

**REVISED GUIDELINES GOVERNING THE NOMINATION AND DELEGATION OF
THE REGULAR BOARD OF DIRECTORS OF THE INDEPENDENT ELECTRICITY
MARKET OPERATOR OF THE PHILIPPINES INC.**

WHEREAS, pursuant to Section 30 of the Electric Power Industry Reform Act (EPIRA), the Department of Energy (DOE) issued on 17 January 2018, Circular No. 2018-01-002 entitled *"Adopting Policies for the Effective and Efficient Transition to the Independent Market Operator for the Wholesale Electricity Spot Market,"* (DC No. 2018-001-002). On one hand, the WESM or electric power industry stakeholders, through the Philippine Electricity Market Corporation (PEMC) approved and promulgated with the DOE, a plan entitled *"Plan for Transition to the IMO of the Wholesale Electricity Spot Market* (IMO Transition Plan) on 06 February 2018;

WHEREAS, the transition to Independent Market Operator (IMO) was implemented and the PEMC remained the Governance Arm of the WESM;

WHEREAS, Section 6.4 of DOE Circular No. 2018-001-002 provides that the Board of Directors of the PEMC (PEM Board), subject to the approval of the DOE, shall provide for a detailed nomination and selection process for the election of the initial transitory and subsequent regular members of the Board of Directors of the IMO including the details on the tenure and composition of the IMO Board to ensure that the operations of the IMO are entrusted to highly capable individuals with necessary expertise and/or qualifications;

WHEREAS, Section 7 of the IMO Transition Plan similarly sets forth guidelines on the formation and qualifications of the IMO Board of Directors and the nomination and selection process and the role of PEMC in relation thereto subject to the WESM Rules or relevant market manual;

WHEREAS, on 23 June 2020, the DOE issued Special Order No. SO2020-06-0020, which, among others, directed the creation of the DOE Task Force-IMO and mandated it to "facilitate the completion of the amendments to the WESM Rules, Market Manuals, and PEMC Articles of Incorporation and By-Laws pursuant to Transition DC and the Transition Plan";

WHEREAS, on 13 October 2020, the DOE approved the guidelines on the Nomination and Selection of the Regular Board of Directors of the IEMOP;

WHEREAS, regular elections for the Board of Directors have not been conducted for the past two (2) years, thereby disrupting the regular staggered-term system intended to ensure continuity and orderly succession of the Board;

NOW, THEREFORE, in consideration of the above, the following amendments to the Guidelines on the Nomination and Selection of the Regular Board of Directors of the IEMOP are hereby adopted to restore the staggered-term system and strengthen the nomination and selection process for the IEMOP Board of Directors.

1. PRELIMINARY STATEMENT

Pursuant to Section 6.4 of Department Circular (DC) No. 2018-01-0002 of the DOE, the PEMC is mandated to provide, among others, a detailed nomination and selection process for the election of the transition and regular members of the Board of Directors of the IEMOP, subject to approval by the DOE.

Sections 5 and 7 of the Approved Plan for Transition to the Independent Market Operator of the Wholesale Electricity Spot Market (WESM) also set forth provisions similar to the foregoing.

2. DEFINITION

The following terms and expressions shall have the meanings set forth below:

- 2.1. **"Applicable Laws and Rules"** shall include the Corporation Code, the EPIRA and its Implementing Rules, DC 2018-01-002 the WESM Rules and other laws, rules and regulations relating or affecting the Board Governance of the IEMOP Board.
- 2.2. **"Board or IEMOP Board"** shall refer to the governing body elected by the members of the IEMOP that exercises the corporate powers of a corporation, conducts all business and control its properties;
- 2.3. **"Department of Energy" or "DOE"** is a government agency created pursuant to Republic Act No. 7638 with functions as expanded by the EPIRA.
- 2.4. **"EPIRA"** refers to Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001."
- 2.5. **"Government"** refers to the Government of the Republic of the Philippines.
- 2.6. **"Guidelines"** refers to this document otherwise called "Guidelines Governing the Nomination and Selection of the Independent Electricity Market Operator of the Philippines, Inc." or "IEMOP" Regular Board of Directors.
- 2.7. **"Independent Market Operator" or "IMO"** refers to the Independent Electricity Market Operator of the Philippines, Inc." or "IEMOP"
- 2.8. **"IEMOP Charter"** refers to the Articles of Incorporation and By-laws of the IEMOP that was approved by the Securities and Exchange Commission (SEC) on 07 March 2018.
- 2.9. **"PEM Board Selection Committee" or "Selection Committee"** is the committee appointed by the PEM Board tasked to perform the obligations provided in Section 4.1 and other relevant sections of the Guidelines.

- 2.10. **"Person"** refers to a natural person.
- 2.11. **"Philippine Electricity Market Corporation" or "PEMC"** refers to the non-profit, non-stock corporation created pursuant to EPIRA and other Applicable Laws responsible for the governance of the WESM and which is governed by the PEM Board.
- 2.12. **"Wholesale Electricity Spot Market" or "WESM"** refers to the Wholesale Electricity Sport Market established by the DOE in accordance with Section 30 of the EPIRA.
- 2.13. **"WESM Member"** shall mean a person or entity that satisfies the requirements for being a member of PEMC and is registered with the Market Operator to participate in the WESM.
- 2.14. **"WESM Rules"** refers to the detailed rules that govern the administration and operation of the WESM.

3. GOVERNANCE PRINCIPLES

In line with its mandate, the PEMC Board of Directors shall:

- 3.1. Adopt a fair and transparent nomination and selection policy;
- 3.2. Ensure that the IEMOP Board shall be composed of members of known expertise, experience, independence, and
- 3.3. Ensure that qualification standards shall be observed pursuant to, including but not limited to, academic, professional and business background, age, gender and other regulatory requirements for the position.

4. RESPONSIBILITIES OF DIFFERENT GOVERNING BODIES IN THE DETERMINATION OF THE REGULAR BOARD OF DIRECTORS OF THE INDEPENDENT MARKET OPERATOR

- 4.1 **PEM Selection Committee.** As appointed by the PEM Board, the PEM Board Selection Committee shall administer the nomination and selection process, determine the competencies and qualifications required by the IEMOP Board, evaluate and shortlist nominees, and recommend the final list of qualified nominees to the PEM Board
- 4.2 **PEM Board.** Upon the recommendation of the PEM Board Selection Committee, the PEM Board shall independently review and approve the recommended list of nominees for endorsement to DOE.

- 4.3. DOE.** Upon submission by the PEM Board, the DOE shall evaluate and validate the nominees endorsed by the PEM Board, determine their compliance with the qualifications, eligibility, and independence requirements under these Guidelines, and approve the final list of qualified nominees for election by the IEMOP Board.
- 4.4. IEMOP Board.** Upon receipt of the DOE-validated nominees, the IEMOP Board shall elect the directors or fill the vacancy/vacancies in the IEMOP Board. Directors, so elected, shall perform their duties and responsibilities in accordance with applicable laws and regulations.

5. BOARD GOVERNANCE

- 5.1. Composition.** The IEMOP Board shall consist of such number of directors as may be provided in IEMOP's Articles of Incorporation and By-Laws; provided, that any amendment or change in the number of directors under the Articles of Incorporation or By-Laws shall be subject to the prior approval of the DOE. The directors shall be elected at a general membership meeting held every 4th Wednesday of June of each year, in accordance with the IEMOP By-Laws.

- 5.2. Term of Office.** The Regular members of the IEMOP Board shall have a term of three (3) years until their successors are duly elected and qualified.

No Director shall serve for more than two (2) consecutive terms; provided, that no Director shall serve for more than a cumulative period of nine (9) years, reckoned from the year 2018.

Notwithstanding any provision to the contrary, the election of directors to be conducted in 2026 shall serve as a transitional measure to restore the Board's regular system of staggered term. Accordingly, the directors elected in 2026 shall be assigned terms as follows:

- two (2) directors shall serve until the June 2027 annual elections;
- two (2) directors shall serve until the June 2028 annual elections; and
- three (3) directors shall serve until the June 2029 annual elections.

Following the 2026 election, the Board shall transmit to the DOE the list of the elected Directors. The DOE shall determine which of the elected Directors shall serve the one (1)-, two (2)-, and three (3)-year transitional terms for purposes of implementing the staggered election system.

Upon the expiration of the foregoing transitional terms, the successors of the respective directors shall each be elected for a regular term of three (3) years.

Thereafter, all elections shall be conducted in accordance with the established staggered cycle to ensure that only a portion of the Board is elected at each annual election, thereby promoting continuity in governance, preserving institutional knowledge, and ensuring the orderly succession of the Board.

5.3. General Qualifications. Each Director of the IEMOP Board shall be independent as defined by Section 5.4 and shall possess the following general qualifications:

- 5.3.1 has a proven track record for sound strategic thinking and judgment;
- 5.3.2 must be independent with an objective perspective;
- 5.3.3 must have an exemplary professional background and meaningful experience in the relevant skill set sought;
- 5.3.4 must be committed to representing the long-term interests of the WESM and the public; and
- 5.3.5 must hold a certificate or proof of training in board/corporate governance prior to nomination or within six (6) months after election, if duly elected.

5.4. Independence of the IEMOP Board. The IEMOP Board shall be composed of persons that are independent of the electric power industry participants, including the generation sector and other industry sectors.

A person is independent if he/she:

- 5.4.1 Is not a director, officer, employee, contractor, agent, manager or shareholder of a WESM Member or the System Operator;
- 5.4.2 Is not a relative of a person within the fourth (4th) civil degree of consanguinity or affinity of a director, officer, employee, contractor, agent, manager or shareholder of a WESM Member or the System Operator;
- 5.4.3 Is not an officer, manager, director or shareholder, agent, employee or contractor of, or is not a person who directly or indirectly, through one or more intermediaries, control or is controlled by a company, affiliate or any other entity related or associated with, any WESM Member or the System Operator, where:
 - 5.4.3.1 A related company or body is a parent, holding company, subsidiary or affiliate of the WESM Member or the System Operator; and

5.4.3.2 An associate is a person who is a director, officer, manager or shareholder of that related company or entity or a relative of such a person within the fourth civil degree of affinity or consanguinity; and

5.4.3.3 An affiliate is any person that, alone or together with any other person, directly or indirectly, through one or more intermediaries controls or is controlled by, or is under common control with another person;

Provided, That the term shareholder shall exclude a member of an electric cooperative who is not involved in its operation and management and an end user required to subscribe to or purchase a share in a distribution utility as an incident to the provision of service by the same distribution utility, and provided the interest of the end-user is not more than the minimum required to avail of the distribution utility's service.

5.4.4 Is not an official or employee of the Philippine government, its agencies or instrumentalities within one (1) year prior to the nomination date, provided, this will not apply to members of the academe in public schools and universities;

5.4.5 Has not been an employee, officer, director, contractor, agent, manager, supervisor or shareholder of, any electric power industry participant, or a company or body related to or associated with a WESM Member or the System Operator within one (1) year prior to the nomination date; and,

5.4.6 Agrees not be employed by and does not accept any employment with a company, affiliate or any other entity related to or associated with a WESM Member or the System Operator within one (1) year after the person ceases to be a director.

Every Director shall, prior to assumption of office, execute a sworn undertaking affirming compliance with all the qualifications, independence requirements, prohibitions, and continuing obligations prescribed under this Section, including the post-employment restriction provided herein. Such undertaking shall form part of the official records of the IEMOP and may be required by DOE for verification or enforcement purposes.

5.5. Professional Qualifications. The IEMOP Board shall possess the professional qualification or experience required under the IMO Transition Plan. As such, the IEMOP Board shall be composed of persons with any of the following expertise:

- 5.5.1 A member of the academe with a high academic position such as faculty head with expertise in a discipline related to commerce or science;
 - 5.5.2 An economist with a doctorate degree in economics and experience in a senior management position and has a background in the disciplines of econometrics and macroeconomics;
 - 5.5.3 A person with a background in finance/commerce with experience in a senior management position in a commercial field, preferably with a significant finance-related component, with at least five (5) years of experience;
 - 5.5.4 An engineer with at least five (5) years of experience and has in-depth knowledge and understanding of the energy-related field;
 - 5.5.5 A lawyer with at least five (5) years of experience in the practice of law or who has held the position of judge or justice;
 - 5.5.6 A certified public accountant with at least five (5) years of experience in the practice of accountancy or financial audit; and
 - 5.5.7 An individual with proven leadership or management experience or has held leadership positions at least five (5) years in reputable or well-established organizations.
- 5.6. Disqualification of Directors.** No person convicted by final judgement of an offense punishable by imprisonment for a period exceeding six (6) years, or found guilty of a violation of the Corporation Code committed within five (5) years prior to date of his or her election, shall qualify as a director of the IEMOP.

6. NOMINATION AND SELECTION PROCESS IN THE DETERMINATION OF DIRECTORS OF THE INDEPENDENT MARKET OPERATOR

6.1. Notice of Vacancy.

- 6.1.1. **Regular Vacancy.** Not earlier than 01 February of each year, IEMOP shall notify the PEM Board Selection Committee of any vacancy that will arise during the year due to the expiration of the term of an incumbent Director, for purposes of commencing the nomination process.
- 6.1.2. **Special Vacancy.** In case of a vacancy arising from removal, resignation, death, incapacity, or any cause other than expiration of term, IEMOP shall notify the PEM Board Selection Committee within five (5) calendar days from the occurrence of the vacancy.

The Director so elected shall serve the unexpired term of the removed, resigned, incapacitated or deceased director.

6.2. Call for Nominations.

Within three (3) days from receipt of the Notice of Vacancy, the PEM Board Selection Committee shall publish the Notice of Vacancy on the PEMC website and invite nominations from WESM Members or market participants using the prescribed forms and supporting documents.

6.3. Nomination Period.

6.3.1. Regular Election. The PEM Board Selection Committee shall receive and acknowledge all nominations submitted within the prescribed nomination period.

6.3.2. Special Election. The nomination period shall be ten (10) calendar days from the publication of the Notice of Vacancy.

6.4. Evaluation of Nominees.

The PEM Board Selection Committee shall receive, screen, and evaluate the nominees based on the applicable qualifications, disqualifications, independence requirements, conflict-of-interest rules, and competency requirements under these Guidelines and other applicable laws and regulations. The Committee may conduct interviews, verify submitted information, consider comments or oppositions, and utilize external search firms or other reputable sources in identifying and evaluating qualified candidates.

For regular elections, the evaluation shall be completed in time for the shortlist to be recommended to the PEM Board on or before 01 April. For special elections, the evaluation shall be completed within seven (7) calendar days from the close of the nomination period.

6.5. Publication of Nominees.

Within three (3) days from completion of the evaluation, the PEM Board Selection Committee shall publish the list of qualified nominees on the PEMC website or through other appropriate means of public dissemination for comments or opposition.

6.6. Shortlisting and Recommendation.

6.6.1. Regular Election.

On or before 01 April, the PEM Board Selection Committee shall recommend to the PEM Board a shortlist of nominees, ensuring that the number of nominees exceeds the number of vacant

positions by at least two (2). The recommended candidates shall collectively provide an appropriate balance of knowledge, expertise, experience, independence, and diversity required by the IEMOP Board.

6.6.2. Special Election.

Within five (5) calendar days from publication of the qualified nominees, the PEM Board Selection Committee shall recommend to the PEM Board a shortlist satisfying the same requirements under Section 6.6.1.

6.7. PEM Board Evaluation and Endorsement.

6.7.1. Regular Election.

On or before 15 April, the PEM Board shall evaluate the shortlist and endorse its recommended nominees to the DOE for validation.

6.7.2. Special Election.

Within three (3) calendar days from receipt of the shortlist, the PEM Board shall evaluate the nominees and endorse its recommended nominees to the DOE for validation.

6.8. DOE Validation.

The DOE shall determine whether the endorsed nominees satisfy the applicable qualifications, eligibility requirements, independence standards, and other requirements under these Guidelines and applicable laws and regulations.

6.9. Transmittal of Validated Nominees.

Upon receipt of the DOE-validated nominees, PEMC shall transmit the final list of validated nominees to the incumbent IEMOP Board for election, as follows:

6.9.1. Regular Election

Within five (5) days from receipt of the DOE validation; and

6.9.2. Special Election

Within two (2) calendar days from receipt of the DOE validation.

6.10. Election.

6.10.1. Regular Election.

The incumbent IEMOP Board shall conduct the regular election of Directors in accordance with the IEMOP Articles of Incorporation and By-Laws.

6.10.2. Special Election.

The incumbent IEMOP Board shall conduct the special election to fill the vacancy in accordance with the IEMOP Articles of Incorporation and By-Laws.

7. TRANSITORY PROVISION

The first set of IEMOP Board who will be selected on the 4th Wednesday of June may be called and selected earlier without prejudicing their term of office.

8. AMENDMENTS

Any amendment to these Guidelines shall be subject to the approval of the PEM Board and the DOE.

The IMO shall ensure that approved amendments to these Guidelines that affect matters governed by its Articles of Incorporation and By-Laws are incorporated into, or otherwise reflected in, the appropriate amendments to its Articles of Incorporation and By-Laws, subject to the approval of the DOE and compliance with applicable laws, rules, and regulatory requirements. The IMO shall report to the PEMC and DOE its compliance to this provision.

9. SEPARABILITY CLAUSE

Should any provision or section of these Guidelines be declared unconstitutional or contrary to law, the parts not so declared shall remain in full force and effect.

10. PUBLICATION AND EFFECTIVITY

These Guidelines, as they may be amended from time to time, shall be published in the PEMC website.