

**BACKGROUND INFORMATION TO SUPPORT CONSULTATION SLIDES**

**IMO AND GOVERNANCE STRUCTURE**

**DECEMBER 2011**

**Department of Energy**

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**SUMMARY OF KEY RECOMMENDATIONS**

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**THE FOLLOWING ARE KEY CHANGES PROPOSED FOR THE FORMATION OF THE IMO THAT THE DOE SEEKS COMMENTS FROM INDUSTRY ON:**

1. That an IMO Board:
  - a. be established:
  - b. comprises the IMO management President and 4 elected members all of whom are independent:
2. That an Audit Committee, a Compliance Committee, and the Market Surveillance Committee report to the IMO Board:
3. That an interim Board is set up, the IMO Transition Board, to replace the current AGMO PEM Board, to manage an orderly transition to the IMO Board:
4. That the existing non-independent PEM Board members transfer to a stakeholder's Market Committee:
5. That the Market Committee:
  - a. recommends rule changes to the IMO Board:
  - b. in other ways provides advice and guidance to the IMO Board:
6. That the Rules Change Committee and the Technical Committee report to the Market Committee:
7. That the membership, reporting lines, functions, powers, and duties of these and associated bodies outlined in this report are reflected in the WESM Rules, Manuals, Protocols, and associated documents:
8. That the IMO Transition Board is allocated all appropriate assets and liabilities such that those are transferred to the IMO Board to enable the Board to effectively govern the WESM.

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## 1 OBJECTIVES AND REQUIREMENTS OF EPIRA AND ITS IRRS AND THE WESM RULES RELEVANT TO THE IMO GOVERNANCE STRUCTURE

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### 1.1 GOVERNANCE PROVISIONS IN THE EPIRA AND IRR

1. The Electric Power Industry Reform Act of 2001 (RA 9136) (EPIRA) underpins the electric power industry reform and established a new regulatory environment and governance structure for the sector. The Implementing Rules and Regulations (IRR) were enacted to enable the provisions of the EPIRA and finally the WESM Rules were a jointly created set of Market Rules, by the DOE and Market Participants, under the guidance of the IRR and EPIRA.
2. Guidance on the creation of an IMO a hierarchical structure is obtained from the EPIRA and its intentions, then the IRR and finally the WESM rules which in and of themselves are an interpretation of the intentions of the EPIRA and IRR and are a consensus view of the DOE and the stakeholders.

#### 1.1.1 The EPIRA policy

3. Section 2 of the EPIRA declares the following policy of the State:
  - (a) *To ensure and accelerate the total electrification of the country:*
  - (b) *To ensure the quality, reliability, security and affordability of the supply of electric power:*
  - (c) *To 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:*
  - (d) *To enhance the inflow of private capital and broaden the ownership base of the power generation, transmission and distribution sectors:*
  - (e) *To ensure fair and non-discriminatory treatment of public and private sector entities in the process of restructuring the electric power industry:*
  - (f) *To protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power:*

- (g) *To assure socially and environmentally compatible energy sources and infrastructure:*
- (h) *To promote the utilization of indigenous and new and renewable energy resources in power generation in order to reduce dependence on imported energy:*
- (i) *To provide for an orderly and transparent privatization of the assets and liabilities of the National Power Corporation (NPC):*
- (j) *To establish a strong and purely independent regulatory body and system to ensure consumer protection and enhance the competitive operation of the electricity market:*
- (k) *To encourage the efficient use of energy and other modalities of demand side management.*

#### **1.1.2 The EPIRA section 30 and IRR rule 9**

4. Section 30 of the EPIRA sets out the requirements for the establishment of the AGMO:

*The wholesale electricity spot market shall be implemented by a market operator in accordance with the wholesale electricity spot market rules. The market operator shall be an autonomous group, to be constituted by DOE, with equitable representation from electric power industry participants, initially under the administrative supervision of the TRANSCO. The market operator shall undertake the preparatory work and initial operation of the wholesale electricity spot market.*

5. Jointly with the electric power industry participants, the DOE was required to formulate the detailed rules for the WESM. The rules should, amongst other things, provide procedures for the formation of the WESM governing body and also for amending the rules. **This has been done.** The WESM and its interim governing body the PEM Board and the interim market operator the PEMC have been in place and operational in WESM for more than five years. The interim market operator is an autonomous group, constituted by DOE, with equitable representation from electric power industry participants. This is the PEM Board and PEMC structure currently.

6. Section 30 also sets out the requirements to transition to an independent entity after the WESM has been established and the initial Market Rules have been agreed to between the DOE and electric power representatives:

*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. Thereafter, the administrative supervision of the TRANSCO over such entity shall cease.*

7. The current market operator is currently the PEM Board and PEMC from which the functions, assets and liabilities will transfer to the independent entity. The IRR refers to this independent entity interchangeably as the Independent Market Operator (IMO) or the Market Operator. The AGMO was required to be constituted by the DOE, with equitable representation from the electric power industry participants, initially under the administrative supervision of the TRANSCO. **This has been done.** The AGMO was established on the initiative of the DOE under the authority of the EPIRA and the IRR. The establishment of the AGMO was achieved with the formation of the PEMC.
8. The WESM has been implemented since June 2006 (over 5 years) and is presently overseen by a interim Stakeholder Board, with equitable representation from industry participants and the DOE and is presently called the PEM Board.
9. The EPIRA states that no later than 1 year after the implementation of the WESM an independent entity must be formed and the functions, assets, and liabilities of the interim entity, presently the PEMC, including the PEM Board, are to be transferred to the independent entity with the joint endorsement of the DOE and the electric power industry participants.
10. The establishment of the WESM rules and the initial operation of the Market Operator **has been done.** The remaining task is to transfer these functions, assets, and liabilities, which are presently under the direction of a stakeholdered board, to an independent entity, the yet to be created Independent Market Operator.

### **1.1.3 EPIRA “independent entity”**

11. What is the meaning of “independent entity”? This term is used in section 30 of the EPIRA but is not defined in the EPIRA.

12. Section 45 of the EPIRA provides guidance as to what Independent means. Section 45 of the EPIRA deals with cross ownership, market power abuse, and anti-competitive behavior and provides a useful guide to what are the prerequisites required for an entity to be classified as “independent”. Section 45 prohibits market participants or their affiliates from holding any interest directly or indirectly in TRANSCO or its concessionaire. The term ‘affiliates’ is defined as “*any person which, alone or together with any other person, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another person*”. The term ‘control’ is defined to mean “*the power to direct or cause the direction of the management policies of a person by contract, agency, or otherwise.*”
13. THE IRR, while it uses the term ‘Independent’ in many clauses, provides no definition of Independent. Therefore the IRR must take its definition from the EPIRA.
14. In the WESM Rules, the term “Independent”, which has been **defined in agreement by both the DOE and Stakeholders**, has the meaning at its simplest to be independent of the Philippine electric power industry. *WESM Rule 1.4.2.7 reads:*

*For the purposes of this clause 1.4.2, a person is deemed to be independent of the Philippine electric power industry if that person:*

*(a) Is not an employee, contractor, agent, manager, director or shareholder of a WESM Member;*

*(b) Is not a relative of a person, within the fourth civil degree of consanguinity or affinity, of an employee, contractor, agent, manager, director or shareholder of a WESM Member;*

*(c) Is not an employee, contractor, agent, manager, director or shareholder of a company, affiliate or any other entity related to or associated with a WESM Member, where:*

*(1) A related company or body, is a parent or holding company of the WESM Member, a subsidiary or affiliate of the WESM Member or a subsidiary of a holding company of the WESM Member; and*

*(2) An associate is a person who is a director, manager or*

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*shareholder of that related company or entity or a relative of such a person;*

*(d) Has not been employed by any electric power industry participant, or a company or body related to or associated with a WESM Participant (as defined in clause 1.4.2.7 (c)) within two years prior to the nomination date; and*

*(e) Agrees not to be employed by and does not accept employment with any electric power industry participant, or a company or body related to or associated with a WESM Member (as defined in clause 1.4.2.7 (c)) within one year after the person ceases to be a Director.*

15. It is reasonable, for the purpose of establishing the scope of the term 'independent' as that term is used in the EPIRA to describe the nature of the market operator, to use section 45 of the EPIRA as an indication of the principles to apply to the scope of the term 'independent' used in the Act:

*Section 45 .....No generation company, distribution utility, or its respective subsidiary or affiliate or stockholder or official of a generation company or distribution utility, or other entity engaged in generating and supplying electricity specified by ERC within the fourth civil degree of consanguinity or affinity, shall be allowed to hold any interest, directly or indirectly, in TRANSCO or its concessionaire.*

16. Therefore, applying these principles, an "independent entity" means that certain classes of person or their affiliates cannot hold any interest directly or indirectly in the IMO. In addition those persons should not themselves become an affiliate of the IMO by controlling the IMO or, in other words, having the power to direct or cause the direction of the management policies of the IMO by contract, agency, or otherwise.
17. The question then is who the intended "certain classes of person" are that the IMO is to be independent from? Again, section 45 of the EPIRA provides a useful guide where it refers to those classes as being:

(1) a “generation company, distribution utility, or its respective subsidiary or affiliate or stockholder or official of a generation company or distribution utility, or other entity engaged in generating and supplying electricity specified by the ERC within the fourth civil degree of consanguinity or affinity” and

(2) “the TRANSCO, or its concessionaire or any of its stockholders or officials or any of their relatives within the fourth civil degree of consanguinity or affinity”.

These classes of person also represent the stakeholders in WESM and can be considered to fairly represent those persons defined in the EPIRA as an “electric power industry participant”.

18. There are other relevant considerations when defining the scope of IMO “independence”. The IMO fulfils a unique role where its actions and decisions impact on electric power industry participants. Some of these actions or decisions may not be in the interests of a particular electric power industry participant even though it will be in the interests of the WESM as a whole. The electric power industry participants should not be able to unduly influence the IMO; their presence on a governing body over an IMO would provide an opportunity to exercise such influence.
19. The EPIRA is explicit that the DOE has a responsibility to ensure that the policy of State is carried out in respect of, amongst other things, the electricity sector. To fulfil its role the DOE is required to maintain oversight of the WESM operation. This oversight is high-level where it sits at the policy end of the spectrum and also acts as the ultimate guardian of the WESM Rules (and as such it retains the final sign-off on amendments to them). Therefore its involvement with the WESM needs to be close enough to understand the key issues that the WESM is grappling with at any particular time but not so close that it’s national policy perspective is narrowed due to a too close involvement with the day to day WESM operations. Although the IMO should be independent of the DOE (this is confirmed in the JCPC deliberations of the IRR drafting), the DOE must be sufficiently informed and detached to enable it to have the widest policy perspective. This detachment, while offering independence from the IMO, also enables the DOE to be the most effective ultimate guardian of the WESM Rules.

#### **1.1.4 The purpose of creating an Independent Entity**

20. The creation of an Independent entity follows the original purpose of the State as set out in EPIRA Section 2 where several Policy statements re-iterate the necessity for

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independence and full and transparent accountability in decisions regarding the administration and operation of the WESM:

*To 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:*

*To enhance the inflow of private capital and broaden the ownership base of the power generation, transmission and distribution sectors:*

*To ensure fair and non-discriminatory treatment of public and private sector entities in the process of restructuring the electric power industry:*

*To protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power:*

*To establish a strong and purely independent regulatory body and system to ensure consumer protection and enhance the competitive operation of the electricity market:*

#### **1.1.5 EPIRA and the WESM “governing body”**

21. What is the intended fate of the AGMO governing body (the PEM Board) that was established through the WESM rules once the “independent entity” is established to replace the AGMO? The PEM Board is referred to in the IRR as the AGMO governing body, which is not the WESM governing body referred to in section 30 of the EPIRA. Section 7(d) of Rule 9 of the IRR states the AGMO governing body is to govern the operation of the WESM until the formation or the selection of an IMO. This means that the PEM Board is a transitional governing body pending the introduction of the IMO.
22. Section 2 of EPIRA declares the policy of State so far as it relates to the scope of the EPIRA, including:
  - (a) Section 2(c) states that EPIRA includes the objective to 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:

- (b) Section 2(d) states that EPIRA includes the objective to enhance the inflow of private capital and broaden the ownership base of the power generation, transmission and distribution sectors:
- (c) Section 2(j) states that EPIRA includes the objective to establish a strong and purely independent regulatory body and system to ensure consumer protection and enhance the competitive operation of the electricity market.
23. In addition to the specific provisions in the EPIRA regarding the WESM governing body found in section 30, the above objectives are relevant when considering the appropriate form and structural arrangements for the WESM governing body. The critical component is the independence of both the regulatory body and the system.
24. While the EPIRA does not explicitly promote a self-governing WESM it does allude to it in the statement on policy that it is necessary to establish a “purely independent... system to enhance the competitive operation of the electricity market”:

*To establish a strong and purely independent regulatory body and system to ensure consumer protection and enhance the competitive operation of the electricity market:*

25. The EPIRA provides for market participants and the DOE to jointly formulate the detailed rules. This sensibly utilizes the expertise within an emerging market to contribute to market and rule development. **This has been done.** The EPIRA and IRR had been drafted to utilize industry expertise in the initial phase of the WESM.
26. The AGMO is required to be constituted by the DOE with equitable representation from the electric power industry participants. This autonomous group, the AGMO and the AGMO governing body, were both established under one umbrella corporate structure, through the establishment of the PEMC controlled by the PEM Board.
27. The PEMC ‘s primary purpose is stated in its articles of association to “manage, govern and administer an efficient, competitive, transparent and reliable market for the wholesale and purchase of electricity and ancillary services in the Philippines ... (the WESM) in accordance with the Republic Act No 9136 ...”.
28. Section 30 of the EPIRA continues:

*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*

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*liabilities of the market operator shall be transferred to such entity with the joint endorsement of the DOE and the electric power industry participants.*

29. In other words after the establishment of the Market and the WESM Rules by both stakeholders and the DOE, the next step in the process was to turn the Market Operator (refer section 30 of the EPIRA which states this is the autonomous group, constituted by the DOE, with equitable representation from electric power industry participants) over to an independent entity that would take over the functions of the present PEM Board and PEMC. At the same time as this independent entity is put in place, under section (7) of the IRR, the AGMO governing body, the PEM Board, ceases to govern the operation of the WESM.

#### **1.1.6 The EPIRA “voting rights” of participants**

30. Section 30 of the EPIRA requires the DOE to formulate detailed rules for the WESM jointly with the electric power industry participants, and requires those detailed rules to include procedures for administering the market including voting rights of the participants:

*The rules shall provide, among others, procedures for ...*

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

*(e) Amending the rules.*

31. What is the nature of the voting rights to which section 30 refers?
32. Rule 9 section 1 of the IRR states that, pursuant to section 30 of the EPIRA, all WESM participants shall comply with the WESM rules.
33. WESM formulates, but does not make (the DOE does this by order), its own rules. Those rules contain enforcement provisions to which the members are contractually (as well as regulatorily) bound.
34. In the case of the recommended IMO structure, the participants do not have a vote in the WESM governing body but will have the function of formulating and recommending WESM rule changes to the Independent Market Operator Board. The WESM will be

self governing in the sense that it has a governing board independent of government, the integrity functions report to the governing board, WESM formulates its own rules, and the WESM Rules are enforced, to a large extent, within the WESM system. The voting rights referred to in EPIRA, in its widest sense, refers to right of participants to contribute equitably and meaningfully through the Market Committee process.

#### **1.1.7 IRR WESM “governing body”**

35. The IRR fills many of the interpretational ‘gaps’ referred above regarding the ‘independent entity’ and the WESM ‘governing body’. The IRR was the spring board for the establishment of the PEM Board and PEMC structure.
46. Rule 9 of the IRR provides the details of the WESM structure. Section 7 of Rule 9 deals with the constitution of the AGMO. Under sections 7(a) and (b) the AGMO is governed by a body that comprises stakeholder and independent members chaired by the DOE Secretary.
36. The AGMO governing body is established under IRR section 7. Its functions include governing the operation of the WESM.
37. Section 7(d) provides that the AGMO governing body, amongst other things, governs the operation of the WESM until the IMO is put in place at which time the functions, assets and liabilities of the AGMO are transferred to the IMO.
38. Section 7(e) of the IRR requires the AGMO to transfer its functions, assets, and liabilities to the IMO. There is no reference to a transfer of the “powers and duties” of the AGMO governing body at the same time, but that does not mean that the AGMO governing body retains any powers and duties. Section 7(d) is clear that the power and duty of the AGMO governing body to govern the operation of the WESM ceases once the IMO is in place.
39. The IRR states that the AGMO will govern the operation of the market until the selection of the IMO at which time the AGMO’s power to govern will expire. When that happens the IMO will already have been established (the WESM governing body), and been provided with the requisite power to govern, under the rules to take over this role and govern the market.

#### **1.1.8 Summary of the legislative landscape**

40. In summary the situation is as follows:

- (a) Section 30 of EPIRA requires the establishment of an AGMO. Section 30 clearly states that the AGMO is the interim market operator. The composition of the AGMO must include the DOE and stakeholders. This is supported in Rule 9 section 7 of the IRR for the DOE to establish the AGMO: **This has happened**
- (b) Section 30 of EPIRA requires the procedures for a WESM governing body to be established in the WESM rules. **This has happened.** Section 7 of Rule 9 of the IRR created the concept of an AGMO governing body which was to be established in accordance with WESM rules. The AGMO governing body was to comprise stakeholder and independent members to be chaired by the DOE Secretary. This composition accords with the EPIRA requirements for the AGMO: **This has happened**
- (c) The IRR sets out that when an IMO is established the functions, assets, and liabilities of the AGMO are transferred to the IMO and the power and duty of the AGMO to govern the operation of the WESM terminates. The EPIRA is explicit that the market operator is to be an “independent entity”. A definition of Independent can be constructed from the EPIRA and the WESM Rules. **These are to be done.**
- (d) Section 30 of the EPIRA requires the establishment of the WESM governing body through the WESM rules. This is not the AGMO governing body established under the IRR. The AGMO governing body established under the IRR is transitional until the WESM governing body, required under EPIRA, is implemented with the introduction of the IMO:
- (e) Under Rule 9 section 7(d) of the IRR the AGMO has functions that include not only to operate the market (in subsection (iv)) but also to govern the operation of the WESM until the formation of the IMO (in subsection (i)):
- (f) All the activities of the AGMO governing body specified under Rule 9 section 7(d) of the IRR are written as “powers and duties” lasting only up until the IMO is introduced into the WESM system. They are not included as the AGMO’s functions which are specified in Rule 9 section 6(c) of the IRR:
- (g) Therefore, once the IMO is put in place, the PEMC and the PEM Board, the AGMO, no longer holding functions, assets or liabilities, or duties or powers, simply become redundant; a shell corporation. As an interim or transitional measure the AGMO governing body concept has been a useful mechanism to

manage the AGMO process. Once the IMO is put in place, the interim AGMO becomes redundant. The WESM governing body, the IMO, will be established and empowered through the WESM Rules.

#### **1.1.9 Rule 9 Section 6 IRR Proviso**

41. Section 6(a) of Rule 9 of IRR contains the proviso that the IMO shall be financially and technically capable, with proven experience and expertise of not less than 2 years as a leading independent market operator of similar or larger size electricity market.
42. The IMO Project Team reviewed the financial condition of PEMC and concluded its financial position revealed financial capability for operating as an Independent Market Operator. The Company's auditors prior to 2010 were Ernst and Young who had given the Company a clean opinion. The current auditors, Punongbayan & Araullo, also gave a clean opinion and its Report reveals PEMC is in a position to meet all its obligations as budgeted, has a positive cash flow, and is liquid.
43. PEMC has operated the WESM for over 5 years as the AGMO. Audits are conducted on its operation each year. The current WESM Audit Report by PA Consulting, dated 30 September 2011, concluded that the market has "bedded down" well. No doubts were raised in its Report regarding PEMC's technical capability.
44. The IMO Project Team review of the personnel, applicable technical specifications, and services and assurance practices of PEMC revealed technical capability and expertise in operating an electricity market.
45. The IMO Project Team considered the proviso requiring the IMO to be a "leading independent market operator of similar or larger size electricity market". The JCPC referred to the term 'independent' in reference to the electricity market system as the means to ensuring consumer protection and to enhance the competitive operation of the electricity market. The JCPC considered (refer January 17 2002 meeting) that the move from the AGMO to the IMO was similar to the Transco provision in Section 21 of EPIRA, except in that provision it refers to the requirement for proven "domestic and/or international" experience and expertise as a leading transmission system operator. The AGMO IMO transition was treated differently to the Transco transition and did not refer to "domestic" expertise and experience because, as Senator Osmena stated, "[I]n this country we do not have such an animal yet".

46. It is now over 5 years that the WESM has been operational under the AGMO. The AGMO governing body is stakeholdered and is not independent. The AGMO market operator is not stakeholdered and, as an operations group, is independent. The reference in Section 6(a) of Rule 9 of IRR that the IMO has experience and expertise as a leading 'independent' market operator merely reflected an acceptance that no market operator with expertise and experience existed in the Philippines. The situation has changed over the last 5 years and PEMC does have that experience and expertise.
47. The IMO structure will put significant emphasis on, and constantly test, the dynamics between the IMO and market participants and government. The best qualified IMO to manage these dynamics is not a foreign board but one that is composed of national expertise and experience.
48. Initially the JCPC considered whether to require market operation experience of three years but agreed that a requirement for two years was preferable in order not to be too limiting. Two years is not a long time for a market operator to gain experience in its own market let alone to apply that limited experience in another, foreign, jurisdiction.
49. PEMC has developed and maintained communication channels and relationships with many foreign market operators and is well placed to continue to operate the WESM.

#### **1.1.10 Summary**

50. As set out in EPIRA the IMO must be independent of the stakeholders (ie the electric power industry participants) and the government, and should not be under the direction of a stakeholdered governing body.

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## 2 IMO STRUCTURE

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### 2.1 IMO STRUCTURE AND GOVERNANCE PROVISIONS IN THE WESM RULES

#### 2.1.1 Background WESM IMO structure and governance

51. The principle oversight mechanisms applicable to the electricity sector are established, at a high level, under the EPIRA. So far as WESM is concerned oversight is provided by the Department of Energy (DOE), the Energy Regulatory Commission (ERC), and the Market Participants.
52. The WESM comprises a group of members whose total membership consists of a finite and definable group of legal entities. All these members participate, one way or other, in the business of the spot market. Membership is achieved by a formal registration process which includes the signing of an agreement by each participant member. Registration is the mechanism by which a market participant becomes a WESM member. Once registered, a WESM member acquires certain rights and obligations, the majority of which are set out in the WESM Rules. In order for the WESM to function as a spot market it needs a mechanism to perform the administration and operational tasks required of a spot market. That mechanism is set out in the EPIRA which provides that the WESM is to be administered and operated by an independent entity, the IMO.
53. The Philippines Electricity Market Board Corporation (PEM Board and PEMC) is the body that currently performs the functions of the market operator and the keeper of the Rules. It performs these functions temporarily until such time as the market operator functions are transferred to an independent entity, the Independent Market Operator (IMO). The PEM Board and PEMC is an interim, or transitional, market operator and is called the Autonomous Group Market Operator (AGMO). The AGMO comprises two parts, one that operates the market and the other that governs it.
54. The PEM Board was established as the governing arm of the AGMO. The PEM Board regulates the membership and activities and operation of the spot market. Like the PEMC, the PEM Board, as part of the AGMO, is an interim body and has the power to govern only until an IMO is established.

55. From a governance perspective the stakeholder membership of the PEM Board is a structure that has been tried in other markets. For example in the voluntary market in New Zealand the Board was majority stakeholder but the Chair was independent. That is now changed and the Board is totally independent. In CAISO the Board was stakeholder but this was changed after the crisis in the California market. In NYISO the Board members have no business, financial, operating or other direct relationship to any Market Participant or stakeholder of Directors and stakeholder Management Committee. In Ontario, initially the Board was comprised of both stakeholders and independents but was changed to being totally independent. In other US States, for example in the NYISO Board, the MISO Board, the ISO-NE Board, the PJM Board, and the SPP Board, the boards are all independent. Refer to the presentation slides for further comparison with other foreign electricity markets. By far the vast majority of Market Operators (10 of 12) have an Independent Board and a not for profit structure (11 of 12). Those that have stakeholders on the Board (2 of 12) have their Market Integrity Functions (Market Surveillance and Compliance) reporting to a different entity with the ability to effect change if issues are found. The recommended IMO structure is consistent with international trends.

## **2.2 DISCUSSION ON STRUCTURE COMPONENTS**

### **2.2.1 INTRODUCTION**

56. The recommended IMO structure is as presented to the industry in November and December 2011.

### **2.2.2 TWO-TIERED GOVERNANCE**

The recommended IMO model has a two tier governance structure.

#### ***2.2.2.1 Functions under a WESM governing body, the IMO Board***

57. The IMO structure is designed to employ a two-tiered governance model to assure that it operates neutrally and independently in managing the electricity grid and markets. The structure is shown in the consultation presentation slides. The first tier being the Independent Board and its Governance of the Market and Market Operations and the second tier being the Market Participants and their advice and guidance to the Independent Board on the Market and its Rules setting.
58. Independence and neutrality are at the core of the proposed business operations by creating a two-tiered governance structure – the IMO Board and the Market Committee – ensures independent decisions.

59. The IMO Board is charged with ensuring that the IMO operates the Market efficiently including the setting of WESM Rules and creates and operates a fair energy market. To establish neutrality, Board members can have no personal affiliation or ongoing professional relationship with, or any financial stake in, any WESM participant.
60. The Board ensures that no member or group of members has undue influence. The Board is required to prevent the undue exercise of market power by any market participant. To support this goal of Market oversight, the IMO Board employs both a Market Surveillance Committee and Compliance Committee which report to the Board.

### **2.2.2.2 The Market Committee**

61. The second level of governance in the market is the Market Committee; a committee comprised of stake holders tasked with:
- (a) providing advice to the IMO Board:
  - (b) voting on whether Rules will be recommended by it to the IMO Board for its decision (note: the Board will still decide on the outcome of Rule change proposals that are not recommended by the Market Committee, but a failed Committee vote must carry weight).
62. The DOE will have, as is the case now, the final approval decision with regard to rule change proposals. Currently the WESM Rules are worded such that the DOE only considers proposed changes, but not proposals that are rejected. It is envisaged that the DOE will be given the authority and discretion to request the IMO Board to reconsider proposals that are rejected by the IMO Board on its own account or if the Market Committee makes a request to the DOE for it to reconsider rejected proposals provided that the DOE considers the request is reasonable and satisfies the overall objectives of the WESM.

### **2.2.3 Market Integrity Functions – Reporting Directly to the IMO Board**

#### **2.2.3.1 Role of the WESM Market Monitoring Committee - Independent**

63. The WESM market monitoring body must be independent to shield it from stakeholder influence. This is a key structural component of a well-governed market.
64. The general principle is that the market monitoring function is structured to ensure the data collected, analysis conducted, and information provided by the market monitoring

body is free of bias. To promote this the market monitoring body must be independent and the market monitoring process must, and must be seen to, promote objectivity.

65. The WESM monitoring body must be able to conduct real time monitoring. In this respect there is an advantage for the monitor to be close to or have ready access to the market's day to day operations. This can be achieved by giving the monitoring body access to assistance from the IMO monitoring unit.
66. The WESM monitoring body is currently called the Market Surveillance Committee (MSC) and its roles and responsibilities and composition are established under Chapter 1.6 of the WESM Rules and, except for removal of compliance related functions, are not expected to change. The monitoring unit assisting the MSC will be the Monitoring and Assessment Group ("MAG").
67. Because the WESM governing body will be independent, the market monitoring body appropriately sits under it.
68. The WESM monitoring body can be a group formally selected under detailed provisions set out in the WESM rules or, alternatively, may be one or more independent expert market adviser/s. The latter option is utilized by some electricity markets, for example NYISO has both an internal market monitor and an independent adviser and so too does ISO-NE. The Southwest Power Pool (SPP), not yet a market, uses an external independent market monitor (Boston Pacific). In the IESO the Monitoring Body, the Market Surveillance Panel reports to the Ontario Energy Board, the Regulator of the market and in Alberta the monitoring is undertaken by a separate Company the Market Surveillance Administrator.
69. If the WESM governing body is not independent then another structure or tier would need to have been created to appropriately harbor the independent functions necessary for good governance.

### **2.2.3.2 WESM Compliance Committee - Independent**

70. The WESM Compliance Committee will be independent.
71. The PEM Board is currently responsible for initiating compliance investigations and for imposing sanctions on participants for breaches of the WESM rules. Sanctions are imposed in accordance with a detailed penalty process prescribed under the WESM

Rules and in accordance with a protocol with the ERC which sets out the boundary line between the two different but compatible enforcement processes.

72. Presently the day to day management of the enforcement process is handled by the Enforcement and Compliance Officer (ECO) which is within the AGMO and established with its roles and responsibilities under Chapter 7 of the WESM Rules. The effect of having Market Participant compliance enforcement reporting directly or indirectly to a stakeholder board is both a perceived and real conflict.
73. The enforcement Market Manual requires the MSC to review the ECO Investigation Report prior to it going to the PEM Board. This step adds little, if anything, to the process and imposes an extra and unnecessary layer and complexity to the process. The skill-set of the members of the WESM monitoring body will not necessarily match the skill-set requirements for reviewing and approving enforcement matters. It is envisaged that the ECO report directly to a compliance body that sits under the WESM governing body without going through the MSC or its equivalent under the new structure. The ECO budget will also be approved by the Compliance Committee.
74. The recommendation is that a Compliance Committee sits under the WESM governing body responsible for receiving and deciding whether it agrees with ECO recommendations on findings of breach of the WESM Rules and making recommendation on breach and sanctions on participants for breaches to the Board. The Compliance Committee is a standing Committee of the Board, composed of Board members, with its functions specified in the by-laws of the Board. It is recommended, under this process, that the ECO be able to initiate fact finding immediately the IMO receives notice of any potential breaches and then reports to the Compliance Committee at the next Committee meeting. At this point the Committee may decide not to pursue a matter, setting out its reasons, or to direct ECO to begin an investigation, or to seek further information. The Committee will not oversee investigations and so will be able to objectively assess ECO's final Investigation Report including ECO's recommendation on breach including relevant considerations for penalty in cases where a breach has occurred. The Committee will then provide its own recommendation on breach and, if relevant, on penalty to the Board. If a party disagrees with the decision of the IMO Board on breach or on penalty then the matter may be taken to the ERC who will decide whether to exercise its original jurisdiction to hear a matter. Essentially the Compliance Committee, who are composed of Board members, will act as a filtering mechanism for the Board and also to ensure that the Board is sufficiently apprised of the compliance activities conducted on behalf of the

market. The Compliance Committee may consider alternative options for settling minor admitted breaches swiftly.

75. The Chair of the Compliance Committee will be a senior attorney or a similarly qualified person with a deep strategic and philosophical understanding of enforcement and at least 2 other members who, in combination, will ideally provide in-depth knowledge of electricity markets from both economic and electrical engineering perspectives. The Compliance Committee will comprise only Board members. The Committee will be supported by the Corporate Secretary (not the market administration unit) so as to keep monitoring and compliance information streams separate.

#### **2.2.3.3 WESM Audit Committee - Independent**

76. The audit body, the Audit Committee, will sit under the WESM governing body and will be responsible for managing the WESM audits including the IMO annual audit conducted by an independent auditor (including software audits), the annual WESM audit, and reviewing the IMO's internal audits, including any software updates.
77. This Audit Committee may also be responsible for monitoring the performance of market operation services under any future outsourced market operator functions.
78. The Philippines Market Auditor role already exists under the WESM Rules in Chapter 1.5 and it is not envisaged that its roles and responsibilities will change.

#### **2.2.3.4 Dispute Resolution Committee - Independent**

79. The Dispute Resolution body will report to the WESM governing body for any resolution approvals. It will be an outsourced function. Its roles and responsibilities are under Chapter 7.3 of the WESM Rules. It will comprise a panel of independent members who can provide mediation and arbitration services to disputants. In other Markets while this Body reports to the Board of Directors typically it is an outsourced service provided by Dispute Resolution Experts, typically with a Legal background.
80. The ruling of the Dispute Resolution Committee is considered final within the WESM system. The participants have a final recourse via the WESM Rules 7.13.11 and 7.3.12 from the Dispute Resolution process to approach the ERC or the Courts if it is a matter of Law.

**2.2.4 Market Participant Functions and Responsibilities****2.2.4.1 Market Committee - Stakeholdered**

81. As a reflection of the dual Governance role of the IMO and the Market Participants, the Market Committee will be composed of Market Participants and, by virtue of their presence in the market, oversee and monitor the IMO'S conduct of market operations, including key reliability functions directly related to market operations. It should regularly interface with the IMO (Board). Regularly scheduled Market Committee meetings with the Board facilitate more direct communication from the membership to the Board on key issues.
82. The Market Committee, on which each member/customer sector has a representative, provides advice to the Board by proposing and voting on changes and new programs. The voting rights of the Market Committee will not be designed around electricity traded volume as this will lead to an imbalance of representative votes. It will also include membership of Visayas and future potential membership of Mindanao.
83. The Market Committee is composed of four voting sectors representing power generators, transmission owners, electric distributors and consumers. There will be policy guidelines in which each sector will develop its own internal (but transparent) policy on the qualifications and mode of the selection.
84. While the Market Committee provides an integrated view it is also responsible for:
- (a) supervising and reviewing work of the other IMO Market Participant committees, the Rules Change Committee and the Technical Committee and whatever Ad Hoc Market Participant Committees as may be struck:
  - (b) developing positions on IMO operations, policies, rules, and procedures:
  - (c) making recommendations to the other committees and the Board, including its recommendations for approval of RCC and TC membership and endorsement of the independent members of each:
  - (d) reviewing and making recommendations to the Board with respect to Market Rule changes proposed by the Rules Change Committee:
  - (e) such other functions and powers conferred on it by the IMO Board.

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**2.2.4.2 Rules Change Committee – Stakeholdered**

85. The Rules Change Committee is made up of both Stakeholders and Independents and presently recommends Rule changes to the Market Committee and then to the IMO Board, who may or may not take their advice to enact Rule changes. In turn the DOE as the “owner” of the Rules may determine if such Rule changes are appropriate to meet the policy/purposes of the electricity market.
86. The Rules Change Committee will include input from experts in the market place and those impacted by the Rules themselves, the market participants. The interaction of these two groups leads to Market Rules that are crafted to ensure the correct incentives within the marketplace.
87. The Rules Change Committee will report to a Stakeholder Committee, the Market Committee. The Market Committee will be a recommending body and while it can recommend rule changes, the IMO Board will decide what is put to the DOE for approval. The Rules Change Committee has been constituted in Chapter 8 of the WESM Rules and it is envisaged its composition will mirror the Market Committee and neither its roles or responsibilities will change.
88. The Market Committee will recommend Rule changes to the IMO Board as well as be the liaison between the stakeholder committees and community and the IMO Board.
89. In turn the IMO Board would have the right to accept the proposed Rule Change or reject it with a documented rationale to the Market Committee as to why it was rejected.

**2.2.4.3 Technical Committee**

90. The Technical Committee has been established in Chapter 1.7 of the Market Rules and it is envisaged that neither its composition, roles nor responsibilities will change. It will sit under the Market Committee providing advice.

**2.2.5 Internal Functions under the IMO****2.2.5.1 The Market Assessment Group (MAG)**

91. The Market Assessment Group (MAG) serves as the primary support unit of the Market Surveillance Committee for the purpose of implementing an effective governance system for the WESM. MAG monitors, assesses, and prepares reports on the performance of the WESM and behaviour of its members to ensure that the market is

functioning effectively and efficiently. The MAG also provides advisory support to Department of Energy and Energy Regulatory Commission.

#### **2.2.5.2 The Enforcement and Compliance Officer (ECO)**

92. The Enforcement and Compliance Officer (ECO) serves as the technical and investigative arm of the WESM Compliance Committee. The ECO establishes mechanisms to promote consultation and voluntary compliance by participants to the WESM Rules, but also conducts investigations of possible breaches of the WESM Rules and makes recommendations regarding the compliance of WESM Members.
93. ECO shall continuously develop systems and procedures to deter breaches of the WESM Rules and further evolves enforcement of penalties consistent with the objectives of the WESM.

#### **2.2.5.3 Market Operations**

94. The Market Operations group manages, directs, and coordinates real-time operation of the WESM 24-hours a day. It is responsible for the daily trading operations, development of market operating systems, procedures and business processes, market documentation, market report publication, participant and client support, market forecast and projections, dispatch scheduling and pricing, analysis of market outcome, facilitation of market re-run and interface with the system operator.
95. Market Operations staff may act as resource experts in the area of Trading Operations as may be required in public consultations, ERC hearings, and investment forums.

#### **2.2.5.4 Corporate Services**

96. The Corporate Services group develops policies, provides administrative support and guidance, and implements programs at the corporate level in the areas of Finance, Human Resources and Administration, and Billing and Settlement, ensuring consistency of implementation across the corporation.

#### **2.2.5.5 Information Technology**

97. The IT group is mainly responsible of ensuring an uninterrupted and continuous 24/7 market operations, efficient and reliable software applications, databases, and computer hardware and communication equipment.

98. The IT group is further tasked to manage and supervise the development and implementation of the Corporate IS/IT policies and procedures. Such would cover Corporate IS Plan, Corporate Security, IT security risk management plans, E-Mail and Internet Access, IS/IT Standards, in-house and off-the shelf systems and facilities.
99. Further duties of the IT group are to coordinate with various groups and units, both internal and external on matters related to IS/IT with regard to the operation of the WESM; and to manage the evaluation of proposals and contract negotiations for the development and implementation of the MMS IS/IT infrastructure to support the WESM.

#### **2.2.5.6 Legal**

100. The Legal group shall provide overall legal assistance to various PEMC internal business units and stakeholders and represent PEMC in various courts and ensure timely filing of applications and pleadings. Legal group also acts as the legislative liaison office of PEMC and conducts workshops on regular legal updates for WESM participants.
101. Legal monitors compliance of PEMC with WESM Rules, ERC decisions and orders, and other pertinent rules and regulations of government agencies and analyzes legal implications to PEMC of policies, orders, and decisions by relevant government agencies.
102. Legal also assists in the review of PEMC procedures and the formulation of various market manuals.

#### **2.2.5.7 Corporate Planning and Communication**

103. Corporate Planning and Communication develops, manages, and monitors the overall business and annual operational plans of the corporation. It ensures synergy across the corporation's performance measures and alignment of corporate goals and activities with regulatory compliance and government agency policies. Corplan conducts risk management activities and formulates the risk management plan.
104. The group manages overall training and communications plan. It develops and implements strategies and programs related to the dissemination of corporate broadcasts, management of relationships with media and stakeholders, and supervises holding of corporate events.

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**2.2.6 Recommended Structure - Independent IMO Board**

105. The two-tiered governance model assures that WESM operates neutrally and independently in managing the electricity grid and markets. Independence and neutrality are at the core of the proposed business operations by creating a two-tiered governance structure – the IMO Board and the Market Committee – ensures independent decisions. To be judged as an Independent, members of the Board must satisfy the independence requirements set out in EPIRA and the rules, for example the Market Rule Test defined in the WESM Rules (MR 1.4.2.7).
106. The IMO Board is charged with ensuring that IMO operates the Market efficiently and creates and operates a fair energy market. To establish neutrality, Board members can have no personal affiliation or ongoing professional relationship with, or any financial stake in, any WESM participant. The Board ensures that no member or group of members has undue influence. The Board is required to prevent the undue exercise of market power by any market participant (note: this is slightly different to, but compatible with, ERC's role to take enforcement action when there is or suspected to be an undue exercise of market power). To support this goal of Market Oversight, the IMO employs both a Market Surveillance Committee and Compliance Committee which report directly to the Board.
107. The IMO will be non-stock and non-profit and can be viewed as a transfer from the present PEMC except the new Board of the IMO is independent. The IMO Board will continue to have the Board Obligations as set out in the WESM Rules (MR 1.4.5).
108. The IMO Board will be directly responsible for the following standing committees:
- (a) Market Surveillance Committee:
  - (b) Compliance Committee:
  - (c) Audit Committee:
  - (d) Dispute Resolution Committee.
109. The standing committees report directly to the IMO Board on all matters concerning both Market Participants and the IMO.
110. The Board will take guidance from these committees on appropriate actions required to maintain the integrity of the market by a continual review of Participant conduct, including the IMO.

111. The Board as part of its mandate will approve rule changes, audit reports and compliance and surveillance matters. In terms of compliance and surveillance matters the Board may recommend to the IMO and its Rules Committee the formulation of new rules to deal with issues that may be leading to unintended consequences within the WESM Rules.

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### 3 SELECTION OF MEMBERS

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#### 3.1 SELECTION PROCESSES

##### 3.1.1 IMO Board Selection Options

112. The DOE will select the initial members of the IMO Board; to be judged as an Independent, members of the Board must satisfy the Market Rule Test defined in the WESM Rules (refer MR 1.4.2.7).
113. The qualifications of the members will be prescriptive to minimize the potential for inappropriate appointments.
114. There will be at least 5 members on the Board (including the President as a permanent member). Of the 4 non-permanent members one member rolls off each year. Thus on an annual basis there would be one new Board member.
115. After the DOE has made the initial IMO Board selection, the process might proceed along the following lines:

DOE will select the first IMO Board members with the following terms - A (1 year), B (2 years), C (3 years), and D (4 years).

The IMO Board provides the DOE with a slate of candidates for it to choose 2 of the Board members. The IMO Board and the DOE each provide the Market Committee with a slate of candidates for it to choose 2 of the Board members.

Example:

Member A -- chosen by the Market Committee from a slate provided by the Board

Member B -- chosen by the Market Committee from a slate provided by the DOE

Members C and D -- chosen by the DOE from a slate provided by the Board

The Market Committee should only have a limited time in which to choose from the slate of candidates.

116. The Chair and Vice Chair of the IMO Board are elected annually by majority vote of the Directors but the President cannot be either.

**3.1.2 Market Committee selection**

117. The dual role of the governance structure includes a substantial stakeholder presence via a Market Committee composed of the stakeholder community which will provide advice and recommendations on appropriate market changes to enhance the effectiveness of the WESM.
118. In addition to consumer representation, the Market Committee will have the same structure and representation as is presently included in the PEM Board, but excluding IMO representation, and including Viasayas and Mindanao when it enters the market, and will represent the following sectors:
- (a) Distribution:
  - (b) Generation:
  - (c) Transmission:
  - (d) Supplier/Customer/Consumer
119. Reporting to the Market Committee will be the presently constituted Rules Change Committee and Technical Committee. The skill-set differentiation required in these various committees will contribute to the best advice and recommendations to the IMO Board.

**3.2 IMO GOVERNING BODY****3.2.1 Composition**

120. The Board of Directors of the IMO will consist of four members, plus the President as the Executive Director. The Board may exercise all of the powers of a non-stock, not-for-profit corporation and do all lawful acts and things (including the adoption of such rules and regulations for the conduct of its meetings, the exercise of its powers, and the management of the IMO) as it may deem proper and consistent with applicable law, the EPIRA, the Transmission Tariff, the Articles of Incorporation, and the Bylaws. The President is a permanent member of the Board, who may vote on any matter presented at a Board meeting.
121. If appropriate and consistent with the EPIRA, the Board will recommend amendments to the Company's Bylaws, in order to provide for a different Board size than may be set forth therein. Consistent with the Company's Bylaws, the Board does not limit the

number of terms that an individual may serve as a Director. In addition, there are no age limits that govern.

122. Director eligibility. As an alternative to term limits, the Board can continue to evolve and adopt new viewpoints through the evaluation and nomination process described in these guidelines and in the Bylaws. The Company's Directors are elected to staggered terms with actual elections conducted on an annual basis.
123. One of the functions of the IMO Board is to ensure that the relevant expertise will reside within the Board for the continued success of the WESM.

### **3.2.2 Experience and qualifications**

124. Of the four non-permanent Directors, two shall have expertise and experience in corporate leadership at the senior management or board of directors level, or in the professional disciplines of finance, accounting, engineering, or utility laws and regulation. Of the other two Directors, one shall have expertise and experience in the operation of electric transmission systems, one shall have expertise and experience in electric generation or expertise and experience in commercial markets and trading, and associated risk management. One of the members must be sufficiently qualified to Chair the Compliance Committee.

### **3.2.3 Level of independence**

125. A Director shall not be, and shall not have been at any time within two years prior to or subsequent to election to the Board, a Director, Officer, or employee of a Member, User, or an affiliate of a Member or User. At all times while serving on the Board, and for two years thereafter, a Director shall have no material business relationship or other affiliation with any Member or User, or an affiliate of a Member or User. (Refer rule 1.4.2.7)

## **3.3 IMO MONITORING PANEL (MSC)**

126. Oversees and monitors the Company's and Participants conduct of market operations, including key reliability functions directly related to market operations. It regularly interfaces with the IMO's market monitor.

### **3.3.1 Composition**

127. At least 3 members.

128. Should not include member of the IMO governing body.

### **3.3.2 Experience and qualifications**

129. Expert Members of the committee should have experience in Electrical Utilities, Economics, Finance.

### **3.3.3 Level of independence**

130. A Committee Member shall not be, and shall not have been at any time within two years prior to or subsequent to election to the Board, a Director, Officer, or employee of a Member, User, or an affiliate of a Member or User. At all times while serving on the Committee, and for one year thereafter, a Committee Member shall have no material business relationship or other affiliation with any Member or User, or an affiliate of a Member or User. (Refer rule 1.4.2.7)

## **3.4 IMO COMPLIANCE COMMITTEE**

### **3.4.1 Composition**

131. At least 3 members.

132. Chair is senior lawyer.

133. Will be selected from members of the WESM governing body.

### **3.4.2 Experience and qualifications**

134. Expert mixed law, economics, electrical engineering.

### **3.4.3 Level of independence**

135. A Committee Member shall not be, and shall not have been at any time within two years prior to or subsequent to election to the Board, a Director, Officer, or employee of a WESM Member, User, or an affiliate of a Member or User. At all times while serving on the Committee, and for one year thereafter, a Committee Member shall have no material business relationship or other affiliation with any Member or User, or an affiliate of a Member or User. (Refer rule 1.4.2.7)

**3.5 IMO AUDIT COMMITTEE****3.5.1 Composition**

136. At least 3 members.
137. The Board will select non Board members for the Committee.

**3.5.2 Experience and qualifications**

138. Expertise in governance and operational audits.

**3.5.3 Level of independence**

139. A Committee Member shall not be, and shall not have been at any time within two years prior to or subsequent to election to the Board, a Director, Officer, or employee of a Member, User, or an affiliate of a Member or User. At all times while serving on the Committee, and for one year thereafter, a Committee Member shall have no material business relationship or other affiliation with any Member or User, or an affiliate of a Member or User. (Refer rule 1.4.2.7)

**3.6 IMO RULES CHANGE COMMITTEE****3.6.1 Composition**

140. Members represent stakeholders and IMO and include at least three independent members.

**3.6.2 Experience and qualifications**

141. They will be put forward by their respective participant companies.

**3.6.3 Level of independence**

142. Independent members must meet the criteria for independence.

**3.7 WESM TECHNICAL COMMITTEE****3.7.1 Composition**

143. Chair is independent.
144. Members independent and IMO and may include consultants.

**3.7.2 Experience and qualifications**

145. Expert electrical engineering.

**3.7.3 Level of independence**

146. High level per rule 1.4.2.7

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## 4 IMO TRANSITION BOARD

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### 4.1 IMO TRANSITION BOARD (ITB)

#### 4.1.1 Background

147. A great deal of preparatory work will need to be undertaken to finally establish the IMO Board and structure.
148. This preparatory work will be undertaken by a transition board, the IMO Transition Board (ITB).
149. The preparatory work of the ITB may take between 1 to 2 years. After that period the IMO will finally be in place and operating.
150. It is envisaged that the ITB will replace the current PEM Board as soon as possible and perform as the governing body until such time as the IMO Board is ready to take over.

#### 4.1.2 Composition of ITB

151. The ITB will be chaired by the DOE Secretary and be composed of independent members and the PEMC President. There is no limit on the number of members in the ITB, which will be at the discretion of the Secretary.
152. It is envisaged the ITB members will not be engaged on ITB business in a full time capacity. However, the Secretary may engage a member as the project director whose functions may require that person to spend greater hours on ITB business than the other members.

#### 4.1.3 Functions of ITB

153. The ITB objective is to ensure all the preparatory work is done to enable the IMO Board to be implemented as seamlessly as possible. Its role will principally be co-ordination of activities. This will entail co-ordination of a broad range of tasks including consultation, amending corporate structures and WESM Rules, transferring assets and liabilities to the IMO Board, revising market manuals and protocols, and recruiting personnel to the independent and other bodies in the WESM.
154. The primary objective of the ITB is implementation of the IMO Board. This objective will be met when the IMO Board is in place and the market operation functions are

being performed by the IMO (ie the IMO Board as the governing arm of the IMO, and what is currently PEMC as the operations arm of the IMO).

155. The tasks that need to be undertaken will include:

- (a) Legal: prepare any necessary change of name and incorporation details and by-laws for PEM Board and PEMC to the IMO Board and IMO Management Corporation: Consider the extent that the Board can commit to debt/borrowing obligations.
- (b) Legal: assess the mechanisms appropriate to impose some or all of the new rules:
- (c) Legal: assess the mechanisms to outline the restrictions on the IMO Board's decision-making powers, such as the power to consider, approve, select, and engage outsourced service providers:
- (d) Financial: prepare for transfer of assets and liabilities from the AGMO to the IMO Board: Review tax implications for new structure:
- (e) Personnel: prepare criteria for selection of new governance members; establish remuneration mechanism, and tenure:
- (f) Protocols: review existing protocols and prepare amendments and new protocols as appropriate:
- (g) Rules development: prepare outline of the WESM rule changes required including name changes, new reporting lines and structures, and inclusion of indemnities for governance members. Include recommendation for a process to commence for consideration of improvements to existing rules such as optional shorter billing cycles and change from hourly dispatch to half or quarter hour dispatch:
- (h) Manuals amendment: review and prepare outline of required amendments.

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**FREQUENTLY ASKED QUESTIONS**

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**General**

Q Who is the final approving authority of the IMO structure?

A The DOE is. It will prepare and issue a Department Circular on the IMO structure.

Q Will the ERC have a say in the IMO structure?

A ERC will be responsible for regulation and for ensuring competition in the market.

Q Once the IMO is established, what will the role of the DOE be? Once the IMO is established, what will the role of the DOE be?

A Policy oversight. Approval of WESM Rules amendments.

Q Have there been simulations conducted on the proposed IMO model/structure? If there is, will it translate to lower market fees?

A Model simulation has not been conducted, but based on the proposed structure, no significant additional costs result. The additional committees included in the proposed structure will translate to minimal cost. It was discussed that the model has to be non-stock, non-profit, in consideration of moving the fees lower so as not to burden stakeholders. Outsourcing may be considered in the future if shown to be the least cost or more cost effective. The costs of the counterfactual were also considered whereby, if the stakeholders remained in the governing body, the integrity functions would need to be shifted to another new governance level/tier.

Q What does 'joint endorsement' mean?

A It means the 'blessing' of industry. Signature from every single representative is ideal but difficult so various groups representing energy stakeholders will be asked for endorsement. There should be a consensus among the stakeholders.

Q Will there be a new organization acting as the IMO? What will happen to PEMC?

A PEMC will be re-structured and its by-laws and charter will be amended, converting PEMC to become part of the IMO.

Q Who will oversee the operation of the independent market operator?

- A For breach of the rules, it is ERC; for policy direction it is the DOE. There will be a check and balance and this does not hinder the formation of groups such as advisory groups in the future.
- Q Does the new structure aim for less intervention from the government? What is the timeline for IMO? How about integration of Mindanao, can it be done?
- A The government will no longer be in the Board and will be 'arm's length' from it. The will take two years to happen at longest. Mindanao may be integrated in the WESM even with the IMO.
- Q How will the changes in the IMO and the commencement of Open Access be synchronized? Will the same Market Operator operate the Open Access?
- A Yes, Open Access will push through under the ITB, while the IMO is being formed. The retail and wholesale market will be operated by the IMO.

**Independence**

- Q What does it mean that the DOE is 'arm's length' from the IMO?
- A It means that the DOE will retain policy oversight with ability to control policy direction.
- Q How will the composition of the Independent Board be determined?
- A Independence will be considered, based on definition of "independent" in various related legislation.
- Q As required under WESM Rules 1.4.2.7, will the IMO Board be comprised of Independent Members?
- A Yes. Market Participants will only be providing advice to the Independent Board. The ITB will ensure the independence of the Board.
- Q The present PEM Board is composed mostly Market Participants. Why is there a shift to purely independent members in the IMO Board?
- A The guide is the EPIRA and the experience of other markets with independent boards. This is also to achieve self-regulation and so that there will be no question regarding market integrity of the Market Operator. The justification for stakeholder board that all interests can 'fight it out at the table' capitalizes on conflict rather on the expertise and integrity of the independent members.

**IMO Board**

- Q Who will the IMO Board represent? What or whose interests do they represent? How will they resolve competing priorities?
- A The IMO Board will be responsible for ensuring the WESM is operated efficiently. IMO must serve the interests of the WESM as a whole to ensure competitive operation of the WESM.
- Q Who is the IMO Board accountable to?
- A For compliance related matters it will be accountable ultimately to the ERC. For other matters such as those that involve WESM efficiency and impacts on national energy policy it will be accountable to the DOE.
- Q Will the IMO regulate PEMC?
- A The IMO will be composed of both operations and governance.
- Q How will the members of the Independent Board be selected? Is there a ruling in the EPIRA on how to select? How will the DOE protect itself from possible accusations of political intervention?
- A There will be high-level eligibility criteria regarding independence, experience, and qualifications. This consultation is seeking comments from parties regarding possible use of slate system where the IMO Board, the Market Committee, and the DOE will share in the selection of the members.
- Q What term will board members have on the IMO Board?
- A They will each have a 4 year term if there are 4 independent members. The initial board terms will be staggered so that each year thereafter one member election takes place.
- Q Why not have more members on the Board?
- A Many foreign markets have between three and nine members on their board. Comments are sought in this consultation regarding whether more than 4 independent members should be appointed.
- Q Who will select the first board members?
- A The DOE will select the first members of the IMO Board.
- Q Will there be a process to be employed to consider opposition to certain nominees
- A There will be a mechanism to validate the shortlist for IMO board.

- Q Who will appoint? Will the initial appointment be published?
- A Yes, the board composition will be published. The mechanism for appointment is open for consultation.
- Q How about age? Will this be part of the requirements?
- A Age requirement will be considered, however, it is more of competence and capability that is important.
- Q To emphasize the idea of the separation of governance and operations functions, the IMO Board will be for governance while the IMO corporation be for operations. The IMO Board can perform better governance and achieve better check and balance especially in cases of disputes and organizational issues, if the IMO President is not part of the IMO Board.
- A This is a point for submission and consideration through consultation. It is not uncommon to have an Executive Director as member of the Board. However it is noted that the “eye and ear” function can be handled in a different way, without necessarily making the PEMC President a member of the Board. Further comment is sought on this during consultation. The Executive Director may be a voting member, a non-voting member, or not a member of the IMO Board.

### **Market Committee**

- Q Who will appoint the members of the Market Committee?
- A The Market Committee will select its own members and Chair in accordance with that Committee’s procedures and policies approved by the IMO.
- Q Will the Market Committee be recognised in the WESM Rules?
- A Yes. It will be recognised in the WESM Rules as the body responsible for providing the IMO with advice and guidance on proposed rule changes and other matters.
- Q Is the Market Committee accountable? If so, to whom?
- A The objectives, functions, and procedures of the Market Committee will be formally set out in its Manuals. Its Manuals will be approved by the IMO. The Market Committee Manuals will prescribe its member representation and voting rights and procedures. The IMO Board will hold the Market Committee accountable for the performance of its functions.
- Q Can there be only one Market Committee?

- A It is crucial that the rules are developed with a common purpose. Having more than one Market Committee will be potentially divisive. It is unlikely therefore that there will be more than one Market Committee. However, it may have subcommittees for task allocation, for example there may be a subcommittee based on location (for example Luzon, Visayas, and Mindanao subcommittees). The Market Committee will largely control how it develops to best serve the WESM and end consumers.
- Q Who will determine which Market Committee will or will not be recognized if other groups want to establish their own Market Committee?
- A The Market Committee will receive the formal recognition of the IMO Board. It will be at the Board's pleasure whom it chooses to recognize as the Market Committee.
- Q Is the Market Committee outside the IMO structure? If so is it like a lobby group?
- A The Market Committee is a body external to the IMO. It may be considered as a WESM representative lobby group but with formal functions and an obligation to act in the interests of the whole of WESM and not merely particular sectors within it.

#### **Rules Change Committee and Technical Committee**

- Q Who will appoint the members of the Rules Change Committee and the Technical Committee?
- A Independent Chairs appointed by the IMO, members are approved by the IMO on the recommendation of the Market Committee.
- Q Who will provide Secretariat and Administrative support to the Market, Rules Change, and Technical Committees?
- A Support to the RCC and TC will be provided by the IMO. It is envisaged that the Market Committee will carry its own costs for set up and operation. Comments are sought on this.

#### **IMO Transition Board**

- Q How long will the term of the IMO Transition Board be?
- A The IMO Transition Board will have a term of up to 2 years, by which time the IMO should be fully operational.
- Q Will the IMO Transition Board (ITB) be different from the current Board?

*IMO AND GOVERNANCE STRUCTURE*

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A Yes. The stakeholders from the current PEM Board will move to the Market Committee and the ITB will be the transitional governing body Chaired by the Secretary DOE and be composed of the PEMC President and independent members.

Q Who will select the members of the ITB?

A The Secretary DOE will select the members of the ITB.