

DEFINING THE GOVERNANCE ARRANGEMENTS IN THE WHOLESALE ELECTRICITY SPOT MARKET (WESM) UNDER THE INDEPENDENT MARKET OPERATOR REGIME AND PROVIDING FOR VARIOUS REQUIREMENTS FOR THE EFFECTIVE MONITORING, SURVEILLANCE AND ENFORCEMENT

WHEREAS, Section 2 of the Republic Act No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001 (EPIRA)”, declared the Policy of the State among others the following:

- a) Ensure the quality, reliability, security and affordability of the supply of electric power;
- b) Ensure transparent and reasonable prices of electricity in a regime of free and fair competition and full public accountability to achieve greater operational and economic efficiency and enhance the competitiveness of Philippine products in the global market;
- c) Ensure fair and non-discriminatory treatment of public and private sector entities in the process of restructuring the electric power industry;
- d) Protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power; and
- e) Establish a strong and purely independent regulatory body and system to ensure consumer protection and enhance the competitive operation of the electricity market;

WHEREAS, Section 30 of the EPIRA provides:

- a) Within one (1) year from the effectivity of the Act, the Department of Energy (DOE) shall establish the wholesale electricity spot market (WESM) composed of the wholesale electricity spot market participants;
- b) The WESM shall be implemented by a market operator (MO) in accordance with the Wholesale Electricity Spot Market Rules;
- c) The market operator shall initially be an autonomous group, to be constituted by DOE, with equitable representation from electric power industry participants, initially under the administrative supervision of the National Transmission Corporation (TRANSCO);
- d) The market operator, as an autonomous group, shall undertake the preparatory work and initial operation of the wholesale electricity spot market;
- e) Not later than one (1) year after the implementation of the wholesale electricity spot market, an independent entity shall be formed and the functions, assets and liabilities of the market operator shall be transferred to such entity with the joint endorsement of the DOE and the electric power industry participants;
- f) Thereafter, the administrative supervision of the TRANSCO over such entity shall cease; and
- g) The cost of administering and operating the wholesale electricity spot market shall be recovered by the market operator through a charge imposed to all market members: Provided, That such charge shall be filed with and approved by the Energy and Regulatory Commission (ERC);

WHEREAS, Section 37 of the EPIRA mandates the DOE to formulate rules and regulations and exercise other powers as may be necessary to implement the objectives of the EPIRA;

WHEREAS, Section 43 of the EPIRA provides, among others, that the ERC shall:

- a) Promote competition, encourage market development, ensure customer choice and penalize abuse of market power in the restructured electricity industry; and
- b) Enforce the rules and regulations governing the operations of the electricity spot market and the activities of the spot market operator and other participants in the spot market, for the purpose of ensuring a greater supply and rational pricing of electricity;

WHEREAS, on 17 January 2018, the DOE promulgated the Department Circular No. DC2018-01-0002 entitled “Adopting Policies for the Effective and Efficient Transition To The Independent Market Operator for the Wholesale Electricity Spot Market;”

WHEREAS, Section 2 of the DC2018-01-0002 mandates the DOE as policymaker and the ERC as regulator to ensure that the principles of fair competition and the promotion of the public interest shall govern all policies and rules during the transition to and full operation of the WESM under an Independent Market Operator (IMO);

NOW, THEREFORE, for and in consideration of the aforementioned mandates and the necessity for the effective market monitoring, surveillance and enforcement processes, the DOE hereby issues, adopts and promulgates the following:

Section 1. General Principles in the Governance of the Wholesale Electricity Spot Market under the Independent Market Operator. The governance of the WESM under the Independent Market Operator (IMO) shall:

- 1.1. Ensure the quality, reliability, security and affordability of the supply of electric power;
- 1.2. Ensure transparent and reasonable prices of electricity in a regime of free and fair competition and full public accountability to achieve greater operational and economic efficiency and enhance the competitiveness of the Philippines;
- 1.3. Ensure a fair and non-discriminatory treatment of public and private sector entities; and
- 1.4. Protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power.

Section 2. Independent Market Operator. The IMO shall be an independent entity, formed separate from PEMC, and incorporated as a private corporation under the Corporation Code of the Philippines.

- 2.1. No electric power industry participants, nor any of their subsidiaries, affiliates, stockholders, directors, officers or their relatives within the fourth degree of consanguinity or affinity shall hold any interest, whether directly or indirectly, in the IMO, in accordance with Department Circular DC 2018-01-0002.
- 2.2. The IMO’s budget shall be submitted to the PEMC for approval prior to the filing before the ERC. In cases where the budget of the IMO is not approved by the PEMC in time, prior to its filing before the ERC, the budget approved by the ERC in the previous year shall be deemed approved by PEMC for filing with the ERC, which shall decide on the appropriate level of Market Fees required to operate the WESM.

Section 3. Functions of the IMO. The IMO shall be responsible for the operations of the WESM in accordance with the WESM Rules and its Market Manuals, and other issuances duly promulgated by the DOE and the ERC. Specifically, the IMO shall:

- 3.1. Comply with the WESM Rules and its Market Manuals;

- 3.2. Apply for ERC's approval the level of Market Fees required to operate the WESM;
- 3.3. Ensure compliance to the Market Operations Performance Standards duly approved by the DOE and to the Operating Agreement with PEMC under such guidelines set forth in Section 4 hereof;
- 3.4. Ensure the seamless transfer of all market information and data as required by the DOE and ERC by making necessary arrangements for provision of market information, including as may be necessary, provision of facilities that allow transmittal of market data in a real-time manner, information systems, and trainings or capacity building that would further strengthen the capability of DOE and the ERC with respect to their policy-making and regulatory functions, respectively. Provided, that the costs in carrying out the foregoing responsibilities shall be recovered by the IMO through the market fees duly approved by the ERC. The market fees so collected shall be exclusively used for such purpose. For the transparent and efficient utilization of support arrangements from the IMO, the DOE, in consultation with the ERC and other relevant government agencies shall develop and promulgate the applicable guidelines which shall consider, among others, the requirement for proper accounting and auditing procedures; and
- 3.5. Provide technical assistance to the DOE and ERC to support policy and rule-making processes.

To support the DOE and the ERC in the discharge of their respective functions, a protocol shall be developed by the IMO, PEMC, DOE, and ERC to enable the latter to have direct coordination with the IMO, the PEMC organic units responsible for market assessment, enforcement and compliance, and the governance committees for matters related to market surveillance and compliance.

The IMO and PEMC shall continue to submit regular market operations reports and compliance reports, respectively, to the DOE and the ERC in aid of their policy-making and regulatory functions.

Section 4. Guidelines for the Operating Agreement between PEMC and the IMO. PEMC and the IMO shall enter into an Operating Agreement that shall:

- 4.1. Outline the terms and conditions for the transfer of the functions, assets and personnel of PEMC. For this purpose, the PEM Board shall ensure that the current PEMC employees having relevant experience and exemplary performance in the operations of the WESM shall be considered for placement in the IMO in accordance with the existing regulations and guidelines on labor and employment practices;
- 4.2. Grant the IMO the right to use, maintain and improve the market management systems and all other associated market systems and infrastructures that are used for the efficient operation of the WESM;
- 4.3. Define the guidelines for the IMO's filing and recovery of market fees to support the IMO and PEMC's operations;
- 4.4. In filing its application for approval of the market fees by the ERC, the IMO shall clearly delineate and justify the costs of supporting the WESM operations. It shall also provide appropriate disclosure of the itemized costs and related references to support the

reasonableness of the application. Subject to Section 2.2 hereof, the budgetary requirements for the operation of the WESM shall be approved by the PEMC prior to filing with the ERC for approval of the market fees.

- 4.5. Adopt budgetary standards that ensure a prudent and cost-effective utilization of resources, and for this purpose: (a) an appropriate assessment or study of the business needs, priorities, and opportunities consistent with the strategic direction is considered; (b) relevant policies and procedures are adopted; (c) past performances are evaluated; and (d) appropriate adjustments are made, as needed;
- 4.6. Identify the standards and metrics to be complied by the IMO for the operations and financial conditions, among others, as may hereinafter be established by PEMC and approved by the DOE. The financial performance standards shall provide for an executive compensation policy that outlines the process and procedures that will be applied by the PEM Board in reviewing and approving the total compensation paid to senior executives and key employees of PEMC and the IMO;
- 4.7. Provide processes for verification and validation of actual performances and compliance to WESM Rules and the Operating Agreement;
- 4.8. Ensure performance by the IMO of additional responsibilities pursuant to relevant issuances by the DOE and the ERC, which shall include among others, performance of functions in support of PEMC's designation as the Central Registration Body and Renewable Energy Market Registrar; and
- 4.9. Identify the grounds, terms and conditions for termination of the Operating Agreement and the possible legal recourse or remedies that may be made available to both entities to address any issues affecting the operations of the WESM: Provided that any consideration leading to a possible selection of another entity to become IMO, and an execution of another Operating Agreement by virtue thereof, shall be subject to consultation with and concurrence by the DOE and the PEMC members.

Section 5. Governance of the WESM under the IMO. PEMC shall remain the governance arm of the WESM. It shall perform its functions through its Board of Directors, the PEM Board, which shall be supported by the WESM Governance Committees, and their organic units. Specifically, PEMC shall:

- 5.1. Continue to provide administrative and technical support to all WESM Committees created by the PEM Board pursuant to the WESM Rules;
- 5.2. Continue to have authority over WESM rules change, market surveillance, market audit processes, including the conduct of technical studies, market assessment, market governance administration, and enforcement and compliance;
- 5.3. Review and recommend the appropriate changes to the Governance Committees in accordance with the established rules change process;
- 5.4. Ensure the proper performance of the PEMC as the governing body of the WESM and recommend policies for the observance of performance measures which include qualifications and disqualifications of the members of the Board and Governance Committees to ensure that these members are members in good standing;

- 5.5. Assist the DOE and the ERC in developing policies and regulations, respectively, for the continuing improvement of the WESM by undertaking studies of the relevant products that are intended to enhance the competitiveness of the WESM and the reliability and adequacy of supply of electric power which shall include, but not limited to, the establishment of the reserves market, the expansion of the retail market, the adoption of demand-side bidding, including demand response, and the introduction of hedging mechanisms;
- 5.6. Undertake monitoring and assessment of the performance of the market and provide reports to the Market Surveillance Committee. For this purpose, the Market Assessment Group or its equivalent shall reside in PEMC and shall continue to perform its functions, which includes, among others, assessment of the market, in accordance with the WESM Rules. The DOE and the ERC shall be provided with the market monitoring-related reports referred to in Section 5.8 hereof;
- 5.7. Assess the compliance of market participants to the WESM Rules and its Market Manuals and, if applicable, investigate possible violations of the WESM Rules and its Market Manuals. For this purpose, the Enforcement and Compliance Office or its equivalent, shall reside in PEMC and shall submit the monitoring, compliance and investigation reports to the Market Surveillance Committee or to the committee which may hereinafter be formed to review the results of the compliance monitoring and investigation by PEMC or the Enforcement and Compliance Office. The DOE and the ERC shall be provided with the compliance monitoring and enforcement-related reports referred to in Section 5.8 hereof. The process for investigation, determination of violations and the imposition of penalties shall be reviewed and modified, if necessary, by PEMC, in consultation with the appropriate governance committees, the DOE and ERC, and in accordance with the rules change process;
- 5.8. Prepare periodic assessment reports on overall market performance and competitiveness for submission to the DOE and ERC;
- 5.9. Ensure compliance to other various reportorial requirements to the DOE and the ERC pursuant to the WESM Rules and its Market Manuals, the DOE Circulars, Orders, and the ERC Resolutions, Guidelines and other relevant issuances. For the timely and efficient implementation of the herein stated policies, PEMC is hereby directed to undertake the following:
 - 5.9.1. Not later than June 30, 2018, submit to the DOE the proposed revision on the Market Operator Performance Standards applicable to the IMO;
 - 5.9.2. On or before June 30, 2018, enter into an Operating Agreement with the IMO subject to the guidelines set forth in Section 4 hereof.
 - 5.9.3. Submit to the DOE the detailed nomination and selection process for the election of the initial and subsequent members of the Board of Directors of the IMO with the details required in Section 6.4 of Department Circular No. DC2018-01-0002; and
- 5.10 In coordination with IMO, ensure provision of support to the DOE and the ERC.

Section 6. Responsibilities of the DOE. As policymaker, the DOE shall oversee the WESM and in the performance of this function, it shall continue to have access to vital information that are generated by WESM or submitted to it by the participants and service providers; Provided, that such access shall be solely for the purpose of promulgating policies and issuing guidance to the WESM participants. Specifically, for the implementation of the transition to the IMO, the DOE shall:

- 6.1. Ensure the timely implementation of the activities necessary to establish the IMO by June 30, 2018;
- 6.2. Review and approve changes to the WESM Rules and the Market Manuals;
- 6.3. Review and approve the nomination and the selection process for the election of the initial and subsequent members of the Board of Directors of the IMO;
- 6.4. Provide guidance to the PEMC and the IMO on the key policy directives of the DOE in line with the implementation of the EPIRA and other relevant laws;
- 6.5. Review and approve the market governance and operating standards applicable to both PEMC and the IMO;
- 6.6. Ensure representation, as observer, to the PEM Board and to the different WESM Governance Committees; and
- 6.7. Review and approve any future plans relating to selection of another entity to become IMO in the event of termination of the Operating Agreement as provided in Section 4.9 hereof.

Section 7. Responsibilities of the ERC. Pursuant to Section 43 (c) of the EPIRA, the ERC shall enforce the rules and regulations governing the operations of the electricity spot market and the activities of the spot market operator and other participants in the spot market, for the purpose of ensuring a greater supply and rational pricing of electricity. Specifically, the ERC shall:

- 7.1. Strengthen its internal capacity to monitor, investigate, and enforce penalties and sanctions to WESM Participants found in breach of the WESM Rules and anti-competitive behavior;
- 7.2. Promulgate the applicable rules for the determination of anti-competitive behaviour and breach of WESM Rules and the process for investigation and imposition of penalties, including the levels thereof;
- 7.3. Undertake actions to harmonize the existing ERC issuances with the WESM Rules and Market Manuals which may include Philippine Grid Code among others;
- 7.4. Impose penalties and sanctions on the Market Participants and the WESM Members found to be in breach of the WESM Rules and other relevant issuances, in the exercise of its regulatory authority and investigatory powers. This is without prejudice to the investigation that may be conducted on the same incident of non-compliance and on the penalties that may be imposed by PEMC on the erring Market Participants,

which is hereby understood to be a separate and independent investigation from that conducted by the ERC;

- 7.5. Ensure the provision of support in the regulatory requirements and approvals consistent with the policies set forth under this Circular and in accordance with existing laws and procedures. The PEMC and the IMO shall likewise ensure that all the obligations set forth herein shall be complied. As may be warranted, administrative fines or penalties may be imposed for failure to meet the said obligations; and
- 7.6. Ensure representation, as observer, to the different WESM Governance Committees.

Section 8. Confidentiality of Information and Anti-competitive Behavior. All data and information provided by PEMC and the IMO to the DOE and the ERC shall only be used for purposes of policy-making and regulation of anti-competitive behaviour.

Section 9. Separability. If for any reason, any section or provision of this Circular is declared unconstitutional or invalid, the other parts or provisions hereof which are not affected thereby shall continue to be in full force and effect.

Section 10. Repealing Clause. Except insofar as may be manifestly inconsistent herewith, nothing in this Circular shall be construed as to repeal any of the mechanisms already existing or responsibilities already provided for under existing rules.

Section 11. Effectivity and Publication. This Circular shall take effect immediately upon its publication in at least two (2) newspapers of general circulation, and shall remain in effect until otherwise revoked.

Issued on _____ 2018 at the Energy Center, Rizal Drive, Bonifacio Global City, Taguig City.

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