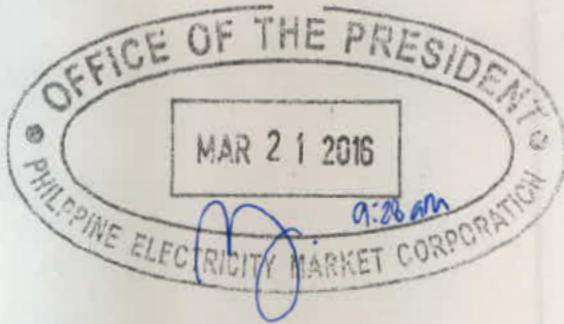


21 March 2016  
COR-INT-DRA-16-01



**MEMORANDUM**

To : **The PEM Board**

Cc : **Pres. Melinda L. Ocampo, PEMC**  
**Atty. Claudette G. Ubaldo, Corporate Secretary**

Thru : **Chrysanthus S. Heruela, VP-- PEMC-MAG**

From : **The Dispute Resolution Administrator**

Subject : **2015 Annual Report and 2016 Work Plan**

The Dispute Resolution Administrator (DRA) respectfully submits the attached 2015 Annual Report and the 2016 Work Plan annexed therein, which, respectively, presents the DRA's accomplishments in the previous year and the activities that the same intends to carry out for 2016.

For the PEM Board's information and reference.

Thank you.

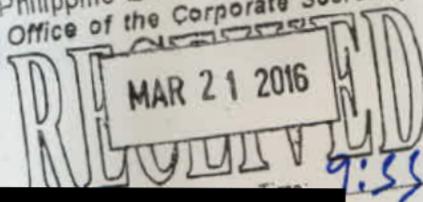
Very truly yours,

[Redacted Signature]

Note: This signature has been redacted pursuant to PEMC's Documented Information Management Policy. The full version of the file is available with the DRA Secretariat of PEMC.

**Atty. Jesusito G. Morallos**  
Dispute Resolution Administrator

Philippine Electricity Market Corp.  
Office of the Corporate Secretary



[Redacted]

# Dispute Resolution Administrator 2015 Annual Report

January 2015 to December 2015

Prepared by:  
Market Assessment Group  
March 2016

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## **A. 2015 ACCOMPLISHMENTS**

The Dispute Resolution Administrator (DRA) submits this Annual Report covering the activities undertaken and accomplished by the DRA for the year 2015. This report also presents the proposed activities of the DRA for 2016.

### **1. Publication of profiles and full CVs of the 37 WESM-accredited Mediators and Arbitrators**

In compliance with Sections 5.4.1 (e) and 6.1.2.5 of the Dispute Resolution Market Manual, the profiles and the most recent full CVs of the 37 WESM Mediators and Arbitrators were published in the Market Information Website on 08 June 2015. In the event a WESM dispute is referred to the DRA for mediation or arbitration, the parties to the dispute may refer to the WESM neutrals' CVs to guide them in selecting the mediator or members of the Arbitral Tribunal, as the case may be.

### **2. Development and Publication of Flowcharts and Standard Fillable Forms for the WESM Dispute Resolution Process**

Pursuant to Section 5.4.1(c) of the Dispute Resolution Market Manual, the DRA, with the assistance of the Secretariat, developed standard forms and flowcharts for Negotiation, Mediation and Arbitration *“to help expedite the resolution of disputes as contained in th[e] Manual”*.

The flowcharts and fillable forms were published in the Downloads section of the Market Information Website on 08 June 2015 for the use and easy reference of WESM Participants.

### **3. Publication of WESM Dispute Resolution Handbook version 2**

The development of a WESM Dispute Resolution Handbook (“Handbook”) was initiated late 2014 with the objective of providing both Market Participants and WESM-accredited Mediators/Arbitrators a quick guide and reference to the most relevant procedures, flowcharts, standard forms and document checklist for Negotiation, Mediation and

Arbitration in the WESM. Most of the contents of the Handbook were sourced from the Dispute Resolution Market Manual Issue 4.0 and is intended to only be a supplementary material to the same.

Upon completing the draft of the Handbook, the DRA requested the Philippine Institute of Arbitrators (PIArb), through a letter dated 06 April 2015, to undertake a technical review of the draft Handbook's form and style. The PIArb was selected due to its reputation as the foremost advocate of private dispute resolution in the country, as well as being PEMC's partner organization in the conduct of the Basic WESM and Arbitration Course given to aspiring WESM Mediators/Arbitrators held on September 2013.

The PIArb completed the review of the draft on August 2015, and on 29 September 2015, the WESM Dispute Resolution Handbook version 2.0 was published in the Market Information Website. Market Participants were likewise advised of the publication through the PEMC Helpdesk, while WESM Mediators/Arbitrators were notified through e-mail by the DRA Secretariat.

#### **4. Publication of Frequently Asked Questions on WESM Dispute Resolution**

As an initiative to promote awareness of WESM Dispute Resolution among WESM Participants, the DRA and the MAG Secretariat developed a set of Frequently Asked Questions which intend to address the most common concerns of Market Participants, WESM Mediators/Arbitrators, legal practitioners and the general public alike, for which the answers are not expressly found in the WESM Rules and the Dispute Resolution Market Manual (DRMM). The information covered in the FAQs not only touched upon those stipulated in the WESM Rules and the DRMM, but also from the overarching laws on commercial arbitration, namely R.A. No. 9285 (ADR Act of 2004) and R.A. No. 876 (Arbitration Law).

The topics of the fourteen-item FAQs include, among others, the forms required from a claimant pursuing negotiation, mediation or arbitration; the unique aspects of WESM Arbitration; the enforceability of compromise agreements (for mediation) or arbitral awards (for arbitration); the delineation of jurisdiction among the DOE, ERC and PEMC based from a dispute's subject matter; and specific issues that may be admitted for resolution under the WESM Dispute Resolution Process.

The FAQs were published in the Market Information Website on 29 September 2015. It is intended that the FAQs will be continually developed, as deemed necessary.

**Ongoing Activities:****1. Meeting with the Philippine Dispute Resolution Center, Inc. (PDRCI)**

Section 6.2.4 of the DRMM requires the DRA to accredit an ADR Support Service Center (ASSC), tasked to provide support and integrated administrative services for the exacting demands of mediation and arbitration proceedings. Towards this end, the DRA and the Secretariat, on 13 January 2015, met with some officers and staff and toured the facilities of the Philippine Dispute Resolution Center, Inc. (PDRCI), the only ADR support service provider in the country. The objective of the meeting was to invite the PDRCI to pursue accreditation to be the ASSC of the WESM for the duration of mediation or arbitration of WESM disputes, subject to the PEM Board's approval. The DRA briefly gave PDRCI an overview of the WESM Dispute Resolution process and explained what makes WESM Arbitration different from commercial arbitration in other industries.

During the same meeting, it was also established that PEMC, through the DRA, is approaching PDRCI as a prospective *ad hoc* client in the event that a WESM dispute is referred to the DRA, pending an accreditation. In an *ad hoc* arrangement, the DRA Secretariat will serve as the case Secretariat in-charge of the main administrative support throughout the proceedings, while the PDRCI will only be providing the venue and a menu of other support services (e.g., escrow service, partial administrative services, etc.).

An *ad hoc* arrangement differs from an institutional arrangement as the former entails the provision of only certain services by the PDRCI, while the latter is borne out of an accreditation of the PDRCI as the WESM ASSC, effectively forging a partnership between PEMC and PDRCI. An institutional arrangement also means that the accredited ASSC is the one who will provide all the support service requirements of mediation or arbitration, whichever the case may be, guided by the WESM Mediation and Arbitration Rules.

**2. Development of Proposed Amendments to the WESM Rules and Dispute Resolution Market Manual Issue 4.0**

The WESM Rules and the Dispute Resolution Market Manual (DRMM) were last amended in 2012 to reflect the shift in the framework of WESM Dispute Resolution Process (WESM DRP) from regulatory adjudication to agreement-based arbitration. This

framework is contemplated to only resolve *inter-partes* (“between the parties”) disputes that are civil, commercial and business in nature. The absence of any dispute lodged before the WESM since then afforded a closer review of the current dispute resolution rules and procedures in order to refine and improve them.

Throughout several meetings, the DRA and the MAG Secretariat determined provisions in the WESM Rules and the DRMM where revisions were deemed necessary, then proceeded to deliberate and develop possible amendments to the same. Consultations with other PEMC departments were made as well in order to make informed assessments whether revisions are necessary. The review was eventually expanded to cover all other provisions related to the role of WESM Dispute Resolution within the whole WESM and Retail Rules and all WESM and Retail Market Manuals to (i) classify if such provisions are administrative, regulatory or commercial in nature, and (ii) determine if the “non-commercial” (administrative and regulatory) dispute/dispute resolution-related provisions need to be amended to align them with the tenets of agreement-based arbitration (i.e., commercial arbitration).

The target timeline for the submission of the finalized proposed amendments to the WESM Rules and the DRMM Issue 4.0 to the Rules Change Committee is included in the DRA’s program of activities for 2016.

### **3. Negotiations between Therma Mobile, Inc. and PEMC**

On 13 February and subsequently on 23 February 2015, the DRA was furnished by TMO copies of the Notice of Dispute and Request for Information, respectively, which were addressed to the Dispute Management Protocol Focal Persons of PEMC. Therma Mobile, Inc. (TMO), in an effort to privately and amicably resolve its disagreement with PEMC as regards the PEM Board’s decision to impose financial penalty against it for breaching the ‘Must-Offer Rule’ during the November-December 2013 period, initiated the conduct of Negotiations with PEMC pursuant to the WESM Dispute Resolution Process provided under Clause 7.3 of the WESM Rules and the relevant provisions of the Dispute Resolution Market Manual (DRMM).

Both parties conducted a series of negotiation meetings from then until July 2015, conforming to the prescribed timeline in the DRMM for the Negotiation stage.

Failing to reach any form of settlement, TMO sent PEMC a Notice of Failure and Termination of Negotiations dated 13 August 2015, copy-furnished the DRA for his

information. The same Notice mentions that TMO shall be referring the dispute to the DRA for mediation, although no specific date of submission was set.

## **B. 2016 WORK PLAN**

Annex A provides the details of the Work Plan of the DRA for 2016.

## **C. THE DISPUTE RESOLUTION ADMINISTRATOR (DRA)**

The DRA is tasked to facilitate the resolution of disputes between or among the parties in accordance with the dispute resolution process approved for the Wholesale Electricity Spot Market (WESM), the Retail Competition and Open Access (RCOA) and the Interim Mindanao Electricity Market (IMEM). The alternative dispute resolution is a process which follows the stages of negotiation, mediation and arbitration, or negotiation up to mediation only in the case of the IMEM.

**Atty. Jesusito G. Morillos**, Senior Partner from Follosco Morillos and Herce Law Offices was appointed by the PEM Board on 01 September 2011 as the Dispute Resolution Administrator for the WESM.

The Market Assessment Group (“MAG”) acts as the Technical and Administrative Secretariat of the DRA.

## **D. RESPONSIBILITIES**

The main role and responsibilities of the DRA as set out in the relevant Dispute Resolution Market Manuals, consistent with the requirements of the WESM, RCOA and the IMEM Rules, are as follows:

- A. Administer and ensure the effective implementation and operation of the dispute resolution provisions of the relevant Dispute Resolution Market Manuals;
- B. Determine preliminarily if a dispute is a *dispute* which falls under the dispute resolution process of the WESM, the RCOA or the IMEM;
- C. Draft and issue standard forms to help expedite the resolution of disputes;

- D. Facilitate the accreditation process of mediators and arbitrations;
- E. Update the list of Accredited Mediators and Arbitrators published in the Market Information Website;
- F. Maintain data, reports and other information regarding the development and results of the disputes referred to the DRA.

**ANNEX A  
2016 WORK PLAN**

Item	Activity	Target	Deliverables	Remarks
1	Development of a directory of DMP Focal Persons	Apr-2016	Publication of updated directory of DMP Focal Persons and Alternates	
2	Exploration of a secure and cost-efficient electronic communication and files exchange platform for the use of WESM-accredited neutrals and multiple parties throughout the course of resolving a case	Jun-2016	Matrix of options for possible files exchange platforms	
3	Submission of Proposed Amendments to the WESM Rules and relevant Market Manuals to the Rules Change Committee	Aug-2016	Proposed amendments	
4	Acquisition of a roster/directory of case stenographers and their respective rates	Sep-2016	Roster/directory of stenographers	
5	Research on literature of procedures for dispute avoidance for the Dispute Management Protocol Focal Persons	Oct-2016	Informative/ facilitative materials	
6	Attendance of seminars or acquisition of training for Arbitral Tribunal Secretariat	as offered/as scheduled	Report	seminar is scheduled on 24 Feb 2016;

Item	Activity	Target	Deliverables	Remarks
				training is scheduled in Nov 2016
7	Development of a Procedural Manual for Case Secretariat/ADR Support Service Centers (ASSCs)	Dec-2016	Procedural guidelines and flowcharts	carried over from previous year
8	Awareness campaign for the WESM Dispute Resolution Process among Market Participants	as necessary	Continuous update of FAQs in the Market website, presentations, etc.	
9	Dissemination of schedules of ADR-related programs, lectures or events organized by external strategic partners (i.e., PI Arb, PDRCI, DOJ-OADR) for the continuing education of WESM-accredited Mediators/Arbitrators	as offered/ as scheduled	Advisories/notifications/invitations to WESM Mediators/Arbitrators	subject to the schedule of relevant programs or events
10	Facilitation of training for WESM-accredited Mediators/Arbitrators on the WESM, the Retail Market and the Reserve Market	as scheduled	Training(s)/seminar(s)	subject to the availability of trainings offered

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Item	Activity	Target	Deliverables	Remarks
11	Submission of report(s) on dispute case(s)	monthly or as applicable	Dispute Report(s), as needed	