

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



IN THE MATTER OF THE APPLICATION FOR THE APPROVAL OF THE LEVEL OF MARKET TRANSACTION FEES FOR THE REPAYMENT OF THE MARKET MANAGEMENT SYSTEM (MMS) LOAN FOR THE PHILIPPINE WHOLESALE ELECTRICITY SPOT MARKET (WESM), WITH PRAYER FOR AUTHORITY TO ENTER INTO A FACILITY AGREEMENT TO REFINANCE THE MMS LOAN,

ERC CASE NO. 2012-097 RC

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

Applicant.

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DOCKETED
Date: MAR 01 2018
By: _____

DECISION

Before the Commission for resolution is the *Application* dated 10 August 2012 (*Application*) filed by Philippine Electricity Market Corporation (PEMC) on 14 August 2012 for the approval of the level of Market Transaction Fees for the repayment of the Market Management System (MMS) loan for the Philippine Wholesale Electricity Spot Market (WESM), with prayer for authority to enter into a facility agreement to refinance the MMS loan.

In its *Application*, PEMC alleged the following:

1. PEMC 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, Ms. Melinda L. Ocampo, who is duly authorized by PEMC's Board of Directors, as evidenced by the Secretary's Certificates attached hereto as Annexes "A" and "B" and made integral parts of this Application.

2. This Application is filed pursuant to Section 30 of Republic Act. No. 9136, also known as the "Electric Power Industry Reform Act of 2001" or "EPIRA" which reads:

"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

3. Applicant's prayer for authority to enter into a Facility Agreement to refinance the MMS Loan complies with the General Policies set in the 30 January 2008 Decision of the Honorable Commission in PEMC's application for the approval of the level of market transaction fees (MF) for CY 2007 (the "CY 2007 MF Application").² The Decision pertinently reads:

"i. Other than to defray pre-operating expenses, PEMC shall not be allowed to incur loans without the approval of the Commission. Payment of loans, both principal and interests, shall only be charged to Market Fees if such loans have been approved by the Commission."³

A. MMS Loan

4. Consistent with the EPIRA,⁴ the Market Operations Unit of the National Transmission Corporation (TRANSCO) was designated to operate the WESM through Department of Energy (DOE) Department Order No. Do2003-06-0006 issued on 9 June 2003.
5. In December 2003, the National Power Corporation (NPC), as Borrower, entered into loan agreements ("Loan Agreements") with the Asian Development Bank (ADB) and the Japan Bank for International Cooperation (JBIC) (collectively, the "Lenders") for the purpose of, among others, financing the electricity market.
6. TRANSCO was designated as the Project Executing Agency pursuant to the Loan Agreements.
7. In March 2004, TRANSCO entered into the following contracts for the development of the WESM Market Management System (MMS) (collectively, the "MMS Contracts"):
 - a. Contract for the Turnkey Implementation for the Market Management System (MMS) for the Philippine Wholesale Electricity Spot Market (WESM) [Loan No. 198PHI] with ABB, Inc. Network Management Unit (ABB) as counter-party; and

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

² In the Matter of the Application for the Approval of the Level of Market Transaction Fees for Year 2007 for the Philippine Wholesale Electricity Spot Market, ERC Case No. 2007-124 RC.

³ 30 January 2008 Decision, ERC Case No. 2007-124 RC, page 40.

⁴ EPIRA, Sec. 30.

- b. Contract for the Project Management Consultant for the Wholesale Electricity Spot Market (WESM) with The Marketplace Company Pty Limited (M-Co) as counter-party.
8. In May 2004, an Operating Agreement was entered into by the DOE, TRANSCO and PEMC, where TRANSCO committed to allocate resources to cover operational and capital expenses necessary for the operation and administration of the WESM and to procure, develop, and establish the infrastructure for the MMS, subject to reasonable recovery arrangements.
9. On 12 October 2004, TRANSCO and PEMC executed a Memorandum of Agreement which provides for the mechanisms for the transfer of the market operations functions from TRANSCO to PEMC. In the Agreement, PEMC was designated as the Project Contract Administrator for the MMS Contracts.
 - a. As Project Contract Administrator, PEMC was authorized to direct the activities of the contractors, monitor and evaluate their performance, issue certifications as provided under the contracts, and appoint a project manager.
 - b. TRANSCO remained as the Project Executing Agency, tasked to facilitate the disbursement of the proceeds of the Loan Agreements and to continue to process all the payments related to the MMS Contracts until completion.
10. In 2005, PEMC and M-Co executed a Service Agreement with PA Consulting Group Limited (PA) as counter-party. The Service Agreement covered the engagement of PA as independent auditor to certify compliance of the formulation of the Market Dispatch Optimization Model (MDOM) of the MMS with the WESM Rules.
11. Funds sourced from the Loan Agreements were advanced to PEMC to finance the procurement, acceptance, installation, testing and initial operation of the MMS (the "MMS Project"). The MMS Project costs include:
 - a. Contract costs or payments made to ABB and M-Co under the MMS Contracts and the Service Agreement with PA. As of this filing, ABB and M-Co have been paid in full in accordance with the terms of their respective service agreements;
 - b. Borrowing costs or expenses advanced by TRANSCO in administering the Loan Agreements such as the equity counterpart required by the Loan Agreements, front-end fees, interest charges and foreign exchange transaction costs; and
 - c. Maintenance costs or payments for MMS hardware and software upgrades, enhancements and replacements, and the development or procurement of

additional supporting software and hardware prior to the collection of MFs.

12. NPC's assets and liabilities have been transferred to the Power Sector Assets and Liabilities Management Corporation (PSALM) pursuant to the EPIRA.⁵ PSALM has assumed the debt servicing on the Loan Agreements.

B. Market Fees Applications

13. PEMC first filed an application for the approval of the level of MF in the WESM on 14 November 2005 (the "CY 2006 MF Application").⁶ The MMS Project costs were excluded from the CY 2006 MF Application because there was as yet no cost recovery arrangement at the time it was filed. Moreover, under the Loan Agreements, repayment of the MMS Project costs will commence only in 2009.

14. In its 22 June 2006 Decision in PEMC's CY 2006 MF Application, the Honorable Commission noted that:

"The MMS development costs, including the borrowing costs are not included in the instant application, pending the agreement for the recovery arrangements among NPC, TransCo, ADB and JBIC. Under the loan agreement, the repayment period has yet to start in year 2009. PEMC manifested that the recovery of such cost component will be effected through a separate filing with the Commission in the future."⁷

15. PEMC included the repayment of the MMS Project costs among the budgetary items applied for in its application for the approval of the level of MF in the WESM for CY 2009-2011 (the "CY 2009-2011 MF Application").⁸ The recovery arrangements between NPC, TRANSCO and the Lenders were still not finalized as of the filing of the CY 2009-2011 MF Application. However, the amount of the repayment was estimated based on submissions made by PSALM NPC and TRANSCO.

16. In its 28 September 2009 Order in the CY 2009-2011 MF Application, the Honorable Commission held:

"xxx As per the Commission's Decision dated June 22, 2009 (sic), the cost and recovery mechanism for the MMS loan repayments have yet to start in 2009 but will be subject to a separate application with the agreement that there should be established recovery arrangements between NPC, TRANSCO, PSALM and PEMC.

⁵ EPIRA, Sec. 49.

⁶ In the Matter of the Application for the Approval of the Structure and Level of Market Fees for the Philippine Wholesale Electricity Spot Market, ERC Case No. 2005-048 RC.

⁷ 22 June 2006 Decision, pages 21-22.

⁸ In the Matter of the Application for the Approval of the Level of Market Transaction Fees for Calendar Years 2009-2011 for the Philippine Wholesale Electricity Spot Market, ERC Case No. 2008-050 RC.

As of date, it is apparent that there is yet no agreement for the manner of repayments for said cost. As stated in PEMC's submission, PSALM has just proposed to include a budget in the proposed budgetary expenditures and it agreed to provide supporting documents on the amount claimed. The request for payments from PSALM indicated only estimates of the amount drawn, project management costs including financing costs and transaction costs incurred from 2004 to 2008.

Therefore, the additional budget requested by PEMC for MMS Loan Repayments, likewise, does not merit approval. Said request must be made in a separate and independent application pursuant to the Commission's Decision dated June 22, 2009 (sic). In this manner, the market participants may be adequately apprised and would have sufficient opportunity to comment on the proposed mechanism. Moreover, the requisite scheme for implementation thereof has not been presented to the Commission for approval as required in said Decision."⁹

C. MMS Loan Repayment

17. Consistent with the 22 June 2006 Decision and 28 September 2009 Order of the Honorable Commission quoted above, PSALM, NPC, TRANSCO (the "Counterparties") and PEMC entered into a Memorandum of Agreement (MOA) on 1 June 2012 covering the repayment of the MMS Loan and the transfer of the ownership of the MMS to PEMC. Copy of the MOA is attached hereto as Annex "C" and is made an integral part of this Application.
18. Among others, the MOA provides that:
 - a. PEMC shall pay PSALM the amount of PhP863,341,185.60 representing the principal amount of advances for the MMS Project, with interest at the rate of twelve percent (12%) per annum (the principal and the interest shall hereafter be referred to as the "MMS Loan").
 - b. The MMS Loan shall be payable in three (3) years, in accordance with the loan repayment schedule attached hereto as Annex "C-1" and made an integral part of the Application.
 - i. The principal shall be paid in equal monthly installments of PhP20,237,721.00 from month 1 through month 35, and the remainder on month 36.
 - ii. The interest, payable monthly, is based on the outstanding balance of the MMS Loan.
 - c. PEMC shall deliver to PSALM promissory notes or such other instruments and documents evidencing the

⁹ 28 September 2009 order, pages 11-14.

obligation of PEMC to repay the amount upon approval of the cost-recovery scheme by the Honorable Commission.

- d. In consideration of PEMC's payment, the Counterparties transfer to PEMC all their rights, title, authorities and privileges over the MMS including all hardware, software, warranties, licenses and maintenance agreements secured for such system.
 - e. The failure of PEMC to pay any amount due and payable to PSALM in accordance with the repayment schedule as approved by the Honorable Commission for a period of five (5) days from due date shall be considered a payment default.
 - i. In case of default, the unpaid amount shall bear interest at the rate of twelve percent (12%) per annum.
 - f. However, the failure of PEMC to timely pay any amount due by reason of insufficient collection of market fees or market failure, through no fault or negligence by PEMC, shall not be considered as payment default.
 - i. In case of insufficient collection of market fees, PEMC shall have a grace period of thirty (30) days from the due date, or until the due date of the next billing period, whichever is later, within which to effect payment.
 - ii. At the expiration of the grace period, any unpaid amount attributable to such insufficient collection shall bear the default interest as prescribed under the WESM Rules reckoned from the day on which said amount first became due.
 - g. All taxes, duties or other fiscal charges which may be due in relation to the execution of the Agreement, any promissory note and/or any other related document shall be for the account of PEMC.
19. PEMC may at any time prepay all or any portion of the principal or interest owing under the MOA without penalty.
20. The table below summarizes the principal terms of the MMS Loan Repayment.

Principal	Php728,557,962
Interest Rate	12% p.a. fixed rate
Repayment	36 monthly installments
Penalty for default	12% p.a. on the unpaid amount
Taxes	For the account of PEMPC

Table 1 – MMS Loan Repayment (Principle Terms)

D. MMS Loan Refinancing

21. With the consent of the Counterparties, and considering PEMC's option to prepay under the MOA without penalty, PEMC approached several commercial banks to refinance the MMS Loan to secure more favorable interest rates.
22. On 26 July 2012, the PEMC Board of Directors (PEM Board) approved the terms of the Syndicated Term Loan Facility offered by a commercial bank (the "Syndicated Loan"). The terms of the Syndicated Loan are summarized in the tables below.

a. Principal Terms and Conditions

Borrower	Philippine Electricity Market Corporation
Purpose	To refinance existing term debt
Facility	Syndicated Term Loan Facility up to PhP800 Million, subject to internal credit approvals
Signing Date	The date of signing of the Facility Agreement
Final Maturity -	3 years from the Signing Date
Drawdown and Availability	One (1) lump sum drawdown within one (1) month from the Signing Date
Repayment	34 equal monthly principal installments with the 1 st installment commencing on the 3 rd month from the Signing Date
Interest Rate	7.75% p.a. fixed rate
Structuring/ Coordinating Fee	1% flat on the Facility Amount
Arrangement Fee	1% flat on the Facility Amount

Table 2 – MMS Loan Refinancing (Principal Terms and Conditions)

b. Other Terms

Mandatory Prepayment	<ol style="list-style-type: none"> i. PEMC shall fully prepay and cancel the available commitment (if any) on the entire Facility if PEMC is no longer mandated by the DOE to be the market operator. ii. Other conditions to be agreed post due diligence by all parties
Voluntary Prepayment and Cancellation	<ol style="list-style-type: none"> i. Borrower may prepay or cancel in whole or in part the Facility, without penalty, on the last day of any Interest Period upon prior written notice ii. Prepayments on a day other than the last day of any Interest Period are permitted provided that any breakfunding costs shall be for the Borrower's account
Financial Covenants	<ol style="list-style-type: none"> i. Debt to Equity Ratio ii. Cap on Total Consolidated Debt
Taxes	Documentary stamp taxes (DST), applicable gross receipt tax (GRT) and withholding tax (WHT) shall be for the account of the Borrower

Table 3 – MMS Loan Refinancing (Other Terms)

23. The terms of the proposal are indicative and may be subject to change in the course of due diligence and the credit approval process or as a result of market conditions or otherwise.

E. Treatment of the MMS

24. The MMS was accepted in June 2006 and has since been used by PEMC in the commercial operations of the WESM.
25. The MMS was first recorded in the statement of financial position of PEMC in CY 2007 as part of its assets and liabilities at a provisional amount of PhP574,909,649 pending the submission of complete supporting documents from PSALM.
26. As of 31 December 2010, the MMS was presented as an Intangible Asset¹⁰ at a cost of PhP681,264,498. Meanwhile, PEMC recognized a liability of PhP728,557,962, which is equal to the principal amount of the MMS Loan. The difference between the cost of the MMS asset and said liability is attributed to professional fees and borrowing costs that were expensed outright.
27. The capitalized costs of the MMS are amortized on a straight line basis over the estimated useful life of the asset of eight (8) years.
28. As of 31 December 2011, the net carrying amount of the MMS assets in the books of PEMC is PhP238,745,293.¹¹

F. Proposed Level of Additional Market Fees

29. The Additional, Market Fees (AMF) prayed for by PEMC equals the MMS Loan in the amount of PhP863,341,185.60.
30. The AMF shall be recovered over a period of three (3) years to match the amortization schedule agreed upon between PEMC and the Counterparties, and in the proposed Syndicated Loan Facility.
31. The AMF shall be collected in addition to the prevailing MF rate at the time of the Honorable Commission's approval.
32. The prevailing market fee rate as of this filing is PhP0.0121/kWh¹² based on the 12 December 2011 Order of the Honorable Commission in PEMC's MF Application for CY 2012,¹³ which pertinently reads:

"xxx the Commission hereby authorizes the Philippine Electricity Market Corporation (PEMC) to continue imposing the approved Market Transaction Fee for CY 2011, xxx to be imposed on the market participants in the

¹⁰ Management determined that the software component of the MMS is more prominent than its hardware component.

¹¹ Gross carrying amount (Php681.2 Million) less accumulated amortization (Php442.5 Million).

¹² The average market fee rate for the billing records of January to April 2012.

¹³ In the Matter of the Application for the Approval of the Level of Market Transaction Fees for Calendar Years 2012 for the Philippine Wholesale Electricity Spot Market (WESM) with Prayer for Issuance Exparte of Provisional Authority, ERC Case No. 2011-111 RC.

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Luzon and Visayas Wholesale Electricity Spot Market (WESM) for CY 2012, pending the final resolution of the instant application."¹⁴

33. Based on initial indicative figures, i.e. the projected volume of energy for the next three (3) succeeding calendar years, the AMF shall result in additional market fee rates as follows:

Particulars	CY 2013	CY 2014	CY 2015	TOTAL
Annual Budget (in Million PhP)	316.923	287.780	258.638	863.341
Projected Volume (GWh)	61,555	64,376	67,327	185,809
Additional market fee rate (in PhP/kWh)	0.0051	0.0045	0.0038	0.0046

34. The AMF shall be recovered from generators in both Luzon and Visayas according to the volume traded by each in the WESM energy market,¹⁵ pursuant to the approvals of the Honorable Commission as follows:

$$\text{Market Transaction Fee Rate (PhP/kWh)} = \frac{\text{Total Annual Market Transaction Fee}/12}{\text{Total Generation Metered Quantity}}$$

35. Upon approval by the Honorable Commission of PEMC's Application in ERC -Case No. 2007-04 RC,-16 the AMF shall be recovered on the basis of volume traded by generators in the WESM energy and reserve markets thus:

$$\text{Market Transaction Fee Rate (PhP/kWh)} = \frac{\text{Total Annual Market Transaction Fee}/12}{\text{Total Generation Metered Quantity} + \text{Total Scheduled Reserves}}$$

36. The AMF is net of applicable taxes, such as corporate income and value added taxes. It also does not cover possible changes in expenses due to changes in law, rules or regulations, compliance with other regulatory requirements and other external factors.

PRAYER

WHEREFORE, premises considered, it is respectfully prayed of this Honorable Commission to:

1. APPROVE the Additional Market Fees of PhP863,341, 185.60 for the repayment of the MMS Loan, recoverable over a period of three (3) years pursuant to the terms of the Memorandum of Agreement among NPC, TRANSCO, PSALM, and PEMC; and

¹⁴ 12 December 2011 Order, Page 8.

¹⁵ PEMC is authorized to collect MFs from WESM participants in the Visayas retroactive to the billing month of January 2011; See 5 December 2011 Decision of the Honorable Commission in the PEMC's supplemental MF Application for CY 2010-2011 docketed as ERC Case No. 2011-085 RC, and 12 December 2011 Decision in PEMC's CY 2012 MF Application docketed as ERC Case No. 2011-111 RC.

2. GRANT PEMC the authority to enter into a Facility Agreement with a commercial bank to refinance the MMS Loan in an amount not exceeding the Additional Market Fees, the principal and interest payments of which shall be recoverable through MF collected over a period of three (3) years.

Other just and equitable reliefs are also prayed for.

Finding the said *Application* sufficient in form and substance, the Commission issued an Order and a Notice of Public Hearing, both dated 28 August 2012, setting the case for initial hearing on 28 September 2012.

On 04 September 2012, the Manila Electric Company (MERALCO) filed its *Petition for Intervention* dated 30 August 2012.

On 18 September 2012, MERALCO filed its *Pre-Trial Brief* of even date.

On 24 September 2012, PEMC filed its *Pre-Trial Brief* dated 20 September 2012.

During the 28 September 2012 initial hearing for Luzon, only PEMC and MERALCO appeared.

At the said hearing, PEMC presented its proofs of compliance with the Commission's posting and publication of notice requirements, which were duly marked as Exhibits "A" to "J-4".

Finding the said submissions substantially compliant with the Order dated 28 August 2012, the Commission declared that it acquired jurisdiction over the instant case.

Thereafter, the hearing proceeded with the Expository Presentation. PEMC's Finance Manager, Ms. Marissa P. Gandia (Ms. Gandia) discussed under oath the *Application*. The Commission and intervenor, MERALCO, propounded clarificatory questions to the presenter.

On 04 October 2012, another hearing was set for Expository Presentation in Visayas, wherein only PEMC appeared. PEMC conducted another expository presentation of the instant *Application*. Thereafter, the Commission propounded clarificatory questions.

On 08 October 2012, the Pre-Trial Conference and evidentiary hearing were held. During the Pre-Trial Conference, PEMC and MERALCO presented their proposed stipulations or admissions of facts and the issues to be tried or resolved.

During the presentation of evidence, PEMC presented its witnesses, Ms. Gandia and Ms. Lourdes Algona, who testified in support of the instant *Application*. In the course of their respective testimony, they identified several documents, which were duly marked as exhibits.

After the direct examination, MERALCO conducted its cross-examination of PEMC's witnesses. Thereafter, the Commission propounded questions to the said witnesses. By the end of the hearing, the Commission directed PEMC to submit its Formal Offer of Evidence and additional documents to aid the Commission's evaluation of the instant *Application*.

On 23 October 2012, PEMC filed its *Formal Offer of Exhibits with Motion for Marking of Additional Documents* (FOE).

On 17 August 2017, the Commission issued an Order admitting the exhibits contained in the FOE of PEMC and submitting the instant case for resolution.

ISSUE

The issue to be resolved by the Commission is whether the Commission should approve the instant *Application* and allow PEMC to collect an Additional Market Fees (AMF) for the repayment of the Market Management System (MMS) Loan.

COMMISSION'S RULING

The Commission approves with modification the instant *Application* of PEMC.

DISCUSSION

I. MARKET MANAGEMENT SYSTEM (MMS) PROJECT

The MMS Project is the infrastructure that supports the Philippine Wholesale Electricity Spot Market (WESM), which encompasses functionalities, like the pricing and scheduling, that are needed to operate the WESM. The MMS was developed, installed,

tested and certified pursuant to contracts entered into by PEMC with several counterparties as would be discussed hereinafter. Further, the MMS Project involved the procurement, acceptance, installation, testing, and initial operation of the existing MMS, which has been used by PEMC in its operations since 2006.

On 09 June 2003, the Department of Energy (DOE) issued Department Circular (DC) No. 2003-06-00006 designating the Market Operations Unit of the National Transmission Company (TRANSCO) to handle and operate the WESM.

In December 2003, the National Power Corporation (NPC) entered into loan agreements (“Loan Agreements”) with the Asian Development Bank (ADB), and the Japan Bank for International Cooperation (JBIC) for the purpose of, among others, financing the establishment of the WESM.

Pursuant to the Loan Agreements, TRANSCO was designated as the Project Executing Agency.

In March 2004, several contracts were executed by TRANSCO for the development of the WESM MMS (collectively, the “MMS Contracts”), to wit:

- a. Contract with ABB, Inc. Network Management Unit (ABB) for the Turnkey Implementation for WESM MMS; and
- b. Contract with the Marketplace Company Pty Limited (M-Co) for the Project Management Consultant for the WESM.
- c. Contract with PA Consulting Group Limited for the Service Agreement for Independent Auditor.

In May 2004, PEMC, DOE and TRANSCO entered into an Operating Agreement wherein TRANSCO committed to allocate resources to cover operational and capital expenses necessary for the operation and administration of the WESM, and to procure, develop, and establish the infrastructure for the MMS, subject to reasonable recovery arrangements.

On 12 October 2004, PEMC and TRANSCO executed a Memorandum of Agreement (MOA dated 12 October 2004), which provides for the mechanism for the transfer of the market operations functions from TRANSCO to PEMC.

Under the MOA dated 12 October 2004, PEMC was designated as the Project Contract Administrator for the MMS Contracts. As Project Contract Administrator, PEMC was authorized to direct the activities of the contractors, monitor and evaluate their performance, issue certifications as provided under the contracts, and appoint a project manager.

On the other hand, TRANSCO remained as the Project Executing Agency, tasked to facilitate the disbursement of the proceeds of the Loan Agreements, and to continue to process all the payments related to the MMS Contracts until completion.

In 2005, PEMC and M-Co executed a Service Agreement with PA Consulting Group Limited (PA). The Service Agreement covered the engagement of PA as independent auditor to certify compliance of the formulation of the Market Dispatch Optimization Model (MDOM) of the MMS with the WESM Rules.

II. MMS PROJECT

a. Sources of Funds

The funds obtained by NPC for the MMS Project includes the following:

- 1) ADB Loan for the Power Sector Restructuring Program (PSRP), and JBIC Loan for the Electricity Market Transmission Development Project (EMTDP). The corresponding loan with ADB and JBIC is shown in the table below:

	ADB 1984 (US\$)	JBIC(Japanese Yen)
Loan Amount	40,000,000.00	5,000,000,000.00
Cancelled Amount	4,409,114.59	1,766,778,966.00
Total Amount Disbursed	35,590,885.41	3,233,221,034.00
WESM Share	1,065,231.82	1,031,878,164.22
WESM Percentage Share	2.99%	31.91%

- 2) Disbursements from the Internal Cash Generation (ICG) of TRANSCO to cover the equity counterpart for the ADB Loan and JBIC Loan, which were contributed by TRANSCO pursuant to the terms and conditions of the Loan Agreements.

- 3) Other borrowing costs advanced by TRANSCO for the other fees *i.e.*, front-end fees, guaranty fees and commitment fees.

b. MMS Project Cost Component

The MMS Project Cost includes the following components:

1. **Contract Costs** which refers to the payments made to ABB and M-Co under the MMS Contracts and the Service Agreement with PA.

The Contract Costs also cover the procurement and development of software and hardware that make up the MMS, the project management services that supported the establishment of the WESM and the MMS, and the independent audit of the MDOM;

2. **Borrowing Costs** refer to the funds used to finance the MMS Project that were sourced through borrowings and cash advances.

It includes the expenses advanced by TRANSCO in administering the Loan Agreements, such as the equity counterpart required by the Loan Agreements, front-end fees, interest charges, and foreign exchange transaction costs;

3. **Maintenance Costs** refer to the development and procurement of additional supporting software and hardware including hardware and software upgrades, enhancements and replacements.

III. MMS LOAN

Pursuant to Section 49 of Republic Act No. 9136, *otherwise known as*, the Electric Power Industry Reform Act of 2001 (EPIRA), all outstanding obligations of NPC arising from loans, issuances of bonds, securities and other instruments of indebtedness shall be transferred to and assumed by Power Sector Assets and Liabilities Management Corporation (PSALM). In view thereof, PSALM has assumed NPC's obligations under the debt servicing on the Loan Agreements.

Accordingly, the MMS Loan was transferred to PSALM. On 01 June 2012, PEMC, PSALM, NPC, and TRANSCO entered into a Memorandum of Agreement (MOA) covering the repayment of the MMS Loan and the transfer of ownership of the MMS to PEMC, consistent with the Commission's Decision dated 22 June 2006 in ERC Case No. 2005-048 RC¹⁶, and the Order dated 28 September 2009 in ERC Case No. 2008-50 RC¹⁷.

Under the MOA, PEMC, PSALM, NPC, and TRANSCO agreed on the following terms and conditions, among others:

1. PEMC shall pay PSALM the amount of PhP863,341,185.60 representing the principal amount of advances for the MMS Project, with interest at the rate of twelve percent (12%) per annum;
2. The MMS Loan shall be payable in three (3) years in accordance with the Loan Repayment Schedule attached to the Application;
3. The principal shall be paid in equal monthly installments of PhP20,237,721.00 from month 1 to month 35 and the remainder on month 36.
4. The interest, payable monthly, is based on the outstanding balance of the MMS Loan.
5. PEMC shall deliver to PSALM promissory notes or such other instruments and documents evidencing its obligation to repay the amount upon approval of the cost recovery scheme by the Commission;
6. The counter-parties NPC, PSALM and TRANSCO shall transfer to PEMC all their rights, title, authorities and privileges over the MMS, including all hardware, software, warranties, licenses and maintenance agreements secured for such system;
7. PEMC's failure to pay any amount due and payable to PSALM for a period of five (5) days from due date, shall be considered a payment default;
8. In case of default, the unpaid amount shall bear interest at the rate of twelve percent (12%) per annum.
9. PEMC's failure to timely pay any amount due by reason of insufficient collection of market fees or market failure through no fault or negligence on its part shall not be considered as payment default.

¹⁶ In the Matter of the Application for the Approval of the Structure and Level of Market Fees for the Philippine Wholesale Electricity Spot Market- PEMC, Applicant.

¹⁷ In the Matter of the Application for the Approval of the Level of Market Transaction Fees for Calendar Years 2009-2011 of the Philippine Wholesale Electricity Spot Market- PEMC, Applicant.

10. In case of insufficient collection of market fees, it shall have a grace period of thirty (30) days from the due date or until the due date of the next billing period, whichever is later, within which to effect payment.
11. At the expiration of the grace period, any unpaid amount attributable to such insufficient collection shall bear the default interest as prescribed under the WESM Rules reckoned from the day on which said amount first became due.
12. All taxes, duties or other fiscal charges which may be due in relation to the execution of the Agreement, any promissory note and/or any other related document shall be for its account.
13. PEMC may at any time prepay all or any portion of the principal or interest owing under the MOA without penalty.
14. The Principal Terms of the MMS Loan Repayment shall be as follows:

MMS Loan Repayment Principal Terms

Particulars	Values
Principal	PhP728,557,962.00
Interest Rate	12% per annum (p.a.) fixed rate
Repayment	36 monthly instalments
Penalty for Default	12% p.a. on the unpaid amount
Taxes	For the account of PEMC

MMS Loan Repayment Principal Loan

Based on the MOA, the MMS Loan Repayment for the principal amount is PhP728,557,961.58, broken down as follows:

MMS Loan Principal Amount

Particulars	Amount (in Million PhP)
Payments as per contracts	587.267
Interest during construction	62.359
Commitment Fees/Interest	45.693
Front End Fees	0.495
Guarantee Fees	32.744
Total	728.558

In a Letter dated 03 October 2014 by PSALM to PEMC, PSALM stressed that the principal amount of PhP728,557,961.58 only covers the advances by NPC/PSALM for the MMS cost, interest during construction, and other charges for the MMS portions of the ADB Loan and JBIC Loan from 17 May 2005 up to 15 October 2010. On the other hand, the principal amount is exclusive of the debt service advances from 15 October 2010 up to their maturity dates.

b. MMS Loan Repayment and PSALM's 12% Fixed Annual Interest

Under the MOA, the repayment of MMS Loan by PEMC to PSALM shall be made within a period of three (3) years in thirty six (36) monthly instalments, subject to a fixed annual interest rate of 12%, as shown in the table below:

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MMS Loan Repayment Principal Terms

Principal (in Million PhP)		728.558							
Interest & Charges		134.783							
Total Amortization		863.341							
Mo.	Year 1 (in Mn PhP)			Year 2 (in Mn PhP)			Year 3 (in Mn PhP)		
	Principal (P)	Interest (I)	Total	(P)	(I)	Total	(P)	(I)	Total
Jan	20.238	7.286	27.524	20.238	4.857	25.095	20.238	2.429	22.667
Feb	20.238	7.083	27.321	20.238	4.655	24.893	20.238	2.226	22.464
Mar	20.238	6.881	27.119	20.238	4.452	24.690	20.238	2.024	22.262
Apr	20.238	6.678	26.916	20.238	4.250	24.488	20.238	1.821	22.059
May	20.238	6.476	26.714	20.238	4.048	24.286	20.238	1.619	21.857
Jun	20.238	6.274	26.512	20.238	3.845	24.083	20.238	1.417	21.655
Jul	20.238	6.071	26.309	20.238	3.643	23.881	20.238	1.214	21.452
Aug	20.238	5.869	26.107	20.238	3.440	23.678	20.238	1.012	21.250
Sep	20.238	5.667	25.905	20.238	3.238	23.476	20.238	0.810	21.048
Oct	20.238	5.464	25.702	20.238	3.036	23.274	20.238	0.607	20.845
Nov	20.238	5.262	25.500	20.238	2.833	23.071	20.238	0.405	20.643
Dec	20.238	5.059	25.297	20.238	2.631	22.869	20.238	0.202	20.440
Total	242.853	74.070	316.923	242.853	44.928	287.781	242.853	15.786	258.639

PSALM submitted that it secured financing from 2004 to 2010 to cover the debt servicing of the MMS portions of the loans. From 2004 to 2010, the prevailing Philippine Dealing System Treasury Fixing (PDSTF) rates were as follows: 13.9% (2004), 10.2% (2005), 6.3% (2006), 6.6% (2007), 7.4% (2008), 8.1% (2009), and 6.1% (2010).

According to PSALM, from the cut-off date of 15 October 2010 up to the maturity date of the MMS Loans, PSALM is expected to incur an estimated additional cost of PhP91,113,782.15 for the MMS Loan, broken down as follows:

PSALM Estimated Additional Cost

Estimates Additional Cost	Amount (PhP)*
Cost of advances on debt service – principal and interest	27,452,278.99
Debt service (14 April 2011 to 15 April 2014)**	40,262,975.76
Estimated interest on ADB Loan (15 Oct 2014 to 15 Oct 2022)	1,948,661.29
Guarantee Fee (2011 to 2022)	21,449,866.11
Total	91,113,782.15
Principal Amount	728,557,961.58
% over Principal and other charges	12.51%

*1US\$/PhP43.712

**JBIC loan was fully paid on 15 April 2014.

Further, according to PSALM, the PhP91,113,782.15 estimated additional cost was the basis of the imposition of the fixed annual interest rate of 12%, which is expected to be recovered through the MMS Loan repayment.

Moreover, PSALM stated that the 12% interest rate was also the same interest rate charged by TRANSCO to its advances to PEMC under the MOA. The same interest rate was also applied and approved by the Commission in relation to PEMC's application for market fees to recover the repayment of its advances to TRANSCO.

The Commission notes that the MMS Loan was already prepaid by PSALM. The JBIC Loan was fully paid on 15 April 2014 while the ADB loan was fully paid on 10 October 2015. Thus, the calculation of the estimated additional costs pertaining to the interest on the ADB Loan and the Guarantee Fees should accordingly be adjusted. Therefore, the estimated interest on the ADB Loan and the Guarantee Fees for the period from 16 October 2015 to 15 October 2022 must be excluded in the computation thereof based on the table above.

Further, the Commission notes that the interest rates applied by PSALM to the advances it incurred for the payment of the MMS Loan, inclusive of the principal and interest, were equal to the prevailing PDSTF rates in the year when the amortization was actually paid by PSALM. To determine the reasonableness of the proposed 12% annual interest level, the Commission compared the same to the submitted PDSTF rates prevailing during the covered period, to wit:

PDST-F Rates

Date	PDST-F Rates
31 December 2004	13.8667
31 December 2005	10.1925
31 December 2006	6.3804
31 December 2007	6.5827
31 December 2008	7.4365
31 December 2009	8.1115
31 December 2010	6.1000
31 December 2011	5.4135
31 December 2012	4.4000
31 December 2013	3.8038
31 December 2014	4.3705
31 December 2015	4.1000
Average	6.7298

It can be gleaned from the above table that the average PDSTF rates is only 6.73%, which is lower than the 12% fixed annual interest rate proposed by PSALM.

To further determine the reasonableness of the fixed annual interest rate of 12% imposed by PSALM, the Commission likewise compared the same to the average historical banking lending rates in the Philippines of commercial banks engaged in the financing and lending business for the past five (5) years based on Bangko Sentral ng Pilipinas (BSP)¹⁹ data, to wit:

Average Lending Rates in Philippines Based on BSP Data²⁰

Year	Average Lending Rates
2009	8.54
2010	7.67
2011	6.63
2012	5.65
2013	5.76
Average	6.85

As shown in the table below, the average lending rate in the Philippines for the past five (5) years is only 6.85%, which is also lower than the 12% annual interest proposed by PSALM.

In view of the foregoing, the Commission finds that the 12% fixed annual interest rate proposed by PSALM to be imposed on the MMS Loan principal amount to be unreasonable. The applicable interest rate, if any, should be equivalent only to the interest rate and other charges applicable to the loan actually obtained by PSALM for the purpose of the MMS Loan prepayments.

Further, based on the records, the total actual costs incurred by PSALM relative to the MMS project, after prepayment, amounts to P816,585,077.95, inclusive of the principal, interests and all other related charges. Considering that the loans are already prepaid by PSALM, the Commission finds it appropriate that the total amount to be recovered shall correspond to the total actual costs incurred by PSALM.

¹⁹ http://www.bsp.gov.ph/statistics/spei_pub/Table%2019.pdf as of on 08 June 2017.

²⁰ Ibid.

c. Bank Refinancing of the MMS Loan

Under the MOA, there is an option to prepay the existing debt with PSALM without penalty. Accordingly, PEMC had approached several commercial banks to refinance the MMS Loan and to secure more favorable interest rates. However, out of the seven (7) commercial banks invited by PEMC, only one signified its intention to refinance the MMS loan with PSALM.

On 26 July 2012, the PEMC Board of Directors approved the terms of the Syndicated Term Loan Facility offered by the commercial bank, which signified its intention. The proposed Syndicated Term Loan Facility covers up to PhP800 Million with an interest rate of 7.75% fixed per annum. It includes a structuring fee of one percent (1%), and an arrangement fee of one percent (1%) on the total loan facility amount. The loan has a three (3) year-term payable in thirty-six (36) equal monthly principal installments with the first (1st) installment commencing on the third (3rd) month from the signing date.

PEMC submitted that based on the terms provided by the commercial bank, the total amount payable shall be PhP843.477 Million, inclusive of interest and charges. Thus, the same resulted to a saving of about PhP19.864 Million. On the other hand, the total amount payable, inclusive of interest and charges, to PSALM under the MOA is PhP863.341 Million, to wit:

Amortization under PSALM vis-à-vis Bank Refinancing

MMS Loan	PSALM	Bank	Savings
Principal	728.558	728.558	-
Interest and Charges	134.783	114.919	19.864
Total Amortization (in Million PhP)	863.341	843.477	19.864

The above table shows that it would be beneficial to refinance the MMS loan with a commercial bank as it would yield lower interest rate resulting to a saving of PhP19.864 Million. PEMC further submitted that the interest rates imposed by commercial banks in the beginning of the year continue to pose an attractive outlook, thus, PEMC may renew exploratory talks with banks for lower rates instead of the 7.75% interest per annum submitted to the Commission.

While bank refinancing may appear to be the better option, the Commission was cognizant that the terms and conditions negotiated by PEMC with a commercial bank for 7.75% interest rate occurred sometime in the first half of Calendar Year (CY) 2012. Thus, in order to establish as to whether bank refinancing still remains to be a good option to date, the Commission referred the same to the current prevailing bank lending rates based on the BSP²³ data, to wit:

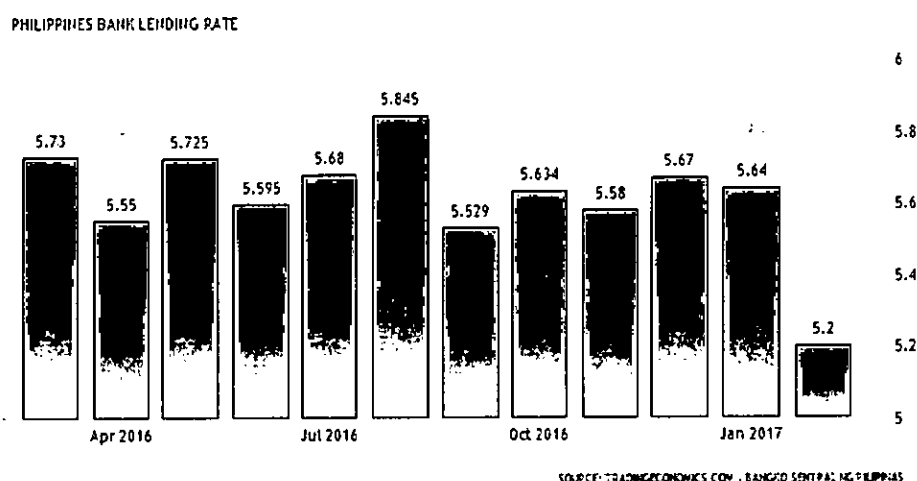
Philippine Bank Lending Rates

Bank Lending Rates	Calendar Year (CY)						
	2010	2011	2012	2013	2014	2015	2016
High	9.25	8.70	7.75	7.84	6.93	6.80	6.67
Low	7.31	6.55	5.62	5.56	4.60	4.38	4.47
Average	8.54	7.67	6.63	5.65	5.76	5.53	5.64

Based on the table above, it would show that the proposed 7.75% interest rate of the commercial bank to PEMC in 2012 was higher compared to the 7.67% reported average interest rates of bank lending rates in 2011. On the other hand, the proposed 7.75% interest rate is equal to the recorded bank lending rates-high in 2012.

It is worthwhile to note that while the instant *Application* was filed on 12 August 2012, the table above would show that the trend of the bank lending rates according to the BSP statistical data for the CY 2010 to CY 2016 is on a downward trend.

Further, the same downward trend is consistent as to this date as shown the graph below²⁴:



²³ http://www.bsp.gov.ph/statistics/spei_pub/Table%2019.pdf as of 08 June 2017

²⁴ <https://tradingeconomics.com/philippines/bank-lending-rate> as of 08 June 2017

The proposed 7.75% interest rate of commercial bank to PEMC would still be comparable and may still be lower than the prevailing bank lending rates to date. The terms in refinancing the MMS loan through a Syndicated Term Loan Facility Agreement would in fact result in a saving of at least PhP19.864 Million.

Thus, the grant of authority for PEMC to secure a loan for the repayment of the MMS Loan as advanced by PSALM would help facilitate the immediate approval of refinancing the MMS Loan. Likewise, the authority granted to PEMC may even be a consideration for PEMC to be able to negotiate a much lower interest rate with a commercial bank given the guaranteed recovery.

**IV. ADDITIONAL MARKET
FEE (AMF)
ALLOCATION FOR
LUZON AND VISAYAS
REGIONS**

The total AMF for the repayment of the MMS loan shall be recovered over a period of three (3) years from the Luzon and Visayas participants.

Considering that the Visayas WESM commenced commercial operations only in 26 December 2010, it should be fair and appropriate that the allocation of the AMF for the repayment of the MMS Loan shall be computed based on the utilization of the MMS of the Luzon and Visayas regions in terms of the number of years.

Accordingly, the Luzon region shall bear the MMS cost corresponding to the first 4.5 years of the MMS life while only the cost pertaining to the remainder 6.5 years shall be allocated to both Luzon and Visayas regions.

Shown below is the Cost Allocation Ratio based on years of MMS utilization:

Period Covered	Number of years	Ratio of Allocation	Allocated to
June 2006-Dec 2010	4.5	41%	Luzon
Dec 2010-June 2017	6.5	59%	Luzon and Visayas

Based on the above allocation, only 41% of the total MMS Loan shall be charged to the Luzon region through the corresponding AMF rate computed, while the remaining 59% of the MMS loan shall be

allocated between the Luzon and Visayas regions. Thus, the corresponding annual budget for the MMS Loan repayment for Luzon and Visayas Regions are as follows, to wit:

Annual Budget for the MMS Loan Repayment

Particulars	Calendar Year		
	2018	2019	2020
Luzon (41%)	129.71	122.23	121.48
Luzon and Visayas (59%)	187.36	176.55	175.42
Total Annual Budget (in Million PhP)	317.07	298.78	296.95

In order to determine the indicative PhP/kWh AMF, the Commission referred to the PEMC forecasted energy²⁵ for the next three (3) years covering the CYs 2018, 2019 and 2020. The table below shows the indicative allocation of the AMF between Luzon and Visayas, in PhP/kWh.

Indicative Additional Market Fee (AMF)

Particulars (a)	CY 2018 (Year 1)				
	Ratio (b)	MMS Loan PhP Million (c)	Volume (MQ) (d)	Luzon PhP/kWh e=(c/d)	Visayas PhP/kWh f=(c/d)
Luzon	41%	129.71	66,979.10	0.0019	
Luzon & Visayas	59%	187.36	78,354.70	0.0024	0.0024
Indicative AMF for MMS Loan Repayment		317.07		0.0043	0.0024
Particulars (a)	CY 2019 (Year 2)				
	Ratio (b)	MMS Loan PhP Million (c)	Volume (MQ) (d)	Luzon PhP/kWh e=(c/d)	Visayas PhP/kWh f=(c/d)
Luzon	41%	122.23	70,013.20	0.0017	
Luzon & Visayas	59%	176.55	1,962.20	0.0022	0.0022
Indicative AMF for MMS Loan Repayment		298.78		0.0039	0.0021
Particulars (a)	CY 2020 (Year 3)				
	Ratio (b)	MMS Loan PhP Million (c)	Volume (MQ) (d)	Luzon PhP/kWh e=(c/d)	Visayas PhP/kWh f=(c/d)
Luzon	41%	121.48	3,184.80	0.0017	
Luzon & Visayas	59%	175.42	5,736.00	0.0020	0.0020
Indicative AMF for MMS Loan Repayment		296.95		0.0037	0.0020

²⁵ PEMC 2017-2020 Forecast Summary dated 12 January 2017

In the first (1st) year of recovery of the total MMS Loan amortization in the amount PhP317.07 Million, 41 % of which, or an equivalent of PhP129.71 Million shall be chargeable in full to the Luzon participants. On the other hand, the remaining 59%, or an equivalent of PhP187.36 Million shall be allocated between the Luzon and Visayas participants based on their actual Metered Quantities (MQ). Thus, the total indicative AMF rate for the MMS Loan repayment to be billed to the Luzon participants is PhPo.0043/kWh while for that of the participants in the Visayas region is PhPo.0024/kWh.

The same method of computation for the allocation of the indicative AMF rate for CYs 2019 and 2020 are shown in the table above.

WHEREFORE, the foregoing premises considered, the *Application* filed by Philippine Electricity Market Corporation (PEMC) for the approval of the Additional Market Transaction Fees (AMF) for the repayment of the Market Management System (MMS) Loan for the Philippine Wholesale Electricity Spot Market (WESM) in the amount of **Eight Hundred Sixteen Thousand Eight Hundred Fifty Eight Thousand Seventy Seven Pesos and Ninety Five Centavos (PhP816,858,077.95)** is hereby **APPROVED**, subject to the following conditions:

1. PEMC is hereby granted an authority to enter into a Facility Agreement with a commercial bank for a reasonable interest rate to refinance the MMS Loan repayment.
2. PEMC is hereby directed to exert its best efforts to negotiate for a reasonable interest rate with a commercial bank and execute therewith the necessary Facility Agreement to refinance the MMS Loan within three (3) months from receipt hereof;
3. PEMC is hereby authorized to recover the refinanced MMS Loan under a duly executed Facility Agreement through the imposition of an Additional Market Fees (AMF) to be collected from the Luzon and Visayas participants over a period of three (3) years;
4. PEMC is hereby directed to allocate the annual cost of the refinanced MMS Loan to Luzon and Visayas participants based on their respective utilization of the MMS, and collect the corresponding monthly AMF rate in the next billing period following the receipt hereof; and

5. PEMC is hereby directed to submit to the Commission a copy of the duly executed Facility Agreement, including an executive summary of its salient features, within thirty (30) days from date of the execution thereof.

SO ORDERED.

Pasig City, 31 August 2017.

JOSE VICENTE B. SALAZAR*
Chairman & CEO


ALFREDO J. NON
Commissioner


GLORIA VICTORIA C. YAP-TARUC
Commissioner


JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Commissioner


GERONIMO D. STA. ANA
Commissioner

MOS: DBB/JJM/DATL
LS: MLMG/LSI/APV

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*26 The Chairman was suspended as per Decision of the Office of the President (OP-DC Case No. 17-D- 094) dated 02 August 2017.

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