

AMENDED BY LAWS
OF THE
PHILIPPINE ELECTRICITY MARKET CORPORATION

ARTICLE I
DECLARATION OF PURPOSES

Section 1. Purpose. The purposes of the Philippine Electricity Market Corporation are those set forth in its Articles of Incorporation.

Section 2. ~~Operation and Management~~ Governance of the WESM. The Corporation's primary concern is to govern and manage the Wholesale Electricity Spot Market ("WESM") in an efficient, competitive and transparent manner, with the equitable participation of its members and with the end view of improving the trading, delivery and provision of electricity and ancillary services to the Philippine Electric Power Industry Participants to ensure a competitive, efficient, transparent and reliable market for electricity where:

- a) A level playing field exists among WESM Participants within the spot market;
- b) Trading of electricity is facilitated among WESM Participants within the spot market;
- c) Third parties are granted access to the power system in accordance with the EPIRA;
- d) Prices are governed as far as practicable by commercial and market forces; and
- e) Efficiency is encouraged.

(As amended on 06 February 2018)

Section 3. Operation and Governance of the Renewable Energy Market and the Retail Electricity Market. The Corporation shall operate and manage the Renewable Energy Market and exercise and perform the power and duties of the Renewable Energy Registrar pursuant to the Renewable Energy Act and its implementing rules and regulations, as well as operate and govern the Retail Electricity Market in accordance with the Retail Rules. (As amended on 06 February 2018).

ARTICLE II
DEFINITIONS

Section 1. Defined Terms. Unless the context otherwise specifies or requires, capitalized terms used in these By-Laws shall have the respective meanings assigned herein and those assigned to it in the WESM Rules Applicable Laws and the Articles of Incorporation (as hereinafter defined) for all purposes of these By-Laws (such definitions to be equally applicable to both the singular and the plural forms of the terms defined). Unless otherwise specified, all references

to Articles and Sections are to Articles and Sections of these By-Laws. As used in these By-Laws: (As amended on 06 February 2018).

a) "Applicable Laws" shall mean the EPIRA, ~~EPIRA IRR Rules~~, ~~WESM the Rules~~, Renewable Energy Act, the Renewable Energy Act IRR, the Codes, and such other relevant laws, rules or regulations, including all amendments thereto enacted by the Republic of the Philippines, including all government and administrative agencies, institutions and regulatory bodies. (As amended on 06 February 2018).

b) "Articles of Incorporation" shall mean the Articles of Incorporation of the Corporation.

c) "Board" shall mean the board of directors of the Corporation.

d) "By-Laws" shall mean the By-Laws of the Corporation.

e) "Codes" shall mean the Grid Code and the Distribution Code, and their respective amendments.

f) "Corporation" shall mean the Philippine Electricity Market Corporation.

g) "Director" shall mean a member of the Board.

h) "Distribution Code" shall have the meaning ascribed to it in the WESM Rules.

i) "DOE" shall mean the Department of Energy.

j) "EPIRA" shall mean Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001, and any of its amendments. (As amended on 06 February 2018).

k) "~~EPIRA Rules-IRR~~" shall mean the implementing rules and regulations promulgated to implement the EPIRA, and any of its amendments. (As amended on 06 February 2018).

l) "ERC" shall mean the Energy Regulatory Commission.

m) "Grid Code" shall have the meaning ascribed to it in the WESM Rules.

n) "Member" shall mean a person or an entity that satisfies the requirements for being a Member of the Corporation and is admitted as a member of the Corporation.

o) “Renewable Energy Act” shall mean Republic Act No. 9513, otherwise known as the Renewable Energy Act of 2008, and any of its amendments. (As amended on 06 February 2018).

p) “Renewable Energy Act IRR” shall mean the implementing rules and regulations promulgated to implement the Renewable Energy Act, and any of its amendments. (As amended on 06 February 2018).

q) “Renewable Energy Market” shall mean the market for the trading of renewable energy certificates that is established by the DOE pursuant to the Renewable Energy Act. (As amended on 06 February 2018).

r) “REM Rules” shall mean the rules promulgated to govern the operations of the Renewable Energy Market. (As amended on 06 February 2018).

s) “Retail Electricity Market” shall mean the electricity market wherein contestable customers exercise their ability to choose suppliers of electricity. (As amended on 06 February 2018).

t) “Retail Rules” shall mean the rules promulgated to govern the operations of the Retail Electricity Market, and any of its amendments. (As amended on 06 February 2018).

u) “Rules” shall collectively mean the WESM Rules, the REM Rules and the Retail Rules, and any amendments thereto. (As amended on 06 February 2018).

v) “SEC” shall mean the Philippine Securities and Exchange Commission.

w) “Secretary” shall mean the Corporate Secretary of the Corporation.

x) “Spot Market Commencement Date” shall mean the date on which the electricity spot market commences operations as declared by the DOE.

y) “Supplier” shall mean any person or entity authorized by the ERC to sell, broker, market or aggregate electricity to end-users. (As amended on 06 February 2018).

z) “WESM” shall mean the Philippine Wholesale Electricity Spot Market.

aa) “WESM Member” shall have the meaning ascribed to it in the WESM Rules.

bb) "WESM Rules" shall mean the rules jointly promulgated on 28 June 2002 by the DOE and the Electric Power Industry Participants to govern the operation of the WESM as mandated by the EPIRA and any amendments thereto.

ARTICLE III

NAME AND LOCATION

Section 1. Name. The name of the Corporation and the name under which it shall conduct business is "Philippine Electricity Market Corporation."

Section 2. Place of Business. The Corporation's principal office shall be located ~~in~~ at the 18th Floor, Robinsons Equitable Tower, ADB Avenue, Ortigas Center, Pasig City Metro Manila, Philippines. The Corporation may also have offices at such other places within or outside Metro Manila, Philippines as the Board may from time to time determine or the business of the Corporation may require. (As amended on 06 February 2018).

ARTICLE IV

GOVERNING LAW

Section 1. Incorporation of Applicable Laws. The provisions of Applicable Laws are deemed incorporated into these By-Laws.

Section 2. Conflicts. In case of conflicts between these By-laws and the Applicable Laws, the latter shall prevail and the Corporation shall amend, if necessary, these By-Laws to conform to the Applicable Laws.

Section 3. Reference to Government Agencies. Any reference to a government body or agency shall include offices, agencies and bodies which will succeed the authority and responsibilities of the offices, agencies and bodies named herein, including those offices, agencies and/or bodies which shall be created in the future that will oversee or require compliance of the Corporation.

ARTICLE V

MEMBERS

Section 1. Eligibility and Registration as Member. Only Direct 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 a Member of the Corporation in accordance with these By-Laws. (As amended on 06 February 2018).

Section 2. Classification of Members. Membership in the Corporation shall be of two (2) classes – Individual Members and Sectoral Members. The Sectoral Members are further classified under Section 3 of this Article. Only individuals who are qualified to be elected as directors of the Corporation in accordance with the WESM Rules and these By-Laws shall be eligible to become Individual Members. An Individual Member may transfer his or her membership only to another qualified Individual Member. The Individual Members shall be issued Individual

Membership Certificates and shall execute such documents as may be required by the Board before assuming directorship in the Corporation, including but not limited to declarations of trust, deeds of assignment and sworn undertakings.

Section 3. Classification of Sectoral Members. The Sectoral members shall be classified into the following sectors (each "Sector"):

- a) Generation Sector, which shall be composed of WESM Members that are Generation Companies and such other similar persons or entities as determined by Applicable Laws to be part of the Generation Sector;
- b) Transmission Sector, which shall be composed of the National Transmission Corporation and its concessionaire and other entities as determined by Applicable Laws to be part of the Transmission Sector;
- c) Distribution Sector, which shall be composed of WESM Members that are Distribution Utilities and such other similar persons or entities as determined by Applicable Laws to be part of the Distribution Sector; and
- d) Supply Sector, which shall be composed of WESM Members that are Suppliers, directly-connected end-users, ~~Bulk consumers, End users, Metering Service Providers~~ and such other similar persons or entities as determined by Applicable Laws to be part of the Supply Sector. ~~Except for persons or entities that may be allowed to join more than one Member Sector, a WESM Member that is not part of the Generation, Transmission or Distribution Sector shall be a part of the Supply Sector.~~ (As amended on 06 February 2018).

~~Membership in a Sector may only be transferred to transferees who are qualified and registered as WESM Members and belong to the same Sector as that of the transferor in accordance with the By-Laws.~~ (As amended on 06 February 2018).

Section 4. Criteria and Procedure. The criteria and procedure for becoming a Member of the Corporation and to which Sector/s one belongs shall be determined by the Board in accordance with WESM Rules.

A WESM Member may join more than one Sector provided that said WESM Member is qualified and registered in such Sector under Applicable Laws.

Section 5. Certificates. Each ~~WESM~~ Member shall be entitled to one (1) certificate for each Sector to which it belongs. The certificates shall contain the matters required by the Corporation Code and the Articles of Incorporation. They shall be in such form and design as may be determined by the Board and numbered consecutively. The certificates, which must be issued in consecutive order, shall bear the signature of the President, manually countersigned by the Secretary or Assistant Secretary and sealed with the corporate seal.

Notwithstanding the number of certificates issued to it, a Member shall have voting rights determined in accordance with Article VIII, Section 9. (As amended on 06 February 2018).

In case any certificate is lost, stolen or destroyed, a new certificate may be issued in lieu thereof in accordance with the procedure prescribed by the Board.

No assignment of a Membership Certificate ~~(including by Individual Membership Certificates)~~ shall be valid and binding with respect to the Corporation, unless the assignment is properly recorded in the books of the Corporation. (As amended on 06 February 2018).

Section 6. Representative of a Sectoral Member. All the rights and obligations of a Sectoral Member in a connection with its membership in the Corporation shall be exercised and performed by its duly appointed representative. Each Sectoral Member may submit and recommend only one authorized representative. Whenever a vacancy in the position occupied by the authorized representative occurs by reason of any cause, the successor shall be named in accordance with the procedure to be determined by the Board. The Sectoral Member shall be fully liable for the acts of its duly authorized representative.

Section 7. Sectoral Member in Good Standing. Only Sectoral Members in good standing shall be counted in determining a quorum at regular or special meetings of the Members and shall be eligible to vote thereat, except in matters and/or cases as may be provided by the Corporation Code or Applicable Laws. In order to be in good standing, a Sectoral Member must comply with all the duties and obligations of a Member as determined by the By-Laws and the Board and all the duties of a WESM Member under the WESM Rules. A Sectoral Member shall be considered a Member in good standing if it is not suspended, has not filed for cessation of WESM membership or has not been deregistered in accordance with the WESM Rules. The Board shall make the final determination on whether a Sectoral Member is considered a Member of good standing.

Section 8. Duties of Members. A Member shall have the following duties:

a) To pay the registration fee, membership dues and service fees, special assessment, market or transaction fees and such other fees that the Corporation may charge from time to time, including any interest that may be imposed or which may be levied on the Sectoral Members by the Board;

b) To satisfy and continue to satisfy its requirements for becoming a Member and a WESM Member, including its Prudential Requirements, under the WESM Rules;

c) To comply with technical requirements that may be imposed by the Corporation or the Market Operator or imposed pursuant to the Applicable Laws; (As amended on 06 February 2018).

d) To submit agreements, documents, information, approval and/or licenses deemed necessary by the Corporation or the Market Operator; (As amended on 06 February 2018).

e) To attend all meetings, consultations and seminars that may be called by the Corporation and/or its various committees, the Market Operator, the System Operator, the DOE, the ERC and such other relevant government agencies;

f) To obey and comply with the By-Laws, the Applicable Laws, committee guidelines, procedures and regulations, and such other rules and regulations as may be promulgated by the Board; and.

g) To comply with all the requests and directions issued by the Market Operator and the System Operator especially in times of market suspension and intervention as defined in the WESM Rules.

Section 9. Non-vested rights of Members and Non-Profit Nature of Corporation. Except upon dissolution, no Member shall have any vested right in or to the assets or franchise of the Corporation. The Corporation shall not pay dividends or other corporate income to its Members.

Section 10. Dissolution of the Corporation. In the event that the Corporation will be dissolved in accordance with the requirements of the Corporation Code and Applicable Laws, the Sectoral Members and the DOE- shall jointly formulate a plan of dissolution that ensures the continuity in the operation of the WESM, the Retail Electricity Market and the Renewable Energy Market. (As amended on 06 February 2018).

ARTICLE VI

FEES AND DUES

Section 1. Membership Fee. Each Sectoral Member shall pay a membership fee in an amount as may be determined pursuant to the WESM Rules or prescribed by the Board.

Section 2. Membership Dues and Special Assessments. Regular membership dues and/or special assessments in an amount prescribed by the Board may be collected from every Member, as may be necessary, to defray the administration and operational expenses of the Corporation and to fund any research and/or study programs. The membership dues and special assessments shall be payable on the indicated due date without need of demand.

Section 3. Budgets. The Board shall prepare and obtain the necessary approvals of the annual statements, budget of expenditure and revenue requirements, and such other reports in accordance with the ~~WESM Rules~~ Applicable Laws. (As amended on 06 February 2018).

~~Section 4. Contributions. The Corporation may raise funds for its programs and activities, through contributions, donations and/or other activities.~~

~~Section 5. Market Fees. Subject to the WESM Rules, the Board in coordination with the Market Operator, may from time to time assess and collect from each Sectoral Member, reasonable amounts, hereinafter referred to as Market Fees which shall include but are not limited to:~~

- ~~a. Registration fees, comprising an annual fee payable by each WESM Member for the category or categories in which they are registered;~~
- ~~b. Metering fees to recover the Market Operator's budgeted revenue requirements for the collection, storage and processing of Metering Data;~~
- ~~c. Billing and Settlement fees, to recover the Market Operator's budgeted revenue requirements for providing the billing and settlements service provided to the Members;~~
- ~~d. Administration fees, to recover the remainder of the Market Operator's budgeted revenue requirements not covered by the membership fees, membership dues, metering fees and Billing and Settlement fees;~~
- ~~e. Costs reasonably incurred by the Board and the committees and working groups that the Board may create under these By Laws and the WESM Rules; and.~~
- ~~f. Other service fees which the Board may impose such as Reserve Cost Recovery Charges and information dissemination charges.~~

~~Section 65. Default in Payment. A Sectoral Member is in default of payment when it fails to pay in full any of the necessary fees, assessment and dues payable to the Corporation on the day they fall due without need for further demand. The Board shall have the authority to determine the appropriate interest rates in an amount not to exceed the Default Interest Rate under the WESM Rules shall apply. A Sectoral Member who defaults in payment shall not be considered a Member in good standing under Article V, Section 7. (As amended on 06 February 2018).~~

~~Section 76. Exemptions. The Board shall have the power to grant exemptions to certain Members from payment of any fees, dues or assessments payable to the Corporation, provided that such exemptions are not inconsistent with the Applicable Laws WESM Rules. (As amended on 06 February 2018).~~

~~Section 87. Obligations Following Transfer of Membership. Notwithstanding the reason for a transfer of membership, the Sectoral Member, until the transfer is recorded in the books of the Corporation, shall continue to be liable to the Corporation such as, but not limited to, the payment of dues and Market Fees. (As amended on 06 February 2018).~~

ARTICLE VII.
SUSPENSION AND DEREGISTRATION OF MEMBERS

Section 1. *Suspension and Deregistration.* A member may be declared a Member not in good standing by being suspended or deregistered, if it commits a breach of any of the Applicable Laws, the Articles of Incorporation, these By-Laws or such rules and regulations that may be promulgated by the Board. Grounds for suspension or deregistration of membership include non-payment of any fees, dues, and any amounts payable to the Corporation or the Market Operator. (As amended on 06 February 2018).

Section 2. *Procedure.* The procedure as found in the WESM Rules on suspension and deregistration of WESM Members shall be observed in the suspension and deregistration of a Member. The Board may order immediate suspension or deregistration (effective upon receipt of notice by the Member) in cases where it is required to prevent damage or further damage to the System, to another Member, to the WESM, or to such other entities.

Section 3. *Delegation.* Under the power to delegate given to the Board in Article IX, Section 2, suspension and deregistration may also be enforced through the Market Operator and Dispute Resolution Arbitrator or Panel as prescribed in the WESM Rules.

ARTICLE VIII
MEETINGS OF MEMBERS

Section 1. *Annual Meetings.* The annual meetings of the Members shall be held at the principal office of the Corporation or at any place designated by the Board of Directors in the city or municipality where the principal office of the Corporation is located every third Wednesday of June of each year. The President shall present his annual report to the Members regarding the activities of the Corporation. (As amended on 06 February 2018).

Section 2. *Special Meetings.* Special meetings of the Members shall be called as the need thereof arises by (i) the Chairman of the Board, or (ii) a majority vote of all the members of the Board. The meeting shall be held in the principal office of the Corporation or at any place designated by the Board of Directors in the city or municipality where the principal office of the Corporation is located. (As amended on 06 February 2018).

Section 3. *Notices.* Notices of the time and place of annual and special meetings of the Members shall be given either personally, by special delivery mail, by registered mail, by electronic mail, by facsimile, such other modes of delivery approved by the Board, or by publication in two (2) newspapers of general circulation not less than fifteen (15) days before the date of the meeting.

The notice shall include the agenda of the meeting, the background of matters and items for discussion, the proposed resolution of management for each item and such other information that are relevant to enable the Members to vote on a matter or item.

When the meeting of Members is adjourned to another time or place, it shall not be necessary to give any notice of the adjourned meeting if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken. At the reconvened meeting, any business may be transacted that might have been transacted on the original date of the meeting.

Section 4. Closing of Books. Only Sectoral Members in good standing (as defined under Article V, Section 6 I) at least five (5) days before the date of any meeting of the Members shall be counted for purposes of quorum and allowed to vote at the said meeting. (As amended on 06 February 2018).

Section 5. Quorum. The presence, by the authorized representative or proxy, of Sectoral Members in good standing having a majority of the Voting Rights of all Sectoral Members in good standing (as computed in **Article VIII, Section 9**) shall constitute a quorum and a majority of the Voting Rights of those present and voting shall constitute a valid corporate act, except in matters and/or cases where the Corporation Code or Applicable Laws require the affirmative vote of a greater number. A smaller number of Voting rights insufficient to constitute a quorum shall adjourn the meeting to another time.

Section 6. Order of Business. The order of business at the annual meeting of the Members shall be as follows:

- a) Proof of service of the required notice of the meeting.
- b) Determination of Voting Rights.
- c) Proof of the presence of a quorum.
- d) Reading and approval of the minutes of the previous annual meeting.
- e) Unfinished business.
- f) Report of the President.
- g) Election of the Directors, if applicable.
- h) Other matters.

Section 7. Conduct of Meeting. Meetings of Members shall be presided over by the Chairperson, or in the absence thereof, by the President, or if none of the foregoing is present and acting, by a chairperson to be chosen by the Members. The Secretary shall act as Secretary of every meeting, but if not present, the chairperson of the meeting shall appoint a secretary of the meeting.

Section 8. Voting Proxy. Each Sectoral Member in good standing shall be entitled to vote either through its authorized representative or by proxy. Proxies shall be in writing, dated, signed by the authorized officer of the Sectoral Member and received by the Secretary at least three (3) days before the scheduled meeting. It shall be valid only for the meeting for which it is intended, unless otherwise provided in the proxy. Proxies submitted by facsimile shall be conditionally accepted by the Secretary and the Sectoral Member's proxy is required to validate the proxy form by submitting the original copy at least one (1) hour before the scheduled meeting. Failure to timely validate shall render the proxy as invalid and the Sectoral Member shall not be counted for quorum purposes and neither shall it be entitled to vote.

Section 9. *Voting Rights.* A Sectoral Member in good standing shall vote in accordance with its Voting Rights as determined in this Section. An Individual Member shall have no Voting Rights. A Sectoral Member's Voting Rights is equivalent to the number of votes it can cast during the meeting. Voting Rights are not consistent and are determined at the start of every meeting.

The Total Voting Rights allocated to each Sector are computed as follows:

a) A Voting Factor shall be determined by applying the following procedure:

i. The Secretary shall within five (5) business days prior to a regular or special meeting of the Members determine the number of Sectoral Members in good standing in each Sector.

ii. The Secretary shall thereafter multiply the number of Sectoral Members in good standing in each Sector and the product thereof shall result in the Voting Factor.

By way of example, given that:

Generation Sector has 3 members in good standing,
Transmission Sector has 1 member in good standing,
Distribution Sector has 25 members in good standing,
Supply Sector has 20 members in good standing,

Voting Factor = $3 \times 1 \times 25 \times 20$

Voting Factor = 1,500

b) Unless otherwise determined and agreed upon by a majority of the Sectoral Members within a Sector pursuant to subsection (c) below, the number of Voting Rights of a Sectoral Member in good standing within a particular Sector shall be determined as follows:

i. For the Generation Sector

(i) Obtain the total number of Megawatts (MW) owned, operated or controlled by all Sectoral Members in good standing within the Generation Sector as provided in the Certificate of Compliance issued by the ERC ("the Total MW");

(ii) Divide the number of MW owned, operated or controlled by each Sectoral Member in good standing in the Generation Sector by the Total MW ("the MW Quotient");

(iii) Multiply the MW Quotient of each Sectoral Member in good standing within the Generation Sector by the Voting Factor to obtain the number of Voting Rights for each Sectoral

Member in good standing within the Generation Sector rounded off to the nearest one.

By way of example, assuming that:

Voting Factor:	1,500
Generator A:	100MW
Generator B:	200MW
Generator C:	300MW

Then:

Total MW = 600MW
MW Quotient for Generator A = $100/600 = .1666666$
MW Quotient for Generator B = $200/600 = .3333333$
MW Quotient for Generator C = $300/600 = .5000000$

Voting Rights for Generator A = $.1666666 \times 1,500 = 250$
Voting Rights for Generator B = $.3333333 \times 1,500 = 500$
Voting Rights for Generator C = $.5000000 \times 1,500 = 750$

ii. For the Distribution Sector

- (i) Voting Factor shall be divided equally between Distribution Utilities that are not Electric Cooperatives ("Distribution Sub-sector 1") and Electric Cooperatives ("Distribution Sub-sector 2");
- (ii) For Distribution Sub-sector 1, their Voting Rights shall be allocated as follows:
 1. Obtain the total number of customers, served by all Sectoral Members in good standing within the Distribution Sector 1 as determined in the latest documents filed with the ERC fifteen (15) days prior to the scheduled meeting (the "Total Customers");
 2. Divide the number of customers served by each Sectoral Member in good standing within the Distribution Sub-sector 1 by the Total Customers (the "Customer Quotient");
 3. Multiply the Customer Quotient of each Sectoral Member in good standing within the Distribution Sub-sector 1 with the Voting Factor of the Distribution Sub-sector 1 to obtain the number of Voting Rights for each Sectoral Member in good standing with the Distribution Sub-sector 1 rounded off to the nearest one.

By way of example, assuming that:

Voting Factor: 1,500

Distribution Utility A ("DU A") 100,000 Customers
Distribution Utility B ("DU B") 200,000 Customers
Distribution Utility C ("DU C") 300,000 Customers

Then:

Voting Factor for Sub-sector 1 750

Total Customers = 600,000
Customer Quotient for DU A = $100,000/600,000 = .166$
Customer Quotient for DU B = $200,000/600,000 = .333$
Customer Quotient for DU C = $300,000/600,000 = .500$

Voting Rights for DU A = $.166 \times 750 = 125$
Voting Rights for DU B = $.333 \times 750 = 250$
Voting Rights for DU C = $.500 \times 750 = 375$

(iii) For Distribution Sub-sector 2, their Voting Rights shall be allocated as follows:

1. Obtain the number of Sectoral Members in good standing in Distribution in Distribution Sub-sector 2;
2. Divide the Voting Factor allocated to Distribution Sub-sector 2 by the Number 2 by the number of Sectoral Members in good standing:

By way of example, assuming that:

Voting Factor: 1,500

Sectoral Members in good standing in Distribution Sub-sector 2 = 22

Then

Voting Factor for Sub-sector 2 = 750
Voting Rights per Sectoral Member in good standing of Distribution Sub-sector 2 = $\frac{750}{22} = 34$

iii. For the Transmission Sector

by dividing the Voting Factor by the number of Sectoral Members in good standing within the Transmission Sector.

By way of example, assuming the figures under the example in Sub-section a(ii) of Section 9 of Article VIII.

$$\begin{array}{lcl} \text{Number of Voting Rights of each} & & 1,500 \\ \text{Sectoral Member on good standing of} & = & \text{-----} = 1,500 \\ \text{the Transmission Sector} & & 1 \end{array}$$

iv. For the Supply Sector

by dividing the Voting Factor by the number of Sectoral Members in good standing within the Supply Sector:

By way of example, assuming the figures under the example in Subsection a(ii) of Section 9 of Article VIII,

$$\begin{array}{lcl} \text{Number of Voting Rights of each} & & 1,500 \\ \text{Sectoral Member in good standing of} & = & \text{-----} = 75 \\ \text{the Transmission Sector} & & 20 \end{array}$$

- c) The Sectoral Members within a Sector may establish and agree on a different formula for determining the Voting Rights within their Sector or Sub-sector. In such event, the Sector or Sub-sector must submit to the Secretary of the Corporation such formula within six (6) months from the date of incorporation of the Corporation, which formula shall form part of these By-Laws. Failure of the Sector or Sub-sector to submit an agreed formula within the prescribed period shall automatically mean that the formula provided in subsection (b) shall apply.

Section 10. Indivisibility of Voting Rights. Unless otherwise agreed upon by the Sectoral Members within a Sector as provided in Article VIII, Section 9 of these By-Laws, the number of Voting Rights for each Sectoral Member shall be indivisible for all purposes (whether for proxies, quorum determination or voting) under these By-Laws. Notwithstanding the foregoing, the Members of the Transmission Sector shall not be allowed to divide their Voting Rights for all purposes (whether for proxies, quorum determination or voting) under these By-Laws.

Section 11. Voting Requirements. Each Sectoral Member in good standing shall have such number of votes as its Voting Rights determined under Article VIII, Section 9.

Subject to the limitations under the WESM Rules, a Sectoral Member's right to vote shall consist of the following:

- a) The right to vote on matters presented before the Members for resolution;

- b) The right to be nominated as representative to the Board;
- c) The right to nominate a Sectoral representative to the Board (in accordance with Article VIII Section 12) and vote for the same; and
- d) The right to nominate and vote for the Independent Directors of the Board.

Section 12. Nomination and Election of Directors. In the event a meeting of the Members includes the election of directors, and unless otherwise provided in the nomination and election rules as determined by the Board, the following procedure shall be followed:

12.1. Nomination of Directors by Sector. Each Sector shall have the right to nominate individuals representing the Sector to which they belong. The number of nominees from each sector shall be limited to the number of representatives per Sector as provided under Article IX, Section 3 hereof and the WESM Rules. For avoidance of doubt, in the Distribution Sector, the number of nominations will be divided equally between Electric Cooperatives and Distribution Utilities that are not Electric Cooperatives.

If a Sectoral Member is represented or nominated in more than one Sector, the Sectoral Member must choose to which Sector it will field a representative and withdraw or decline the nomination in the other Sectors.

12.2 Nomination of Independent Directors. Any Sectoral Member from any Sector may nominate individuals for Independent Directors. The current Board shall determine whether such nominees are qualified to be Independent Directors under the WESM Rules. The incumbent Independent Directors, who may be eligible for re-election, shall not participate in the preparation and determination of the list of nominees for Independent Directors.

12.3. Nomination of Director for the Market Operator. The Market Operator shall nominate an individual to be its representative to the Board.

12.4 Nomination of Director for the Transmission Sector. The Transco and/or Buyer Concessionaire shall nominate an individual to be its representative to the Board.

12.5 Dissemination of the List of Nominees. Except as provided for under Sections 12.3 and 12.4, the Secretary shall, at least thirty (30) days prior to the election, send out the list of nominees, including copies of the nomination forms and other similar documents, to all Members by personal delivery, ordinary mail, electronic mail, facsimile or courier.

12.6. Election of Directors. On the day of the election, the Secretary shall prominently display the list of nominees to all the Members. Directors shall be voted upon at large with Sectoral Members casting their votes in accordance with their number of Voting Rights. The nominees with the highest number of Voting Rights obtained shall become Directors, provided that the Board composition under Article IX, Section 3 is achieved. In the event of a tie, a run-off election shall be held between the nominees who are tied.

12.7 Default Nominee. Unless otherwise provided in the nomination and election rules prescribed by the Board, in the event that a Sector fails to provide its list of nominees for Directors forty-five (45) days prior to the date of the election, the incumbent directors/representing the Sector shall become the default nominee/s for that particular sector.

Section 13. Manner of Voting. As a general rule, voting shall be by ballot. Voting by the Sectoral Members entitled to vote may be obtained by considering the following as valid votes cast at a meeting duly called for its purpose:

- a) votes cast by the representative of Sectoral Members actually present; and
- b) votes cast by Sectoral Members acting through their valid proxies.

For votes cast by way of proxies, the Sectoral Members are required to use the standard forms issued by the Corporation.

ARTICLE IX

BOARD OF DIRECTORS

Section 1. General Powers. The business and affairs of the Corporation shall be managed by the Board, which shall exercise all the powers of the Corporation. The Board shall have all such powers and perform all such functions as are necessary for it to govern the WESM, and perform its functions in the Retail Market and Renewable Energy Market, including the power to issue rules and regulations to clarify and implement the ~~WESM~~ Rules. However, in the exercise of its powers, the Board cannot contravene the provisions of the ~~WESM~~ Rules, the Codes, and the Applicable Laws. (As amended on 06 February 2018).

Section 2. Delegation of Powers. The Board may delegate any of its functions, obligations and powers to a committee or other entity in circumstances where the Board may deem appropriate. Working groups or entities that the Board shall create or delegate functions to, in accordance with the ~~WESM~~ Rules, include but are not limited to the following: (As amended on 06 February 2018).

- a) The PEM Auditor or auditing committee to conduct audits of the WESM and the Market Operator, the Renewable Energy Market and the Retail Electricity Market; (As amended on 06 February 2018).

b) The Market Surveillance Committee to monitor and report on activities in the WESM;

c) The Technical Committee to monitor and review technical matters as required and may be relevant in the WESM Rules and the Codes;

d) The Rules Change Committee to assist the DOE in relation to any amendments in the WESM Rules;

e) The Dispute Resolution Administrator ~~and its committee~~ to facilitate the mediation of disputes between or among Members or between the Corporation and any WESM Member, or any Retail Market participant, or any Renewable Energy Market participant; and (As amended on 06 February 2018).

f) Such other committees or working groups required to be created under the Rules, or as the Board may deem necessary to assist in the performance of its functions or that of the Corporation. (As amended on 06 February 2018).

Section 3. *Composition of the Board of Directors.* The Board may shall be composed of fifteen (15) members. Unless otherwise amended by the WESM Rules, the Board shall consist of:

a) One (1) Director nominated by and representing the Market Operator;

b) One (1) Director nominated by and representing the Transmission Sector;

c) Four (4) Directors nominated by and representing the Distribution Sector, two (2) of whom shall be nominated by and shall be representing the Electric Cooperatives, and the other two (2) nominated by and representative of the remaining Distribution Utilities who are not Electric Cooperatives;

d) One (1) Director who is nominated by and a representative of the Supply Sector;

e) Four (4) Directors who are nominated by and are representatives of the Generation Sector; and

f) Four (4) Independent Directors elected in accordance with the WESM Rules and these By-Laws.

g) In no event shall a company, firm or business have more than one representative in the Board within the same Sector and neither shall a company, firm, or business which is already represented in the Board in one Sector be

represented by an individual in any other Sector regardless of whether the company, firm or business has interests or is a Member in more than one Sector.

Section 4. Qualifications and Disqualifications of Directors. The qualifications and disqualifications of Directors, including Independent Directors, are those provided in the WESM Rules and other Applicable Laws.

Section 5. Undertaking. Before a Director can assume office, each Director shall be required to execute an undertaking to faithfully fulfill the duties of a Director in a form to be prescribed by the Board.

Section 6. Chairperson. The Board shall, during a regular or special meeting, elect the Chairperson from among themselves. ~~who must be an Independent Director.~~ (As amended on 06 February 2018).

Section 7. Term of Office. Except for the interim directors of the Corporation, the Directors so elected shall hold their office for a term of ~~one (1)~~ three (3) years and until their successors are duly elected and qualified. (As amended on 06 February 2018).

Section 8. Disclosure Requirement. A Director or the entity such Director represents who has a direct or indirect material or pecuniary interest in a matter being considered before the Board is required to disclose such interest and such relevant details thereof to the Board. Disclosure shall be made at the earliest possible time to properly address issues on conflict of interest. In such a situation, the disclosing Director shall (i) not be counted for purposes of determining quorum for discussing such disclosed matter; (ii) not be present during the deliberations of the disclosed matter, and (iii) not vote on the disclosed matter. For purposes of determining whether a quorum exists under the foregoing situation, the following formula will be applied: (As amended on _____ 2018)

$$\frac{\text{Total Number of Directors} - \text{Number of disclosing Director(s)}}{2} + 1$$

For purposes of determining the required majority vote, the following formula will be applied:

$$\frac{\text{Total Number of Directors Present} - \text{Number of disclosing Director(s)}}{2} + 1$$

Section 9. Removal of Directors by Referendum. A Director may be removed by at least two-thirds (2/3) of the Voting Rights of the Sector such Director represents and by the vote of the Sectoral Members holding at least two-thirds (2/3) of the Voting Rights of all the Members of the Corporation, at any regular or special meeting of the Members of the Corporation. Any vacancy created by such removal shall be filled upon nomination of a replacement Director by the relevant Sector and by the election of a majority of the Voting Rights of all the Sectoral Members; provided that the composition of the Board under Article IX, Section 3

is maintained. The director so elected shall serve the unexpired terms of the replaced director.

Section 10. Vacancies. Except as herein above provided, any other vacancies occurring in the Board either by resignation, death or incapacity, shall be filled upon nomination of a replacement Director by the relevant Sector and by a majority vote of the remaining Directors, if still constituting a quorum, at a regular meeting duly called and held for the purpose. The director so elected shall serve the unexpired terms of the resigning, incapacitated, or deceased director, provided that the composition of the Board under Article IX, Section 3 is maintained.

Section 11. Quorum. The presence of two-thirds (2/3) of the Directors shall constitute a quorum at any meeting of the Board. A majority vote of those present in the meeting shall be sufficient to pass a resolution, except the election of officers which requires a majority of all the Directors.

Section 12. Meetings. Regular meetings of the Board shall be held at least once a month at such dates and at such time and places as the Board may determine. Special meetings of the Board may be called by the Chairman, or in his absence, by the President, or by at least eight (8) Directors.

Section 13. Notices. Notice of meetings shall include the date, time, place and agenda of the meeting and shall be sent to the Directors by the Secretary at least five (5) days prior to the scheduled meeting, unless the notice requirement is waived by the director. Notice may be delivered personally, by registered mail, electronic mail, facsimile or such other mode of delivery provided that receipt thereof shall be completed at least three (3) days prior to the scheduled meeting.

When the meeting of the Board is adjourned to another time or place, it shall not be necessary to give any notice of the adjourned meeting if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken. At the reconvened meeting, any business may be transacted that might have been transacted on the original date of the meeting.

Section 14. Presence at Meetings. Directors are required to be personally present during the meetings of the Board. Attendance by proxy is not allowed. Personal presence is considered complied with if a Director participates and witnesses the entire meeting by way of video or telephone conferencing and such other technology, provided that the Secretary shall record the entire proceedings of the meeting and indicate the modes through which the Directors are present. This provision shall be consistent with the regulations which may be issued by the SEC from time to time.

Section 15. Public Consultation. Whenever consultation with the Members or a Sector is required by the WESM Rules or the Applicable Laws, the following procedure shall be followed by the Corporation in addition to the procedure laid out in the WESM Rules.

- a) Notice thereof shall be published in at least two (2) newspapers of national circulation;

b) Notices shall also be sent to the relevant Sectoral Members either by personal delivery, by registered mail, email, facsimile, through the Electronic Communication System or such other mode of delivery determined by the Secretary;

c) Notices shall contain as far as practicable the proposed guidelines, structure, market fees, procedures and/or the relevant details of the matter to be implemented;

d) Notices shall invite written comments on the matter pending;
and

e) Notices shall indicate the deadline for the submission of the written comments.

In addition to the written submissions discussed immediately above, the Corporation, through the Board, may, at its option, hold a meeting or forum with the Sectoral Members and interested third parties to discuss further the matter to be implemented. The meetings shall be held at dates and places as the Board may determine.

Comments received by the Corporation shall be reviewed, but the Corporation shall not be bound to incorporate and implement the comments and suggestions received.

For actions taken under this Article IX, Section 15, the Corporation shall prepare a report consistent with the WESM Rules.

Section 16. Compensation. No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to the Members, Directors, officers or third persons, except that the Corporation may be authorized and empowered to (i) pay reasonable compensation for services rendered by such Directors, officers or third persons as may be allowed by the Members; and (ii) make payments and distributions in furtherance of the purposes set forth in its Articles of Incorporation. In no case shall the total yearly compensation of directors exceed ten percent (10%) of the net income before income tax of the Corporation during the preceding year.

ARTICLE X

OFFICERS

Section 1. Officers. The officers of the Corporation are the President, ~~Vice President~~, Secretary, Treasurer, and such other officers as may from time to time be determined by the Board. (As amended on 06 February 2018).

Section 2. Election and Term of Office. The officers mentioned in Article X, Section 1 of these By-Laws shall be elected by the majority vote of all Directors at the organizational meeting of the Board held immediately after the annual meeting of the Members. The officers so elected shall hold office for a term of ~~one~~

(4) three (3) years and until their successors shall have been elected and qualified. If the election of officers cannot be held at such meeting, the election shall be held thereafter as soon as it is convenient and practicable. Only the Board can elect officers of the Corporation. (As amended on 06 February 2018).

Section 3. Compensation. The officers of the Corporation who are not Directors may receive such compensation as may be determined by the Board.

Section 4. Removal of Officers. Any officer of the Corporation may be removed by a majority vote of all the Directors whenever in its judgment the interests of the Corporation will be best served thereby.

Section 5. President. The President who should be an Independent Director shall exercise such powers and perform such duties incident to his office and such other duties as may from time to time be delegated to him by the Board. Among others, the President shall: (As amended on 06 February 2018).

- a) Preside at meetings of the Members and the Board, if the Chairperson is not present;
- b) Represent the Corporation in all activities to which it is a party or participant;
- c) Prepare and submit, in consultation with the appropriate officers and committee, a yearly program of activities, an annual report of activities and operations of the Corporation to the Members at the annual meeting;
- d) Prepare and submit to the Board such statements, reports, memoranda and accounts as may be requested by the latter; and
- e) Organize and supervise work groups among the Members.

~~Section 6. Vice-President. The Vice President who should also be a Director, shall, in the absence or the disability of the President, perform the duties of the President and such other duties as the Board may from time to time prescribe.~~

Section 7 ~~6~~. Treasurer. The Treasurer shall have the following duties: (As amended on 06 February 2018)

- a) Have charge and custody of and be responsible for the funds of the Corporation;
- b) Disburse the funds of the Corporation, for specific purposes authorized by resolution of the Board;
- c) Be responsible for keeping the financial records of the Corporation and the liquidation of any and all accounts, liabilities and obligations owing to the Corporation;

d) Monitor all delinquencies and send notices and/or demand letters to Members for overdue payments of fees and dues owing to the Corporation;

e) In general, perform all the duties incident to the office of the Treasurer and such other duties as may from time to time be assigned to him/her by the Board; and

f) Post a bond in such amount as may be fixed by the Board.

Section 8 7. *Secretary*. The Secretary, who must be a resident and citizen of the Philippines, shall: (As amended on 06 February 2018)

a) Record and keep the minutes of the meetings of the Members and the Board, in one or more books provided for this purpose;

b) Issue, sign and deliver all notices in accordance with these By-Laws;

c) Keep all corporate records and the seal of the Corporation which shall be affixed to such instruments as may be required and thereupon be attested by his/her signature or that of the Treasurer;

d) Maintain and update the Corporation's membership book;

e) Keep a registry of the names and postal addresses of all the Members;

f) Provide each Member a copy of the By-Laws and all amendments thereto, when requested; and

g) In general, perform all duties incident to the office of the Secretary and such other duties as may from time to time be assigned by the Board.

Section 9 8. *Appointment of Other Officers*. The Board shall elect such other officers of the Corporation as it may deem necessary. (As amended on 06 February 2018).

ARTICLE XI

TRANSITORY PROVISIONS

Section 1. *Incorporating Directors*. The incorporating Directors shall hold office until the Interim Board is duly elected under Art. XI, Section 2 below.

Section 2. *Interim Board*. At any time after the SEC issues a certificate of registration of the Corporation, the directors of the Interim Board shall be appointed by the DOE Secretary in accordance with the required composition of the Board

having regard to the expertise necessary for the Board to carry out its functions. The Interim Board shall hold office until one (1) year after the Spot Market Commencement Date ("Interim Period"). Pursuant to the WESM Rules, the Secretary of Energy shall be the ex-officio chairman of the Interim Board.

Section 3. TRANSCO or its Subsidiary as Market Operator. Pursuant to EPIRA, TRANSCO or any of its subsidiaries (as may be directed by TRANSCO) shall enter into an Operating Agreement to perform the functions of the Market Operator until the appointment of an Independent Market Operator.

Section 4. Expiration of Interim Period. Upon the expiration of the Interim Period, TRANSCO or its Market Operator Subsidiary shall transfer its functions, assets and liabilities to the Independent Market Operator with 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.

Section 5. Applicability of Provisions. The other provisions of these By-laws including those on voting and conduct of meetings, shall apply, *mutatis mutandis*, during the Interim Period.

ARTICLE XII

MISCELLANEOUS

Section 1. Fiscal Year. The Fiscal Year of the Corporation shall be 1 January to 31 December of each year. The Treasurer shall cause to be made a full and complete audit of the book, accounts and financial condition of the Corporation. Such audit shall be made available for inspection by the Members.

Section 2. Seal. The Corporation shall have an official and common seals as may be determined by the Board.

Section 3. Board Rules and Regulations. The Board shall have the power to promulgate such rules and regulations consistent with Applicable Laws.

Section 4. Dispute Resolution. In the event of any dispute arising between (i) Members of the Corporation, (ii) between the Directors and the Members of the Corporation, or (iii) Directors, such disputes shall first follow the Dispute Resolution Procedure provided under the WESM Rules.

Section 5. Amendments. These By-Laws or any portion or provision hereof may be amended, repealed or otherwise changed, in any manner not contrary to Applicable Laws and the Articles of Incorporation at a meeting of the Members duly called and held for that purpose by a majority vote of the Board constituting a quorum and the ratification by at least a majority of the total Voting Rights of the Sectoral Members entitled to vote, provided, that notice of such meeting whether regular or special, shall contain a fair statement of the proposed amendments.

Section 6. Separability. If any provision of these By-laws is declared unconstitutional, illegal or invalid, it shall not affect the validity of other provisions which have not been so declared unconstitutional, illegal or invalid and such provisions shall continue to be binding and effective.

Section 7. Adoption of the By-Laws. The foregoing by-laws are adopted by all incorporators of the Corporation on Nov. 13, 2003 at the principal office of the Department of Energy in the Municipality of Taguig, Metro Manila.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, we the undersigned incorporators present at said meeting and voting thereat in favor of the adoption of said by-laws, have hereunto subscribed our names this Nov 2003 at the Municipality of Taguig, Metro Manila.

Vincent S. Perez Secretary of Energy	Froilan A. Tampinco
Maria P. Garcia	Rizalino G. Santos
Rolando T. Bacani	Tomas B. Vivero
Wilhelm G. Ortiz	Wendell V. Ballesteros
Jesus P. Francisco	Crisanto R. Laset, Jr.
Dennis P. Gonzales	Samson P. Javellana