

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 YEAR 2018 FOR
THE PHILIPPINE
WHOLESALE ELECTRICITY
SPOT MARKET (WESM),**

ERC Case No. 2017-095 RC

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

Applicant,

X-----X

D O C K E T E D

Date: **APR 03 2018**

By: _____

ORDER

On 20 October 2017, the Philippine Electricity Market Corporation (PEMC) filed an *Application* dated 12 October 2017 seeking the Commission's approval of the structure and level of market fees for the Calendar Year 2018 for the Philippine Wholesale Electricity Spot Market (WESM).

PEMC alleged the following in its *Application*:

1. PEMC is a non-stock, non-profit corporation duly organized and existing in accordance with Philippine laws, with principal office at the 18th Floor Robinsons-Equitable Tower, ADB Avenue corner Poveda Street, Ortigas Center, Pasig City. Applicant is represented herein by its CEO and Chairman of the Transition Committee, Atty. Oscar E. Ala, who is duly authorized by PEMC's Board of Directors, as evidenced by the Secretary's Certificate attached hereto as Annex "A" and made an integral part 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

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*charge imposed [to] all members: Provided.
That such charge shall be filed with and
approved by the ERC.”¹*

3. In the Decision dated 30 January 2008 in PEMC's CY 2007 Market Fees (MF) Application², 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”;
4. On 30 June 2017, PEMC filed its Motion for Extension of Time to file its application for market fees for the years 2018-2020, considering that it has yet to obtain approval of the same from the PEM Board. On 31 July 2017, PEMC filed its Second Motion for Extension of Time requesting for additional period within which to file its application on the ground that the PEM Board deferred discussion on, among others, the budget proposal during its 28 July 2017 meeting. Similarly, on 30 August 2017, PEMC filed another Motion for Extension of Time within which to file its application, citing the fact that during its meeting on 1 August 2017, the PEM Board agenda was limited to organizational issues;
5. On 18 September 2017, the PEM Board deliberated on and approved PEMC's proposed budget for the calendar year 2018 and authorized the CEO and Chairman of the Transition Committee to file said application in behalf of PEMC. However, PEMC needed more time to prepare and finalize its Application, as well as comply with the pre-filing requirements. Thus on 28 September 2017, PEMC prayed for an additional period of fifteen (15) days, or until 15 October 2017 within which to file the instant Application;
6. This Application is thus filed within the reglementary period requested.

FACTUAL ANTECEDENTS

7. The Applicant first filed its Application³ for approval of the structure and level of the market fees in WESM in 2005.
8. In its Application, the Applicant proposed a dual structure market fees comprised of the following categories
 - a. **Market Registration Fees** to cover the expenses for registering WESM members; and
 - b. **Market Transaction Fees** to cover the budgetary requirements of PEMC in operating and governing the market.
9. Acting on the Application, the Honorable Commission approved the level and structure of the market fees in its

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

² ERC Case No. 2007-124 RC

³ ERC Case No. 2005-048 RC

Decision dated 22 June 2006 (hereafter the "2006 Decision") as follows:

- a. The Market Registration Fees to be imposed upon all the WESM participants, equivalent to a Fixed Fee Rate of Php 50,000.00 and variable costs representing the additional registration expenses of the market participants; and
 - b. The Market Transaction Fees, to be levied upon the generators registered with the WESM in the Total amount of Php433,624,276.00 to cover the budgetary requirements for CY 2006.⁴
10. In the same case, the Honorable Commission ruled that the total amount of Market Transaction Fees shall be apportioned among the generators according to the volume traded by each using the following formula:

$$\text{Rate} = \frac{\text{Total Annual Market Transaction Fees (PhD)}}{12 \times \text{Total Generation Metered Quantity for the Month (kWh)}} \\ = P/\text{kWh}$$

11. For the subsequent calendar year, CY 2007, the Applicant adopted the level of the previously approved Market Registration Fee (MRF) and sought approval⁵ of the new level of Market Transaction Fee (MTF) in view of the increase in its budgetary requirement.
12. In the Decision dated 30 January 2008 and docketed on 20 February 2008 (hereafter the 2008 Decision), the Honorable Commission:
 - a. suspended the yearly collection of the MRF;
 - b. extended the approved 2006 budgetary requirements for the MTF for the year 2007 since there was no approval made for the year 2007;
 - c. applied the approved budget for CY 2007 for the 2008 budgetary requirements of the Applicant.
 - d. directed the filing of PEMC's Application every first working day of July⁶.
13. Thereafter, the Applicant filed its application for approval of the level of the MTF for the Calendar Years (CY) 2009-2011⁷, CY 2010-2011⁸, 2012⁹, 2013¹⁰, 2014¹¹, 2015¹², 2016-2017¹³;

⁴ ERC Case No. 2005-048 RC, Decision dated 22 June 2006, pp. 55-56.

⁵ ERC Case No. 2007-124 RC

⁶ Id, at p. 37, 39.

⁷ ERC Case No. 2008-050 RC; The Honorable Commission allowed a single fixed rate of PhP 0.0144/kWh as the market transaction fees for calendar year 2009.

⁸ ERC Case No.2010-079 RC

**APPLICATION PROPOSED MARKET FEE
FOR THE YEAR 2018 FOR LUZON, VISAYAS, AND
MINDANAO**

14. The factual allegations set forth above are re-pleaded in support of this second application;
15. The Department of Energy instructed PEMC to prepare for the operation of WESM in Mindanao in light of the projected overcapacity that Mindanao will experience in the first quarter of the year 2016;
16. In view of this, PEMC incorporated in its budget the cost of the preparations and initial operations of the WESM in Mindanao for the year 2018. Attached and made an integral part hereof is the resolution of the PEM Board approving the budget for 2018. The approved budget includes funding requirements to support WESM Mindanao preparations and initial operation;
17. The market fee applied for equals the funding requirements of PEMC for CY 2018, as approved by the PEM Board, in the amount of **EIGHT HUNDRED TWENTY TWO MILLION TWO HUNDRED EIGHT THOUSAND PESOS (P822,208,000.00)** broken down as follows:

| Budget Component | Amount |
|-------------------------|----------------|
| PS | 359.508 |
| MOOE | 392.708 |
| CAPEX | 69.992 |
| TOTAL | 822.208 |

Table 1-CY Budgetary Requirements, in PhPM

18. Personnel Services (PS) pertain to the salaries and benefits of 160 employees in Luzon and Visayas;
19. Maintenance and Other Operating Expenses (MODE) include, among others, honorarium, rent, utilities, repairs and maintenance, contracted services, insurance, training, travel and transportation, participant development costs, and the costs of the market audit required under the WESM Rules;
20. Capital Expenditures (CAPEX) consist of enhancements and upgrades to the Market Management System (MMS) and corporate infrastructure, and the cost of lease improvements;
21. A discussion of the specific budgetary allocations falling within the foregoing cost components and their

⁹ ERC Case No. 2011-111 RC
¹⁰ ERC Case No. 2012-084 RC
¹¹ ERC Case No. 2013-137 RC
¹² ERC Case No. 2014-092 RC
¹³ ERC Case No. 2015-160 RC



justifications is attached as **Annex "B"** and is made an integral parts of this Application;

22. The amounts proposed by PEMC 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;
23. This Application does not include the following:
 - a) Provision for the payment of the cost of the Market Management System (MMS). PEMC filed on 14 August 2012, a separate application for the approval of additional MF for the payment of the cost of procurement of the MMS, pursuant to the terms of the Memorandum of Agreement among the National Power Corporation (NPC), National Transmission Corporation (TransCo), Power Sector Assets and Liabilities Management Corporation (PSALM) and PEMC. The Application is pending resolution by the Honorable Commission;¹⁴ and
 - b) Provision for the New MMS (NMMS) Project. On 1 July 2013, the Honorable Commission authorized collection of additional MFs to fund the cost of the NMMS. These MFs are collected over a period of three (3) years in addition to the prevailing MF rate;¹⁵
24. Pursuant to the approvals of the Honorable Commission, the Market Fee Rate shall be apportioned among generators where the WESM operates, according to the volume traded by each in the WESM, as follows:

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

25. Based on initial indicative figures, the estimated Market Fee Rate is P0.0104/kWh;
26. The indicative market fee rate is based on the Luzon and Visayas energy forecast of 79,262.97GWh. The energy forecast is attached as **Annex "C"** and is made an integral part of this Application;
27. It should be noted, however, that the market fee shall be recovered from Luzon and Visayas generators pending the commencement of commercial operations of WESM in Mindanao. This is consistent with the pronouncement of the Honorable Commission in its Order dated 11 July 2017 in ERC Case No. 2015-160 RC, thus:

¹⁴ ERC Case No. 2012-097 RC.

¹⁵ 1 July 2013 Decision, ERC Case No. 2011-127 RC.

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“ 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.

28. Should the Honorable Commission approve PEMC’s Applications for the approval of the pricing and cost recovery mechanism for reserves to be traded in the WESM,¹⁶ the MF shall be apportioned among generators as follows:

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

PRAYER

WHEREFORE, premises considered, it is most respectfully prayed of this Honorable Commission to give due course to the Application and accordingly render judgment APPROVING the proposed Market Fees for CY 2018 in the amount of **EIGHT HUNDRED TWENTY TWO MILLION TWO HUNDRED EIGHT THOUSAND PESOS (P822,208,000.00)** without prejudice to the resolution of PEMC’s MMS Loan Repayment Application.

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

¹⁶ ERC Case No. 2007-004 RC, and subsequently, in ERC Case No. 2017-042, Application for Approval of the price Determination Methodology for the Wholesale Electricity Spot Market (WESM). The latter includes application for approval of the pricing and cost recovery mechanism for reserves.



Finding the said *Application* sufficient in substance with the required fees having been paid, the same is hereby set for hearing on the following dates:

| Date and Time | Venue | Purpose |
|--|---|--|
| 24 April 2018 (Tuesday) Ten o'clock in the morning (10:00 A.M.) | ERC Hearing Room, 15 th Floor Pacific Center Building, San Miguel Avenue, Ortigas Center, Pasig City | Determination of compliance of Jurisdictional Requirements. |
| 02 May 2018 (Wednesday) Ten o'clock in the morning (10:00 A.M.) | Visayas Field Office, St. Mary's Drive, Banilad, Cebu City | Expository Presentation. |
| 10 May 2018 (Thursday) Ten o'clock in the morning (10:00 A.M.) | ERC Hearing Room, 15 th Floor Pacific Center Building, San Miguel Avenue, Ortigas Center, Pasig City | Pre-Trial Conference and Presentation of Evidence. |

Accordingly, Applicant PEMC is hereby directed to:

- 1) Cause the publication of the attached Notice of Public Hearing in two (2) newspapers of nationwide circulation in the Philippines at its own expense, twice (2x) for two (2) successive weeks, the dates of publication not being less than seven (7) days apart and the date of the last publication to be made not later than ten (10) days before the date of the scheduled initial hearing;
- 2) Furnish with copies of this Order and the attached Notice of Public Hearing the Offices of the the City Mayor and the Local Government Unit (LGU) legislative body of Pasig City for the appropriate posting thereof on their respective bulletin boards;
- 3) Inform of the filing of the *Application*, its reasons therefor, and of the scheduled hearing thereon, the consumers within the affected area, by any other means available and appropriate;

- 4) Furnish with copies of this Order and the attached Notice of Public Hearing, the Office of the Solicitor General (OSG), the Commission on Audit (COA), and the Committees on Energy of both Houses of Congress. They are hereby requested, if they so desire to send their duly authorized representatives at the scheduled hearing; and
- 5) Furnish with copies of the *Application* and its attachments all those making requests therefor, subject to reimbursement of reasonable photocopying costs.

On the date of the initial hearing, Applicant PEMC must submit to the Commission its written compliance with the aforementioned jurisdictional requirements attaching therewith, methodically arranged and duly marked the following:

- 1) The evidence of publication of the attached Notice of Public Hearing consisting of affidavits of the Editors or Business Managers of the newspapers where the said Notice of Public Hearing was published, and the complete issues of the said newspapers;
- 2) The evidence of actual posting of this Order and the attached Notice of Public Hearing consisting of certifications issued to that effect, signed by the aforementioned Mayor and LGU legislative body or their duly authorized representatives, bearing the seals of their offices;
- 3) The evidence of other means employed by Applicant to inform of the filing of the *Application*, its reasons therefore, and of the scheduled hearing thereon, the consumers within the affected franchise area;
- 4) The evidence of receipt of copies of this Order and the attached Notice of Public Hearing by the Office of the Solicitor General (OSG), the Commission on Audit (COA), and the Committees on Energy of both Houses of Congress;
- 5) The evidence of receipt of copies of the *Application* and its attachments by all those making requests therefor, if any; and

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- 6) Such other proofs of compliance with the requirements of the Commission.

Applicant and all interested parties are directed to submit, at least five (5) days before the date of initial hearing and Pre-Trial Conference, their respective Pre-trial Briefs containing, among others:

- a. A summary of admitted facts and proposed stipulation of facts;
- b. The issues to be tried or resolved;
- c. The documents or exhibits to be presented, stating the purposes and proposed markings therefore; and
- d. The number and names of the witnesses, with their written testimonies in a Judicial Affidavit form attached to the Pre-trial Brief.

Failure of Applicant to comply with the above-requirements within the prescribed period shall be a ground for cancellation of the scheduled hearing, and the resetting of which shall be six (6) months from said date of cancellation.

Applicant must also be prepared to make an expository presentation of its *Application*, aided by whatever communication medium that it may deem appropriate for the purpose, in order to put in plain words and explain, for the benefit of the consumers and other concerned parties, what the *Application* is all about and the reasons and justifications being cited in support thereof.

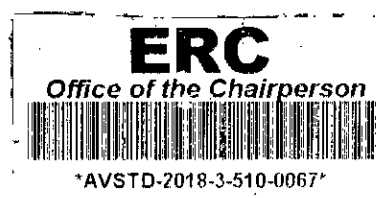
SO ORDERED.

Pasig City, 09 March 2018.

FOR AND BY AUTHORITY
OF THE COMMISSION:


AGNES VST DEVANADERA
Chairperson and CEO

KJP/LSP/APV



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Copy Furnished

1. Atty. Criselda S. Martin-Funelas
Atty. Caryl Miriam Y. Lopez
Counsel for PEMC
18th Floor, Robinsons-Equitable Tower
ADB Avenue corner Poveda Street, Pasig City
2. Office of the Solicitor General (OSG)
134 Amorsolo Street, Legaspi Village
Makati City, Metro Manila
3. Commission on Audit (COA)
Commonwealth Avenue
Quezon City, Metro Manila
4. Senate Committee on Energy
GSIS Bldg. Roxas Blvd., Pasay City
Metro Manila
5. House of Representatives Committee on Energy
Batasan Hills, Quezon City, Metro Manila
6. Office of the President
Philippine Chamber of Commerce and Industry (PCCI)
3rd Floor, Chamber and Industry Plaza (CIP)
1030 Campus Avenue corner Park Avenue
McKinley Town Center, Fort Bonifacio, Taguig City
7. Office of the City Mayor
Pasig City
8. Sangguniang Panglungsod
Pasig City
9. MOS-SMD
Energy Regulatory Commission
12/F Pacific Center, San Miguel Avenue
Ortigas Center, Pasig City
10. Manila Electric Company (Intervenor)
7th Floor, Lopez Building,
Ortigas Avenue, Barangay Ugong, Pasig City

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