

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City

**IN THE MATTER OF THE
APPLICATION FOR
APPROVAL OF THE LEVEL
OF MARKET FEES FOR THE
CALENDAR YEAR 2022 FOR
THE PHILIPPINE
WHOLESALE ELECTRICITY
SPOT MARKET (WESM)**

ERC CASE NO. 2023-129 RC

**INDEPENDENT
ELECTRICITY MARKET
OPERATOR OF THE
PHILILPPINES, INC.,**
Applicant.

Promulgated:
January 04, 2024

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ORDER

On 22 November 2023, Independent Electricity Market Operator of the Philippines, Inc. (IEMOP) filed the instant *Application*, dated 09 September 2021, seeking the Commission’s approval of the level of Market Fees for the calendar year 2022 for the Philippine Wholesale Electricity Spot Market (WESM).

The pertinent allegations of the instant *Application* are hereunder quoted as follows:

1. IEMOP is a non-stock, non-profit corporation duly organized and existing in accordance with Philippine laws, with principal office at the 19th Floor Robinsons-Equitable Tower, ADB Avenue corner Poveda Street, Ortigas Center, Pasig City. Applicant is represented herein by its President and CEO, Atty. Richard J. Nethercott, who is duly authorized by the IEMOP Board of Directors as evidenced by the Secretary’s Certificate dated 4 August 2021 and attached as Annex “A” and made an integral part of this Application;
2. IEMOP is filing this Application as the Market Operator of the Philippine Wholesale Electricity Spot Market (WESM), pursuant to Section 30 of Republic Act No. 9136, also known as the "Electric Power Industry Reform Act of 2001" or "EPIRA" which reads, in part, as follows:

"The cost of administering and operating the wholesale electricity spot market shall be recovered by the market operator through a charge imposed on all members: Provided, That such charge shall be filed with and approved by the ERC."¹

BACKGROUND

Transition to the Independent Market Operator (IMO)

3. The establishment of the WESM was mandated of the Department of Energy (DOE) by Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA). Section 30 of the EPIRA expressly directs DOE to establish the WESM composed of the wholesale electricity spot market participants, and, jointly with electric power industry participants, promulgate the detailed rules for the WESM (WESM Rules);
4. The EPIRA and the EPIRA IRR mandate that the WESM shall be implemented by a Market Operator, which shall initially be an autonomous group market operator (AGMO) and, thereafter, the Independent Market Operator (IMO). The AGMO is to be composed of an equitable representation of the electric power industry participants, shall be responsible for the preparations for and initial operations of the WESM and shall be under the administrative supervision of the National Transmission Corporation (TRANSCO). The transition to the Independent Market Operator (the "IMO") is mandated by Section 30 of the EPIRA to occur one year after the commercial operations of the Philippine Wholesale Electricity Spot Market (the "WESM"). It is mandated that an independent entity shall be formed, which shall assume the functions, assets and liabilities of the market operator from the AGMO upon joint endorsement of the DOE and the electric power industry participants and the administrative supervision of TRANSCO shall then cease;
5. The EPIRA and the EPIRA IRR also mandate that the Wholesale Electricity Spot Market Rules (WESM Rules) shall include the procedures for the formation of a WESM governing body. In this regard, the WESM Rules provided for the creation of the Philippine Electricity Market Board ("PEM Board"), which, among other functions, shall oversee and monitor the activities of the Market Operator to ensure that the latter shall fulfil its responsibilities under the WESM Rules. The WESM Rules also provided for the creation of various governance committees and organic units within the Philippine Electricity Market Corporation ("PEMC") to perform governance functions, including among other things, market assessment, monitoring and surveillance,

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

- enforcement and compliance, rules change and review, market audit, dispute resolution and technical assistance;
6. PEMC was incorporated as a non-stock, non-profit corporation and became the AGMO as well as the governance arm of the WESM. Its Board of Directors is the PEM Board.
 7. Pursuant with the mandate of Section 30 of the EPIRA to transition to the IMO, the DOE endorsed the transition to the Independent Market Operator through its Department Circular No. 2018-01-0002 dated 18 January 2018 and entitled “Adopting Policies for the Effective and Efficient Transition to the Independent Market Operator for the Wholesale Electricity Spot Market”²;
 8. The industry participants likewise endorsed the transition through approval by the PEM Board and ratification by the members of PEMC during its membership meeting held on 06 February 2018 of the “Plan for Transition to the Independent Market Operator of the Philippine Wholesale Electricity Spot Market” (IMO Transition Plan)³;
 9. Both the above-mentioned DOE Circular and IMO Transition Plan called for the formation of an independent entity that is separate from PEMC to become the IMO, and directed that the IMO be incorporated as a private, non-stock, non-profit corporation;
 10. IEMOP was thereafter organized as a non-stock, non-profit private corporation that is separate from PEMC. IEMOP was incorporated to become the IMO and as such, shall assume and perform all functions of the Market Operator as set out in the EPIRA, the EPIRA IRR and the WESM Rules, market manuals, and other rules, regulations and issuances;
 11. On 19 September 2018, PEMC and IEMOP executed an Operating Agreement⁴ by virtue of which, PEMC acknowledged and confirmed that IEMOP is the corporation duly incorporated in the Philippines to act as the Independent Market Operator of the WESM pursuant to the IMO Transition Plan and DOE Department Circular No. 2018-01-0002;
 12. The time and date of the actual transfer and assumption by IEMOP of the market operator functions and other services defined in the Operating Agreement was on 00:00H, 26 September 2018 (“Commencement Date”). Correspondingly, the related personnel, assets, and liabilities were transferred from PEMC to IEMOP as of Commencement Date;
 13. In accordance with the DOE Circular and the IMO Transition Plan, PEMC remains to be the governing body of the WESM

² A copy of which is hereto attached and made an integral part as Annex “B” of the Application.

³ A copy of which is hereto attached and made an integral part as Annex “C” of the Application.

⁴ A copy of which is hereto attached and made an integral part as Annex “D” of the Application.

and, as such, will continue to perform the WESM governance functions, including, among other things, the supervision and monitoring of the operations of the Market Operator in accordance with the WESM Rules. For this purpose, the Articles of Incorporation and By-Laws of PEMC were amended to, among other things, amend its Primary Purpose to emphasize its function as the WESM governing body;

14. Having assumed the functions, assets and liabilities of the market operator on the Commencement Date, IEMOP is now responsible for performing the following functions:
 - (a) Market registration;
 - (b) Pricing and scheduling, including short term load forecasting and the provision of the dispatch schedule to the System Operator;
 - (c) Billing, settlements, management of prudential requirements, meter data management and warehousing; and
 - (d) Monitoring of trading activities in the market, management of market data and provision of market data and reports.
15. Additionally, IEMOP renders Other Services as provided in Article V and Schedule 2 of the Operating Agreement for the performance of the following functions:
 - (a) as the Central Registration Body for the retail market;
 - (b) as the Metered Quantity (MQ) Reconciliation Agent under the Interim Mindanao Dispatch Protocol (IMDP);
 - (c) facilitate collection and payment of unpaid Interim Mindanao Electricity Market (IMEM) settlement transactions, pursuant to DOE Circular DOE DC2017-05-00095 and other relevant issuances of the DOE on the IMEM;
 - (d) training of Market Participants, PEMC, DOE, ERC, PCC and other stakeholders; and
 - (e) participant or customer support services to WESM participants aimed at facilitating their transactions in the WESM, including the (a) conduct of regular market participants update meetings, and (b) operation and maintenance of help desk facility to facilitate actions on participant queries and requests.

⁵ Section 1.2 and Section 2.8, Annex B, DOE Circular No. DC2017-05-0009 (04 May 2017).

16. In DOE Circular No. DC2019-07-0011 dated 29 July 2019⁶, the DOE affirmed the designation of the IMO as the CRB;
17. On 22 October 2020, the DOE issued Department Circular No. DC 2020-10-0021⁷ entitled “Adopting Further Amendments to the Wholesale Electricity Spot Market (WESM) Rules (Provisions for the Implementation of Independent Market Operator)” which affirmed the establishment of the Independent Market Operator which shall administer the operations of the WESM in accordance with the EPIRA, its Implementing Rules and Regulations, the WESM Rules and Market Manuals, and such other relevant laws, rules and regulations;

**Authority to File Application
for Approval of Market Fees**

18. Sections 5.5 and 7.7 of DOE Circular No. 2018-01-0002, providing for guidelines for the transition to the IMO, direct the IMO to file with the Honorable Commission the application for approval of the market fees, which shall cover the budget and revenue requirements of PEMC and the IMO for the operation and administration of the WESM.
19. Clause 2.10.2.3 of the WESM Rules, meanwhile, provides that the proposed structure and level of market fees shall be developed by the Market Operator, subject to approval by the PEM Board prior to filing with the Honorable Commission for final approval;
20. Consistent with the WESM Rules, Section 10.02 of the Operating Agreement and the approved IMO Transition Plan, the approval by the PEM Board of the budgets of both PEMC and IEMOP is required prior to IEMOP’s filing of the application for approval of the market fees with the Honorable Commission, which shall clearly indicate the market fees that respectively pertain to PEMC and IEMOP;
21. Section 10.05 of the Operating Agreement likewise provides that IEMOP shall be responsible for collecting the market fees through the WESM settlement process upon approval thereof by the Honorable Commission. It is also provided that PEMC and IEMOP shall agree on the manner and schedule of remittance of the market fees pertaining to PEMC considering that these are being collected by IEMOP only on behalf of PEMC;
22. Pursuant to the foregoing WESM Rules clause 2.10.2.3 and the agreements between PEMC and the IEMOP in their Operating Agreement, the PEM Board approved the budgets of IEMOP and PEMC for CY 2022. The PEM Board likewise approved the filing by IEMOP of the application before this Honorable Commission. Prior to approval by the PEM Board,

⁶ A copy of which is hereto attached and made an integral part as Annex “E” of the Application.

⁷ A copy of which is hereto attached and made an integral part as Annex “F” of the Application.

the IEMOP Board of Directors likewise approved IEMOP's budgetary requirements and authorized the filing of the application. These approvals are evidenced by the Secretary's Certificate dated 16 August 2021 and 27 August 2021, copies of which are hereto attached as Annexes "G" and "H", respectively, and made integral parts of this Application;

23. Moreover, in the letter dated 23 June 2020 addressed to Gen. Ralph A. Villanueva, Ret., Chairman of IEMOP, DOE Secretary Alfonso G. Cusi directed the completion of the transition to the Independent Market Operator pursuant to Section 30 of the EPIRA, DOE Department Circular No. 2018-01-0002 dated 18 January 2018 and the IMO Transition Plan, citing the authority of the DOE to "issue policies, rules and regulations pertinent to the EPIRA". A copy of the letter dated 23 June 2020 is attached hereto as Annex "I" and made an integral part of this Application;
24. In response to the said letter, PEMC, through the letter of PEM Board Chairman Noel V. Aboboto dated 01 July 2020, confirmed its commitment to adhere to what is expected from PEMC in relation to the directive stated in the DOE letter dated 23 June 2020. A copy of the letter dated 01 July 2020 is attached hereto as Annex "J" and made an integral part of this Application;
25. Finally, in its letter dated 24 May 2021 addressed to the Honorable Commission with the subject: "IEMOP as the IMO and PEMC not being a GOCC", the DOE reiterated its two policy directions that it has pursued in relation to the WESM, one of which is the establishment of IEMOP as the IMO, urging ERC to accord Applicant IEMOP with all the rights and authority granted to it by law, including the filing of market fees for the WESM. A copy of the letter dated 24 May 2021 is attached hereto as Annex "K" and made an integral part of this Application;

TIMELINESS OF FILING THE APPLICATION

26. In the Decision dated 30 January 2008 in the CY 2007 Market Fees (MF) Application⁸ of PEMC, 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";
27. On 15 June 2021, IEMOP filed its Motion for Additional Time requesting for an additional period of thirty (30) days from 1 July 2021, or until 31 July 2021, within which to file the Application, considering that the PEM Board has yet to approve the budgets of IEMOP and PEMC;
28. On 21 July 2021, IEMOP filed its Second Motion for Additional Time requesting for an additional period of thirty (30) days from 31 July 2021, or until 30 August 2021, within

⁸ ERC Case No. 2007-124 RC.

which to file the Application, citing the need for more time to allow the PEM Board to approve the budgets of IEMOP and PEMC, as well as the need to prepare the relevant documents for submission to the Honorable Commission;

29. On 25 August 2021, IEMOP filed its Third Motion for Additional Time requesting for an additional period of thirty (30) days from 30 August 2021, or until 29 September 2021, within which to file the Application, to collate the relevant documents and comply with pre-filing requirements;
30. This Application is thus filed within the reglementary period requested;

PROPOSED MARKET FEES

31. The factual allegations set forth above are re-pleaded in support of this Application;
32. Section 9 Rule 9 (c) of the Implementing Rules and Regulations of the EPIRA provides that “the cost of administering and operating the WESM shall be recovered by the IMO through a charge imposed on all WESM participants or WESM transactions, provided such charge shall be filed with and approved by the ERC, consistent with the WESM Rules”;
33. PEMC, as then the Autonomous Group Market Operator (AGMO), first filed its Application⁹ for approval of the structure and level of the market fees in WESM in 2005 and proposed a dual structure market fees comprised of the following categories-
 - (a) Market Registration Fee 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.

34. The Honorable Commission approved the foregoing structure of the market fees in its Decision dated 22 June 2006, further ruling 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:

$$\begin{aligned}\text{Rate} &= \frac{\text{Total Annual Market Transaction Fees (Php)}}{\text{Total Generation Metered Quantity for the Month (kWh)}} \\ &= P/\text{kWh}\end{aligned}$$

35. Following the above-mentioned market fee structure, the instant Application seeks for approval of the Market Transaction Fee for CY 2022 to cover the cost of PEMC and

⁹ ERC Case No. 2005-048 RC.

IEMOP in governing and operating the WESM, respectively. In view of the pronouncement of the Honorable Commission in the Decision dated 22 June 2020 in ERC Case No. 2015-160RC deferring resolution of the prayer for the approval of a single market fee structure, the Applicant no longer seeks for approval of a Market Registration Fee;

36. The projected total budgetary requirement of both PEMC and IEMOP as approved by the PEM Board is NINE HUNDRED FORTY-EIGHT MILLION FIFTY-THREE THOUSAND PESOS (PhP948,053,000.00), broken down as follows:

Budget Component	PEMC, PhPM	IEMOP, PhPM	Total, PhPM
Personnel Services (PS)	167.13	265.74	432.87
Maintenance and Other Operating Expenses (MOOE)	160.45	282.30	442.75
Capital Expenditures (CAPEX)	8.62	64.28	72.90
TOTAL	336.21	612.32	948.53
Projected Generation, GWH	101,218		
Fixed Market Fee Charge, PhP/kWh	0.003322	0.006050	0.009371

37. As shown in the foregoing table, the projected budgetary requirements cover the following budget components:
- (a) *Personnel Services (PS)* pertain to the salaries and benefits of the employees of PEMC and IEMOP;
 - (b) *Maintenance and Other Operating Expenses (MOOE)* include, among other things, honorarium, rent, utilities, repairs and maintenance, contracted services, conference, insurance, advertising and promotion, taxes and dues, training, travel and transportation, materials and supplies and subscriptions, as well as, for PEMC, the cost for market operations audit and metering review;
 - (c) *Capital Expenditures (CAPEX)* consist of purchase, enhancements and upgrades to the market governance systems, corporate infrastructure, and purchase of service vehicles;
38. A discussion of the specific budgetary allocations falling within the foregoing cost components and their justifications are provided in the judicial affidavits of witnesses that are attached and made integral parts of this Application;
39. Applicant respectfully submits that the budgetary requirements for CY 2022 is sufficiently indicative of the

requirements of PEMC and IEMOP for the medium term, as these already consider the following:

- (a) Cost of administering and operating the WESM with two separate organizations performing market governance and market operations functions;
- (b) Organizational structures or tables of organization of the two organizations designed in accordance with their respective functions as envisioned by the two organizations, and not merely to accommodate the then existing manpower complement of PEMC. There are no significant changes in IEMOP’s manpower complement over the medium term. As for PEMC, its Modified Table of Organization which was approved on December 2020 by the PEM Board reflects an additional manpower for eleven (11) position;
- (c) Commercial operation of the Enhanced WESM Design and Operations as directed by DOE Department Circular No. DC2021-06-0015, and the corresponding cost of operation of the Market Management System, Central Registration and Settlement System, Accounts Management System and other new or enhanced market systems;
- (d) The aggregate PEMC and IEMOP budgetary requirements upon which the proposed Fixed Market Fee Charge and Market Fees are based does not include the pre-establishment expenses for the operations of WESM in the Mindanao grid. This is consistent with the Honorable Commission’s directive in its Order dated 11 July 2017 in ERC Case No. 2015-160RC, thus:

“ 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.

- (e) Further, the aggregate PEMC and IEMOP budgetary requirements do not include the corresponding costs of implementing market developments pursuant to more recent policy and regulatory issuances, such as the lowering of the threshold for retail competition, implementation of green energy option, and other projects, the costs of which cannot yet be determined at the time of the preparation and approval of the budgets;
- 40. Moreover, the amounts proposed by the Applicant 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;
- 41. Based on initial indicative figures, the estimated market fee charge is PhPP0.009371/kWh based on the Luzon Visayas and Mindanao energy forecast of 101,218GWh. The energy forecast is attached as Annex "L" and is made an integral part of this Application;
- 42. The market fee charge shall be recovered from Luzon and Visayas generators, and in Mindanao upon the actual 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. 2015-160RC, thus:

"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.

xxx xxx xxx”

Imposition on Generation
Company-Trading Participants

43. Pursuant to the previous approvals of the Honorable Commission, the market fee charge/rate shall be collected from the generation companies registered in the WESM and shall be assessed based on their actual generation. Thus, the amount of market fees that will be collected monthly shall be calculated by multiplying the market fee charge/rate by the actual metered generation metered quantities, in kWh, for the month, as follows:

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

As previously mentioned, the market fee charge shall be recovered from Luzon and Visayas, and in Mindanao upon the actual commercial operations of WESM in Mindanao.

44. Should it be necessary, Applicant shall file for adjustment of the market fee charge prior to the commencement of the commercial operations of the trading of reserves in the WESM, which adjustment shall consider the inclusion of

scheduled reserves in determining the Fixed Market Fee Charge as well as the additional budgetary requirements for IEMOP and PEMC, if any, in operating and governing the trading of reserves.

**Compliance with Reporting
and Policy Requirements**

45. PEMC and IEMOP, consistent with their obligations under the WESM Rules, shall submit to the Honorable Commission their annual financial reports, which shall include, among other matters, information on the utilization of the market fees;
46. Moreover, the general policies in the collection and utilization of the market fees laid down by the Honorable Commission in ERC Case No. 2007-124 RC, as may be applicable, have been and will continue to be complied with, foremost of which is that expenses will never exceed the total approved budget;
47. Additionally, PEMC and IEMOP shall comply with the policies laid down in DOE Department Circular No. 2018-01-0002 which prescribes the conditions for the effective and efficient transition to the IMO, as follows:
 - (i) Section 4.3 mandates that the IMO shall operate on a non-profit basis;
 - (ii) Section 5.4 provides that the IMO shall have fiscal autonomy from PEMC;
 - (iii) Section 5.5 requires that the IMO apply for the approval of the market fees to the Honorable Commission and that the same shall have minimal impact to the consumers;
 - (iv) Section 7.6 provides that the performance standards to be enforced upon the IMO by the PEM Board shall include financial performance standards which shall provide for an executive compensation policy that outlines the process and procedures that will be applied in reviewing and approving the total compensation paid to senior executives and key employees of PEMC and the IMO; and

Section 7.7 directs the IMO, upon approval of the PEM Board, to file the application for market fees, which shall cover the budget and revenue requirements of PEMC and the IMO for the operation and administration of the WESM, with the Honorable Commission for approval.

Motion for Issuance of Provisional Authority

48. The factual allegations set forth above are re-pleaded in support of the Motion for Issuance of Provisional Authority;
49. Given the highly dynamic nature of the electricity market, the Market Operator must be sufficiently capable of coping with a

highly dynamic and progressive electricity market. When its resources are limited, such capability is significantly compromised. More particularly, based on the results of the first two months since the commercial operation of the Enhanced WESM Design and Operations, the notable observations include the need for enhancements to the market systems to make the market processes more efficient and address the challenges of operating a five-minute market. Suffice it to say that the previously approved market fees levels are sorely inadequate to support daily operations, much less additional CAPEX requirements to sustain the efficient operations and governance of the WESM;

50. On the part of PEMC, the grant of Provisional Authority is necessary for the implementation of its urgent and vital projects for the WESM for CY2022. In particular, these projects are the Precision Air Conditioning Unit (PACU) or PACU and the Human Resource Information Systems (HRIS). For PACU, it is urgent because it is no longer functioning and the remaining cooling system is not enough to continuously ensure normal operating temperature needed for the efficient and reliable operation of PEMC's servers and network equipment located in its data center. For the HRIS, there is no technical support for the existing system due to business closure of the software developer. The replacement is badly needed as soon as possible so that issues and upgrades to the systems that may arise can be addressed immediately;
51. In the Decision dated 20 May 2020¹⁰ in the Market Fees Application docketed as ERC Case No. 2014-092 RC, the Honorable Commission approved the same with modification, authorizing PEMC to impose the market transaction fee for calendar year 2015 in the amount of PhP447,470,026.06 on WESM participants in the Luzon and Visayas grids. The Honorable Commission likewise issued its Decision dated 22 June 2020 in the Market Fees Application docketed as ERC Case No. 2015-160 RC, authorizing PEMC to impose the market transaction fee for calendar year 2016 in the amount of PhP486,248,467.71 and for calendar year 2017 in the amount of PhP486,441,602.85, on WESM participants in the Luzon and Visayas grids. The motions for reconsideration filed on the cited decisions have since been denied but petitions for review have been filed by PEMC with the Court of Appeals which remain pending as of date
52. Notably, these levels are clearly not sufficient to cover the budget requirements for calendar year 2022 especially in view of the market development initiatives that are mandated to be implemented through policy and regulatory issuances;
53. Thus, the Applicant respectfully prays for the issuance of a provisional authority to impose the proposed market fee charge of PhPo.009371/kWh to all generation companies registered in the WESM based on their actual generation, in

¹⁰ A copy of which was received by PEMC on 1 July 2020.

kWh, to support the operations of both PEMC and IEMOP pending resolution of the instant Application;

54. In support of this Application and the motion for issuance of provisional authority, Applicant herein submits the following documents, copies of which are hereto attached and made integral parts thereof:

Annex	Document
M	Judicial Affidavit of Ms. Mary Anne T. Santiago, Controllershship Manager of the Corporate Services Department of IEMOP, dated 7 September 2021
M-1	IEMOP Proposed Budgetary Requirements and Detailed Descriptions dated September 2022
N	Judicial Affidavit of Mr. Salvador D. Subaran, Chief Information Systems and Technology Officer of IEMOP, dated 9 September 2021
O	Judicial Affidavit of Mr. Herbie C. Ngirngir, Finance Assistant Manager of PEMC, dated 7 September 2021
O-1	PEMC Proposed Budgetary Requirements CY 2022 and Detailed Descriptions of the Budget Components
P	Judicial Affidavit of Ms. Marydette C. Jocson, Head of the Corporate Services Department of PEMC, dated 2 September 2021
P-1	Secretary’s Certificate dated 9 October 2020
P-2	Secretary’s Certificate dated 2 August 2021
P-3	PEMC 2020 Manpower Assessment
Q	Judicial Affidavit of Mr. Patrick S. Fernandez, Head of the Information Systems and Technology Department of PEMC, dated 2 September 2021
Q-1	Details of Cost Estimates of the Customized IT Systems (PEMC)

55. In accordance with the guidelines laid down by the Honorable Commission in its Decision dated 20 May 2020 in the Market Fees Application docketed as ERC Case No. 2014-092 RC and Decision dated 22 June 2020 in the Market Fees Application docketed as ERC Case No. 2015-160 RC, the Applicant submits the following supporting documents:

Annex	Documentary Requirement	Submitted Document
Personnel Services		
R	Detailed list of filled up positions with corresponding salary as of 30 June 2020	IEMOP Masterlist of Employees as of 30 June 2021

S		PEMC Masterlist of Employees as of 30 June 2021
P to P-3	Justification and timeline of request of additional positions, if any	Judicial Affidavit of Ms. Marydette C. Jocson, Head of the Corporate Services Department of PEMC, dated 2 September 2021 (including annexes thereto)
P to P-3	Justification and Market Study of the proposed upward adjustment of salaries, if any	Judicial Affidavit of Ms. Marydette C. Jocson, Head of the Corporate Services Department of PEMC, dated 2 September 2021 (including annexes thereto)
T	Reasonable level of allowances	Organization Assessment and Compensation and Benefits Review dated June 2018
M-1		IEMOP Proposed Budgetary Requirements and Detailed Descriptions for CY 2022, pp. 3-4
P to P-3		Judicial Affidavit of Ms. Marydette C. Jocson, Head of the Corporate Services Department of PEMC, dated 2 September 2021 (including annexes thereto)
M-1	Overtime Policy, if any	IEMOP Proposed Budgetary Requirements and Detailed Descriptions for CY 2022, pp. 3-4
U		PEMC Compensation and Benefits Policy
Maintenance and Other Operating Expenses		
V	Latest contract of Rental and Contracted Services	IEMOP Contracts on Rental and Contracted Services
W		PEMC Contracts on Rental and Contracted Services
X	Market Study for new Rental and Contracted Services	Project Information Sheet – IEMOP Work Area Recovery Operations Center (WAROC) Project
Y	Inventory and historical usage of materials and supplies for the past three (3) years	IEMOP Inventory and Historical Usage of Materials and Supplies

Z		PEMC Inventory and Historical Usage of Materials and Supplies
Capital Expenditures		
N	Market Study of upward adjustment of CAPEX budget items	Judicial Affidavit of Mr. Salvador D. Subaran, Chief Information Systems and Technology Officer of IEMOP, dated 9 September 2021
Q to Q-1		Judicial Affidavit of Mr. Patrick S. Fernandez, Head of the Information Systems and Technology Department of PEMC, dated 2 September 2021
AA	Inventory and Aging of Equipment	IEMOP Inventory and Aging of Equipment
BB		PEMC Inventory and Aging of Equipment
CC		Market Fee Rate Computation

Compliance with Pre-Filing Requirements

56. In compliance with the pre-filing requirements for the instant Application and Motion, pursuant to Rule 6 of the ERC Rules of Practice and Procedure, Applicant herein submits the following documents, which are made integral parts hereof:

Annex	Document
DD	Acknowledgment of City Council Secretary, Sangguniang Panlungsod of Pasig City
EE	Affidavit of Service
FF	Affidavit of Publication
GG	Complete copy of newspaper
HH	Certification of City Council Secretary, Sangguniang Panlungsod of Pasig City
II	Affidavit of Service

Motion for Confidential Treatment of Information

57. Applicant respectfully moves for the Confidential Treatment of the IEMOP Masterlist of Employees as of 30 June 2021, PEMC Masterlist of Employees as of 30 June 2021 and the Organization Assessment and Compensation and Benefits Review dated June 2018 hereto attached as Annexes “P-3”, “R”, “S”, “T”, “U”, “V” and “W”, respectively, copies of which are submitted as password-protected files which form part of Applicant’s submission;
58. The cited documents should be accorded confidential treatment and protected from public disclosure, as well as kept separate from the records of this case during the

pendency of the proceedings in the instant case, and after the termination thereof, for the following reasons: (i) the masterlist of employees which indicate the corresponding salary of the employee are confidential in nature and are subject to confidentiality provisions under the employment contract executed between the employer and employee; (ii) the Data Privacy Act (Republic Act No. 101073) ensures the protection of personal information from which the identity of an individual is apparent or can be reasonably and directly ascertained by the entity holding the information, or when put together with other information would directly and certainly identify an individual, such as those contained in the Masterlist of Employees of both IEMOP and PEMC; and (iii) the disclosure of the contents thereof may be a source of competitive advantage for the recipient of the information and IEMOP and/or PEMC will be vulnerable to pirating and loss of key personnel, or may become a basis for discontent and comparison among the relevant parties;

59. Applicant requests that the same be protected from public disclosure and kept separate from the records of this case considering the highly sensitive and confidential nature of the information contained in these documents, pursuant to Section 1, Rule 4 of the ERC Rules of Practice and Procedure, which reads:

RULE 4 - CONFIDENTIAL INFORMATION

Section 1. Request for Confidential Treatment of Information. - A party to a proceeding before the Commission may move for information to be treated as confidential.

The motion shall:

- (a) Describe therein with particularity the information to be treated as confidential, stating the specific grounds thereof, and specifying the period during which the information must not be disclosed; and
- (b) Be accompanied with one (1) copy of the document that contains the information sought to be treated as confidential, placed in a sealed envelope, with the envelope and each page thereof stamped with the word "Confidential". The sealed envelope shall be accompanied by an index enumerating the contents thereof with sufficient particularity.

The movant shall serve the other parties with the motion but not copies of the documents and/or information sought to be treated as confidential.

If the information for which confidentiality is requested is part of the attachments to an application, petition or pleading, the same must comply with this Section by incorporating therein the motion.

The movant has the burden to establish that the information is entitled to such confidentiality.”

60. Further, in compliance with the requirement under Section 7, Rule 3 of the ERC Rules of Practice and Procedure, the pdf and MS Word files of the instant pleading are submitted as well as an MS Excel file of the rate computation. Meanwhile, the pdf files of the documents herein attached as annexes are submitted to the Honorable Commission

PRAYER

WHEREFORE, premises considered, it is most respectfully prayed of this Honorable Commission:

- (i) grant Applicant’s prayer for the issuance of a provisional authority authorizing IEMOP to impose a MARKET FEE CHARGE of PhPo.009371/kWh to all generation companies registered in the WESM based on their actual generation, in kWh, pending resolution of the instant Application;
- (ii) after due notice and hearing, render judgment APPROVING the proposed market fees for CY 2022 for IEMOP and PEMC in the total amount of NINE HUNDRED FORTY-EIGHT MILLION FIFTY-THREE THOUSAND PESOS (PhP948,053,000.00);
- (iii) confirming the confidentiality of the IEMOP Masterlist of Employees as of 30 June 2021, PEMC Masterlist of Employees as of 30 June 2021 and the Organization Assessment and Compensation and Benefits Review dated June 2018 hereto attached as Annexes “P-3”, “R”, “S”, “T”, “U”, “V” and “W” and directing the said documents be treated as confidential and protected from public disclosure during the pendency of the proceedings in the instant case, and after the termination thereof and in a manner deemed appropriate by the Honorable Commission in accordance with Rule 4 of the ERC Rules of Practice and Procedure.

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

Finding the said *Application* to be sufficient in form and with the required fees having been paid, the Commission hereby sets the same for determination of compliance with the jurisdictional requirements, expository presentation, Pre-Trial Conference and presentation of evidence on the following dates and venue, or online platform for the conduct thereof, pursuant to Resolution No. 09, Series of 2020¹¹ and Resolution No. 01, Series of 2021 (ERC Revised Rules of Practice and Procedure):¹²

Date	Platform	Activity
06 February 2024 (Tuesday) at nine o'clock in the morning (09:00 A.M)	Energy Regulatory Commission, Hearing Room 11th Floor, Exquadra Tower, 1 Jade Drive, Ortigas Center, Brgy. San Antonio, Pasig City	Determination of compliance with jurisdictional requirements and Expository presentation for Luzon stakeholders
13 February 2024 (Tuesday) at nine o'clock in the morning (09:00 A.M)	Energy Regulatory Commission, Visayas Area Operations Divisions (VAOD), 7th Floor, Kepwealth Building, Samar Loop, Cebu Business Park	Expository presentation for Visayas stakeholders
20 February 2024 (Tuesday) at nine o'clock in the morning (09:00 A.M)	Energy Regulatory Commission, Mindanao Area Operations Division (MAOD), 6th Floor, BIZ Bldg., c/o BORMAHECO, Inc., 209 J.P. Laurel Avenue, Bajada, Davao City	Expository presentation for Mindanao stakeholders

¹¹ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.

¹² A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

Date	Platform	Activity
29 February 2024 (Thursday) at nine o'clock in the morning (09:00 A.M)	Microsoft Teams Application	Pre-Trial Conference and Presentation of Evidence
07 March 2024 (Thursday) at nine o'clock in the morning (09:00 A.M)		Presentation of Evidence
14 March 2024 (Thursday) at nine o'clock in the morning (09:00 A.M)		Presentation of Evidence

Applicant IEMOP is directed to attend the said hearings at the designated venues.

RELATIVE THERETO, IEMOP is hereby directed to:

- 1) Cause the publication of the attached *Notice of Public/Virtual Hearing* in two (2) newspapers of nationwide circulation in the Philippines at its own expense, twice (2x) within 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 virtual hearing;
- 2) Furnish with copies of this *Order* and the attached *Notice of Public/Virtual Hearing* the Office of the Mayor of Pasig, City and the Local Government Unit (LGU) of Pasig City for the appropriate posting thereof on their respective bulletin boards;
- 3) Inform the consumers within the affected area, by any other means available and appropriate, of the filing of the *Application*, its reasons therefor, and of the scheduled virtual hearings thereon;
- 4) Furnish with copies of this *Order* and the attached *Notice of Public/Virtual 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, except those subject of a motion for confidential treatment of information, all those making requests therefor, subject to reimbursement of reasonable photocopying costs.

Within five (5) calendar days prior to the date of the initial virtual hearing, IEMOP must submit to the Commission via electronic mail (e-mail) at docket@erc.ph, and copy furnish the Legal Service through legal@erc.ph, the scanned copies of 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/Virtual Hearing* consisting of affidavits of the Editors or Business Managers of the newspaper where the said *Notice of Virtual 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/Virtual Hearing* consisting of certifications issued to that effect, signed by the aforementioned City Mayor and its LGU legislative bodies or their duly authorized representatives, bearing the seals of their offices;
- 3) The evidence of other means employed by IEMOP to inform the consumers within the affected area of the filing of the *Application*, its reasons therefor, and of the scheduled hearings thereon;
- 4) The evidence of receipt of copies of this *Order* and the attached *Notice of Public/Virtual Hearing* by the OSG, the COA, and the Committees on Energy of both Houses of Congress;
- 5) The evidence of receipt of copies of the *Application* and its attachments, except those subject of a motion for confidential treatment of information, if any, by all those making requests therefor; and

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

Moreover, IEMOP is hereby required to post on its bulletin boards, the scanned copies of the foregoing jurisdictional requirements, together with the newspaper publication and certifications issued by the concerned Offices City Mayor and its Local Legislative Bodies, and to submit proof of posting thereof.

Applicant IEMOP, and all interested parties are also required to submit via e-mail at docket@erc.ph, and copy furnish the Legal Service through legal@erc.ph, **at least five (5) calendar days** before the date of the scheduled virtual hearing and Pre-trial Conference, its respective Pre-Trial Brief containing, among others:

- 1) A summary of admitted facts and proposed stipulation of facts;
- 2) The issues to be tried or resolved;
- 3) The documents or exhibits to be presented, stating the purposes and proposed markings therefor, which should also be attached to the Pre-trial Brief; and
- 4) The number and names of the witnesses, with their written testimonies in a Judicial Affidavit form attached to the Pre-trial Brief.

Applicant IEMOP must ensure that all the documents or exhibits proposed to be presented have already been duly submitted to the Commission **at least five (5) calendar days** before the date of the scheduled initial virtual hearing and Pre-trial Conference pursuant to the preceding paragraph.

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

Applicant IEMOP must also be prepared to make an expository presentation of the instant *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, the nature of the *Application*. Relevant information and pertinent details substantiating the reasons and justifications for the *Application* must be cited in support thereof.

Applicant IEMOP is hereby directed to file a copy of its Expository Presentation via e-mail at docket@erc.ph, and copy furnish the Legal Service through legal@erc.ph, **at least five (5) calendar days** prior to the scheduled virtual hearing. IEMOP shall also be required, upon the request of any stakeholder, to provide an advance copy of its expository presentation, **at least five (5) calendar days** prior to the scheduled virtual hearing.


Applicant IEMOP is hereby directed to submit, through personal service, registered mail, or ordinary mail/private courier, one (1) set of the original or certified true hard copies of its Jurisdictional Compliance, Expository Presentation, Pre-trial Brief, and Judicial Affidavits of witnesses, **within five (5) working days** from the date that the same were electronically submitted, as reflected in the acknowledgment receipt e-mail sent by the Commission.

Finally, IEMOP, including its authorized representatives and witnesses, are hereby directed to provide the Commission, through legal.virtualhearings@erc.ph, their respective e-mail addresses upon receipt of this *Order*. The Commission will send the access link/s to the aforementioned hearing platform within five (5) working days prior to the scheduled hearing.

SO ORDERED.

Pasig City, 4 January 2024.

FOR AND BY AUTHORITY
OF THE COMMISSION:


MONALISA C. DIMALANTA
Chairperson and CEO

ERC

Office of the Chairperson and CEO



MCD2024-013120


LS: AVL/LSP/MCCG

ERC CASE NO. 2023-129 RC
ORDER / 04 JANUARY 2024
PAGE 24 OF 24

Copy Furnished:

1. Independent Market Operator of the Philippines, Inc. (IEMOP)
Applicant
19th Floor Robinsons-Equitable Tower,
ADB Avenue corner Poveda Street,
Ortigas Center, Pasig City
2. Attys. Rachel Angela P. Anosan; Sheryll Mallari-Dy; Lilibeth Grace L. Vetus
Counsel for IEMOP
19th Floor, Robinsons-Equitable Tower
ADB Avenue corner Poveda Street
Ortigas Center, Pasig City
Email Address: rachel.anosan@iemop.ph; sheryll.dy@iemop.ph; grace.vetus@iemop.ph
3. Office of the City Mayor
Pasig City
4. Office of the LGU Legislative Body
Pasig City
5. Office of the Solicitor General (OSG)
Amorsolo St., Legaspi Village, Makati City
docket@osg.gov.ph
6. Commission on Audit (COA)
Don Mariano Marcos Avenue, Diliman, Quezon City
citizensdesk@coa.gov.ph
7. Senate Committee on Energy
Senate of the Philippine
GSIS Bldg., Roxas Blvd., Pasay City
senateenergycommittee@gmail.com
8. House Committee on Energy
House of Representatives
Batasan Hills, Quezon City
Committee.energy@house.gov.ph
9. Market Operations Service (MOS)
Exquadra Tower, Jade Drive, Ortigas Center, Pasig City
mos@erc.ph