



Republic of the Philippines
DEPARTMENT OF ENERGY
(Kagawaran ng Enerhiya)

MEMORANDUM FOR THE SECRETARY

FROM : Assistant Secretary GERARDO D. ERGUIZA, JR.

DATE : 13 October 2020

SUBJECT : Guidelines on the Nomination and Selection of the
Regular Board of Directors of the Independent Electricity Market
Operator of the Philippines, Inc. (IEMOP)

NATURE OF THE REQUEST:

For the Secretary's approval is the attached Guidelines providing for a detailed selection and nomination process of the regular board of directors of the Independent Electricity Market Operator of the Philippines (IEMOP).

LEGAL BASES:

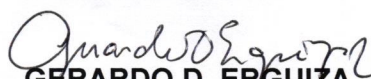
On 23 June 2020, the DOE issued Special Order No. SO2020-06-0020, directing among others, the creation of a DOE – Task Force – IMO. Among the mandates and functions of the said Task Force is to "facilitate the completion of the amendment of the WESM Rules and Market Manuals and PEMC AOI/By-Laws pursuant to the TRANSITION DC and TRANSITION PLAN.

Section 6.4 of DOE Department Circular No. DC2018-001-002 provides that the Board of Directors of the PEMC (PEM Board), subject to the approval of the DOE, shall provide for a detailed nomination and selection process for the election of the initial transitory and subsequent regular members of the Board of Directors of the IMO including the details on the tenure and composition of the IMO Board to ensure that the operations of the IMO are entrusted to highly capable individuals with necessary expertise and/or qualifications.

RECOMMENDATION:

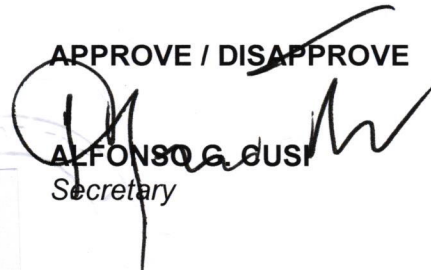
After review, we find the Guidelines consistent with the Transition DC and the Transition Plan. As such, we hereby recommend the Secretary's approval thereto.

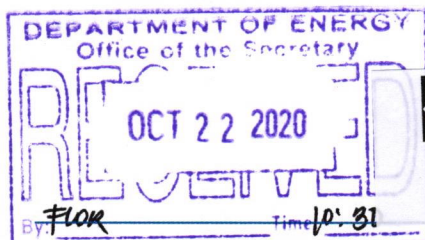
Thank you.


GERARDO D. ERGUIZA, JR.
Assistant Secretary
Chairman, DOE Task Force – IMO

datt: rjads: mcp: kahs

APPROVE / DISAPPROVE


ALFONSO G. GUSTAFSON
Secretary



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

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RECITALS

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

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

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

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

ARTICLE 1. PRELIMINARY STATEMENT

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

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

ARTICLE 2. DEFINITION

Section 2.01 The following terms and expressions shall have the meanings set forth below:

- (a) **“Applicable Laws and Rules”** shall include the Corporation Code, the EPIRA and its Implementing Rules, DC 2018-01-002 the WESM Rules and other laws,

rules and regulations relating or affecting the Board Governance of the IEMOP Board.

- (b) **"Board or IEMOP Board"** shall refer to the governing body elected by the members of the IEMOP that exercises the corporate powers of a corporation, conducts all business and control its properties;
- (c) **"Department of Energy" or "DOE"** is a government agency created pursuant to Republic Act No. 7638 with functions as expanded by the EPIRA.
- (d) **"EPIRA"** refers to Republic Act NO. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001."
- (e) **"Government"** refers to the Government of the Republic of the Philippines.
- (f) **"Guidelines"** refers to this document otherwise called "Guidelines Governing the Nomination and Selection of the Independent Electricity Market Operator of the Philippines, Inc." or "IEMOP" Regular Board of Directors.
- (g) **"Independent Market Operator"(IMO)** refers to the Independent Electricity Market Operator of the Philippines, Inc." or "IEMOP"
- (h) **"IEMOP Charter"** refers to the Articles of Incorporation and By-laws of the IEMOP that was approved by the Securities and Exchange Commission (SEC) on 07 March 2018.
- (i) **"Person"** refers to a natural person.
- (j) **"Philippine Electricity Market Corporation" or "PEMC"** refers to the non-profit, non-stock corporation created pursuant to EPIRA and other Applicable Laws responsible for the governance of the WESM and which is governed by the PEM Board.
- (k) **"Wholesale Electricity Spot Market" or "WESM"** refers to the Wholesale Electricity Sport Market established by the DOE in accordance with Section 30 of the EPIRA.
- (l) **"WESM Member"** shall mean a person or entity that satisfies the requirements for being a member of PEMC and is registered with the Market Operator to participate in the WESM.
- (m) **"WESM Rules"** refers to the detailed rules that govern the administration and operation of the WESM.

ARTICLE 3. GOVERNANCE PRINCIPLES

Section 3.01 In line with its mandate, the PEMC Board of Directors shall:

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

ARTICLE 4. FORMATION OF THE REGULAR BOARD OF DIRECTORS OF THE INDEPENDENT MARKET OPERATOR

Section 4.01 Following the incorporation of the IMO and the transfer of the operations of the Wholesale Electricity Spot Market ("WESM"), the PEMC, through PEM Board shall provide for a detailed nomination and selection process for the election of transition and regular members of its Board of Directors¹.

Section 4.02 The nomination and selection process shall be as follows:

- a. Nominees. The PEMC, through the PEM Board, shall adopt a process that is fair and transparent and shall evaluate through a selection committee nominees for directors, subject to the nomination process as provided by these Guidelines. The number of nominees shall not be less than three (3), if doable, for each board position.
- b. Dissemination of the List of Nominees. PEMC shall submit the list to IEMOP at least forty-five (45) days before the 4th Wednesday of June each year or the date of the scheduled annual Members' meeting when directors are to be elected, after DOE's evaluation and validation that the qualification standards as set forth by the rules have been complied with. The list of nominees shall be given through personal delivery, postal mail, electronic mail, facsimile or courier.
- c. In the case of the members of the first regular Board, they shall be elected or selected without prejudicing their term of office; their nomination and selection may be done before the 4th Wednesday of June to the extent allowed by the rules.

The full nomination and selection process are set forth in detail in Article 6 of this Guidelines.

¹ DOE DC NO. 2018 01-00002; Article 5.3.3 of Transition Plan;

Section 4.03 PEM Selection Committee. As appointed by the PEM Board, the PEM Board Selection Committee is tasked to determine the nomination and selection process of the IEMOP and has the special duty of evaluating and assessing the general profile that the IEMOP may need and to ensure appropriate knowledge, competencies and expertise that complement the existing skills of the Board of the IEMOP. It is the PEMC Selection Committee that shall recommend and submit to the PEM Board for its approval the shortlisted nominees to the Board of Directors of the IEMOP.

Section 4.05 PEM Board. Upon recommendation of the PEM Board Selection Committee, the PEM Board shall exercise independent judgement and act judiciously in approving the final list of nominees to be endorsed and provided to the IEMOP.

Section 4.06 IEMOP Board. Upon receipt of the final list of nominees by the PEM Board, the Board of the IEMOP as members of its corporation shall select, elect the directors or fill up the vacancy in the Board who shall exercise the duties and responsibilities as contained in the IEMOP's Articles of Incorporation and By-Laws.

ARTICLE 5. BOARD GOVERNANCE

Section 5.01. Composition. The IEMOP Regular Board shall consist of as many directors as may be provided by IEMOP's Articles of Incorporation and By-Law which shall not be less than five (5) or more than nine (9) members. The members shall be elected at a general membership meeting held every 4th Wednesday of June of each year in accordance with By-Laws.

Section 5.02. Term of Office. The Regular members of the IEMOP Board shall have a term of three (3) years until their successors are duly elected and qualified. The first set of regular members of the Board (after the exercise of the Interim Board of Directors) shall have staggered terms with three (3) Directors to hold office for three (3) years, three (3) Directors shall hold office for two (2) years and one (1) Director shall office for one (1) year).

No Regular Directors shall serve for two (2) consecutive terms.

Section 5.03. General Qualifications. Each member of the IEMOP Board shall be independent as defined herein by Section 5.04 and shall possess the following general qualifications:

- (a) the member must have a proven track record for sound strategic thinking and judgement;
- (b) the member must be an independent thinker with an objective perspective;
- (c) the member must have an exemplary professional background and meaningful experience in the relevant skill-set sought; and

- (d) the member must be committed to representing the long-term interests of the WESM and the general public.²

Section 5.04. Independence of Regular Board of Directors. The Board of the IEMOP including the initial regular members and the subsequent members will be composed of persons that are independent of government and the electric power industry participants³, including the generation sector and other industry sectors.

A person is independent if he/she:⁴

- (a) Is not a director, officer, employee, contractor, agent, manager or shareholder of a WESM Member or the System Operator;
- (b) Is not a relative of a person within the fourth (4th) civil degree of consanguinity or affinity of a director, officer, employee, contractor, agent, manager or shareholder of a WESM Member or the System Operator;
- (c) Is not an officer, manager, director or shareholder, agent, employee or contractor of, or is not a person who directly or indirectly, through one or more intermediaries control, is controlled by a company, affiliate or any other entity related or associated with a WESM Member or the System Operator, where:
 - 1. A related company or body is a parent, holding company, subsidiary or affiliate of the WESM Member or the System Operator; and
 - 2. An associate is a person who is a director, officer, manager or shareholder of that related company or entity or a relative of such a person within the fourth civil degree of affinity or consanguinity; and
 - 3. An affiliate is any person that, alone or together with any other person, directly or indirectly, through one or more intermediaries' controls or is controlled by, or is under common control with another person;

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

- (d) Is not an official or employee of the Philippine government, its agencies or instrumentalities, provided, this will not apply to members of the academe in public schools and universities;
- (e) has not been employed as an officer, or in any supervisory or managerial capacity, by any electric power industry participant, or a company or body related

² Article 8, Section 1, IEMOP By-laws

³ Section 5.3.3 of the Transition Plan

⁴ Section 6.2 DOE DC 2018-01-008; Section 7.21 of the IMO Transition Plan; Article 8, Section 3 of the IEMOP By-Laws

to or associated with a WESM Member or the government within one (1) year prior to the nomination date; and

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

Section 5.05. Professional Qualification.⁵ The Board of the IEMOP shall possess the professional qualification or experience as required under the approved Transition Plan. As such the Board shall be composed of persons with the following expertise:

- (a) A member of the academe with a high academic position such as faculty head with expertise in a discipline related to commerce or science;
- (b) An economist with a doctorate degree in economics and experience in a senior management position and has a background in the disciplines of econometrics and macroeconomics;
- (c) A person with a background in finance/commerce with experience in a senior management position in a commercial field, preferably with a significant finance-related component;
- (d) An engineer with at least fifteen (15) years of experience and has-depth knowledge and understanding of an energy-related field; and
- (e) A lawyer with at least fifteen (15) years of experience in the practice of law or who has held the position of judge or justice.

Section 5.06. Disqualification of Directors. No person convicted by final judgement of an offense punishable by imprisonment for a period exceeding six (6) years or a violation of the Corporation Code committed within five (5) years prior to date of his election or appointment, shall qualify as a director of the IEMOP⁶.

Section 5.07. Vacancies.⁷ Vacancies occurring in the Board either by removal, resignation, death or incapacity shall be filled in the same manner as provided in IEMOP's By-Laws and in accordance with Section 29 of the Corporation Code of the Philippines. The Director so elected shall serve the unexpired term of the removed, resigning, incapacitated or deceased director.

⁵ Section 7.2.2. IMO Transition Plan

⁶ Section 27, Corporation Code of the Philippines

⁷ Article 8, Section 10 IEMOP By-Laws; Section 29 Corporation Code: "*Section 29. Vacancies in the office of director or trustee. - Any vacancy occurring in the board of directors or trustees other than by removal by the stockholders or members or by expiration of term, may be filled by the vote of at least a majority of the remaining directors or trustees, if still constituting a quorum; otherwise, said vacancies must be filled by the stockholders in a regular or special meeting called for that purpose. A director or trustee so elected to fill a vacancy shall be elected only for the unexpired term of his predecessor in office.*"

ARTICLE 6. PROCEDURES IN THE REGULAR DIRECTOR NOMINATION AND SELECTION PROCESS OF THE INDEPENDENT MARKET OPERATOR

Section 6.01 Nomination.⁸ The PEMC Board shall follow the following procedures in the evaluation of nominees.

- a. The PEM Board Selection Committee shall cause the publication of notice of such vacancy or solicit nomination for the position.
- b. The PEM Board Selection Committee ("Selection Committee") shall receive all letters nominating candidates for election as Regular Directors of the IEMOP from any Market Participants.
- c. All nominations shall be in a form (Appendix A) and manner as may be prescribed by the PEM Board Selection Committee.
- d. Any WESM Member may nominate qualified individuals as Regular Directors of the Independent Market Operator.
- e. In case of vacancy, the IEMOP shall give notice to the PEM Board Selection Committee immediately upon occurrence of vacancy or within four (4) months prior to the effectivity of the expiration of the term of office of the concerned Director.

Section 6.02 Short-listing and Approval of Final List of Nominees by the PEMC Selection Committee.⁹

Pursuant to its authority from the PEM Board, the Selection Committee shall:

- (a) Evaluate and screen potential directors vis-à-vis the applicable qualifications and disqualifications as set forth in this Guidelines, the DC No.2018-01-0002, the WESM Rules, the approved IMO Transition Plan, By-Laws of the IEMOP and other applicable policy, law or regulations;
- (b) May consider foreign professionals,¹⁰ if and only if during the pre-screening and evaluation process, they have proven that such professional is known to be an outstanding expert or specialist in the particular field and that the services of such foreigner is urgently necessary either for lack of local experts or if his or her service will promote advancement of the Market Operations.
- (c) Determine whether or not the nominees meet the independence criteria set forth by this Guidelines, the DC No. 2018-01-0002, the WESM Rules, the IMO Transition Plan and the By-Laws of the Independent Market Operator.
- (d) Consider other relevant factors, such as any conflict of interest and directorship and/or position in other corporation, which may compromise their capacity to

⁸ Section 3.02 Guidelines Governing Constitution of PEM Board Committees

⁹ Section 3.03 (b) Guidelines Governing Constitution of PEM Board Committees

¹⁰ Section 3.03 (a) Guidelines Governing Constitution of PEM Board Committees

diligently and effectively serve and perform their duties to the Board, the IEMOP and the WESM, when elected.¹¹

- (e) In the search of potential nominees, the Selection Committee may use external sources, such as professional search firms, director databases and/or other reputable external sources to further enhance the search for and widen the base of potential nominees.
- (f) Develop a list of nominees to be recommended to the Board, ensuring thereby that:
 - a. The composition of the Board is an effective and balanced mix of knowledge, experience, complementary skills and talent that are mutually enforcing and promotes diversity in terms of gender and ethnicity, among others; and
 - b. The selection of the Regular Directors is aligned and consistent with the Board's duties and responsibilities. Whenever applicable the Selection Committee shall undertake the following procedures:
 - i. Identification of the necessary skills and qualifications that are aligned and will promote the achievement of the Independent Market Operator's functions and responsibilities;
 - ii. Assessment of the existing Board's composition which entails cataloguing member's skills and experience;
 - iii. Comparison of the existing Board's inventory of qualifications with the list of desired skills and experience to develop a clear picture of gaps, if any. The Selection Committee may also identify potential upcoming vacancies owing to retirement or resignation in order to account for potential required skills and qualifications.
 - iv. The gaps, if any, should function as the driving criteria for the specified qualifications which the Selection Committee shall assemble upon which the nominees shall be measured against.
- (g) Require the submission to the Selection Committee a Certification (Annex B) stating his/her qualification and list of affiliation and positions that may directly or indirectly give rise to conflict of interest or may contravene applicable regulations;

¹¹ Section 3.03 (a) Guidelines Governing Constitution of PEM Board Committees

- (h) Screen all the nominees received of the nominees submitted within allowable time as prescribed by the PEM Board Selection Committee, and cause the publication of the list of the qualified nominees in the PEMC website.¹²
- (i) After publication¹³ of the nominees, the PEM Board Selection Committee shall verify and resolve any opposition thereof, if any and thereafter may opt to conduct further assessment to identify short-listed nominees through personal interview or any other means as the PEM Board Selection Committee may consider appropriate. The PEM Board Selection Committee shall rate them in accordance with a scoring system provided for this purpose.¹⁴
- (j) Submit to the PEM Board of Directors its recommended list of final nominees and the latter shall approve the list of final nominees provided that the number of nominees shall not be less than three (3) for each board position.

Section 6.03 Selection and Election. The manner of Selection and Election shall be in accordance with the IEMOP Articles of Incorporation and By-Laws.

ARTICLE 7. TRANSITORY PROVISION

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

ARTICLE 8. AMENDMENTS

Any amendments to this Manual on Guidelines Governing the Nomination and Selection of the IEMOP Regular Board of Directors shall not be amended, altered or varied unless such amendment shall have been approved by resolution of the Board of Directors of PEMC and approved by the DOE.

ARTICLE 9. SEPARABILITY CLAUSE

Should any provision or section of this Manual on Guidelines Governing the Constitution of the PEM Board Committees be declared unconstitutional or contrary to law, the parts not so declared shall remain in full force and effect.

ARTICLE 10. PUBLICATION AND EFFECTIVITY.

This Market Manual, as it may be amended from time to time, shall be published in the information website maintained by the PEMC.

¹² Section 3.04 Guidelines Governing Constitution of PEM Board Committees

¹³ Section 3.05 Guidelines Governing Constitution of PEM Board Committees

¹⁴ Section 3.05 Guidelines Governing Constitution of PEM Board Committees

APPENDIX B – COMMITTEE MEMBER'S UNDERTAKING

(REPUBLIC OF THE PHILIPPINES)

NOMINEE'S CERTIFICATION

In accepting my nomination as a Regular member of the Board of Directors of the Independent Market Operator of the Philippines, ("IEMOP"), I, the undersigned, of legal age, after being duly sworn in accordance with law hereby state and undertake that:

1. I am affiliated with the following companies and or organizations:

Company/Organization	Position/Relationship	Period of Service

2. I agree to serve the IEMOP, and shall perform to the best of my ability the duties and functions as member of the Board of Directors actively promote the WESM objectives of market efficiency, transparency and competition, and safeguard with full trust and confidence any lawful and reasonable directions of the IEMOP Board.
3. At all times, I shall faithfully comply with all laws, rules or codes of conduct such as, but not limited to, the WESM Rules, the By-Laws of IEMOP, WESM Manuals, and the Code of Corporate Governance, as may be amended from time to time and required by any government authority in relation to the business of IEMOP or which IEMOP shall reasonably determine are necessary for the proper functioning of its business.
4. During my tenure as Board member, I will not (a) make use of, for personal gain, or (b) divulge to any unauthorized person or entity, any of the confidential information relating to the business of IEMOP except where such disclosure is required by law or by the proper governmental authority or is allowed in writing by IEMOP.
5. I shall endeavour to maintain an excellent record of attendance and shall actively participate in all Board meetings.
6. I further attest that I understand and possess all of the qualifications and none of the disqualifications of a Board Member and, in the event, that I cease to possess the qualifications and/or have acquired any of the disqualifications, or at any time, come into any enterprise, activity or transaction that may be in conflict with my Board membership, I shall be obliged to immediately inform the IEMOP Board of such circumstance. That such circumstance shall be grounds for termination of my membership to the Committee.

Executed this ____ day of _____ at _____.

(Signature of Affiant)

Name :
Nationality :
Address :

SUBSCRIBED AND SWORN TO before me this ____ day of _____ at _____, affiant exhibiting to me _____ issued on _____ at _____.

Doc. No. ____;
Page No. ____;
Book No. ____;
Series of 2019.