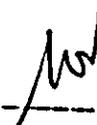


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SENATE

RECEIVED BY: 

P.S.R. No. 1672

Introduced by Senator Sergio Osmeña III

RESOLUTION

DIRECTING THE COMMITTEE ON ENERGY TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, TO DETERMINE POSSIBLE CAUSES FOR THE DELAY IN THE FORMATION OF THE INDEPENDENT MARKET OPERATOR (IMO) FOR THE WHOLESALE ELECTRICITY SPOT MARKET (WESM), IDENTIFY THE NATURE OF THE CURRENT PHILIPPINE ELECTRICITY MARKET CORPORATION (PEMC), INCLUDING THE NEED FOR EFFECTIVE COST CONTROL AND PROPER UTILIZATION OF MARKET FEES AUTHORIZED BY THE ENERGY REGULATORY COMMISSION (ERC), AND MORE IMPORTANTLY, SET OUT APPROPRIATE GOVERNANCE ARRANGEMENTS FOR THE IMO GIVEN ITS POSSIBLE FUTURE ROLE AND FUNCTIONS

WHEREAS, Section 30 of Republic Act No. 9136 or the "*Electric Power Industry Reform Act of 2001*" (EPIRA) has mandated the Department of Energy (DOE) to establish the Wholesale Electricity Spot Market (WESM) to be implemented by a market operator constituted by the DOE with equitable representation from electric power industry participants initially under the administrative supervision of the National Transmission Corporation (TRANSCO), to undertake the preparatory work and initial operation of the Wholesale Electricity Spot Market; not later than one (1) year after the implementation of the WESM, 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 and after which, the administrative supervision of the TRANSCO over such entity shall cease;

WHEREAS, on November 18, 2003, PEMC was organized as a non-stock, non-profit corporation under Batas Pambansa Blg. 68 or the "*Corporation Code of the Philippines*", with the primary purpose of managing, governing and administering an efficient, competitive, transparent and reliable market for the wholesale sale and purchase of electricity and ancillary services in the WESM in accordance with the EPIRA, the rules promulgated to govern the operation of the WESM (the WESM Rules), including their respective amendments and such other laws, rules and regulations that may be enacted thereafter to govern the WESM;

WHEREAS, PEMC is governed by its PEM Board formed on the basis of equitable representation from the electric power industry participants, which include government appointees or public officers designated by reason of their office, and chaired by the Secretary of the DOE;

WHEREAS, while intended not to extend beyond a period of one (1) year from the implementation of the WESM, i.e., from the actual commercial operation of the WESM on June 26, 2006, the operation by PEMC, as an interim or transitory Autonomous Group Market Operator (AGMO), has lasted for more than nine (9) years already without the Independent market operator (IMO) having been organized up to this time, as mandated by the EPIRA;

WHEREAS, a final report prepared by the Project Team engaged by Asian Development Bank (ADB) to provide technical assistance on the structure of the IMO was submitted to the DOE in December 2011;

WHEREAS, it has come to the attention of the Committee on Energy that the Governance Commission for GOCCs (GCG) has rendered an opinion in 2013 stating that the PEMC is a government-owned and controlled corporation (GOCC) covered by Republic Act No. 10149 or the "GOCC Governance Act of 2011", hence, subject to the jurisdiction of the GCG, including the selection, nomination and appointment of members of its governing board;

WHEREAS, pursuant to Section 30 of the EPIRA, the cost of administering and operating the WESM shall be recovered by the market operator through a charge imposed upon all market members, subject to approval by the Energy Regulatory Commission (ERC);

WHEREAS, under the Operating Agreement (OPA) dated May 5, 2004 executed between TRANSCO, DOE and PEMC, TRANSCO provided for the initial capital and operating expenditures¹ of PEMC, including the procedures for the recovery by TRANSCO of such expenditures, which in turn was the subject of a recovery mechanism formulated by TRANSCO and PEMC on October 22, 2004;

WHEREAS, there is a need to determine the nature or legal status of the PEMC, to ascertain whether it is a GOCC or a private corporation, which is subject to the audit jurisdiction of the Commission on Audit (COA).

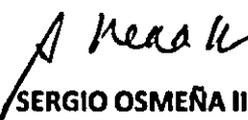
NOW, THEREFORE, BE IT RESOLVED, AS IT IS HEREBY RESOLVED, to direct the Committee on Energy to conduct an inquiry, in aid of legislation, to determine possible causes for the delay in the formation of the Independent Market Operator (IMO) for the Wholesale Electricity Spot Market (WESM), identify the nature of the current Philippine Electricity Market

¹Based on PEMC's Audited Financial Statement for January-December 2014, PEMC has Loans Payable to TRANSCO and PSALM amounting to ₱216,121,151 and ₱828,586,628, respectively. The loan to TRANSCO was based on the Operating Agreement (OPA) entered into between TRANSCO, DOE and PEMC on May 5, 2004, wherein TRANSCO would provide for the initial operational and capital expenses of PEMC prior to its collection of market fees to be authorized by the ERC pursuant to Section 30 of the EPIRA. PEMC filed its first application for approval of the structure and level of market fees for CY 2006 in 2005 under ERC Case No. 2005-048 RC, which was approved by the ERC in its Decision dated June 22, 2006. The market fees for subsequent calendar years were filed by PEMC and approved by the ERC under ERC Cases Nos. 2007-124 RC, 2008-050 RC (which approved a single fixed rate of PhP0.0144/kWh as market transaction fee for CY 2009), 2010-079 RC, 2011-111 RC, 2012-084 RC, 2013-137 RC, and 2014-092 RC. Last September 4, 2015, PEMC filed its latest application for approval of the structure and level of market fees for CYs 2016-2017 under ERC Case No. 2015-160 RC.

On the other hand, the Loans Payable to PSALM came from the proceeds of the loan agreements that NPC entered into with the Asian Development Bank and Japan Bank for International Cooperation for the purpose of securing financing for developments in the Philippine power industry. Said loan was specifically intended to finance the cost of the development of PEMC's Market Management System (MMS). At the meeting held on April 24, 2008, PSALM, NPC, TRANSCO and PEMC agreed that the MMS cost recovery and loan repayment would be included in the application for the 2009 market fees to be filed by PEMC with the ERC on September 11, 2008, with PSALM providing the documents to support the amount to be claimed. In its Order dated September 28, 2009 on PEMC's motion for reconsideration on the market fees for the year 2009, the ERC ruled that the cost and recovery mechanism for the MMS loan repayment should be the subject of a separate application to be filed by PEMC. On August 14, 2012, PEMC filed a separate application (docketed as ERC Case No. 2012-097 RC) for the approval of additional market fees amounting to P863.3 Million for the repayment of the MMS loan recoverable over a period of three (3) years pursuant to the terms of the April 24, 2008 agreement among PSALM, NPC, TRANSCO and PEMC. Said application is still pending approval by the ERC. Corollarily, the ERC issued a Decision dated July 1, 2013 in ERC Case No. 2011-127 RC authorizing the collection of additional market fees to fund the cost of the New Market Management System (NMMS) to be collected over a period of three (3) in addition to the prevailing for market fee rate.

Corporation (PEMC), including the need for effective cost control and proper utilization of market fees authorized by the Energy Regulatory Commission (ERC), and more importantly, set out appropriate governance arrangements for the IMO given its possible future role and functions.

Adopted.


SERGIO OSMEÑA III
Senator