



Republic of the Philippines
DEPARTMENT OF ENERGY

DEPARTMENT CIRCULAR NO. DE 2012-02-0001

ADOPTING FURTHER AMENDMENTS TO THE WESM RULES

WHEREAS, Rule 8.6 of the Wholesale Electricity Spot Market (WESM) Rules provides for the approval by the Department of Energy (DOE) of proposals for any WESM Rules changes upon endorsement by the Philippine Electricity Market (PEM) Board;

WHEREAS, on 02 November 2011, proposed changes to the WESM Rules on dispute resolution provisions were submitted to the Rules Change Committee (RCC);

WHEREAS, the proposed changes will provide for a new dispute resolution framework for WESM-related disputes;

WHEREAS, on its various meetings, the RCC deliberated the proposed changes to the WESM Rules incorporating comments from various stakeholders;

WHEREAS, on 11 January 2012, the RCC approved for submission to the PEM Board changes in the WESM Rules concerning provisions on dispute resolution; and

WHEREAS, on 24 January 2012, the PEM Board approved the proposed changes to the WESM Rules for endorsement to the DOE.

NOW, THEREFORE, pursuant to its authority under the WESM Rules, the DOE hereby issues, adopts and promulgates the following amendments to the WESM Rules.

Section 1. Amendments to the WESM Rules.

1.1 Clause 1.4.6 is amended to read -

1.4.6 Formation of Committees

The *PEM Board* shall form working groups and appoint qualified personnel who shall act as the following:

- (a) The *PEM Auditor* to conduct audits of the operation of the *spot market* and of the *Market Operator* in accordance with clause 1.5;
- (b) A *Market Surveillance Committee* to monitor and report on activities in the *spot market* in accordance with clause 1.6;
- (c) A *Technical Committee* to monitor and review technical matters under and in relation to the *WESM Rules*, the *Grid Code* and *Distribution Code* in accordance with clause 1.7;

- (d) A *Rules Change Committee* to assist the *PEM Board* and the *DOE* in relation to the revision and amendment of the *WESM Rules* in accordance with chapter 8, and the formulation, revision, amendment of market manuals, procedures and guidelines; and
- (e) A *Dispute Resolution Administrator* to facilitate the resolution of the dispute between and among the parties within a specified period of time in accordance with the dispute resolution process under clause 7.3.

1.2 Clause 3.3.3.7 is amended to read –

3.3.3.7 Any dispute between the *System Operator* and the *Ancillary Services Provider* in relation to the determination of a payment for spot market ancillary services shall be determined by the *Dispute Resolution Administrator* in accordance with clause 7.3, unless otherwise provided in the *Ancillary Services Procurement Agreement (ASPA)*.

1.3 Clause 7.1 is amended to read –

7.1 In line with the principles of self-governance, expeditious, just and least expensive disposition of disputes and considering the continuous nature of transactions and operations of the *WESM*, this chapter sets out:

- (a) The responsibilities for ensuring that all *WESM members* comply with the *WESM Rules*;
- (b) The procedures on how the alleged breaches will be dealt with including:
 - (1) The correct party to whom notice of an alleged breach of the *WESM Rules* by a *WESM Member* shall be given;
 - (2) The manner in which an alleged breach is to be investigated;
 - (3) The manner in which a breach is to be sanctioned;
- (c) Other provisions on how disputes are to be resolved; and
- (d) The appointment of an *Enforcement and Compliance Officer*, a *Dispute Resolution Administrator* and selection of mediators and arbitrators that shall form part of the arbitration panel.

1.4 Clause 7.3.1.1 is amended to read –

7.3.1.1 The dispute resolution procedures set out in this clause 7.3 apply to all disputes relating to or in connection with transactions in the *WESM* which may arise between or among any of the following:

- (a) *The Market Operator;*
- (b) *The System Operator;*
- (c) *The PEM Board and its Working Groups, except the Dispute Resolution Administrator;*
- (d) *WESM members;*
- (e) *Intending WESM members;*
- (f) *Persons who have been notified by the Market Operator under clause 2.5.6.1 on the following grounds:*
 - (1) *an application for registration as a WESM member has been unsuccessful;*
 - (2) *the application or interpretation of the WESM Rules;*
 - (3) *the application under or in relation to a contract between two or more persons or entities referred to in clauses 7.3.1.1 (a) to (f) where that contract provides that the dispute resolution procedures under the WESM Rules are to apply to any dispute under or in relation to the contract with respect to the application of the WESM Rules;*
 - (4) *a dispute under or in relation to the rules and regulations issued by the ERC and the DOE under the Act, where such rules and regulations provide that the dispute resolution procedures under the WESM Rules are to apply to any dispute under or in relation to that industry code or rules and regulations;*
 - (5) *the failure of an entity or entities referred to in clauses 7.3.1.1 (a) to (e) to act or behave in a manner consistent with the WESM Rules;*
 - (6) *an obligation to settle payment under the WESM Rules;*

The aforementioned parties shall bind themselves with the effect of submitting any dispute, controversy or claim arising out of or relating to, a WESM transaction to which they are or will be a party for settlement by arbitration in accordance with the dispute resolution provisions provided herein.

1.5 Clause 7.3.1.3 is amended to read –

- 7.3.1.3. Where a dispute of a kind set out in clause 7.3.1.1 arises, the parties concerned shall comply with the dispute management protocol set out in this Chapter.

1.6 Clause 7.3.2 is amended to read -

7.3.2 Appointment of Dispute Resolution Administrator (DRA)

7.3.2.1 The *PEM Board* shall appoint a person to act as the *Dispute Resolution Administrator*, who shall have the following responsibilities:

- (a) Administer and ensure the effective implementation and operation of the *WESM* dispute resolution process;
- (b) Determine preliminarily if the dispute falls under the *WESM* dispute resolution process;
- (c) Draft and issue standard forms and documents to help expedite the resolution of disputes;
- (d) Facilitate the accreditation process of mediators and arbitrators;
- (e) Update the list of accredited mediators and arbitrators published in the website;
- (f) Refer the case to the mediator selected by the parties in dispute from the accredited pool of mediators; and
- (g) Refer the case to the arbitration panel composed of arbitrators selected by the parties in dispute from the accredited list of arbitrators.

1.7 Clause 7.3.2.2 is amended to read -

7.3.2.2. The *Dispute Resolution Administrator* shall have the following qualifications:

- (a) At least five years' experience in alternative dispute resolution practice and procedures which do not involve litigation;
- (b) At least five years' experience in the electric power industry; and
- (c) Not been employed by any electric power industry participant, or a company or body related to or associated with a *WESM Participant* at least one year before appointment.

The *DRA* not to be employed by and does not accept employment with any electric power industry participant, or company, or a body related to or associated with a *WESM member* within one year after the person ceases to be a *Dispute Resolution Administrator*.

1.8 Clauses 7.3.2.4 to 7.3.2.6 are deleted.

1.9 Clause 7.3.3 is amended to read -

7.3.3 Dispute Management Protocol

7.3.3.1 Prior to the referral of a dispute to the *DRA*, a dispute management protocol (DMP) shall first be implemented by all parties covered by the *WESM* dispute resolution process.

The DMP is a system to be followed by the disputing parties and shall form part of the negotiation stage of the *WESM* dispute resolution framework. The goal of the DMP is to allow the parties to negotiate through designated DMP contact persons within a period of forty five (45) days from the time a formal notice is received by the *Market Operator* or a *WESM Member*.

For this purpose, the DMP of the *Market Operator* and each *WESM Member* shall provide:

- (a) the DMP contact person who will be the first point of contact for the notification of disputes;
- (b) the mode of service and receipt of notice of dispute and other related notices; and
- (c) the mode of responding to requests for information from other *WESM Member/s* in relation to a dispute.

1.10 Clause 7.3.3.2 is amended to read -

7.3.3.2. The *Market Operator* and all *WESM Members* shall submit a copy of its dispute management protocol to the *DRA* which shall be posted by the *DRA* in the market website.

1.11 Clause 7.3.4. is added to read -

7.3.4 Accreditation and Selection of Mediators and Arbitrators

7.3.4.1 The *Dispute Resolution Administrator* shall recommend to the *PEM Board* the procedure for the accreditation of the mediators and arbitrators from certified alternative dispute resolution (ADR) providers.

The *PEM Board* shall approve the process of accreditation and shall thereafter accredit the *DRA*-recommended mediators and arbitrators based on the said accreditation process.

The *DRA* shall ensure that an updated list of accredited mediators and arbitrators shall be published in the *WESM* website.

1.12 Clause 7.3.4.2 is added to read –

7.3.4.2. In case of failure of the negotiation process and upon a preliminary determination by the *Dispute Resolution Administrator* that the dispute falls under the WESM dispute resolution process, the *DRA* shall provide the parties with a list of accredited mediators together with their respective expertise.

1.13 Clause 7.3.4.3 is added to read –

7.3.4.3. In the event of failure of the mediation process, the *DRA* shall provide the parties with a list of accredited arbitrators together with their respective expertise.

1.14 Clause 7.3.4 is renumbered and amended to read –

7.3.5. Dispute Resolution Process

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7.3.5.6 If the *Dispute Resolution Administrator* is not reasonably satisfied that the dispute is one to which clause 7.3.1.1 applies, the *Dispute Resolution Administrator* shall issue a written order stating that the claim is not a dispute covered under clause 7.3.1.1.

1.15 Clause 7.3.5.7 is added to read –

7.3.5.7 If the *Dispute Resolution Administrator* is reasonably satisfied that the dispute is one to which clause 7.3.1.1 applies, the *Dispute Resolution Administrator* shall issue a written direction stating preliminarily that the claim falls under the WESM dispute resolution process.

1.16 Clause 7.3.4.8 is deleted.

1.17 Clause 7.3.5 (The Dispute Resolution Panel) and Clauses 7.3.5.1 to 7.3.5.8 are deleted.

1.18 Clause 7.3.8 is amended to read –

7.3.8 Legal Representation

Reliance on legal representation in dispute resolution proceedings may be permitted whenever the mediator and/or arbitrator panel considers it appropriate and desirable.

1.19 Clause 7.3.9 is amended to read -

7.3.9 Cost of Dispute Resolution

Unless otherwise agreed upon by the parties, the reasonable costs of the proceedings may be allocated by the mediator or arbitrators for payment by one or more parties as part of the agreement or award, as may be applicable. The following are considered costs of the proceedings:

- (a) Professional fees of the mediator and arbitrators;
- (b) Legal expenses; and
- (c) Administrative costs.

1.20 Clause 7.3.10.3 is amended to read -

7.3.10.3 All persons referred to in clauses 7.3.1.1 (a) to (e) affected by an agreement reached during the mediation stage or an award of the arbitration panel shall comply with the agreement or award to the extent such agreement or award applies to them, notwithstanding that they were not parties to the dispute.

The DRA shall, prior to the mediation or arbitration process, notify in writing and through posting in the market website, all persons who may be affected as a consequence of the resolution of the dispute.

1.21 Clause 7.3.11.1 is to read -

7.3.11.1 Whenever a dispute is resolved, the mediator or the arbitration tribunal, as may be applicable, shall send written details of the resolution of the dispute to the *Dispute Resolution Administrator*, the *PEM Board*, the *DOE*, the *ERC* and the *Market Operator* as soon as practicable.

1.22 Clause 7.3.11.2 is amended to read -

7.3.11.2 Subject to clause 5.3, the details and results of each dispute which the mediator and/or arbitration panel resolves, as the case may be, except confidential information, shall be published and made available to *WESM Members* as soon as practicable.

1.23 Clause 7.3.12 (Judicial Review) is deleted.

1.24 Clause 7.3.12 is renumbered and amended to read -

7.3.12 Limitation of Liability

The Dispute Resolution Administrator is not liable for any loss or damage suffered by a Participant or any other person as a consequence of any act or omission of those persons unless the Dispute Resolution Administrator acted with malice, manifest impartiality, bad faith, gross incompetence or gross negligence.

1.25 Clause 7.3.14 (Indemnity) is deleted.

1.26 The definition of Dispatch Management Protocol in Chapter 11: Glossary is amended to read -

Dispatch Management Protocol or "DMP". The DMP is a system to be followed by the disputing parties and shall form part of the negotiation stage of the WESM dispute resolution framework.

1.27 Reference to the Dispute Resolution Group (DRG) in Chapter 11: Glossary is removed.

1.28 Reference to the Dispute Resolution Panel in Chapter 11: Glossary is removed.

Section 2. Separability Clause. If for any reason, any section or provision of this Circular is declared unconstitutional or invalid, such parts not affected shall remain in full force and effect.

Section 3. Effectivity. This Circular shall take into effect fifteen (15) days following its publication in at least two (2) newspapers of general circulation and shall remain in effect until otherwise revoked.

Issued this FEB 15 2012 in Fort Bonifacio, Taguig City, Metro Manila.


JOSE RENE D. ALMENDRAS

Secretary

