

Republic of the Philippines  
ENERGY REGULATORY COMMISSION  
Pasig City

IN THE MATTER OF THE  
APPLICATION FOR THE  
APPROVAL OF THE MARKET  
FEES FOR CALENDAR YEARS  
2025 TO 2027 FOR THE  
PHILIPPINE WHOLESALE  
ELECTRICITY SPOT MARKET  
(WESM)

ERC CASE NO. 2024-109 RC

INDEPENDENT  
ELECTRICITY MARKET  
OPERATOR OF THE  
PHILIPPINES, INC. (IEMOP)  
AND PHILIPPINE  
ELECTRICITY MARKET  
CORPORATION (PEMC),  
*Applicants.*

Promulgated:  
September 19, 2024

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ORDER

On 05 September 2024, Independent Electricity Market Operator of the Philippines, Inc. (IEMOP) and Philippine Electricity Market Corporation (PEMC) filed the instant *Joint Application*, dated 23 July 2024, seeking the Commission’s approval of the level of Market Fees for Calendar Years (CYs) 2025 to 2027 for the Philippine Wholesale Electricity Spot Market (WESM), with motions for the issuance of provisional authority and confidential treatment of information.

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

I. COMMON ALLEGATIONS

1. This is an Application jointly filed by IEMOP and PEMC for the approval of the level of market fees for the Calendar Years (CY) 2025 to 2027 pursuant to Section 30 of Republic Act No. 9136, also known as the "Electric Power Industry Reform Act of 2001" or "EPIRA" which reads, in part, as follows:

*"The cost of administering and operating the wholesale electricity spot market shall be recovered by the market operator through a charge imposed on all members: Provided, That such charge shall be filed with and approved by the ERC."<sup>1</sup>*

2. Applicant IEMOP is a non-stock, non-profit corporation duly organized and existing in accordance with Philippine laws, with principal office at the 9<sup>th</sup> Floor Robinsons-Equitable Tower, ADB Avenue corner Poveda Street, Ortigas Center, Pasig City. Applicant is represented herein by its President and CEO, Atty. Richard J. Nethercott, who is duly authorized by the IEMOP Board of Directors to file this Application jointly with PEMC and represent the Applicant IEMOP in all stages of the proceedings, as evidenced by the Secretary's Certificate dated 16 January 2024 containing IEMOP Board Resolution No. 2024-01-002, attached as Annex "A" and made an integral part of this Application;
3. Applicant PEMC is a non-stock, non-profit private corporation duly organized and existing in accordance with the laws of the Philippines with principal office address at the 18<sup>th</sup> Floor Robinsons Equitable Tower, ADB Avenue, Ortigas Center, Pasig City. It is represented in this Application by its President, Elvin Hayes E. Nidea, who has been duly authorized by Applicant PEMC's Board of Directors ("PEM Board") to file this Application jointly with IEMOP and represent Applicant PEMC in all stages of the proceedings, as evidenced by the Secretary's Certificate dated 03 July 2024 with PEM Board Resolution No. 2024-72-04 hereto attached as Annex "B".

Timeliness of Filing the Application

4. In the Decision dated 30 January 2008 in the CY 2007 Market Fees (MF) Application of PEMC, the Honorable Commission directed the filing of the market fee application "not later than the first working day of July of the current year. xxx";
5. On 26 June 2024, the Applicants filed a Motion for Additional Time praying for an additional period of thirty (30) days from 01 July 2024, or until 31 July 2024, within which to file the Joint Application considering the need to collate the relevant documents and comply with the pre-filing requirements, such as the publication of the application and the service thereof on the local city council, as prescribed under the Honorable Commission's Rules of Practice and Procedure;
6. This Application is thus filed within the reglementary period requested;

Authority to File Application for Approval of Market Fees

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

7. Section 30 of Republic Act No. 9136, otherwise known as “*An Act Ordaining Reforms in the Electric Power Industry, amending for the Purpose Certain Laws and for Other Purposes (EPIRA)*”, provides that the cost of administering and operating the wholesale electricity spot market shall be recovered by the market operator through a charge applied to all market members: Provided, that such charge shall be filed with and approved by the ERC. A copy of Republic Act No. 9136 is attached herein as Annex “C” and made an integral part of this Joint Application;
8. Clause 2.10.2.3 of the WESM Rules provides that the proposed structure and level of market fees shall be developed by the Market Operator, subject to approval by the PEM Board prior to filing with the Honorable Commission for final approval;
9. Clause 2.10.4 of the WESM Rules further provides for the components of 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, as described in chapter 3; (d) Administration fees, to recover the remainder of the Market Operator's budgeted revenue requirements not covered by (a), (b), (c) and (d); and (e) Costs reasonably incurred by the PEM Board and the committees and working groups that the PEM Board appoints under the WESM Rules.
10. Applicant PEMC joins the Application considering its substantial interest over the subject matter of the case, i.e., as the owner of the market fees pertaining to it. This is because the market fees being sought to be approved by this Honorable Commission cover the budget and revenue requirements of both Applicants, as the market operator and governing body of the WESM;
11. The IEMOP Board of Directors likewise approved Applicant IEMOP's budgetary requirements and authorized the joint filing of the application with Applicant PEMC, which approval is evidenced by the Secretary's Certificate dated 16 January 2024 containing IEMOP Board Resolution 2024-01-003, a copy of which is hereto attached as Annex "A" and made an integral part of this Joint Application;
12. Pursuant to Section 30 of EPIRA and WESM Rules Clauses 2.10.2.3, 2.10.4, the PEM Board approved the budgets of IEMOP and PEMC for CY 2025 to 2027 and authorized the filing of the application before this Honorable Commission, as evidenced by the Secretary's Certificate dated 03 July 2024 containing PEM Board Resolution Nos. 2024-68-01 and

2024-72-03, attached hereto as *Annex "D"* and made an integral part of this Joint Application.

Mandates of Applicants IEMOP and PEMC

13. As the Independent Market Operator, Applicant IEMOP is responsible for performing the following functions:
  - (1) Market registration;
  - (2) Pricing and scheduling, including short-term load forecasting and the provision of the dispatch schedule to the System Operator;
  - (3) Billing, settlements, management of prudential requirements, meter data management and warehousing; and
  - (4) Monitoring of trading activities in the market, management of market data and provision of market data and reports.
14. Additionally, IEMOP renders Other Services as provided in Article V and Schedule 2 of the Operating Agreement for the performance of the following functions:
  - (1) as the Central Registration Body for the retail market;
  - (2) as the Metered Quantity (MQ) Reconciliation Agent under the Interim Mindanao Dispatch Protocol (IMDP);
  - (3) facilitate collection and payment of unpaid Interim Mindanao Electricity Market (IMEM) settlement transactions, pursuant to DOE Circular DOE DC2017-05-0009 and other relevant issuances of the DOE on the IMEM;
  - (4) training of Market Participants, PEMC, DOE, ERC, PCC and other stakeholders; and
  - (5) participant or customer support services to WESM participants aimed at facilitating their transactions in the WESM, including the (a) conduct of regular market participants update meetings, and (b) operation and maintenance of help desk facility to facilitate actions on participant queries and requests.
15. IEMOP also performs the functions of the Collection Agent under ERC Resolution No. 16, Series of 2010, adopting the FIT Rules.
16. Pursuant to Section 30 of the EPIRA, the Department of Energy (DOE) shall formulate the WESM Rules, that shall provide, among others, procedures for administering the market including the voting rights of the participants, surveillance and assurance of compliance of the participants with the rules and the formation of the WESM governing body. Since the transition to the IMO, Applicant PEMC remained as the governing body of the WESM and, as such, will continue to perform governance functions as mandated

under the EPIRA and those stated in the WESM Rules<sup>2</sup> as follows:

- (a) Oversee and monitor the activities of the Market Operator and the System Operator;
- (b) Form Committees in accordance with the WESM Rules;
- (c) Oversee and monitor the activities of the working groups;
- (d) In conjunction with the Compliance Committee and the Enforcement and Compliance Office, enforce the WESM Rules and Market Manuals;
- (e) Oversee the process by which changes to the WESM Rules are proposed;
- (f) Review and recommend changes to the WESM Rules and Market Manuals, as well as the adoption of new Market Manuals; and
- (g) Issue resolutions or advisories on any matter related to the WESM

Components of Market Fees

17. Clause 2.10.4 of the WESM Rules provides for the components of Market Fees, thus:

2.10.4 Components of Market Fees

The components of the market fees 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, as described in chapter 3;
- (d) Administration fees, to recover the remainder of the Market Operator's budgeted revenue requirements not covered by (a), (b), (c) and (d); and
- (e) Costs reasonably incurred by the PEM Board and the committees and working groups that the PEM Board appoints under the WESM Rules.

18. The performance by Applicant IEMOP of its mandate as the Independent Market Operator shall be covered by its proposed budget pertaining to components (a) to (d) as provided above, the breakdown of which is as follows:

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<sup>2</sup> Clause 1.4.5.2 of the WESM Rules.

OUTPUT	CY2025	CY2026	CY2027
Participant and Registration Support	41.03	41.10	41.77
Trading Operations *	134.78	143.33	152.32
Metering	30.24	32.69	33.27
Billing and Settlement	68.52	72.47	73.81
Information Systems and Technology	263.03	286.43	315.93
Administration **	64.47	66.41	68.42
<b>Total</b>	<b>602.07</b>	<b>642.43</b>	<b>685.52</b>

\*Dispatch Scheduling and Pricing/Forecasts and Projections/Market Development and Innovation  
\*\* IEMOP Board/Office of the President/ Legal Services/ Administrative Services/Corporate Finance/Internal Audit

19. The components of market fees prescribed in Clause 2.10.4 are performed by various IEMOP units whose principal functions are listed below –
- a. Participant and Registration Support– primarily responsible for registration processes and customer switching for RCOA and GEOP; training of Market Participants, PEMC, DOE, ERC, PCC and other stakeholders; and support services to WESM participants aimed at facilitating their transactions in the WESM;
  - b. Trading Operations- performs nodal demand forecasting for the 24x7 Real-Time Dispatch, Hour-Ahead, Day-Ahead and Week-Ahead Projections process; performs the 24x7 dispatch scheduling and provision of market nodal prices to Trading Participants; coordinates with the System Operator in real-time and in contingency planning activities to ensure market dispatch schedules are implementable; performs modeling functions to ensure accurate representation of the transmission system of the Luzon, Visayas, and Mindanao grids used by the Market Dispatch Optimization Model (MDOM); validates market results and pricing to guarantee the execution of manual market re-runs during intervals where input data errors might occur; performs market result analyses and ensures that market information is updated and published on the market information website; supports policy and market development initiatives to ensure a competitive, reliable, and transparent electricity market. It also includes the Market Development and Innovation Division which is responsible for the research and development of activities for electricity market solutions and market design initiatives.
  - c. Metering – responsible for communicating and reconciling with Wholesale and Retail Metering Services Providers (MSP), formulations and equations of metering data for energy calculation.
  - d. Information Systems and Technology includes

- i. Software Systems Operations – responsible for ensuring that the electricity market systems are working without errors 24x7 in support of the real-time operations of the WESM.
  - ii. Market Data and Software Product Development – responsible for the management of the software development projects, market data archiving and data backup, and maintenance of the market information website.
  - iii. Planning and Corporate IT Assets Management – responsible for monitoring and protecting all software against intrusion, malicious software, data theft and data corruption.
- e. Billing and Settlement
  - i. Billing – responsible for calculating the energy and reserve market for the monthly Trading Amounts and Market Fees for the issuance of Preliminary, Final and Adjustment Statements.
  - ii. Settlement – responsible for the collection and payment of the settlement amount for all WESM transactions, and monitors compliance of the market participants with the prudential requirements.
- f. Administration
  - i. Board of Directors – responsible for making major decisions and providing strategic direction to IEMOP Management to ensure the organization’s sustainability and longevity.
  - ii. Office of the President – provides overall leadership in the organization and direction for action of management and employees.
  - iii. Legal Department – provides overall legal assistance to various internal business units of the company and the IEMOP Board.
  - iv. Administrative Services
    - 1. Procurement Division – responsible for every activity involved in obtaining the goods and services a company needs.
    - 2. Fixed Asset and Material Management Division – responsible in planning and controlling fixed assets and material flows.

- 3. Human Resources Division – responsible for the manpower planning, recruitment, selection, placement and orientation.
- v. Corporate Finance Division – responsible for the preparation of budget for market fees application and its utilization, and financial management of Applicant IEMOP.
- vi. Internal Audit Department– provides an independent assurance to the Board and management.

The more detailed functions of the above units are described in the Proposed Budgetary Requirement attached herein as *Annex "F"* and is made an integral part of this Application;

- 20. Applicant PEMC's discharge of its mandate as the Governance Arm of the WESM shall be covered by its proposed budget pertaining to component (e) as provided above, which refers to "[c]osts reasonably incurred by the PEM Board and the committees and working groups that the PEM Board appoints under the WESM Rules", and also costs incidental to the performance of its function as the Governance Arm.
- 21. These costs are incurred by Applicant PEMC as it performs its mandates under the EPIRA, the WESM Rules, and other implementing rules and regulations issued by relevant government agencies, through the PEM Board and various WESM Governance Committees ("WGCs") established pursuant to the WESM Rules, as well as the organic departments and units within PEMC, as follows:
  - a. PEM Board of Directors – the governing body composed of equitable representation from the stakeholders and independent members responsible for decisions, policies and over-all exercise of corporate functions for the effective and efficient governance of the WESM.
  - b. WESM Governance Committees:
    - i. PEM Audit Committee – conducts audits of the operations of the spot market, the Market Operator, and Metering Service Providers
    - ii. Market Surveillance Committee – performs monitoring and assessment of the activities of the participants to ensure efficiency and competitiveness in the market.
    - iii. Technical Committee – monitors and reviews technical matters under and in relation to the WESM Rules, the Grid Code, and the Distribution Code
    - iv. Rules Change Committee – assists the PEM Board and the DOE in the formulation and amendment of



the WESM Rules, Retail Rules and Market Manuals.

- v. Dispute Resolution Administrator – facilitates the resolution of the disputes in the WESM and the Renewable Energy Market between or among the participants, MO, SO and the Governance Arm.
- vi. Compliance Committee –monitors the compliance of the market participants with the WESM Rules; supervises the conduct of enforcement and compliance proceedings including a review of investigations and recommendation of sanctions or penalties.

c. Organic Departments and Support Units

- i. Market Assessment Department – responsible for overall conduct of market monitoring and assessment and performance monitoring of the MO and Metering Services Providers;
- ii. Internal Audit Department – provides check and balance through an independent, risk-based, and objective audit
- iii. Enforcement and Compliance Department – performs compliance monitoring, investigation and establishes mechanisms to promote consultation and voluntary compliance by the participants.
- iv. Office of the President – provides overall organizational leadership; spearheads policy-making efforts, corporate management functions and high-level coordination and communications with external parties.
- v. Finance and Internal Relations Department – provides administrative support, such as human resources, finance, administrative services, procurement, records and materials management
- vi. Office of the Corporate Secretary – provides secretariat support to the PEM Board; ensures corporate compliance with regulations and implements Board directives
- vii. Legal Department –ensures PEMC’s compliance with regulations, manages legal risks and contracts, litigation, data privacy requirements and provides secretariat support to the DRA.
- viii. Information Systems and Technology Department (“ISTD”) – responsible for the over-all development and management of all IS/IT requirements.

22. Anent the registration fee in component (a), however, Applicants will no longer request approval of the imposition of registration fees for WESM Members considering the single market fee structure of the proposed budget.

Fixed Market Fee Charge

23. Section 6, Rule 9 of the Implementing Rules and Regulations of EPIRA underscores a fundamental requirement that the

Market Operator should be financially and technically capable. This is crucial in ensuring the efficient and effective operation and governance of the WESM. Ultimately, the financial capability of the Applicants, which serve as the Market Operator and Governance Arm of the WESM, relies entirely on their ability to recover costs through a charge imposed on all WESM participants or WESM transactions. To ensure the viability and integrity of the operation and governance of the WESM, the Applicants propose the approval of a Fixed Market Fee Charge which will cover the budgetary requirements of IEMOP and PEMC;

24. Such Application may be likened to the Honorable Commission's approval of rate-based applications, particularly of private utilities and electric cooperatives, where price and rate caps are imposed which consider the recovery of efficient expenditure and appropriate return, as well as incentives for good performance. These are translated to fixed rates that are charged to their respective customers or customer classes for a defined regulatory period. As provided under Section 43(f) of the EPIRA, the rates must be such as to allow the recovery of just and reasonable costs and a reasonable return on rate base (RORB) to enable the entity to operate viably. Therefore, the approval of a fixed market fee charge will provide better certainty in terms of availability of funds for intended programs and projects, as well as greater degree of flexibility to align with the goals set under their respective strategic planning activities and be better equipped to face the challenges of a highly dynamic electricity market.
25. A fixed market fee charge is likewise beneficial to the stakeholders, as it enables them to consider such charge in their financial planning and promote efficiency in their operations, particularly on the aspect of spending, which will ultimately benefit the consumers;
26. Procedurally, it will be observed that the approval process for previous market fee applications followed that used for rate applications, demanding strict compliance with the procedural requirements, particularly for the pre-filing requirements and the prescribed proceedings under the Honorable Commission's Rules of Practice and Procedure.
27. It should be noted that the imposition of a fixed rate for the market fees collection is not without precedent. In its Decision dated 16 March 2009, the Honorable Commission approved with modification the proposed level of market transaction fees for calendar years 2009-2011 for the Philippine WESM filed by PEMC and approved the imposition of a fixed market fee rate of PhPo.0144/kWh;
28. Thus, Applicants seek the approval of a fixed market fee rate which meets the requirements of transparency and non-discriminatory nature as mandated by the WESM Rules;

29. Applicants seek approval of a Fixed Market Fee Charge amounting to a total of PhP 0.0087/kWh, which will be allocated to IEMOP and PEMC as follows:

Fixed Market Fee Charge	PEMC Share	IEMOP Share
PhP 0.0087/kWh (100%)	PhP 0.0038/kWh (43.67%)	PhP 0.0049 (56.32%)

Bases for Calculation of Fixed Market Fee Charge

30. This is calculated based on (a) the projected generation metered quantities for CY 2025 to 2027 for Luzon, Visayas, and Mindanao generation companies and (b) the aggregate projected budgetary requirements of IEMOP and PEMC for CY 2025-2027, using the same formula for market transaction fee rate previously approved by the Honorable Commission, as follows:

Fixed Market Fee Charge  
(PhP/kWh)

=

Total CY 2025-2027 Budgetary  
Requirements (PEMC & IEMOP)

Total CY2025-2027 Projected  
Generation Metered Quantity  
(Luzon, Visayas, and Mindanao)

31. The calculation is based on the Luzon, Visayas, and Mindanao energy forecast for CY 2025-2027 as shown below:

Region	2021		2022		2023	
	Energy, GWh	Reserve, GW-hr	Energy, GWh	Reserve, GW-hr	Energy, GWh	Reserve, GW-hr
Luzon	70,157		74,358		77,653	
Visayas	14,264		14,346		15,310	
Mindanao	12,414		13,025		14,965	
Total	96,835		101,728		107,928	

Region	2024		2025		2026	
	Energy, GWh	Reserve, GW-hr	Energy, GWh	Reserve, GW-hr	Energy, GWh	Reserve, GW-hr
Luzon	82,576	16,086	87,811	16,309	93,379	16,592
Visayas	16,451	3,842	17,676	3,895	18,993	3,963
Mindanao	16,129	3,546	17,384	3,606	18,737	3,681
Total	115,156	23,474	122,872	23,810	131,109	24,236

Region	2027		2028		2029	
	Energy, GWh	Reserve, GW-hr	Energy, GWh	Reserve, GW-hr	Energy, GWh	Reserve, GW-hr
Luzon	99,299	16,893	105,594	17,259	112,289	17,551
Visayas	20,408	4,036	21,928	4,126	23,562	4,199
Mindanao	20,195	3,762	21,766	3,860	23,459	3,943
Total	139,902	24,691	149,289	25,244	159,310	25,693

Actual Data

Forecast Data

The energy is attached as Annex “E” and is made an integral part of this Application.

32. The projected total budgetary requirements of both IEMOP and PEMC, as approved by the PEM Board for 2025 to 2027, are as follows:

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Budget Component	PEMC, PhPM			IEMOP, PhPM		
	2025	2026	2027	2025	2026	2027
Personnel Services (PS)	206.76	218.04	229.98	259.30	271.94	284.64
Maintenance and Other Operating Expenses (MOOE)	207.90	240.42	273.71	297.72	307.62	317.18
Capital Expenditures (CAPEX)	57.17	45.00	33.54	45.05	62.87	83.70
TOTAL	471.83	503.46	537.22	602.07	642.43	685.52
Projected Volume, GWh (LVM)	122,872	131,109	139,902	122,872	131,109	139,902
Projected Market Fee Rate, (LVM)	0.0038	0.0038	0.0038	0.0049	0.0049	0.0049
Total Market Fee Charge	Phpo.0038/kWh			Phpo.0049/kWh		
TOTAL	Phpo.0087/kWh					

33.

As shown in the foregoing table, the projected budgetary requirements cover the following budget components:

a.

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

b.

*Maintenance and Other Operating Expenses (MOOE)* include, among other things, honorarium, rent, utilities, repairs and maintenance, contracted services, conference, insurance, advertising and promotion, taxes and dues, training, travel and transportation, materials and supplies and subscriptions;

c.

*Capital Expenditures (CAPEX)* consist of purchase, enhancements and upgrades to the market governance systems, corporate infrastructure, and purchase of service vehicles;

34.

The foregoing amounts are net of applicable taxes, such as corporate income and value added taxes and do not cover possible changes in expenses due to changes in law, rules or regulations, compliance with other regulatory requirements and other external factors.

35.

With respect to taxes, the proposed amounts are also without prejudice to the filing of a separate or supplemental application, if necessary, to cover payment for such taxes as may be further assessed by the BIR and / or adjudged by the Court of Tax Appeals (CTA), in light of BIR Ruling No. OT-323-2021 dated 24 August 2021. In the said Ruling, the Bureau of Internal revenue, among others, ruled that Applicant IEMOP is not a tax-exempt corporation under Section 30 of the NIRC, as amended, and that the market fees it collects from market participants to defray the cost of operations of the WESM is subject to income tax and, consequently, to withholding tax. Both IEMOP and PEMC have filed separate Petitions for Review to question the Ruling and their respective tax assessments, which are still pending with the Court of Appeals<sup>3</sup> as of the date of this Application.

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Applicant IEMOP filed a Petition for Review of the said Ruling with the Court of Tax Appeals, docketed as CTA Case No. 10885 and entitled “Independent Electricity Market Operator of the Philippines, Inc. v. Commissioner of Internal Revenue and Secretary of Finance”, where it is

36. As to the specific budgetary allocations falling within the aforementioned cost components, their details and justifications are discussed in the document hereto attached as *Annex "F"* and is made an integral part of this Application;
37. Applicants respectfully submit that the budgetary requirements for CY 2025-2027 is sufficiently indicative of the requirements of IEMOP and PEMC for the medium term, as these already consider the following:
  - a. Cost of administering and operating the WESM with two separate organizations performing market governance and market operations functions;
  - b. Organizational structures or tables of organization of the two organizations designed in accordance with their respective functions as envisioned by the two organizations, and not merely to accommodate the then existing manpower complement of PEMC;
  - c. Operation of the Reserve Market, as may be included in the proposed amendments to the Price Determination Methodology for approval of the Honorable Commission through a separate application;
  - d. Implementation of the Retail Competition and Open Access (RCOA) and Green Energy Options Program (GEOP) in Mindanao, and the Green Energy Auction Program of the DOE.
  - e. Applicants shall then file for adjustment of the Fixed Market Fee Charge and/or a separate application to cover the capital expenditure of new market developments as may be directed to be implemented by the Honorable Commission and/or the Department of Energy after the filing of this Application.

[II.] MOTION FOR ISSUANCE OF  
PROVISIONAL AUTHORITY

38. The factual allegations set forth above are re-pleaded in support of the Motion for Issuance of Provisional Authority;
39. As in any enterprise, sufficiency of resources is imperative considering the need to finance even the minimum requirements for a normal level of operation. Such need is more pronounced in a highly dynamic platform such as the WESM, which is being operated on a 24x7 basis and is highly critical to sustaining a transparent and competitive electricity market. To stress, the Applicants must be sufficiently capable of coping with a highly dynamic and progressive electricity

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pending as of date. In this connection, PEMC also has a pending tax dispute with the CTA on the tax treatment of the market fees, which is docketed as CTA Case No. 11493 and entitled "Philippine Electricity Market Corp. v. Commission of Internal Revenue."

market. When the resources are limited, such capability is significantly compromised. Indeed, Applicants IEMOP and PEMC, as the Market Operator and Governance Arm, respectively, of the WESM, must be assured of adequate financial support to enable both entities to perform their respective responsibilities under the EPIRA and the WESM Rules and market manuals;

40. The deficiency in the collection of market fees is very evident in the previous years, particularly for Calendar Years 2021 to 2022, as shown by the Variance Report, the pertinent portions of which are reproduced below:

INDEPENDENT ELECTRICITY MARKET OPERATOR OF THE PHILIPPINES					
(A Nonstock, Nonprofit Corporation)					
ATTACHMENT A					
ACTUAL AND BUDGETED REVENUES AND EXPENDITURES VARIANCE REPORT					
FOR THE YEAR ENDED DECEMBER 31, 2021					
(Amounts in millions)					
	Budget approved by ERC*	Allocated to IEMOP	Actual	Under (Over) Utilization	
				Amount	Percentage
MARKET FEE REVENUES	P486.442	P316.190	P316.190	P-	0%
EXPENDITURES					
Personnel Services (PS)	237.337	154.270	227.656	(73.386)	-47.570%
Maintenance and Other Operating Expenses (MOOE)	203.722	132.420	155.377	(22.957)	-17.337%
Capital Projects Expenditure (CAPEX)	45.383	29.500	1.650	27.850	94.407%
	486.442	316.190	384.683	(68.493)	-21.662%
Provision for Department of Energy/Energy Regulatory Commission (ERC) Monitoring Facilities	-	-	-	-	0%
DEFICIENCY OF APPROVED MARKET FEE REVENUES OVER EXPENDITURES	P-	P-	(P68.493)	(P68.493)	

\*Based on ERC-approved budget for 2017

Prepared by: 

INDEPENDENT ELECTRICITY MARKET OPERATOR OF THE PHILIPPINES					
(A Nonstock, Nonprofit Corporation)					
ATTACHMENT A					
ACTUAL AND BUDGETED REVENUES AND EXPENDITURES VARIANCE REPORT					
FOR THE YEAR ENDED DECEMBER 31, 2022					
(Amounts in millions)					
	Budget approved by ERC*	Allocated to IEMOP	Actual	Under (Over) Utilization	
				Amount	Percentage
MARKET FEE REVENUES	P448.966	P291.830	P291.830	P-	0%
EXPENDITURES					
Personnel Services (PS)	245.847	159.801	223.434	(63.633)	-39.820%
Maintenance and Other Operating Expenses (MOOE)	197.420	128.324	168.873	(40.549)	-31.599%
Capital Projects Expenditure (CAPEX)	5.699	3.705	7.064	(3.359)	-90.661%
	448.966	291.830	399.371	(107.541)	-36.851%
Provision for Department of Energy/Energy Regulatory Commission (ERC) Monitoring Facilities	-	-	-	-	0%
DEFICIENCY OF APPROVED MARKET FEE REVENUES OVER EXPENDITURES	P-	P-	(P107.541)	(P107.541)	

\*Based on ERC-approved budget for 2018

Prepared by: 



PHILIPPINE ELECTRICITY MARKET CORPORATION				
(A Non-stock, Non-profit Corporation)				
ATTACHMENT A				
ACTUAL AND BUDGETED REVENUES AND EXPENDITURES COMBINED VARIANCE REPORT				
For the Year Ended December 31, 2021				
(Amounts in millions)				
	Budget Approved by ERC*	Under (Over) Utilization		
		Actual	Amount	Percentage
Market Fee Revenues	P170.430	P170.430		
Expenditures				
Personnel services	83.250	120.706	(37.456)	-44.99%
Maintenance and other operating expenses	71.300	95.640	(24.340)	-34.14%
Capital projects expenditure	15.880	21.245	(5.365)	-33.79%
Provision for Department of Energy/Energy Regulatory Commission (ERC) Monitoring Facilities	-	0.561	(0.561)	0.00%
	170.430	238.153	(P67.723)	-39.74%
Excess of Expenditures over Approved				
Market Fee Revenues	P -	(67.723)	(67.723)	-39.74%
*Based on ERC-approved budget for 2017 authorized to be imposed in 2021 under ERC Case No. 2015-160 RC and PEMC Board Resolution No. 2019-10-14 on the allocation of 2019 & onwards Budgetary requirements between PEMC and IEMOP				

PHILIPPINE ELECTRICITY MARKET CORPORATION					
(A Non-stock, Non-profit Corporation)					
ATTACHMENT A					
ACTUAL AND BUDGETED REVENUES AND EXPENDITURES COMBINED VARIANCE REPORT					
For the Year Ended December 31, 2022					
(Amounts in millions)					
		Budget Approved by ERC*	Under (Over) Utilization		
	Notes		Actual	Amount	Percentage
Market Fee Revenues	2	P157.138	P157.138	P -	P -
Expenditures					
Personnel services	3	86.046	144.236	(58.189)	-67.63%
Maintenance and other operating expenses	3	69.097	100.139	(31.042)	-44.92%
Capital projects expenditure	3	1.995	6.364	(4.369)	-219.03%
Provision for Department of Energy/Energy Regulatory Commission (ERC) Monitoring Facilities	3	-	-	-	0.00%
		157.138	250.738	(93.600)	-59.57%
Excess of Expenditures Over Approved					
Market Fee Revenues		P -	(P93.600)	(P93.600)	-59.57%
*Based on ERC-approved budget for 2018 authorized to be imposed in 2022 under ERC Case No. 2017-095 RC and PEMC Board Resolution Nos. 2019-10-14 and 2019-14-06 on the allocation of 2019 & onwards Budgetary requirements between PEMC and IEMOP					

The copies of the above illustrated Variance Reports are attached herein as Annexes “I-1”, “I-2”, “J-1”, and “J-2”, respectively, and are made integral parts of the Application.

41. For calendar year 2023, the Honorable Commission, in its Order dated 04 December 2023 in the Market Fees Application docketed as ERC Case No. 2023-008 RC, authorized the Applicants to collect the MTF Level for calendar year 2023 amounting to Php615,756,631.37, or an indicative rate of Php0.00564/kWh. The amount in the interim relief is significantly lower than the amount sought for by the Applicants, amounting to Php1,016,660,000.00 in ERC Case No. 2023-008 RC.
42. Given the foregoing, the reliefs approved by the Honorable Commission remained indubitably insufficient compared to the proposed and actual utilization of the Applicants to maintain efficient operations. More importantly, it is respectfully submitted that the finality of the Decisions of the Honorable Commission approving the market fees

application for calendar years 2021, 2022, 2023 and 2024 remains pending as of date.

43. Since the two entities are incorporated as non-stock and non-profit private companies which are mandated to remain so by virtue of policy directive, each relies solely on the market fees as approved by the Honorable Commission for their revenue requirements. Given the substantial cuts and disallowances ordered in the recent issuances of the Honorable Commission in the preceding years' market fees applications, Applicants IEMOP and PEMC have both suffered and reported deficits as early as Calendar Year 2020, especially in light of the fact that the recently approved market fee levels are significantly lower than the amounts reported in the budget utilization reports submitted by Applicants IEMOP and PEMC for the relevant year. Copies of the Audited Financial Statements of Applicants IEMOP and PEMC for calendar years 2020 to 2022 are attached herein as Annexes "G" to "G-2" and "H" to "H-2", respectively. Also, copies of the Variance Reports of Applicant IEMOP for calendar years 2020 to 2022 are attached herein as Annexes "I" to "I-2" and Variance Reports of PEMC for calendar years 2020 to 2022 are attached herein as Annexes "J" to "J-2";
44. The objectives of the WESM are to establish a competitive, efficient, transparent and reliable market for electricity where: (a) a level playing field exists among WESM participants; (b) trading of electricity is facilitated among WESM participants within the spot market; (c) third parties are granted access to the power system in accordance with the EPIRA; (d) prices are governed as far as practicable by commercial and market forces; and (e) efficiency is encouraged. As the primary platform for electricity trading, the WESM likewise seeks to provide the avenue for consumers, particularly the distribution utilities and bulk users, to source their energy requirements. Paramount to the fulfillment of these objectives is the timely recovery of costs by the Applicants, as mandated under the WESM Rules and the EPIRA.
  - a. For financial support to undertake adequate and effective preparatory activities for market developments that are intended to be fully commercially operational in the immediate future, i.e., Renewable Energy Market, Retail Aggregation Program, GEAP, Electricity Derivatives Market and Capacity Market through policy and regulatory directives of the DOE, the Honorable Commission and other relevant government agencies.

In this regard, the Applicants have incurred and will continue to incur additional costs to ensure adequate preparations for these upcoming and ongoing market developments;
  - b. To finance regularly occurring expenses such as, but not limited to: (i) periodic replacement of office equipment



and appliances to allow the efficient discharge of the respective mandates of the Applicants, which were either deferred or foregone due to lack of budget; (ii) costs for the physical attendance by the Applicants' personnel to attend public consultations, conferences, meetings and other events where their participation is indispensable either as resource persons or where the Applicants' contributions are highly relevant to the subject matter; (iii) conduct of training sessions and discussions for the benefit of WESM stakeholders in various areas of the nation which is principally aimed to facilitate understanding and appreciation of the recent market developments, and to equip them to participate therein; (iv) increase in software license subscription and support services; and

- c. To enable the Applicants to be equipped to provide technical assistance and support to various WESM stakeholders, especially the DOE, the Honorable Commission and other government agencies. Notably, the performance by the Applicants of simulations, analysis and data provision, to name a few, for these stakeholders demand that the appropriate skills and technological capability is available in order for the Applicants to be able to provide a timely, intelligible and reliable report or submission;
45. Despite the insufficiency of the prevailing market fee to cover the budget requirements of Applicants each year, Applicants faithfully endeavor to carry out their functions effectively and efficiently, as well as fulfill their mandate under the WESM Rules in establishing a competitive, efficient, transparent and reliable market for electricity.
46. Although the Applicants have been suffering losses due to the deficiency in their respective budgets, they have no other option but to comply with their mandate in order to ensure the stability of the electricity market so that the consumers are supplied with enough electricity, which supports and stimulates economic growth.
47. Further, the fact that Applicants are non-stock, non-profit corporations should not and could not mean that they operate altruistically given the insufficient budget that they are running on. Without sufficient budget, Applicants will not be able to sustain their effective and efficient operations of the WESM and faithfully fulfill their mandate. At the current level of market fees, the Applicants may not even be able to sustain their normal operations of the WESM.
48. Thus, Applicants respectfully pray for the issuance of a provisional authority for Applicant IEMOP, as the Market Operator of the WESM, to impose the proposed market fee charge of PhP0.0038/kWh and PhP0.0049/kWh, respectively, or a total of PhP 0.0087/kWh to all generation companies registered in the WESM based on their actual

generation, in kWh, in behalf of the Applicants, to support their operation pending resolution of the instant Application.

*Compliance with the Pre-Filing Requirements*

49. In support of this Joint Application and the motion for issuance of provisional authority, Applicants herein submit Annex “WW” showing the list of supporting documents. Copies of these documents are attached and made integral parts thereof.
50. In compliance with the Checklist for Market Transaction Fees Application (Proposed Budget) of the WESM Reportorial Compliance and Rate Setting Section of the Market Operations Service-Spot Market Division of the Honorable Commission, and Rule 6 of the ERC Rules of Practice and Procedure, Applicants submit the supporting documents contained in Annex “WW” hereof.

*Motion for Confidential Treatment of Information*

51. Applicants respectfully move for the confidential treatment of the IEMOP Masterlist of Employees as of 31 December 2023 and 2024, PEMC Masterlist of Employees as of 31 December 2023, PEMC PS Budget Workfile for CYs 2025-2027 (excel file), PEMC Proposed Positions vs. Warm Bodies Workfile (excel file), PEMC Secretary’s Certificate dated 09 October 2020 containing the Compensation and Benefits Policy, Organization Assessment and Compensation and Benefits Review dated June 2018, and IEMOP List of Board and Committee Members with Honorarium Rate hereto attached as Annexes “Q”, “Q-1”, “Q-2”, “Q-3”, “R”, “R-1”, “S”, and “T” respectively, copies of which are submitted as password-protected files which form part of Applicants’ submission;
52. The cited documents should be accorded confidential treatment and protected from public disclosure, as well as kept separate from the records of this case during the pendency of the proceedings in the instant case, and after the termination thereof, for the following reasons: (i) the master list of employees which indicate the corresponding salary of the employee are confidential in nature and are subject to confidentiality provisions under the employment contract executed between the employer and employee; (ii) the Data Privacy Act (Republic Act No. 101073) ensures the protection of personal information from which the identity of an individual is apparent or can be reasonably and directly ascertained by the entity holding the information, or when put together with other information would directly and certainly identify an individual, such as those contained in the Master list of Employees of both Applicants IEMOP and PEMC; and (iii) the disclosure of the contents thereof may be a source of competitive advantage for the recipient of the information and Applicants IEMOP and/or PEMC will be vulnerable to pirating and loss of key personnel, or may become a basis for discontent and comparison among the relevant parties;

53. Further, in compliance with the requirement under Section 7, Rule 3 of the ERC Rules of Practice and Procedure, the pdf and MS Word files of the instant pleading are submitted as well as an MS Excel file of the rate computation. Meanwhile, the pdf files of the documents herein attached as annexes are submitted to the Honorable Commission.

**PRAYER**

WHEREFORE, premises considered, it is most respectfully prayed of this Honorable Commission:

- (i) to grant Applicants' prayer for the issuance of a provisional authority authorizing IEMOP, on behalf of the Applicants, to impose a MARKET FEE CHARGE of PhPo.0087/kWh to all generation companies registered in the WESM based on their actual generation, in kWh, pending resolution of the instant Joint Application;
- (ii) after due notice and hearing, to render judgment APPROVING PhPo.0049 as the proposed market fee charge for CY 2025 to 2027 for Applicant IEMOP;
- (iii) after due notice and hearing, to render judgment APPROVING PhPo.0038 the proposed market fee charge for CY 2025 to 2027 for Applicant PEMC;
- (iv) to confirm the confidentiality of the IEMOP Masterlist of Employees as of 31 December 2023 and 2024, PEMC Masterlist of Employees as of 31 December 2023, PEMC PS Budget Workfile for CYs 2025-2027 (excel file), PEMC Proposed Positions vs. Warm Bodies Workfile (excel file), PEMC Secretary's Certificate dated 09 October 2020 containing the Compensation and Benefits Policy, and the Organization Assessment and Compensation and Benefits Review dated June 2018 hereto attached as Annexes "Q", "Q-1", "Q-2", "Q-3", "R", "R-1", "S" and "T" respectively, and directing the said documents be treated as confidential and protected from public disclosure during the pendency of the proceedings in the instant case, and after the termination thereof and in a manner deemed appropriate by the Honorable Commission in accordance with Rule 4 of the ERC Rules of Practice and Procedure.

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

Finding the said *Joint Application* to be sufficient in form and with the required fees having been paid, the Commission hereby sets the same for determination of compliance with the jurisdictional

requirements, expository presentation, Pre-Trial Conference and presentation of evidence on the following dates and venue, or online platform for the conduct thereof, pursuant to Resolution No. 09, Series of 2020<sup>4</sup> and Resolution No. 01, Series of 2021 (ERC Revised Rules of Practice and Procedure):<sup>5</sup>

Date	Platform	Activity
<b>05 November 2024 (Tuesday)</b> at two o'clock in the afternoon (02:00 P.M)	<b>Energy Regulatory Commission, Hearing Room 11<sup>th</sup> Floor, Exquadra Tower, 1 Jade Drive, Ortigas Center, Brgy. San Antonio, Pasig City</b>	Determination of compliance with jurisdictional requirements and Expository presentation for Luzon stakeholders
<b>12 November 2024 (Tuesday)</b> at two o'clock in the afternoon (02:00 P.M)	<b>Energy Regulatory Commission, Visayas Area Operations Divisions (VAOD), 7<sup>th</sup> Floor, Kepwealth Building, Samar Loop, Cebu Business Park</b>	Expository presentation for Visayas stakeholders
<b>19 November 2024 (Tuesday)</b> at two o'clock in the afternoon (02:00 P.M)	<b>Energy Regulatory Commission, Mindanao Area Operations Division (MAOD), 6<sup>th</sup> Floor, BIZ Bldg., c/o BORMAHECO, Inc., 209 J.P. Laurel Avenue, Bajada, Davao City</b>	Expository presentation for Mindanao stakeholders
<b>03 December 2024 (Tuesday)</b> at nine o'clock in the morning (09:00 A.M)	<b>Microsoft Teams Application</b>	Pre-Trial Conference and Presentation of Evidence
<b>03 December 2024 (Tuesday)</b>		Presentation of Evidence

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<sup>4</sup> A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.  
<sup>5</sup> A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

Date	Platform	Activity
at two o'clock in the afternoon (02:00 P.M)		
<b>10 December 2024 (Tuesday)</b> at nine o'clock in the morning (09:00 A.M)		Presentation of Evidence
<b>10 December 2024 (Tuesday)</b> at two o'clock in the afternoon (02:00 P.M)		Presentation of Evidence

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

**RELATIVE THERETO**, Applicants IEMOP and PEMC are hereby directed to:

- 1) Cause the publication of the attached *Notice of Public/Virtual Hearing* in two (2) newspapers of nationwide circulation in the Philippines at their own expense, twice (2x) within two (2) successive weeks, the dates of publication not being less than seven (7) days apart, and the date of the last publication to be made not later than ten (10) days before the date of the scheduled initial virtual hearing;
- 2) Furnish with copies of this *Order* and the attached *Notice of Public/Virtual Hearing* the Office of the Mayor of Pasig City and the Local Government Unit (LGU) of Pasig City for the appropriate posting thereof on their respective bulletin boards;
- 3) Inform the consumers within the affected area, by any other means available and appropriate, of the filing of the *Joint Application*, its reasons therefor, and of the scheduled hearings thereon;
- 4) Furnish with copies of this *Order* and the attached *Notice of Public/Virtual Hearing*, the Office of the Solicitor

General (OSG), the Commission on Audit (COA), and the Committees on Energy of both Houses of Congress. They are hereby requested, if they so desire, to send their duly authorized representatives at the scheduled hearing; and

- 5) Furnish with copies of the *Joint Application* and its attachments, except those subject of a motion for confidential treatment of information, all those making requests therefor, subject to reimbursement of reasonable photocopying costs.

**Within five (5) calendar days** prior to the date of the initial virtual hearing, IEMOP and PEMC must submit to the Commission via electronic mail (e-mail) at [docket@erc.ph](mailto:docket@erc.ph), and copy furnish the Legal Service through [legal@erc.ph](mailto:legal@erc.ph), the scanned copies of their written compliance with the aforementioned jurisdictional requirements, attaching therewith, methodically arranged and duly marked, the following:

- 1) The evidence of publication of the attached *Notice of Public/Virtual Hearing* consisting of affidavits of the Editors or Business Managers of the newspaper where the said *Notice of Public/Virtual Hearing* was published, and the complete issues of the said newspapers;
- 2) The evidence of actual posting of this *Order* and the attached *Notice of Public/Virtual Hearing* consisting of certifications issued to that effect, signed by the aforementioned City Mayor and its LGU legislative body or their duly authorized representatives, bearing the seals of their offices;
- 3) The evidence of other means employed by IEMOP and PEMC to inform the consumers within the affected area of the filing of the *Joint Application*, its reasons therefor, and of the scheduled hearings thereon;
- 4) The evidence of receipt of copies of this *Order* and the attached *Notice of Public/Virtual Hearing* by the OSG, the COA, and the Committees on Energy of both Houses of Congress;
- 5) The evidence of receipt of copies of the *Joint Application* and its attachments, except those subject of a motion for

confidential treatment of information, if any, by all those making requests therefor; and

- 6) Such other proof of compliance with the requirements of the Commission.

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

Joint Applicants IEMOP and PEMC, and all interested parties are also required to submit via e-mail at [doCKET@erc.ph](mailto:doCKET@erc.ph), and copy furnish the Legal Service through [legal@erc.ph](mailto:legal@erc.ph), **at least five (5) calendar days** before the date of the scheduled virtual hearing and Pre-trial Conference, their respective Pre-Trial Briefs containing, among others:

- 1) A summary of admitted facts and proposed stipulation of facts;
- 2) The issues to be tried or resolved;
- 3) The documents or exhibits to be presented, stating the purposes and proposed markings therefor, which should also be attached to the Pre-trial Brief; and
- 4) The number and names of the witnesses, with their written testimonies in a Judicial Affidavit form attached to the Pre-trial Brief.

Joint Applicants IEMOP and PEMC must ensure that all the documents or exhibits proposed to be presented have already been duly submitted to the Commission **at least five (5) calendar days** before the date of the scheduled initial hearing and Pre-trial Conference pursuant to the preceding paragraph.

Failure of IEMOP and PEMC to comply with the above requirements within the prescribed period shall be a ground for cancellation of the scheduled hearings.

Joint Applicants IEMOP and PEMC must also be prepared to make an expository presentation of the instant *Joint Application*, aided by whatever communication medium that it may deem appropriate for the purpose, in order to put in plain words and explain, for the benefit of the consumers and other concerned parties, the nature of the *Joint Application*. Relevant information and pertinent details substantiating the reasons and justifications for the *Joint Application* must be cited in support thereof.

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

Joint Applicants IEMOP and PEMC are hereby directed to submit, through personal service, registered mail, or ordinary mail/private courier, one (1) set of the original or certified true hard copies of their Jurisdictional Compliance, Expository Presentation, Pre-trial Brief, and Judicial Affidavits of witnesses, **within five (5) working days** from the date that the same were electronically submitted, as reflected in the acknowledgment receipt e-mail sent by the Commission.

Finally, IEMOP and PEMC, including their authorized representatives and witnesses, are hereby directed to provide the Commission, through [legal.virtualhearings@erc.ph](mailto:legal.virtualhearings@erc.ph), their respective e-mail addresses upon receipt of this *Order*. The Commission will send the access link/s to the aforementioned hearing platform within five (5) working days prior to the scheduled hearing.

**SO ORDERED.**

Pasig City, 19 September 2024.

FOR AND BY AUTHORITY  
OF THE COMMISSION:

  
**KRISTIA MARIE T. BUENA**  
*Director III, Legal Service*

LS:   
LSC: HCL/MVM



**ERC CASE NO. 2024-109 RC**  
**ORDER /19 SEPTEMBER 2024**  
**PAGE 25 OF 25**

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Copy Furnished:

1. Independent Market Operator of the Philippines, Inc. (IEMOP)  
*Joint Applicant*  
9<sup>th</sup> Floor Robinsons-Equitable Tower,  
ADB Avenue corner Poveda Street,  
Ortigas Center, Pasig City
2. Attys. Sheryll Mallari-Dy; Lilibeth Grace L. Vetus; and Jochelle Cliffany T. Santos  
Counsels for IEMOP  
19<sup>th</sup> Floor, Robinsons-Equitable Tower  
ADB Avenue corner Poveda Street  
Ortigas Center, Pasig City  
Email Address: [iemoplegal@iemop.ph](mailto:iemoplegal@iemop.ph); [sheryll.dy@iemop.ph](mailto:sheryll.dy@iemop.ph); [grace.vetus@iemop.ph](mailto:grace.vetus@iemop.ph);  
[jochelle.santos@iemop.ph](mailto:jochelle.santos@iemop.ph)
3. Philippine Electricity Market Corporation (PEMC)  
*Joint Applicant*  
18<sup>th</sup> Floor Robinsons-Equitable Tower,  
ADB Avenue corner Poveda Street,  
Ortigas Center, Pasig City
4. Attys. Andrea S. Joson-Mendiola; Ervin John Mikel D. Hilado; and Alija Rowie Schailey  
M. Pandapatan  
Counsels for PEMC  
19<sup>th</sup> Floor, Robinsons-Equitable Tower  
ADB Avenue corner Poveda Street  
Ortigas Center, Pasig City  
Email Address: [legal@wesm.ph](mailto:legal@wesm.ph); [wesm.legal@wesm.ph](mailto:wesm.legal@wesm.ph); [ajmendiola@wesm.ph](mailto:ajmendiola@wesm.ph);  
[ejmdhilado@wesm.ph](mailto:ejmdhilado@wesm.ph); [arsmpandapatan@wesm.ph](mailto:arsmpandapatan@wesm.ph)
5. Office of the City Mayor  
Pasig City
6. Office of the LGU Legislative Body  
Pasig City
7. Office of the Solicitor General (OSG)  
Amorsolo St., Legaspi Village, Makati City  
[docket@osg.gov.ph](mailto:docket@osg.gov.ph)
8. Commission on Audit (COA)  
Don Mariano Marcos Avenue, Diliman, Quezon City  
[citizensdesk@coa.gov.ph](mailto:citizensdesk@coa.gov.ph)
9. Senate Committee on Energy  
Senate of the Philippine  
GSIS Bldg., Roxas Blvd., Pasay City  
[senateenergycommittee@gmail.com](mailto:senateenergycommittee@gmail.com)
10. House Committee on Energy  
House of Representatives  
Batasan Hills, Quezon City  
[Committee.energy@house.gov.ph](mailto:Committee.energy@house.gov.ph)
11. Market Operations Service (MOS)  
12F Exquadra Tower, Jade Drive, Ortigas Center, Pasig City  
[mos@erc.ph](mailto:mos@erc.ph)