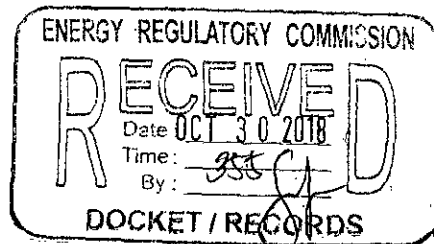


Republic of the Philippines
ENERGY REGULATORY COMMISSION
San Miguel Avenue, Pasig City

**IN THE MATTER OF THE
APPLICATION FOR THE
APPROVAL OF THE
MARKET FEES FOR THE
PHILIPPINE WHOLESALE
ELECTRICITY SPOT
MARKET (WESM)**



2018-105

ERC CASE NO. _____ RC

**INDEPENDENT
ELECTRICITY MARKET
OPERATOR OF THE
PHILIPPINES, INC.,
Applicant.**

X-----X



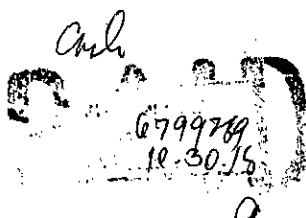
BY: Agnes
DATE: 10/26/18 TIME: 4:15pm

APPLICATION

Applicant, **INDEPENDENT ELECTRICITY MARKET OPERATOR OF THE PHILIPPINES, INC. (IEMOP)**, by counsel, respectfully states:

1. IEMOP is a non-stock, non-profit corporation duly organized and existing in accordance with Philippine laws, with principal office at the 9th Floor Robinsons-Equitable Tower, ADB Avenue corner Poveda Street, Ortigas Center, Pasig City. Applicant is represented herein by its President and CEO, Atty. Francis Saturnino C. Juan, who is the duly authorized signatory of the IEMOP under its Manual of Approval;

2. IEMOP is filing this Application as the Market Operator of the Philippine Wholesale Electricity Spot Market (WESM), pursuant to Section 30 of Republic Act No. 9136, also known as the "Electric Power Industry Reform Act of 2001" or "EPIRA" which reads, in part, as follows:



"The cost of administering and operating the wholesale electricity spot market shall be recovered by the market operator through a charge imposed on all members: Provided, That such charge shall be filed with and approved by the ERC."¹

BACKGROUND

Transition to the Independent Market Operator (IMO)

3. The establishment of the WESM was mandated of the Department of Energy (DOE) by Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA). Section 30 of the EPIRA expressly directs DOE to establish the WESM composed of the wholesale electricity spot market participants, and, jointly with electric power industry participants, promulgate the detailed rules for the WESM (WESM Rules);

4. The EPIRA and the EPIRA IRR mandate that the WESM shall be implemented by a Market Operator, which shall initially be an autonomous group market operator (AGMO) and, thereafter, the Independent Market Operator (IMO). The AGMO is to be composed of an equitable representation of the electric power industry participants, shall be responsible for the preparations for and initial operations of the WESM and shall be under the administrative supervision of the National Transmission Corporation (TRANSCO). The transition to the Independent Market Operator (the "IMO") is mandated by Section 30 of the EPIRA to occur one year after the commercial operations of the Philippine Wholesale Electricity Spot Market (the "WESM"). It is mandated that an independent entity shall be formed, which shall assume the functions, assets and liabilities of the market operator from the AGMO upon joint endorsement of the DOE and the electric power industry participants and the administrative supervision of TRANSCO shall then cease;

¹ See also Rule 9 (a) of the Implementing Rules and Regulations of the EPIRA ("EPIRA-IRR").

5. The EPIRA and the EPIRA IRR also mandate that the Wholesale Electricity Spot Market Rules (WESM Rules) shall include the procedures for the formation of a WESM governing body. In this regard, the WESM Rules provided for the creation of the Philippine Electricity Market Board ("PEM Board"), which, among other functions, shall oversee and monitor the activities of the Market Operator to ensure that the latter shall fulfil its responsibilities under the WESM Rules. The WESM Rules also provided for the creation of various governance committees and organic units within the Philippine Electricity Market Corporation ("PEMC") to perform governance functions, including among other things, market assessment, monitoring and surveillance, enforcement and compliance, rules change and review, market audit, dispute resolution and technical assistance;

6. PEMC was incorporated as a non-stock, non-profit corporation and became the AGMO as well as the governance arm of the WESM. Its Board of Directors is the PEM Board.

7. In its Department Circular No. 2018-01-0002 dated 18 January 2018 and entitled "Adopting Policies for the Effective and Efficient Transition to the Independent Market Operator for the Wholesale Electricity Spot Market"², the DOE endorsed the transition to the Independent Market Operator;

8. The industry participants likewise endorsed the transition through ratification by the members of PEMC during its membership meeting held on 06 February 2018 of the "Plan for Transition to the Independent Market Operator of the Philippine Wholesale Electricity Spot Market" (IMO Transition Plan)³;

9. IEMOP was thereafter organized as a non-stock, non-profit private corporation that is separate from PEMC. IEMOP was incorporated to become the IMO and as such, shall assume and perform all functions of the Market Operator as set out in the EPIRA, the EPIRA IRR and the WESM Rules, market manuals, and other rules, regulations and issuances;

10. On 19 September 2018, PEMC and IEMOP executed an Operating Agreement⁴ by virtue of which, PEMC

² A copy of which is hereto attached as Annex "A".

³ A copy of which is hereto attached as Annex "B".

⁴ A copy of which is hereto attached as Annex "C".

acknowledges and confirms that IEMOP is the corporation duly incorporated in the Philippines to act as the Independent Market Operator of the WESM pursuant to the IMO Transition Plan and DOE Department Circular No. 2018-01-0002;

11. The time and date of the actual transfer and assumption by IEMOP of the market operator functions and other services defined in the Operating Agreement was on 00:00H, 26 September 2018 ("Commencement Date"). Correspondingly, the related personnel, assets, and liabilities were transferred from PEMC to IEMOP as of Commencement Date;

12. PEMC shall remain to be the governing body of the WESM and will continue to perform the WESM governance functions, including, among other things, the supervision and monitoring of the operations of the Market Operator in accordance with the WESM Rules. For this purpose, the Articles of Incorporation and By-Laws of PEMC were amended to, among other things, amend its Primary Purpose to emphasize its function as the WESM governing body;

13. Having assumed the functions, assets and liabilities of the market operator on the Commencement Date, IEMOP is now responsible for performing the following functions:

- (a) Market registration;
- (b) Pricing and scheduling, including short term load forecasting and the provision of the dispatch schedule to the System Operator;
- (c) Billing, settlements, management of prudential requirements, meter data management and warehousing; and
- (d) Monitoring of trading activities in the market, management of market data and provision of market data and reports.

14. Additionally, IEMOP will render Other Services as provided in Article V and Schedule 2 of the Operating Agreement for the performance of the following functions:

- (a) as the Central Registration Body for the retail market;
- (b) as the Metered Quantity (MQ) Reconciliation Agent under the Interim Mindanao Dispatch Protocol (IMDP);
- (c) facilitate collection and payment of unpaid Interim Mindanao Electricity Market (IMEM) settlement

transactions, pursuant to DOE Circular DOE DC2017-05-00095 and other relevant issuances of the DOE on the IMEM;

- (d) training of Market Participants, PEMC, DOE, ERC, PCC and other stakeholders;
- (e) participant or customer support services to WESM participants aimed at facilitating their transactions in the WESM, including the (a) conduct of regular market participants update meetings, and (b) operation and maintenance of help desk facility to facilitate actions on participant queries and requests; and
- (f) upon designation, as the Renewable Energy Registrar of the Renewable Energy Market.

Authority to File Application for Approval of Market Fees

15. Clause 2.10.2.3 of the WESM Rules provides that the proposed structure and level of market fees shall be developed by the Market Operator, subject to approval by the PEM Board prior to filing with the Honorable Commission for final approval;

16. Consistent with the WESM Rules, Section 10.02 of the Operating Agreement and the approved IMO Transition Plan, the approval by the PEM Board of the budgets of both PEMC and IEMOP is required prior to IEMOP's filing of the application for approval of the market fees with the Honorable Commission, which shall clearly indicate the market fees that respectively pertain to PEMC and IEMOP;

17. Section 10.05 of the Operating Agreement likewise provides that IEMOP shall be responsible for collecting the market fees through the WESM settlement process upon approval thereof by the Honorable Commission. PEMC and IEMOP shall agree on the manner and schedule of remittance of the market fees pertaining to PEMC considering that these are being collected by IEMOP only on behalf of PEMC;

18. Pursuant to the foregoing WESM Rules clause 2.10.2.3 and the agreements between PEMC and the IEMOP in their Operating Agreement, the PEM Board approved the budgets of IEMOP and PEMC for CY 2019 and authorized the

⁵ Section 1.2 and Section 2.8, Annex B, DOE Circular No. DC2017-05-0009 (04 May 2017).

filing by IEMOP of the application before this Honorable Commission, as evidenced by the Secretary's Certificate attached hereto as **Annex "D"** and made integral part of this Application

TIMELINESS OF FILING THE APPLICATION

19. In the Decision dated 30 January 2008 in the CY 2007 Market Fees (MF) Application⁶ of PEMC, the Honorable Commission directed the filing of the market fee application "not later than the first working day of July of the current year. xxx";

20. On 3 July 2017, PEMC filed its Motion for Extension of Time to file to file its application for market fees for the calendar year 2019, requesting for an additional period of thirty (30) days, or until 31 July 2018, citing the fact that the members of the IEMOP Board of Directors were appointed only on 25 June 2018 and similarly, the new set of members of the PEM Board were elected on the same date, and thus would need sufficient time to study the organization and the corresponding budgetary requirements, as well as obtain the necessary corporate approvals;

21. PEMC filed its Motion for Additional Time on 31 July 2018 requesting an additional period of thirty (30) days, or until 30 August 2018, within which to file its application for market fees for the calendar year 2019, stating that PEMC and IEMOP have yet to obtain their respective approvals and would need more time to carefully study the budgetary requirements in view of personnel complement and logistical considerations arising from the separation of the governance and market operations functions in the WESM;

22. On 13 August 2018, PEMC received the letter dated 2 August 2018 from the Honorable Commission, acknowledging receipt of its Motion for Additional Time filed on 31 July 2018;

23. Another Motion for Additional Time was filed by PEMC on 30 August 2018, praying for an additional period of thirty (30) days, or until 29 September 2018, for PEMC and

⁶ ERC Case No. 2007-124 RC.

IEMOP to file the application for market fees for the calendar year 2019, as the PEM Board has yet to approve the budgets of PEMC and IEMOP. In the same pleading, the Honorable Commission was informed that the formal date of the transfer of the market operations functions to IEMOP is set on 26 September 2018 and on said date, IEMOP shall assume and perform all functions of the market operator as set out in the EPIRA and its IRR, the WESM Rules and Market Manuals, as well as all other relevant rules, regulations and issuances. As such, the assets and liabilities related to the market operations functions shall be transferred from PEMC to IEMOP, including the market fees which correspond to such functions;

24. On 5 September 2018, PEMC received the letter dated 3 September 2018 from the Honorable Commission, acknowledging receipt of its Motion for Additional Time filed on 30 August 2018;

25. On 28 September 2018, IEMOP filed its Omnibus Motion (For Substitution of Parties and For Additional Time) praying for the substitution by IEMOP of PEMC as the Applicant, and additional period of until 29 October 2018 within which to file the Application;

26. This Application is thus filed within the reglementary period requested;

PROPOSED MARKET FEES

27. The factual allegations set forth above are re-pleaded in support of this application;

28. Section 9 Rule 9 (c) of the Implementing Rules and Regulations of the EPIRA provides that "the cost of administering and operating the WESM shall be recovered by the IMO through a charge imposed on all WESM participants or WESM transactions, provided such charge shall be filed with and approved by the ERC, consistent with the WESM Rules";

Fixed Market Fee Charge

29. Thus, the Applicant proposes the approval of a **Fixed Market Fee Charge** which will cover the budgetary

requirements of PEMC and IEMOP. This will provide better certainty in terms of availability of funds for intended programs and projects, as well as some degree of flexibility, to be better equipped to face the challenges of a highly dynamic electricity market. A fixed market fee charge is likewise beneficial to the stakeholders, as it enables them to consider such charge in their financial planning and promote efficiency in their operations, particularly on the aspect of spending, which will ultimately benefit the consumers;

30. Such Application may be likened to the Honorable Commission's approval of rate-based applications, particularly of private utilities and electric cooperatives, where price and rate caps are imposed which consider the recovery of efficient expenditure and appropriate return, as well as incentives for good performance. These are translated to fixed rates that are charged to their respective customers or customer classes for a defined regulatory period;

31. Procedurally, it will be observed that the approval process for previous market fee applications followed that used for rate applications, demanding strict compliance with the procedural requirements therefor:

- a. Pre-filing requirements which include furnishing copies of the application or petition to identified parties and the publication of the same in a newspaper of general circulation within the franchise area of the applicant or petitioner, or area where it principally operates (Rule 6, Section 2 of the ERC Rules);
- b. Filing by the applicant or petitioner of proof of compliance with pre-filing requirements (Rule 6, Sections 3 and 4 of the ERC Rules) and payment of docket fees (Rule 6, Section 5 of the ERC Rules);
- c. The Honorable Commission gives notice of the commencement of the hearings of the application or petition which the applicant or petitioner is directed to publish, at its own expense, at least twice for two (2) consecutive weeks in two (2) newspapers of general circulation;
- d. Filing by the applicant or petitioner of proof of compliance with the jurisdictional requirements;

- e. Conduct of the pre-trial conference;
- f. Conduct of public hearings where the applicant or petitioner will present evidence by offering the affidavits and supporting documents of its witnesses and additional evidence, if any. The intervenors, if any, shall be allowed to conduct cross-examination of said witness/es;
- g. Should they wish to, the intervenors are likewise given the opportunity to present their evidence, subject to the cross-examination of the applicant or petitioner;
- h. Applicant and/or the intervenors, file their respective formal offer of evidence;
- i. Should they wish to, parties will be allowed to file their respective memorandum before the application or petition is submitted for decision.

32. It should be noted that the imposition of a fixed rate for the market fees collection is not without precedent. In its Decision dated 16 March 2009, the Honorable Commission approved with modification the proposed level of market transaction fees for calendar years 2009-2011 for the Philippine WESM filed by PEMC, and approved the imposition of a fixed market fee rate of PhP0.0144/kWh;

33. Thus, Applicant seeks the approval of a fixed market fee rate which meets the requirements of transparency and non-discriminatory nature as mandated by the WESM Rules;

34. Applicant seeks approval of a **Fixed Market Fee Charge** amounting to a total of **PhP 0.0135/kWh**, which will be allocated to PEMC and IEMOP as follows:

| Fixed Market Fee Charge | PEMC Share | IEMOP Share |
|--------------------------------|-----------------------------|-----------------------------|
| PhP 0.0135/kWh (100%) | PhP 0.00414/kWh (30.67%) | PhP 0.00936/kWh (69.33%) |

Bases for Calculation of Fixed Market Fee Charge

35. This is calculated based on (a) the projected generation metered quantities for CY 2019 for Luzon and Visayas generation companies and (b) the aggregate projected budgetary requirements of PEMC and IEMOP for CY 2019, using the same formula for market transaction fee rate previously approved by the Honorable Commission, as follows:

$$\text{Fixed Market Fee Charge (PhP/kWh)} = \frac{\text{Total CY 2019 Budgetary Requirements (PEMC \& IEMOP)}}{\text{Total Monthly Projected Generation Metered Quantity (Luzon and Visayas)}}$$

36. The calculation is based on the Luzon and Visayas energy forecast for CY 2019 of 82,812.1 GWh. The energy forecast is attached as **Annex "E"** and is made an integral part of this Application;

37. The projected total budgetary requirement of both PEMC and IEMOP as approved by the PEM Board is **PhP 1,116,620,000.00**, broken down as follows:

| Budget Component | PEMC, PhPM | IEMOP, PhPM | Total, PhPM |
|---|-------------------|--------------------|--------------------|
| Personnel Services (PS) | 146.23 | 272.20 | 418.43 |
| Maintenance and Other Operating Expenses (MOOE) | 129.67 | 319.57 | 449.24 |
| Capital Expenditures (CAPEX) | 66.55 | 110.58 | 177.13 |
| Project Enhancements | | 71.82 | 71.82 |
| TOTAL | 342.45 | 774.17 | 1,116.62 |
| Projected Generation, GWH | 82,812 | 82,812 | 82,812 |
| Fixed Market Fee Charge, PhP/kWh | 0.00414 | 0.00936 | 0.0135 |

38. As shown in the foregoing table, the projected budgetary requirements cover the following budget components:

- a. *Personnel Services (PS)* pertain to the salaries and benefits of the employees of PEMC and IEMOP;
- b. *Maintenance and Other Operating Expenses (MOOE)* include, among other things, honorarium, rent, utilities, repairs and maintenance, contracted services, conference, insurance, advertising and promotion, taxes and dues, training, travel and transportation, materials and supplies and subscriptions;

c. *Capital Expenditures (CAPEX)* consist of purchase, enhancements and upgrades to the market governance systems, corporate infrastructure, and purchase of service vehicles;

39. The foregoing amounts are net of applicable taxes, such as corporate income and value added taxes. These also do not cover possible changes in expenses due to changes in law, rules or regulations, compliance with other regulatory requirements and other external factors;

40. A discussion of the specific budgetary allocations falling within the foregoing cost components and their justifications is attached as ***Annex "F"*** and is made an integral part of this Application;

41. Applicant respectfully submits that the budgetary requirements for CY 2019 is sufficiently indicative of the requirements of PEMC and IEMOP for the medium term, as these already consider the following:

a. Cost of administering and operating the WESM with two separate organizations performing market governance and market operations functions;

b. Organizational structures or tables of organization of the two organizations designed in accordance with their respective functions as envisioned by the two organizations, and not merely to accommodate the then existing manpower complement of PEMC. No significant changes in manpower complement is expected over the medium term;

c. Operation of the new Market Management System and changes to the market design, as embodied in the revised Price Determination Methodology currently being applied for approval with the Honorable Commission in a separate application;

d. The aggregate PEMC and IEMOP budgetary requirements upon which the proposed Fixed Market Fee Charge is based does not include the pre-establishment expenses for the operations of WESM in the Mindanao grid. This is consistent with the Honorable Commission's directive in its Order dated 11 July 2017 in ERC Case No. 2015-160RC, thus:

“ XXX XXX XXX

As the above discussed expenses are to be incurred in the upcoming establishment of the WESM in Mindanao, the Commission recognizes that the pre-operating expenses should not be charged to Luzon & Visayas customers. The separate apportionment of expenses between Luzon-Visayas WESM and Mindanao WESM is significant considering that in the absence of interconnection by the Mindanao grid, the WESM Mindanao will be a market separate from the Luzon and Visayas WESM.

XXX XXX XXX

Furthermore, considering that the total amount sourced from the collected fines and penalties are from Luzon’s and Visayas’ customers, the same shall be recovered from Mindanao WESM customers upon the establishment of the commercial operations of WESM in Mindanao. Following the launch and establishment of the WESM in Mindanao, PEMC shall subsequently file its budgetary requirements for the continuous administration and operation of WESM Mindanao including the cost recovery mechanism for the pre operations of WESM Mindanao.

42. Applicant shall then file for adjustment of the Fixed Market Fee Charge prior to the commencement of the following:

- a. Commercial operations of the WESM in the Mindanao grid, which adjustment shall consider the additional budgetary requirements for the operation and administration of the WESM and the projected increase in generation volumes arising due to the integration of Mindanao grid. This is consistent with the pronouncement of the Honorable Commission in its Order dated 11 July 2017 in ERC Case No. 2015-160RC, as quoted above; and
- b. Commercial operations of the trading of reserves in the WESM, which adjustment shall consider

the inclusion of scheduled reserves in determining the Fixed Market Fee Charge as well as the additional budgetary requirements for IEMOP and PEMC, **if any**, in operating and governing the trading of reserves.

Imposition on Generation Company-Trading Participants

43. The Applicant further proposes that the Fixed Market Fee Charge shall be collected from the generation companies registered in the WESM and shall be assessed based on their actual generation. Thus, the amount of market fees that will be collected monthly shall be calculated by multiplying the Fixed Market Fee Charge by the actual metered generation metered quantities, in kWh, for the month.

Reporting Requirements

44. PEMC and IEMOP, consistent with their obligations under the WESM Rules, shall submit to the Honorable Commission their annual financial reports, which shall include, among other matters, information on the utilization of the market fees.

PRAYER

WHEREFORE, premises considered, it is most respectfully prayed of this Honorable Commission to give due course to the Application and accordingly render judgment AUTHORIZING IEMOP to impose a FIXED MARKET FEE RATE of P0.0135/kWh to all generation companies registered in the WESM based on their actual generation, in kWh.

IEMOP prays for such other reliefs just and equitable under the premises.

Pasig City, ²⁶ October 2018.



RACHEL ANGELA P. ANOSAN

Roll of Attorneys No. 39278

IBP No. 029526 / 25 January 2018 / Baguio

PTR No. 3991343 / 25 January 2018 / Pasig City

MCLE Compliance No. V-0015205/ 08 March 2016

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MCLE Compliance No. V-0015653/ 07 March 2016

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Tel. 318-9376

VERIFICATION AND CERTIFICATION

I, **FRANCIS SATURNINO C. JUAN**, of legal age, Filipino and with office address at the Independent Electricity Market Operator of the Philippines, Inc. (IEMOP), 9th Floor, Robinsons Equitable Tower, Ortigas Center, Pasig City, after having been duly sworn in accordance with law, hereby depose and state that:

1. I am the President and CEO of IEMOP, the Applicant in this case, with full power and authority to initiate and file the instant Application;

2. I have caused the preparation and filing of the instant Application. I confirm that I have read and understood the contents thereof and attest that the allegations contained therein are true and correct based on my personal knowledge and/or based on authentic records at hand; and

3. I further certify that the IEMOP has not heretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency, and to the best of my knowledge, no such other action or claim is pending therein. If I should hereafter learn that the same or similar action or claim has been filed or is pending, I shall report that fact within five (5) days therefrom to the court, wherein the aforesaid complaint or initiatory pleading has been filed.

IN WITNESS WHEREOF, I have hereunto set my hand on this ___ day of October 2018 at Pasig City, Philippines.


FRANCIS SATURNINO C. JUAN
Affiant

OCT 26 2018

SUBSCRIBED AND SWORN to before me this ___ day of
October 2018 affiant exhibiting to me his Driver's License No.
N01-86-037714 bearing his photograph and signature, who is
known to me to be the same person who executed the
foregoing Verification and Certification.

Doc. No. 311 ;
Page No. 64 ;
Book No. 2002 ;
Series of 2018.

ATTY. JOSHUA V. LAPUZ
Notary Public for and in Makati City
Appointment No. M-82 until 12/31/2019
PTR No. 6607878/ Jan. 3, 2018, Makati
Roll No. 45790, BPP File No. Roll No. 04897
MCE No. V-0019692 4-15-2016
w/ Tedman Suites, 199 Salcedo Street,
Legaspi Village, Makati City