

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City

**IN THE MATTER OF THE
APPLICATION FOR
APPROVAL OF THE POWER
SUPPLY AGREEMENT
BETWEEN CAMARINES
SUR IV ELECTRIC
COOPERATIVE, INC.
(CASURECO IV) AND
THERMA LUZON, INC.
(TLI), WITH MOTION FOR
CONFIDENTIAL
TREATMENT OF
INFORMATION**

ERC CASE NO. 2024-010 RC

**CAMARINES SUR IV
ELECTRIC COOPERATIVE,
INC. (CASURECO IV) AND
THERMA LUZON, INC.
(TLI),**

Applicants.

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Promulgated:
January 24, 2024

ORDER

On 17 January 2024, Camarines Sur IV Electric Cooperative, Inc, (CASURECO IV) and Therma Luzon, Inc. (TLI) filed a *Joint Application* dated 25 October 2023, seeking the Commission's approval of their Power Supply Agreement (PSA), with motion for confidential treatment of information.

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

PARTIES

1. Applicant CASURECO IV is a non-stock, non-profit electric cooperative duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with its principal office located at Brgy. Talojongon, Tigaon, Camarines Sur. It is engaged in the distribution of electricity and presently

operates within the franchise area covering the municipalities of Ocampo, Tigaon, Sagnay, Goa, San Jose, Lagonoy, Presentacion, Caramoan, and Garchitorena, all in the province of Camarines Sur.

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

STATEMENT OF FACTS

4. Applicant CASURECO IV sources the bulk of its baseload requirements from the Power Sector Assets and Liabilities Management Corporation (PSALM) under a Contract for the Supply of Electric Energy (CSEE).
5. In order to address the upcoming expiration of the said CSEE in 2023 and, consequently, the need to procure power supply for its energy requirements, CASURECO IV conducted a Competitive Selection Process (CSP) to procure power supply for a period of ten (10) years, based on the Department of Energy (DOE) Department Circular No. DC2018-02-0003¹, as amended by DOE DC2021-09-0030².
6. On 18 May and 25 May 2022, CASURECO IV published in Malaya Business Insight its Invitation for Bid for the contract capacity of 12.96-23.48 MW from December 26, 2023 to December 25, 2032.
7. On 20 July 2022, CASURECO IV's Third Party Bids and Award Committee (TPBAC) conducted a Pre-bid Conference that was attended by four (4) bidders, namely, Masinloc Power Partners Co. Ltd. (MPPCL), Energy Development Corporation (EDC), GN Power, and Therma Luzon, Inc. (TLI).

¹ Adopting and Prescribing the Policy for the Competitive Selection Process in the Procurement by the Distribution Utilities of Power Supply Agreement for the Captive Market otherwise known as "CSP Rules".

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

8. Subsequently, MPPCL, EDC, GN Power, and TLI sent their respective letters informing CASURECO IV that they will no longer participate in the CSP and signifying their intent to participate in future CSPs of CASURECO IV.
9. Given that all the responsive bidders withdrew their respective bids, CASURECO IV's TBAC declared a failure of bidding through a TP BAC Resolution No. 001-2022 dated 5 October 2022.
10. On 18 November and 2 December 2022, CASURECO IV caused again the publication in Malaya Business Insight of its Invitation for Bid for the contract capacity of 12.96-23.48MW from July 26, 2023 to July 25, 2023 with a Revised Terms of Reference.
11. On 19 December 2022, CASURECO IV's TPBAC conducted another Pre-bid Conference for the second round of bidding where only one (1) prospective bidder, i.e. TLI, attended.
12. During the Bid Opening for the 2nd round of CSP, only TLI attended but made no offer. CASURECO IV did not receive any other offer from any generation company on the 2nd round of CSP.
13. For having not received any bid offer, CASURECO IV's TPBAC, through a TPBAC Resolution No. 001-2023 dated 5 January 2023, declared the failure of the 2nd round of CSP.
14. Consequently, pursuant to DOE DC2018-02-0003, as amended by DOE DC2021-09-0030, CASURECO IV proceeded to direct negotiations for the procurement of its power supply requirements.
15. CASURECO IV's TPBAC sent Letters of Invitation dated 20 March 2023 with Revised Terms of Reference for Negotiation to previous bidders, inviting the latter to participate in the direct negotiations. Only two (2) offers were received, including TLI's.
16. After a careful review of the offers, CASURECO IV's TPBAC, through TPBAC Resolution No. 003-2023 dated 18 May 2023, declared that TLI is the sole proponent that fully satisfied all the parameters for CASURECO IV's power supply requirements.
17. Consequently, on 20 May 2023, CASURECO IV's Board of Directors, through Board Resolution No. 042-2023 dated 20 May 2023, approved the recommendation of the TPBAC declaring TLI as the successful proponent. Thus, TLI was chosen to provide CASURECO IV's power supply requirements for a period of 10 years.
18. Thereafter, CASURECO IV received a Notice to Proceed dated 06 September 2023 from the National Electrification

Administration (NEA), directing CASURECO IV to proceed with the signing of the PSA with TLI. Thus, on 20 September 2023, CASURECO IV and TLI executed the Power Supply Agreement (PSA) with a term of ten (10) years, with capacity ranging from 2.999MW to 24.792MW.

19. Hence, this instant Joint Application for the approval of the PSA between CASURECO IV and TLI.

SALIENT TERMS OF THE PSA

20. The PSA between CASURECO IV and TLI, a copy of which is attached as ANNEX "A", contains the following salient features:

- 20.1. **Contract Period.** The PSA shall take effect immediately from Effective Date until the end of the Contract Period on 26 July 2033.

"Effective Date" means the date of execution of the PSA, as set out below the respective signature of the Parties; provided, however, that if the Parties executed shall have executed the PSA on separate dates, the Effective Date shall be the later of the dates on which each Party executed this PSA.

- 20.2. **Contract Capacity and Contract Energy.** Contract Capacity refers to the estimated capacity of electricity to be made available for Delivery to each Customer Facility as provided in Schedule 4.1 (Delivery Schedule).

"Contract Energy" refers to the amount of energy nominated or taken by CASURECO IV, which shall in no case exceed the Maximum Contract Energy per Billing Period or the Maximum Contract Energy per Interval, nor be less than the Minimum Contract Energy per Billing Period or the Minimum Contract Energy per Interval.

"Minimum Contract Energy" refers to the minimum Energy quantity in kilowatt-hours that CASURECO IV shall receive or pay for per Billing Period as provided in Schedule 4.1 (Delivery Schedule).

"Maximum Contract Energy" refers to the maximum Energy quantity in kilowatt-hours that CASURECO IV may draw per Billing Period as provided in Schedule 4.1 (Delivery Schedule).

The Minimum and Maximum Contract Energy are shown in Schedule 4.1 (Delivery Schedule) of the PSA, to wit:

Schedule 4.1 – Delivery Schedule

BILLING MONTH	MAXIMUM CONTRACT ENERGY PER INTERVAL (kW)	MINIMUM CONTRACT ENERGY PER BILLING PERIOD (kWh)	MAXIMUM CONTRACT ENERGY PER BILLING PERIOD (kWh)
July 26, 2023 - August 25, 2023	3,560	0	2,648,608
August 26, 2023 - September 25, 2023	3,410	0	2,536,754
September 26, 2023 - October 25, 2023	3,636	0	2,617,788
October 26, 2023 - November 25, 2023	3,546	0	2,638,361
November 26, 2023 - December 25, 2023	3,488	0	2,511,060
December 26, 2023 - January 25, 2024	3,001	0	2,232,494
January 26, 2024 - February 25, 2024	2,999	0	2,230,960
February 26, 2024 - March 25, 2024	3,099	0	2,156,904
March 26, 2024 - April 25, 2024	3,631	0	2,701,577
April 26, 2024 - May 25, 2024	4,224	0	3,041,331
May 26, 2024 - June 25, 2024	4,032	0	2,999,629
June 26, 2024 - July 25, 2024	3,869	0	2,785,454
July 26, 2024 - August 25, 2024	12,940	0	9,627,111
August 26, 2024 - September 25, 2024	12,397	0	9,223,529
September 26, 2024 - October 25, 2024	13,225	0	9,521,788
October 26, 2024 - November 25, 2024	12,887	0	9,588,236
November 26, 2024 - December 25, 2024	12,675	0	9,125,978

December 26, 2024 - January 25, 2025	8,532	0	6,347,772
January 26, 2025 - February 25, 2025	8,531	0	6,347,371
February 26, 2025 - March 25, 2025	9,333	0	6,271,676
March 26, 2025 - April 25, 2025	10,825	0	8,053,861
April 26, 2025 - May 25, 2025	12,960	0	9,331,491
May 26, 2025 - June 25, 2025	12,265	0	9,124,822
June 26, 2025 - July 25, 2025	11,677	0	8,407,320
July 26, 2025 - August 25, 2025	11,717	0	8,717,529
August 26, 2025 - September 25, 2025	11,131	0	8,281,601
September 26, 2025 - October 25, 2025	12,036	0	8,665,925
October 26, 2025 - November 25, 2025	11,658	0	8,673,691
November 26, 2025 - December 25, 2025	11,428	0	8,227,970
December 26, 2025 - January 25, 2026	9,457	0	7,036,288
January 26, 2026 - February 25, 2026	9,463	0	7,040,835
February 26, 2026 - March 25, 2026	10,342	0	6,949,927
March 26, 2026 - April 25, 2026	11,952	0	8,891,931
April 26, 2026 - May 25, 2026	14,254	0	10,262,634
May 26, 2026 - June 25, 2026	13,500	0	10,044,193
June 26, 2026 - July 25, 2026	12,866	0	9,263,675
July 26, 2026 - August 25, 2026	12,903	0	9,599,490
August 26, 2026 - September 25, 2026	12,271	0	9,129,608
September 26, 2026 - October 25, 2026	13,257	0	9,545,025
October 26, 2026 - November 25, 2026	12,837	0	9,550,438
November 26, 2026 - December 25, 2026	12,587	0	9,062,828
December 26, 2026 - January 25, 2027	10,426	0	7,757,286
January 26, 2027 - February 25, 2027	10,440	0	7,767,011
February 26, 2027 - March 25, 2027	11,399	0	7,660,176
March 26, 2027 - April 25, 2027	13,131	0	9,769,537
April 26, 2027 - May 25, 2027	15,608	0	11,237,702
May 26, 2027 - June 25, 2027	14,794	0	11,006,933
June 26, 2027 - July 25, 2027	14,112	0	10,160,430
July 26, 2027 - August 25, 2027	14,144	0	10,523,054
August 26, 2027 - September 25, 2027	13,465	0	10,017,619
September 26, 2027 - October 25, 2027	14,536	0	10,465,593

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October 26, 2027 - November 25, 2027	14,071	0	10,468,548
November 26, 2027 - December 25, 2027	13,801	0	9,937,071
December 26, 2027 - January 25, 2028	11,439	0	8,510,645
January 26, 2028 - February 25, 2028	11,459	0	8,525,784
February 26, 2028 - March 25, 2028	11,968	0	8,329,548
March 26, 2028 - April 25, 2028	14,364	0	10,686,537
April 26, 2028 - May 25, 2028	17,023	0	12,256,540
May 26, 2028 - June 25, 2028	16,146	0	12,012,889
June 26, 2028 - July 25, 2028	15,413	0	11,097,437
July 26, 2028 - August 25, 2028	15,441	0	11,488,077
August 26, 2028 - September 25, 2028	14,712	0	10,945,493
September 26, 2028 - October 25, 2028	15,872	0	11,427,485
October 26, 2028 - November 25, 2028	15,360	0	11,427,867

November 26, 2028 - December 25, 2028	15,070	0	10,850,556
December 26, 2028 - January 25, 2029	12,495	0	9,296,231
January 26, 2029 - February 25, 2029	12,523	0	9,317,015
February 26, 2029 - March 25, 2029	13,655	0	9,176,181
March 26, 2029 - April 25, 2029	15,649	0	11,642,762
April 26, 2029 - May 25, 2029	18,499	0	13,318,962
May 26, 2029 - June 25, 2029	17,556	0	13,081,679
June 26, 2029 - July 25, 2029	16,770	0	12,074,528
July 26, 2029 - August 25, 2029	16,794	0	12,494,381
August 26, 2029 - September 25, 2029	16,012	0	11,913,057
September 26, 2029 - October 25, 2029	17,267	0	12,430,524
October 26, 2029 - November 25, 2029	16,705	0	12,428,225
November 26, 2029 - December 25, 2029	16,393	0	11,803,118
December 26, 2029 - January 25, 2030	13,594	0	10,113,896
January 26, 2030 - February 25, 2030	13,630	0	10,140,552
February 26, 2030 - March 25, 2030	14,854	0	9,981,653
March 26, 2030 - April 25, 2030	16,987	0	12,638,030
April 26, 2030 - May 25, 2030	20,034	0	14,424,760
May 26, 2030 - June 25, 2030	19,024	0	14,153,698
June 26, 2030 - July 25, 2030	18,183	0	13,091,512
July 26, 2030 - August 25, 2030	18,201	0	13,541,773
August 26, 2030 - September 25, 2030	17,366	0	12,920,127
September 26, 2030 - October 25, 2030	18,715	0	13,474,517
October 26, 2030 - November 25, 2030	18,104	0	13,469,429
November 26, 2030 - December 25, 2030	17,770	0	12,794,575
December 26, 2030 - January 25, 2031	14,806	0	11,015,918
January 26, 2031 - February 25, 2031	14,851	0	11,049,055
February 26, 2031 - March 25, 2031	16,176	0	10,870,227
March 26, 2031 - April 25, 2031	18,462	0	13,735,981
April 26, 2031 - May 25, 2031	21,729	0	15,644,646
May 26, 2031 - June 25, 2031	20,643	0	15,358,160
June 26, 2031 - July 25, 2031	19,741	0	14,213,420
July 26, 2031 - August 25, 2031	19,754	0	14,697,224
August 26, 2031 - September 25, 2031	18,859	0	14,031,097
September 26, 2031 - October 25, 2031	20,314	0	14,626,220
October 26, 2031 - November 25, 2031	19,648	0	14,618,053
November 26, 2031 - December 25, 2031	19,289	0	13,868,318
December 26, 2031 - January 25, 2032	16,057	0	11,946,520
January 26, 2032 - February 25, 2032	16,111	0	11,986,343
February 26, 2032 - March 25, 2032	16,912	0	11,770,646
March 26, 2032 - April 25, 2032	19,985	0	14,868,721
April 26, 2032 - May 25, 2032	23,477	0	16,903,184
May 26, 2032 - June 25, 2032	22,313	0	16,600,786
June 26, 2032 - July 25, 2032	21,348	0	15,370,875
July 26, 2032 - August 25, 2032	20,984	0	15,612,446
August 26, 2032 - September 25, 2032	20,042	0	14,911,087
September 26, 2032 - October 25, 2032	21,581	0	15,538,473

October 26, 2032 - November 25, 2032	20,871	0	15,527,867
November 26, 2032 - December 25, 2032	20,493	0	14,754,663
December 26, 2032 - January 25, 2033	16,998	0	12,646,857
January 26, 2033 - February 25, 2033	17,059	0	12,691,711
February 26, 2033 - March 25, 2033	18,208	0	12,467,532
March 26, 2033 - April 25, 2033	21,131	0	15,721,179
April 26, 2033 - May 25, 2033	24,792	0	17,850,313
May 26, 2033 - June 25, 2033	23,570	0	17,535,940
June 26, 2033 - July 25, 2033	22,558	0	16,241,933

During the Contract Period, and provided that Closing shall have occurred, TLI [shall deliver], and CASURECO IV shall receive and pay for, Contract Energy from the Power Plant to CASURECO IV during the Billing Periods specified in Schedule 4.1 (Delivery Schedule) until the end of the Contract Period specified in Schedule 3.1(b), at the Metering Points specified in item 2, Schedule 3.1(b) (General Conditions), and at the rates specified in Schedule 6.1.2 (Rate Schedule).

20.3 Scheduled Outages. TLI shall not have any allowance for scheduled or unscheduled outages under this Agreement but shall not be obligated to Deliver Energy during events of Force Majeure under Article 11 and/or at any interval following the date of termination or expiration of this Agreement.

20.4 Replacement Power in case of Force Majeure.

During such full or partial Force Majeure event, CASURECO IV shall, at its own cost, fully or partially source the replacement energy which it requires under the Agreement from other sources, which may include the WESM, but the Parties may agree that TLI shall supply Back-Up Power from power plants owned and/or operated by any of its Affiliates (if any), WESM, or any other supplier, and the same shall be paid for by CASURECO IV at the Back-Up Power Rate.

20.5 Payment of Fees. TLI shall deliver to CASURECO IV a Billing Statement setting out the Electricity Fees due on account of all Energy delivered during each Billing Period on or before the seventh (7th) day of the Payment Month; provided, however, that in the event TLI delivers said Billing Statement after the seventh (7th) day of the Payment Month, the

aforementioned deadline shall be correspondingly adjusted.

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

- 20.6 Security Deposit. In the event that CASURECO IV fails to pay the Electricity Fees or any other amounts payable by it under this Agreement in full on the due date, TLI shall have the right to require CASURECO IV to post a Security Deposit, whereupon, CASURECO IV shall establish, not later than fifteen (15) business days from receipt of TLI's notice to this effect, the Security Deposit which shall be valid for at least twelve (12) Billing Periods, and with a face value computed in accordance with the formula set out in Schedule 7.2.1 (*Security Deposit*); provided that, for the final Contract Year, CASURECO IV shall post a Security Deposit which shall be valid until sixty (60) calendar days after the end of the Contract Period.

In the event that TLI draws against the Security Deposit, TLI shall promptly notify CASURECO IV of such withdrawal, providing written notice within two (2) business days following the date TLI made the drawing. CASURECO IV shall replenish the Security Deposit to restore the value thereof to its original amount, on the business day immediately following the date TLI shall have made a drawing thereon.

- 20.7 Government Charges. CASURECO IV shall be liable for and pay (i) any and all taxes (including value-added tax, if any), fees, charges, levies and imposts imposed or assessed by any Governmental Authority on or in connection with the purchase and sale of electricity and/or payments due to TLI hereunder, and (ii) any new taxes, fees, charges, levies and imposts (including any increase in the rate or amount thereof after the date hereof but excluding income taxes imposed on TLI and fines and penalties directly attributed to TLI's gross negligence) after the date hereof in connection with the performance by TLI of its obligations pursuant to this Agreement. Such payments

shall be made as and when required pursuant to Applicable Laws in effect from time to time.

The Electricity Fee is exclusive of VAT, which shall be for the account of CASURECO IV.

- 20.8 Electricity Fees. Electricity Fees refers to the total amount of charges due from Customer in respect of the Contract Capacity and all Energy supplied by Supplier during a Billing Period, computed in accordance with Schedule 6.1.2 (Rate Schedule).

The computation of Electricity Fees contained in Schedule 6.1.2 (Rates Schedule) of the PSA is as follows:

Schedule 6.1.2 – Rates Schedule

Electricity Fees = A + B + C + D + E

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

Where:

A = CRF x CC x Adj

CRF = 920.00 Php/kW/mo

CC = the contracted capacity in kW for the Billing Period as indicated in the attached Delivery Schedule

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

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

Int = the number of Trading Intervals per day

n = the number of days for the current Billing Period

B = FOM x CC x Adj

$$\text{FOM} = \text{Base FOM} \times \frac{RPCPI_{y-1}}{RPCPI_0}$$

Base FOM = 180 Php/kW/mo

$RPCPI_{y-1}$ = the Philippine Consumer Price Index for All Income Households in the Philippines – All Items (2018=100) published as of the end of December for year y-1, the year prior to which the Invoice is being prepared

$RPCPI_0$ = the Philippine Consumer Price Index for All Income Households in the Philippines – All Items (2018=100) of 112.20

CC = as previously defined

Adj = as previously defined

$$C = VOM \times \frac{RPCPI_{y-1}}{RPCPI_0} \times TED$$

Base VOM = 0.3232 Php/kWh

$RPCPI_{y-1}$ = the Philippine Consumer Price Index for All Income Households in the Philippines – All Items (2018=100) published as of the end of December for year y-1, the year prior to which the Invoice is being prepared

$RPCPI_0$ = the Philippine Consumer Price Index for All Income Households in the Philippines – All Items (2018=100) of 112.20

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

$$D = \text{Fuel} \times \text{TED}$$

$$\text{Fuel} = \text{Base} \times \left((87.45\% \times \frac{N_m}{N_0}) + (4.56\% \times \frac{ICI4_m}{ICI4_0}) + 7.99\% \right) \times \left(\frac{FX_m}{FX_0} \right)$$

Base = 9.9782 Php/kWh

N_m = the average Newcastle index (USD/MT) for the last three calendar months

prior to the Billing Period for which the Invoice is being prepared, as posted by globalCOAL on the website www.globalcoal.com or its successor or, if globalCOAL ceases to report the Newcastle index, an agreed upon replacement source that reports the Newcastle Index shall be adopted by the Parties

N_0 = the Newcastle index of 439 USD/MT

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

$ICI4_0$ = the ICI4 index of 73.52 USD/MT

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

FX_0 = the PHP/USD exchange rate of 56.31

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

In the event that the index (a) becomes unavailable, (b) is replaced by a new benchmark rate as determined by the relevant authorized entity, its successor-in-interest, or (c) ceases to exist, or (d) in the reasonable

determination of either Party, fails to reflect the real costs

and forms an integral part of this price mechanism, the Parties shall agree to adopt a new price index.

TED = as previously defined

E = all future taxes, fees and imposts (including increases, or adjustments thereon and increases, or adjustments on existing taxes, fees and imposts), such as but not limited to real property taxes, excise taxes, and other future charges imposed on the Power Plant for the generation of electricity, in Philippine Pesos

Adjustments:

a.) Service Interruption Adjustment:

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

21. CASURECO IV calculated the rate impact of the subject PSA with TLI and compared it with the generation rate if CASURECO IV solely purchases its requirements from the WESM³, as follows:

³ See Rate Impact Calculation attached as Annex "R".

	w/o TLI	w TLI
MWh Purchase*		
WESM	1,259,742	
TLI		1,259,742
Total	0	1,259,742
Power Cost (Php)		
WESM	8,347,932,709	
TLI		7,749,303,282
Total	8,347,932,709	7,749,303,282
Generation Rate	6.6267	6.1515
Rate Impact		-0.4752

Notes:

1. The input MWh purchase is based from the CASURECO IV energy requirement from 26 July 2023 to 25 July 2023
2. Rate of the WESM is the average generation rate for the month of August 2022 to July 2023
3. TLI's Generation rate is based on the average proposed rate for CASURECO IV energy requirement

22. As shown in the Rate Impact Calculation, the implementation of the PSA between TLI and CASURECO IV will benefit CASURECO IV and its member-consumers with an estimated generation rate reduction of Php0.4752/kWh as compared to sourcing the same power requirements solely from the WESM. Thus, the PSA subject of this Application will ultimately provide CASURECO IV's end-users with a continuous and reliable supply of electricity at affordable rates.
23. The Applicants likewise submit the following documents for the evaluation of the Joint Application:

Description of Document	Annex
Power Supply Agreement (PSA) between CASURECO IV and TLI dated 20 September 2023	"A"
CASURECO IV's Certificate of Registration issued by the National Electrification Administration (NEA) with Amended Articles of Incorporation	"B" and "B-1"
CASURECO IV's Secretary's Certificate showing the list of Board of Directors and Board Members	"C"
CASURECO IV's Distribution Development Plan (DDP) (2023-2032)	"D"
CASURECO IV's Demand Side Management (DSM) Program	"D-1"
CASURECO IV's Supply and Demand Scenario and Average Daily Load Curve	"E" and "E-1"
CASURECO IV's Power Supply Contract Utilization (January 2018 to June 2023)	"E-2"
CASURECO IV's Single Line Diagram (SLD) Connection	"F"

Description of Document	Annex
CASURECO IV's Performance Assessment of the System (SAIFI and SAIDI)	"G"
CASURECO IV's Invitation to Bid (First Round) (Invitation Letter and Proofs of Publication)	"H" and series
CASURECO IV's Invitation to Bid (Second Round) (Invitation Letter and Proofs of Publication)	"I" and "I-1"
CASURECO IV's Letters of Invitation (For Direct Negotiations)	"I-2"
CASURECO IV's Terms of Reference and Annex (First Round)	"J" and "J-1"
CASURECO IV's Revised Terms of Reference and Annex (Second Round)	"J-2" and "J-3"
CASURECO IV's Revised Terms of Reference for Negotiation and Annex (For Negotiation)	"J-4" and "J-5"
CASURECO IV's Third Party Bids and Awards Committee (TPBAC) Resolution No. 001-2022 declaring the failure of bidding for the procurement of power supply of 12.96-23.48MW from July 26, 2023 to December 25, 2032 thru competitive selection process (CSP) of CASURECO IV Power Supply (First Round)	"K"
CASURECO IV's TPBAC Resolution No. 001-2023 declaring the failure of bidding for the procurement of power supply of 12.96-23.48MW from July 26, 2023 to July 25, 2033 thru competitive selection process (CSP) Round 2 of CASURECO IV Power Supply (Second Round)	"K-1"
CASURECO IV's TPBAC Resolution No. 003-2023 declaring the TLI as the successful proponent selected through direct negotiation for the procurement of Power Supply requirements from July 26, 2023 to July 25, 2033 of CASURECO IV; and CASURECO IV's TPBAC Resolution No. 004-2023 (Direct Negotiation)	"K-2" and "K-3"
CASURECO IV's Board Resolution No. 042-2023 approving the recommendation of TP-BAC declaring TLI as the successful proponent selected through direct negotiation for the procurement of Power Supply of CASURECO IV from July 26, 2023 to July 25, 2033, and to proceed with the issuance of Notice of Award (NOA) to TLI; and CASURECO IV's Board Resolution No. 122-2023.	"L" and "L-1"
Amended Notice of Award issued by CASURECO IV to TLI dated 9 October 2023 and Explanation for the Amendment	"M" and "M-1"

Description of Document	Annex
CASURECO IV's Matrix and Type of CSP (Schedule of Bidding Activities - First Round, Second Round, and Direct Negotiation)	"N", "N-1", and "N-2"
CASURECO IV's Secretary's Certificate (on the Conduct of CSP) dated 3 August 2023	"O"
Notice to Proceed from NEA dated 6 September 2023	"P"
CASURECO IV's Certification of WESM Membership	"Q"
CASURECO IV's Rate Impact Simulation	"R"
CASURECO IV's Write-up of Non-Applicability	"S"
TLI's Certificate of Incorporation, Amended Articles of Incorporation and By-Laws	"T"
TLI's Verified Certification showing the list of Board of Directors and Board Members of the Ultimate Parent Company dated 17 March 2023	"U"
TLI's General Information Sheet ("GIS")	"V"
TLI's Board of Investments ("BOI") Certificate of Registration No. 2010-052	"W"
TLI's Environmental Compliance Certificate ("ECC") Ref. No. ECC-CO-1311-0037	"X"
Certificate of Compliance ("COC") No. 19-07-M-00040L for the Pagbilao Coal Fired Thermal Power Plant	"Y"
TLI's Legal Opinion on DOE PDP and/or COE dated 24 February 2022	"Z"
TLI's Single-line Diagram Connection	"AA"
TLI's Write-up on Inconsistency in Capacity	"BB"
TLI's Transmission Service Agreement with National Grid Corporation of the Philippines ("NGCP")	"CC"
Executive Summary of the CASURECO IV-TLI PSA	"DD"
TLI's Sources of Funds (Confidential)*	"EE"
TLI's Generation Rate and Derivation (Confidential)*	"FF"
TLI's Replacement Cost New (Confidential)*	"GG"
TLI's Cash Flow (Confidential)*	"HH"
TLI's Financial Model (Confidential)*	"II"
TLI's Sample Bill	"JJ"

Description of Document	Annex
TLI's Write-up on Relevant Technical and Economic Characteristics of the Generation Capacity	"KK"
TLI's Latest Audited Financial Statements	"LL"
<p>TLI's Write-Up on the Non-Applicability of the following:</p> <ul style="list-style-type: none"> • 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 	"MM"
TLI's Certification of the Net Heat Rate kCal per kWh (<i>Confidential</i>)*	"NN"
TLI's Coal Supply Agreement (<i>Confidential</i>) *	"OO"
TLI's Coal Procurement Plan (<i>Confidential</i>) *	"PP"
Sworn Statement Re: TLI's Explanation on Coal Procurement Process (<i>Confidential</i>) *	"QQ"
TLI's WESM Registration Approval Form	"RR"

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

MOTION FOR CONFIDENTIAL TREATMENT OF
ANNEXES “EE”, “FF”, “GG”, “HH”, “II”, “NN”, “OO”, “PP”, and
“QQ”

24. Under the ERC Rules of Practice and Procedure, a party to any proceeding before the Honorable Commission may request that certain information not be disclosed and be treated as confidential.⁴ Pursuant to this, TLI prays for the confidential treatment of the information contained in the following annexes:

Documents and/or Information	Annex
TLI’s Sources of Funds (Confidential)*	“EE”
TLI’s Generation Rate and Derivation (Confidential)*	“FF”
TLI’s Replacement Cost New (Confidential)*	“GG”
TLI’s Cash Flow (Confidential)*	“HH”
TLI’s Financial Model (Confidential)*	“II”
TLI’s Certification of the Net Heat Rate kCal per kWh (Confidential)*	“NN”
TLI’s Coal Supply Agreement (Confidential) *	“OO”
TLI’s Coal Procurement Plan (Confidential) *	“PP”
Sworn Statement Re: TLI’s Explanation on Coal Procurement Process (Confidential) *	“QQ”

25. Annexes “EE”, “FF”, “GG”, “HH”, “II”, “NN”, “OO”, “PP”, and “QQ” contain information and data where TLI has actual and valuable proprietary interest to protect with respect to such information, and fall within the bounds of “trade secrets” that are entitled to protection under the Constitution, statutes, and rules and regulations of this Honorable Commission.

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

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

- 25.2. In the case of Air Philippines Corporation vs. Pennswell, Inc.,⁵ the Supreme Court defined “trade secrets” and explained that:

“A trade secret is defined as a plan or process, tool, mechanism or compound known only to its owner and those of his employees to whom it is necessary to confide it. The definition also extends to a secret formula or process not patented, but known only to certain individuals using it in compounding some article of trade having a commercial value. A trade secret may consist of any formula, pattern, device, or compilation of information that: (1) is used in one’s business; and (2) gives the employer an opportunity to obtain an advantage over competitors who do not possess the information. Generally, a trade secret is a process or device intended for continuous use in the operation of the business, for example, a machine or formula, but can be a price list or catalogue or specialized customer list. It is indubitable that trade secrets constitute proprietary rights.” (Emphasis supplied.)

- 25.3. Moreover, the Honorable Commission categorically acknowledged in its Decision in ERC Case No. 2015-111 RC⁶ that formulas and pricing structures of a generation company must be accorded confidential protection, to wit:

“In the case of PNOC RC, the documents sought to be protected from disclosure contain formula and pricing structures used in arriving at their proposed tariff. In fact, all three (3) documents were used by the Commission in evaluating the reasonableness of the proposed rate. In the electric power industry w(h)ere prices is[sic] a major consideration in selecting one’s 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).

26. 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

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

⁶ Decision, ERC Case No. 2015-111 RC dated 30 May 2017 entitled “In the Matter of the Application for Approval of the Power Supply Agreement Between Nueva Ecija II Electric Cooperative, Inc.- Area 2 (NEECO II – Area 2) and PNOC Renewables Corporation (PNOC RC).”

provided for under Rule 4 of the ERC Rules of Practice and Procedure.

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

PRAYER

WHEREFORE, premises considered, Applicants CAMARINES SUR IV ELECTRIC COOPERATIVE, INC. (CASURECO IV) and THERMA LUZON, INC. (TLI) respectfully pray that the Honorable Commission:

- (i) ISSUE an Order treating Annexes "EE", "FF", "GG", "HH", "II", "NN", "OO", "PP", and "QQ", 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; and
- (ii) After hearing on the merits, ISSUE a Decision APPROVING the Joint Application and the PSA between CASURECO IV and TLI, including all the rates, fees, charges, and tariff adjustment mechanisms set out therein at the rates provided in the PSA, and authorizing CASURECO IV 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 CASURECO IV 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 2020⁸ and Resolution No. 01, Series of 2021⁹ (ERC Revised Rules of Practice and Procedure):

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

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

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

Date	Platform	Activity
14 March 2024 (Thursday) at two o'clock in the afternoon (2:00 P.M)	MS Teams Application	Determination of compliance with jurisdictional requirements and expository presentation
21 March 2024 (Thursday) at two o'clock in the afternoon (2:00 P.M)		Pre-Trial Conference and Presentation of Evidence

Accordingly, CASURECO IV and TLI are hereby directed to host the virtual hearings at **CASURECO IV's principal office located at Brgy. Talojongon, Tigaon, Camarines Sur**, as the designated venue for the conduct thereof, and ensure that the same is open to the public and the community quarantine guidelines are observed at all times. Moreover, Applicants shall guarantee that, during the conduct of the expository presentation, the participation of the public shall not be impaired.

RELATIVE THERETO, CASURECO IV 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, and their respective Local Government Unit (LGU) legislative bodies within CASURECO IV's franchise area for the appropriate posting thereof on their respective bulletin boards;
- 3) Inform the consumers within CASURECO IV's franchise area, by any other means available and appropriate, of the filing of the *Joint Application*, its 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 at the scheduled hearing; and
- 5) Furnish with copies of the *Joint Application* and its attachments, except those subject of a motion for confidential treatment of information, all those making requests therefor, subject to reimbursement of reasonable photocopying costs.

Within five (5) calendar days prior to the date of the initial virtual hearing, CASURECO IV 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 its 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 newspaper 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 CASURECO IV to inform the consumers within its franchise area of the filing of the *Joint Application*, its reasons therefor, and of the scheduled hearings thereon;
- 4) The evidence of receipt of copies of this *Order* and the attached *Notice of Virtual Hearing* by the OSG, the COA, and the Committees on Energy of both Houses of Congress;

- 5) The evidence of receipt of copies of the *Joint Application* and its attachments, except those subject of a motion for confidential treatment of information, if any, by all those making requests therefor; and
- 6) Such other proof of compliance with the requirements of the Commission.

Moreover, CASURECO IV and TLI are hereby required to post on their bulletin boards, the scanned copies of the foregoing jurisdictional requirements, together with the newspaper publication and certifications issued by the concerned Offices of the Governor, Mayors and Local Legislative Bodies, and to submit proof of posting thereof.

Joint Applicants CASURECO IV and TLI, and all interested parties are also required to submit via e-mail at docket@erc.ph, and copy furnish the Legal Service through legal@erc.ph, **at least five (5) calendar days** before the date of the scheduled virtual hearing and Pre-Trial Conference, their respective Pre-Trial Briefs containing, among others:

- 1) A summary of admitted facts and proposed stipulation of facts;
- 2) The issues to be tried or resolved;
- 3) The documents or exhibits to be presented, stating the purposes and proposed markings therefor, which should also be attached to the Pre-Trial Brief; and
- 4) The number and names of the witnesses, with their written testimonies in a Judicial Affidavit form attached to the Pre-Trial Brief.

Joint Applicants CASURECO IV 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 CASURECO IV and TLI to comply with the above requirements within the prescribed period shall be a ground for

cancellation of the scheduled hearings, and the resetting of which shall be six (6) months from the said date of cancellation.

Joint Applicants CASURECO IV and TLI must also be prepared to make an expository presentation of the instant *Joint Application*, aided by whatever communication medium that they may deem appropriate for the purpose, in order to put in plain words and explain, for the benefit of the consumers and other concerned parties, the nature of the *Joint Application*. Relevant information and pertinent details substantiating the reasons and justifications for the *Joint Application* must be cited in support thereof.

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

Joint Applicants CASURECO IV and TLI are further directed to submit, through personal service, registered mail, or ordinary mail/private courier, one (1) set of the original or certified true hard copies of their Jurisdictional Compliance, Expository Presentation, Pre-Trial Brief, and Judicial Affidavits of witnesses, **within five (5) working days** from the date that the same were electronically submitted, as reflected in the acknowledgment receipt e-mail sent by the Commission.

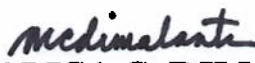
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Finally, CASURECO IV and TLI, including their authorized representatives and witnesses, are hereby directed to provide the Commission, through legal.virtualhearings@erc.ph, their respective e-mail addresses upon receipt of this *Order*. The Commission will send the access link/s to the aforementioned hearing platform within five (5) working days prior to the scheduled hearing.

SO ORDERED.

Pasig City, 24 January 2024.

FOR AND BY AUTHORITY
OF THE COMMISSION:


MONALISA C. DIMALANTA
Chairperson and CEO


LS: AVL/MVM/LSP

ERC

Office of the Chairperson and CEO



MCD2024-014065

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Copy Furnished:

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10. Office of the Governor
Province of Camarines Sur
11. Office of the Local Government Unit (LGU) Legislative Body
Province of Camarines Sur
12. Office of the Mayor
Municipality of Caramoan, Camarines Sur
13. Office of the LGU Legislative Body
Municipality of Caramoan, Camarines Sur
14. Office of the Mayor
Municipality of Garchitorena, Camarines Sur
15. Office of the LGU Legislative Body
Municipality of Garchitorena, Camarines Sur
16. Office of the Mayor
Municipality of Goa, Camarines Sur
17. Office of the LGU Legislative Body
Municipality of Goa, Camarines Sur
18. Office of the Mayor
Municipality of Lagonoy, Camarines Sur
19. Office of the LGU Legislative Body
Municipality of Lagonoy, Camarines Sur

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20. Office of the Mayor
Municipality of Ocampo, Camarines Sur
21. Office of the LGU Legislative Body
Municipality of Ocampo, Camarines Sur
22. Office of the Mayor
Municipality of Presentacion, Camarines Sur
23. Office of the LGU Legislative Body
Municipality of Presentacion, Camarines Sur
24. Office of the Mayor
Municipality of Sagnay, Camarines Sur
25. Office of the LGU Legislative Body
Municipality of Sagnay, Camarines Sur
26. Office of the Mayor
Municipality of San Jose, Camarines Sur
27. Office of the LGU Legislative Body
Municipality of San Jose, Camarines Sur
28. Office of the Mayor
Municipality of Tigaon, Camarines Sur
29. Office of the LGU Legislative Body
Municipality of Tigaon, Camarines Sur