

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. 2015-009 MC

PANAY ENERGY  
DEVELOPMENT CORPORATION  
(PEDC) AND PANAY POWER  
CORPORATION (PPC),  
Applicants.

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DOCKETED  
Date: OCT 21 2015  
By: W

**ORDER**

On February 26, 2015, Panay Energy Development Corporation (PEDC) and Panay Power Corporation (PPC) filed an application for 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, PEDC and PPC alleged, among others, the following:

**Parties to the Case**

1. PEDC is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines with principal office address at Brgy. Ingore, La Paz, Iloilo City. PEDC owns and operates a 2 x 82 MW clean coal-fired power plant located at Brgy. Ingore, La Paz, Iloilo City;

2. PPC is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines with principal office address at Brgy. Ingore, La Paz, Iloilo City. PPC owns and operates a 72 MW (PPC 1) and a 20 MW (PPC 2) diesel-fired power plants located at Brgy. Ingore, La Paz, Iloilo City;

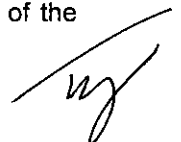
**Statement of Facts and of the Case**

3. 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>;
4. 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);
5. 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);
6. Pursuant to these WESM Rules, the schedules of generating plants in the Visayas, including PEDC and PPC, were controlled by the SO and both were constrained to comply with the hourly dispatch instructions of the SO, notwithstanding their obligations to deliver electricity under their respective power purchase agreements with their various off-takers;
7. For energy delivered by PEDC and PPC for the period of November 8, 2013 to March 25, 2014, they sought additional

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<sup>1</sup> Order dated 18 November 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 24 March 2014 in ERC Case No. 2013-086 MC.



compensation from the Philippine Electricity Market Corporation (PEMC) as MO, beyond the Administered Price imposed pursuant to the Administered Price Determination Methodology<sup>3</sup>. This claim was based on the Commission-approved rates of PEDC in ERC Case No. 2010-108RC4 and ERC Case No. 2010-066RC5, and of PPC in ERC Case No. 2009-019RC6;

8. The total amount of additional compensation sought by them, which comprises Capital Recovery Fee (CRF), Operations and Maintenance (O&M) costs, and cost of fuel, was One Hundred Three Million Six Hundred Sixty Thousand Six Hundred Three Pesos and Thirty One Centavos (PhP103,660,603.31) exclusive of Value Added Tax (VAT), broken down as follows:

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<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.

In case any of the prices covered by the four preceding same days have 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 that has 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> Decision dated 22 August 2011 and Order dated 5 July 2014 in ERC Case No. 2010-108 RC entitled "In the Matter of the Application for Approval of the Electric Power Purchase Agreement (EPPA) between Aklan Electric Cooperative Incorporated (AKELCO) and Panay Energy Development Corporation (PEDC), with Prayer for Provisional Authority."

<sup>5</sup> Decision dated 11 April 2011 in ERC Case No. 2010-066 RC entitled "In the Matter of the Application for Approval of the Electric Power Purchase Agreement (EPPA) between Antique Electric Cooperative, Incorporated (ANTECO) and Panay Energy Development Corporation (PEDC), with Prayer for Provisional Authority."

<sup>6</sup> Decision dated 19 April 2010 in ERC Case No. 2009-019 RC entitled "In the Matter of the Application for the Suspension of the Implementation of Table "B" Base Rates in the Order dated July 5, 2006 in ERC Case No. 2005-043 RC, with Prayer for Provisional Authority." The tariff rate is adjusted monthly corresponding to the percentage change in the CPI and in the actual Peso per Dollar exchange rate, as published by the BSP, of the last day of the month immediately preceding the applicable billing period. PPC used as the base tariff rate the effective tariff rate for the month of June 2006, rebased to 100 level.



	Period Covered	Amount	Supporting Document
1	8 Nov. 2013 to 25 Nov. 2013	PhP13,318,282.65, submarked as Annex "A-1".	Letter to PEMC dated 11 December 2013, hereto attached as Annex "A".
2	26 Nov. 2013 to 25 Dec. 2013	PhP50,841,074.70 <sup>7</sup> , submarked as Annex "B-1".	Letter to PEMC dated 30 January 2014, hereto attached as Annex "B".
3	26 Dec. 2013 to 25 Jan. 2014	PhP8,514,404.79 <sup>8</sup> , submarked as Annex "C-1".	Letter to PEMC dated 5 March 2014, hereto attached as Annex "C".
4	26 Jan. 2014 to 25 Feb. 2014	PhP12,847,219.16 <sup>9</sup> , submarked as Annex "D-1".	Letter to PEMC dated 28 March 2014, hereto attached as Annex "D".
5	26 Feb. 2014 to 25 Mar. 2014	PhP18,139,622.01 <sup>10</sup> , submarked as Annex "E-1".	Letter to PEMC dated 15 May 2014, hereto attached as Annex "E".
	<b>TOTAL</b>	<b>PhP 103,660,603.31</b>	

9. In response, PEMC computed the additional compensation due to them for energy delivered for the period of November 8, 2013 to March 25, 2014 to amount to only Twenty Seven Million Two Hundred Forty Three Thousand Four Hundred Ninety Six Pesos and Seventy One Centavos (PhP27,243,496.71) exclusive of VAT, broken down as follows:

	Period Covered	Amount (VAT Exclusive)	Supporting Document
1	8 Nov. 2013 to 25 Nov. 2013	PhP10,440,952.27, submarked as Annex "F-1".	PEMC Letter dated 15 April 2014 with Settlement Invoice dated 14 April 2014 hereto attached as Annex "F".
2	26 Nov. 2013 to 25 Dec. 2013	PhP12,866,861.61, submarked as Annex "F-2".	
3	26 Dec. 2013 to 25 Jan. 2014	PhP1,392,797.38, submarked as Annex "G-1".	PEMC Letter dated 15 May 2014 with Settlement Invoice dated 14 May 2014 hereto attached as Annex "G".

<sup>7</sup> Includes energy delivered from the 92 MW diesel power plant of PPC.

<sup>8</sup> Includes energy delivered from the 92 MW diesel power plant of PPC.

<sup>9</sup> Includes energy delivered from the 92 MW diesel power plant of PPC.

<sup>10</sup> Includes energy delivered from the 92 MW diesel power plant of PPC.

4	26 Jan. 2014 to 25 Feb. 2014	PhP1,118,883.95, broken down as PhP1,118,816.80 (for PEDC) and PhP67.15 (for PPC), submarked as Annexes "H-1a" and "H-1b"	PEMC Letter dated 14 August 2014 with Settlement Invoice dated 25 August 2014 hereto attached as Annex "H".
5	26 Feb. 2014 to 25 Mar. 2014	PhP1,424,001.50, submarked as Annex "H-2"  The total amount of PhP2,542,885.46 for the two billing periods from 26 January 2014 to 25 February 2014 and 26 February 2014 to March 25, 2014 is submarked as Annex "H-3".	
<b>TOTAL</b>		<b>PhP27,243,496.71</b>	

10. This amount represents only the O&M cost and cost of fuel from November 8, 2013 to January 25, 2014, and only the cost of fuel from January 26, 2014 to March 25, 2014;

11. The difference between PEDC and PPC's claim for additional compensation and that which was approved by PEMC is Seventy Six Million Four Hundred Seventeen Thousand One Hundred Six Pesos and Fifty Nine Centavos (PhP76,417,106.59), exclusive of VAT. Below is a summary of their claim for additional compensation for energy delivered during market suspension:

	Period Covered	Additional Compensation sought by PEDC and PPC (VAT Exclusive)	PEMC-Approved Additional Compensation (VAT Exclusive)	Amount now claimed as Additional Compensation (VAT Exclusive) (Difference between Columns 3 and 4)
1	8 Nov. 2013 to 25 Nov. 2013	PhP13,318,282.65	PhP10,440,952.27	PhP2,877,330.38
2	26 Nov. 2013 to 25 Dec. 2013	PhP50,841,074.70	PhP12,866,861.61	PhP37,974,213.09

3	26 Dec. 2013 to 25 Jan. 2014	PhP8,514,404.79	PhP1,392,797.38	PhP7,121,607.41
4	26 Jan. 2014 to 25 Feb. 2014	PhP12,847,219.16	PhP1,118,883.95	PhP11,728,335.21
5	26 Feb. 2014 to 25 Mar. 2014	PhP18,139,622.01	PhP1,424,001.50	PhP16,715,620.51
	<b>Total</b>	PhP103,660,603.31	PhP27,243,496.71	<b>PhP76,417,106.60</b>

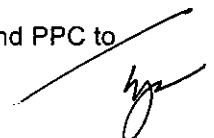
12. As the additional compensation paid by the MO to them, which mainly covered only O&M cost and fuel cost, remain insufficient to cover their actual costs of generation, they seek the Commission's approval for them to recover from the MO additional compensation for energy delivered during the period of suspension of the WESM operations in the Visayas from November 8, 2013 to March 25, 2014;

13. PEDC and PPC submit that for the period in question, both have been deprived of the reasonable costs of power generation, which involve not only O&M costs 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>11</sup> or CRF, which has not been paid to them;

14. PEDC and PPC now come before the Commission to apply for the recovery of its CRF, as well as the cost of O&M that was not compensated from January 26, 2014 to March 25, 2014, as these have remained unpaid notwithstanding that both reasonably incurred these costs in complying with the dispatch instructions of the SO;

15. While it is true that CRF is recoverable in bilateral contracts entered into by PEDC and PPC, it should be pointed out, however, that during the suspension of the WESM operations in the Visayas, schedules of generating plants, including them, were controlled by the SO. Therefore, PEDC and PPC had to comply with the hourly dispatch instructions of the SO, which dispatch instructions included frequent manual load drops as dispatch for bilateral contracts were curtailed;

<sup>11</sup> Capital Recovery Fee includes costs related to the contracts entered into by PEDC and PPC to build their plants.



16. It should be noted in this regard that both PEDC and PPC have Commission-approved rates, which should have been the basis of compensation. However, due to the imposition of the Administered Price, both have been made to carry in part the costs of power generation, notwithstanding that the Commission had already determined their reasonableness when it approved their rates;
17. That there was an emergency situation that called for the imposition of the Administered Price should not prevent them from recovering their reasonable costs, especially considering that their rates have 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 or the 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;
18. In light of the foregoing, PEDC and PPC seek the Commission's approval to recover CRF for energy delivered during the suspension of the WESM operations in the Visayas. They also seek the Commission's approval to recover the cost of O&M that had not been compensated by the MO from January 26, 2014 to March 25, 2014;
19. The Administered Price Determination Methodology approved by the Commission itself sets out as one of the guiding principles in the determination of the Administered Price that it be fair and reasonable to both the suppliers and consumers of electricity;
20. PEDC and PPC believe that what is fair and reasonable for generation companies such as themselves is to be compensated for the actual cost of generating power during the period of market suspension. Otherwise, PEDC and PPC would in a way be subsidizing the cost of power generation as its true cost is not recovered by them; and
21. PEDC and PPC pray that the Commission grant their application and be allowed to recover :



- a. Additional compensation for CRF for energy delivered during the suspension of the WESM operations in the Visayas from November 8, 2013 to March 25, 2014; and
- b. The cost of O&M that had not been compensated by the MO from January 26, 2014 to March 25, 2014.

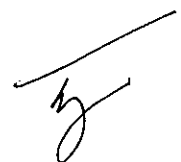
Finding the said application to be sufficient in form and in substance with the required fees having been paid, the same is hereby set for jurisdictional hearing, pre-trial conference and evidentiary hearing on **November 23, 2015 (Monday) at two o' clock in the afternoon (2:00 P.M.) at the ERC Hearing Room, 15th Floor, Pacific Center Building, San Miguel Avenue, Pasig City.**

PEDC and PPC are hereby directed to cause the publication of the attached Notice of Public Hearing, at their own expense, once (1x) in a newspaper of general circulation in the Philippines, at least ten (10) days before the date of the scheduled initial hearing.

The Philippine Electricity Market Corporation (PEMC) is hereby directed to comment on the Application within ten (10) days from receipt hereof.

PEDC and PPC are directed to submit, at least five (5) days before the date of initial hearing and pre-trial conference, its Pre-trial Brief 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 affidavit form, if already available, to be attached to the Pre-trial Brief.





Failure of PEDC and PPC to submit the required Pre-trial Brief and Judicial Affidavits of their respective 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.

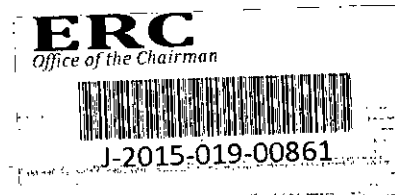
As part of the pre-trial conference, PEDC and PPC must also be prepared to make an expository presentation of their application, aided by whatever communication medium that they may deem appropriate for the purpose, in order to put in plain words and explain, for the benefit of the consumers and other concerned parties, what the application is all about and the reasons and justifications being cited in support thereof.

**SO ORDERED.**

Pasig City, October 12, 2015.

FOR AND BY AUTHORITY  
OF THE COMMISSION:

  
**JOSE VICENTE B. SALAZAR**  
Chairman 



  
MBB/NJS

Copy Furnished:

1. **Attys. Amanda R. Abrera Bengson, Bernadette Ann Villa Policarpio, and Rogelio D. Puno, Jr.**  
c/o Global Business Power Corporation  
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2. **Philippine Electricity Market Corporation (PEMC)**  
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ADB Avenue, Ortigas Center, Pasig City 1600 Philippines

A handwritten signature in black ink, appearing to be the initials 'R.P.' or similar, located to the right of the second list item.