

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City



**IN THE MATTER OF THE
APPLICATION FOR THE
APPROVAL OF THE
STRUCTURE AND LEVEL OF
MARKET FEES FOR THE
CALENDAR YEARS 2016-
2017 FOR THE PHILIPPINE
WHOLESALE ELECTRICITY
SPOT MARKET (WESM),**

ERC CASE NO. 2015-160 RC

**PHILIPPINE ELECTRICITY
MARKET CORPORATION
(PEMC),**

Applicant.

X-----X

D O C K E T E D
Date: SEP 22 2017
By: [Signature]

ORDER

Pursuant to Section 30¹ of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA), Applicant Philippine Electricity Market Corporation (PEMC) filed the instant Application for the approval of the structure and level of Market Fees (MFs) for calendar years (CYs) 2016-2017 for the Philippine Wholesale Electricity Spot Market (WESM) on 8 September 2015.

FACTUAL ANTECEDENTS

In the Commission's Decision dated 30 January 2008 in ERC Case No. 2007-124 RC, PEMC was directed to file the Application for the approval of the level of its Market Transaction Fees on the first day of July for each year. On 29 June 2015, PEMC filed a "*Motion for Extension of Time*" seeking an extension of 45 days from 1 July 2015 or until 15 August 2015 to file its market fees for the succeeding years for the reason that PEMC is currently conducting a comprehensive study on its market fee structure and it intends to submit a proposal

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

that will assist the Commission in the approval of market fees in the future.

On 14 August 2015, PEMC filed a “*Second Motion for Extension*” praying for another 20 days from 15 August 2015 until 04 September 2015 within which to file its Application where some of the figures approved by the Philippine Electricity Market (PEM) Board in its meeting on 24 July 2015 needed clarification. With the next PEM Board meeting scheduled on 28 August 2015, PEMC averred that it would file its Application as soon as the board has clarified the figures for the market fee application.

Finally, on 04 September 2015, PEMC filed the instant application seeking approval of the following:

- A. Approval of the restructuring of the Market Fees (MF) into a single fee;
- B. Approval of the allocation of the previously collected Market Registration Fees from the 2016 MTF applied for; and
- C. Approval of the proposed Market Transaction Fees (MTF) in the amount of **One Billion Sixty-six Million Eight Hundred Thirty-seven Thousand Pesos (PhP1,066,837,000)** for Calendar Year (CY) 2016 and **One Billion Ten Million Nine Hundred Forty-two Thousand Pesos (PhP1,010,942,000)** for CY 2017.

In its application, PEMC stated that it was instructed by the Department of Energy (DOE) to prepare for the operation of WESM in Mindanao in light of the projected overcapacity Mindanao will experience in the first quarter of 2016. As a result, the proposed budgetary requirement of PEMC incorporated the cost of operation of WESM Mindanao.

Finding the Application sufficient in form and substance, the Commission issued an Order dated 12 October 2015 setting the application for public hearings in Metro Manila, Cebu City and Davao City.

During the initial hearing on 25 November 2015, the Applicant appeared through its counsel. Likewise, the following appeared as

Intervenors: Manila Electric Company (MERALCO), Subic Enerzone Corporation (SEZ) and Visayan Electric Company (VECO).

The 25 November 2015 hearing proceeded with the Applicant's presentation of its compliance to the Commission's jurisdictional requirements.

The Clerk of the Commission perused Applicant's compliance and found the following attachments:

- (1) Complete issue of The Philippine Star² newspaper dated 2 September 2015 with page 13³ thereof showing the copy of the instant Application dated 1 September 2015;
- (2) Affidavit of Edwin L. Monforte⁴, Billing and Collection Manager of PhilSTAR Daily, Inc., attesting to the publication of the said Application on The Philippine Star newspaper on 2 September 2015;
- (3) Complete issue of Philippine Star newspaper dated 28⁵ October 2015 with page 19⁶ thereof showing the Notice of Public Hearing for the instant case dated 12 October 2015;
- (4) Affidavit of Perlita De Lara⁷, Accountant of PhilSTAR Daily, Inc., attesting to the publication of the said Notice of Public Hearing on The Philippine Star newspaper dated 28 October 2015;
- (5) Complete issue of The Manila Times newspaper dated 28 October 2015⁸ with page A3⁹ thereof showing the Notice of Public Hearing for the instant case dated 12 October 2015;
- (6) Affidavit of Evelyn S. Arevalo¹⁰, Accounting Supervision of The Manila Times, attesting to the publication of the said Notice of Public Hearing on The Manila Times newspaper dated 28 October 2015;
- (7) Complete issue of Philippine Star newspaper dated 4 November 2015¹¹ with page 11¹² thereof showing

² Exhibit "B-1"

³ Exhibit "B-1-a"

⁴ Exhibit "B"

⁵ Exhibit "C-1"

⁶ Exhibit "C-1-a"

⁷ Exhibit "C"

⁸ Exhibit "E-1"

⁹ Exhibit "E-1-a"

¹⁰ Exhibit "E"

¹¹ Exhibit "D-1"

¹² Exhibit "D-1-a"

- the Notice of Public Hearing for the instant case dated 12 October 2015;
- (8) Affidavit of Perlita De Lara¹³, Accountant of PhilSTAR Daily, Inc., attesting to the publication of the said Notice of Public Hearing on The Philippine Star newspaper dated 4 November 2015;
 - (9) proofs of receipt of the Office of the Solicitor General¹⁴, Commission on Audit¹⁵, Senate Committee on Energy¹⁶ and House of Representatives' Committee on Energy¹⁷;
 - (10) Certificates of Posting showing that the Order and Notice of Public Hearing, both dated 12 January 2012, were posted in the bulleting board of the Office of the Mayor of Pasig City.

As the Clerk of the Commission verified the Applicant's submissions to be compliant with Section 4, Rule 14 of ERPP¹⁸, the members of the Commission, who presided over the said hearing, declared that the Commission acquired jurisdiction over the instant Application. Thereafter, Applicant discussed its application through an expository presentation. In the course thereof, clarificatory questions were asked by the Intervenors, as well as the members of the Commission.

The same expository presentation was discussed during the 13 January 2015 hearing in ERC Visayas Field Office in Cebu City. Intervenors, VECO and SEZ appeared in the said hearing. In addition to MERALCO, VECO and SEZ, Engr. Robert Mallilin filed a Motion to Participate as Intervenor to the case.

¹³ Exhibit "D"

¹⁴ Exhibit "G-1" – Receipt of the Copy of the Application; Exhibit "I-1" – receipt of the Order dated 12 October 2015; and Exhibit "J-1" – receipt of the Notice of Public Hearing dated 12 October 2015

¹⁵ Exhibit "G-2" - Receipt of the Copy of the Application; Exhibit "I-2" – receipt of the Order dated 12 October 2015; and Exhibit "J-2" – receipt of the Notice of Public Hearing dated 12 October 2015

¹⁶ Exhibit "G-3" - Receipt of the Copy of the Application; Exhibit "I-3" – receipt of the Order dated 12 October 2015; and Exhibit "J-3" – receipt of the Notice of Public Hearing dated 12 October 2015

¹⁷ Exhibit "G-4" - Receipt of the Copy of the Application; Exhibit "I-4" – receipt of the Order dated 12 October 2015; and Exhibit "J-4" – receipt of the Notice of Public Hearing dated 12 October 2015

¹⁸ Section 4. Publication and Other Requirements. - The notice of hearing for any application or petition for rate adjustment or for any relief affecting the consumers shall be published by the applicant or petitioner, at its own expense, at least twice for two (2) successive weeks in two (2) newspapers of nationwide circulation, the last day of publication not to be later than ten (10) days before the scheduled hearing. In all other applications or petitions, the publication of the notice shall only be once in a newspaper of general circulation in the locality or localities where the applicant or petitioner operates its business, if there be any such local newspaper, or in a newspaper of nationwide circulation, at least ten (10) days before the scheduled hearing.

During the Cebu hearing, clarificatory questions were propounded by the Commission, particularly on the inclusion of the operations of WESM Mindanao in the 2016-2017 MTFs applied for. PEMC was then directed to identify and submit all costs pertaining to the operations of WESM in Mindanao.

On 5 February 2016, PEMC filed its "*Manifestation and Submission*" with Supplemental Judicial Affidavit of its witness, Ms. Marissa Gandia. The said submission contained therewith the pre-operating cost of WESM Mindanao.

After several public hearings, presentation of evidence by the Applicant was concluded and Applicant filed its "Formal Offer of Evidence (FOE)" on 13 April 2016.

In line with the DOE's directive, the WESM was launched in Mindanao on 28 June 2017. The launching is to be followed by trial runs and later on actual commercial operations. As alleged, a facility for the full operation of the WESM Mindanao will be necessary and putting-up such facility will entail expenses.

In view of the forthcoming WESM operations in Mindanao, the Commission, upon initial evaluation of the instant Application, deemed it appropriate to partially approve the Application as far as the budget for the WESM Mindanao is concerned.

DISCUSSION

PEMC proposed a budget in the amount of PhP31.133 million for CY 2016 and PhP18.721 million for CY 2017 for the establishment of WESM in Mindanao, to wit:

Budget Component	Proposed CY 2016	Proposed CY 2017
MOOE		
Contractual Personnel	4,689,200	5,158,120
Rental	1,824,000	2,006,400
Contracted services	1,579,975	1,643,174
Utilities	2,262,000	2,352,480
Travel and transportation	4,229,954	4,399,152
Conference cost	2,920,000	3,036,800
Materials, office supplies and equipment	120,000	124,800
CAPEX		-
IT Systems Hardware	7,410,000	-

Budget Component	Proposed CY 2016	Proposed CY 2017
Leasehold Improvement	6,098,158	-
Total	31,133,287	18,720,926

PEMC's Proposed Pre-operating Expenses for WESM Mindanao

The cost of operating the WESM in Mindanao was incorporated in the proposed budget in the instant case in light of the directive of the DOE as stated in the letter to PEMC dated 24 August 2015. Republic Act No. 9136, also known as the Electric Power Industry Reform Act of 2001 (EPIRA) mandates the DOE to establish an efficient, transparent and reliable electricity market. Accordingly, the DOE has issued the Department Circular No. DC2016-10-0014 in October 2016 to adopt further amendments to the WESM Rules with regard to the enhancements on the WESM design and operations in congruence to the implementation of the New Market Monitoring System (NMMS) and the expected launch of the WESM in Mindanao. Likewise, a draft circular was distributed in January 2017, which effectively began the collaborative efforts of the DOE with industry participants in declaring the launch of the WESM in Mindanao.

As WESM Mindanao has just been launched on 28 June 2017, in evaluating the reasonableness of the proposed budget, the Commission, focused on the initial proposed budget for CY 2016 and the propriety of the escalation due to projected inflation and presumed annual contract costs for each item as reflected in the proposed budget for CY 2017. The assessment was made on a per account item bases.

Contractual Personnel

PEMC proposed the amount of PhP5,158,120 for CY 2017 to cover the salaries and benefits package of the contracted employees for the establishment of the WESM in Mindanao. This includes the basic pay, 13th month pay, service incentive leaves, severance pay, SSS/EC/Philhealth/Pag-ibig contributions, and the administration fees required. Based on the list provided, there will be eight (8) personnel to be contracted: an IT Operations Engineer, a Settlement and Metering Specialist, a Participant Support Specialist, an Accounts Management Officer and four (4) Market Operators.

The budget for CY 2017 was derived from the 2016 proposed budget subjected to a 10% increase that accounts for the assumed contract escalation cost. Due to the fact that the launch of the WESM in Mindanao was done midway of 2017, i.e. 28 June 2017, the

Commission fails to see the relevance of the 10% increment from the 2016 budget proposal. Hence, the Commission is constrained to deny the allowance of the 10% increment along with the provision for the over-time allowance of each contracted personnel since the scheduled launch is arranged halfway through the CY 2017 and the market is yet to be fully operational. Therefore, an equivalent amount for twelve (12) months period based on proposed salary schedule provided by PEMC excluding over-time allowance was recommended.

Accordingly, the Commission resolves to approved the calculated amount of **PhP4,358,359** for CY 2017 for contractual personnel expenses.

Rental

The proposed budget is in the amount of PhP2,006,400 to be utilized in the rental of an office space in Davao City for CY 2017. PEMC pegged the amount from the commercial rent price of PhP400/sq. m. in Davao City for an area of 380sq. m. with a 10% increase that can be accounted for the assumed contract escalation cost.

Post-review of the calculation provided in the submission, the Commission approves the amount of **PhP1,824,000** for CY 2017 excluding the 10% assumed contract escalation cost since it has yet to enter into a contract of lease for office space.

Contracted Services

PEMC has determined the need for security and janitorial services for its operations in Mindanao. The amount of PhP1,643,174 was proposed for the computed contract price based on the basic pay, 13th month pay, night shift differential, 5-day incentive leave, uniform allowance, cost-of-living allowance (COLA¹⁹), overtime allowance, SSS/EC/Philhealth/Pag-ibig contributions and agency fees required for the services to be rendered subjected to a 4% increment that may be accounted for the projected inflation rate for the year.

It is recognized that the COLA is included in the computation of the salaries and benefits package of the contracted employees. Where COLA is given to workers to compensate for the loss in purchasing power due to inflation, it is redundant to subject the allotted budget to an increase to account the inflation for the year. Thus, the Commission hereby adopts the amount of **PhP1,579,975** to cover the twelve (12) months' worth of services for CY 2017.

¹⁹ <http://www.gov.ph/2011/05/18/briefer-on-cost-of-living-allowance-cola/>

Utilities

PEMC proposed the amount of PhP2,352,480 to cover the installation and usage of electricity and communication lines in the Mindanao office for CY 2017. The communication lines include hot lines for Market Operator (MO) & System Operator, telephone line, internet connections and Market Management System (MMS).

The Commission is aware of the significance of securing the electricity and communication lines for the smooth transition and operations of WESM in Mindanao. In evaluating the proposed budget for utilities, the Commission took note that the 4% increment, as reflected in the proposed budget for CY 2017, is based on an estimated cost supposedly spent in CY 2016. However, as the proposed CY 2016 budget is a projected cost, the resulting escalated amount for CY 2017 does not reflect the actual increase in the cost of installation and usage. Thus, the Commission approves only the **PhP2,262,000** proposed budget for CY 2016 to cover the installation costs and utilities.

Travel and Transportation

This budget item covers the expenses related to official travels such as airfare, hotel charges, and travel allowances. While PEMC was directed to do the preparatory work for the establishment of the WESM pursuant to Section 30 of the EPIRA, a number of public consultations, trainings and activities are expected to be conducted in Mindanao until the full commercial operations of the WESM. The basis of number of staff and frequency of travels are indicated in the table below. Likewise, PEMC pegged the hotel accommodation per diem and the round trip airfare at a fixed amount of PhP3,882.35 and PhP10,000, plus a 4% increment based on the projected CPI. Thus, PEMC proposed a total of PhP4,399,152 for travel budget for CY 2017:

Department/Group	Destination	HC	No. of Days	Freq
TOD staff	Mindanao	3	7	6
BSMD staff	Mindanao	2	3	6
IST staff	Mindanao	2	3	6
CPC staff	Mindanao	2	3	6
Participants trainings/coordination meetings	Mindanao	15	3	6
Registration drive	Mindanao	7	2	1

Department/Group	Destination	HC	No. of Days	Freq
Hearing/Consultation	Mindanao	2	3	2
Launching of WESM Mindanao	Mindanao	30	2	1
Mindanao Participants' Update	Mindanao	30	2	1
TOTAL		93	28	35

In reviewing the calculations, the Commission approves the amount of **PhP4,028,528** which is based on the submitted total cost per travel multiplied by its frequency excluding the 4% projected inflation rate for CY 2017. The exclusion of the 4% inflation rate is because the estimation of costs is deemed applicable within the actual rates currently offered by the service providers.

Conference

This budget will cover the expenses for the following activities as proposed by PEMC:

PARTICULARS	Proposed Amount
Public Consultation/Roadshows	169,416
Meetings and Focus Group Discussions	499,200
Participants Trainings	712,920
Regulatory Hearing	82,368
IEC Activities	458,432
Trial Operation Activities	193,336
Launching/Participants Updates	713,440
Registration Drive	207,688
TOTAL	3,036,800

The Commission finds the proposed amount reasonable. Accordingly, the Commission approves the 2016 proposed budget in the amount of PhP2,920,000 discounting the projected 4% inflation rate for CY 2017 for not being appropriate given that the proposed 2016 budget is also estimated.

Materials, office supplies and equipment

PEMC proposed the amount of PhP124,800 budget for the materials, supplies and equipment budget. The proposal is based on the actual expenses in Cebu.

Since the WESM Mindanao was launched only weeks ago, the Commission resolves to approve the amount of **PhP120,000 as proposed for initial year 2016 sans 4% inflation rate.**

CAPEX

This budget will cover the expenses for the following acquisition and leasehold improvements as proposed and calculated by PEMC:

Particulars	Amount
IT Systems Hardware	
LCD Monitor	320,000
Workstations/Servers	1,080,000
VPN Router	1,400,000
Computers for Contractual Employees	560,000
Computers dedicated for participants trainings	1,050,000
Data Communication Interface Equipment Cagayan de Oro/Iligan City	3,000,000.00
Leasehold Improvement	
General Requirements (Permits & Licenses/Mobilization & Demobilization)	600,000
Architectural, Civil / Fixtures & Design Works	4,018,828
Electrical Works	677,355
Structural Cabling	801,975
Total	13,508,158

The Commission acknowledges the need to put up the required facilities for the operation of WESM Mindanao, as well as the proper and suitable working environment for the employees. Therefore, to provide a work place conducive to productivity and to acclimate the employees for a smooth transition and establishment of the Mindanao office, the Commission approves the budget as proposed in the amount of **PhP13,508,158** for CY 2017.

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 the 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.

It may be recalled that in ERC Case No. 2013-137 RC, PEMC filed a Motion for Reconsideration to the Commission to set aside the new formula for computing the market fees as provided in the 2015 Order where the fines and penalties collected as well as the Other Income was included as a deduction in the MTF formula. PEMC maintains that there will be a mechanism to facilitate the utilization of the amounts collected as fines and penalties after the PEM Board of Directors decides on how the amounts shall be utilized which shall be consistent with PEMC's role and mandate as the Market Operator. Pending the approval of the PEM Board on its utilization, PEMC placed the fines and penalties collected under an escrow account.

Hence, PEMC was directed to submit to the Commission its disposition on the utilization of the amounts collected as fines and penalties. In a filed Compliance and Submission dated 10 June 2016, PEMC requested to be given an additional 30 days to submit its Compliance on the directive of the Commission with respect to the decision of its Board of Directors regarding the same.

To date, PEMC has yet to submit its proposed mechanism for the utilization of the said fund. In the meantime, the Commission deems it appropriate that the pre-operating budget for WESM Mindanao be sourced from fines and penalties collected and held under an escrow account pending approval of its PEM Board on its utilization.

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.

WHEREFORE, premises considered, the Commission hereby partially approves the instant application insofar as it covers the pre-operating budget for WESM Mindanao in the total amount of **PhP30,601,019** for CY 2017 as shown hereunder:

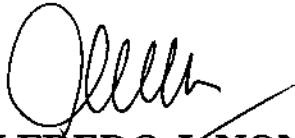
Budget Component	Proposed CY 2017	Approved CY 2017
MOOE		
Contractual Personnel	5,158,120	4,358,359
Rental	2,006,400	1,824,000
Contracted services	1,643,174	1,579,975
Utilities	2,352,480	2,262,000
Travel and transportation	4,399,152	4,028,528
Conference cost	3,036,800	2,920,000
Materials, office supplies and equipment	124,800	120,000
CAPEX		
IT Systems Hardware	7,410,000	7,410,000
Leasehold Improvement	6,098,158	6,098,158
Total	32,229,084	30,601,019

SO ORDERED.

Pasig City, 11 July 2017.

JOSE VICENTE B. SALAZAR*

Chairman and CEO



ALFREDO J. NON
Commissioner



GLORIA VICTORIA C. YAP-TARUC
Commissioner




JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Commissioner



GERONIMO D. STA. ANA
Commissioner

MOS-SMD: /JLM/DTL

LS-SD: /KTB/RFM/APV

* The Chairman was placed on preventive suspension as per Order of the Office of the President (OP-DC Case No. 17-D-094) dated 2 May 2017 and received on 04 May 2017.

Copy furnished:

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