

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

**IN THE MATTER OF THE  
APPLICATION FOR APPROVAL OF  
THE POWER SUPPLY AGREEMENT  
BETWEEN IBAAN ELECTRIC AND  
ENGINEERING CORPORATION AND  
THERMA LUZON, INC., WITH  
PRAYER FOR PROVISIONAL  
AUTHORITY,**

**ERC Case No. 2010-021RC**

**IBAAN ELECTRIC AND  
ENGINEERING CORPORATION AND  
THERMA LUZON, INC.,**

Applicants.

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**APPLICATION FOR APPROVAL OF POWER SUPPLY AGREEMENT  
WITH MOTION FOR ISSUANCE OF PROVISIONAL AUTHORITY**

Applicants **IBAAN ELECTRIC AND ENGINEERING CORPORATION** and  
**THERMA LUZON, INC.**, by their respective counsels, respectfully state:

**The Applicants**

1. Applicant Ibaan Electric and Engineering Corporation (“Ibaan”) is a domestic corporation duly organized and existing by virtue of the laws of the Republic of the Philippines, with principal office address at Don Pedro Subdivision, Poblacion, Ibaan, Batangas. Under Republic Act No. 7578, Ibaan is the grantee of the right, privilege and authority to operate and maintain the electric light, heat and power system in the Municipality of Ibaan, in the Province of Batangas.

2. Applicant Therma Luzon, Inc. (“TLI”) is a domestic corporation duly organized and existing by virtue of the laws of the Republic of the Philippines,

with principal office address at Governor Manuel A. Cuenco Avenue, Kasambagan 6000, Cebu City, Cebu. On October 1, 2009, TLI assumed the management and control of the 700-MW contracted capacity of the Pagbilao coal-fired power plants (the "Power Plant"), as IPP Administrator under the IPP Administration Agreement executed by and between TLI and the Power Sector Assets and Liabilities Management Corporation ("PSALM").

3. Applicants may be served the orders and other process of the Honorable Commission through their undersigned counsels.

### **Statement of Facts**

4. Ibaan had a Contract for Supply of Electric Energy/Transition Supply Contract ("CSEE" or "TSC") with the National Power Corporation ("NPC") which was subsequently assigned to AP Renewables Inc. ("APRI") by reason of the privatization of the Tiwi and Mak-Ban geothermal power plants of the NPC.

5. In October 2009, with the impending expiration of the TSC on January 25, 2010, Ibaan commenced negotiations for a power supply contract with TLI, in the absence of a firm offer from other power suppliers.

6. Considering that the agreement between Ibaan and TLI on the terms of the power supply contract was not yet final as of November 2009, and it did not appear that a definite agreement would be concluded by expiration of the TSC on January 25, 2010, Ibaan and APRI agreed to the extension of the TSC for another 3 months, or until April 25, 2010 in order to prevent any disruption in the services to Ibaan's consumers.

7. Thereafter, in February 2010, Ibaan and TLI concluded negotiations and executed the Power Supply Agreement (the “PSA”), subject of the instant Application. A copy of the PSA is attached as Annex “A” of this Application.

8. TLI was favorably considered in light of the following circumstances: (a) the other suppliers that Ibaan contacted are still in transition and have yet to offer their services to the market; (b) the computation of TLI rates under the PSA is more transparent because it is formula based; (c) under the PSA, a longer period has been provided within which Ibaan shall qualify for a prompt payment discount; and (d) subject to certain conditions, TLI shall grant a Security Deposit Incentive under the PSA. Given the above circumstances, the rates offered by TLI are more favorable to Ibaan’s consumers.

**The Power Supply Agreement**

9. **Term.** The obligation of TLI to deliver energy shall commence on April 26, 2010. This obligation shall subsist for a period of three (3) years, until April 25, 2013.

10. **Volume.** Under the PSA, TLI shall supply the following energy levels for the periods indicated:

**MONTHLY CONTRACT ENERGY LEVEL**

PERIOD	MAXIMUM CONTRACT ENERGY PER INTERVAL (kW-max)	MINIMUM CONTRACT ENERGY (kWh- min)	MAXIMUM CONTRACT ENERGY (kWh- max)
April 26, 2010 – May 25, 2010	3,900	1,487,000	1,784,400
May 26, 2010 – June 25, 2010	3,900	1,557,000	1,868,400
June 26, 2010 – July 25, 2010	3,900	1,463,000	1,755,600
July 26, 2010 – August 25, 2010	3,900	1,507,000	1,808,400
August 26, 2010 – September 25, 2010	3,900	1,502,000	1,802,400
September 26, 2010 – October 25, 2010	3,900	1,418,000	1,701,600

October 26, 2010 – November 25, 2010	3,900	1,451,000	1,741,200
November 26, 2010 – December 25, 2010	3,900	1,384,000	1,660,800
December 26, 2010 – January 25, 2011	3,900	1,379,000	1,654,800
January 26, 2011 – February 25, 2011	3,900	1,463,000	1,755,600
February 26, 2011 – March 25, 2011	3,900	1,455,000	1,746,000
March 26, 2011 – April 25, 2011	3,900	1,648,000	1,977,600
April 26, 2011 – May 25, 2011	3,900	1,561,000	1,873,200
May 26, 2011 – June 25, 2011	3,900	1,634,000	1,960,800
June 26, 2011 – July 25, 2011	3,900	1,536,000	1,843,200
July 26, 2011 – August 25, 2011	3,900	1,583,000	1,899,600
August 26, 2011 – September 25, 2011	3,900	1,577,000	1,892,400
September 26, 2011 – October 25, 2011	3,900	1,489,000	1,786,800
October 26, 2011 – November 25, 2011	3,900	1,524,000	1,828,800
November 26, 2011 – December 25, 2011	3,900	1,454,000	1,744,800
December 26, 2011 – January 25, 2012	3,900	1,448,000	1,737,600
January 26, 2012 – February 25, 2012	3,900	1,536,000	1,843,200
February 26, 2012 – March 25, 2012	3,900	1,527,000	1,832,400
March 26, 2012 – April 25, 2012	3,900	1,731,000	2,077,200
April 26, 2012 – May 25, 2012	3,900	1,639,000	1,966,800
May 26, 2012 – June 25, 2012	3,900	1,716,000	2,059,200
June 26, 2012 – July 25, 2012	3,900	1,613,000	1,935,600
July 26, 2012 – August 25, 2012	3,900	1,662,000	1,994,400
August 26, 2012 – September 25, 2012	3,900	1,656,000	1,987,200
September 26, 2012 – October 25, 2012	3,900	1,564,000	1,876,800
October 26, 2012 – November 25, 2012	3,900	1,600,000	1,920,000
November 26, 2012 – December 25, 2012	3,900	1,526,000	1,831,200
December 26, 2012 – January 25, 2013	3,900	1,520,000	1,824,000
January 26, 2013 – February 25, 2013	3,900	1,612,000	1,934,400
February 26, 2013 – March 25, 2013	3,900	1,604,000	1,924,800
March 26, 2013 – April 25, 2013	3,900	1,817,000	2,180,400

a. Where Ibaan reduces its Minimum Contract Energy, it shall pay TLI the Buy-Out Charge of PhP2.50/kWh multiplied by the balance of the Minimum Contract Energy for the remainder of the Contract Period.

b. In compliance with Section 45(c) of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001, TLI shall procure 10% of the monthly Contract Energy from the Wholesale Electricity Spot Market (“WESM”) on behalf of Ibaan. Such energy so purchased by TLI shall be deemed purchased from the WESM by Ibaan for which the latter shall pay TLI at the WESM *ex-ante* hourly nodal price at the Receiving Node for such energy.

c. If Ibaan at any time becomes a direct WESM member, self-generates, or sources energy from an additional source, TLI shall fix the volume of Contract Energy based on TLI's projection of Ibaan's hourly consumption for the remaining term of the PSA. If Ibaan consumes more than the fixed volume of Contract Energy, it shall pay the corresponding Additional Energy Charge for the excess energy. If it consumes less than the fixed volume of Contract Energy, it shall pay the Minimum Energy Charge which is equivalent to the load weighted average price for the Billing Period.

d. For energy taken in excess of the Maximum Contract Energy and/or Maximum Contract Energy per interval, Ibaan shall pay TLI the amount equivalent to: a) the WESM *ex ante* Nodal Energy Price for the hour during which the Additional Energy was supplied at the Receiving Node, or b) contract price for the hour during which the Additional Energy was supplied at the Receiving Node, whichever is higher, including all incidental charges attendant to transactions at the WESM.

e. For Back-up Power and Replacement Power, Ibaan shall pay the corresponding Back-up Power Charge and Replacement Power Charge. Back-up Power Charge is the price per kWh of Back-up Power consumed by Ibaan, equal to the actual cost of Back-up Power sourced by TLI when TLI's power supply is unavailable due to force majeure. Replacement Power Charge is the price per kWh of Replacement Power consumed by Ibaan, equal to the Basic Energy Charge for the relevant interval.

f. In case of shortfall in the consumption of Ibaan, it shall pay TLI an amount equivalent to the Minimum Energy Charge multiplied by the difference between the Minimum Contract Energy and the actual energy consumed by Ibaan.

11. **Purchased power rate.** Before the Honorable Commission shall have issued an approval of the PSA, including the pricing structure set out therein, the rate to be applied will be the NPC TOU rate approved by the Honorable Commission for the appropriate grid. Thereafter, the rates applicable shall be as computed below:

**THERMA LUZON, INC.**  
**POWER GENERATION RATE, P/kWh**  
**FORMULA**

$\mathbf{R} = \mathbf{B} + \mathbf{F}$				
$\mathbf{Rate} = \mathbf{Base\ Fuel} + \mathbf{Fixed\ Costs}$				
	$\mathbf{Base\ Fuel, B}$	$\frac{\mathbf{x N_m}}{\mathbf{N_o}}$	$\frac{\mathbf{x Fx_m}}{\mathbf{Fx_o}}$	
<b>B</b>	<b>1.9989</b>	$\frac{\mathbf{x 95.00}}{\mathbf{95.00}}$	$\frac{\mathbf{x 46.22}}{\mathbf{46.22}} = \mathbf{1.9989}$	<b>1.9989</b>
	$\mathbf{O\&M\ Costs, M}$	$\frac{\mathbf{x US\ CPI_m}}{\mathbf{US\ CPI_o}}$	$\frac{\mathbf{x Fx_m}}{\mathbf{Fx_o}}$	
	<b>0.5500</b>	$\frac{\mathbf{x 216.0}}{\mathbf{216.0}}$	$\frac{\mathbf{x 46.22}}{\mathbf{46.22}} = \mathbf{0.5500}$	
<b>F</b>		$\mathbf{Fixed\ Fees - USD\ Portion, F1}$	$\frac{\mathbf{x Fx_m}}{\mathbf{Fx_o}}$	
	<b>0.9044</b>		$\frac{\mathbf{x 46.22}}{\mathbf{46.22}} = \mathbf{0.9044}$	<b>2.3589</b>

	Fixed Fees - PHP Portion, F2	$\frac{x \text{ RP CPI}_m}{\text{RP CPI}_o}$	
	0.9044	$\frac{x 163.6}{163.6} = 0.9044$	
<b>RATE</b>	<b>4.3578</b>		<b>4.3578</b>

<b>N<sub>m</sub></b>	Newcastle Coal Index, End of Billing Period <sup>1, 2</sup>	= 95.00	USD/MT
<b>N<sub>o</sub></b>	Newcastle Coal Index, Base	25.Jan.10 = 95.00	USD/MT
<b>Fx<sub>m</sub></b>	PHP-USD Exchange Rate, End of Billing Period <sup>1</sup>	= 46.22	PHP/USD
<b>Fx<sub>o</sub></b>	PHP-USD Exchange Rate, Base	25.Jan.10 = 46.22	PHP/USD
<b>US CPI<sub>m</sub></b>	US CPI, End of Billing Period <sup>1</sup>	= 216.0	
<b>US CPI<sub>o</sub></b>	US CPI, Base	15.Dec.09 = 216.0	
<b>RP CPI<sub>m</sub></b>	RP CPI, End of Billing Period <sup>1</sup>	= 163.6	
<b>RP CPI<sub>o</sub></b>	RP CPI, Base	05.Dec.09 = 163.6	

1. **End of Billing Period** is defined as the appropriate index published at the end of the billing period (the 25th of the month). If there is no published index for that the day, then the most recently published index shall be applied.

2. The **Newcastle Coal Index** is the midpoint of the bid and offer rates for the physical Newcastle forward market three (3) months from the current billing period. If there is no midpoint published for that month, the midpoint of the previous month (published on the same day) shall be used.

**THERMA LUZON, INC.**  
**TIME-OF-USE RATES, P/kWh**  
**ALL INTERVALS**

$\text{TOU Rate } T_R = \text{Base Fuel } B + (\text{Fixed Costs } F \times \text{time factor } t)$		
<b>B</b>	Base Fuel, in PHP/kWh	1.9989
<b>M</b>	O&M Costs, in PHP/kWh	0.5500
<b>F<sub>1</sub></b>	Fixed Fees - USD Portion, PHP/kWh	0.9044
<b>F<sub>2</sub></b>	Fixed Fees - PHP Portion, PHP/kWh	0.9044
<b>N<sub>m</sub></b>	Newcastle Coal Index, End of Billing Period	95.00
<b>N<sub>o</sub></b>	Newcastle Coal Index, Base	95.00
<b>Fx<sub>m</sub></b>	PHP-USD Exchange Rate, End of Billing Period	46.22
<b>Fx<sub>o</sub></b>	PHP-USD Exchange Rate, Base	46.22
<b>US CPI<sub>m</sub></b>	US CPI, End of Billing Period	216.0
<b>US CPI<sub>o</sub></b>	US CPI, Base	216.0
<b>RP CPI<sub>m</sub></b>	RP CPI, End of Billing Period	163.6
<b>RP CPI<sub>o</sub></b>	RP CPI, Base	163.6

INTERVAL	MON – SAT				INTERVAL	SUN & HOL			
	B	F	t	R <small>R = B + (F x t)</small>		B	F	t	R <small>R = B + (F x t)</small>
	P/kWh	P/kWh		P/kWh		P/kWh	P/kWh		P/kWh
0100	1.9989	2.3589	0.1338	<b>2.3145</b>	0100	1.9989	2.3589	0.1959	<b>2.4610</b>
0200	1.9989	2.3589	0.1338	<b>2.3145</b>	0200	1.9989	2.3589	0.1338	<b>2.3145</b>
0300	1.9989	2.3589	0.1338	<b>2.3145</b>	0300	1.9989	2.3589	0.1338	<b>2.3145</b>
0400	1.9989	2.3589	0.1338	<b>2.3145</b>	0400	1.9989	2.3589	0.1338	<b>2.3145</b>
0500	1.9989	2.3589	0.1338	<b>2.3145</b>	0500	1.9989	2.3589	0.1338	<b>2.3145</b>
0600	1.9989	2.3589	0.1338	<b>2.3145</b>	0600	1.9989	2.3589	0.1338	<b>2.3145</b>
0700	1.9989	2.3589	0.1338	<b>2.3145</b>	0700	1.9989	2.3589	0.1338	<b>2.3145</b>
0800	1.9989	2.3589	0.1338	<b>2.3145</b>	0800	1.9989	2.3589	0.1338	<b>2.3145</b>
0900	1.9989	2.3589	1.4716	<b>5.4702</b>	0900	1.9989	2.3589	0.1338	<b>2.3145</b>
1000	1.9989	2.3589	1.7633	<b>6.1583</b>	1000	1.9989	2.3589	0.1959	<b>2.4610</b>
1100	1.9989	2.3589	1.7633	<b>6.1583</b>	1100	1.9989	2.3589	0.1959	<b>2.4610</b>
1200	1.9989	2.3589	1.7633	<b>6.1583</b>	1200	1.9989	2.3589	0.1959	<b>2.4610</b>
1300	1.9989	2.3589	1.7633	<b>6.1583</b>	1300	1.9989	2.3589	0.1959	<b>2.4610</b>
1400	1.9989	2.3589	1.7633	<b>6.1583</b>	1400	1.9989	2.3589	0.1959	<b>2.4610</b>
1500	1.9989	2.3589	1.7633	<b>6.1583</b>	1500	1.9989	2.3589	0.1959	<b>2.4610</b>
1600	1.9989	2.3589	1.7633	<b>6.1583</b>	1600	1.9989	2.3589	0.1959	<b>2.4610</b>
1700	1.9989	2.3589	1.5526	<b>5.6613</b>	1700	1.9989	2.3589	0.1959	<b>2.4610</b>
1800	1.9989	2.3589	1.5526	<b>5.6613</b>	1800	1.9989	2.3589	0.1959	<b>2.4610</b>
1900	1.9989	2.3589	1.7633	<b>6.1583</b>	1900	1.9989	2.3589	1.4716	<b>5.4702</b>
2000	1.9989	2.3589	1.7633	<b>6.1583</b>	2000	1.9989	2.3589	1.4716	<b>5.4702</b>
2100	1.9989	2.3589	1.5526	<b>5.6613</b>	2100	1.9989	2.3589	0.4907	<b>3.1564</b>
2200	1.9989	2.3589	0.4907	<b>3.1564</b>	2200	1.9989	2.3589	0.2440	<b>2.5745</b>
2300	1.9989	2.3589	0.2440	<b>2.5745</b>	2300	1.9989	2.3589	0.1959	<b>2.4610</b>
2400	1.9989	2.3589	0.1959	<b>2.4610</b>	2400	1.9989	2.3589	0.1338	<b>2.3145</b>
<b>AVERAGE</b>				<b>4.3578</b>	<b>AVERAGE</b>				<b>2.6906</b>

12. **Indexation.** The Basic Energy Charge shall be adjusted monthly based on the current indexation to coal price, consumer price indices and peso-dollar exchange rates.

13. **Discount.** If Ibaan pays the full amount of the Electricity Fees due in respect of a Billing Period not later than the 15<sup>th</sup> day of a Payment Month, Ibaan shall be entitled to a discount equivalent to 0.5% of the Electricity Fees so due.

14. **Penalty.** If Ibaan fails to pay the Electricity Fee or any other amount payable on the due date, it shall pay a penalty of 2% per month (a fraction of a month considered one month). If Ibaan fails to replenish its Security

Deposit within the time prescribed, TLI may increase the Basic Energy Charge by an additional PhP0.20/kWh until such time as Ibaan shall have replenished the Security Deposit satisfactorily.

### **Related Information**

15. **Compliance with Rule 20(B) of the ERC Rules of Practice and Procedure [“Rule 20(B)”]**. In further compliance with Rule 20(B), copies of the following are attached hereto as annexes of this Application:

- a. Articles of Incorporation (“AOI”) of TLI (Annex “B”);
- b. Securities and Exchange Commission Certificate of Registration of the AOI of TLI (Annex “C”);
- c. General Information Sheet of TLI for the year 2009 (Annex “D”);
- d. letter dated December 28, 2009 from the Board of Investments approving the registration of TLI (Annex “E”);
- e. Environmental Compliance Certificate issued by the Department of Environment and Natural Resources (Annex “F”);
- f. sample computation of the purchased power rates (Annex “G”); and
- g. Certificate of Compliance issued by the Honorable Commission to TLI (Annex “H”).

16. **Compliance with the “Guidelines for the Recovery of Costs for the Generation Component of the Distribution Utilities’ (DUs) Rates” (the**

“Guidelines”). In compliance with the Guidelines, copies of the following are attached hereto as annexes of this Application:

- a. relevant technical and economic characteristics of the Power Plant (Annex “I”);
- b. load forecast projections of Ibaan (Annex “J”); and
- c. certification dated March 8, 2010 that the financial statements of TLI for the year ending December 31, 2009 are still under audit (Annex “K”).

As required by the Guidelines, the following is a comparative analysis of the rates of TLI and NPC:

Rate Computation for IEEC	TLI		NPC	
	Rate	Amount	Rate	Amount
Basic Energy Charge (TOU Rate)	4.3047	6,689,120.31	4.5190	7,022,067.83
Franchise Benefits to Host Communities			0.0245	38,070.77
Deferred Accounting Adjustment (DAA):				
11th ICERA and 12th GRAM			-0.3622	(562,825.84)
12th ICERA and 13th GRAM**			1.5058	2,339,876.17
VAT	12%	802,694.44	12%	842,648.14
TOTAL AMOUNT		7,491,814.75		9,679,837.07
<b>ESTIMATED TOTAL SAVINGS in P/kWh</b>		<b>1.4080</b>		

\* Assuming a monthly consumption = 1,553,909.00 (Actual, April08)

\*\* Assuming approved by the ERC

### Provisional Authority

17. Under Rule 14 of the ERC Rules of Practice and Procedure, the Honorable Commission is authorized to issue provisional authority or interim relief prior to a final decision, provided the facts warrant such remedy.

18. The present Application involves such facts warranting the issuance of a provisional authority. Ibaan’s TSC expired on January 25, 2010 and it does not appear that NPC/PSALM, with the continuing privatization of its

generation assets, is in a position to economically supply the electric power requirements of Ibaan for the term covered by the PSA.

19. To prevent a delay in the implementation of the PSA and to avoid power interruptions in its franchise area, a provisional authority is respectfully prayed for to ensure the continued and reliable supply of power by Ibaan to its customers.

20. Nonetheless, where any interim relief is hereafter granted, Applicants acknowledge that it shall be subject to the final decision of the Honorable Commission of this Application.

#### **P R A Y E R**

WHEREFORE, in view of all the foregoing, Applicants respectfully pray that the Honorable Commission:

1) upon initial review of the Application and pending trial on the merits, issue an order granting provisional approval/authority for the parties to implement the provisions of the PSA effective April 26, 2010, pending the issuance of a final decision in the Application; and

2) after trial on the merits, issue a permanent approval of the subject PSA, including the rates set forth in paragraph 10 of the Application.

Other reliefs just and equitable are likewise prayed for.

Makati City for Pasig City, March 12, 2010.

**CHERRY GRACE V. KATIGBAK**

*Counsel for Ibaan Electric and Engineering Corporation*

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IBP No. 812828/January 15, 2010/Batangas Chapter  
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