivalent Forced Outage Allowance Days.

7.1.3 For the purposes of computing Scheduled Outages, Full Load Equivalent Scheduled Outage Days, Forced Outages and Full Load Equivalent Forced Outage Days Taken, a fraction of a Trading Interval shall be considered as one Trading Interval.

7.2 Replacement Electrical Output During Outages

7.2.1 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 purchase replacement capacity and associated energy from the WESM, the cost of which shall form part of the price that Meralco will charge to its customers.

7.2.2 If during the Term, the actual outages for maintenance, inspection and testing of the Plant that have occurred exceed the Full Load Equivalent Scheduled Outage Allowance Days, Power Supplier shall procure such quantities of electrical energy from third parties (including the WESM) and Meralco shall pay for such quantities at the lower between WEP and the Price as defined and computed in accordance with Appendix D. Power Supplier shall indemnify and hold Meralco harmless from any loss, cost, expense or penalty incurred or paid by Meralco as a result of Power Supplier's failure to so procure such quantities of electrical energy for Meralco.

7.2.3 If during the Term, the actual Forced Outages that have occurred exceed the Full Load Equivalent Forced Outage Allowance Days, Power Supplier shall procure such quantities of electrical output from third parties (including the WESM) and Meralco shall pay for such quantities at the lower between WEP and the Price as defined and computed in accordance with Appendix D.

7.3 Scheduling Outages

7.3.1 Power Supplier acknowledges that Meralco needs to schedule outages among its various suppliers to minimize or prevent scheduled outages at multiple suppliers at the same time.

7.3.2 Power Supplier and Meralco shall discuss in good faith to determine a mutually agreeable Scheduled Outage period, taking into consideration the following:

- (a) the specific requirements of Meralco, including the scheduled outages of the other power suppliers of Meralco; and
- (b) the specific requirements of Power Supplier, including its requirements that the Scheduled Outage period shall not coincide with the scheduled outages of the other plants of Power Supplier and its subsidiaries and Affiliates;

For the avoidance of doubt, Power Supplier shall be provided the opportunity to fully utilize the Full Load Equivalent Scheduled Outage Allowance Days.

7.3.3 Power Supplier undertakes to relay to the IPP the Scheduled Outage period acceptable to Meralco, provided that such proposed Scheduled Outage period shall be subject to the final approval by the IPP, NPC and the System Operator.

7.4 Early Completion of a Scheduled Outage

If Power Supplier is able to complete the maintenance, inspection and testing to be performed during a Scheduled Outage earlier than originally anticipated, Power Supplier

shall resume delivery of Contract Capacity and Associated Energy at the Price.

The number of maintenance, inspection and testing hours not used during that Scheduled Outage shall not be counted towards the Full Load Equivalent Scheduled Outage Allowance Days, subject to Section 7.1.1.

7.5 Notification of Outages

7.5.1 When a Forced Outage occurs, Meralco shall be notified within four (4) hours after Power Supplier's receipt of notification from NPC or the IPP regarding the occurrence of a Forced Outage, provided that Power Supplier shall immediately advise Meralco of such outage occurrence, nature and expected duration of the Forced Outage upon being aware of the occurrence thereof via telephone, cellular phone, email or text message. Power Supplier shall furnish Meralco with a report on the occurrence, nature and duration of Scheduled Outages and Forced Outages during such Billing Period in accordance with the Operating Procedures to be attached to the Invoice.

7.5.2 If Power Supplier fails to notify Meralco in accordance with Section 7.5.1, and Meralco notifies Power Supplier of such failure within forty-eight (48) hours, Power Supplier shall be liable for the Administrative Fee. Such Administrative Fee shall be paid to Meralco within thirty (30) Days from Meralco's notification.

7.6 No Billing for Replacement Power without Consent

Except for circumstances provided under Section 7.2, Power Supplier shall not procure or bill Meralco for any replacement power unless specifically requested to do so by Meralco in accordance with this Agreement, and Power Supplier shall indemnify and hold Meralco harmless from any loss, cost, expense or penalty incurred or paid by Meralco as a result of Power Supplier procuring or billing such replacement power in contravention of this Agreement.

Article 8 Assignment or Transfer of Contract Capacity

8.1 Meralco shall be entitled to assign, transfer, designate, delegate or allocate (collectively in this context, "Transfer") its rights and obligations to purchase a portion of the Contract Capacity and Associated Energy that is no longer required by Meralco to any of its business segments or wholly-owned Affiliates, to the extent allowed by Law, or to any other Person acceptable to Power Supplier (which consent shall not be unreasonably withheld, delayed or conditioned).

8.2 In respect of Transfers not requiring Power Supplier's consent, Meralco shall give a written notice to Power Supplier of such Transfer at least five (5) Days prior to the

first Day of the next Billing Period or by such date as would be sufficient for timely notice to WESM of such change. In respect of Transfers requiring Power Supplier's consent, Meralco shall give a written notice to Power Supplier of such Transfer at least sixty (60) Days prior to the first Day of the next Billing Period or by such date as would be sufficient for timely notice to WESM of such change.

Subject to the receipt of Meralco and Power Supplier of the written acceptance of such Transfer by the transferee:

- a) Meralco shall cease to have any rights and obligations under this Agreement, and
- b) the transferee shall assume all rights and obligations of Meralco under this Agreement."

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Article 12 **Covenants**

12.1 **ERC Application**

xxx

12.1.2 If in connection with the ERC Application, the ERC requires any portion of any sum that has been paid by one Party ("**Payor Party**") to the other Party ("**Payee Party**") to be refunded to the Payor Party, the Payee Party shall be liable for any such amounts and shall repay in full such amounts in accordance with the direction of the ERC; provided that if payments made by Power Supplier pursuant to this Section 12.1.2 exceed the Level 2 Threshold the adversely affected party may terminate this Agreement in accordance with Section 16.6.7(b).

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APPENDIX D

CALCULATION OF PAYMENT

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2 PAYMENT STRUCTURE

The payment to be made in each Billing Period during the Term for Contract Capacity and BCQ shall consist of a Capacity Payment and an Energy Payment. The Capacity Payment consists of Component A (Monthly Capacity Payment) and Component B (Monthly Fixed O&M), and the Energy Payment consists of Component C (Fuel Payment), Component D (Variable O&M), and Component E (Replacement Power) as set forth below. All computations on payments to Power Supplier shall not be rounded off, except for the final PHP and USD amount, which shall be rounded off to the nearest Philippine centavo and US cent, respectively.

Sample calculations of the payment are set forth in Schedule 3 of Appendix D of this Agreement.

The Capacity Payment and Energy Payment are exclusive of the applicable Value Added Tax.”

13. Given the foregoing, a sample calculation of the base contract price under the 2019 PSA, given a certain set of assumptions, results in an annual effective rate of PhP4.9938 per kWh (at plant gate), as shown in the rate impact analysis below:

Therma Luzon, Inc. (TLI) PSA - Rate Impact						
(YEAR 2020)						
BILLING COMPONENT	UNIT	BASE RATE ^[a]	CPI Adj Factor ^[g]	BILLING DETERMINANT ^[h]		AMOUNT (PHP)
A. Capacity Payment (MCP)						
US Dollar Portion	(USD/kW-yr) ^[b]	122.55		250,000	(kW)	1,585,637,685.00
Peso Portion	(Php/kW-yr) ^[b]	6,250.00		250,000	(kW)	1,562,500,000.00
B. Fixed O&M Payment (MFOM)						
Peso Portion Escalating	(Php/kW-yr) ^[b]	444.47	1.273544	250,000	(kW)	141,513,018.47
C. Fuel Payment (MFP)						
US Dollar Portion	(USD/kWh) ^[c]	0.0344		1,098,000,000	(kWh)	1,954,169,423.41
Peso Portion	(PhP/kWh) ^[c]	0.0316		1,098,000,000	(kWh)	34,716,778.06
D. Variable O&M Payment (MVOM)						
US Dollar Portion Escalating	(USD/kWh)	0.0020	1.184255	1,098,000,000	(kWh)	134,594,776.41
Peso Portion Escalating	(Php/kWh)	0.0107	5.959596	1,098,000,000	(kWh)	70,016,909.09
TOTAL PAYMENT	(Php)					5,483,148,590.43
Effective Rate at Plant Gate	(Php/kWh)					4.9938
WESM Line Rental Rate ^[d]	(Php/kWh)					0.1742
Delivered Rate	(Php/kWh)					5.1679
Effective Cost at WESM Price ^[e]	(Php/kWh)					6.9060
Increase / (Decrease) over WESM Price	(Php/kWh)					(1.7381)
Meralco Captive Energy Demand ^[f]	(kWh)					35,005,615,519
Increase / (Decrease) in Generation Cost	(Php)					(1,908,437,309.09)
Increase / (Decrease) in Generation Cost	(Php/kWh)					(0.0545)

NOTE:

^[a] Base Rates as set forth in Schedule 1 of Appendix D of the PSA.

^[b] Annual Capacity Rate and Annual Fixed O&M is converted into monthly rates by applying the formulas shown in Appendix D of the PSA.

^[c] Fuel Payment calculated based on Guaranteed Net Plant Heat Rate at 50.00% plant capacity factor, Newcastle index = USD 66.81/MT, Freight Price_(USD) = USD 5.70/MT, Freight Price_(PHP) = PHP 59.75/MT, and Forex = PhP 51.75/USD.

^[d] TLI line rental rate based on actual weighted average line rental rate of TLI-Pagbilao plant from Jan to Oct 2019.

^[e] Cost if equivalent volume of TLI was sourced from the WESM based on forecasted average hourly peak prices from Jan - Dec 2020.

^[f] Forecasted Meralco Captive Energy for 2020 based on Power Supply Procurement Plan as submitted to DOE.

^[g] Forecasted Indices for 2020.

^[h] Energy Payments based on 50.00% plant capacity factor.

14. As seen in the rate impact above, given the above assumptions, the simulated delivered price under the 2019 PSA would result in the reduction of MERALCO's generation charge by about PhPo.0545 per kWh.
15. MERALCO notes that the rates under the 2019 PSA are significantly lower than the rate under the existing and ERC-approved MERALCO-TLI PSA dated 29 February 2012,⁴ by about PhP 0.8131/kWh at 75% Plant Capacity Factor.
16. In support of this Joint Application, the Judicial Affidavit of **DAVIDJOHN A. ZUÑIGA**, an Officer of MERALCO's Energy Resource Planning - Energy Sourcing Office is attached as **ANNEX "D"**, 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 this Honorable Commission:

Description of Document	Annex
MERALCO's Articles of Incorporation and By-Laws	"E"
MERALCO's latest General Information Sheet (GIS)	"F"
Demand Side Management Program	"G"
Write-up on non-applicability of a Certification by NPC re: whether Transition Supply Contract (TSC) capacity and energy is expected to be available	"H"
Supply and Demand Scenario	"I"
Average Daily Load Curve scenarios	"I-1"
DOE Memorandum dated 2 December 2019	"J"
Letters of MERALCO to DOE requesting for CSP Exemption	"J-1" and "J-2"
DOE Certificate of Exemption	"J-3"
TLI's SEC Certificate of Registration with the Securities and Exchange Commission ("SEC")	"K"
TLI's Articles of Incorporation and By-Laws	"L"
TLI's latest GIS showing list of Shareholders	"M"
TLI's Corporate Structure showing the Ultimate Parent Company, its Subsidiaries, and all its Affiliates	"N"
TLI's Board of Investments ("BOI") Certificate of Registration No. BOI 2010-052 dated 26 February 2010	"O"
TLI's Environmental Compliance Certificate ("ECC") No. ECC-CO-1311-0037 dated 4 February 2014	"P"
TLI's Certificate of Compliance No. 19-07-M-00040L	"Q"

⁴ ERC Case No. 2012-035 RC.

TLI's Transmission Service Agreement with National Grid Corporation of the Philippines ("NGCP")	"R" and series
TLI's Connection Agreement with NGCP	"S" and series
Executive Summary of the PSA (technical and economic characteristics of the generation capacity, salient features of the PSA)	"T"
- TLI's Sources of Funds/Financial Plans; Generation Rate and Derivation; Cash Flow - TLI's Financial model in compact disc containing derivation of rates	"U" and Series*
Sample Bill	"V"
TLI's Explanation on the Coal Procurement Process	"W"
All relevant technical and economic characteristics of the generation capacity; Installed Capacity, Mode of Operation, Dependable Capacity; Auxiliary load; Scheduled and Unscheduled Outages; Basis/Justification of day used.	"X"
TLI's Write-Up on the Non-Applicability of the following: <ul style="list-style-type: none"> • Shareholders' Agreement • Certification from Department of Energy (DOE) regarding Philippine Development Plan (PDP) or Certificate of Endorsement (CoE) • Renewable Energy (RE) Service/Operating Contract from the DOE • Certificate of Registration or Certificate of Confirmation of Commerciality by an RE Developer and after due confirmation by the DOE • Copy of related agreements • Certification from the Bank/Lending Institution specifying the principal amortization, term and interest during the cooperation period of the loan agreement • Life of Asset versus Term of Loan (Computation of Levelized Cost) • Bank Certification of Long-term Loans, including, to wit: <ul style="list-style-type: none"> ○ Schedule of Original Loan (Principal amount, interest payable, term of loan) ○ Updated Balances (Principal amount, interest payable, penalties (if any), remaining term of the loan) • All costs analysis related to the generation in support of the proposed pricing provisions of the contract • Simulation of the no. of operating units necessary to meet the MEOT and/or additional energy/demand requirements of the DU • Potential Cost (absolute amounts and Php/kWh of Ancillary Services as and when the IPP or the DU is connected to the main grid) 	"Y"
TLI's latest Audited Financial Statements	"Z" and Series
Certification regarding the net heat rate	"AA"
TLI's Secretary Certificate on the authorized personnel to sign and deliver contracts, agreements, instruments and/or securities	"BB"

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

**MOTION FOR CONFIDENTIAL TREATMENT OF
ANNEX “U” and series**

18. **Annex “U” and series** contain numbers, methodology, and calculations such as debt or equity ratio, capital costs, weighted average cost of capital, and fuel cost that provide valuable information and insight on how TLI arrives at its power generation rate and/or on TLI’s trading in the WESM.
19. It is therefore submitted that **Annex “U” and series** 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 ERC Rules of Practice and Procedure, 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 **Annex “U” and series** as confidential information, since TLI intends to present them as evidence in the instant Application.
21. The data contained in **Annex “U” and series** 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 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." [Emphasis supplied].

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 ERC Rules of Practice and Procedure. **Annex "U"** and **series** should therefore be entitled to the protection of confidential information provided under Rule 4 of the ERC Rules of Practice and Procedure.
25. TLI hereby submits one (1) copy of each of the foregoing confidential documents in a sealed envelope, with the envelope and each page of the document stamped with the word "Confidential."

PRAYER

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

- (i) **ISSUE** an Order treating **Annex "U"** and **series** as confidential information pursuant to Rule 4, Section 1 of the ERC Rules of Practice and Procedure and prescribing the guidelines for the protection thereof; and
- (ii) After hearing on the merits, render a Decision **APPROVING** the Power Supply Agreement.

Other relief just and reasonable are likewise prayed for.

Finding the said *Joint Application* to be sufficient in form and substance, with the required fees having been paid, the same is hereby set for determination of compliance with the jurisdictional requirements, expository presentation, pre-trial conference, and presentation of evidence **at the ERC Hearing Room, 15th Floor, Pacific Center Building, San Miguel Avenue, Pasig City** on the following dates:

Date and Time	Particulars
05 March 2020 (Thursday) at nine o'clock in the morning (09:00 A.M.)	Jurisdictional Hearing and Expository Presentation
18 March 2020 (Wednesday) at ten o'clock in the morning (10:00 A.M.)	Pre-trial Conference and Presentation of Evidence
25 March 2020 (Wednesday) at ten o'clock in the morning (10:00 A.M.)	Presentation of Evidence

Accordingly, MERALCO and TLI are hereby directed to:

- 1) Cause the publication of the attached *Notice of Public Hearing* in two (2) newspapers of nationwide circulation in the Philippines at their own expense, twice (2x) within two (2) successive weeks, the dates of publication not being less than seven (7) days apart and the date of the last publication to be made not later than ten (10) days before the date of the scheduled initial hearing;
- 2) Furnish with copies of this *Order* and the attached *Notice of Public Hearing* the Offices of the Provincial Governors, the City and Municipal Mayors, and the Local Government Unit (LGU) legislative bodies within MERALCO's franchise area for the appropriate posting thereof on their respective bulletin boards;
- 3) Inform the consumers within MERALCO's franchise area of the filing of the *Joint Application*, the reasons therefor, and of the scheduled hearings thereon, by any other means available and appropriate;
- 4) Furnish with copies of this *Order* and the attached *Notice of Public Hearing*, the Office of the Solicitor General (OSG), the Commission on Audit (COA), and the Committees on Energy of both Houses of Congress. They are hereby requested, if they so desire, to send their duly authorized representatives at the scheduled hearings; and
- 5) Furnish with copies of the *Joint Application* and its attachments all those making requests therefor, subject to reimbursement of reasonable photocopying costs.

On the date of the initial hearing, MERALCO and TLI must submit to the Commission their written compliance with the aforementioned jurisdictional requirements attaching therewith, methodically arranged and duly marked the following:

- 1) The evidence of publication of the attached *Notice of Public Hearing* consisting of affidavits of the Editors or Business Managers of the newspapers where the said *Notice of Public Hearing* were published, and the complete issues of the said newspapers;
- 2) The evidence of actual posting of this *Order* and the attached *Notice of Public Hearing*, consisting of certifications issued to that effect, signed by the Provincial Governors, Mayors and LGU legislative bodies or their duly authorized representatives, bearing the seals of their offices;
- 3) The evidence of other means employed by MERALCO and TLI to inform the consumers within the affected areas of the filing of the *Joint Application*, its reasons therefor, and of the scheduled hearings thereon;
- 4) The evidence of receipt of copies of this *Order* and the attached *Notice of Public 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 by all those making requests therefor, if any; and
- 6) Such other proofs of compliance with the requirements of the Commission.

Applicants and all interested parties are also required to submit, at least five (5) days before the date of initial 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 therefore; and

- 4) The number and names of the witnesses, with their written testimonies in a Judicial Affidavit form attached to the Pre-trial Brief.

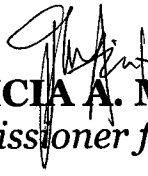
Failure of Applicants to comply with the above requirements within the prescribed period shall be a ground for cancellation of the scheduled hearing, and the resetting of which shall be six (6) months from the said date of cancellation.

Applicants 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.

SO ORDERED.

Pasig City, 17 January 2020.

FOR AND BY AUTHORITY
OF THE COMMISSION:


JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Oversight Commissioner for Legal Service 

 
LS: RSPV/ARG/MCCG

ERC CASE NO. 2019-099 RC
ORDER/ 17 January 2020
PAGE 17 OF 27

Copy Furnished:

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3. Therma Luzon, Inc. (TLI)
Applicant
NAC Tower, 32nd Street, Bonifacio Global City, Taguig City
4. Attys. Katrina M. Platon, Paul B. Soriño, Celeni Kristine G. Guinto and
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6. Office of the Local Government Unit (LGU) Legislative Body
City of Caloocan
7. Office the City Mayor
City of Las Piñas
8. Office of the LGU Legislative Body
City of Las Piñas
9. Office of the City Mayor
City of Makati
10. Office of the LGU Legislative Body
City of Makati
11. Office of the City Mayor
City of Malabon
12. Office of the LGU Legislative Body
City of Malabon
13. Office of the City Mayor
City of Mandaluyong
14. Office of the LGU Legislative Body
City of Mandaluyong
15. Office of the City Mayor
City of Manila
16. Office of the LGU Legislative Body
City of Manila
17. Office of the City Mayor
City of Marikina
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City of Marikina
19. Office of the City Mayor
City of Muntinlupa
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City of Muntinlupa
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City of Navotas
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City of Navotas

23. Office of the City Mayor
City of Parañaque
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City of Parañaque
25. Office of the City Mayor
City of Pasay
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City of Pasig
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City of Pasig
29. Office of the Municipal Mayor
Municipality of Pateros
30. Office of the LGU Legislative Body
Municipality of Pateros
31. Office of the City Mayor
City of Quezon
32. Office of the LGU Legislative Body
City of Quezon
33. Office the City Mayor
City of San Juan
34. Office of the LGU Legislative Body
City of San Juan
35. Office of the City Mayor
City of Taguig
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37. Office of the City Mayor
City of Valenzuela
38. Office of the LGU Legislative Body
City of Valenzuela
39. Office of the Municipal Mayor
Angat, Bulacan
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Angat, Bulacan
41. Office of the Municipal Mayor
Balagtas, Bulacan
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Balagtas, Bulacan
43. Office of the The Municipal Mayor
Baliwag, Bulacan
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Baliwag, Bulacan
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Bocaue, Bulacan
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Bulacan, Bulacan

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Bulacan, Bulacan
49. Office of the Municipal Mayor
Bustos, Bulacan
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51. Office of the Municipal Mayor
Calumpit, Bulacan
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Calumpit, Bulacan
53. Office of the Municipal Mayor
Doña Remedios Trinidad, Bulacan
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55. Office of the Municipal Mayor
Guiguinto, Bulacan
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Guiguinto, Bulacan
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Hagonoy, Bulacan
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Hagonoy, Bulacan
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Malolos, Bulacan
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Malolos, Bulacan
61. Office of the Municipal Mayor
Marilao, Bulacan
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Marilao, Bulacan
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Meycauayan, Bulacan
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Meycauayan, Bulacan
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Norzagaray, Bulacan
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Obando, Bulacan
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Pandi, Bulacan
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Pandi, Bulacan
71. Office of the Municipal Mayor
Paombong, Bulacan
72. Office of the LGU Legislative Body
Paombong, Bulacan

ERC CASE NO. 2019-099 RC
ORDER/ 17 January 2020
PAGE 20 OF 27

73. Office of the Municipal Mayor
Plaridel, Bulacan
74. Office of the LGU Legislative Body
Plaridel, Bulacan
75. Office of the Municipal Mayor
Pulilan, Bulacan
76. Office of the LGU Legislative Body
Pulilan, Bulacan
77. Office of the Municipal Mayor
San Ildefonso, Bulacan
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San Ildefonso, Bulacan
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San Jose del Monte, Bulacan
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San Miguel, Bulacan
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San Rafael, Bulacan
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Sta. Maria, Bulacan
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87. Office of the Municipal Mayor
Alfonso, Cavite
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89. Office of the Municipal Mayor
Amadeo, Cavite
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Bacoor, Cavite
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Bacoor, Cavite
93. Office of the Municipal Mayor
Carmona, Cavite
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95. Office of the City Mayor
Cavite, Cavite
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Cavite, Cavite
97. Office of the City Mayor
Dasmariñas, Cavite

98. Office of the LGU Legislative Body
Dasmariñas, Cavite
99. Office of the Municipal Mayor
General Emilio Aguinaldo, Cavite
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General Emilio Aguinaldo, Cavite
101. Office of the Municipal Mayor
General Mariano Alvarez, Cavite
102. Office of the LGU Legislative Body
General Mariano Alvarez, Cavite
103. Office of the City Mayor
General Trias, Cavite
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General Trias, Cavite
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Naic, Cavite
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Noveleta, Cavite
121. Office of the Municipal Mayor
Rosario, Cavite
122. Office of the LGU Legislative Body
Rosario, Cavite

ERC CASE NO. 2019-099 RC
ORDER/ 17 January 2020
PAGE 22 OF 27

123. Office of the Municipal Mayor
Silang, Cavite
124. Office of the LGU Legislative Body
Silang, Cavite
125. Office of the City Mayor
Tagaytay, Cavite
126. Office of the LGU Legislative Body
Tagaytay, Cavite
127. Office of the Municipal Mayor
Tanza, Cavite
128. Office of the LGU Legislative Body
Tanza, Cavite
129. Office of the Municipal Mayor
Ternate, Cavite
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Ternate, Cavite
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Trece Martires, Cavite
132. Office of the LGU Legislative Body
Trece Martires, Cavite
133. Office of the Municipal Mayor
Angono, Rizal
134. Office of the LGU Legislative Body
Angono, Rizal
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Antipolo, Rizal
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Antipolo, Rizal
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Baras, Rizal
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Binangonan, Rizal
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144. Office of the LGU Legislative Body
Cardona, Rizal
145. Office of the Municipal Mayor
Jala-Jala, Rizal
146. Office of the LGU Legislative Body
Jala-Jala, Rizal
147. Office of the Municipal Mayor
Morong, Rizal

ERC CASE NO. 2019-099 RC
ORDER/ 17 January 2020
PAGE 23 OF 27

148. Office of the LGU Legislative Body
Morong, Rizal
149. Office of the Municipal Mayor
Pililla, Rizal
150. Office of the LGU Legislative Body
Pililla, Rizal
151. Office of the Municipal Mayor
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Rodriguez, Rizal
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San Mateo, Rizal
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Tanay, Rizal
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Batangas, Batangas
163. Office of the Municipal Mayor
San Pascual, Batangas
164. Office of the LGU Legislative Body
San Pascual, Batangas
165. Office of the City Mayor
Sto. Tomas, Batangas
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Sto. Tomas, Batangas
167. Office of the Municipal Mayor
Alaminos, Laguna
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Alaminos, Laguna
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Bay, Laguna
170. Office of the LGU Legislative Body
Bay, Laguna
171. Office of the City Mayor
Biñan, Laguna
172. Office of the LGU Legislative Body
Biñan, Laguna

ERC CASE NO. 2019-099 RC
ORDER/ 17 January 2020
PAGE 24 OF 27

173. Office of the City Mayor
Cabuyao, Laguna
174. Office of the LGU Legislative Body
Cabuyao, Laguna
175. Office of the City Mayor
Calamba, Laguna
176. Office of the LGU Legislative Body
Calamba, Laguna
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Calauan, Laguna
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Pila, Laguna
193. Office of the Municipal Mayor
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Rizal, Laguna
195. Office of the City Mayor
San Pablo, Laguna
196. Office of the LGU Legislative Body
San Pablo, Laguna
197. Office of the City Mayor
San Pedro, Laguna

ERC CASE NO. 2019-099 RC
ORDER/ 17 January 2020
PAGE 25 OF 27

198. Office of the LGU Legislative Body
San Pedro, Laguna
199. Office of the City Mayor
Sta.Cruz, Laguna
200. Office of the LGU Legislative Body
Sta.Cruz, Laguna
201. Office of the City Mayor
Sta. Rosa, Laguna
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Sampaloc, Quezon
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San Antonio, Quezon
221. Office of the Municipal Mayor
Sariaya, Quezon
222. Office of the LGU Legislative Body
Sariaya, Quezon

ERC CASE NO. 2019-099 RC
ORDER/ 17 January 2020
PAGE 26 OF 27

- 223. Office of the City Mayor
Tayabas, Quezon
- 224. Office of the LGU Legislative Body
Tayabas, Quezon
- 225. Office of the Municipal Mayor
Tiaong, Quezon
- 226. Office of the LGU Legislative Body
Tiaong, Quezon
- 227. Office of the Municipal Mayor
Apalit, Pampanga
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Apalit, Pampanga
- 229. Office of the Municipal Mayor
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Candaba, Pampanga
- 231. Office of the Municipal Mayor
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- 232. Office of the LGU Legislative Body
San Simon, Pampanga
- 233. Office of the Governor
Province of Bulacan
- 234. Office of the LGU Legislative Body
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- 235. Office of the Governor
Province of Cavite
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Province of Rizal
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Province of Rizal
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Province of Laguna
- 242. Office of the LGU Legislative Body
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- 243. Office of the Governor
Province of Quezon
- 244. Office of the LGU Legislative Body
Province of Quezon
- 245. Office of the Governor
Province of Pampanga
- 246. Office of the LGU Legislative Body
Province of Pampanga
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- 249. Senate Committee on Energy
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- 250. House Committee on Energy
Batasan Hills, Quezon City
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