

Republic of the Philippines  
**ENERGY REGULATORY COMMISSION**  
Pasig City



**IN THE MATTER OF THE  
APPLICATION FOR THE  
APPROVAL OF PRICING  
AMENDMENTS TO THE  
ADMINISTERED PRICE  
DETERMINATION  
METHODOLOGY FOR THE  
PHILIPPINE WHOLESALE  
ELECTRICITY SPOT  
MARKET (WESM)**

**ERC Case No. 2015-163 RC**

**PHILIPPINE ELECTRICITY  
MARKET CORPORATION  
(PEMC)**

*Applicant,*

X-----X

DOCKETED  
Date: JUN 21 2018  
By: \_\_\_\_\_

**ORDER**

The above-captioned Application was filed by the Philippine Electricity Market Corporation (PEMC) on 10 September 2015 seeking the Commission's approval of its proposed amendments to the Administered Price Determination Methodology (APDM).

The original APDM was approved by the Commission in its Decision dated 22 June 2006 in ERC Case No. 2005-056RC. In the said Decision, the Commission considered the APDM as a form of Price Determination Methodology (PDM), to wit:

xxx Section 30 of the EPIRA provides that the "price determination methodology contained in said rules [referring to the WESM Rules] shall be subject to the approval of ERC." (Insertion supplied) The said provision simply vests upon the Commission the authority to approve a price determination methodology without making any distinction as to whether the same is applied during a normal operation of the market or during market suspension or intervention. xxx The instant application is

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the methodology referred to by law that should be applied during abnormal market conditions, or in this case, market suspension or intervention.

The first PDM was approved by the Commission through its Decision dated 20 June 2006 in ERC Case No. 2006-007 RC.

On 17 May 2017, PEMC filed another Application for the approval of a New Price Determination Methodology (New PDM) for the WESM docketed as ERC Case No. 2017-042 RC.

The New PDM Application consolidated all WESM pricing-related methodologies, including the following: (1) Market Dispatch Optimization Model; (2) Preferential Scheduling (3) Automatic Pricing Re-runs; (4) Price Substitution Methodology; (4) **Administered Price Determination Methodology (APDM)**; (5) Net Settlement Surplus (NSS); (6) Pricing and Cost Recovery Mechanism for Reserves; (7) Treatment of Must-Run Units; and (8) Mitigating Measures.<sup>1</sup> (emphasis supplied)

The New PDM was filed pursuant to Department of Energy (DOE) Department Circular No. DC2017-03-0001<sup>2</sup> entitled *Adopting Further Amendments to the Wholesale Electricity Spot Market (WESM) Rules and Market Manuals for the Implementation of Enhancements to WESM Design and operations (Provisions for Price Determination Methodology and Constraint Violation coefficients and Pricing Re-run)*.

The said Department Circular was issued in compliance with DOE's mandate under Republic Act No. 9136, otherwise known as the "*Electric Power Industry Reform Act of 2001*" which provides the following:

SEC. 30. Wholesale Electricity Spot Market. – Within one (1) year from the effectivity of this Act, the DOE shall establish a wholesale electricity spot market composed of the wholesale electricity spot market participants. The market shall provide the mechanism for identifying and setting the price of actual variations from the quantities transacted under contracts between sellers and purchasers of electricity.

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<sup>1</sup> ERC Case No. 2017-042RC, PEMC Presentation on 17 August 2018, slide no. 14

<sup>2</sup> ERC Case No. 2017-042 RC, Application dated 16 May 2017, par. 3

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Jointly with the electric power industry participants, **the DOE shall formulate the detailed rules for the wholesale electricity spot market. Said rules shall provide the mechanism for determining the price of electricity not covered by bilateral contracts between sellers and purchasers of electricity users. The price determination methodology contained in said rules shall be subject to the approval of ERC.**

*(emphasis supplied)*

With the amendment of the WESM Rules and the filing of the New PDM Application, the instant Application filed in 2015 can no longer be decided by the Commission without running counter to the new WESM Rules duly promulgated by the DOE as mandated by EPIRA.

Thus, the instant case should be dismissed for having become moot and academic.

A case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use.<sup>3</sup> Courts generally decline jurisdiction over such case or dismiss it on the ground of mootness.<sup>4</sup> This is because the judgment will not serve any useful purpose or have any practical legal effect because, in the nature of things, it cannot be enforced.<sup>5</sup>

In this case, the supervening amendment of the WESM Rules and the corresponding filing of the New PDM case pursuant to the said Rules have made the issue in the instant case moot and academic.

It should be noted that the promulgation and succeeding amendments to the WESM Rules is a mandate of the DOE. With the amendment of the WESM Rules, a major component thereof which is the previously approved PDM, is also deemed amended.

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<sup>3</sup> J.O.S. Managing Builders, Inc. and Eduardo B. Olaguer v. United Overseas Bank Philippines (formerly known as Westmont Bank), Emmanuel T. Mangosing and David Goh Chai Eng, G.R. No. 219815, September 14, 2016, citing *Gunsi, Sr. v. The Commissioners, Commission on Elections, G.R. No. 168792, February 23, 2009, 580 SCRA 70, 76.*

<sup>4</sup> Peñafrancia Sugar Mill, Inc. vs. Sugar Regulatory Administration, G.R. No. 208660, March 5, 2014

<sup>5</sup> Philippine Savings Bank (PSBANK) v. Senate Impeachment Court, G.R. No. 200238, November 20, 2012, 686 SCRA 35, 37-38, citing *Sales v. Commission on Elections, 559 Phil. 593, 596-597 (2007).*

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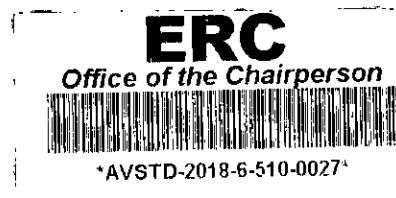
The resolution of the instant case, which was filed as an integral part of the previously approved PDM, cannot be made without running counter with the amended WESM Rules and New PDM Application in ERC Case No. 2017-042RC.


**WHEREFORE**, the foregoing premises considered, the instant Application is hereby **DISMISSED**.

**SO ORDERED.**

Pasig City, 17 April 2018.

  
**AGNES VST DEVANADERA**  
*Chairperson and CEO*

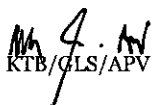


  
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