



**Republic of the Philippines
DEPARTMENT OF ENERGY**

Department Circular No. DC2018 - ____ - _____

**PROVIDING FURTHER POLICIES FOR THE EFFICIENT TRANSITION TO THE
INDEPENDENT MARKET OPERATOR OF THE
WHOLESALE ELECTRICITY SPOT MARKET (WESM)**

WHEREAS, Section 2 of the Republic Act No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001 (EPIRA)” declared the Policy of the State among others the following:

- a) Ensure the quality, reliability, security and affordability of the supply of electric power;
- b) Ensure transparent and reasonable prices of electricity in a regime of free and fair competition and full public accountability to achieve greater operational and economic efficiency and enhance the competitiveness of Philippine products in the global market;
- c) Ensure fair and non-discriminatory treatment of public and private sector entities in the process of restructuring the electric power industry;
- d) Protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power; and
- e) Establish a strong and purely independent regulatory body and system to ensure consumer protection and enhance the competitive operation of the electricity market;

WHEREAS, Section 30 of the EPIRA provides that:

- a) Within one (1) year from the effectivity of the Act, the Department of Energy (DOE) shall establish the wholesale electricity spot market (WESM) composed of the wholesale electricity spot market participants;
- b) The WESM shall be implemented by a market operator (MO) in accordance with the Wholesale Electricity Spot Market Rules;
- c) The market operator shall initially be an autonomous group, to be constituted by DOE, with equitable representation from electric power industry participants, initially under the administrative supervision of the National Transmission Corporation (TRANSCO);
- d) The market operator, as an autonomous group, shall undertake the preparatory work and initial operation of the wholesale electricity spot market;

- e) Not later than one (1) year after the implementation of the wholesale electricity spot market, an independent entity shall be formed and the functions, assets and liabilities of the market operator shall be transferred to such entity with the joint endorsement of the DOE and the electric power industry participants;
- f) Thereafter, the administrative supervision of the TRANSCO over such entity shall cease; and
- g) The cost of administering and operating the wholesale electricity spot market shall be recovered by the market operator through a charge imposed to all market members: Provided, That such charge shall be filed with and approved by the Energy and Regulatory Commission (ERC);

WHEREAS, Section 37 of the EPIRA mandates the DOE to formulate rules and regulations and exercise such other powers as may be necessary to implement the objectives of the EPIRA;

WHEREAS, on 27 February 2002, the DOE promulgated the Implementing Rules and Regulations of the EPIRA (EPIRA-IRR) as approved by the Joint Congressional Power Commission;

WHEREAS, Rule 9 Section 3 of the EPIRA-IRR mandates the DOE to:

- a) Organize and establish the appropriate market design and governance structure of the WESM;
- b) Pursuant to Section 30 of the Act, constitute the AGMO, which shall undertake the preparatory work and initial operation of the WESM;
- c) Oversee the development of the WESM organization and necessary supporting infrastructure, including the funding requirements.

WHEREAS, Section 43 of the EPIRA provides, among others, that the ERC shall:

- a) Promote competition, encourage market development, ensure customer choice and penalize abuse of market power in the restructured electricity industry; and
- b) Enforce the rules and regulations governing the operations of the electricity spot market and the activities of the spot market operator and other participants in the spot market, for the purpose of ensuring a greater supply and rational pricing of electricity;

WHEREAS, in compliance to the aforementioned mandates, the DOE promulgated the WESM Rules, as formulated jointly with the electric power industry participants, including various amendments thereto which provides policies for the appropriate design and governance of the WESM;

WHEREAS, the DOE constituted the Philippine Electricity Market Corporation and its Board, as the Autonomous Group Market Operator (AGMO) and the AGMO Governing Board, respectively, pursuant to the EPIRA and its IRR;

WHEREAS, Rule 9 Section 7 (d) and (e) of the EPIRA-IRR mandates the AGMO to govern the operation of the WESM until the transfer of its functions, assets and liabilities to the IMO;

WHEREAS, on 17 January 2018, the DOE promulgated the Department Circular No. DC2018-01-0002 entitled “Adopting Policies for the Effective and Efficient Transition To The Independent Market Operator for the Wholesale Electricity Spot Market;”

WHEREAS, Section 2 of the DC2018-01-0002 mandates the DOE as policymaker and the ERC as regulator to ensure that the principles of fair competition and the promotion of the public interest shall govern all policies and rules during the transition to and full operation of the WESM under an Independent Market Operator (IMO);

WHEREAS, the DOE deems it necessary to provide additional guidance and safeguards for the operation of the WESM under the IMO, to ensure transparency, competitiveness, protection of public interest and the integrity of the WESM;

NOW, THEREFORE, for and in consideration of the aforementioned mandates and the necessity for the effective governance of the WESM, the DOE hereby issues, adopts and promulgates the following:

Section 1. General Principles in the Governance of the Wholesale Electricity Spot Market under the IMO Regime. Pursuant to Section 30 of the EPIRA, the WESM shall be governed in accordance with the following principles:

- 1.1 The governance of the WESM shall observe transparency and consistency to promote fair and non-discriminatory treatment of all stakeholders which include all WESM Members and the electricity end-users;
- 1.2 The governance of the WESM during the transition to the IMO regime shall initially involve the participation of electricity power industry participants up to a period not exceeding twelve (12) months to ensure seamless transfer of the functions, assets and liabilities of the AGMO to the IMO;
- 1.3 The governance of the WESM and the establishment of the IMO shall not result to higher cost of market fees to be incurred by the market operator; For this purpose, and consistent with its mandate under the EPIRA and its IRR, the DOE shall review and approve the IMO work plan containing such details as budgetary requirements, prior to the filing for the ERC’s approval of the level of the market fees;
- 1.4 The DOE, as policymaker, shall oversee the governance and operation of the WESM and, in the performance of such function, the DOE shall continue to

have access to vital information that are generated by WESM or submitted to the market operator by the participants and service providers: Provided, that such access shall be solely for the purpose of promulgating policies and issuing guidance to the WESM participants;

1.5 The ERC, as regulator, shall enforce the WESM Rules and Market Manuals, monitor the activities of the PEMC during the Transition Period, the IMO, and other participants in the WESM, ensure close monitoring and surveillance of the WESM, and in the performance of such functions, the ERC shall continue to have access to vital information that are generated by WESM or submitted to the market operator by the participants or service providers; and

1.6 The IMO shall perform its functions as outlined under the EPIRA and its IRR, the WESM Rules and its Market Manuals, rules and regulations duly promulgated by the DOE and ERC.

Section 2. Formation of the Independent Market Operator.

2.1 The IMO shall be constituted by the DOE which Board members shall be selected by the DOE with qualifications set forth under Section 6 of DOE Circular No. DC2018-01-0002 and the selection process submitted by PEMC and duly approved by the DOE.

2.2 The subsequent members of the IMO Board shall be selected and appointed, in accordance with the selection process to be submitted by PEMC, and approved by the DOE.

Section 3. Transfer of the Functions, Assets and Liabilities

The transition to the IMO shall commence in the following manner:

3.1 Approval by the DOE of the Transition Plan submitted by PEMC which shall include timelines, transfer of functions and personnel, identification of residual unit which shall undertake activities for the smooth transfer of remaining functions, assets and liabilities and the reorganization of the PEMC units transferring to the IMO.

3.2 Upon its incorporation as a separate corporation from PEMC, the IMO shall assume responsibility of all the governance and market operations functions of PEMC. For this purpose, all qualified personnel undertaking such functions shall be transferred to the IMO while a residual unit shall be temporarily retained in PEMC to ensure the smooth transfer of the assets and liabilities of the AGMO to the IMO; Provided, that the Residual Unit shall be a team of highly qualified personnel capable of undertaking activities necessary to complete the transition to the IMO: Provided further, that the Residual Unit shall be absorbed by PEMC, with functions already identified in the structure of the IMO; and

3.3 Within 1 year from the incorporation of the IMO, all the assets and liabilities of the PEMC as the AGMO, shall be transferred to the IMO, subject to the most appropriate and legally accepted manner.

Section 4. Remaining Functions and Responsibilities of PEMC

- 4.1 PEMC, as represented by the PEM Board and assisted by the PEMC Residual unit, shall provide oversight and advisory functions to the IMO in so far as governance of the WESM is concerned, until the full endorsement of the functions, assets and liabilities of the PEMC to the IMO, which shall be not more than 1 year from the constitution of the IMO;
- 4.2 In coordination with the initial IMO Board, PEMC shall undertake preparations for the complete transfer of its functions, assets and liabilities to the IMO;
- 4.3 PEMC shall assist the DOE in the selection of the initial members of the IMO Board;
- 4.4 In consultation with the IMO, PEMC shall formulate and submit for the DOE's approval, the selection process of the subsequent members of the IMO Board;
- 4.5 In coordination with the IMO, PEMC shall submit for the DOE's approval, not later than 30 June 2018, a Market Operator Performance Standards (MOPS) which shall include operation, financial and governance standards that ensures transparency and prudence in the utilization of the market fees duly approved by the ERC;
- 4.6 In coordination with the IMO, PEMC shall submit, for the DOE's approval, the necessary amendment to the WESM Rules and its Market Manuals, pursuant to the provisions of this Circular.
- 4.7 Assist the DOE in the selection process of the initial IMO Board through submission and shortlisting of nominees; and
- 4.8 Submit for the DOE's consideration the budgetary requirements of the PEM Board and the residual PEMC unit which shall be included in the budget of the IMO until the PEMC ceases to exist.

Section 5. Additional Responsibilities of the IMO. In accordance with the principles of the EPIRA and in consideration of the policies adopted under DOE Circular No. DC2018-01-0002, the IMO shall have the following additional responsibilities:

- 5.1 Assist the DOE and the ERC in developing policies and regulations, respectively, for the continuing improvement of the WESM by undertaking studies of the relevant products that are intended to enhance the competitiveness of the WESM and the reliability and adequacy of supply of electric power which shall include, but not limited to, the establishment of reserve market, expansion of the retail market, adoption of demand-side management resources, including demand response, and introduction of hedging mechanisms;
- 5.2 Ensure compliance to the various reportorial requirements of the DOE and the ERC pursuant to the WESM Rules and its Market Manuals, DOE Circulars,

Orders and the like, and ERC Resolutions, Guidelines and other relevant issuances; and

5.3 Adopts budgetary standards that ensure a prudent and cost-effective utilization of resources;

Section 6. Further Arrangements for WESM Governance. Unless otherwise provided for in any WESM Rules amendment that may subsequently be adopted, the existing WESM Governance Committees shall subsist and shall act in accordance with the principles of fairness and transparency. Towards this end, the following arrangements are hereby adopted:

6.1 The IMO shall provide administrative and technical support to all WESM Committees created by the PEM Board pursuant to the WESM Rules, and for this purpose, shall consider for placement the existing qualified personnel within the organization to undertake such functions;

6.2 The DOE and the ERC shall continue to have representations in the different WESM Governance Committees to observe and provide guidance as necessary: *Provided, that* the presence of DOE and ERC representatives is not meant to influence the proceedings and decision-making in the various committees but to ensure harmony and consistency of matters being deliberated with existing policies, rules and regulations; and

6.3 To support the DOE and the ERC in the discharge of their respective functions, a protocol shall be developed to enable the DOE and the ERC to have direct coordination with the IMO organic units responsible for market assessment, enforcement and compliance, and the governance committees that are responsible for market surveillance and compliance. The IMO shall continue to submit regular market and compliance reports to the DOE and the ERC in aid of their policy-making and regulatory functions.

Section 7. Creation of DOE-ERC Enforcement and Compliance Committee (DEECC). In pursuit of fairness and transparency in the WESM, the DOE hereby creates the DOE-ERC Enforcement and Compliance Committee mainly to supervise the processes and actions on enforcement and compliance by the IMO. In order to ensure the efficient, effective, and credible transition to the IMO of the WESM, in consultation with the ERC, the DOE shall promulgate rules of procedures and practice which must adequately take into consideration the following:

7.1 Transparent and efficient monitoring, evaluation and analysis of all WESM related activities, particularly the compliance of WESM Participants to the WESM Rules and the conduct of Market Participants that are tantamount to anti-competitive activities and contravene to protection of public interest;

7.2 Direct reporting to the DEECC of the Enforcement and Compliance unit of the IMO such that all actions undertaken by it with respect to compliance and investigation, which shall be subject to confirmation or approval by the DEECC;

- 7.3 The IMO shall ensure DEECC's dedicated access to the real-time data generated by the IMO for the timely detection of potential breach of WESM Rules or anti-competitive behavior in the WESM;
- 7.4 Ensure that findings and decisions are taken independently of individual interests for the improvement of the system and the market as a whole;
- 7.5 Create a level playing field by ensuring non-discrimination among different types of participants and ownership;
- 7.6 Establish simple but effective oversight and governance arrangements, to harmonize the objective of maximizing the efficiency of market operations with the constraints that usually are imposed by oversight and governance mechanism;
- 7.7 To instill confidence by addressing possible conflicts of interest;
- 7.8 Assess whether the surveillance, compliance, enforcement and investigation processes are producing the desired policy outcomes;
- 7.9 Ensure timely and efficient decision making process; and
- 7.10 Ensure that appropriate penalties are fairly applied.

Section 8. Responsibilities of the ERC. The ERC shall ensure the provision of support in the regulatory requirements and approvals consistent with the policies set forth under this Circular and in accordance with existing laws and procedures.

Pursuant to Section 43 (c) of the EPIRA, the ERC shall enforce the rules and regulations governing the operations of the electricity spot market and the activities of the spot market operator and other participants in the spot market, for the purpose of ensuring a greater supply and rational pricing of electricity. Specifically, the ERC shall:

- 8.1 Strengthen its internal capacity to monitor, investigate, and enforce penalties and sanctions to WESM Participants found in breach of the WESM Rules and anti-competitive behavior;
- 8.2 Promulgate the applicable rules for the determination of anti-competitive behavior and breach of WESM Rules and the process for investigation and imposition of penalties, including the levels thereof;
- 8.3 Undertake actions to harmonize the existing ERC issuances with the WESM Rules and Market Manuals which includes Philippine Grid Code among others;
- 8.4 Impose penalties and sanctions to Market Participants and the WESM Members found to be in breach of the WESM Rules and other relevant issuances. As may be practicable, the ERC may allow the automatic imposition of penalties by the IMO to Market Participants found to be in breach of the WESM Rules after conduct of due process. Provided, that any appeal for the same shall be subject to the ERC review and approval;

8.5 Ensure the provision of support in the regulatory requirements and approvals consistent with the policies set forth under this Circular and in accordance with existing laws and procedures. The IMO shall likewise ensure that all the obligations set forth herein shall be complied. As may be warranted, administrative fines or penalties may be imposed for failure to meet the said obligations.

8.6 Ensure representation, as observer, to the different WESM Governance Committees.

Section 9. Transparency. No information or data relating to the operation of the WESM under the IMO Regime and the governance thereof that the DOE and the ERC may hereinafter request in the pursuit of transparency, fair competition, and promotion of public interest, shall be unreasonably withheld or denied by the IMO.

Section 10. Separability. If for any reason, any section or provision of this Circular is declared unconstitutional or invalid, the other parts or provisions hereof which are not affected thereby shall continue to be in full force and effect.

Section 11. Repealing Clause. Sections 4.5, 5.3, 7 and 8 of DOE Circular No.2018-01-0002 are hereby repealed or modified accordingly.

Except insofar as may be manifestly inconsistent herewith, nothing in this Circular shall be construed as to repeal any of the mechanisms already existing or responsibilities already provided for under existing rules.

Section 12. Effectivity and Publication. This Circular shall take effect immediately upon its publication in at least two (2) newspapers of general circulation, and shall remain in effect until otherwise revoked.

Issued on _____ 2018 at the Energy Center, Rizal Drive, Bonifacio Global City, Taguig City.

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Secretary