

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 ENTERED INTO BY
AND BETWEEN CABANATUAN ELECTRIC
CORPORATION AND THERMA LUZON,
INC., WITH PRAYER FOR THE IMMEDIATE
ISSUANCE OF A PROVISIONAL
AUTHORITY.

ERC CASE NO. 2010-144 RC

CABANATUAN ELECTRIC CORPORATION,
Applicant.
X-----X

APPLICATION

COMES NOW applicant, CABANATUAN ELECTRIC CORPORATION,
hereinafter referred to as "CELCOR" for brevity, through undersigned counsels, and
unto this Honorable Commission, most respectfully avers:

THE APPLICANT

1. CELCOR is a domestic corporation duly organized and existing under
and by virtue of the laws of the Republic of the Philippines, with principal office
address at Maharlika Highway, Cabanatuan City.

2. Under Republic Act No. 9968, CELCOR is a grantee of the right,
privilege and authority to maintain and operate an electric light, heat and power
system for the purpose of distributing electric light, heat and/or power for sale.

3. Currently, CELCOR provides the electricity requirements of the City of Cabanatuan, Province of Nueva Ecija.

4. In the process of serving the power requirements of its consumers within its franchise area, CELCOR sources its power from the National Power Corporation/PSALM, First Cabanatuan Ventures Corporation ("FCVC"), an Independent Power Producer ("IPP") and the Wholesale Electricity Spot Market ("WESM").

THE PROCUREMENT PROCESS

5. Its Transition Supply Contract ("TSC") with the National Power Corporation/PSALM expiring on 25 December 2010, CELCOR caused the publication of an "INVITATION" for the supply of its power requirements for the period 26 December 2010 to 25 December 2015 in the 13 August 2010 issue of the Philippine Star. Copies of the Affidavit of Publication executed by Arlyn F. Servanez and the "Invitation", as published, in the 13 August 2010 issue of the Philippine Star are hereto attached and marked as **Annexes "A" and "B"** respectively.

6. On 12 August 2010, CELCOR likewise sent letters to the following:

- a. Aboitiz Power Corporation
- b. AES Philippines
- c. Amlan Hydro Power, Inc.
- d. First Gen Corporation
- e. GN Power
- f. PSALM
- g. San Miguel Energy Corp.
- h. TeaM Energy

inviting potential electricity suppliers – existing or new Generation Companies – to submit proposals for the supply of CELCOR’s partial electricity requirements.

Out of the eight (8) abovementioned parties, only five (5) replied to the invitation of CELCOR, namely, (1.) AES Philippines; (2.) Aboitiz Power Corporation; (3.) First Gen Corp.; (4.) GN Power; and (5.) PSALM.

Copies of the aforementioned letters as well as the proposals/replies of the five (5) prospective bidders are herein attached and marked as **Annexes “C” to “C-7”** respectively.

7. Thus, on 17 November 2010, after a competitive, transparent and open public bidding, CELCOR and THERMA LUZON, INC. (“TLI”) entered into a Power Supply Agreement (“PSA”). A copy of the said PSA is hereto attached and marked as **Annex “D”** hereof.

8. CELCOR now applies before this Honorable Commission for the approval of the PSA it entered with TLI on 17 November 2010.

THE POWER SUPPLY AGREEMENT (“PSA”)
AND RELATED INFORMATION

9. **EXECUTIVE SUMMARY:**

9.1 **Contract Period.** – The PSA shall take effect immediately from the “Effective Date” until the end of the last Billing Period specified in Annex “A” (Delivery Schedule) thereof; provided, that obligations of CELCOR and TLI arising prior to the date

of expiration or termination and those which, by their nature, are to be performed after expiration or termination or which are expressed to survive the expiration of the Contract Period or the termination hereof shall survive any such expiration or termination.

Notwithstanding the execution of the PSA and the occurrence of the Effective Date, the obligation of TLI to commence deliveries of Energy to CELCOR shall be subject to the satisfaction, by the Closing Date, of the following conditions precedent:

9.2 Supply of Energy. - During the Contract Period, and provided that the Closing Date shall have occurred, TLI shall supply and deliver Energy (whether from its contracted capacity, WESM or any other supplier) to CELCOR during the Billing Periods specified in Annex "A" (Delivery Schedule), at the Metering Points specified in Annex "B" (Metering Points) and at the rates specified in Annex "C" (Rate Schedule) of the PSA; provided that, TLI shall not be obligated to deliver Energy following the date of termination or expiration of the PSA.

During the Contract Period, CELCOR shall (a) pay Electricity Fees, and (b) enter into any and all contracts with NGCP as may be necessary for the transmission of electricity and the

consummation of the transactions contemplated under the PSA.

9.3 Payment of Fees. (Annex C - Rate Schedule) - TLI shall deliver 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. If TLI shall have sourced any Energy from another supplier, the billing statement(s) shall (a) set out the quantities of Energy sourced from those other suppliers and the amount due thereon, (b) identify the account or accounts to which amounts payable to it may be paid, (c) identify value-added taxes due on all Energy sourced and delivered, if any, and (d) shall have attached thereto the originals of invoices issued by the relevant supplier in respect of any Energy sourced and delivered by such supplier.

CELCOR obligates to pay the rates embodied in Annex "C" and specified hereinbelow:

Annex C – Rate Schedule

ANNEX C-1

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

T_R	=	B	+	$(F \times t)$
TOU Rate		Base Fuel		Fixed Costs <i>time factor</i>
B		Base Fuel		$\frac{x N_m}{N_o} \times \frac{x Fx_m}{Fx_o}$
F		O&M Costs, M		$\frac{x US CPI_m}{US CPI_o} \times \frac{x Fx_m}{Fx_o}$
		+ Fixed Fees - USD Portion, F1		$\frac{x Fx_m}{Fx_o}$
		+ Fixed Fees - PHP Portion, F2		$\frac{x RP CPI_m}{RP CPI_o}$
t		<i>time factor</i>		

Escalation Factor Indices

N_m	Newcastle Coal Index, End of Billing Period ^{1, 2}	= 88.50	USD/MT	
N_o	Newcastle Coal Index, Base	18.Aug.10 = 88.50	USD/MT	GlobalCOAL
Fx_m	PHP-USD Exchange Rate, End of Billing Period ¹	= 45.20	PHP/USD	
Fx_o	PHP-USD Exchange Rate, Base	18.Aug.10 = 45.20	PHP/USD	BSP
$US CPI_m$	US CPI, End of Billing Period ¹	= 218.2		
$US CPI_o$	US CPI, Base	15.Jun.10 = 218.2		US Dept. of Labor
$RP CPI_m$	RP CPI, End of Billing Period ¹	= 165.6		
$RP CPI_o$	RP CPI, Base	15.Jul.10 = 165.6		BSP

- ¹ **End of Billing Period** refers to the 25th of a calendar month, and when used in the calculations for base fuel and fixed costs in this Annex C-1, means that the relevant indices as published on the 25th of the calendar month shall be applied in those calculations. If there is no published index on that day, then the most recently published index shall apply.
- ² The Newcastle Coal Index is the midpoint of the bid and offer rates for the physical Newcastle forward market three (3) months prior to 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.
- ³ If the CPI for the current Billing Period is not published and available within two days from the end of the same Billing Period, the most recent available published CPI shall be used.
- ⁴ If the source of any of the foregoing indices is no longer available, or if any index has not been published or has otherwise become unavailable for two (2) consecutive Billing Periods, Supplier shall select a replacement index and notify Customer of such replacement index. Any such replacement index shall supersede the then-current index and be binding upon the Parties.

- 5 If any of the foregoing indices are re-based during the Contract Period, Supplier has the option to apply a corresponding adjustment to the inflation formula to conform to the re-basing of the subject indices and notify Customer of such adjustment.

ANNEX C-2

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

$T_R = B + (F \times t)$		
TOU Rate	=	Base Fuel + Fixed Costs \times time factor
Inflation Factor Indices		
N_m	Newcastle Coal Index, End of Billing Period	88.50
N_o	Newcastle Coal Index, Base	88.50
F_x_m	PHP-USD Exchange Rate, End of Billing Period	45.20
F_x_o	PHP-USD Exchange Rate, Base	45.20
$US\ CPI_m$	US CPI, End of Billing Period	218.2
$US\ CPI_o$	US CPI, Base	218.2
$RP\ CPI_m$	RP CPI, End of Billing Period	165.6
$RP\ CPI_o$	RP CPI, Base	165.6

INTERVAL	MON - SAT						INTERVAL	SUN & HOL					
	B	F			t	T_R <small>R = B + (F x t)</small>		B	F			t	T_R <small>R = B + (F x t)</small>
		P/kWh	M	F1					F2	P/kWh	M		
0100	1.8351	0.5500	1.3089	1.3089	0.1857	2.4234	0100	1.8351	0.5500	1.3089	1.3089	0.2441	2.6084
0200	1.8351	0.5500	1.3089	1.3089	0.1857	2.4234	0200	1.8351	0.5500	1.3089	1.3089	0.1857	2.4234
0300	1.8351	0.5500	1.3089	1.3089	0.1857	2.4234	0300	1.8351	0.5500	1.3089	1.3089	0.1857	2.4234
0400	1.8351	0.5500	1.3089	1.3089	0.1857	2.4234	0400	1.8351	0.5500	1.3089	1.3089	0.1857	2.4234
0500	1.8351	0.5500	1.3089	1.3089	0.1857	2.4234	0500	1.8351	0.5500	1.3089	1.3089	0.1857	2.4234
0600	1.8351	0.5500	1.3089	1.3089	0.1857	2.4234	0600	1.8351	0.5500	1.3089	1.3089	0.1857	2.4234
0700	1.8351	0.5500	1.3089	1.3089	0.1857	2.4234	0700	1.8351	0.5500	1.3089	1.3089	0.1857	2.4234
0800	1.8351	0.5500	1.3089	1.3089	0.1857	2.4234	0800	1.8351	0.5500	1.3089	1.3089	0.1857	2.4234
0900	1.8351	0.5500	1.3089	1.3089	1.4433	6.4073	0900	1.8351	0.5500	1.3089	1.3089	0.1857	2.4234
1000	1.8351	0.5500	1.3089	1.3089	1.7175	7.2759	1000	1.8351	0.5500	1.3089	1.3089	0.2441	2.6084
1100	1.8351	0.5500	1.3089	1.3089	1.7175	7.2759	1100	1.8351	0.5500	1.3089	1.3089	0.2441	2.6084
1200	1.8351	0.5500	1.3089	1.3089	1.7175	7.2759	1200	1.8351	0.5500	1.3089	1.3089	0.2441	2.6084
1300	1.8351	0.5500	1.3089	1.3089	1.7175	7.2759	1300	1.8351	0.5500	1.3089	1.3089	0.2441	2.6084
1400	1.8351	0.5500	1.3089	1.3089	1.7175	7.2759	1400	1.8351	0.5500	1.3089	1.3089	0.2441	2.6084
1500	1.8351	0.5500	1.3089	1.3089	1.7175	7.2759	1500	1.8351	0.5500	1.3089	1.3089	0.2441	2.6084
1600	1.8351	0.5500	1.3089	1.3089	1.7175	7.2759	1600	1.8351	0.5500	1.3089	1.3089	0.2441	2.6084
1700	1.8351	0.5500	1.3089	1.3089	1.5195	6.6487	1700	1.8351	0.5500	1.3089	1.3089	0.2441	2.6084
1800	1.8351	0.5500	1.3089	1.3089	1.5195	6.6487	1800	1.8351	0.5500	1.3089	1.3089	0.2441	2.6084
1900	1.8351	0.5500	1.3089	1.3089	1.7175	7.2759	1900	1.8351	0.5500	1.3089	1.3089	1.4433	6.4073
2000	1.8351	0.5500	1.3089	1.3089	1.7175	7.2759	2000	1.8351	0.5500	1.3089	1.3089	1.4433	6.4073
2100	1.8351	0.5500	1.3089	1.3089	1.5195	6.6487	2100	1.8351	0.5500	1.3089	1.3089	0.5212	3.4862
2200	1.8351	0.5500	1.3089	1.3089	0.5212	3.4862	2200	1.8351	0.5500	1.3089	1.3089	0.2893	2.7516
2300	1.8351	0.5500	1.3089	1.3089	0.2893	2.7516	2300	1.8351	0.5500	1.3089	1.3089	0.2441	2.6084
2400	1.8351	0.5500	1.3089	1.3089	0.2441	2.6084	2400	1.8351	0.5500	1.3089	1.3089	0.1857	2.4234

Discussion:

1. The computation for the Basic Energy Charge is set out in Table 1 and Table 2, respectively, of this Annex C. The Basic Energy Charge shall be adjusted monthly based on the current indexation to coal price, consumer price indices and peso-dollar exchange rates.
2. Supplier sales are subject to applicable Value Added Tax.
3. Replacement Power and Back-up Power Charges
 - a.) Replacement Power Charge refers to the price per kilowatt-hour of Replacement Power consumed by Customer, which is equal to the Basic Energy Charge for the relevant interval.

b.) Back-up Power Charge refers to the price per kilowatt-hour of Back-Up Power consumed by Customer, which is equal to the actual cost of Back-Up Power sourced by Supplier when Supplier's power supply is unavailable due to Force Majeure.

4. Adjustments:

a.) Maintenance Service Adjustment:

The Supplier shall adjust the Contract Energy to take into account Allowable Downtime; such downtime being one hundred twenty hours (120) hours, or an equivalent of five (5) days per Contract Year, and provided that the Supplier is informed in writing fifteen (15) days prior to the implementation of the scheduled maintenance. The adjustment shall be made by reducing the Contract Energy by the unconsumed quantity of Energy by Customer in the Billing Period during which scheduled maintenance was undertaken.

b.) 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.

If CELCOR pays the full amount of the Electricity Fees due in respect of a Billing Period, together with all other charges payable by it to TLI under the subject PSA and all taxes (including value-added tax) due thereon, not later than the fifteenth (15th) day of the Payment Month, CELCOR shall be entitled to a discount equivalent to PhP0.0249 per kWh on the Electricity Fees accruing in the immediately succeeding Billing Period (but not on any taxes due thereon). TLI credit the discount to the Electricity Fees due on CELCOR's next Billing Statement.

If CELCOR fails to pay the Electricity Fee or any other amount payable by it under this Agreement in full on the due date, it shall pay a penalty of two percent (2%) per month (a fraction of a month to be considered one month) based on the amount due, from the date when such payment is due until the date such amount is received in full by TLI. In addition to the penalty, CELCOR shall immediately post a Security Deposit (which shall be in the form of cash or a standby letter of credit in the form set out in Annex G-A) in an amount equivalent to the product of the highest projected monthly consumption for the succeeding twelve-month period and the projected Basic Energy Charge as notified by TLI to CELCOR. Until CELCOR shall have posted the Security Deposit, the Basic Energy Charge shall be increased by PHP 0.20/kWh.

TLI shall always have the right, upon any default in payment by CELCOR (i) to draw against the Security Deposit; (ii) to temporarily suspend its obligation to generate and sell electric power to CELCOR without need of consent but with notice; (iii) to rescind or terminate this Agreement; and/or (iv) to declare fees and charges for electricity supplied in the current Billing Period and such other unbilled periods, as due and payable, whereupon CELCOR shall pay such fees and charges immediately upon delivery by TLI of the corresponding Billing Statement to CELCOR.

9.4 **Billing Dispute.** - If CELCOR disputes any Billing Statement, it shall so inform TLI in writing by the twelfth (12th) day of the Payment Month. CELCOR must specify the items that are disputed in the Billing Statement. If the dispute is not resolved by the Payment Date, CELCOR shall pay the full amount stated in the Billing Statement on or before such due date, with the disputed portion paid under protest. The Parties shall endeavor to resolve the dispute within ten (10) days after payment in full of the amount stated in the Billing Statement. In case the dispute is not resolved within ten (10) days, then the matter shall be deemed to be a Dispute and the provisions of Article 15 (Dispute Resolution) shall apply.

9.5 **Dispute Resolution.** - CELCOR and TLI shall refer any dispute, controversy, claim or difference between them arising out of or relating to this Agreement, or the breach thereof, or in the interpretation of any of the provisions hereof (each, a "Dispute"), to their respective representatives who shall seek to amicably resolve such Dispute in accordance with the procedure set out in Article 15 of the PSA.

COMPLIANCE WITH RULE 20(B) OF THE
ERC RULES OF PRACTICE AND PROCEDURE
AND THE
GUIDELINES FOR THE RECOVERY OF COSTS FOR
THE GENERATION COMPONENT OF
THE DISTRIBUTION UTILITIES' RATES

10. In compliance with Rule 20(B) of this Honorable Commission's **"Rules of Practice and Procedure"** and the **"Guidelines for the Recovery of Costs for the Generation Component of the Distribution Utilities' Rates"**, CELCOR attaches the following as annexes of the instant Application:

- a. Certificate of Filing of Amended Articles of Incorporation of THERMA LUZON, INC. (**Annex "E"**);
- b. Certificate of Incorporation of THERMA LUZON, INC. (**Annex "F"**);
- c. General Information Sheet of THERMA LUZON, INC. for the year 2010 (**Annex "G"**);
- d. BOI Certificate of Registration No. 2010-052 of THERMA LUZON, INC. (**Annex "H"**);
- e. Environmental Compliance Certificate No. 9204-039-306C (**Annex "I"**);
- f. Certificate of Compliance No. 03-12-GXT40-0040 (**Annex "J"**);
- g. Plant Data and Description (**Annex "K"**);
- h. sample computation of the purchased power rates (**Annex "L"**);
- i. Audited Financial Statements of THERMA LUZON, INC. (**Annex "M"**);
- j. Transmission Service Agreement between the National Grid Corporation of the Philippines and CELCOR; (**Annex "N"**);
- k. Load Forecast Projections in accordance with the latest Distribution Development Plan of CELCOR (**Annex "O"**);
- l. Narrative explanation on the Rationale of the Basic Energy Rate (**Annex "P"**);
- m. PSALM Certification (**Annex "Q"**); and
- n. Secretary's Certificate executed by Atty. Reginald T. Beltran, Corporate Secretary of CELCOR, authorizing the applicant, through its Chairperson/Chief Executive Officer, Mrs. Adoracion C. Yatco enter into a Power Supply Agreement with Therma Luzon, Inc. and to submit the same to this Honorable Commission for its approval (**Annex "R"**).

**ALLEGATIONS IN FURTHER SUPPORT OF
CELCOR'S PRAYER FOR THE IMMEDIATE ISSUANCE OF A
PROVISIONAL AUTHORITY**

11. CELCOR repleads all the aforementioned allegations in further support of its prayer for the immediate issuance of a provisional authority pending hearing of the instant Application.

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

13. As already stated above, the TSC of CELCOR with NPC/PSALM will be expiring on 25 December 2010. It is, therefore, imperative that the City of Cabanatuan have an alternative source of power upon the termination of the said TSC in order to avert a blackout and have a continuous, reliable and steady supply of electricity.

14. Without such provisional authority or interim relief and consequently the due implementation of the PSA, CELCOR and its consumers will suffer a power blackout which is clearly an immediate and irreparable injury calling for the exercise by this Honorable Commission of its discretion to prevent the same.

15. Where any such interim relief is hereafter granted, CELCOR acknowledges that the same shall be subject to the final decision by this Honorable Commission.

COMPLIANCE WITH PRE-FILING REQUIREMENTS

16. In compliance with the Rules of Practice and Procedure of this Honorable Commission, CELCOR has furnished the legislative body of the City of Cabanatuan, Province of Nueva Ecija copy of the present Application inclusive of its annexes. A copy of the Certification issued by the said legislative body attesting to the fact of service of a copy of the application and its annexes is hereto attached and marked as **Annex "S"**.

Furthermore, CELCOR had also caused the publication of the instant Application in a newspaper of general circulation. Copies of the Affidavit of Publication and the newspaper issue where the said Application was published are hereto attached and marked as **Annexes "T" and "T-1"** respectively.

PRAYER

WHEREFORE, in view of all the foregoing, it is respectfully prayed that pending hearing, it is respectfully prayed that the Power Supply Agreement including the rates set forth therein entered into by Cabanatuan Electric Corporation and Therma Luzon, Inc. be provisionally approved and implemented upon the first (1st) Billing Period ending on 25 January 2011, and that after due notice and hearing, a permanent approval of the same PSA and the rates set forth therein be issued.

Other relief just and equitable under the premises are likewise prayed for.

Marikina City for the City of Pasig, Metro Manila. 18 November 2010.

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