

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

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IN THE MATTER OF THE APPLICATION FOR THE APPROVAL OF THE LEVEL OF MARKET FEES FOR THE CALENDAR YEAR 2024 FOR THE PHILIPPINE WHOLESALE ELECTRICITY SPOT MARKET (WESM)

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ERC CASE NO. _____ RC

INDEPENDENT ELECTRICITY MARKET OPERATOR OF THE PHILIPPINES INC. and PHILIPPINE ELECTRICITY MARKET CORPORATION,

Applicants.

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**JOINT APPLICATION
(WITH MOTION FOR ISSUANCE OF
PROVISIONAL AUTHORITY)**

Applicants, **INDEPENDENT ELECTRICITY MARKET OPERATOR OF THE PHILIPPINES INC. (IEMOP)** and **PHILIPPINE ELECTRICITY MARKET CORPORATION (PEMC)**, by counsel, respectfully state:

1. This is an Application jointly filed by IEMOP and PEMC for the approval of the level of market fees for the Calendar Year (CY) 2024 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

2. Applicant IEMOP is a non-stock, non-profit corporation duly organized and existing in accordance with Philippine laws, with principal office at the 9th 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 to file this Application jointly with PEMC and represent the Applicant IEMOP in all stages of the proceedings, as evidenced by the Secretary's Certificates hereto attached as **Annexes "A" to "A-1"** and made an integral part of this Application;

3. Applicant PEMC is a non-stock, non-profit private corporation duly organized and existing in accordance with the laws of the Philippines with principal office address at the 18th Floor Robinsons Equitable Tower, ADB Avenue, Ortigas Center, Pasig City. It is represented in this Application by its President, Elvin Hayes E. Nidea, who has been duly authorized by Applicant PEMC's Board of Directors ("PEM Board") to file this Application jointly with IEMOP and represent the Applicant PEMC in all stages of the proceedings, as evidenced by the Secretary's Certificate hereto attached as **Annex "B"**.

Transition to the Independent Market Operator (IMO)

4. 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);

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

5. 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;

6. 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 fulfill 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, enforcement and compliance, rules change and review, market audit, dispute resolution and technical assistance;

7. 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.

8. 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 17 January

2018 and entitled "Adopting Policies for the Effective and Efficient Transition to the Independent Market Operator for the Wholesale Electricity Spot Market"²;

9. 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;

10. 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;

11. 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;

12. 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;

13. 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;

14. In accordance with the DOE Circular and the IMO Transition Plan, PEMC remains to be the governing body of

² A copy of which is hereto attached and made an integral part as Annex "C".

³ A copy of which is hereto attached and made an integral part as Annex "D".

⁴ A copy of which is hereto attached and made an integral part as Annex "E".

the WESM 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;

15. 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.

16. 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

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

participants update meetings, and (b) operation and maintenance of help desk facility to facilitate actions on participant queries and requests.

17. In DOE Circular No. DC2019-07-0011 dated 29 July 2019⁶, the DOE affirmed the designation of the IMO as the CRB;

18. PEMC remained as the Governance Arm of the WESM and is mandated to perform its functions as set out in the WESM Rules and its Market Manuals, through its Board of Directors, the PEM Board and its governance committees, as provided under Section 7 of Department of Energy Circular No. DC 2018-01-0002;

19. 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)". This issuance 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

20. 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;

21. 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;

⁶ A copy of which is hereto attached and made an integral part as Annex "F".

⁷ A copy of which is hereto attached and made an integral part as Annex "G".

22. 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 Applicants 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 Applicants IEMOP and PEMC;

23. Section 10.05 of the Operating Agreement likewise provides that Applicant 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 Applicants 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;

24. For its part, PEMC deems itself as an indispensable party to the Application considering its substantial interest over the subject matter of the case, i.e., as the owner of the market fees pertaining to it. This is because the market fees being sought to be approved by this Honorable Commission cover the budget and revenue requirements of both Applicants, as the market operator and governing body of the WESM;

25. The IEMOP Board of Directors likewise approved Applicant IEMOP's budgetary requirements and authorized the joint filing of the application with Applicant PEMC, which approval is evidenced by the Secretary's Certificate dated 5 July 2023 a copy of which is hereto attached as **Annex "A-1"** and made an integral part of this Joint Application;

26. Pursuant to WESM Rules Clause 2.10.2.3 and the agreements between Applicants PEMC and the IEMOP in their Operating Agreement, the PEM Board approved the budgets of Applicants IEMOP and PEMC for CY 2024 during its regular meeting held on 31 May 2023. These approvals are evidenced by the Secretary's Certificate dated 21 July 2023, a copy of which is hereto attached as **Annex "H"**, and made an integral part of this Joint Application;

TIMELINESS OF FILING THE APPLICATION

27. 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";

28. On 27 June 2023, Applicant IEMOP filed its Motion for Additional Time requesting for an additional period of thirty (30) days from 1 July 2023, or until 31 July 2023, within which to file the Application, considering the need to complete the pre-filing requirements of the Application, including the supporting documents thereto;

29. This Joint Application is thus filed within the reglementary period requested;

PROPOSED MARKET FEES

30. The factual allegations set forth above are re-pleaded in support of this Application;

31. 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";

32. Applicant PEMC, as then the Autonomous Group Market Operator (AGMO), first filed its Application⁹ for approval of the struc

33. ture and level of the market fees in WESM in 2005 and proposed a dual structure of market fees comprised of the following categories-

⁸ ERC Case No. 2007-124 RC.

⁹ ERC Case No. 2005-048 RC.

- (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:

$$\text{Rate} = \frac{\text{Total Annual Market Transaction Fees (Php)} / 12}{\text{Total Generation Metered Quantity for the Month (kWh)}} = \text{P/kWh}$$

35. Following the above-mentioned market fee structure, the instant Joint Application seeks for approval of the Market Transaction Fee for CY 2024 to cover the cost of Applicants IEMOP and PEMC in operating and governing 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 Applicants no longer seek the approval of a Market Registration Fee;

36. The projected total budgetary requirement of both PEMC and IEMOP as approved by the PEM Board is **ONE BILLION ONE HUNDRED THIRTY-FIVE MILLION PESOS (PhP1,135,000,000.00)**; broken down as follows:

Budget Component	IEMOP, PhPM	PEMC, PhPM	Total, PhPM
Personnel Services (PS)	276.02	208.13	484.14
Maintenance and Other Operating Expenses (MOOE)	295.70	242.87	538.59
Capital Expenditures (CAPEX)	46.98	65.29	112.28
TOTAL	618.71	516.29	1,135.00
Projected Generation, GWH (Luzon, Visayas & Mindanao)	114,808		
Fixed Market Fee Charge, PhP/kWh	0.0054	0.0045	0.0099

37. As shown in the foregoing table, the projected budgetary requirements cover the following budget components for IEMOP and PEMC that are necessary to perform their respective functions:

(a) *Personnel Services (PS)* pertain to the salaries and benefits of the employees;

(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, 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 Joint Application;

39. Applicants respectfully submit that the budgetary requirement for CY 2024 is sufficiently indicative of their requirements for the medium term, as these already consider the following:

(a) Cost of governing 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

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.

- (d) Further, the aggregate budgetary requirements of IEMOP and PEMC do not include the corresponding costs of implementing market developments pursuant to more recent policy and regulatory issuances, which shall be covered by a separate application to be filed by the Applicants with the Honorable Commission;

40. Moreover, the amounts proposed by the Applicants are net of applicable taxes, such as corporate income and value-added taxes, and without prejudice to the filing of an application to cover such taxes, especially in light of BIR Ruling No. OT-323-2021 dated 24 August 2021. In the said Ruling, the Bureau of Internal Revenue, among others, ruled that Applicant IEMOP is not a tax-exempt corporation under Section 30 of the NIRC, as amended, and that the market fees it collects from market participants to defray the cost of operations of the WESM is subject to income tax and, consequently, to withholding tax. Applicant IEMOP has since filed a Petition for Review of the said Ruling with the Court of Tax Appeals, docketed as CTA Case No. 10885 and entitled "Independent Electricity Market Operator of the Philippines, Inc. v. Commissioner of Internal Revenue and Secretary of Finance", where it is pending as of date. The Application does not also 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 PhP0.0099/kWh based on the Luzon Visayas and Mindanao energy forecast of 114,808 GWh. The

energy forecast is attached as **Annex "I"** and is made an integral part of this Joint Application;

42. The market fee charge shall be recovered from Luzon, Visayas, and Mindanao generators, for their actual commercial operations in the WESM. 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:

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

The monthly market fee charge shall be recovered from Luzon, Visayas and Mindanao, considering that the commercial operation of WESM in Mindanao has already been declared.

44. Should it be necessary, Applicants 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 Applicants IEMOP and PEMC, if any, in operating and governing the trading of reserves.

Compliance with Reporting and Policy Requirements

45. Applicants IEMOP and PEMC, 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 shall not exceed the total approved budget;

47. Additionally, Applicants IEMOP and PEMC 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. As in any enterprise, sufficiency of resources is imperative considering the need to finance even the minimum requirements for a normal level of operation. Such need is more pronounced in a highly dynamic platform such as the

WESM, which is being operated on a 24x7 basis and is highly critical to sustaining a transparent and competitive electricity market. Indeed, Applicants IEMOP and PEMC, as the Market Operator and Governance Arm, respectively, of the WESM, must be assured of adequate financial support to enable both entities to perform their respective responsibilities under the EPIRA and the WESM Rules and market manuals;

50. In the Decision dated 20 May 2020 in the Market Fees Application docketed as ERC Case No. 2014-092 RC, the Honorable Commission approved the same with modification, authorized the imposition of 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, authorized the imposition of 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 this date;

51. Further, in the Decision dated 16 March 2022, in the Market Fees Application docketed as ERC Case No. 2017-095 RC, the Honorable Commission approved the same with modification, authorized the imposition of market transaction fee for Calendar Year 2018 in the amount of Php448,966,163.25 on WESM participants in the Luzon and Visayas grids. Applicant PEMC has since filed a motion for reconsideration of the said Decision which is now pending resolution;

52. Moreover, in the Order dated 16 June 2022 in the Market Fees Application docketed as ERC Case No. 2019-088 RC, the Honorable Commission authorized and capped the authorized level of market fees for Calendar Years 2019-2020 at the approved market fees for Calendar Year 2018 by way of grant of interim relief. Applicants IEMOP and PEMC have separately filed motions for reconsideration of the said Order which have yet to be resolved by the Honorable Commission;

53. In compliance with the directive of the Honorable Commission to impose the most recent approved market fees level, Applicants IEMOP and PEMC have capped the market fees collection for Calendar Year 2022 to the approved market fees for Calendar Year 2018. Needless to state, the approved market fee level is grossly inadequate to sustain the efficient operations of Applicants IEMOP and PEMC;

54. Since the two entities are incorporated as non-stock and non-profit private companies which are mandated to remain so by virtue of policy directive, each relies solely on the market fees as approved by the Honorable Commission for their revenue requirements. Given the substantial cuts and disallowances ordered in the recent issuances of the Honorable Commission in the preceding years' market fees applications, Applicants IEMOP and PEMC have both suffered and reported deficits as early as Calendar Year 2020, especially in light of the fact that the recently approved market fee levels are significantly lower than the amounts reported in the budget utilization reports submitted by Applicants IEMOP and PEMC for the relevant year. Copies of the Audited Financial Statements of Applicants IEMOP and PEMC for calendar years 2020 to 2022 are attached herein as **Annexes "J" to "J-2"** and **"K" to "K-2"**, respectively. Also, copies of the Variance Reports of Applicant IEMOP for calendar years 2020 to 2022 are attached herein as **Annexes "L" to "L-2"** and Variance Reports of PEMC for calendar years 2020 to 2021 are attached herein as **Annexes "M" to "M-1"**;

55. At its current level, the prevailing market fee for the WESM are grossly insufficient to cover the budget requirements for calendar year 2024 especially in view of the market development initiatives that are mandated to be implemented through policy and regulatory issuances and the effect of inflation on the maintenance of market systems supporting the operations and governance of the WESM, including other logistical requirements;

56. The objectives of the WESM are to establish a competitive, efficient, transparent and reliable market for electricity where: (a) a level playing field exists among WESM participants; (b) trading of electricity is facilitated among WESM participants within the spot market; (c) third parties are granted access to the power system in accordance with

the EPIRA; (d) prices are governed as far as practicable by commercial and market forces; and (e) efficiency is encouraged. As the primary platform for electricity trading, the WESM likewise seeks to provide the avenue for consumers, particularly the distribution utilities and bulk users, to source their energy requirements. Paramount to the fulfillment of these objectives is the timely recovery of costs by the Applicants, as mandated under the WESM Rules and the EPIRA.

57. The implementation of market developments mandated by various policy and regulatory issuances, likewise, requires the timely recovery of costs by the Market Operator. In particular, there is an urgent necessity –

- (a) For sufficient resources to sustain the newly-implemented market developments such as the Enhanced WESM Design and Operations (EWDO), WESM in Mindanao, Green Energy Option Program (GEOP) and Green Energy Auction Program (GEAP), which were mandated to be implemented through various issuances of the Department of Energy and the Honorable Commission.

The implementation of these market developments requires significant enhancements in- and upgrades to the market systems and corporate infrastructure as these were not contemplated in the original design.

In particular, the implementation of the EWDO necessitates substantial upgrades in telecommunication lines, database capacity, and computing power of existing market systems. This is because the shift from hourly to 5-minute trading interval resulted to an exponential increase in the volume of data used for pricing, scheduling and settlement processes.

As to the commercial operation of WESM Mindanao, the Applicants have already incurred costs for its preparation and

implementation, all of which were unprogrammed expenses;

- (b) For financial support to undertake adequate and effective preparatory activities for market developments that are intended to be commercially launched within the year and in the immediate future, i.e., Reserve Market, Renewable Energy Market, Retail Aggregation Program and Forwards Market through policy and regulatory directives of the DOE and the Honorable Commission.

In this regard, the Applicants have incurred- and will continue to incur additional costs to ensure adequate preparations for these upcoming and ongoing market developments;

- (c) To finance regularly occurring expenses such as, but not limited to: (i) periodic replacement of office equipment and appliances to allow the efficient discharge of the respective mandates of the Applicants, which were either deferred or foregone due to lack of budget; (ii) costs for the physical attendance by the Applicants' personnel to attend public consultations, conferences, meetings and other events where their participation is indispensable either as resource persons or where the Applicants' contributions are highly relevant to the subject matter, especially since pandemic restrictions have since eased; (iii) conduct of training sessions and discussions for the benefit of WESM stakeholders in various areas of the nation which is principally aimed to facilitate understanding and appreciation of the recent market developments, and to equip them to participate therein; (iv) increase in software license subscription and support services for the past 2 years; and
- (d) To enable the Applicants to be equipped to provide technical assistance and support to

various WESM stakeholders, especially the DOE, the Honorable Commission and other government agencies. Notably, the performance by the Applicants of simulations, analysis and data provision, to name a few, to these stakeholders demand that the appropriate skills and technological capability is available in order for the Applicants to be able to provide a timely, intelligible and reliable report or submission;

58. Despite the insufficiency of the prevailing market fee to cover the budget requirements of Applicants each year, Applicants faithfully endeavor to carry out their functions effectively and efficiently as well as fulfill their mandate under the WESM Rules in establishing a competitive, efficient, transparent and reliable market for electricity.

59. Although the Applicants continue to suffer due to the deficiency in their respective budgets, they have no other option but to comply with their mandate in order to ensure the stability of the electricity market so that the consumers are supplied with enough electricity, which supports and stimulates economic growth.

60. Further, the fact that Applicants are non-stock, non-profit corporations should not and could not mean that they operate altruistically given the insufficient budget that they are running on. Without enough budget, Applicants will not be able to sustain their effective and efficient operations of the WESM and faithfully fulfill their mandate. At the current level of market fees, the Applicants may not even be able to sustain their normal operations of the WESM.

61. Thus, Applicants respectfully pray for the issuance of a provisional authority for Applicant IEMOP, as the Market Operator of the WESM, to impose the proposed market fee charge of PhP0.0099 kWh to all generation companies registered in the WESM based on their actual generation, in kWh, in behalf of the Applicants, to support their operation pending resolution of the instant Application;

62. In support of this Application and the motion for issuance of provisional authority, Applicants herein submit the

following documents, copies of which are hereto attached and made integral parts thereof:

Annex	Document
N	Judicial Affidavit of Ms. Mary Anne T. Santiago, Head of the Finance Department of IEMOP, dated 21 July 2023
N-1	IEMOP Proposed Budgetary Requirements and Detailed Descriptions dated 21 July 2023
O	Judicial Affidavit of Mr. Salvador D. Subaran, Chief Information Systems and Technology Officer of IEMOP, dated 21 July 2023
P	Judicial Affidavit of Mr. Herbie C. Ngirngir, Chief Financial Officer of PEMC, dated 21 July 2023
P-1	PEMC Proposed Budgetary Requirements CY 2024 and Detailed Descriptions of the Budget Components
Q	Judicial Affidavit of Mr. Patrick S. Fernandez, Head of the Information Systems and Technology Department of PEMC, dated 21 July 2023
Q-1	Details of Cost Estimates of the Customized IT Systems (PEMC)

63. In compliance with the Checklist for Market Transaction Fees Application (Proposed Budget) of the WESM Reportorial Compliance and Rate Setting Section of the Market Operations Service-Spot Market Division of the Honorable Commission, Applicants submit the following supporting documents:

Annex	Documentary Requirement	Submitted Document
<i>Personnel Services</i>		
R	Masterlist of warm bodies as of end of the preceding year	IEMOP Master list of Employees as of 31 December 2022
S		PEMC Master list of Employees as of 30 June 2023
	Detailed justification of the difference of	<i>Included in the Masterlist of</i>

	proposed positions vis-à-vis the warm bodies as of the end of the preceding year	<i>Employees of Applicant PEMC (Annex R)</i>
T	Copy of Board Resolutions Granting the benefits	PEMC Compensation and Benefits Policy
U		IEMOP Compensation and Benefits Policy
V	Copy of the Basis of Proposed Salary Structure	Organization Assessment and Compensation and Benefits Review dated June 2018
<i>Maintenance and Other Operating Expenses</i>		
W and sub markings	List of Board and Committee members with corresponding honorarium rate	Certifications dated 21 July 2023 (from IEMOP and PEMC)
X	Workfile (in excel file format) used in the computation of proposed amounts which shall at minimum provide the following details: Particular proposed item, brief description, base amount, source of the base amount, and increment/escalation rate applied (if any).	PEMC Excel file of Maintenance and Other Operating Expenses
Y		IEMOP Excel file of Maintenance and Other Operating Expenses
<i>Proofs of the source of base amounts mentioned in item above, such as:</i>		
Z	Existing contracts for the following: (i) Rented Properties, (ii) Maintenance Service, (iii) Other External Services (i.e. Consultants, Audit, Janitorial, Security),	PEMC Contracts on Rental and Contracted Services
AA		IEMOP Contracts on Rental and Contracted Services

	(iv) Insurance, (v) Subscriptions.	
BB and sub markings	For items whose estimated costs are not based on contracts but on historical utilization, reports or documents to support historical utilization (i.e., Financial Statement, Proof of settlement, etc.)	PEMC Contracts on Rental and Contracted Services
CC and sub markings		IEMOP Contracts on Rental and Contracted Services
<i>For proposed items that do not exist in the preceding year, provide the following:</i>		
DD	(a) List with descriptions and detailed justification	PEMC Summary List of proposed items
EE		IEMOP Summary List of proposed items
FF and sub markings	(b) Proof of the cost estimate (i.e., Market Study, Suppliers Quotation, Published/posted prices, etc.)	PEMC sources of cost estimates for proposed items that do not have contracts in the preceding year
GG and sub markings		IEMOP sources of cost estimates for proposed items that do not have contracts in the preceding year
HH and sub markings	(c) List of Existing Rented Properties with a description of the use or purpose of the facility and the date when the applicant started occupying each property.	PEMC Summary List of Existing Rented Properties
II and sub markings		IEMOP Summary List of Existing Rented Properties
Capital Expenditures		
JJ and sub markings	List of proposed Capital acquisitions with	PEMC Summary List of proposed capital acquisitions

KK and sub markings	detailed descriptions and justifications	IEMOP Summary List of proposed capital acquisitions
LL and sub markings	Proof of the cost estimate (i.e., Market Study, Suppliers	PEMC sources of cost estimates for capital acquisitions
MM and sub markings	Quotation, Published/posted prices, etc.)	IEMOP sources of cost estimates for capital acquisitions
NN and sub markings	Inventory and Aging of Equipment	PEMC Inventory and Aging of Equipment
OO and sub markings		IEMOP Inventory and Aging of Equipment

Application for the Approval of Applicant PEMC's Bank Loan to Finance Costs for Fit-out and Construction of its New Office.

64. On 31 May 2023, the PEM Board approved PEMC's plan to relocate its office to SM Mega Tower in Mandaluyong City and execute a Lease Agreement with SM Prime Holdings, Inc. After careful assessment, the relocation proved necessary as PEMC's current office no longer provides sufficient space to accommodate the requirements for the company's growth and expansion. Financially, the transfer also proved to be a viable option considering that PEMC would eventually save on the rental costs with the new office as opposed to the increasing rent with the current office facility coupled with high maintenance and repair costs associated with the building depreciation.

65. To implement the transfer, PEMC needs funds to finance the costs of the fit-out and construction of its new office. PEMC conducted cost comparisons with other entities within the industry and finally agreed on the terms with a contractor who will perform the services required. To finance the costs, herein Applicant PEMC entered into a loan agreement with a commercial bank under the following terms:

- (a) Loan Amount: Fifty Million Pesos (Php 50,000,000.00);
- (b) Interest Rate: 1.4% annual interest rate; fixed for five (5) years;
- (c) Frequency of Amortization: Balloon Payment upon maturity (with option to partially pay the principal every discounting period); and
- (d) Maturity: five (5) years from loan release.

66. PEMC now seeks the approval of the Honorable Commission of the above terms and conditions of the loan it secured with the commercial bank to finance the fit-out and construction costs for its new office. As regards the market fees, the payment for the loan shall be spread over a period of five (5) years and charged to the market fees as follows:

	Year 1	Year 2	Year 3	Year 4	Year 5
Yearly Payment (Principal + Interest)	15,335,969.86	10,614,591.78	10,473,747.95	10,332,904.11	4,963,808.22
Projected Generation (Luzon, Visayas, Mindanao)	114,808	122,493	130,696	139,453	148,800
Fixed Market Fee Charge, Php/kWh	0.00013	0.00009	0.00008	0.00007	0.00003

67. Under the General Policies pertinent to the collection and utilization of the market fees as stated in the decision dated 30 January 2008 rendered by this Honorable Commission in the case involving PEMC's market transaction fees for CY 2007 docketed as ERC Case No. 2007-124RC, PEMC shall not be allowed to incur loans without the approval of the Commission and the payment of loans, both principal and interests, shall only be charged to the market fees if such loans have been approved by the Commission.¹⁰

68. Considering the recent amendments to the Commonwealth Act No. 146 ("Public Service Act") that lifted

¹⁰ Pag 40, ERC Decision dated 30 January 2008, ERC Case No. 2007-124.

restrictions on the approval requirements for loans taken out by Public Utilities, as well as the DOJ Opinion No.2022 dated 23 September 2022 (the "DOJ Opinion") confirming the authority of the National Power Corporation ("NPC") under its Charter, RA 6395,¹¹ to contract indebtedness and issue bonds¹² without need of prior approval of the relevant regulatory agency; PEMC submitted a Position Paper to this Honorable Commission on 10 May 2023, seeking to adopt the same amendments to the General Policies on the collection and utilization of the market fees.

69. Specifically, PEMC prayed to amend the General Policies by removing the following requirements: (i) to obtain the Honorable Commission's approval prior to securing a loan with a commercial bank; and (ii) to file an application for approval of this loan that is separate and independent from the annual market fee application. PEMC clarified that the actual loan and its terms shall still be submitted for approval of the Honorable Commission as included in the annual market fee application. This is consistent with the authority granted to PEMC as a private corporation under the Revised Corporation Code to exercise its power as may be essential or necessary to carry out its purpose. In this case, the power to borrow money or enter into a loan agreement is a necessary and essential power of PEMC for it to be able to perform its mandate under the EPIRA and the WESM Rules as the governance arm of the WESM, and to promote and establish a competitive, efficient, transparent, and reliable market for electricity.¹³

70. The proposed Market Fee charge indicated for Year 1 is already factored in and included in the computation of the total proposed Market Fee Charge of Applicant PEMC for CY 2024.

71. In support of the foregoing allegations, Applicant PEMC submits the following documents attached to this Joint Application and made integral parts hereof:

Annex	Document / Description
--------------	-------------------------------

¹¹ Republic Act No. 6395, An Act Revising the Charter of the National Power Corporation.

¹² Section 3(k), RA 6395.

¹³ Section 1.2.5, WESM Rules, 27 January 2023.

PP	Secretary's Certificate dated 02 June 2023 with Board Resolution approving the office relocation and lease of the new office
QQ	Fit Out and Construction Costs Details
RR	Comparative Analysis of Fit Out and Construction Costs
SS and sub markings	Details of the Loan Agreement with the Bank containing specific terms and conditions (i.e. Promissory Note and other documents)
TT	Position Paper of PEMC submitted to the Honorable Commission on 10 May 2023

Compliance with Pre-Filing Requirements

72. 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
UU	Acknowledgment from the Office of the City Mayor of Pasig City
VV	Acknowledgment from the Office of the Sangguniang Panlungsod of Pasig City
WW	Affidavit of Service
XX	Certification of City Administrator, Mayor's Office of Pasig City
YY	Certification of City Council Secretary, Sangguniang Panlungsod of Pasig City
ZZ	Affidavit of Publication
AAA	Complete copy of newspaper
BBB	Affidavit of Service

Motion for Confidential Treatment of Information

73. Applicants respectfully move for the confidential treatment of the IEMOP Masterlist of Employees as of 31 December 2022, PEMC Masterlist of Employees as of 30 June 2023 and the Organization Assessment and Compensation

and Benefits Review dated June 2018 hereto attached as **Annexes "R", "S", and "V"**, respectively, copies of which are submitted as password-protected files which form part of Applicant's submission;

74. 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 master list 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 Master list of Employees of both Applicants 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 Applicants 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;

75. Further, Applicant PEMC respectfully moves for the confidential treatment of the documents containing specific details of the Loan Agreement with the Bank attached herein as **Annexes "SS and submarkings"**.

76. These bank loan documents are confidential in nature and are subject to confidentiality provisions executed between the bank and Applicant PEMC and contain provisions that may disadvantage or negatively affect the business of the contracting bank if such are made available and disclosed to the public.

77. Applicants request 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."

78. 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) to grant Applicants' prayer for the issuance of a provisional authority authorizing IEMOP to impose a **MARKET FEE CHARGE of PhP0.0099/kWh** to all generation companies registered in the WESM based on their actual generation, in kWh, pending resolution of the instant Joint Application;

(ii) after due notice and hearing, to render judgment APPROVING the proposed market fees for CY 2024 for Applicants IEMOP and PEMC in the total amount of **ONE BILLION ONE HUNDRED THIRTY-FIVE MILLION PESOS (PhP1,135,000,000.00)**;

(iii) to approve Applicant PEMC's bank loan of FIFTY MILLION PESOS (Php 50,000,000.00) to finance the costs for fit-out and construction of its new office; and

(iv) to confirm the confidentiality of the IEMOP Master list of Employees as of 31 December 2022, PEMC Master list of Employees as of 30 June 2023, the Organization Assessment and Compensation and Benefits Review dated June 2018, and the Details of the Loan Agreement with the Bank containing specific terms and conditions hereto attached as **Annexes "R", "S", "V", and "SS and submarkings"**, respectively, 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.

Applicants IEMOP and PEMC pray for such other reliefs just and equitable under the premises.

Pasig City, 21 July 2023.

**INDEPENDENT ELECTRICITY MARKET OPERATOR OF
THE PHILIPPINES (IEMOP)**

9th Floor Robinsons Equitable Tower
ADB Avenue, Ortigas Center, 1600 Pasig City
E-mail: iemoplegal@iemop.ph
Tel. (02) 5318-9376 local 258

By:


SHERYLL J. MALLARI-DY
Roll No. 47726

IBP No. 177442 / 8 February 2022 / Quezon City
PTR No. 8206174 / 20 January 2022 / Pasig City
MCLE Compliance No. VII-0010273 / 16 Feb 2022
Email: sheryll.dy@iemop.ph

LILIBETH GRACE L. VETUS

Roll No. 71331

IBP No. 177443 / 8 February 2022 / Quezon City
PTR No. 8206173 / 20 January 2022 / Pasig City
MCLE Compliance No. VII-0013226 / 24 Mar 2022
Email: grace.vetus@iemop.ph


MANUEL MARTIN C. ESCASURA
Roll of Attorneys No. 74973

IBP No. 233415 / 02 July 2022 / Quezon City
PTR No. 3215839 / 22 June 2022 / Quezon City
MCLE Compliance No. VII-0014683 / 06 April 2022
Email: martin.escasura@iemop.ph


JOHELLE CLIFFANY T. SANTOS
Roll of Attorneys No. 81009

IBP No. 256940 / 1 January 2023 / Makati City
PTR No. 0588589 / 5 May 2023 / Pasig City
MCLE Exemption No. VIII-BEP002932
Email: jochelle.santos@iemop.ph



KRISTOFFER MONICO S. NG

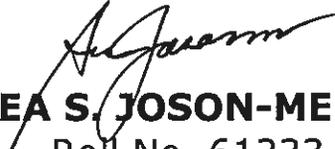
Roll of Attorneys No. 86680
IBP No. 322284 / 3 May 2023 / Rizal (RSM)
PTR No. 0588139/ 5 May 2023 / Pasig City
MCLE Compliance – Exempted (Admitted to the Bar in 2023)
Email: nico.ng@iemop.ph

-And-

PHILIPPINE ELECTRICITY MARKET CORPORATION

18th Floor Robinsons Equitable Tower
ADB Avenue, Ortigas Center, 1600 Pasig City
Email: legal@wesm.ph; wesm.legal@wesm.ph

By:



ANDREA S. JOSON-MENDIOLA

Roll No. 61233
IBP No. 178485 / 2.16.2022 / PPLM
PTR No. 8226157 / 1.31.2022 / Pasig City
MCLE Compliance No. VII-0023713; 04 Oct 2022
Email: ajmendiola@wesm.ph



ERVIN JOHN MIKEL D. HILADO

Roll of Attorneys No. 78646
PTR No. 9077303 / 01.06.2023 / Bacolod City
IBP No. 280102 / 01.10.2023 / Negros Occidental
Admitted to the Bar 2022
Email: ejmdhilado@wesm.ph

VERIFICATION AND CERTIFICATION

I, **RICHARD J. NETHERCOTT**, of legal age, Filipino and with office address at the Independent Electricity Market Operator of the Philippines, Inc. (IEMOP), 9th Floor, Robinsons Equitable Tower, Ortigas Center, Pasig City, after having been duly sworn in accordance with law, hereby depose and state that:

1. I am the President and CEO of IEMOP, one of the Applicants in this case, with full power and authority to initiate and file the instant Application;

2. On behalf of Applicant IEMOP, I have caused the preparation and filing of the Application. I confirm that I have read and understood the contents thereof and attest that: (i) the allegations contained therein are true and correct based on my personal knowledge and/or based on authentic records at hand; (ii) the pleading is not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation; and (iii) the factual allegations therein have evidentiary support or, if specifically so identified, will likewise have evidentiary support after a reasonable opportunity for discovery; and

3. On behalf of Applicant IEMOP, except for the Petition for Mandamus docketed as G.R. No. 254440 entitled "Independent Electricity Market Operator of the Philippines Inc. v. Energy Regulatory Commission" and the Petition for Review docketed as CTA Case No. 10885 entitled "Independent Electricity Market Operator of the Philippines Inc. v. Commissioner of Internal Revenue and Secretary of Finance", I further certify that it has not heretofore commenced any action or filed any claim involving the same issues in the Supreme Court, the Court of Appeals or any other court, tribunal or quasi-judicial agency, and to the best of my knowledge, no such other action or claim is pending therein. If I should hereafter learn that the same or similar action or claim has been filed or is pending in the Supreme Court, the Court of Appeals or any other court, tribunal or quasi-judicial agency, I shall report that fact within five (5) calendar days from discovery thereof to the Honorable Court.

IN WITNESS WHEREOF, I have hereunto set my hand on this ___ day of July 2023 at Pasig City, Philippines.



RICHARD J. NETHERCOTT
Affiant

SUBSCRIBED AND SWORN to before me this JUL 21 2023
day of July 2023 affiant exhibiting to me his IBP ID No. 04079
bearing his photograph and signature, who is known to me to
be the same person who executed the foregoing Verification
and Certification.

Doc. No. 34 ;
Page No. 8 ;
Book No. 1 ;
Series of 2023.



ATTY. KRISTOFFER MONICO S. NG
Notary Public - Pasig City
Comm. Appt. No. 293 (2023-2024) until Dec 2024
Roll No. 86680
IBP No. 322284/3 May 2023/Rizal (RSM)
PTR No. 0588139/5 May 2023/Pasig City
MCLE Compliance-Admitted to Bar in 2023

VERIFICATION AND CERTIFICATION

I, **ELVIN HAYES E. NIDEA**, of legal age, Filipino and with office address at the Philippine Electricity Market Corporation, (PEMC), 18th Floor, Robinsons Equitable Tower, Ortigas Center, Pasig City, after having been duly sworn in accordance with law, hereby depose and state that:

1. I am the President of PEMC, one of the Applicants in this case, with full power and authority to initiate and file the instant Application;

2. On behalf of Applicant PEMC, I have caused the preparation and filing of the Application. I confirm that I have read and understood the contents thereof and attest that: (i) the allegations contained therein are true and correct based on my personal knowledge and/or based on authentic records at hand; (ii) the pleading is not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation; and (iii) the factual allegations therein have evidentiary support or, if specifically so identified, will likewise have evidentiary support after a reasonable opportunity for discovery; and

3. On behalf of Applicant PEMC, I further certify that it has not heretofore commenced any action or filed any claim involving the same issues in the Supreme Court, the Court of Appeals or any other court, tribunal or quasi-judicial agency, and to the best of my knowledge, no such other action or claim is pending therein. If I should hereafter learn that the same or similar action or claim has been filed or is pending in the Supreme Court, the Court of Appeals or any other court, tribunal or quasi-judicial agency, I shall report that fact within five (5) calendar days from discovery thereof to the Honorable Court.

IN WITNESS WHEREOF, I have hereunto set my hand on this 21st day of July 2023 at Pasig City, Philippines.


ELVIN HAYES E. NIDEA
Affiant

SUBSCRIBED AND SWORN to before me this 21st day of July 2023 affiant exhibiting to me his Social Security System (SSS) ID No. 33-3077396-5 bearing his photograph and signature, who is known to me to be the same person who executed the foregoing Verification and Certification.

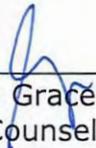
Doc. No. 139 ;
Page No. 29 ;
Book No. 1 ;
Series of 2023.



ERVIN JOHN MIKEL D. HILADO
Notary Public for Cities of Pasig, San Juan
and Municipality of Pateros
Appointment No. 247(2023-2024)m until 31 Dec. 2024
18F Robinsons Equitable Tower, ADB Ave., Pasig City 1600
Roll No. 78646
IBP No. 280102/01.10.2023/Negros Occ
PTR No. 9077303/01.06.2023/Bacolod City
MCLE Compliance No. VII-Admitted to the Bar 2022

VERIFIED DECLARATION

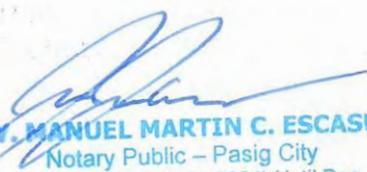
I, Lilibeth Grace L. Vetus-Magtalas, Legal Counsel, hereby declare that all the documents hereto submitted electronically in accordance with Resolution No. 09, series of 2020, are complete and true copies of the original documents.



Lilibeth Grace L. Vetus-Magtalas
Legal Counsel
____ July 2023

SUBSCRIBED AND SWORN TO before me on this JUL 31 2023 working day of July 2023, affiant exhibiting her competent evidence of identity, to wit: Driver's License No. N25-13-007042

Doc. No. 292
Page No. 60
Book No. 2
Series of 2023


ATTY. MANUEL MARTIN C. ESCASURA
Notary Public – Pasig City
Comm. Appt. No. 270 (2023-2024) Until Dec. 2024
Roll No. 74973
IBP No. 233416/2 July 2022
(For CY 2023) / Quezon City
PTR No. 163345/10 Jan. 2023/Pasig City
MCLE Compliance No. VII-0014683
Valid until 14 April 2025

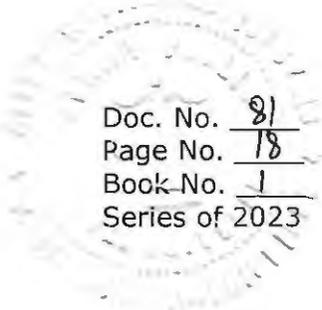
VERIFIED DECLARATION

I, Jochelle Cliffany T. Santos , Legal Counsel, hereby declare that all the documents hereto submitted electronically in accordance with Resolution No. 09, series of 2020, are complete and true copies of the original documents.



Jochelle Cliffany T. Santos
Legal Counsel
__ October 2023

SUBSCRIBED AND SWORN TO before me on this OCT 09 2023 working day of October 2023, affiant exhibiting her competent evidence of identity, to wit: IBP Roll of Attorneys No. 81009


Doc. No. 81
Page No. 18
Book No. 1
Series of 2023


ATTY. KRISTOFFER MONICO S. NG
Notary Public - Pasig City
Comm. Appt. No. 293 (2023-2024) until Dec. 2024
9/F Robinsons Equitable Tower
ADB Avenue, Ortigas Center, Pasig City
Roll No. 86680
IBP No. 322284/3 May 2023/Rizal (RSM)
PTR No. 0588139/5 May 2023/Pasig City
MCLE Compliance-Admitted to Bar in 2023

REPUBLIC OF THE PHILIPPINES)
CITY OF)

AFFIDAVIT OF SERVICE

I, **FRANCISCO M. ALVAREZ JR.**, Filipino, of legal age, with office address at the 9th Floor Robinsons Equitable Tower, ADB Avenue, Ortigas Center, Pasig City, after having been duly sworn in accordance with law, hereby state as follows:

1. I am a Messenger in the Independent Electricity Market Operator of the Philippines Inc. (the "Corporation"), a corporation duly organized and existing under Philippine laws, with office address at 9th Floor Robinsons Equitable Tower, ADB Avenue, Ortigas Center, Pasig City;

2. The Corporation is an Applicant in an Application to be filed before the Honorable Energy Regulatory Commission (the "Honorable Commission") in the case entitled **"IN THE MATTER OF THE APPLICATION FOR THE APPROVAL OF THE LEVEL OF MARKET FEES FOR THE CALENDAR YEAR 2024 FOR THE PHILIPPINE WHOLESALE ELECTRICITY SPOT MARKET (WESM), INDEPENDENT ELECTRICITY MARKET OPERATOR OF THE PHILIPPINES, INC. (IEMOP) and PHILIPPINE ELECTRICITY MARKET CORPORATION (PEMC), Applicants."**

3. On 09 October 2023, I filed the **JOINT APPLICATION (With Motion for Issuance of Provisional Authority)** for the above-stated case to the Energy Regulatory Commission.

4. I am executing this Affidavit of Service in compliance with Rule 10 of the ERC Rules of Practice and Procedure and for whatever legal purpose it may serve.


Francisco M. Alvarez Jr.
Affiant

SUBSCRIBED AND SWORN TO before me this OCT 09 2023 day of October 2023 affiant exhibiting to me his Driver's License ID No.

Doc. No. 82 ;
Page No. 18 ;
Book No. 1 ;
Series of 2023.


ATTY. KRISTOFFER MONICO S. NG
Notary Public - Pasig City
Comm. Appt. No. 293 (2023-2024) until Dec. 2024
9/F Robinsons Equitable Tower
ADB Avenue, Ortigas Center, Pasig City
Roll No. 86680
IBP No. 322284/3 May 2023/Rizal (RSM)
PTR No. 0588139/5 May 2023/Pasig City
MCLE Compliance-Admitted to Bar in 2023

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City

**IN THE MATTER OF THE
APPLICATION FOR THE
APPROVAL OF THE LEVEL OF
MARKET FEES FOR THE
CALENDAR YEAR 2024 FOR
THE PHILIPPINE WHOLESALE
ELECTRICITY SPOT MARKET
(WESM)**

ERC CASE NO. 2023-108 RC

**INDEPENDENT ELECTRICITY
MARKET OPERATOR OF THE
PHILIPPINES, INC. AND
PHILIPPINE ELECTRICITY
MARKET CORPORATION,**

Applicants.

X-----X

Promulgated:

October 16, 2023

ORDER

On 02 October 2023, the Independent Electricity Market Operator of the Philippines, Inc. (IEMOP) and the Philippine Electricity Market Corporation (PEMC) filed a *Joint Application* dated 21 July 2023, seeking the Commission's approval of the level of market fees for Calendar Year (CY) 2024 for the Philippine Wholesale Electricity Spot Market (WESM), with prayer for provisional authority.

The pertinent portions of the said *Joint Application* are hereunder quoted as follows:

1. This is an Application jointly filed by IEMOP and PEMC for the approval of the level of market fees for the Calendar Year (CY) 2024 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

2. Applicant IEMOP is a non-stock, non-profit corporation duly organized and existing in accordance with Philippine laws, with principal office at the 9th 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 to file this Application jointly with PEMC and represent the Applicant IEMOP in all stages of the proceedings, as evidenced by the Secretary's Certificates hereto attached as Annexes "A" to "A-1" and made an integral part of this Application;
3. Applicant PEMC is a non-stock, non-profit private corporation duly organized and existing in accordance with the laws of the Philippines with principal office address at the 18th Floor Robinsons Equitable Tower, ADB Avenue, Ortigas Center, Pasig City. It is represented in this Application by its President, Elvin Hayes E. Nidea, who has been duly authorized by Applicant PEMC's Board of Directors ("PEM Board") to file this Application jointly with IEMOP and represent the Applicant PEMC in all stages of the proceedings, as evidenced by the Secretary's Certificate hereto attached as Annex "B".

Transition to the Independent Market Operator (IMO)

4. 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);
5. 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

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

the AGMO upon joint endorsement of the DOE and the electric power industry participants and the administrative supervision of TRANSCO shall then cease;

6. 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 fulfill 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, enforcement and compliance, rules change and review, market audit, dispute resolution and technical assistance;
7. 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.
8. 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 17 January 2018 and entitled “Adopting Policies for the Effective and Efficient Transition to the Independent Market Operator for the Wholesale Electricity Spot Market”²;
9. 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;
10. 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;
11. 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;

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

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

12. 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;
13. 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;
14. In accordance with the DOE Circular and the IMO Transition Plan, PEMC remains to be the governing body of the WESM 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;
15. 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.
16. 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;

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

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

- (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.
17. In DOE Circular No. DC2019-07-0011 dated 29 July 2019⁶, the DOE affirmed the designation of the IMO as the CRB;
18. PEMC remained as the Governance Arm of the WESM and is mandated to perform its functions as set out in the WESM Rules and its Market Manuals, through its Board of Directors, the PEM Board and its governance committees, as provided under Section 7 of Department of Energy Circular No. DC 2018-01-0002;
19. 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)”. This issuance 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*

20. 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;
21. 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;
22. 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 Applicants 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

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

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

market fees that respectively pertain to Applicants IEMOP and PEMC;

23. Section 10.05 of the Operating Agreement likewise provides that Applicant 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 Applicants 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;
24. For its part, PEMC deems itself as an indispensable party to the Application considering its substantial interest over the subject matter of the case, i.e., as the owner of the market fees pertaining to it. This is because the market fees being sought to be approved by this Honorable Commission cover the budget and revenue requirements of both Applicants, as the market operator and governing body of the WESM;
25. The IEMOP Board of Directors likewise approved Applicant IEMOP's budgetary requirements and authorized the joint filing of the application with Applicant PEMC, which approval is evidenced by the Secretary's Certificate dated 5 July 2023 a copy of which is hereto attached as *Annex "A-1"* and made an integral part of this Joint Application;
26. Pursuant to WESM Rules Clause 2.10.2.3 and the agreements between Applicants PEMC and the IEMOP in their Operating Agreement, the PEM Board approved the budgets of Applicants IEMOP and PEMC for CY 2024 during its regular meeting held on 31 May 2023. These approvals are evidenced by the Secretary's Certificate dated 21 July 2023, a copy of which is hereto attached as *Annex "H"*, and made an integral part of this Joint Application;

TIMELINESS OF FILING THE APPLICATION

27. 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";
28. On 27 June 2023, Applicant IEMOP filed its Motion for Additional Time requesting for an additional period of thirty (30) days from 1 July 2023, or until 31 July 2023, within which to file the Application, considering the need to complete the pre-filing requirements of the Application, including the supporting documents thereto;
29. This Joint Application is thus filed within the reglementary period requested;

⁸ ERC Case No. 2007-124 RC.

PROPOSED MARKET FEES

30. The factual allegations set forth above are re-pleaded in support of this Application;
31. 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”;
32. Applicant 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 of 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.*

33. 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:

$$\begin{aligned} \text{Rate} &= \frac{\text{Total Annual Market Transaction Fees (Php)} / 12}{\text{Total Generation Metered Quantity for the Month (kWh)}} \\ &= \text{P/kWh} \end{aligned}$$

34. Following the above-mentioned market fee structure, the instant Joint Application seeks for approval of the Market Transaction Fee for CY 2024 to cover the cost of Applicants IEMOP and PEMC in operating and governing 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 Applicants no longer seek the approval of a Market Registration Fee;
35. The projected total budgetary requirement of both PEMC and IEMOP as approved by the PEM Board is ONE BILLION ONE HUNDRED THIRTY-FIVE MILLION PESOS (PhP1,135,000,000.00); broken down as follows:

Budget Component	IEMOP, PhPM	PEMC, PhPM	Total, PhPM
Personnel Services (PS)	276.02	208.13	484.14
Maintenance and Other Operating Expenses (MOOE)	295.70	242.87	538.59

⁹ ERC Case No. 2005-048 RC.

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Budget Component	IEMOP, PhPM	PEMC, PhPM	Total, PhPM
Capital Expenditures (CAPEX)	46.98	65.29	112.28
TOTAL	618.71	516.29	1,135.00
Projected Generation, GWH (Luzon, Visayas & Mindanao)	114,808		
Fixed Market Fee Charge, PhP/kWh	0.0054	0.0045	0.0099

36. As shown in the foregoing table, the projected budgetary requirements cover the following budget components for IEMOP and PEMC that are necessary to perform their respective functions:
- (a) *Personnel Services (PS)* pertain to the salaries and benefits of the employees;
 - (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, 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;
37. 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 Joint Application;
38. Applicants respectfully submit that the budgetary requirement for CY 2024 is sufficiently indicative of their requirements for the medium term, as these already consider the following:
- (a) Cost of governing 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 reflects an additional manpower for twenty-two (22) positions;
 - (c) The aggregate IEMOP and PEMC budgetary requirements, upon which the proposed Fixed Market Fee Charge and Market Fees are based, do not include

the pre-establishment expenses for the commercial 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.

- (d) Further, the aggregate budgetary requirements of IEMOP and PEMC do not include the corresponding costs of implementing market developments pursuant to more recent policy and regulatory issuances, which shall be covered by a separate application to be filed by the Applicants with the Honorable Commission;
39. Moreover, the amounts proposed by the Applicants are net of applicable taxes, such as corporate income and value-added taxes, and without prejudice to the filing of an application to cover such taxes, especially in light of BIR Ruling No. OT-323-2021 dated 24 August 2021. In the said Ruling, the Bureau of Internal revenue, among others, ruled that Applicant IEMOP is not a tax-exempt corporation under Section 30 of the NIRC,

as amended, and that the market fees it collects from market participants to defray the cost of operations of the WESM is subject to income tax and, consequently, to withholding tax. Applicant IEMOP has since filed a Petition for Review of the said Ruling with the Court of Tax Appeals, docketed as CTA Case No. 10885 and entitled “Independent Electricity Market Operator of the Philippines, Inc. v. Commissioner of Internal Revenue and Secretary of Finance”, where it is pending as of date. The Application does not also cover possible changes in expenses due to changes in law, rules or regulations, compliance with other regulatory requirements and other external factors;

40. Based on initial indicative figures, the estimated market fee charge is PhPo.0099/kWh based on the Luzon Visayas and Mindanao energy forecast of 114,808 GWh. The energy forecast is attached as *Annex “I”* and is made an integral part of this Joint Application;
41. The market fee charge shall be recovered from Luzon, Visayas, and Mindanao generators, for their actual commercial operations in the WESM. 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**

42. 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:

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

The monthly market fee charge shall be recovered from Luzon, Visayas and Mindanao, considering that the commercial operation of WESM in Mindanao has already been declared.

43. Should it be necessary, Applicants 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 Applicants IEMOP and PEMC, if any, in operating and governing the trading of reserves.

**Compliance with Reporting and Policy
Requirements**

44. Applicants IEMOP and PEMC, 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;
45. 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 shall not exceed the total approved budget;
46. Additionally, Applicants IEMOP and PEMC 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

- 47. The factual allegations set forth above are re-pleaded in support of the Motion for Issuance of Provisional Authority;
- 48. As in any enterprise, sufficiency of resources is imperative considering the need to finance even the minimum requirements for a normal level of operation. Such need is more pronounced in a highly dynamic platform such as the WESM, which is being operated on a 24x7 basis and is highly critical to sustaining a transparent and competitive electricity market. Indeed, Applicants IEMOP and PEMC, as the Market Operator and Governance Arm, respectively, of the WESM, must be assured of adequate financial support to enable both entities to perform their respective responsibilities under the EPIRA and the WESM Rules and market manuals;
- 49. In the Decision dated 20 May 2020 in the Market Fees Application docketed as ERC Case No. 2014-092 RC, the Honorable Commission approved the same with modification, authorized the imposition of 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, authorized the imposition of 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 this date;
- 50. Further, in the Decision dated 16 March 2022, in the Market Fees Application docketed as ERC Case No. 2017-095 RC, the Honorable Commission approved the same with

modification, authorized the imposition of market transaction fee for Calendar Year 2018 in the amount of PhP448,966,163.25 on WESM participants in the Luzon and Visayas grids. Applicant PEMC has since filed a motion for reconsideration of the said Decision which is now pending resolution;

51. Moreover, in the Order dated 16 June 2022 in the Market Fees Application docketed as ERC Case No. 2019-088 RC, the Honorable Commission authorized and capped the authorized level of market fees for Calendar Years 2019-2020 at the approved market fees for Calendar Year 2018 by way of grant of interim relief. Applicants IEMOP and PEMC have separately filed motions for reconsideration of the said Order which have yet to be resolved by the Honorable Commission;
52. In compliance with the directive of the Honorable Commission to impose the most recent approved market fees level, Applicants IEMOP and PEMC have capped the market fees collection for Calendar Year 2022 to the approved market fees for Calendar Year 2018. Needless to state, the approved market fee level is grossly inadequate to sustain the efficient operations of Applicants IEMOP and PEMC;
53. Since the two entities are incorporated as non-stock and non-profit private companies which are mandated to remain so by virtue of policy directive, each relies solely on the market fees as approved by the Honorable Commission for their revenue requirements. Given the substantial cuts and disallowances ordered in the recent issuances of the Honorable Commission in the preceding years' market fees applications, Applicants IEMOP and PEMC have both suffered and reported deficits as early as Calendar Year 2020, especially in light of the fact that the recently approved market fee levels are significantly lower than the amounts reported in the budget utilization reports submitted by Applicants IEMOP and PEMC for the relevant year. Copies of the Audited Financial Statements of Applicants IEMOP and PEMC for calendar years 2020 to 2022 are attached herein as Annexes "J" to "J-2" and "K" to "K-2", respectively. Also, copies of the Variance Reports of Applicant IEMOP for calendar years 2020 to 2022 are attached herein as Annexes "L" to "L-2" and Variance Reports of PEMC for calendar years 2020 to 2021 are attached herein as Annexes "M" to "M-1";
54. At its current level, the prevailing market fee for the WESM are grossly insufficient to cover the budget requirements for calendar year 2024 especially in view of the market development initiatives that are mandated to be implemented through policy and regulatory issuances and the effect of inflation on the maintenance of market systems supporting the operations and governance of the WESM, including other logistical requirements;
55. The objectives of the WESM are to establish a competitive, efficient, transparent and reliable market for electricity

where: (a) a level playing field exists among WESM participants; (b) trading of electricity is facilitated among WESM participants within the spot market; (c) third parties are granted access to the power system in accordance with the EPIRA; (d) prices are governed as far as practicable by commercial and market forces; and (e) efficiency is encouraged. As the primary platform for electricity trading, the WESM likewise seeks to provide the avenue for consumers, particularly the distribution utilities and bulk users, to source their energy requirements. Paramount to the fulfillment of these objectives is the timely recovery of costs by the Applicants, as mandated under the WESM Rules and the EPIRA.

56. The implementation of market developments mandated by various policy and regulatory issuances, likewise, requires the timely recovery of costs by the Market Operator. In particular, there is an urgent necessity –

- (a) For sufficient resources to sustain the newly-implemented market developments such as the Enhanced WESM Design and Operations (EWDO), WESM in Mindanao, Green Energy Option Program (GEOP) and Green Energy Auction Program (GEAP), which were mandated to be implemented through various issuances of the Department of Energy and the Honorable Commission.

The implementation of these market developments requires significant enhancements in- and upgrades to the market systems and corporate infrastructure as these were not contemplated in the original design.

In particular, the implementation of the EWDO necessitates substantial upgrades in telecommunication lines, database capacity, and computing power of existing market systems. This is because the shift from hourly to 5-minute trading interval resulted to an exponential increase in the volume of data used for pricing, scheduling and settlement processes.

As to the commercial operation of WESM Mindanao, the Applicants have already incurred costs for its preparation and implementation, all of which were unprogrammed expenses;

- (b) For financial support to undertake adequate and effective preparatory activities for market developments that are intended to be commercially launched within the year and in the immediate future, i.e., Reserve Market, Renewable Energy Market, Retail Aggregation Program and Forwards Market through policy and regulatory directives of the DOE and the Honorable Commission.

In this regard, the Applicants have incurred- and will continue to incur additional costs to ensure adequate preparations for these upcoming and ongoing market developments;

- (c) To finance regularly occurring expenses such as, but not limited to: (i) periodic replacement of office equipment and appliances to allow the efficient discharge of the respective mandates of the Applicants, which were either deferred or foregone due to lack of budget; (ii) costs for the physical attendance by the Applicants' personnel to attend public consultations, conferences, meetings and other events where their participation is indispensable either as resource persons or where the Applicants' contributions are highly relevant to the subject matter, especially since pandemic restrictions have since eased; (iii) conduct of training sessions and discussions for the benefit of WESM stakeholders in various areas of the nation which is principally aimed to facilitate understanding and appreciation of the recent market developments, and to equip them to participate therein; (iv) increase in software license subscription and support services for the past 2 years; and
 - (d) To enable the Applicants to be equipped to provide technical assistance and support to various WESM stakeholders, especially the DOE, the Honorable Commission and other government agencies. Notably, the performance by the Applicants of simulations, analysis and data provision, to name a few, to these stakeholders demand that the appropriate skills and technological capability is available in order for the Applicants to be able to provide a timely, intelligible and reliable report or submission;
57. Despite the insufficiency of the prevailing market fee to cover the budget requirements of Applicants each year, Applicants faithfully endeavor to carry out their functions effectively and efficiently as well as fulfill their mandate under the WESM Rules in establishing a competitive, efficient, transparent and reliable market for electricity.
58. Although the Applicants continue to suffer due to the deficiency in their respective budgets, they have no other option but to comply with their mandate in order to ensure the stability of the electricity market so that the consumers are supplied with enough electricity, which supports and stimulates economic growth.
59. Further, the fact that Applicants are non-stock, non-profit corporations should not and could not mean that they operate altruistically given the insufficient budget that they are running on. Without enough budget, Applicants will not be able to sustain their effective and efficient operations of the WESM and faithfully fulfill their mandate. At the current level

of market fees, the Applicants may not even be able to sustain their normal operations of the WESM.

60. Thus, Applicants respectfully pray for the issuance of a provisional authority for Applicant IEMOP, as the Market Operator of the WESM, to impose the proposed market fee charge of PhP0.0099 kWh to all generation companies registered in the WESM based on their actual generation, in kWh, in behalf of the Applicants, to support their operation pending resolution of the instant Application;
61. In support of this Application and the motion for issuance of provisional authority, Applicants herein submit the following documents, copies of which are hereto attached and made integral parts thereof:

Annex	Document
N	Judicial Affidavit of Ms. Mary Anne T. Santiago, Head of the Finance Department of IEMOP, dated 21 July 2023
N-1	IEMOP Proposed Budgetary Requirements and Detailed Descriptions dated 21 July 2023
O	Judicial Affidavit of Mr. Salvador D. Subaran, Chief Information Systems and Technology Officer of IEMOP, dated 21 July 2023
P	Judicial Affidavit of Mr. Herbie C. Ngirngir, Chief Financial Officer of PEMC, dated 21 July 2023
P-1	PEMC Proposed Budgetary Requirements CY 2024 and Detailed Descriptions of the Budget Components
Q	Judicial Affidavit of Mr. Patrick S. Fernandez, Head of the Information Systems and Technology Department of PEMC, dated 21 July 2023
Q-1	Details of Cost Estimates of the Customized IT Systems (PEMC)

62. In compliance with the Checklist for Market Transaction Fees Application (Proposed Budget) of the WESM Reportorial Compliance and Rate Setting Section of the Market Operations Service-Spot Market Division of the Honorable Commission, Applicants submit the following supporting documents:

Annex	Documentary Requirement	Submitted Document
<i>Personnel Services</i>		
R	Masterlist of warm bodies as of end of the preceding year	IEMOP Master list of Employees as of 31 December 2022
S		PEMC Master list of Employees as of 30 June 2023
	Detailed justification of the difference of proposed positions vis-à-vis the warm bodies as of the end of the preceding year	<i>Included in the Masterlist of Employees of Applicant PEMC (Annex R)</i>
T	Copy of Board Resolutions Granting the benefits	PEMC Compensation and Benefits Policy

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U		IEMOP Compensation and Benefits Policy
V	Copy of the Basis of Proposed Salary Structure	Organization Assessment and Compensation and Benefits Review dated June 2018
<i>Maintenance and Other Operating Expenses</i>		
W and sub markings	List of Board and Committee members with corresponding honorarium rate	Certifications dated 21 July 2023 (from IEMOP and PEMC)
X	Workfile (in excel file format) used in the computation of proposed amounts which shall at minimum provide the following details: Particular proposed item, brief description, base amount, source of the base amount, and increment/escalation rate applied (if any).	PEMC Excel file of Maintenance and Other Operating Expenses
Y		IEMOP Excel file of Maintenance and Other Operating Expenses
<i>Proofs of the source of base amounts mentioned in item above, such as:</i>		
Z	Existing contracts for the following: (i) Rented Properties, (ii) Maintenance Service, (iii) Other External Services (i.e. Consultants, Audit, Janitorial, Security), (iv) Insurance, (v) Subscriptions.	PEMC Contracts on Rental and Contracted Services
AA		IEMOP Contracts on Rental and Contracted Services
BB and sub markings	For items whose estimated costs are not based on contracts but on historical utilization, reports or documents to support historical utilization (i.e., Financial Statement, Proof of settlement, etc.)	PEMC Contracts on Rental and Contracted Services
CC and sub markings		IEMOP Contracts on Rental and Contracted Services
<i>For proposed items that do not exist in the preceding year, provide the following:</i>		
DD	(a) List with descriptions and detailed justification	PEMC Summary List of proposed items
EE		IEMOP Summary List of proposed items
FF and sub markings	(b) Proof of the cost estimate (i.e., Market Study, Suppliers Quotation, Published/posted prices, etc.)	PEMC sources of cost estimates for proposed items that do not have contracts in the preceding year
GG and sub markings		IEMOP sources of cost estimates for proposed items that do not have contracts in the preceding year

HH and sub markings	(c) List of Existing Rented Properties with a description of the use or purpose of the facility and the date when the applicant started occupying each property.	PEMC Summary List of Existing Rented Properties
II and sub markings		IEMOP Summary List of Existing Rented Properties
<i>Capital Expenditures</i>		
JJ and sub markings	List of proposed Capital acquisitions with detailed descriptions and justifications	PEMC Summary List of proposed capital acquisitions
KK and sub markings		IEMOP Summary List of proposed capital acquisitions
LL and sub markings	Proof of the cost estimate (i.e., Market Study, Suppliers Quotation, Published/posted prices, etc.)	PEMC sources of cost estimates for capital acquisitions
MM and sub markings		IEMOP sources of cost estimates for capital acquisitions
NN and sub markings	Inventory and Aging of Equipment	PEMC Inventory and Aging of Equipment
OO and sub markings		IEMOP Inventory and Aging of Equipment

Application for the Approval of Applicant PEMC's Bank Loan to Finance Costs for Fit-out and Construction of its New Office.

63. On 31 May 2023, the PEM Board approved PEMC's plan to relocate its office to SM Mega Tower in Mandaluyong City and execute a Lease Agreement with SM Prime Holdings, Inc. After careful assessment, the relocation proved necessary as PEMC's current office no longer provides sufficient space to accommodate the requirements for the company's growth and expansion. Financially, the transfer also proved to be a viable option considering that PEMC would eventually save on the rental costs with the new office as opposed to the increasing rent with the current office facility coupled with high maintenance and repair costs associated with the building depreciation.
64. To implement the transfer, PEMC needs funds to finance the costs of the fit-out and construction of its new office. PEMC conducted cost comparisons with other entities within the industry and finally agreed on the terms with a contractor who will perform the services required. To finance the costs, herein Applicant PEMC entered into a loan agreement with a commercial bank under the following terms:

- (a) Loan Amount: Fifty Million Pesos (Php 50,000,000.00);
- (b) Interest Rate: 1.4% annual interest rate; fixed for five (5) years;
- (c) Frequency of Amortization: Balloon Payment upon maturity (with option to partially pay the principal every discounting period); and
- (d) Maturity: five (5) years from loan release.

65. PEMC now seeks the approval of the Honorable Commission of the above terms and conditions of the loan it secured with the commercial bank to finance the fit-out and construction costs for its new office. As regards the market fees, the payment for the loan shall be spread over a period of five (5) years and charged to the market fees as follows:

	Year 1	Year 2	Year 3	Year 4	Year 5
Yearly Payment (Principal + Interest)	15,335,969.86	10,614,591.78	10,473,747.95	10,332,904.11	4,963,808.22
Projected Generation (Luzon, Visayas, Mindanao)	114,808	122,493	130,696	139,453	148,800
Fixed Market Fee Charge, Php/kWh	0.00013	0.00009	0.00008	0.00007	0.00003

66. Under the General Policies pertinent to the collection and utilization of the market fees as stated in the decision dated 30 January 2008 rendered by this Honorable Commission in the case involving PEMC's market transaction fees for CY 2007 docketed as ERC Case No. 2007-124RC, PEMC shall not be allowed to incur loans without the approval of the Commission and the payment of loans, both principal and interests, shall only be charged to the market fees if such loans have been approved by the Commission.¹⁰

67. Considering the recent amendments to the Commonwealth Act No. 146 ("Public Service Act") that lifted restrictions on the approval requirements for loans taken out by Public Utilities, as well as the DOJ Opinion No.2022 dated 23 September 2022 (the "DOJ Opinion") confirming the authority of the National Power Corporation ("NPC") under its Charter, RA 6395,¹¹ to contract indebtedness and issue bonds¹² without need of prior approval of the relevant regulatory agency; PEMC submitted a Position Paper to this Honorable Commission on 10 May 2023, seeking to adopt the same amendments to the General Policies on the collection and utilization of the market fees.

68. Specifically, PEMC prayed to amend the General Policies by removing the following requirements: (i) to obtain the Honorable Commission's approval prior to securing a loan with a commercial bank; and (ii) to file an application for

¹⁰ Pag 40, ERC Decision dated 30 January 2008, ERC Case No. 2007-124.

¹¹ Republic Act No. 6395, An Act Revising the Charter of the National Power Corporation.

¹² Section 3(k), RA 6395.

approval of this loan that is separate and independent from the annual market fee application. PEMC clarified that the actual loan and its terms shall still be submitted for approval of the Honorable Commission as included in the annual market fee application. This is consistent with the authority granted to PEMC as a private corporation under the Revised Corporation Code to exercise its power as may be essential or necessary to carry out its purpose. In this case, the power to borrow money or enter into a loan agreement is a necessary and essential power of PEMC for it to be able to perform its mandate under the EPIRA and the WESM Rules as the governance arm of the WESM, and to promote and establish a competitive, efficient, transparent, and reliable market for electricity.¹³

69. The proposed Market Fee charge indicated for Year 1 is already factored in and included in the computation of the total proposed Market Fee Charge of Applicant PEMC for CY 2024.
70. In support of the foregoing allegations, Applicant PEMC submits the following documents attached to this Joint Application and made integral parts hereof:

Annex	Document / Description
PP	Secretary's Certificate dated 02 June 2023 with Board Resolution approving the office relocation and lease of the new office
QQ	Fit Out and Construction Costs Details
RR	Comparative Analysis of Fit Out and Construction Costs
SS and sub markings	Details of the Loan Agreement with the Bank containing specific terms and conditions (i.e. Promissory Note and other documents)
TT	Position Paper of PEMC submitted to the Honorable Commission on 10 May 2023

Compliance with Pre-Filing Requirements

71. 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
UU	Acknowledgment from the Office of the City Mayor of Pasig City
VV	Acknowledgment from the Office of the Sangguniang Panlungsod of Pasig City
WW	Affidavit of Service
XX	Certification of City Administrator, Mayor's Office of Pasig City
YY	Certification of City Council Secretary, Sangguniang Panlungsod of Pasig City
ZZ	Affidavit of Publication
AAA	Complete copy of newspaper

¹³ Section 1.2.5, WESM Rules, 27 January 2023.

BBB	Affidavit of Service
-----	----------------------

Motion for Confidential Treatment of Information

72. Applicants respectfully move for the confidential treatment of the IEMOP Masterlist of Employees as of 31 December 2022, PEMC Masterlist of Employees as of 30 June 2023 and the Organization Assessment and Compensation and Benefits Review dated June 2018 hereto attached as Annexes "R", "S", and "V", respectively, copies of which are submitted as password-protected files which form part of Applicant's submission;
73. 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 master list 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 Master list of Employees of both Applicants 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 Applicants 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;
74. Further, Applicant PEMC respectfully moves for the confidential treatment of the documents containing specific details of the Loan Agreement with the Bank attached herein as Annexes "SS and submarkings".
75. These bank loan documents are confidential in nature and are subject to confidentiality provisions executed between the bank and Applicant PEMC and contain provisions that may disadvantage or negatively affect the business of the contracting bank if such are made available and disclosed to the public.
76. Applicants request 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."

77. 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) to grant Applicants' prayer for the issuance of a provisional authority authorizing IEMOP to impose a MARKET FEE CHARGE of PhPo.0099/kWh to all generation companies registered in the WESM based on their actual generation, in kWh, pending resolution of the instant Joint Application;
- (ii) after due notice and hearing, to render judgment APPROVING the proposed market fees for CY 2024 for Applicants IEMOP and PEMC in the total amount of ONE BILLION ONE HUNDRED THIRTY-FIVE MILLION PESOS (PhP1,135,000,000.00);

- (iii) to approve Applicant PEMC's bank loan of FIFTY MILLION PESOS (Php 50,000,000.00) to finance the costs for fit-out and construction of its new office; and
- (iv) to confirm the confidentiality of the IEMOP Master list of Employees as of 31 December 2022, PEMC Master list of Employees as of 30 June 2023, the Organization Assessment and Compensation and Benefits Review dated June 2018, and the Details of the Loan Agreement with the Bank containing specific terms and conditions hereto attached as Annexes "R", "S", "V", and "SS and submarkings", respectively, 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.

Applicants IEMOP and PEMC pray for such other reliefs just and equitable under the premises.

Finding the said *Joint Application* to be sufficient in form 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 venues, or online platform for the conduct thereof, pursuant to Resolution No. 09, Series of 2020¹⁴ and Resolution No. 01, Series of 2021¹⁵ (ERC Revised Rules of Practice and Procedure):

Date	Venue/Platform	Activity
21 November 2023 (Tuesday) at nine o'clock in the morning (9:00 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
23 November 2023 (Thursday) at two o'clock in the afternoon (2:00 P.M.)	Energy Regulatory Commission, Visayas Area Operations Division (VAOD), 7th Floor,	Expository presentation for Visayas stakeholders

¹⁴ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.

¹⁵ A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

Date	Venue/Platform	Activity
	Kepwealth Building, Samar Loop, Cebu Business Park	
28 November 2023 (Tuesday) at two o'clock in the afternoon (2:00 P.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
05 December 2023 (Tuesday) at nine o'clock in the morning (9:00 A.M.)	Microsoft Teams or Zoom Application	Pre-Trial Conference and presentation of evidence
06 December 2023 (Wednesday) at nine o'clock in the morning (9:00 A.M.)		Presentation of evidence
07 December 2023 (Thursday) at nine o'clock in the morning (9:00 A.M.)		Presentation of evidence

Applicants IEMOP and PEMC are directed to attend the said hearings at the designated venues.

RELATIVE THERETO, IEMOP and PEMC are 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 their 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 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) legislative body 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 *Joint Application*, its reasons therefor, and of the scheduled 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 and attend the scheduled hearings; and
- 5) Furnish with copies of the *Joint 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 hearing, IEMOP and PEMC 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 their written compliance with the aforementioned jurisdictional requirements attaching the following methodically arranged and duly marked documents:

- 1) The evidence of publication of the attached *Notice of Public/Virtual Hearing* consisting of affidavits of the Editors or Business Managers of the newspapers where the said *Notice of Public/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 body or their duly authorized representatives, bearing the seals of their offices;

- 3) The evidence of other means employed by IEMOP and PEMC to inform the consumers within the affected area of the filing of the *Joint 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 *Joint Application* and its attachments, except those subject of a motion for confidential treatment of information, by all those making requests therefor, if any; and
- 6) Such other proof of compliance with the requirements of the Commission.

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

Applicants IEMOP and PEMC 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 initial hearing and Pre-Trial Conference, their respective Pre-Trial Briefs 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; and
- 4) The number and names of the witnesses, with their written testimonies in a Judicial Affidavit form attached to the Pre-Trial Brief.

Applicants IEMOP and PEMC 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 hearing and Pre-Trial Conference pursuant to the preceding paragraph.

Failure of IEMOP and PEMC 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.

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

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

Applicants IEMOP and PEMC are 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 their 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.

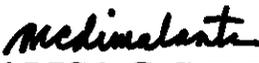
(This space is intentionally left blank.)

Finally, IEMOP and PEMC, including their authorized representatives and witnesses, are hereby directed to provide the Commission, thru 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 virtual hearings.

SO ORDERED.

Pasig City, 16 October 2023.

FOR AND BY AUTHORITY
OF THE COMMISSION:


MONALISA C. DIMALANTA
Chairperson and CEO


LS: MVM/ARG

ERC
Office of the Chairperson and CEO



MCD2023-010065

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Copy Furnished:

1. Attys. Sheryll J. Mallari-Dy, Lilibeth Grace L. Vetus, Manuel Martin C. Escasura, Jochelle Cliffany T. Santos, Kristoffer Monico S. Ng
Counsel for Applicant Independent Electricity Market Operator of the Philippines, Inc. (IEMOP)
9th Floor Robinsons Equitable Tower
ADB Avenue, Ortigas Center, Pasig City
sheryll.dy@iemop.ph
grace.vetus@iemop.ph
martin.escasura@iemop.ph
jochelle.santos@iemop.ph
nico.ng@iemop.ph
2. Attys. Andrea S. Josen-Mendiola, Ervin John Mikel D. Hilado
Counsel for Applicant Philippine Electricity Market Corporation (PEMC)
18th Floor Robinsons Equitable Tower
ADB Avenue, Ortigas Center, Pasig City
ajmendiola@wesm.ph
ejmdhilado@wesm.ph
legal@wesm.ph; wesm.legal@wesm.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)
134 Amorsolo Street, Legaspi Village, Makati City
docket@osg.gov.ph
6. Commission on Audit (COA)
Commonwealth Avenue, Quezon City 1121
citizensdesk@coa.gov.ph
7. Senate Committee on Energy
GSIS Building, Roxas Boulevard, Pasay City 1307
senateenergycommittee@gmail.com
8. House of Representatives Committee on Energy
Batasan Hills, Quezon City 1126
committee.energy@house.gov.ph
9. Market Operations Service (MOS)
Energy Regulatory Commission
12F Exquadra Tower, Jade 1 Drive, Pasig City
mos@erc.ph

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City

**IN THE MATTER OF THE
APPLICATION FOR THE
APPROVAL OF THE LEVEL OF
MARKET FEES FOR THE
CALENDAR YEAR 2024 FOR
THE PHILIPPINE WHOLESALE
ELECTRICITY SPOT MARKET
(WESM)**

ERC CASE NO. 2023-108 RC

**INDEPENDENT ELECTRICITY
MARKET OPERATOR OF THE
PHILIPPINES, INC. AND
PHILIPPINE ELECTRICITY
MARKET CORPORATION,**
Applicants.

Promulgated:
October 16, 2023

X-----X

NOTICE OF PUBLIC/VIRTUAL HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 02 October 2023, the Independent Electricity Market Operator of the Philippines, Inc. (IEMOP) and the Philippine Electricity Market Corporation (PEMC) filed a *Joint Application* dated 21 July 2023, seeking the Commission's approval of the level of market fees for Calendar Year (CY) 2024 for the Philippine Wholesale Electricity Spot Market (WESM), with prayer for provisional authority.

The pertinent portions of the said *Joint Application* are hereunder quoted as follows:

1. This is an Application jointly filed by IEMOP and PEMC for the approval of the level of market fees for the Calendar Year (CY) 2024 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:

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"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

2. Applicant IEMOP is a non-stock, non-profit corporation duly organized and existing in accordance with Philippine laws, with principal office at the 9th 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 to file this Application jointly with PEMC and represent the Applicant IEMOP in all stages of the proceedings, as evidenced by the Secretary's Certificates hereto attached as Annexes "A" to "A-1" and made an integral part of this Application;
3. Applicant PEMC is a non-stock, non-profit private corporation duly organized and existing in accordance with the laws of the Philippines with principal office address at the 18th Floor Robinsons Equitable Tower, ADB Avenue, Ortigas Center, Pasig City. It is represented in this Application by its President, Elvin Hayes E. Nidea, who has been duly authorized by Applicant PEMC's Board of Directors ("PEM Board") to file this Application jointly with IEMOP and represent the Applicant PEMC in all stages of the proceedings, as evidenced by the Secretary's Certificate hereto attached as Annex "B".

Transition to the Independent Market Operator (IMO)

4. 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);
5. 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

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

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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;

6. 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 fulfill 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, enforcement and compliance, rules change and review, market audit, dispute resolution and technical assistance;
7. 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.
8. 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 17 January 2018 and entitled "Adopting Policies for the Effective and Efficient Transition to the Independent Market Operator for the Wholesale Electricity Spot Market"²;
9. 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;
10. 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;
11. IEMOP was thereafter organized as a non-stock, non-profit private corporation that is separate from PEMC. IEMOP was

² A copy of which is hereto attached and made an integral part as Annex "C".

³ A copy of which is hereto attached and made an integral part as Annex "D".

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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;

12. 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;
13. 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;
14. In accordance with the DOE Circular and the IMO Transition Plan, PEMC remains to be the governing body of the WESM 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;
15. 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.
16. 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);

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

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- (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.
17. In DOE Circular No. DC2019-07-0011 dated 29 July 2019⁶, the DOE affirmed the designation of the IMO as the CRB;
18. PEMC remained as the Governance Arm of the WESM and is mandated to perform its functions as set out in the WESM Rules and its Market Manuals, through its Board of Directors, the PEM Board and its governance committees, as provided under Section 7 of Department of Energy Circular No. DC 2018-01-0002;
19. 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)”. This issuance 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*

20. 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;
21. 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;

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

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

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

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22. 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 Applicants 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 Applicants IEMOP and PEMC;
23. Section 10.05 of the Operating Agreement likewise provides that Applicant 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 Applicants 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;
24. For its part, PEMC deems itself as an indispensable party to the Application considering its substantial interest over the subject matter of the case, i.e., as the owner of the market fees pertaining to it. This is because the market fees being sought to be approved by this Honorable Commission cover the budget and revenue requirements of both Applicants, as the market operator and governing body of the WESM;
25. The IEMOP Board of Directors likewise approved Applicant IEMOP's budgetary requirements and authorized the joint filing of the application with Applicant PEMC, which approval is evidenced by the Secretary's Certificate dated 5 July 2023 a copy of which is hereto attached as *Annex "A-1"* and made an integral part of this Joint Application;
26. Pursuant to WESM Rules Clause 2.10.2.3 and the agreements between Applicants PEMC and the IEMOP in their Operating Agreement, the PEM Board approved the budgets of Applicants IEMOP and PEMC for CY 2024 during its regular meeting held on 31 May 2023. These approvals are evidenced by the Secretary's Certificate dated 21 July 2023, a copy of which is hereto attached as *Annex "H"*, and made an integral part of this Joint Application;

TIMELINESS OF FILING THE APPLICATION

27. 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";
28. On 27 June 2023, Applicant IEMOP filed its Motion for Additional Time requesting for an additional period of thirty (30) days from 1 July 2023, or until 31 July 2023, within which to file the Application, considering the need to complete

⁸ ERC Case No. 2007-124 RC.

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the pre-filing requirements of the Application, including the supporting documents thereto;

29. This Joint Application is thus filed within the reglementary period requested;

PROPOSED MARKET FEES

30. The factual allegations set forth above are re-pleaded in support of this Application;

31. 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”;

32. Applicant 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 of 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.*

33. 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:

$$\begin{aligned} \text{Rate} &= \frac{\text{Total Annual Market Transaction Fees (Php)} / 12}{\text{Total Generation Metered Quantity for the Month (kWh)}} \\ &= \text{P/kWh} \end{aligned}$$

34. Following the above-mentioned market fee structure, the instant Joint Application seeks for approval of the Market Transaction Fee for CY 2024 to cover the cost of Applicants IEMOP and PEMC in operating and governing 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 Applicants no longer seek the approval of a Market Registration Fee;

35. The projected total budgetary requirement of both PEMC and IEMOP as approved by the PEM Board is ONE BILLION ONE

⁹ ERC Case No. 2005-048 RC.

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HUNDRED THIRTY-FIVE MILLION PESOS
(PhP1,135,000,000.00); broken down as follows:

Budget Component	IEMOP, PhPM	PEMC, PhPM	Total, PhPM
Personnel Services (PS)	276.02	208.13	484.14
Maintenance and Other Operating Expenses (MOOE)	295.70	242.87	538.59
Capital Expenditures (CAPEX)	46.98	65.29	112.28
TOTAL	618.71	516.29	1,135.00
Projected Generation, GWH (Luzon, Visayas & Mindanao)	114,808		
Fixed Market Fee Charge. PhP/kWh	0.0054	0.0045	0.0099

36. As shown in the foregoing table, the projected budgetary requirements cover the following budget components for IEMOP and PEMC that are necessary to perform their respective functions:

- (a) *Personnel Services (PS)* pertain to the salaries and benefits of the employees;
- (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, 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;

37. 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 Joint Application;

38. Applicants respectfully submit that the budgetary requirement for CY 2024 is sufficiently indicative of their requirements for the medium term, as these already consider the following:

- (a) Cost of governing 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

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complement over the medium term. As for PEMC, its Modified Table of Organization reflects an additional manpower for twenty-two (22) positions;

- (c) The aggregate IEMOP and PEMC budgetary requirements, upon which the proposed Fixed Market Fee Charge and Market Fees are based, do not include the pre-establishment expenses for the commercial 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.

- (d) Further, the aggregate budgetary requirements of IEMOP and PEMC do not include the corresponding costs of implementing market developments pursuant to more recent policy and regulatory issuances, which

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shall be covered by a separate application to be filed by the Applicants with the Honorable Commission;

39. Moreover, the amounts proposed by the Applicants are net of applicable taxes, such as corporate income and value-added taxes, and without prejudice to the filing of an application to cover such taxes, especially in light of BIR Ruling No. OT-323-2021 dated 24 August 2021. In the said Ruling, the Bureau of Internal Revenue, among others, ruled that Applicant IEMOP is not a tax-exempt corporation under Section 30 of the NIRC, as amended, and that the market fees it collects from market participants to defray the cost of operations of the WESM is subject to income tax and, consequently, to withholding tax. Applicant IEMOP has since filed a Petition for Review of the said Ruling with the Court of Tax Appeals, docketed as CTA Case No. 10885 and entitled "Independent Electricity Market Operator of the Philippines, Inc. v. Commissioner of Internal Revenue and Secretary of Finance", where it is pending as of date. The Application does not also cover possible changes in expenses due to changes in law, rules or regulations, compliance with other regulatory requirements and other external factors;
40. Based on initial indicative figures, the estimated market fee charge is PhPo.0099/kWh based on the Luzon Visayas and Mindanao energy forecast of 114,808 GWh. The energy forecast is attached as *Annex "I"* and is made an integral part of this Joint Application;
41. The market fee charge shall be recovered from Luzon, Visayas, and Mindanao generators, for their actual commercial operations in the WESM. 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

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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**

42. 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:

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

The monthly market fee charge shall be recovered from Luzon, Visayas and Mindanao, considering that the commercial operation of WESM in Mindanao has already been declared.

43. Should it be necessary, Applicants 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 Applicants IEMOP and PEMC, if any, in operating and governing the trading of reserves.

**Compliance with Reporting and Policy
Requirements**

44. Applicants IEMOP and PEMC, 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;
45. 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

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and will continue to be complied with, foremost of which is that expenses shall not exceed the total approved budget;

46. Additionally, Applicants IEMOP and PEMC 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

47. The factual allegations set forth above are re-pleaded in support of the Motion for Issuance of Provisional Authority;
48. As in any enterprise, sufficiency of resources is imperative considering the need to finance even the minimum requirements for a normal level of operation. Such need is more pronounced in a highly dynamic platform such as the WESM, which is being operated on a 24x7 basis and is highly critical to sustaining a transparent and competitive electricity market. Indeed, Applicants IEMOP and PEMC, as the Market Operator and Governance Arm, respectively, of the WESM, must be assured of adequate financial support to enable both entities to perform their respective responsibilities under the EPIRA and the WESM Rules and market manuals;
49. In the Decision dated 20 May 2020 in the Market Fees Application docketed as ERC Case No. 2014-092 RC, the Honorable Commission approved the same with modification, authorized the imposition of market transaction fee for Calendar Year 2015 in the amount of PhP447,470,026.06 on WESM participants in the Luzon and

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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, authorized the imposition of 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 this date;

50. Further, in the Decision dated 16 March 2022, in the Market Fees Application docketed as ERC Case No. 2017-095 RC, the Honorable Commission approved the same with modification, authorized the imposition of market transaction fee for Calendar Year 2018 in the amount of PhP448,966,163.25 on WESM participants in the Luzon and Visayas grids. Applicant PEMC has since filed a motion for reconsideration of the said Decision which is now pending resolution;
51. Moreover, in the Order dated 16 June 2022 in the Market Fees Application docketed as ERC Case No. 2019-088 RC, the Honorable Commission authorized and capped the authorized level of market fees for Calendar Years 2019-2020 at the approved market fees for Calendar Year 2018 by way of grant of interim relief. Applicants IEMOP and PEMC have separately filed motions for reconsideration of the said Order which have yet to be resolved by the Honorable Commission;
52. In compliance with the directive of the Honorable Commission to impose the most recent approved market fees level, Applicants IEMOP and PEMC have capped the market fees collection for Calendar Year 2022 to the approved market fees for Calendar Year 2018. Needless to state, the approved market fee level is grossly inadequate to sustain the efficient operations of Applicants IEMOP and PEMC;
53. Since the two entities are incorporated as non-stock and non-profit private companies which are mandated to remain so by virtue of policy directive, each relies solely on the market fees as approved by the Honorable Commission for their revenue requirements. Given the substantial cuts and disallowances ordered in the recent issuances of the Honorable Commission in the preceding years' market fees applications, Applicants IEMOP and PEMC have both suffered and reported deficits as early as Calendar Year 2020, especially in light of the fact that the recently approved market fee levels are significantly lower than the amounts reported in the budget utilization reports submitted by Applicants IEMOP and PEMC for the relevant year. Copies of the Audited Financial Statements of Applicants IEMOP and PEMC for calendar years 2020 to 2022 are attached herein as Annexes "J" to "J-2" and "K" to "K-2", respectively. Also, copies of the Variance Reports of

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Applicant IEMOP for calendar years 2020 to 2022 are attached herein as Annexes “L” to “L-2” and Variance Reports of PEMC for calendar years 2020 to 2021 are attached herein as Annexes “M” to “M-1”;

54. At its current level, the prevailing market fee for the WESM are grossly insufficient to cover the budget requirements for calendar year 2024 especially in view of the market development initiatives that are mandated to be implemented through policy and regulatory issuances and the effect of inflation on the maintenance of market systems supporting the operations and governance of the WESM, including other logistical requirements;
55. The objectives of the WESM are to establish a competitive, efficient, transparent and reliable market for electricity where: (a) a level playing field exists among WESM participants; (b) trading of electricity is facilitated among WESM participants within the spot market; (c) third parties are granted access to the power system in accordance with the EPIRA; (d) prices are governed as far as practicable by commercial and market forces; and (e) efficiency is encouraged. As the primary platform for electricity trading, the WESM likewise seeks to provide the avenue for consumers, particularly the distribution utilities and bulk users, to source their energy requirements. Paramount to the fulfillment of these objectives is the timely recovery of costs by the Applicants, as mandated under the WESM Rules and the EPIRA.
56. The implementation of market developments mandated by various policy and regulatory issuances, likewise, requires the timely recovery of costs by the Market Operator. In particular, there is an urgent necessity –
 - (a) For sufficient resources to sustain the newly-implemented market developments such as the Enhanced WESM Design and Operations (EWDO), WESM in Mindanao, Green Energy Option Program (GEOP) and Green Energy Auction Program (GEAP), which were mandated to be implemented through various issuances of the Department of Energy and the Honorable Commission.

The implementation of these market developments requires significant enhancements in- and upgrades to the market systems and corporate infrastructure as these were not contemplated in the original design.

In particular, the implementation of the EWDO necessitates substantial upgrades in telecommunication lines, database capacity, and computing power of existing market systems. This is because the shift from hourly to 5-minute trading

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interval resulted to an exponential increase in the volume of data used for pricing, scheduling and settlement processes.

As to the commercial operation of WESM Mindanao, the Applicants have already incurred costs for its preparation and implementation, all of which were unprogrammed expenses;

- (b) For financial support to undertake adequate and effective preparatory activities for market developments that are intended to be commercially launched within the year and in the immediate future, i.e., Reserve Market, Renewable Energy Market, Retail Aggregation Program and Forwards Market through policy and regulatory directives of the DOE and the Honorable Commission.

In this regard, the Applicants have incurred- and will continue to incur additional costs to ensure adequate preparations for these upcoming and ongoing market developments;

- (c) To finance regularly occurring expenses such as, but not limited to: (i) periodic replacement of office equipment and appliances to allow the efficient discharge of the respective mandates of the Applicants, which were either deferred or foregone due to lack of budget; (ii) costs for the physical attendance by the Applicants' personnel to attend public consultations, conferences, meetings and other events where their participation is indispensable either as resource persons or where the Applicants' contributions are highly relevant to the subject matter, especially since pandemic restrictions have since eased; (iii) conduct of training sessions and discussions for the benefit of WESM stakeholders in various areas of the nation which is principally aimed to facilitate understanding and appreciation of the recent market developments, and to equip them to participate therein; (iv) increase in software license subscription and support services for the past 2 years; and
- (d) To enable the Applicants to be equipped to provide technical assistance and support to various WESM stakeholders, especially the DOE, the Honorable Commission and other government agencies. Notably, the performance by the Applicants of simulations, analysis and data provision, to name a few, to these stakeholders demand that the appropriate skills and technological capability is available in order for the Applicants to be able to provide a timely, intelligible and reliable report or submission;

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57. Despite the insufficiency of the prevailing market fee to cover the budget requirements of Applicants each year, Applicants faithfully endeavor to carry out their functions effectively and efficiently as well as fulfill their mandate under the WESM Rules in establishing a competitive, efficient, transparent and reliable market for electricity.
58. Although the Applicants continue to suffer due to the deficiency in their respective budgets, they have no other option but to comply with their mandate in order to ensure the stability of the electricity market so that the consumers are supplied with enough electricity, which supports and stimulates economic growth.
59. Further, the fact that Applicants are non-stock, non-profit corporations should not and could not mean that they operate altruistically given the insufficient budget that they are running on. Without enough budget, Applicants will not be able to sustain their effective and efficient operations of the WESM and faithfully fulfill their mandate. At the current level of market fees, the Applicants may not even be able to sustain their normal operations of the WESM.
60. Thus, Applicants respectfully pray for the issuance of a provisional authority for Applicant IEMOP, as the Market Operator of the WESM, to impose the proposed market fee charge of PhPo.0099 kWh to all generation companies registered in the WESM based on their actual generation, in kWh, in behalf of the Applicants, to support their operation pending resolution of the instant Application;
61. In support of this Application and the motion for issuance of provisional authority, Applicants herein submit the following documents, copies of which are hereto attached and made integral parts thereof:

Annex	Document
N	Judicial Affidavit of Ms. Mary Anne T. Santiago, Head of the Finance Department of IEMOP, dated 21 July 2023
N-1	IEMOP Proposed Budgetary Requirements and Detailed Descriptions dated 21 July 2023
O	Judicial Affidavit of Mr. Salvador D. Subaran, Chief Information Systems and Technology Officer of IEMOP, dated 21 July 2023
P	Judicial Affidavit of Mr. Herbie C. Ngirngir, Chief Financial Officer of PEMC, dated 21 July 2023
P-1	PEMC Proposed Budgetary Requirements CY 2024 and Detailed Descriptions of the Budget Components
Q	Judicial Affidavit of Mr. Patrick S. Fernandez, Head of the Information Systems and Technology Department of PEMC, dated 21 July 2023
Q-1	Details of Cost Estimates of the Customized IT Systems (PEMC)

62. In compliance with the Checklist for Market Transaction Fees Application (Proposed Budget) of the WESM Reportorial

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Compliance and Rate Setting Section of the Market Operations Service-Spot Market Division of the Honorable Commission, Applicants submit the following supporting documents:

Annex	Documentary Requirement	Submitted Document
<i>Personnel Services</i>		
R	Masterlist of warm bodies as of end of the preceding year	IEMOP Master list of Employees as of 31 December 2022
S		PEMC Master list of Employees as of 30 June 2023
	Detailed justification of the difference of proposed positions vis-à-vis the warm bodies as of the end of the preceding year	<i>Included in the Masterlist of Employees of Applicant PEMC (Annex R)</i>
T	Copy of Board Resolutions Granting the benefits	PEMC Compensation and Benefits Policy
U		IEMOP Compensation and Benefits Policy
V	Copy of the Basis of Proposed Salary Structure	Organization Assessment and Compensation and Benefits Review dated June 2018
<i>Maintenance and Other Operating Expenses</i>		
W and sub markings	List of Board and Committee members with corresponding honorarium rate	Certifications dated 21 July 2023 (from IEMOP and PEMC)
X	Workfile (in excel file format) used in the computation of proposed amounts which shall at minimum provide the following details: Particular proposed item, brief description, base amount, source of the base amount, and increment/escalation rate applied (if any).	PEMC Excel file of Maintenance and Other Operating Expenses
Y		IEMOP Excel file of Maintenance and Other Operating Expenses
<i>Proofs of the source of base amounts mentioned in item above, such as:</i>		
Z	Existing contracts for the following: (i) Rented Properties, (ii) Maintenance Service, (iii) Other External Services (i.e. Consultants, Audit, Janitorial, Security), (iv) Insurance, (v) Subscriptions.	PEMC Contracts on Rental and Contracted Services
AA		IEMOP Contracts on Rental and Contracted Services

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BB and sub markings	For items whose estimated costs are not based on contracts but on historical utilization, reports or documents to support historical utilization (i.e., Financial Statement, Proof of settlement, etc.)	PEMC Contracts on Rental and Contracted Services
CC and sub markings		IEMOP Contracts on Rental and Contracted Services
<i>For proposed items that do not exist in the preceding year, provide the following:</i>		
DD	(a) List with descriptions and detailed justification	PEMC Summary List of proposed items
EE		IEMOP Summary List of proposed items
FF and sub markings	(b) Proof of the cost estimate (i.e., Market Study, Suppliers Quotation, Published/posted prices, etc.)	PEMC sources of cost estimates for proposed items that do not have contracts in the preceding year
GG and sub markings		IEMOP sources of cost estimates for proposed items that do not have contracts in the preceding year
HH and sub markings	(c) List of Existing Rented Properties with a description of the use or purpose of the facility and the date when the applicant started occupying each property.	PEMC Summary List of Existing Rented Properties
II and sub markings		IEMOP Summary List of Existing Rented Properties
<i>Capital Expenditures</i>		
JJ and sub markings	List of proposed Capital acquisitions with detailed descriptions and justifications	PEMC Summary List of proposed capital acquisitions
KK and sub markings		IEMOP Summary List of proposed capital acquisitions
LL and sub markings	Proof of the cost estimate (i.e., Market Study, Suppliers Quotation, Published/posted prices, etc.)	PEMC sources of cost estimates for capital acquisitions
MM and sub markings		IEMOP sources of cost estimates for capital acquisitions
NN and sub markings	Inventory and Aging of Equipment	PEMC Inventory and Aging of Equipment
OO and sub markings		IEMOP Inventory and Aging of Equipment

Application for the Approval of Applicant PEMC's Bank Loan to Finance Costs for Fit-out and Construction of its New Office.

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63. On 31 May 2023, the PEM Board approved PEMC's plan to relocate its office to SM Mega Tower in Mandaluyong City and execute a Lease Agreement with SM Prime Holdings, Inc. After careful assessment, the relocation proved necessary as PEMC's current office no longer provides sufficient space to accommodate the requirements for the company's growth and expansion. Financially, the transfer also proved to be a viable option considering that PEMC would eventually save on the rental costs with the new office as opposed to the increasing rent with the current office facility coupled with high maintenance and repair costs associated with the building depreciation.
64. To implement the transfer, PEMC needs funds to finance the costs of the fit-out and construction of its new office. PEMC conducted cost comparisons with other entities within the industry and finally agreed on the terms with a contractor who will perform the services required. To finance the costs, herein Applicant PEMC entered into a loan agreement with a commercial bank under the following terms:
- (a) Loan Amount: Fifty Million Pesos (Php 50,000,000.00);
 - (b) Interest Rate: 1.4% annual interest rate; fixed for five (5) years;
 - (c) Frequency of Amortization: Balloon Payment upon maturity (with option to partially pay the principal every discounting period); and
 - (d) Maturity: five (5) years from loan release.
65. PEMC now seeks the approval of the Honorable Commission of the above terms and conditions of the loan it secured with the commercial bank to finance the fit-out and construction costs for its new office. As regards the market fees, the payment for the loan shall be spread over a period of five (5) years and charged to the market fees as follows:

	Year 1	Year 2	Year 3	Year 4	Year 5
Yearly Payment (Principal + Interest)	15,335,969.86	10,614,591.78	10,473,747.95	10,332,904.11	4,963,808.22
Projected Generation (Luzon, Visayas, Mindanao)	114,808	122,493	130,696	139,453	148,800
Fixed Market Fee Charge, Php. kWh	0.00013	0.00009	0.00008	0.00007	0.00003

66. Under the General Policies pertinent to the collection and utilization of the market fees as stated in the decision dated 30 January 2008 rendered by this Honorable Commission in the case involving PEMC's market transaction fees for CY 2007 docketed as ERC Case No. 2007-124RC, PEMC shall not be allowed to incur loans without the approval of the Commission and the payment of loans, both principal and

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interests, shall only be charged to the market fees if such loans have been approved by the Commission.¹⁰

67. Considering the recent amendments to the Commonwealth Act No. 146 (“Public Service Act”) that lifted restrictions on the approval requirements for loans taken out by Public Utilities, as well as the DOJ Opinion No.2022 dated 23 September 2022 (the “DOJ Opinion”) confirming the authority of the National Power Corporation (“NPC”) under its Charter, RA 6395,¹¹ to contract indebtedness and issue bonds¹² without need of prior approval of the relevant regulatory agency; PEMC submitted a Position Paper to this Honorable Commission on 10 May 2023, seeking to adopt the same amendments to the General Policies on the collection and utilization of the market fees.
68. Specifically, PEMC prayed to amend the General Policies by removing the following requirements: (i) to obtain the Honorable Commission’s approval prior to securing a loan with a commercial bank; and (ii) to file an application for approval of this loan that is separate and independent from the annual market fee application. PEMC clarified that the actual loan and its terms shall still be submitted for approval of the Honorable Commission as included in the annual market fee application. This is consistent with the authority granted to PEMC as a private corporation under the Revised Corporation Code to exercise its power as may be essential or necessary to carry out its purpose. In this case, the power to borrow money or enter into a loan agreement is a necessary and essential power of PEMC for it to be able to perform its mandate under the EPIRA and the WESM Rules as the governance arm of the WESM, and to promote and establish a competitive, efficient, transparent, and reliable market for electricity.¹³
69. The proposed Market Fee charge indicated for Year 1 is already factored in and included in the computation of the total proposed Market Fee Charge of Applicant PEMC for CY 2024.
70. In support of the foregoing allegations, Applicant PEMC submits the following documents attached to this Joint Application and made integral parts hereof:

Annex	Document / Description
PP	Secretary’s Certificate dated 02 June 2023 with Board Resolution approving the office relocation and lease of the new office
QQ	Fit Out and Construction Costs Details
RR	Comparative Analysis of Fit Out and Construction Costs

¹⁰ Pag 40, ERC Decision dated 30 January 2008, ERC Case No. 2007-124.

¹¹ Republic Act No. 6395, An Act Revising the Charter of the National Power Corporation.

¹² Section 3(k), RA 6395.

¹³ Section 1.2.5, WESM Rules, 27 January 2023.

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SS and sub markings	Details of the Loan Agreement with the Bank containing specific terms and conditions (i.e. Promissory Note and other documents)
TT	Position Paper of PEMC submitted to the Honorable Commission on 10 May 2023

Compliance with Pre-Filing Requirements

71. 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
UU	Acknowledgment from the Office of the City Mayor of Pasig City
VV	Acknowledgment from the Office of the Sangguniang Panlungsod of Pasig City
WW	Affidavit of Service
XX	Certification of City Administrator, Mayor's Office of Pasig City
YY	Certification of City Council Secretary, Sangguniang Panlungsod of Pasig City
ZZ	Affidavit of Publication
AAA	Complete copy of newspaper
BBB	Affidavit of Service

Motion for Confidential Treatment of Information

72. Applicants respectfully move for the confidential treatment of the IEMOP Masterlist of Employees as of 31 December 2022, PEMC Masterlist of Employees as of 30 June 2023 and the Organization Assessment and Compensation and Benefits Review dated June 2018 hereto attached as Annexes "R", "S", and "V", respectively, copies of which are submitted as password-protected files which form part of Applicant's submission;
73. 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 master list 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 Master list of Employees of both Applicants IEMOP and PEMC; and (iii) the disclosure of the contents thereof may be a source of competitive advantage for the recipient of the information

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and Applicants 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;

74. Further, Applicant PEMC respectfully moves for the confidential treatment of the documents containing specific details of the Loan Agreement with the Bank attached herein as Annexes "SS and submarkings".
75. These bank loan documents are confidential in nature and are subject to confidentiality provisions executed between the bank and Applicant PEMC and contain provisions that may disadvantage or negatively affect the business of the contracting bank if such are made available and disclosed to the public.
76. Applicants request 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."

77. 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

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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) to grant Applicants' prayer for the issuance of a provisional authority authorizing IEMOP to impose a **MARKET FEE CHARGE** of PhP0.0099/kWh to all generation companies registered in the WESM based on their actual generation, in kWh, pending resolution of the instant Joint Application;
- (ii) after due notice and hearing, to render judgment **APPROVING** the proposed market fees for CY 2024 for Applicants IEMOP and PEMC in the total amount of **ONE BILLION ONE HUNDRED THIRTY-FIVE MILLION PESOS (PhP1,135,000,000.00)**;
- (iii) to approve Applicant PEMC's bank loan of **FIFTY MILLION PESOS (Php 50,000,000.00)** to finance the costs for fit-out and construction of its new office; and
- (iv) to confirm the confidentiality of the IEMOP Master list of Employees as of 31 December 2022, PEMC Master list of Employees as of 30 June 2023, the Organization Assessment and Compensation and Benefits Review dated June 2018, and the Details of the Loan Agreement with the Bank containing specific terms and conditions hereto attached as Annexes "R", "S", "V", and "SS and submarkings", respectively, 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.

Applicants IEMOP and PEMC pray for such other reliefs just and equitable under the premises.

The Commission sets the instant *Joint Application* for the determination of compliance with the jurisdictional requirements, expository presentation, Pre-Trial Conference, and presentation of evidence on the following dates and venues, or online platform for the conduct thereof, pursuant to Resolution No. 09, Series of 2020¹⁴ and

¹⁴ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.

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Resolution No. 01, Series of 2021¹⁵ (ERC Revised Rules of Practice and Procedure):

Date	Venue/Platform	Activity
21 November 2023 (Tuesday) at nine o'clock in the morning (9:00 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
23 November 2023 (Thursday) at two o'clock in the afternoon (2:00 P.M.)	Energy Regulatory Commission, Visayas Area Operations Division (VAOD), 7th Floor, Kepwealth Building, Samar Loop, Cebu Business Park	Expository presentation for Visayas stakeholders
28 November 2023 (Tuesday) at two o'clock in the afternoon (2:00 P.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
05 December 2023 (Tuesday) at nine o'clock in the morning (9:00 A.M.)	Microsoft Teams or Zoom Application	Pre-Trial Conference and presentation of evidence
06 December 2023 (Wednesday) at nine o'clock in the morning (9:00 A.M.)		Presentation of evidence
07 December 2023 (Thursday) at nine o'clock in the morning (9:00 A.M.)		Presentation of evidence

¹⁵ A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

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Applicants IEMOP and PEMC were directed to attend the said hearings at the designated venues.

Any interested stakeholder may submit its comments and/or clarifications **at least one (1) calendar day** prior to the scheduled initial hearing, via electronic mail (e-mail) at docket@erc.ph, and copy furnish the Legal Service through legal@erc.ph. The Commission shall give priority to the stakeholders who have duly submitted their respective comments and/or clarifications, to discuss the same and propound questions during the course of the expository presentation.

Moreover, any person who has an interest in the subject matter of the instant case may become a party by filing with the Commission via e-mail at docket@erc.ph, and copy furnish the Legal Service through legal@erc.ph, a verified Petition to Intervene **at least five (5) calendar days** prior to the date of the initial hearing and must follow the requirements under Rule 9 of the ERC Revised Rules of Practice and Procedure, indicate therein the docket number and title of the case and state the following:

- 1) The petitioner's name, mailing address, and e-mail address;
- 2) The nature of petitioner's interest in the subject matter of the proceeding and the way and manner in which such interest is affected by the issues involved in the proceeding; and
- 3) A statement of the relief desired.

Likewise, all other persons who may want their views known to the Commission with respect to the subject matter of the case may file through e-mail at docket@erc.ph, and copy furnish the Legal Service through legal@erc.ph, their Opposition or Comment **at least five (5) calendar days** prior to the initial hearing. Rule 9 of the ERC Revised Rules of Practice and Procedure shall govern. No particular form of Opposition or Comment is required, but the document, letter, or writing should contain the following:

- 1) The name, mailing address, and e-mail address of such person;

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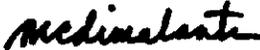
- 2) A concise statement of the Opposition or Comment; and
- 3) The grounds relied upon.

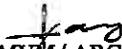
All interested parties filing their Petition to Intervene, Opposition or Comment are required to submit the hard copies thereof through personal service, registered mail or ordinary mail/private courier, **within five (5) working days** from the date that the same were electronically submitted, as reflected in the acknowledgment receipt e-mail sent by the Commission.

Any of the persons mentioned in the preceding paragraphs may access the copy of the *Joint Application* on the Commission's official website at www.erc.gov.ph.

Finally, all interested persons may be allowed to join the scheduled virtual hearings by providing the Commission, thru legal.virtualhearings@erc.ph, their respective e-mail addresses and indicating therein the case number of the instant *Joint Application*. The Commission will send the access link/s to the aforementioned hearing platform within five (5) working days prior to the scheduled virtual hearings.

WITNESS, the Honorable Commissioners **ALEXIS M. LUMBATAN**, **CATHERINE P. MACEDA**, **FLORESINDA G. BALDO-DIGAL**, and **MARKO ROMEO L. FUENTES**, Energy Regulatory Commission, this 16th day of October 2023 in Pasig City.


MONALISA C. DIMALANTA
Chairperson and CEO


LS: MVM/ ARG

ERC
Office of the Chairperson and CEO



MCD2023-010065