

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



IN THE MATTER OF THE  
APPLICATION FOR APPROVAL  
OF ADDITIONAL  
COMPENSATION FOR ENERGY  
DELIVERED TO THE  
WHOLESALE ELECTRICITY  
SPOT MARKET FROM  
NOVEMBER 8, 2013 TO MARCH  
25, 2014

ERC CASE NO. 2015-012 MC

TOLEDO POWER CO. (TPC),  
Applicant.

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DOCKETED  
Date: Jul 23 2015  
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**ORDER**

On February 26, 2015, Toledo Power Co. (TPC) filed an application for the approval of additional compensation for energy delivered to the Wholesale Electricity Spot Market (WESM) from November 8, 2013 to March 25, 2014.

In the said application, TPC alleged, among others, the following:

**Party to the Case**

1. It is a partnership duly organized and existing under the laws of the Republic of the Philippines, with principal office address at Brgy. Daanlungsod, Toledo City. It owns and operates a 52 MW coal-fired power plant located in Brgy. Daanlungsod, Toledo City;

**Statement of Facts and of the Case**

2. In view of the power system disturbance brought about by Typhoon Yolanda on November 8, 2013, the Commission suspended the operations of the WESM in the Visayas effective November 8, 2013 at 1500H<sup>1</sup>. This suspension was lifted effective 0100H on March 26, 2014 upon the Commission's determination that competitive trading has already been achieved<sup>2</sup>;
3. Under the WESM Rules, during market suspension, the Market Operator (MO) shall impose an Administered Price to be used as basis for settlements (WESM Rule 6.2.3). The market price during a trading interval in which the Commission has declared the spot market to be suspended and up to the time that the market resumes is to be determined by the MO (WESM Rule 6.8.3.1);
4. In addition, during market suspension, the System Operator (SO) is responsible for giving directions and coordinating the actions to be taken by the MO and the WESM Trading Participants (WESM Rule 6.2.1.1);
5. Pursuant to these WESM Rules, the schedules of generating plants in the Visayas, including TPC, were controlled by the SO, and TPC was constrained to comply with the hourly dispatch instructions of the SO;
6. For energy it delivered for the period November 8, 2013 to March 25, 2014, it sought additional compensation from the Philippine Electricity Market Corporation (PEMC) as MO, beyond the Administered Price imposed pursuant to the Administered Price Determination Methodology (APDM)<sup>3</sup>. This claim was based on the Commission-

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<sup>1</sup> Order dated November 18, 2013 in ERC Case No. 2013-086 MC, entitled "In the Matter of the Suspension of the Operations of the Philippine Wholesale Electricity Spot Market"

<sup>2</sup> Order dated March 24, 2014 in ERC Case No. 2013-086 MC

<sup>3</sup> Administered Price shall be determined as follows:

- (a) The price and schedule for a given price schedule or trading interval shall be equivalent to the load weighted average ex-post energy price of the corresponding trading interval of the four (4) preceding similar days that have not been administered.

approved rate for TPC in ERC Case No. 2008-058 RC<sup>4</sup> (the Commission-approved rate);

7. The total amount of additional compensation sought by TPC, which comprises Capital Recovery Fee (CRF), Weighted Average Cost of Capital (WACC), fixed cost of operations and maintenance (Fixed O&M), Energy Fee and Cost of Fuel, was Seventy-Seven Million Seven Hundred Twenty-Five Thousand Two Hundred Sixty-Nine Pesos and Ninety-One Centavos (PhP77,725,269.91), exclusive of Value Added Tax (VAT), broken down as follows:

	<b>Period Covered</b>	<b>Amount</b>	<b>Supporting Document</b>
1	November 8, 2013 to November 25, 2013	PhP31,914,440.63, submarked as Annex "A-1"	Letter to PEMC dated December 12, 2013, attached to the application as Annex "A"
2	November 26, 2013 to December 25, 2013	PhP42,679,055.36, submarked as Annex "B-1"	Letter to PEMC dated January 21, 2014, attached to the application as Annex "B"
3	December 26, 2013 to January 25, 2014	PhP2,677,156.56, submarked as Annex "C-1"	Letter to PEMC dated March 13, 2014, attached to the application as Annex "C"
4	January 26, 2014 to February 25, 2014	PhP387,303.08, submarked as Annex "D-1"	Letter to PEMC dated March 28, 2014, attached to the application as Annex

In case any of the prices covered by the four preceding same days have not been administered, said prices shall be excluded and replaced with the prices that have not been administered from the most recent earlier same or similar day.

- (b) The trading participant has not complied with the instructions during market suspension or intervention may be entitled to additional compensation upon determination and sufficient proof that the administered price is not sufficient to cover the following:

- (1) Fuel costs incurred in complying with the dispatch instructions; and
- (2) Variable operating and maintenance costs incurred in complying with the dispatch instructions (which may include start-up and shut-down costs).

<sup>4</sup> In the Matter of the Petition for Approval of the Amended Memorandum of Agreement Between the National Transmission Corporation (TRANSCO) and Toledo Power Co. (TPC), with Prayer for Provisional Authority

			"D"
5	February 26, 2014 to March 25, 2014	PhP67,314.28, submarked as Annex "E-1"	Letter to PEMC dated March 15, 2014, attached to the application as Annex "E"
	<b>Total</b>	<b>PhP77,725,269.91</b>	

8. In response, PEMC computed the additional compensation due to TPC for energy delivered for the period November 8, 2013 to March 25, 2014 amounting to Seventy Million Four Hundred Fifty-Three Thousand One Hundred Fifty-Four Pesos and Sixty-Four Centavos (PhP70,453,154.64), exclusive of VAT, broken down as follows:

	Period Covered	Amount	Supporting Document
1	November 8, 2013 to November 25, 2013	PhP28,897,337.66, submarked as Annex "F-1"	PEMC Letter dated April 15, 2014 with Settlement Invoice dated April 14, 2014, attached to the application as Annex "F"
2	November 26, 2013 to December 25, 2013	PhP38,826,563.35, submarked as Annex "F-2"	
3	December 26, 2013 to January 25, 2014	PhP2,374,835.86, submarked as Annex "G-1"	
4	January 26, 2014 to February 25, 2014	PhP295,249.16, submarked as Annex "G-2"	
5	February 26, 2014 to March 25, 2014	PhP59,168.61, submarked as Annex "G-3"	
		The total amount of PhP2,729,253.63 for the three billing periods from December 26, 2013 to March 25, 2014 is submarked as Annex "G-4"	PEMC Letter dated August 14, 2014 with Settlement Invoice dated August 14, 2014, attached to the application as Annex "G"
	<b>Total</b>	<b>PhP70,453,154.64</b>	

9. This amount represents only the Fixed O&M Costs, Energy Fee and Cost of Fuel from November 8, 2013 to December 25, 2013, and only the Energy Fee and Cost of Fuel from December 26, 2013 to March 25, 2014;
10. The difference between its claim for additional compensation and the amount of additional compensation that PEMC approved is Seven Million Two Hundred Seventy-Two Thousand One Hundred Fifteen Pesos and Twenty-Six Centavos (PhP7,272,115.26), exclusive of VAT. Below is a summary of TPC's claim for additional compensation for energy delivered during market suspension:

	<b>Period Covered</b>	<b>Additional Compensation Sought by TPC (VAT Exclusive)</b>	<b>PEMC-Approved Additional Compensation (VAT Exclusive)</b>	<b>Amount now Claimed as Additional Compensation (VAT Exclusive) (Difference Between Columns 3 and 4)</b>
1	November 8, 2013 to November 25, 2013	PhP31,914,440.63	PhP28,897,337.66	PhP3,017,102.97
2	November 26, 2013 to December 25, 2013	PhP42,679,055.36	PhP38,826,563.35	PhP3,852,492.01
3	December 26, 2013 to January 25, 2014	PhP2,677,156.56	PhP2,374,835.86	PhP302,320.70
4	January 26, 2014 to February 25, 2014	PhP387,303.08	PhP295,249.16	PhP92,053.92

5	February 26, 2014 to March 25, 2014	PhP67,314.28	PhP59,168.61	PhP8,145.67
	<b>TOTAL</b>	<b>PhP77,725,269.91</b>	<b>PhP70,453,154.64</b>	<b>PhP7,272,115.27</b>

11. As the additional compensation paid by the MO to it, which mainly covered only the Energy Fee and Fuel Cost, remain insufficient to cover its actual costs of generation, TPC seeks the Commission's approval for it to recover from the MO the additional compensation for energy delivered during the period of suspension of the WESM operations in the Visayas from November 8, 2013 to March 25, 2014;
  
12. It submits that for the period in question, it has been deprived of the reasonable costs of power generation, which involve not only the Energy Fees and Fuel Cost but also Fixed Costs regardless of whether the power plant is run. These Fixed Costs include the Cost of Capital Recovery<sup>5</sup> or CRF and the cost of capital or WACC, which have not been paid to it;
  
13. It, thus, comes to the Commission now to apply for the recovery of its CRF and WACC as well as the cost of its Fixed O&M that was not compensated from December 26, 2014 to March 25, 2014 as these have remained unpaid notwithstanding that it reasonably incurred these costs in complying with the dispatch instructions of the SO;
  
14. While it is true that CRF and WACC are recoverable in bilateral contracts it entered into, it should be pointed out, however, that during the suspension of the WESM operations in the Visayas, schedules of generating plants, including TPC, were controlled by the SO, which dispatch instructions included frequent manual load drops as dispatch for bilateral contracts were curtailed;
  
15. It should be noted in this regard that it has a Commission-approved rate, which should have been the basis of compensation. However, due to the imposition of the Administered Price, it has been made to carry in part the

<sup>5</sup> Capital Recovery Fee includes costs related to the contracts entered into by TPC to build its plant

costs of power generation, notwithstanding that the Commission had already determined their reasonableness when it approved its rates;

16. That there was an emergency situation that called for the imposition of the Administered Price should not prevent it from recovering its reasonable costs, especially considering that its rate has been approved by the Commission consistent with Section 43 (f) of Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001" (EPIRA), which recognizes that the rates approved by the Commission must be such as to allow the recovery of just and reasonable costs and a reasonable return on rate base to ensure the sustainability and viable operation of an entity;
17. In light of the foregoing, it seeks the Commission's approval to recover its CRF and WACC for energy delivered during the suspension of the WESM operations in the Visayas. It also seeks the Commission's approval to recover the cost of Fixed O&M that had not been compensated by the MO from December 26, 2013 to March 25, 2014;
18. The APDM approved by the Commission itself sets out as one of the guiding principles in the determination of the Administered Price that the same be fair and reasonable to both the suppliers and consumers of electricity;
19. It believes that what is fair and reasonable for generation companies, such as TPC, is to be compensated for the actual cost of generating power during the period of market suspension. Otherwise, it would in a way be subsidizing the cost of power generation as its true cost is not recovered by them; and
20. It prays that the Commission grant the instant application and allow it to recover: (i) additional compensation for its CRF and WACC for energy delivered during the suspension of the WESM operations in the Visayas from November 8, 2013 to March 25, 2014; and (ii) the cost of Fixed O&M that had not been compensated by the MO from December 26, 2013 to March 25, 2014.

Finding the said application to be sufficient in form and in substance with the required fees having been paid, the same is hereby set for jurisdictional hearing, expository presentation, pre-trial conference and evidentiary hearing on **August 20, 2015 (Thursday) at ten o' clock in the morning (10:00 A.M.) at the ERC Hearing Room, 15<sup>th</sup> Floor, Pacific Center Building, San Miguel Avenue, Pasig City.**

TPC is hereby directed to cause the publication of the attached Notice of Public Hearing, at its own expense, once (1x) in a newspaper of general circulation in the Philippines, with the date of the last publication to be made not later than ten (10) days before the date of the scheduled initial hearing.

PEMC is hereby directed to submit its comment on the application, within ten (10) days from receipt hereof.

Let copies of the application, this Order and the attached Notice of Public Hearing be furnished 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.

Likewise, let copies of this Order and the attached Notice of Public Hearing be furnished the Office of the Governor of the Province of Cebu and the Mayor of Toledo City for appropriate posting thereof on their respective bulletin boards.

TPC is hereby directed to furnish all those making requests therefor with copies of the application and its attachments, subject to reimbursement of reasonable photocopying costs.

On the date of the initial hearing, TPC must submit to the Commission its written Compliance with the jurisdictional requirements attaching therewith, methodically arranged and duly marked, the evidences on the actual posting and publication of the Notice of Public Hearing consisting of certifications issued to that effect, signed by the aforementioned Governor, Mayor or their duly authorized representatives, bearing the seals of their offices, and the affidavits of the Editors or Business Managers of the newspapers where the said Notice of Public Hearing were published together with the complete issues of the said newspapers, and such other proofs of compliance with the requirements of the Commission.



TPC and all other 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 thereof and proposed markings therefore; and
- (d) the number and names of the witnesses, with their written testimonies in an individual affidavit form, to be attached to the Pre-trial Brief.

Failure of TPC to submit the required Pre-Trial Brief and Judicial Affidavits of its witnesses 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.

As part of the pre-trial conference, TPC 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, July 20, 2015.

FOR AND BY AUTHORITY  
OF THE COMMISSION:



**ALFREDO J. NON**  
Officer-In-Charge and  
Commissioner ✓



MVA/NJS

Copy Furnished:

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