

# **PLAN FOR TRANSITION TO THE INDEPENDENT MARKET OPERATOR OF THE WHOLESALE ELECTRICITY SPOT MARKET**

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Philippine Electricity Market Corporation  
06 February 2018

*DISCLAIMER AND NOTICE. DISCLAIMER AND NOTICE. This document embodies the plan for transition to the Independent Market Operator of the Philippine Wholesale Electricity Spot Market (WESM) as approved by the Philippine Electricity Market Board (PEM Board) and endorsed by the PEMC membership. This document supersedes earlier revisions of the proposed transition plan that were presented for purposes of consultation only.*

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## **ABOUT THIS DOCUMENT**

This document is prepared by the Philippine Electricity Market Corporation (PEMC), and presents the details of the plan for the transition to the Independent Market Operator (IMO) of the Philippine Wholesale Electricity Spot Market. The Transition Plan embodied in this document has been approved by the Philippine Electricity Market Board, and has been ratified and endorsed by majority of the voting rights of the members of PEMC. Approval and ratification was in accordance with the provisions of Republic Act No. 9136, the WESM Rules, and the By-Laws of PEMC.

This document supersedes all earlier revisions of the transition plan that were disseminated for consultation purposes only.

This document is intended for dissemination to the WESM members, other electric power industry participants and stakeholders, for the purpose of providing information on the details of the transition plan.

## DOCUMENT CHANGE HISTORY

Date/Version	Revision Details	Author
06 February 2018, Issue 1.0	<p>Original document, as approved by the PEM Board and ratified/endorsed by the PEMC Membership in a Special Membership Meeting held on 06 February 2018.</p> <p><i>Earlier revisions of the transition plan, Revision 1.0 and Revision 2.0, were intended for consultation only, and are superseded by this document.</i></p>	PEMC

## DISTRIBUTION AND PUBLICATION

Version	Recipients	Manner of Dissemination
06 February 2018, Issue 1.0	<ul style="list-style-type: none"> <li>• Department of Energy (OSEC and EPIMB)</li> <li>• Energy Regulatory Commission (Commissioners and Market Operations Service)</li> <li>• Joint Congressional Power Commission</li> </ul>	Electronic copy (By email) and/or printed copy (By personal delivery)
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## EXECUTIVE SUMMARY

The transition to the Independent Market Operator (the “IMO”) is mandated in Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (the “EPIRA”). Section 30 of the EPIRA mandates that one year after the commercial operations of the Philippine Wholesale Electricity Spot Market (the “WESM”) an independent entity shall be formed, which shall assume the functions, assets and liabilities of the market operator.

This IMO Transition Plan is developed to implement the transfer of the market operation functions from the Philippine Electricity Market Corporation (the “PEMC”) to the IMO. This Plan includes the guidelines for and describes –

- the legal framework for the transition, as well as the requirements for and qualifications of the IMO, as inferred from the provisions of the EPIRA, its Implementing Rules and Regulations (EPIRA IRR), the WESM Rules and the PEMC Articles of Incorporation and By-Laws;
- the transition plan, including the formation of the IMO company, reorganization of PEMC as WESM governing body, the resulting structure and legal relationships after the transition; and the transfer of relevant PEMC personnel, assets and liabilities to the IMO; and
- the requirements for joint endorsement and transition.

This Plan and the authority to implement the same emanate from the endorsement by the electric power industry participants, represented by the general membership of PEMC, and the Department of Energy (the “DOE”) consistent with the requirements of EPIRA and the EPIRA IRR.

The DOE endorsed the transition to the IMO through its Department Circular No. 2018-01-0002 entitled “*Adopting Policies for the Effective and Efficient Transition to the Independent Market Operator for the Wholesale Electricity Spot Market*”.<sup>1</sup>

Endorsement by the industry participants, meanwhile, was obtained through ratification by the members of the PEMC during its membership meeting held on 06 February 2018 of the transition plan embodied in this document.

### Legal Framework.

**Market Operator.** The EPIRA and the EPIRA IRR mandates that the WESM shall be implemented by a Market Operator, which shall initially be an autonomous group market operator (the “AGMO”) and, thereafter, the IMO. The AGMO is to be composed of an equitable representation of the electric power industry participants and shall be responsible for the preparations for and initial operations of the WESM. It shall be under the administrative supervision of the National Transmission Corporation (the “TRANSCO”). Thereafter, its functions, assets and liabilities shall be transferred to the IMO upon joint endorsement of the DOE and the electric power industry participants. PEMC was constituted as the AGMO in 2004 and has since discharged the functions of the Market Operator.

**WESM Governing Body.** The EPIRA likewise provides for the formation of a governing body. Specifically, it mandated that the WESM Rules shall provide for the procedures for, among

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<sup>1</sup> Department of Energy Circular No. 2018-01-002 (promulgated on 18 January 2018) entitled “*Adopting Policies for the Effective and Efficient Transition to the Independent Market Operator for the Wholesale Electricity Spot Market*”.

other things, the formation of a governing body. The WESM Rules, in turn, provided for the organization of the Philippine Electricity Market Board (the “PEM Board”), composed of equitable representation of the electric power industry participants and independent members.

Meanwhile, the EPIRA IRR provided that, prior to the transition to the IMO, the AGMO shall be responsible for the governance of the WESM, and mandated the creation of an AGMO governing board with equitable representation from the electric power industry participants. The WESM Rules, likewise, provides that prior to the transition to the IMO, the AGMO governing board shall be the PEM Board. The PEMC having been constituted as the AGMO, its Board of Directors is currently the PEM Board.

**Requirements for and Qualifications of the IMO.** The EPIRA mandates that one year after the implementation of the WESM, **an independent entity shall be formed** to become the IMO, and upon such transition, the administrative supervision of TRANSCO shall cease. As the law speaks of formation, it is inferred that there will be a separate entity, i.e., separate from the AGMO and from the WESM governing body, that will be formed. The EPIRA IRR further provides that generation companies, IPP Administrators, distribution utilities, and suppliers shall not have any interest, directly or indirectly, in the IMO.

The WESM Rules, meanwhile, provides that the Market Operator shall be monitored and supervised by the PEM Board, implying that, after the transition, the PEM Board and the Market Operator shall reside in different entities. It is clear in the EPIRA as well as in the EPIRA IRR that the functions that will be transferred to the IMO are the market operations functions and does not include the functions of the WESM governing body. It is understood then that there is a separate governing body that will remain after the transition.

It is further required that the IMO shall be financially and technically capable and shall have experience in operating a similar or larger-sized electricity market. While the IMO is required to be financially capable, the WESM Rules require that the IMO be able to allocate resources as to operate the WESM on a non-profit basis.

**Joint endorsement.** It is required by the EPIRA that the functions, assets and liabilities of the market operator shall be transferred to the IMO upon joint endorsement of the DOE and electric power industry participants. Under PEMC’s By-Laws, such joint endorsement shall be approved by the majority of the voting rights of PEMC members. PEMC members with voting rights are the WESM members belonging to the generation, distribution, supply and transmission sectors.

### **Manner of Transition.**

Pursuant to the requirements of the EPIRA, an independent entity shall be formed to become the IMO. Subject to the requirements set in this Plan, the IMO that shall be formed shall assume the functions of the Market Operator from PEMC.

PEMC, meanwhile, shall remain to be the governance arm of the WESM. It shall perform this function through its board of directors, the PEM Board, and the WESM governance committees and its organic units.

### **Independent Market Operator.**

**Formation of the Independent Market Operator.** The IMO shall be organized as a non-stock, non-profit private corporation and it shall be separate from PEMC. It shall be

incorporated by individuals that are independent from the electric power industry participants and from the government.

**Composition and Selection of the IMO Board.** The IMO Board shall be composed of at least five (5) independent members that have no affiliation with any electric power industry participants or with the government. The members of the IMO Board shall be elected from among candidates that are selected by the PEM Board. Selection shall be by the PEM Board to ensure the private nature of the IMO. Except for the IMO President, no member of the IMO Board can be elected to become members of the PEM Board at the same time.

**Transfer of Functions, Assets, and Personnel.** The IMO 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. For this purpose, the current employees of PEMC that have experience in and performing market operations functions shall transfer to the IMO. These shall include those currently performing functions pertaining to registration, training and participant support, trading operations, billing, settlements and metering, accounts management, payment and collection, and information systems and technology management.

PEMC and the IMO shall enter into an operating agreement that shall, among other things, grant to the IMO exclusive right to use, maintain, and improve the Market Management System, and all other existing market systems and infrastructure that are being used to support the operations of the WESM.

These transfers shall be performed as to ensure continuity of the operations of the WESM.

**Budgetary Requirements and Market Fees.** The budgetary requirements of the IMO and PEMC in operating and governing the WESM shall be recovered from market fees, as provided for in the EPIRA and the EPIRA IRR. The market fees shall be subject to approval by the ERC, and approval shall be applied for by the IMO upon approval by the PEM Board. Pursuant to the WESM Rules, an annual financial report shall be prepared duly certified by an external financial auditor.

#### **WESM Governing Body and Structure.**

**PEMC as governing body.** PEMC shall remain as the governing body of the WESM. This function will be performed through its board of directors, which is the PEM Board, the WESM governance committees and the support staff. These shall perform their functions as such, as set out in the WESM Rules, market manuals, and other rules, regulations, and issuances.

**Composition and Election of the PEM Board.** As it is currently, the PEM Board shall have fifteen (15) members. Consistent with the WESM Rules, the PEM Board shall have membership composed of independent members and representatives of the WESM sectoral members. Composition will likewise be retained, except for the representative of the National Transmission Corporation which shall be replaced by a representative of the System Operator instead. Thus, there will be one (1) Market Operator representative, one (1) System Operator representative, four (4) representatives from the generation sector, four (2) representatives from distribution sector (i.e., two (2) representatives each from private distribution utilities and the electric cooperatives), and one (1) representative from the supply sector. The Market Operator shall be represented by the IMO President.

The members of the PEM Board will be elected by the PEMC members and will not need appointment or confirmation by the DOE. The Chairman of the PEM Board and PEMC

President shall be elected by the PEM Board from amongst themselves, but the President must be an independent member of the PEM Board. Except only for the IMO President, no person can become a member of the PEM Board and the IMO Board at the same time.

**WESM Governance Committees and PEMC Support Staff.** The PEM Board shall be supported by WESM governance committees that will perform, among other things, market surveillance, compliances, dispute resolution, audit, technical support, and rules change functions. The PEM Board and the WESM governance committees shall be supported by a manpower complement that will perform secretariat support functions, market assessment, market governance administration, and enforcement and compliance functions.

The current employees of PEMC that are performing these functions shall remain with PEMC to ensure continuity of the discharge of PEMC's governance functions during transition.

#### **Other PEMC Functions and Designations.**

**Central Registration Body.** PEMC, as corporate entity, has been designated as the central registration body (CRB) for the retail market. As currently implemented, retail transactions are integrated in the operations of the WESM. Unless this market design is changed, the functions of PEMC as CRB and the use of the market systems that support these functions will also be transferred to the IMO.

**Renewable Energy Market.** Republic Act No. 9513, or the Renewable Energy Act of 2008, and its implementing rules and regulations, mandate the establishment of a renewable energy market for trading of renewable energy certificates, and that such market shall be a sub-market of the WESM. PEMC, under supervision of the DOE, is mandated to establish the Renewable Energy Registrar. As the manner by which this is to be established is not set out, PEMC may possibly establish a unit within it to perform this function, or designate the IMO or another entity to do so.

#### **Supervision of the IMO/Measures for Accountability**

**Market Operator Performance Standards, Service Level Agreements, and Audit.** The WESM Rules currently mandate that the PEM Board shall, subject to approval of the DOE, adopt market operator performance standards that shall be enforced on the IMO. Additionally, the operating agreement between PEMC and the IMO shall provide for the adoption and implementation of appropriate service level agreements to ensure that the IMO is able to perform its functions up to standard.

The WESM Rules also provide for a regular audit, implemented by the PEM Auditor, of the Market Operator's operations, systems and processes, including the software that it will use to support transactions of WESM members with the Market Operator.

**Enforcement.** The WESM Rules likewise provide for an investigation of the IMO, as Market Operator, for breach of the WESM Rules and for directing the implementation of remedial measures to rectify a breach.

**Market Fees and Financial Performance Standards.** As currently provided for in the WESM Rules, the PEM Board approves the structure and level of the market fees before these are applied for approval with the ERC. It also approves the budgetary requirements and the annual financial statements of the IMO. Financial performance standards to be complied with by the IMO shall be adopted by the PEM Board subject to approval by the DOE.

**Nominations, Selection and Removal of IMO Board members.** As mentioned earlier, the PEM Board shall select the members of the IMO Board, from nominees submitted by WESM Members.

## **Resulting Structure and Relationships**

**PEMC and the IMO.** The relationship between PEMC and the IMO shall be governed by their operating agreement, the WESM Rules, market manuals, and other relevant rules, regulations, and issuances.

**With WESM Members.** The IMO and PEMC shall be the counterparties to the Market Participation Agreement executed by registered all WESM Members which provides for the rights and obligations of the latter as members of the WESM.

WESM members that are registered as Direct Members are eligible to become members of PEMC, in accordance with its Articles of Incorporation and By-Laws. As PEMC members, they will have the rights and obligations of a PEMC member, including having voting rights, as set out in the PEMC By-Laws.

In respect to the IMO, the WESM Members shall have no participation or interest in the IMO, whether directly or indirectly and shall not become members of the IMO company. This is to ensure compliance with the EPIRA mandate for the IMO to be independent.

**With the System Operator and Metering Services Providers.** The relationship between PEMC and the IMO, and the System Operator and Metering Services Providers shall be as set out in the WESM Rules, market manuals, and other rules, regulations and issuances; as well as operating protocols and service agreements that they shall agree on from time to time.

## **Policy and Regulatory Oversight.**

**DOE Oversight.** Over and above its general mandate to set the policy directions for the electric industry, the DOE retains its functions to approve the market rules and market manuals, as well as the market operator performance standards, including financial performance standards, to be complied with by the IMO.

Additionally, it is the DOE that sets the qualifications of the members of the IMO Board. The rules for nomination and selection of the IMO Board may also be made subject to its approval, and may be incorporated in the WESM Rules or in a market manual similarly with the rules pertaining to the composition of the PEM Board.

**ERC Regulatory Oversight.** The ERC shall retain its regulatory oversight over the WESM, and over both the PEMC and the IMO, and has the overall mandate to enforce the WESM Rules. The ERC also has the jurisdiction to approve the price determination methodology and all associated pricing methodologies pertaining to energy and reserves, approve the market fees, and authorize entities that may become members, directly or indirectly, of the WESM.

Protocols amongst ERC, PEMC, and IMO shall be set to enable the ERC to have direct access to the unit and the governance committee that are responsible for market monitoring, assessment, enforcement and compliance. This is in support of the discharge of ERC's functions under the EPIRA.

## **Implementation Activities and Timeline.**

**Preparations for Endorsement (November 2017 – February 2018).** The activities preparatory to the endorsement of this Transition Plan, and the IMO structure and manner of transition embodied in it, shall include (a) conduct of consultations with WESM members, PEM Board, and DOE, and other stakeholders on this Plan, (b) conduct of public consultation on the DOE department circular that will be promulgated for endorsing the transition to the IMO and setting out the policy guidelines for the transition, and (c) the constitution of PEMC membership and holding of special membership meeting to vote on the endorsement of the Plan and amendments to PEMC's Articles of Incorporation and By-Laws.

**Phase 1 - Legal Documentation and Approvals (February - June 2018).** By the end of this phase, the following would have been accomplished, (a) approval of the incorporation of the IMO company, and after incorporation, formal organization of the company; (b) approval of the amendments of the Articles of Incorporation and By-Laws of PEMC consistent with the approved Transition Plan; and (c) approval of the amendments of the WESM Rules and market manuals consistent with the Plan. Other necessary governmental approvals shall likewise be secured or applied for during this phase, e.g., taxation rulings or issuances.

Reorganization of PEMC shall likewise be carried out. This shall include (a) election of regular members of the PEM Board and the PEMC President, (b) re-organization of the WESM governance committees, if warranted, and (c) re-structuring of the PEMC table of organization, if necessary. Election of regular PEM Board members is expected to be held during the annual membership meeting scheduled on the third Wednesday of June (i.e., 20 June 2018). Organization of the Board and election of its officers (i.e., President, Secretary, and Treasurer) is expected to be held shortly thereafter.

**Phase 2 - Assumption by the IMO Company and Re-organization of PEMC (June 2018).** After obtaining all the necessary approvals applied for during Phase 1, the IMO shall then formally assume its functions as the Market Operator. PEMC and the IMO shall execute their operating agreement, and implement the actual transfer of functions, personnel and use of market systems and other assets. The assumption of the IMO will be timed to coincide with the start of the term of the regular members of the PEM Board.

### **Completion of Transition from the AGMO to the IMO**

The transition from the AGMO to the IMO is deemed to have been completed upon completion of the following:

- a) Formal endorsement by the PEM Board and the PEMC members of the transition;
- b) Promulgation and publication of the DOE Circular approving the transition;
- c) Amendment of the Articles of Incorporation and By-Laws of PEMC; and
- d) Amendment of the WESM Rules and market manuals relevant to the transition.
- e) Incorporation and organization of the IMO, and assumption of the IMO Board
- f) Execution of the operating agreement between PEMC and the IMO.

## 1. OBJECTIVES OF THE PLAN

- 1.1. With this Transition Plan, it is aimed to:
  - 1.1.1. Establish the manner of transition from the PEMC, currently the autonomous group market operator (the “AGMO”) of the Philippine Wholesale Electricity Spot Market (the “WESM”) to the IMO, and to lay the guidelines for the transfer of the market operation functions, assets and liabilities from PEMC to the IMO;
  - 1.1.2. Ensure that the transition to the IMO is implemented in a manner that is consistent with the intent and objectives of the EPIRA and its IRR, and the WESM Rules; and
  - 1.1.3. Ensure that the transition to the IMO is implemented in such a manner as to ensure continuity of and least disruption in the operations of the WESM.
- 1.2. **Associated Documents.** This Plan shall be read and understood in association with the following documents:
  - 1.2.1. EPIRA and EPIRA IRR;
  - 1.2.2. WESM Rules and market manuals;
  - 1.2.3. DOE Circular No. 2018-01-002<sup>2</sup>; and
  - 1.2.4. PEMC Articles of Incorporation and By-Laws.

## 2. LEGAL FRAMEWORK

- 2.1. The establishment of the WESM was mandated of the Department of Energy (the “DOE”) by the EPIRA. Section 30 of the law 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 (the “WESM Rules”). The EPIRA IRR provides for more detailed rules that will govern the implementation of the law. The provisions governing the WESM are contained in Rule 9 thereof.
- 2.2. Pursuant to the requirements of the law, the WESM Rules were promulgated by the DOE, jointly with the industry participants, on 28 June 2002.<sup>3</sup>
- 2.3. Among other things, the EPIRA mandates that one year after the implementation of the WESM, an independent entity shall be formed to which the functions, assets and liabilities of the market operator shall be transferred upon joint endorsement of the DOE and electric power industry participants.<sup>4</sup>

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<sup>2</sup> Department of Energy Circular No. 2018-01-002 (promulgated on 18 January 2018) entitled “*Adopting Policies for the Effective and Efficient Transition to the Independent Market Operator for the Wholesale Electricity Spot Market*”.

<sup>3</sup> Department of Energy Circular No. 2002-06-003 (promulgated on 28 June 2002) entitled “*Wholesale Electricity Spot Market Rules*”.

<sup>4</sup> The full text of the relevant paragraph in EPIRA, Section 30 reads –

*The wholesale electricity spot market shall be implemented by a market operator in accordance with the wholesale electricity spot market rules. The market operator shall be an autonomous group, to be constituted by the DOE, with equitable representation from electric power industry participants, initially under the administrative supervision of the TRANSCO. The market operator shall undertake the preparatory work and initial operation of the wholesale electricity spot market. Note later than one (1) year after the implementation of the wholesale electricity spot market, an independent entity shall be formed and the functions, assets and liabilities of the*

2.4. The WESM commenced commercial operations, initially in Luzon, on 26 June 2006.<sup>5</sup> Integration of the Visayas grid commenced on 26 December 2010<sup>6</sup>. The WESM having been established, the one-year period within which to transition from the AGMO to IMO has already passed.

## 2.5. Market Operator

2.5.1. The EPIRA provides that the WESM shall be implemented by a market operator. Initially, this shall be the AGMO which is constituted by the DOE with equitable representation from electric power industry participants. Thereafter, the functions of the AGMO shall be transferred to the IMO.

2.5.2. The functions and responsibilities of the Market Operator are set out in the EPIRA IRR<sup>7</sup> as follows, with a more detailed description set out in WESM Rules Section 1.3:

- a. Operate and administer the WESM and allocate resources to enable it to operate and administer the market, in accordance with the WESM Rules;
- b. Determine the dispatch schedule of all facilities in accordance with the WESM Rules. Such schedule shall be submitted to the grid operator of the TRANSCO or its Buyer or Concessionaire;
- c. Monitor daily trading activities in the market;
- d. Oversee transaction billing and settlement procedures; and
- e. Maintain and publish a register of all WESM participants and must update and publish the register whenever a person becomes or ceases to be a WESM participant.

2.5.3. The operations of the Market Operator is to be overseen and monitored by the Philippine Electricity Market Board (“PEM Board”).<sup>8</sup>

## 2.6. WESM Governing Body

2.6.1. The EPIRA directs that the detailed rules for the WESM (the “WESM Rules”) that will be promulgated jointly by DOE and the electric power industry participants shall provide for, among other things, the procedures for administering the market including the formation of the wholesale electricity spot market governing body.<sup>9</sup>

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*market operator shall be transferred to such entity with the joint endorsement of the DOE and the electric power industry participants. Thereafter, the administrative supervision of the TRANSCO over such entity shall cease.*

<sup>5</sup> Department of Energy Circular No. DC2006-06-008 (promulgated 21 June 2006) entitled “*Declaring the Launching of the Commercial Operations of the Wholesale Electricity Spot Market (WESM) in the Luzon Grid and Terms and Conditions for the Commencement of Full Commercial Operations of the WESM*”.

<sup>66</sup> Department of Energy Circular No. DC2006-06-008 (promulgated 26 November 2010) entitled “*Declaring the Commercial Operations of the Wholesale Electricity Spot Market (WESM) in the Visayas Grid and its Integration in the Luzon Grid*.”

<sup>7</sup> EPIRA IRR, Rule 9, Section 6 (c).

<sup>8</sup> WESM Rules, clause 1.4.5.2 (a).

<sup>9</sup> The full text of the relevant paragraph of EPIRA, Section 30 reads as follows –

*x x x The rules shall provide, among others, procedures for:*

*x x x*

*(c) Administering the market, including criteria for admission to and termination from the market which includes security or performance bond requirements, voting rights of the participants, surveillance and assurance of compliance of the participants with the rules and the formation of the wholesale electricity spot market governing body;*

- 2.6.2. Pursuant to the foregoing requirement, the WESM Rules provided for the creation of the Philippine Electricity Market Board (the “PEM Board”), and stated that the WESM shall be governed, and its powers and functions exercised, by said PEM Board.<sup>10</sup>
- 2.6.3. The PEM Board has fifteen (15) members and is composed of<sup>11</sup> –
- a. One director representing the Market Operator;
  - b. One director representing National Transmission Corporation (“Transco”);
  - c. Four directors nominated by the generation sector;
  - d. Four directors nominated by the distribution sector, two (2) of whom are nominated by electric cooperatives, and two (2) by other distribution utilities that are not electric cooperatives;
  - e. One director representing and nominated by customers, including but not limited to suppliers; and
  - f. Four directors nominated by WESM members who are independent of the electric power industry and of government.
- 2.6.4. The Chairman of the PEM Board is to be elected from among the independent members by the majority of the Board members. The first Chairman of the PEM Board, however, shall be the DOE Secretary.<sup>12</sup>
- 2.6.5. To back-stop the PEM Board in the governance of the WESM, the WESM Rules established several committees and mandated the appointment of certain officers. These are the Rules Change Committee, Market Surveillance Committee, Technical Committee, PEM Auditor, Dispute Resolution Administrator and Dispute Resolution Group.<sup>13</sup> In addition, the WESM Rules also mandated the creation under PEMC of the Enforcement and Compliance Unit, headed by the Enforcement and Compliance Officer<sup>14</sup>, and of the Market Assessment Group.<sup>15</sup>
- 2.6.6. It can be inferred from the WESM Rules that it was intended for the PEM Board to reside in a corporation. It directed that, prior to spot market commencement date, the DOE shall formulate the by-laws of the PEM Board subject to any relevant law or regulation of the Philippines in relation to processes and procedures of corporate entities or formulation of corporate institutions.<sup>16</sup>
- 2.6.7. In defining the powers of the PEM Board, the WESM Rules provide that it shall have all powers necessary, convenient and incidental to the performance of its functions and responsibilities under the WESM Rules, in addition to the powers of a corporation under the Corporation Code.<sup>17</sup> It shall conduct its business activity in accordance with its Articles of Incorporation and By-laws, and other applicable laws, rules and regulations.<sup>18</sup>

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<sup>10</sup> WESM Rules, Section 1.4 Governance of the Market.

<sup>11</sup> WESM Rules, clause 1.4.2.4.

<sup>12</sup> WESM Rules, clause 1.4.2.4 (g).

<sup>13</sup> WESM Rules, clause 1.4.6 and clause 1.4.5.2.

<sup>14</sup> WESM Rules, clause 1.4.8.

<sup>15</sup> WESM Rules, clause 1.4.7.

<sup>16</sup> WESM Rules, clause 10.4.3.

<sup>17</sup> WESM Rules, clause 1.4.1.2.

<sup>18</sup> WESM Rules, clause 1.4.1.5.

- 2.6.8. Significantly, the WESM Rules also expressly provide that the PEM Board shall oversee and monitor the activities of the Market Operator (and the System Operator) to ensure that the latter shall fulfil its responsibilities under the WESM Rules.<sup>19</sup> There are also certain matters concerning the operations of the Market Operator, as an entity, that require approval of the PEM Board, namely, approval of market fees level and structure<sup>20</sup>, annual budget<sup>21</sup>, financial reports<sup>22</sup> and performance standards.<sup>23</sup>
- 2.6.9. Structure-wise, it can be inferred from a reading of the WESM Rules that the Market Operator and the PEM Board are envisioned to reside in separate corporate entities.

## 2.7. Autonomous Group Market Operator

- 2.7.1. Section 30 of the EPIRA mandates that the AGMO that will be constituted by the DOE will have an equitable representation from the electric power industry participants and, initially shall be under the supervision of Transco.
- 2.7.2. A reading of the provisions of the EPIRA IRR, as implemented in the WESM Rules, indicates the intention to make the AGMO perform both the functions of the market operator and of the governing body, with the latter function being carried out by the AGMO governing board.
- 2.7.3. **As Market Operator.** The law further provides that the AGMO shall be the market operator that will implement the WESM in accordance with the WESM Rules. It shall undertake the preparatory work and initial operation of the WESM, until these functions are transferred to the IMO not later than one (1) year after the implementation of the WESM.
- 2.7.4. Pursuant to this mandate, the WESM Rules provide that during the initial 12-month period, all references to the WESM Rules to the “Market Operator” shall refer to the AGMO.<sup>24</sup>
- 2.7.5. **As WESM Governing Body.** The EPIRA IRR further mandates that the AGMO shall be governed by the AGMO Governing Board, which is to be a governing body with equitable representation from electric power industry participants. The representatives of the AGMO shall be selected, in accordance with the WESM Rules. The DOE Secretary shall chair the AGMO.<sup>25</sup>
- 2.7.6. The WESM Rules, in turn, provide that the AGMO governing board shall be the PEM Board until the formation or selection of the IMO, and until such time, all references in the WESM Rules to the “PEM Board” shall be construed to mean

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<sup>19</sup> WESM Rules, clause 1.4.5.2 (a).

<sup>20</sup> WESM Rules, clause 2.10.2.3.

<sup>21</sup> WESM Rules, clause 2.11.1.1.

<sup>22</sup> WESM Rules, clause 2.12.1.2.

<sup>23</sup> WESM Rules, clause 10.4.2.2.

<sup>24</sup> WESM Rules, clause 10.2.2.2 reads –

*The AGMO shall undertake the preparatory work, and initial operation of the WESM for a period of twelve months from the spot market commencement date and, for the avoidance of doubt, during that twelve-month period, all references in the WESM Rules to “Market Operator” shall be construed to mean “AGMO”.*

<sup>25</sup> EPIRA IRR, Rule 9, Section 7 (a).

“AGMO governing board”.<sup>26</sup> It further stated that, prior to the transition to the IMO, the PEM Board will be chaired the DOE Secretary.<sup>27</sup>

### 3. DESIGNATION OF THE AGMO

#### 3.1. Transco Market Operations Unit

3.1.1. On 09 July 2001, the DOE and the National Power Corporation (NPC) entered into a Memorandum of Agreement where it was agreed that NPC shall provide the appropriate funding, resources and personnel necessary to develop the WESM Rules and to set up the infrastructure including the software and hardware for the establishment, implementation and operations of the WESM. In accordance with this agreement, NPC then created a functional unit, the Market Operations unit, responsible for assisting the DOE in the preparatory work for the initial operations of the WESM.<sup>28</sup>

3.1.2. After the incorporation of Transco, the Market Operations unit was transferred by NPC to Transco.

3.1.3. On 9 June 2003, DOE issued its Department Order No. 2003-06-006, “Designating the Transco-MO to Operate the Wholesale Electricity Spot Market”. In this Department Order, Transco-MO was expressly designated as the market operator (MO) authorized to actually operate the WESM under the direction of the DOE until substituted by the IMO. The Transco-MO was likewise directed to coordinate with the entity to be constituted by the DOE composed of industry participants that will eventually govern the WESM.

#### 3.2. Philippine Electricity Market Corporation

3.2.1. **Incorporation.** On 18 November 2003, PEMC was incorporated upon the initiative of the DOE. It was incorporated under the Corporation Code of the Philippines as a non-profit, non-stock corporation and with the primary purpose to -

*Manage, govern and administer an efficient, competitive, transparent and reliable market for the wholesale and (sic) purchase of electricity and ancillary services in the Philippines (the Wholesale Electricity Spot Market or “WESM”) in accordance with Republic Act No. 9136, the rules promulgated to govern the operation of the WESM (the “WESM Rules”), including their respective amendments and such other laws, rules and regulations which may be enacted hereafter that shall govern the WESM.*<sup>29</sup>

3.2.2. After the incorporation of PEMC, in April 2004, an Operating Agreement was entered into by and among DOE, PEMC and Transco to delineate the roles and responsibilities of the parties prior to and during actual commercial operations

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<sup>26</sup> WESM Rules, clause 10.2.3 reads –

*The AGMO governing board shall govern the operation of the AGMO until formation or selection of an IMO. Until such time, all references in the WESM Rules to “PEM Board” shall be construed to mean “AGMO governing board”.*

<sup>27</sup> WESM Rules, clause 1.4.2.4 (g) and clause 10.2.3.1.

<sup>28</sup> See Department of Energy Order No. DO2003-06-006. 09 June 2003.

<sup>29</sup> Articles of Incorporation of the Philippine Electricity Market Corporation. Article Second.

of the spot market, provide for the procedures for recovery of the capital expenditures and operating expenses incurred by Transco and facilitate the smooth transition to the IMO.<sup>30</sup>

3.2.3. Thereafter, PEMC was constituted as the AGMO and created a Market Operations unit in its table of organization. On 22 October 2004, Transco and PEMC entered into a Memorandum of Agreement providing for transfer of personnel, assets, contracts, and liabilities from Transco-MO to PEMC.<sup>31</sup> The Transco-MO was then abolished.

3.2.4. **As Autonomous Group Market Operator.** PEMC then assumed the responsibility for undertaking the preparations for the commencement of the WESM, and, after spot market commencement, the actual operations.

3.2.5. **As WESM Governing Body.** As PEMC was constituted as the AGMO, its board of directors became the AGMO governing body (or otherwise, the PEM Board). Consistent with the required PEM Board composition in the WESM Rules, the PEMC By-Laws provide for a fifteen-member board of directors, composed of the following –

- a. One director representing the Market Operator;
- b. One director representing the transmission sector;
- c. One director representing the supply sector;
- d. Four directors representing the generation sector;
- e. Four directors representing the distribution sector, with two representatives each from among the electric cooperatives and from other distribution utilities; and
- f. Four independent directors.

3.2.6. The current membership of the PEMC Board of Directors reflects the foregoing composition, except only that one independent seat is occupied by the DOE Secretary. This is pursuant to the requirement in the EPIRA IRR and the WESM Rules that the DOE Secretary shall chair the AGMO governing board. The chairmanship of the DOE Secretary is also provided for in the PEMC By-Laws in its Transitory Provisions.<sup>32</sup>

#### **4. QUALIFICATIONS OF THE INDEPENDENT MARKET OPERATOR AND OTHER CONSIDERATIONS**

4.1. The qualifications and other requirements for the IMO, as can be gleaned from the EPIRA, the EPIRA IRR and the WESM Rules, as well as, to the extent applicable, from the PEMC Articles of Incorporation and By-Laws, are summarized in this section.

##### **4.2. Independent entity**

4.2.1. The law requires that an independent entity be formed, but does not, however define or set the criteria for establishing independence of the entity that will be

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<sup>30</sup> Operating Agreement. Department of Energy, National Transmission Corporation and Philippine Electricity Market Corporation. April 2004.

<sup>31</sup> Memorandum of Agreement. National Transmission Corporation and Philippine Electricity Market Corporation. 22 October 2004.

<sup>32</sup> PEMC By-Laws, Chapter XI (Transitory Provisions), Section 2 (Interim Board).

formed.

4.2.2. **Prohibition on Generation Companies, Distribution Utilities and Suppliers.** The EPIRA IRR expressly provides that distribution utilities<sup>33</sup> and suppliers<sup>34</sup>, generation companies, IPP administrators, or any other entity engaged in generating or supplying electricity,<sup>35</sup> or any of their subsidiaries, affiliates, stockholders, directors, officers or their relatives within fourth degree of consanguinity or affinity shall not hold any interest, directly or indirectly, in the IMO. Other than these entities and persons, there are no other entities that are expressly prohibited from having an interest, directly or indirectly, in the IMO.

4.2.3. **Cessation of the Administrative Supervision of Transco.** The EPIRA expressly provides that the administrative supervision of the TRANSCO over the market operator shall cease upon endorsement of the IMO. This is reiterated in the WESM Rules (i.e., clause 10.2.2.3).<sup>36</sup>

#### 4.3. Formed or selected

4.3.1. The EPIRA in Section 30 provides that the independent entity shall be formed, and the functions, assets and liabilities of the market operator shall be transferred to such entity.

4.3.2. Meanwhile, the EPIRA IRR<sup>37</sup> and the WESM Rules<sup>38</sup>, in providing for the powers and duties of the AGMO governing body, both state that the latter shall govern the WESM until the formation or selection of the IMO, implying that the entity that will become the IMO may be formed or selected.

4.3.3. The PEMC By-Laws similarly speak of a selection process for the IMO which the DOE and the PEMC members shall undertake.<sup>39</sup>

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<sup>33</sup> EPIRA IRR, Section 7, Section 3 (a) reads as follows –

*A Distribution Utility and any of its subsidiaries, Affiliates, stockholders, directors, officers or their relatives within the fourth civil degree of consanguinity or affinity, legitimate or common law, shall not hold any interest, directly or indirectly, in the TRANSCO or its Buyer Concessionaire, or the IMO.*

<sup>34</sup> EPIRA IRR, Rule 8, Section 3 (a) reads as follows –

*A Supplier or Affiliate thereof or any stockholder, director or officer or any of their relatives within the fourth civil degree of consanguinity or affinity, legitimate or common law, shall not hold any interest, directly or indirectly, in the TRANSCO or its Buyer Concessionaire, or the IMO.*

<sup>35</sup> EPIRA IRR, Rule 11, Section 3 (a) reads as follows –

*Pursuant to Section 45 of the Act, no Generation Company, IPP Administrators, Distribution Utility or Supplier, their respective subsidiaries, Affiliates, stockholders, directors or officers or other entity engaged in generating and supplying electricity specified by ERC, shall hold any interest, directly or indirectly, in the TRANSCO or is Buyer or Concessionaire, or the Market Operator.*

<sup>36</sup> WESM Rules clause 10.2.2.3 reads –

*Not later than one (1) year after the implementation of the WESM, and Independent Market Operator (“IMO”) shall be formed and the functions, assets and liabilities of the AGMO shall be transferred to such entity with the joint endorsement of the DOE and the electric power industry participants. Thereafter, the administrative supervision of TRANSCO over such entity shall cease.*

<sup>37</sup> See EPIRA IRR, Rule 9, Section 6 (a) and Section 7 (d). Section 7(d) reads –

*(d) Powers and Duties. The following are the powers and duties of the AGMO governing body:*

*(j) Govern the operations of the WESM until formation and selection of the IMO.*

<sup>38</sup> See WESM Rules clause 10.2.3.2 which reads –

*The AGMO governing board shall govern the operation of the AGMO until the formation or selection of an IMO. Until such time, all references in the WESM Rules to “PEM Board” shall be construed to mean “AGMO governing board”.*

<sup>39</sup> See PEMC By-Laws, Article XI Transitory Provisions, Section 4 which reads –

#### 4.4. Separate entity

- 4.4.1. It may also be inferred from the law and the rules that the IMO that shall be formed or selected shall be an entity that is separate from the governing body of the WESM, the PEM Board.
- 4.4.2. The EPIRA and the EPIRA IRR both provide for the formation of a governing body, but directs that the formation of that governing body be provided in the WESM Rules.<sup>40</sup> The WESM Rules, in turn, provide for the organization of the PEM Board. It can be inferred from the WESM Rules that the PEM Board is envisioned to be residing in an entity separate from the Market Operator.
- 4.4.3. As discussed in paragraphs 2.6.6 to 2.6.9 of this Plan, it can be inferred from the WESM Rules that it envisioned for the PEM Board to reside in a corporate entity, organized in accordance with the Corporation Code, and that it is a separate entity from the Market Operator. Thus, the WESM Rules empower the PEM Board to supervise and oversee the operations of the Market Operator.
- 4.4.4. It is also important to consider that the generation companies, the distribution utilities and the suppliers are represented in the PEM Board pursuant to the WESM Rules, but the EPIRA IRR prohibits these entities from having any interest, directly or indirectly, in the IMO. Given the WESM Rules requirement and the EPIRA IRR prohibition, it will not be possible for the IMO and PEM Board to reside in the same corporate entity, unless these legal requirements or prohibitions are amended.

#### 4.5. Joint endorsement

- 4.5.1. The DOE and the electric power industry participants shall jointly endorse the transfer of functions, assets, and liabilities of the market operator to the IMO. Such joint endorsement should have been done one year after the implementation of the WESM. The requirement of joint endorsement is provided for in the EPIRA and reiterated in the EPIRA IRR<sup>41</sup> and the WESM Rules.<sup>42</sup>
- 4.5.2. An electric power industry participant is defined as referring to any person or entity engaged in the generation, transmission, distribution or supply sector.<sup>43</sup> Neither the EPIRA, the EPIRA IRR, nor the WESM Rules, however, prescribe

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*Section 4. Expiration of Interim Period. Upon expiration of the Interim Period, TRANSCO or its Market Operator subsidiary shall transfer its functions, assets and liabilities to the Independent Market Operator with the joint endorsement of the DOE and majority of the Voting Rights of the Members upon undertaking a selection process for that purpose. Thereafter, the administrative supervision of TRANSCO, under the EPIRA, over the Market Operator shall cease.*

<sup>40</sup> See EPIRA, Section 30. The full text of the relevant paragraph of EPIRA, Section 30 reads as follows –  
x x x *The rules shall provide, among others, procedures for:*

x x x

*(c) Administering the market, including criteria for admission to and termination from the market which includes security or performance bond requirements, voting rights of the participants, surveillance and assurance of compliance of the participants with the rules and the formation of the wholesale electricity spot market governing body;*

<sup>41</sup> EPIRA IRR, Rule 9, Section 6 (a)

<sup>42</sup> WESM Rules, clause 10.2.2.3.

<sup>43</sup> EPIRA, Section 4 (s) and EPIRA IRR, Rule 4 (ee).

the manner by which the electric power industry participants are to endorse the IMO.

- 4.5.3. This is provided for in the PEMC By-Laws, which require that majority of the voting rights of the PEMC members shall endorse the transfer to the IMO jointly with the DOE.<sup>44</sup> Voting rights are held by sectoral members in good standing. Individual members have no voting rights. The manner of determining the number of voting rights of a sectoral member is provided for in the PEMC By-Laws, and the number as determined is equivalent to the number of votes that the member can cast during a meeting.<sup>45</sup>
- 4.5.4. Only WESM members are eligible to become members of PEMC.<sup>46</sup> Sectoral members are from four sectors, namely, generation, transmission, distribution and supply. The generator sector consists of WESM members that are generation companies and such other persons or entities as determined by applicable laws to be part of the generation sector.<sup>47</sup> The transmission sector is composed of the Transco and its concessionaire and other entities determined by law to part of the transmission sector.<sup>48</sup> The distribution sector is made of WESM members that are distribution utilities and other similar persons or entities determined by law to be part of the distribution sector.<sup>49</sup> The supply sector, finally, includes all WESM members that are suppliers, bulk consumers, end users, metering service providers, such other similar persons or entities determined by law to be part of the supply sector, and all other WESM members that are not part of the generation, distribution or transmission sector.<sup>50</sup> Notably, the PEMC By-Laws expanded the definition of the persons of entities that make up the supply sector to include those that are not otherwise covered in the definition of a supplier under the EPIRA.<sup>51</sup>

#### 4.6. Financially capable and operate on a non-profit basis

- 4.6.1. The EPIRA IRR additionally requires that the IMO shall be financially capable.<sup>52</sup> Meanwhile, the WESM Rules mandate that the Market Operator shall operate and administer the market on a non-profit basis.<sup>53</sup>
- 4.6.2. In this regard, it will be noted that the EPIRA, in effect, guarantees the financing of operations of the WESM as it allows that the cost of administering and

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<sup>44</sup> PEMC Articles of Incorporation, Article XI, Section 4.

<sup>45</sup> PEMC By-Laws, Article V, Section 9.

<sup>46</sup> PEMC By-Laws, Article V, Section 1.

<sup>47</sup> PEMC By-Laws, Article V, Section 3 (a).

<sup>48</sup> PEMC By-Laws, Article V, Section 3 (b).

<sup>49</sup> PEMC By-Laws, Article V, Section 3 (c).

<sup>50</sup> PEMC By-Laws, Article V, Section 3 (d).

<sup>51</sup> EPIRA Section 4 (yy) defines –

*Supplier refers to any person or entity authorized by the ERC to sell, broker, market or aggregate electricity to the end users.*

<sup>52</sup> EPIRA IRR, Rule 9, Section 6 (a) reads –

*A Market Operator in accordance with the WESM Rules shall implement the WESM. Not later than one (1) year after implementation of the WESM, an independent entity, the IMO, shall be formed and the functions, assets and liabilities of the AGMO shall be transferred to such entity with the joint endorsement of the DOE and the Electric Power Industry Participants; Provided, That the IMO shall be financially and technically capable, with proven expertise of not less than two (2) years as a leading independent market operator of similar or larger size electricity market.*

<sup>53</sup> WESM Rules clause 1.3.1.1 (b) reads as follows –

*The Market Operator shall, generally and non-restrictively, have the following functions and responsibilities:xxx  
(b) Allocate resources to enable it to operate and administer the WESM on a non-profit basis;*

operating the WESM be recovered through a charge, i.e., the market fees, imposed on WESM members.<sup>54</sup>

#### 4.7. Technically capable and with proven expertise

4.7.1. The EPIRA IRR also requires that the IMO be technically capable, with proven experience and expertise of not less than two (2) years as a leading independent market operator of similar or larger size electricity market.<sup>55</sup>

### 5. TRANSITION TO THE IMO

5.1. This Plan essentially calls for the formation of a separate entity that will become the IMO (the “IMO company”). The market operator functions of PEMC, as AGMO, will be transferred to and assumed by the IMO company. PEMC, meanwhile, will continue to be the WESM governing body.

5.2. The details of the transition is summarized below and discussed in more detail in Sections 7 and 8 of this Plan.

#### 5.3. Formation/Incorporation of an IMO company

5.3.1. **Formation.** The IMO company will be incorporated and organized as a non-stock, non-profit corporation under the Corporation Code of the Philippines. It will be incorporated upon the initiative of the DOE and the PEM Board which will also select the incorporators. It will have at least the minimum number of incorporators allowed under the Corporation Code. It will be incorporated as a private company, and will have no representation from the government as well as from the electric industry participants.

5.3.2. The IMO company will be incorporated as a non-profit company consistent with the requirement in the WESM Rules that the Market Operator operate the WESM on a non-profit basis. This, however, does not preclude the DOE and the PEMC, representing the electric power industry participants, from considering the possibility of selecting another entity to become the IMO in the future. In such case, the selection of another entity will again require the joint endorsement of both the DOE and the electric power industry participants taking into consideration the need to ensure continuity of and avoid unnecessary disruption in the operations of the WESM.

5.3.3. **Independent Board of Directors.** The Board of Directors of the IMO company, including the initial members and subsequent members, will be composed of persons that are independent of government and the electric power industry participants, including the generation sector and other industry sectors. The qualifications for independence are set out in DOE Circular No. 2018-01-002<sup>56</sup> and are consistent with the criteria set out in the WESM Rules.<sup>57</sup> The nomination and selection process for the election of the initial and subsequent

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<sup>54</sup> EPIRA, Section 30, and also in EPIRA IRR, Rule 9, Section 9.

<sup>55</sup> EPIRA IRR, Rule 9, Section 6 (a).

<sup>56</sup> Department of Energy Circular No. 2018-01-002 (promulgated on 18 January 2018) entitled “*Adopting Policies for the Effective and Efficient Transition to the Independent Market Operator for the Wholesale Electricity Spot Market*”.

<sup>57</sup> WESM Rules, clause 1.4.2.7.

members of the Board of Directors of the IMO is described in more detail in Section 7 of this Plan.

5.3.4. The President of the IMO company will be elected from among the members of the Board of Directors of the IMO.

5.3.5. **Transfer of Functions, Assets and Liabilities.** The functions that will be transferred to and assumed by the IMO company from PEMC are the functions of the Market Operator as set out in the EPIRA IRR<sup>58</sup> and the WESM Rules.<sup>59</sup> PEMC shall transfer the right to use the Market Management System and other infrastructure and assets currently being used to support the operations of the WESM to the IMO company, but shall retain title to the same.

5.3.6. The IMO company shall determine its own organizational and staffing requirements, subject to approval of the PEM Board. This shall include a market monitoring unit that will interface with PEMC as WESM governing body, the DOE, and the ERC.

#### 5.4. **PEMC as WESM Governing Body**

5.4.1. PEMC shall remain to be the WESM governing body. Its Board of Directors shall be the PEM Board contemplated in the WESM Rules.

5.4.2. **Structure.** The structure of PEMC as WESM governing body will be as currently set out in the WESM Rules with some modifications. In addition to the PEM Board, it will have the WESM governance committees. They will be supported by organic units within PEMC which will perform secretariat support, enforcement and compliance, and market assessment.

5.4.3. **PEM Board.** As previously mentioned, the PEMC Board of Directors shall be the PEM Board referred to in the WESM Rules and shall have the power and duties as such that are set out therein.

5.4.4. The composition of the PEM Board as set out in the WESM Rules<sup>60</sup> will be maintained, except only that the seat for the National Transmission Corporation shall instead be for the System Operator. As it is currently, the PEMC Board has fifteen (15) members composed of representatives of the electric power industry participants that are members of the WESM (“stakeholder directors”), and independent members. The distribution of seats is as follows:

- a. Four (4) independent directors;
- b. Four (4) representatives from the generation sector;
- c. Four (4) representatives from the distribution sector, with two (2) of these from the electric cooperatives and two (2) from distribution utilities that are not electric cooperatives;
- d. One (1) representative from the supply sector;
- e. One (1) representative from the System Operator; and
- f. One (1) representative from the Market Operator.

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<sup>58</sup> EPIRA IRR, Rule 9, Section 6 (c).

<sup>59</sup> WESM Rules, Section 1.3.2

<sup>60</sup> WESM Rules, clause 1.4.2.4

- 5.4.5. The IMO company will be represented in the PEM Board by its President. Except for the IMO representative, no person shall sit in the PEM Board and the IMO Board at the same time.
- 5.4.6. A Chairman and a President will be elected for PEMC. The Chairman of the PEM Board will be elected by majority of the Board members from among themselves, while the President of PEMC will be elected from among the independent members. An amendment of the WESM Rules will be proposed to reflect these qualifications of the Chairman and the President.<sup>61</sup>
- 5.4.7. The PEM Board members will be elected by the PEMC members in accordance with the PEMC By-Laws and will no longer be appointed by the DOE. The DOE then ceases to have any participation in the PEM Board. It is noted that the chairmanship by the DOE Secretary of the PEM Board is only intended to be interim in nature, until the transition to the IMO, as it is expressly intended only for the AGMO Board.
- 5.4.8. While the EPIRA-IRR does not have any express provision prohibiting the DOE's membership in the governing body or in the IMO, this must be understood in the light of the prohibition under the Constitution against members of the Cabinet or their deputies or assistants from holding any other office or employment during their tenure.<sup>62</sup>
- 5.4.9. **WESM Governance Committees.** The WESM governance committees will remain with PEMC as these perform essentially governance functions, particularly, rules change, market audit, market surveillance, dispute resolution, and technical support to the PEM Board. The composition and functions of the committees may be reviewed and modified, as warranted.

## 6. COMPARISON WITH EXISTING PROPOSALS

- 6.1. There were two proposals for the transition that have been previously presented. One is the proposal presented by the DOE out of a study commissioned through a technical assistance provided by the Asian Development Bank (referred to as the "DOE/ADB Study Proposal). Two is the proposal presented by the electric power industry participants that participated in the technical working group organized by the Senate Committee of Energy (referred to as the "Stakeholders' Proposal").
- 6.2. **Transformation of PEMC.** Both the DOE/ADB Study Proposal and the Stakeholders' Proposal propose the transformation of PEMC as the IMO. Although the proposals call for a different PEM Board composition, they provide for the transformed PEMC to be both the Market Operator and the WESM governing body. While the DOE/ADB Proposal transfers some of the governance functions to a Market Committee composed of stakeholders, majority of the governance functions continue to reside in

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<sup>61</sup> WESM Rules, clause 1.4.2.4 (g).

<sup>62</sup> 1987 Constitution, Article VII, Section 13 reads –

*The President, Vice President, the Members of the Cabinet, and their deputies or assistants shall not, unless otherwise provided in this Constitution, hold any other office or employment during their tenure. They shall not, during said tenure, directly or indirectly practice any other professions, participate in any business, or be financially interested in any contract with, or in any franchise, or special privilege granted by the Government, or any subdivision, agency, or instrumentality thereof, including government-owned or controlled corporation or their subsidiaries. They shall strictly avoid conflict of interest in the conduct of their office.*

PEMC. Notably, the Market Committee appear to still report to the PEMC Board of Directors (which is to be the PEM Board).

- 6.3. Such scheme may, however, prove to be problematic as it is not consistent with the requirements of the EPIRA, the EPIRA IRR and the WESM Rules. As discussed previously, both the EPIRA and the EPIRA IRR provide that the formation of a governing body be provided for in the WESM Rules. In turn, the WESM Rules provide for a governing body, the PEM Board, which shall be organized as a corporate entity that is separate from the Market Operator.
- 6.4. The following table describes these two proposals briefly, and compares them with the proposal embodied in this Plan, with the description and comparison focusing on the proposed organization structure and functions of the IMO. A brief assessment of the legal requirements to effect the proposal is also presented.

**Table 1 – Comparison of Existing Proposals for Transition to the IMO**

<b>Criteria</b>	<b>Proposal from ADB/DOE Study</b>	<b>Stakeholders Proposal</b>	<b>This Transition Plan</b>
Formation/Selection of the IMO	Selection – PEMC will be constituted and endorsed as the IMO.	Selection – PEMC will be constituted and endorsed as the IMO.	Formation – a separate entity will be formed that will become the IMO.
Independence/ Separate Entity	<p>PEMC is a non-stock, non-profit corporation.</p> <p>PEMC Board of Directors will be composed of members that are all independent from government and the electric power industry participants.</p> <p>PEMC, as corporate entity, will hold market operations functions, while governance functions will be shared with a Market Committee composed of representatives of the industry participants.</p>	<p>PEMC is a non-stock, non-profit corporation.</p> <p>Majority of the members of PEMC Board of Directors will be independent members.</p> <p>PEMC, as corporate entity, will hold both market operator and governance functions.</p>	<p>The IMO company will be a non-stock, non-profit corporation.</p> <p>Its board of directors will be composed of independent members.</p> <p>Rules for nomination and election shall be set out that will consider roles of DOE and the PEM Board in the process of nominations of the members of the IMO Board.</p>
Market Operator	Market operations functions will be performed by organic units of PEMC. No change in PEMC organization is explicitly proposed.	Market operations functions will be performed by organic units of PEMC. No change in PEMC organization is explicitly proposed.	The IMO company will perform all functions of the Market Operator as set out in the WESM Rules and manuals.
Governing Body	<b>Two-tiered governance:</b> PEM Board will be the PEMC Board of	<b>PEM Board</b> will be the PEMC Board of Directors composed of	PEMC shall be the governing body.

Criteria	Proposal from ADB/DOE Study	Stakeholders Proposal	This Transition Plan
	<p>Directors composed of five (or seven) independent members. Committees under the PEM Board are:</p> <ul style="list-style-type: none"> <li>○ Market Surveillance Committee</li> <li>○ Compliance Committee</li> <li>○ Audit Committee</li> <li>○ Dispute Resolution Administrator</li> </ul> <p>Market Committee: WESM members participate in the governance through a Market Committee (composed of individuals representing the electric power industry sectors).</p> <ul style="list-style-type: none"> <li>○ Rules Change Committee</li> <li>○ Technical Committee</li> </ul> <p><b>PEMC Governance Units (Organic Units)</b></p> <ul style="list-style-type: none"> <li>• Market Assessment Group</li> <li>• Enforcement and Compliance Office</li> </ul>	<p>15 members as follows:</p> <ul style="list-style-type: none"> <li>• Independent: eight (including Market Operator and System Operator representatives)</li> <li>• Stakeholders: seven, as follows: <ul style="list-style-type: none"> <li>○ Generation: three</li> <li>○ Distribution: three</li> <li>○ Supply: one</li> </ul> </li> </ul> <p><b>No change in governance committees:</b></p> <ul style="list-style-type: none"> <li>• Market Surveillance Committee</li> <li>• Rules Change Committee</li> <li>• PEM Auditor</li> <li>• Dispute Resolution Panel</li> <li>• Technical Committee</li> </ul> <p><b>PEMC Governance Units (Organic Units)</b></p> <ul style="list-style-type: none"> <li>• Chief Governance Officer (day to day coordination of committees)</li> <li>• Enforcement and Compliance Office</li> <li>• Market Assessment Group</li> </ul>	<p><b>PEM Board.</b> Its Board of Directors shall be the PEM Board contemplated in the WESM Rules, which has both stakeholders and independent members.</p> <p>Existing governance committees.</p> <p>No change in governance committees is necessary.</p> <p>The following organic units will be retained in PEMC –</p> <ul style="list-style-type: none"> <li>• Market Assessment Group</li> <li>• Enforcement and Compliance</li> </ul> <p><i>If desired, changes in the PEM Board composition, governance committees and PEMC organic units may also be implemented.</i></p>
Transfer of AGMO Functions, Assets and Liabilities	Not necessary.	Not necessary.	PEMC will retain title to the MMS and other market systems, but will transfer right to use to the IMO company.
Requirements for Implementation	<ul style="list-style-type: none"> <li>• Amendment of the WESM Rules and the PEMC By-Laws, and some market manuals, regarding the: <ul style="list-style-type: none"> <li>○ Composition and election of the PEM Board,</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Amendment of the EPIRA IRR to remove prohibition on distribution utilities and suppliers from having an interest in the IMO.</li> <li>• Amendment of the WESM Rules and the PEMC By-Laws to change the</li> </ul>	<ul style="list-style-type: none"> <li>• Amendment of PEMC Articles and By-Laws to align primary and secondary purposes with its role as WESM governing body.</li> </ul>

Criteria	Proposal from ADB/DOE Study	Stakeholders Proposal	This Transition Plan
	<ul style="list-style-type: none"> <li>○ Creation, selection and functions of the Market Committee, and its relationship with the PEM Board, the other governance committees, the Market Operator, the System Operator and WESM members.</li> <li>• Organizational requirements – organization (secretariat) to support the Market Committee may need to be organized.</li> </ul>	<p>composition of the PEM Board.</p> <p>Organizational requirement – other than the creation of the position of a Chief Governance Officer, no significant change in the PEMC organization may be required.</p>	<ul style="list-style-type: none"> <li>• Incorporation of the IMO company</li> <li>• Operating Agreement between PEMC and the IMO.</li> <li>• Organizational requirement – re-organization of PEMC, organization of IMO company, transfer of personnel to the IMO company.</li> </ul>

## 7. ORGANIZING THE IMO COMPANY

### 7.1. Formation

7.1.1. As previously mentioned, the IMO company will be incorporated and organized as a non-stock, non-profit corporation under the Corporation Code of the Philippines. It will be incorporated as a private company, and will have no representation from the government as well as from the generation companies, IPP administrators, distribution utilities, and the suppliers.

7.1.2. The incorporation of the IMO company shall be initiated by the DOE and the PEM Board. The initial capitalization of the IMO company will be minimal and will be from contributions of the incorporators that will be selected. The individuals chosen to incorporate the IMO company will be requested to pay for their qualifying membership share therein similar to when PEMC was incorporated.

7.1.3. The incorporators, who shall also compose the initial IMO Board, shall be selected from nominees submitted by the incumbent PEM Board. The PEM Board shall likewise select the IMO Board Chairperson and the IMO President from among the directors selected. The Chairperson and the IMO President shall not be same person.

7.1.4. The initial IMO Board shall have a limited term of one (1) year and will be responsible for implementing the actual transfer of functions to the IMO, the organization and initial operations of the IMO. Thereafter, the regular IMO Board will be elected in the manner set out in the succeeding section.

### 7.2. Independent Board of Directors

7.2.1. The Board of Directors of the IMO company, including the initial members and subsequent members, will be composed of persons that are independent of government and the electric power industry participants, including the generation sector and other industry sectors. The qualifications for independence set out in the WESM Rules will be adopted.<sup>63</sup> A person is independent if:

- 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 (4<sup>th</sup>) 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 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 to or associated with a WESM Member or the government within one (1) year prior to the nomination date; and

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<sup>63</sup> WESM Rules, clause 1.4.2.7.

- f) agrees not to 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.
- 7.2.2. There will be at least five (5) members of the Board, composed of persons with the following expertise. As far as practicable, no two (2) members of the Board shall be in the same field or have the same qualification as provided below.
- 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 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.
- 7.2.3. The members of the IMO Board will have a term of three (3) years. The first set of regular members of the Board (i.e., after the initial board members referred to in Section 7.1.4) will have staggered terms. If there will be five members, the term will be as follows: two (2) members will have a term of three (3) years, two (2) members will have a term of two (2) years and one (1) member will have term of one (1) year. Thereafter, each elected member will have a three-year term.
- 7.2.4. The By-Laws of the IMO company shall provide for the manner of nomination and selection of the Board of Directors. To ensure that the IMO company will remain a private entity, the directors will not be appointed by the DOE. The nomination and selection process shall be as follows:
- a) Nominees. The Philippine Electricity Market Corporation (PEMC) shall provide nominees for directors, subject to the nomination process as provided in the WESM Rules or relevant market manual, provided that the number of nominees shall not be less than three (3) for each board position.
  - b) Dissemination of the List of Nominees. PEMC shall provide the incumbent Board of Directors of the IMO the list of nominees at least forty-five (45) days before the 4th Wednesday of June of each year or the date of the scheduled annual Members' meeting when directors are to be elected. The list of nominees shall be given through personal delivery, postal mail, electronic mail, facsimile or courier.

- c) Default Authority. Unless otherwise provided in the WESM Rules, in the event that PEMC fails to provide its list of nominees during the period provided under these By-laws, the incumbent Board of Directors of the Corporation, with the supervision of the DOE, shall implement a nomination process in accordance with the procedures set out in the WESM Rules or relevant and shall elect the Directors from among the nominees.

7.2.5. The President of the IMO company will be elected from among the directors. The IMO Board members will likewise elect from among themselves the Chairperson of the Board, who shall not be the person elected to be the President.

### 7.3. Functions and Organization

7.3.1. The functions that will be transferred to and assumed by the IMO company are the functions of the Market Operator as set out in the EPIRA IRR<sup>64</sup> and the WESM Rules.<sup>65</sup> Correspondingly, the IMO company will be organized and staffed around these functions. The functions are summarized in the table below.

**Table 2 – Market Operator Functions and Responsibilities**

<b>Functions (EPIRA IRR &amp; WESM Rules)</b>	<b>Responsibilities and Obligations (WESM Rules)</b>	<b>Organizational Unit (Current)</b>
Administer the operations of the WESM in accordance with the WESM Rules.	Perform all obligations of the Market Operator set out in the WESM Rules and market manuals.	
Allocate resources to enable it to administer the WESM on a non-profit basis.	Develop the structure and level of the market fees in consultation with market participants, for approval by the PEM Board, and, thereafter, for approval by the ERC. <sup>66</sup>  Submit annual statement of expected income and expenses (i.e., annual budgetary requirements) to the PEM Board for approval. <sup>67</sup>  Prepare annual financial report, duly certified by independent auditor, and approved by the PEM Board. <sup>68</sup>	Corporate Services - Finance
Determine the dispatch schedule of all facilities in accordance with the	Perform obligations set out in Chapter 3 and Chapter 6 of the WESM Rules, the WESM Dispatch Protocol and other	Trading Operations

<sup>64</sup> EPIRA IRR, Rule 9, Section 6 (c).

<sup>65</sup> WESM Rules, Section 1.3.2

<sup>66</sup> WESM Rules, Section 2.10.

<sup>67</sup> WESM Rules, Section 2.11.

<sup>68</sup> WESM Rules, Section 2.12

<b>Functions (EPIRA IRR &amp; WESM Rules)</b>	<b>Responsibilities and Obligations (WESM Rules)</b>	<b>Organizational Unit (Current)</b>
WESM Rules; such schedule shall be submitted to the System Operator.	market manuals pertaining to scheduling and pricing processes in the WESM.  Operate and maintain Market Management System and other market systems authorized to be used in the scheduling and pricing processes of the WESM.	Information Systems and Technology
Monitor daily trading activities in the WESM.	Comply with reporting and publication requirements under the WESM Rules and market manuals, including, particularly reporting on significant variations.	Trading Operations  Corporate Planning & Communications (reports and publications)  Information Systems and Technology
Oversee transaction billing and settlement procedures.	Perform processes pertaining to meter data processing and warehousing, billing and settlements, collection and payments, and all associated accounting procedures, in accordance with WESM Rules Chapter 3, approved pricing and cost recovery methodologies.  Provide/manage electronic fund transfer facility.  Manage prudential guarantee deposits or securities of participants.  Suspend or deregister participants, for failure to comply with payment-related obligations.	Billing, Settlements and Metering  Corporate Services – Finance  Information Systems and Technology
Maintain and publish a register of all WESM participants and update and publish the register whenever a person or entity becomes or ceases to be a WESM Participant.	Register WESM members, in accordance with Chapter 2 of the WESM Rules, and relevant market manuals, and monitor continuing compliance with registration and eligibility requirements.  Suspend or deregister participants for non-compliance with registration requirements.  <i>Additionally, the IMO company shall conduct training of participants, and</i>	Corporate Planning and Communications – Training and Communications

Functions (EPIRA IRR & WESM Rules)	Responsibilities and Obligations (WESM Rules)	Organizational Unit (Current)
	<i>provide other participant support services.</i>	

#### 7.4. Supervision of the IMO company/ Performance Standards

7.4.1. As set out in the WESM Rules, the PEM Board shall monitor and have supervision over the IMO company. In carrying out its functions, the IMO company is subject to the performance standards that are developed by the PEM Board and approved by the DOE, pursuant to the WESM Rules.<sup>69</sup> Performance standards shall include both operational and financial performance standards.

7.4.2. **Operating Agreement.** PEMC and the IMO company will enter into an operating agreement that will further define the obligations of the parties, and establish the service levels required of the IMO company. Among other things, the operating agreement will also establish the manner of determining the service fees that will be due to the IMO company and the service level agreements.

#### 7.5. Market Fees

7.5.1. Market fees are intended to defray cost of administering and operating the WESM. The components of the market fees are set out in the WESM Rules and covers the budgetary requirements of the Market Operator and the costs reasonably incurred by the PEM Board and its committees.<sup>70</sup> The obligation to file for approval of the market fees with the ERC rests with the IMO company, but the WESM Rules require that the PEM Board approve the structure and level of the fees, as well as the annual budgetary requirements. With these controls, the PEMC will be assured that its own budgetary requirements will likewise be covered by the market fees.

7.5.2. The market fee structure may need to be revised as to clearly delineate the budgetary requirement of the IMO company and of PEMC. Consistent with the EPIRA and the WESM Rules, the market fees will be charged and collected by the IMO company, as the Market Operator. This arrangement also serves a practical purpose, as the market fees will be collected through the WESM settlement processes that is being operated by the IMO company.

7.5.3. The IMO company will then remit to PEMC the latter's budgetary requirements.

#### 7.6. Market Systems

7.6.1. The EPIRA requires that the assets and liabilities of the AGMO shall be transferred to the IMO.

<sup>69</sup> WESM Rules, clause 1.3.2.3

<sup>70</sup> WESM Rules, clause 2.10.4.

- 7.6.2. Among the substantial assets are the Market Management System and its ancillary systems, and the Central Registration and Settlement System and its ancillary systems. These were acquired by PEMC fully from the market fees collected from WESM generator trading participants.<sup>71</sup> All other assets that have been acquired by PEMC to support its daily operations were likewise funded from market fees.
- 7.6.3. It is proposed that title to these assets remain with PEMC, but the exclusive right to use the same for purposes of operating the WESM will be transferred to the IMO company. Transferring title will not serve any practical purpose for the IMO company, considering that these assets were acquired purposefully to support WESM operations, and for no other reason. The transfer of associated licenses, or the right of the IMO company to use the same, may have to be negotiated with the relevant software vendors.
- 7.6.4. Likewise, transfer of the associated liabilities may also not serve any purpose, considering that these liabilities, whether held by PEMC or the IMO company, will be paid out of market fees collected from WESM trading participants.
- 7.6.5. The operating agreement between PEMC and the IMO company will define responsibilities for facility upgrades and maintenance. If these were to be assumed by the IMO company, then the service fee structure shall integrate capital expenditures pertaining to the MMS and other market systems. Contingencies for liabilities shall also be integrated in the service fees.

## 7.7. Establishing Accountability of the IMO

- 7.7.1. Measures to ensure that the IMO company be accountable are set out in the (a) WESM Rules, and (b) the DOE Circular No. 2018-01-002 endorsing the IMO transition. Further details shall also be set out in the operating agreement entered into between PEMC and the IMO company.
- 7.7.2. Essentially, the establishment of measures shall be guided by the principle that the IMO company, as the Market Operator, shall be held to account for its fiduciary obligation to protect public interest.
- 7.7.3. Measures already existing in the WESM Rules include –
- a. **Performance standards.** Establishment of market operator performance standards, developed by the PEM Board and approved by the DOE;<sup>72</sup>
  - b. **Audit.** Regular audit of the IMO company, its market systems and processes by the PEM Auditor;<sup>73</sup>
  - c. **Market fees, budget and financial performance.** Approval by the PEM Board of the structure and level of the market fees, the annual budgetary requirements, and the annual financial statements of the IMO company.<sup>74</sup>

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<sup>71</sup> The old Market Management System was procured through funds provided by the National Power Corporation (in turn, from proceeds of loan from JICA and ADB), but the project cost is to be repaid from market fees to be collected specifically for this purpose.

<sup>72</sup> WESM Rules, clause 1.3.2.3.

<sup>73</sup> WESM Rules, clause 1.5.2.

<sup>74</sup> WESM Rules, Section 2.10, Section 2.11 and Section 2.12.

- d. **Enforcement.** Investigation of the IMO company for breach of the WESM Rules or market manuals and requiring implementation of remedial measures to rectify a breach.<sup>75</sup>

7.7.4. In addition to the foregoing, other measures that will be established include the following:

- a. **Nomination and election or selection, and removal of the IMO Board of Directors,** including the director that will become the President of the IMO company. The members of the IMO Board shall be elected from the persons that will be selected by the PEM Board. The latter shall do the selection so as to preserve the private nature of the IMO.
- b. **Service level agreements.** In addition to the performance standards that will be approved by the PEM Board and the DOE, the operating agreement between PEMC and the IMO company shall contain more detailed service level agreements that will be fulfilled by the latter.
- c. **Financial performance standards.** In addition to the rules requiring approval by the PEM Board of the market fees, budgetary requirements and financial statements of the IMO company, there can also be established more detailed statement of standards for financial performance that will be complied with by the IMO company.

## 8. PEMC AS WESM GOVERNING BODY

### 8.1. Governance Structure

- 8.1.1. **Nature/Amendment of Purpose.** After transfer of its market operator functions to the IMO company, PEMC will continue to exist as the WESM governing body. As currently organized, PEMC is a non-stock, non-profit corporation, and will remain as such. The primary purpose of PEMC, as a corporation, will need to be amended, however, consistent with its role as the WESM governing body and no longer as both governing body and market operator.
- 8.1.2. **Structure.** The structure of PEMC as WESM governing body will be as currently set out in the WESM Rules and will include the PEM Board and the WESM governance committees. They will be supported by organic units within PEMC which will perform secretariat support, market monitoring, and enforcement and compliance functions.
- 8.1.3. **PEM Board.** The PEMC Board of Directors shall be the PEM Board referred to in the WESM Rules, and shall have the power and duties as such that are set out in the rules. The IMO company will be represented in the PEM Board by its President.
- 8.1.4. The members of the PEM Board shall elect the Chairperson from amongst themselves. The President of PEMC, meanwhile, shall be elected from amongst the independent members of the Board.

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<sup>75</sup> WESM Rules, Section 7.2.3.

8.1.5. **WESM Governance Committees.** The WESM governance committees will be organized around the following functions and processes:

- a. Formulation of market rules and market manuals, and their subsequent amendments;
- b. Monitoring, assessment, and surveillance of the WESM;
- c. Audit of the Market Operator, its systems and procedures, and of metering service providers (MSPs) for their WESM metering arrangements;
- d. Enforcement of market rules, including monitoring of compliance by WESM members, investigations and imposition of penalties for breach; and
- e. Implementation of alternative dispute resolution procedures to settle disputes amongst WESM members with respect to their transactions in the WESM.

8.1.6. **PEMC Organic Units.** The PEMC Board and the governance committees will be supported by a staff that will, among other corporate functions, provide the following –

- a. Secretariat support, including managing day-to-day operations of PEMC, the PEM Board, and coordination of committee activities;
- b. Market monitoring and assessment, in support of the governance committee organized for this purpose;
- c. Enforcement and compliance functions, in support of the governance committee organized for this purpose.

## 8.2. Other PEMC Functions/Designations

8.2.1. **Central Registration Body.** PEMC, as a corporate entity, has been designated as the central registration body (the “CRB”) for the retail market. As currently designed, retail transactions are integrated in the operations of the WESM. Unless the market design is changed, the functions of PEMC as CRB and the market systems supporting these functions will also be transferred to the IMO company.

8.2.2. **Renewable Energy Market.** Republic Act No. 9513, or the Renewable Energy Act of 2008, mandates the DOE to establish a renewable energy market (REM).<sup>76</sup> The Rules and Regulations Implementing RA No. 9513 further directs that the REM be a sub-market of the WESM where the trading of renewable energy certificates shall take place.<sup>77</sup>

8.2.3. PEMC, under supervision of the DOE, is mandated to establish the Renewable Energy Registrar. Neither the law nor its IRR prescribe the manner by which the same shall be established. In this regard, PEMC may possibly (a) designate the IMO company to be the Renewable Energy Registrar, (b) establish the same as an organic unit within PEMC, or (c) designate another entity to perform this function.

## 9. POLICY AND REGULATORY OVERSIGHT

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<sup>76</sup> Republic Act No. 9513, Section 8.

<sup>77</sup> RA 9513 IRR, Rule 3, Section 11.

## 9.1. Oversight by the Department of Energy

- 9.1.1. Over and above its general mandate to set the policy directions for the electric industry, the DOE retains the following functions with respect to the WESM –
- a. Final approval and promulgation of the market rules and market manuals; and
  - b. Final approval of the Market Operator performance standards, including financial performance standards.
- 9.1.2. Additionally, the DOE may also require that the rules for the nomination and election of the IMO Board of Directors shall be subject to its approval. The rules pertaining to the PEM Board are already incorporated in the WESM Rules which are subject to final approval by the DOE. Similarly, the rules pertaining to the IMO Board may be incorporated in the WESM Rules.
- 9.1.3. While nomination can be open to all WESM Members, the selection of nominees will be done by the PEM Board.

## 9.2. Oversight by the Energy Regulatory Commission

- 9.2.1. In respect to the WESM, the ERC has jurisdiction to –
- a. Approve the price determination methodology, and all associated pricing and cost recovery methodologies pertaining to energy and reserves;
  - b. Approve the market fees; and
  - c. Authorize entities who may become members, directly or indirectly, of the WESM.
- 9.2.2. Protocols among ERC, PEMC, and the IMO company shall be set to enable the ERC to have direct access to the unit and committee that are responsible for market monitoring, and enforcement and compliance, in support to the discharge of the ERC's functions under EPIRA.

## 10. RESULTING STRUCTURES AND RELATIONSHIPS

- 10.1.1. **PEMC and the IMO.** The powers and functions of the IMO company will be exercised through its own board of directors. The supervision and monitoring by the PEM Board over the IMO company will be as defined in the WESM Rules and market manuals, and in their operating agreement. The PEM Board or its committees or the PEMC officers and staff, in general, will not take part in the management of the business and day-to-day operations of the IMO.
- 10.1.2. **PEMC, IMO, and the DOE.** DOE shall continue to have policy oversight over both PEMC and the IMO company. It has the mandate to promulgate WESM Rules and market manuals. While it will have no participation in the day-to-day operations of both PEMC and the IMO company, it will approve the performance standards required to be fulfilled by the IMO company. It is also proposed that the rules for nomination and election of the board of directors of the IMO company be also approved by the DOE, but it will not have a participation in the actual nomination or elections in order to preserve the IMO company's private and independent nature.

- 10.1.3. **PEMC, IMO, and the ERC.** ERC's mandate with respect to the IMO company and PEMC and the market in general are as defined in the EPIRA and EPIRA IRR. This includes the approval of the price-related methodologies and the market fees that will be collected from market participants. The WESM Rules and market manuals also define reporting obligations of the Market Operator and the PEM Board.
- 10.1.4. **PEMC, IMO, and the National Grid Corporation of the Philippines (as System Operator).** The relationship among these entities will be as defined in the law, and in the WESM Rules and market manuals, and other rules, regulations and issuances.
- 10.1.5. **PEMC, IMO and the WESM Members.** PEMC and the IMO will be the legal counterparty to the Market Participation Agreement (the "MPA"). Currently, the MPA confirms the registration of the participant as WESM member and serves to authorize its participation in the WESM. Neither PEMC nor the IMO, however, are counterparties to trades in the WESM.
- 10.1.6. Direct WESM Members are eligible to become members of PEMC, and will have the rights and obligations associated with such membership, and which are different from and are in addition to their rights and obligations as WESM members. Some amendments in the WESM registration process will have to be implemented to more clearly define the boundaries of the WESM registration and PEMC membership.
- 10.1.7. The IMO company as the market operator has obligations to the WESM members as are defined for the Market Operator in the WESM Rules and operating agreement.

## 11. REQUIREMENTS FOR IMPLEMENTATION OF THE TRANSITION

### 11.1. Requirements for Joint Endorsement

- 11.1.1. **Constitution of PEMC Membership/Membership Meeting.** PEMC membership was formally constituted. Constitution of PEMC's membership was necessary in order to comply with the requirement in the By-Laws that the joint endorsement shall be upon majority vote of the members with voting rights. As mentioned previously, only sectoral members of PEMC have voting rights.
- 11.1.2. Under the PEMC By-Laws, only WESM members that belong to the generation, distribution, supply and transmission sectors qualify to become PEMC Members, but they must first register and qualify as WESM Members and thereafter register as members of PEMC.<sup>78</sup> PEMC membership is thus not automatic upon registration as WESM member.

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<sup>78</sup> PEMC By-Laws, Article V, Section 1 reads –  
*Eligibility and Registration as Member. Only WESM Members are eligible to become Members of the Corporation subject to the WESM Rules and these By-Laws. A WESM Member shall first register and qualify under the WESM Rules and thereafter register as Member of the Corporation in accordance with these By-Laws.*

- 11.1.3. Formal registration of PEMC members was thus implemented, and thereafter, a membership meeting was called on 06 February 2018 to (a) approve amendment of the PEMC Articles of Incorporation and By-Laws, and (b) endorse the transfer to the IMO company of PEMC's functions, assets and liabilities as Market Operator.
- 11.1.4. **PEM Board Approval.** Prior to the membership meeting, the PEM Board has approved the IMO Transition Plan and the endorsement for the formation of the IMO company, as well as the necessary amendments of the PEMC Articles of Incorporation and By-Laws.
- 11.1.5. **DOE Approval.** DOE's endorsement was made through the issuance of Department Circular No. 2018-01-0002 entitled "*Adopting Policies for the Effective and Efficient Transition to the Independent Market Operator for the Wholesale Electricity Spot Market*".<sup>79</sup>
- 11.1.6. **Election of regular PEM Board Members.** With the approval of the transition, the regular members of the Board of Directors of PEMC will also have to be elected at the regular or annual meeting of the PEMC membership that will be held after the approval of the transition. Annual PEMC membership meeting is scheduled every third Wednesday of June.

## 11.2. Amendments

- 11.2.1. Some amendments to the WESM Rules and the PEMC Articles and By-Laws are necessary to implement the proposed transition.
- 11.2.2. **WESM Rules.** Amendments to the WESM Rules require approvals of the PEM Board and the DOE. Amendments may include, but shall not be limited, to the following:
- a. Composition of the PEM Board. While change in the composition of the PEM Board is not necessary to transition to the IMO, it may be desirable to change the allocation of seats to increase the number of independent directors.
  - b. Composition and functions of the WESM governance committees. As mentioned in paragraph 5.3.6, the functions and composition of the governance committees may be reviewed and possibly re-organized around the major governance processes that PEMC will perform as WESM governing body.
  - c. Functions of the governance units within PEMC, namely, the Market Assessment Group and the Enforcement and Compliance Office. Amendments of the rules pertaining to these two units may **[be]** have to be made to align with corresponding changes in the functions of the committees.
- 11.2.3. **PEMC Articles of Incorporation and By-Laws.** Amendments to these documents require approval by the PEM Board and the PEM Membership. Amendments include, but shall not be limited, to the following:

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<sup>79</sup> Department of Energy Circular No. 2018-01-002 (promulgated on 18 January 2018) entitled "*Adopting Policies for the Effective and Efficient Transition to the Independent Market Operator for the Wholesale Electricity Spot Market*".

- a. Primary and secondary purposes. These statements of purposes shall be revised to align to PEMC's functions as WESM governing body and to exclude functions relating to market operations. Amendment shall also include its designation as Central Registration Body and Renewable Energy Registrar, and its functions in the renewable energy market that will be established by the DOE.
- b. Composition of the Board of Directors. Should it be decided to change the distribution of seats between the independent directors and the stakeholder directors, the By-Laws will also need to be amended.
- c. Composition of Board Committees. The provisions in the By-Laws on the Committees of the Board will need amendment to align with corresponding changes in the WESM Rules.

### 11.3. Incorporation and Organization of the IMO company

11.3.1. **Incorporation and Initial Capitalization.** The incorporation of the IMO company shall be initiated by the DOE and the PEM Board. The initial capitalization of the IMO company will be minimal and will be from contributions of the incorporators that will be selected.

11.3.2. **Selection of Incorporators and Initial Directors.** The incorporators and initial directors of the IMO company shall be selected from nominees submitted by the PEM Board. All persons that will be selected must be independent, and meet the qualifications as set in Section 7.2.1 of this Plan. Except for the person that will be elected as IMO President, no person shall be selected to be a PEM Board member and IMO director and incorporator at the same time.

11.3.3. **Transfer of PEMC Personnel.** To ensure continuity of WESM operations, the PEMC personnel that are currently handling market operations-related functions and positions will be transferred to the IMO company. Transfer shall be subject to conditions that will ensure compliance with labor laws and regulations, and the IMO company's qualification standards for its personnel. Transfer shall be effective on the same date that the IMO company assumes the market operator functions of PEMC.

### 11.4. Re-Organization of PEMC

11.4.1. The transition will necessarily result in a re-organization of PEMC. This will entail the following:

- a. *Election of PEM Board members.* Upon transition, the Board of Directors of PEMC will be elected by the PEMC members and will no longer be appointed by the DOE. Among the activities for the transition will then include the election of PEMC's regular board members.
- b. *Re-organization of the governance committees.* This may require dissolution and reorganization of the current governance committees.
- c. *Re-organization of remaining PEMC staff.* PEMC's table of organization will need to be revised given the transfer of its market operations functions to the IMO company, as well as the changes in the governance processes and the re-organization of the governance committees.

11.4.2. **Retention of PEMC Personnel.** While re-organization of PEMC is expected, the PEMC units currently handling market assessment, market governance

administration, and enforcement and compliance functions, as well as support service functions will be retained. This is to ensure continuity of the performance of PEMC's governance functions. Any reorganization will be implemented in compliance with prevailing labor laws and regulations.

## 11.5. Completion of Transition from AGMO to the IMO

- 11.5.1. The transition from the AGMO to the IMO is deemed to have been completed upon completion of the following:
- a. Formal endorsement by the PEM Board and the PEMC members of the transition;
  - b. Promulgation and publication of the DOE Circular approving the transition;
  - c. Amendment of the Articles of Incorporation and By-Laws of PEMC; and
  - d. Amendment of the WESM Rules and market manuals relevant to the transition.
  - e. Incorporation and organization of the IMO, and assumption of the IMO Board;
  - f. Execution of the operating agreement between PEMC and the IMO.

## 12. IMPLEMENTATION PHASES

12.1. The transition is to be implemented in several phases.

12.1.1. **Preparations.** Preparations will include the following activities:

- a. presentation to and consultations with the WESM members, the PEM Board and the DOE, and finalization of the Transition Plan based on comments from the DOE, the PEM Board and the PEMC Members;
- b. formal endorsement of the Transition Plan by the PEM Board and the WESM Members, which includes the constitution of PEMC membership and holding of special membership meeting;
- c. public consultations on, promulgation and publication of the DOE department circular formally endorsing the Transition Plan.

12.1.2. Endorsement by the WESM Members, in accordance with the PEMC By-Laws will require constitution of the PEMC membership and holding of a special membership meeting for a vote on the endorsement. Pursuant to the PEMC By-Laws, majority of the voting rights is required to pass the endorsement.<sup>80</sup>

12.1.3. The final output of the preparations phase will be the:

- a. IMO Transition Plan that is approved by the PEM Board, PEMC Members, and the DOE. The approved Transition Plan will then be the document that will be formally endorsed by the DOE and the electric power industry participants.
- b. Formal endorsement by the PEM Board and the PEMC Members through formal resolutions passed in meetings called for this purpose; and
- c. DOE Circular formally endorsing the Transition Plan.

12.1.4. **Phase 1.** This phase will involve the following:

- a. Amendment of the PEMC Articles of Incorporation and By-Laws;

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<sup>80</sup> The PEMC Special Membership Meeting during which this Transition Plan was approved and endorsed by the PEMC members was held on 06 February 2018.

- b. Incorporation of the IMO company; and
- c. Amendment of the WESM Rules and market manuals.

12.1.5. Incorporation of the IMO will require selection of the incorporators and the initial Board of Directors, who must all be independent. The process for selection of the incorporators and initial IMO Board shall be as set out in Section 11.3.2 of this Plan.

12.1.6. **Phase 2.** Phase 2 will begin after the necessary approvals of the WESM Rules amendments and amended PEMC Articles of Incorporation and By-Laws are obtained, and after the IMO has been incorporated and organized. This phase will involve setting up the organization of the IMO, the reorganization of the PEM Board and governance committees and support staff, and the actual transfer of functions and personnel to the IMO.

12.2. **Timeline.** As shown in the Table below, the preparatory activities were implemented from November 2017 to February 2018. The subsequent activities are envisioned to follow the timeline presented in the following table.

**Table 3 – Implementation Timeline**

Activity/Month	Nov-2017	Dec-2017	Jan-2018	Feb-2018	Mar-2018	2Q-2018
<b>PREPARATIONS</b>						
<b>Consultations</b>						
Publication of proposed IMO Transition Plan in market information website; and dissemination to various stakeholders.						
Consultations on the proposed IMO Transition Plan with DOE, PEM Board WESM Members and other stakeholders						
Public consultations on the DOE Circular						
<b>Joint Endorsement</b>						
Constitution of PEMC Membership.						
Special meeting of PEM Board and of PEMC Membership to endorse Transition Plan						
Promulgation and publication on DOE Circular endorsing the Transition Plan						
<b>PHASE 1</b>						
<b>WESM Rules Amendments</b>						
Preparation of WESM Rules amendments.						
Endorsement to Rules Change Committee/Posting for public consultation.						
RCC deliberations and approval.						
PEM Board approval.						
DOE approval and promulgation.						
<b>Incorporation of the IMO</b>						
Preparation of documents (Articles & By-Laws)						
Selection of incorporators and initial board members.						
Filing with SEC/ SEC approval						

Activity/Month	Nov-2017	Dec-2017	Jan-2018	Feb-2018	Mar-2018	2Q-2018
<b>Amendment of PEMC Articles and By-Laws</b>						
Preparation of amended Articles and By-Laws.						
Special membership meeting to amend Articles and By-Laws (same meeting to endorse Transition Plan).						
Filing of amended Articles and By-Laws with SEC/SEC approval.						
<b>Other Government Approvals</b>						
Application with the BIR for tax ruling or issuance on the tax status of PEMC and the IMO.						
Other government approvals						
<b>PHASE 2</b>						
Organization of the IMO.						
Regular/Special Membership Meeting of PEMC to elect new PEMC Board of Directors.						
Organization of WESM committees – nomination, selection and appointment.						
Execution of Operating Agreement by PEMC and IMO.						
Selection and transfer of personnel and offices to IMO.						
Re-organization of remaining PEMC staff.						