

**WHOLESALE ELECTRICITY SPOT MARKET
RULES CHANGE COMMITTEE**

RESOLUTION NO. 2011-06

**Proposed Urgent Amendments to the WESM Rules on
Dispute Resolution Provisions**

WHEREAS, the WESM Rules provide the appointment and responsibilities of the Dispute Resolution Administrator (DRA), as well as the procedures and mechanisms for the resolution of WESM-related disputes;

WHEREAS, the current framework of the dispute resolution process raises conflict of interest when the Philippine Electricity Market (PEM) Board, its Committees and the Philippine Electricity Market Corporation (PEMC) are impleaded as parties to the dispute, as well as can lead to possible double compensation on the professional fees of the members of Dispute Resolution Group (DRG) in view of the current system where DRG members receive a monthly honorarium from PEMC;

WHEREAS, the PEMC deemed that there is a need to amend the existing dispute resolution processes in order to address the issues cited above and thus on 06 June 2011, submitted to the Rules Change Committee (RCC) its proposal to amend the various dispute resolution provisions in the WESM Rules;

WHEREAS, the PEMC introduced changes on the structure of the WESM dispute resolution process where the mediator and arbitrators shall no longer form part of the DRG and the DRG shall no longer be a PEM Board Committee, as well as procedures on the accreditation and selection of mediators and arbitrators;

WHEREAS, the proposed amendments are classified as URGENT Amendments per certification by the President pursuant to Section 3.1 (c) of the Manual of Procedures for Changes to the WESM Rules;

WHEREAS, during the 48th meeting of the RCC on 08 June 2011, the proposed amendments were presented to the RCC, for discussion and approval;

WHEREAS, during the said 48th meeting, after due deliberation, the RCC determined that there is an urgent need to amend the WESM Rules in order to avert the unintended adverse effects of the existing dispute resolution provisions in view of the issues cited above;

WHEREAS, during the said 48th meeting, the RCC agreed to approve the proposed urgent amendments, incorporating the comments/suggestions of the RCC, for submission to the PEM Board;




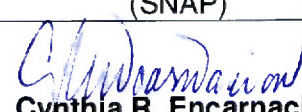
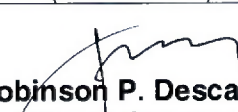

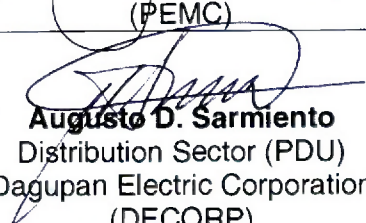


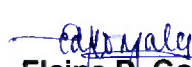
NOW THEREFORE, we, the undersigned and in behalf of the sector we represent, hereby resolve as follows:

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RESOLVED, that the proposed amendments to the WESM Rules on Dispute Resolution Provisions (attached as Annex "A"), as revised by the RCC, are adopted and approved in full;

RESOLVED FINALLY, that the proposed amendments to the WESM Rules be endorsed to the PEM Board for approval.

Done this 08 June 2011, Pasig City.

Approved by: RULES CHANGE COMMITTEE  Epictetus E. Patalinghug Acting Chairperson Independent University of the Philippines (UP)	
Members:	
 Cherry Aquino-Javier Generation Sector AES Philippines (AES)	 Ralph T. Crisologo Generation Sector SN Aboitiz Power (SNAP)
Liberty Z. Dumlao Generation Sector Power Sector Assets and Liabilities Management Corporation (PSALM)	 Cynthia R. Encarnacion Generation Sector National Power Corporation (NAPOCOR)
Raul Joseph G. Seludo Transmission Sector National Grid Corporation of the Philippines (NGCP)	 Robinson P. Descanzo Market Operator Philippine Electricity Market Corporation (PEMC)
 Ciprinilo C. Meneses Distribution Sector (PDU) Manila Electric Company (MERALCO)	 Augusto D. Sarmiento Distribution Sector (PDU) Dagupan Electric Corporation (DECORP)
 Jose P. Santos Distribution Sector (EC) Ilocos Norte Electric Cooperative (INEC)	 Conrado D. Pecjo Supply Sector Angeles Power, Inc.
	Certified True and Correct:  Elaine D. Gonzales RCC Secretary PEMC <i>not</i>

Proposed Changes to the WESM Rules on Dispute Resolution Provisions
RCC/WESM-WR-11/07

Original Provision	PEMC Proposed Amendment		RCC-Approved Proposed Amendment	
	On 06 June 2011	Rationale		Remarks
<p>1.4.6 Formation of Committees</p> <p>The <i>PEM Board</i> shall form working groups and appoint qualified personnel who shall act as the following:</p> <p>(a) The <i>PEM Auditor</i> to conduct audits of the operation of the <i>spot market</i> and of the <i>Market Operator</i> in accordance with clause 1.5;</p> <p>(b) A <i>Market Surveillance Committee</i> to monitor and report on activities in the spot market in accordance with clause 1.6;</p> <p>(c) A <i>Technical Committee</i> to monitor and review technical matters under and in relation to the <i>WESM Rules</i>, the <i>Grid Code</i> and <i>Distribution Code</i> in accordance with clause 1.7; and</p> <p>(d) A <i>Rules Change Committee</i> to assist the <i>PEM Board</i> and the <i>DOE</i> in relation to</p>	<p>1.4.6 Formation of Committees</p> <p>The <i>PEM Board</i> shall form working groups and appoint qualified personnel who shall act as the following:</p> <p>(a) The <i>PEM Auditor</i> to conduct audits of the operation of the <i>spot market</i> and of the <i>Market Operator</i> in accordance with clause 1.5;</p> <p>(b) A <i>Market Surveillance Committee</i> to monitor and report on activities in the spot market in accordance with clause 1.6;</p> <p>(c) A <i>Technical Committee</i> to monitor and review technical matters under and in relation to the <i>WESM Rules</i>, the <i>Grid Code</i> and <i>Distribution Code</i> in accordance with clause 1.7; and</p> <p>(d) A <i>Rules Change Committee</i> to assist the <i>PEM Board</i> and the <i>DOE</i> in relation to</p>	<p>The Dispute Resolution Administrator is not involved in the mediation process.</p>	<p>1.4.6 Formation of Committees</p> <p>The <i>PEM Board</i> shall form working groups and appoint qualified personnel who shall act as the following:</p> <p>(a) The <i>PEM Auditor</i> to conduct audits of the operation of the <i>spot market</i> and of the <i>Market Operator</i> in accordance with clause 1.5;</p> <p>(b) A <i>Market Surveillance Committee</i> to monitor and report on activities in the spot market in accordance with clause 1.6;</p> <p>(c) A <i>Technical Committee</i> to monitor and review technical matters under and in relation to the <i>WESM Rules</i>, the <i>Grid Code</i> and <i>Distribution Code</i> in accordance with clause 1.7; and</p> <p>(d) A <i>Rules Change Committee</i> to assist the <i>PEM Board</i> and the <i>DOE</i> in relation to</p>	<p>-Approved, as amended-</p>

<p>the revision and amendment of the <i>WESM Rules</i> in accordance with chapter 8, and the formulation, revision and amendment of market manuals, procedures and guidelines; and</p> <p>(e) A <i>Dispute Resolution Administrator</i> to facilitate the mediation of the dispute between the parties to reach resolution within a specified period of time in accordance with the dispute resolution process under clause 7.3.</p>	<p>the revision and amendment of the <i>WESM Rules</i> in accordance with chapter 8, and the formulation, revision and amendment of market manuals, procedures and guidelines; and</p> <p>(e) A <i>Dispute Resolution Administrator</i> to facilitate the <u>resolution</u> mediation of the dispute between the parties to reach resolution within a specified period of time in accordance with the dispute resolution process under clause 7.3.</p>		<p>the revision and amendment of the <i>WESM Rules</i> in accordance with chapter 8, and the formulation, revision and amendment of market manuals, procedures and guidelines; and</p> <p>(e) A <i>Dispute Resolution Administrator</i> to facilitate the <u>resolution</u> mediation of the dispute between <u>or among</u> the parties to reach resolution within a specified period of time in accordance with the dispute resolution process under clause 7.3.</p>	
<p>3.3.3 Ancillary Services Agreements</p> <p>xxx</p> <p>3.3.3.7 Any dispute between the <i>System Operator</i> and the <i>Ancillary Services Provider</i> in relation to the determination of a payment under an <i>ancillary services</i> agreement shall be determined by the <i>Dispute Resolution Administrators</i> in accordance with clause 7.3.</p>	<p>3.3.3 Ancillary Services Agreements</p> <p>xxx</p> <p>3.3.3.7 Any dispute between the <i>System Operator</i> and the <i>Ancillary Services Provider</i> in relation to the determination of a payment under an <i>ancillary services</i> agreement shall be determined by the <u>Dispute Resolution Administrators</u> in accordance with clause 7.3.</p>	<p>This dispute shall be resolved in accordance with the process provided under clause 7.3 and not automatically by the DRA.</p>	<p>3.3.3 Ancillary Services Agreements</p> <p>xxx</p> <p>3.3.3.7 Any dispute between the <i>System Operator</i> and the <i>Ancillary Services Provider</i> in relation to the determination of a payment under an <i>ancillary services</i> agreement shall be determined by the <u>Dispute Resolution Administrators</u> in accordance with clause 7.3.</p>	<p>-Approved, as proposed-</p>

<p>7.1 Scope of Chapter 7</p> <p>In line with the principles of self-governance, expeditious, just and least expensive disposition of disputes and considering the continuous nature of the transactions and operations of the <i>WESM</i>, this chapter sets out:</p> <p>(a) The responsibilities for ensuring that all <i>WESM members</i> comply with the <i>WESM Rules</i>;</p>	<p>7.1 Scope of Chapter 7</p> <p>In line with the principles of self-governance, expeditious, just and least expensive disposition of disputes and considering the continuous nature of the transactions and operations of the <i>WESM</i>, this chapter sets out:</p> <p>(a) The responsibilities for ensuring that all <i>WESM members</i> comply with the <i>WESM Rules</i>;</p>	<p>The proposed amendment is consistent with the recommended structure where the mediator and members of the dispute resolution panel shall no longer form part of the Dispute Resolution Group (DRG) and the DRG shall no longer be a PEM Committee.</p>	<p>7.1 Scope of Chapter 7</p> <p>In line with the principles of self-governance, expeditious, just and least expensive disposition of disputes and considering the continuous nature of the transactions and operations of the <i>WESM</i>, this chapter sets out:</p> <p>(a) The responsibilities for ensuring that all <i>WESM members</i> comply with the <i>WESM Rules</i>;</p>	<p>-Approved, as proposed-</p>
<p>(b) The procedures on how the alleged breaches will be dealt with including:</p> <ol style="list-style-type: none"> (1) The correct party to whom notice of an alleged breach of the <i>WESM Rules</i> by a <i>WESM member</i> 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; <p>(c) Other provisions on how disputes are to be resolved; and</p> <p>(d) The appointment of an <i>Enforcement and</i></p>	<p>(b) The procedures on how the alleged breaches will be dealt with including:</p> <ol style="list-style-type: none"> (1) The correct party to whom notice of an alleged breach of the <i>WESM Rules</i> by a <i>WESM member</i> 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; <p>(c) Other provisions on how disputes are to be resolved; and</p> <p>(d) The appointment of an <i>Enforcement and</i></p>		<p>(b) The procedures on how the alleged breaches will be dealt with including:</p> <ol style="list-style-type: none"> (1) The correct party to whom notice of an alleged breach of the <i>WESM Rules</i> by a <i>WESM member</i> 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; <p>(c) Other provisions on how disputes are to be resolved; and</p> <p>(d) The appointment of an <i>Enforcement and</i></p>	

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<p>been unsuccessful , as to:</p> <p>(g) The application or interpretation of the <i>WESM Rules</i>; or</p> <p>(h) A dispute 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</p>	<p>grounds: that</p> <p>(1) an application for registration as a <i>WESM member</i> has been unsuccessful; as to:</p> <p>(2) (g) the application or interpretation of the <i>WESM Rules</i>; or</p> <p>(3) (h) A a dispute 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) (e) where that contract provides that the dispute resolution procedures under the <i>WESM Rules</i> are to apply to any dispute under or in relation to that contract with respect to the application of</p>		<p>(1) an application for registration as a <i>WESM member</i> has been unsuccessful; as to:</p> <p>(2) (g) the application or interpretation of the <i>WESM Rules</i>; or</p> <p>(3) (h) A a dispute 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) (e) where that contract provides that the dispute resolution procedures under the <i>WESM Rules</i> are to apply to any dispute under or in relation to that contract with respect to the application of the <i>WESM</i></p>	
<p>procedures under the <i>WESM Rules</i> are to apply to any dispute under or in relation to that contract with respect to the application of the <i>WESM Rules</i>; or</p> <p>(i) A dispute under or in relation to the rules and regulations issued by the <i>ERC</i> and <i>DOE</i> under the <i>Act</i>, where such rules and regulations provide that the dispute resolution procedures under the <i>WESM Rules</i> are to apply to any</p>				

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<p>dispute under or in relation to that industry code or rules and regulations; or</p> <p>(j) 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 <i>WESM Rules</i>; or</p> <p>(k) An obligation to settle payment under the <i>WESM Rules</i>; or</p>	<p>the <i>WESM Rules</i>; or</p> <p>(4) (i) A a dispute under or in relation to the rules and regulations issued by the <i>ERC</i> and <i>DOE</i> under the <i>Act</i>, where such rules and regulations provide that the dispute resolution procedures under the <i>WESM Rules</i> are to apply to any dispute under or in relation to that industry code or rules and regulations; or</p>		<p><i>Rules</i>; or</p> <p>(4) (i) A a dispute under or in relation to the rules and regulations issued by the <i>ERC</i> and <i>DOE</i> under the <i>Act</i>, where such rules and regulations provide that the dispute resolution procedures under the <i>WESM Rules</i> are to apply to any dispute under or in relation to that industry code or rules and regulations; or</p>	
<p>(l) The failure of a person referred to in clause 7.3.1.1 (f) to become registered as a <i>WESM member</i> under chapter 2.</p>	<p>(5) (i) 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 <i>WESM Rules</i>; or</p> <p>(6) (k) A an</p>		<p>(5) (i) 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 <i>WESM Rules</i>; or</p> <p>(6) (k) A an obligation to</p>	

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	<p>obligation to settle payment under the <i>WESM Rules</i>;</p> <p>or</p> <p>(f) The failure of a person referred to in clause 7.3.1.1 (f) to become registered as a <i>WESM member</i> under chapter 2.</p>		<p>settle payment under the <i>WESM Rules</i>;</p> <p>or</p> <p>(f) The failure of a person referred to in clause 7.3.1.1 (f) to become registered as a <i>WESM member</i> under chapter 2.</p>	
7.3.1 Application and Guiding Principles	7.3.1 Application and Guiding Principles	The proposed revision is harmonized with the provision on dispute management system.	7.3.1 Application and Guiding Principles	-Approved, as proposed-
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 procedures set out in clauses 7.3.2 to 7.3.14 before pursuing any other dispute resolution mechanism, including but not limited to court action in relation to the dispute.	7.3.1.3 Where a dispute of a kind set out in clause 7.3.1.1 arises, the parties concerned shall comply first with the protocols in their respective dispute management systems before pursuing the dispute resolution process laid down under this Rules. with the procedures set out in clauses 7.3.2 to 7.3.14 before pursuing any other dispute resolution mechanism, including but not limited to court action in relation to the dispute.		7.3.1.3 Where a dispute of a kind set out in clause 7.3.1.1 arises, the parties concerned shall comply first with the protocols in their respective dispute management systems before pursuing the dispute resolution process laid down under this Rules. with the procedures set out in clauses 7.3.2 to 7.3.14 before pursuing any other dispute resolution mechanism, including but not limited to court action in relation to the dispute.	
7.3.2 Appointment of Dispute	7.3.2 Appointment of Dispute		7.3.2 Appointment of Dispute	

Resolution Administrator and Panel Group	Resolution Administrator and Panel Group	The revised clause reflects the recommended procedure and establishes the responsibilities and qualifications of the DRA.	Resolution Administrator and Panel Group	-Approved, as proposed-
7.3.2.1 The <i>PEM Board</i> shall appoint a person to act as the <i>Dispute Resolution Administrator</i> , who shall also be a part of the <i>Dispute Resolution Group</i> .	7.3.2.1 The <i>PEM Board</i> shall appoint a person to act as the <i>Dispute Resolution Administrator</i> , who shall also be a part of the <i>Dispute Resolution Group</i> <u>have the following responsibilities:</u>	Under the present WESM Rules, the responsibilities of the Dispute Resolution Administrator are not spelled out. The responsibilities of the Dispute Resolution Administrator are in line with the recommended structure where the mediators and arbitrators shall be selected from an accredited list in case the need for mediation or arbitration arises.	7.3.2.1 The <i>PEM Board</i> shall appoint a person to act as the <i>Dispute Resolution Administrator</i> , who shall also be a part of the <i>Dispute Resolution Group</i> <u>have the following responsibilities:</u>	-Approved, as amended-
	<p>(a) <u>Administer and ensure the effective implementation and operation of the WESM dispute resolution process;</u></p> <p>(b) <u>Aid in the resolution of disputes within the objectives established under clause 7.3.1.5;</u></p> <p>(c) <u>Determine judiciously if the dispute falls under the WESM dispute resolution process;</u></p> <p>(d) <u>Draft and issue standard forms</u></p>		<p>(a) <u>Administer and ensure the effective implementation and operation of the WESM dispute resolution process;</u></p> <p>(b) <u>Aid in the resolution of disputes within the objectives established under clause 7.3.1.5;</u></p> <p>(c) <u>Determine judiciously if the dispute falls under the WESM dispute resolution process;</u></p> <p>(d) <u>Draft and issue standard forms</u></p>	

	<p>and documents required or expedient in the resolution of disputes;</p> <p>(e) Facilitate the accreditation process of mediators and arbitrators;</p> <p>(f) Initiate the selection of mediator from the <u>accredited pool of mediators to facilitate an amicable and voluntary agreement regarding a dispute; and</u></p> <p>(g) Initiate the selection of arbitrators from the <u>accredited list of arbitrators in the resolution of a dispute by rendering an award.</u></p>		<p>and documents required or expedient in the resolution of disputes;</p> <p>(e) Facilitate the accreditation process of mediators and arbitrators;</p> <p>(f) Initiate the selection of mediator from the <u>accredited pool of mediators to facilitate an amicable and voluntary agreement regarding a dispute</u> Refer the case to the mediator selected by the parties in dispute from the <u>accredited pool of mediators; and</u></p> <p>(g) Initiate the selection of arbitrators from the <u>accredited list of arbitrators in the resolution of a dispute by rendering an award</u> Refer the case to the</p>	<p>Proposed Sections 7.3.2.1 (f) and (g) were revised, upon the resolution of the RCC that the DRA should not have a hand or not be involved in the selection of the mediator and arbitrators.</p>
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			<u>arbitration panel composed of arbitrators selected by the parties in dispute from the accredited list of arbitrators.</u>	
7.3.2.2 The <i>Dispute Resolution Administrator</i> shall: (a) Have a detailed understanding and experience of alternative dispute resolution practice and procedures which do not involve litigation; (b) Have the capacity to determine the most appropriate alternative dispute resolution procedures in particular circumstances; (c) Have an understanding of the electricity industry; (d) Has not been employed by any electric power industry participant, or a company or body related to or associated with a	7.3.2.2 The <i>Dispute Resolution Administrator</i> shall <u>have the following qualifications:</u> (a) Have a d Detailed understanding and experience of alternative dispute resolution practice and procedures which do not involve litigation; (b) Have the c Capacity to determine the most appropriate alternative dispute resolution procedures in particular circumstances; (c) Have an u Understanding of the electricity industry <u>and the WESM;</u> (d) Has n Not been employed by any electric power industry participant,	For clarity, Clause 7.3.2.2 provides the qualifications of the DRA.	7.3.2.2 The <i>Dispute Resolution Administrator</i> shall <u>have the following qualifications:</u> (a) Have a d Detailed understanding and experience of alternative dispute resolution practice and procedures which do not involve litigation; (b) Have the c Capacity to determine the most appropriate alternative dispute resolution procedures in particular circumstances; (c) Have an u Understanding of the electricity industry <u>and the WESM;</u> (d) Has n Not been employed by any electric power industry participant,	-Approved, as amended-

<p><i>WESM Participant</i> at least one year before appointment; and</p> <p>(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 <i>WESM member</i> within one year after the person ceases to be a <i>Dispute Resolution Administrator</i>.</p>	<p>or a company or body related to or associated with a <i>WESM Participant</i> at least one year before appointment; and</p> <p>(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 <i>WESM member</i> within one year after the person ceases to be a <i>Dispute Resolution Administrator</i>.</p>		<p>or a company or body related to or associated with a <i>WESM Participant</i> at least one year before appointment; and</p> <p>(e) The DRA 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 <i>WESM member</i> within one year after the person ceases to be a <i>Dispute Resolution Administrator</i>.</p>	<p>Moved to another paragraph as the provision is a statement of the DRA's agreement to the condition cited, and not a qualification.</p>
7.3.2.4 to 7.3.2.6	Clauses 7.3.2.4 to 7.3.2.6 are TO BE DELETED	The proposed deletion is in line with the new process of accreditation and selection of mediators and arbitrators.		-Approved, as proposed-
New Provision	<u>7.3.3 Accreditation and Selection of Mediator and Arbitrators</u>	This suggested provision will detail the procedures for the accreditation and selection of mediator and arbitrators from certified ADR providers by the Office of Alternative Dispute Resolution of the Department of Justice.	<u>7.3.3 Accreditation and Selection of Mediator and Arbitrators</u>	-Approved, as proposed-

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New Provision	<p><u>7.3.3.1 The Dispute Resolution Administrator shall recommend a procedure for the accreditation of the mediators and arbitrators from certified alternative dispute resolution (ADR) providers by the Office of the Alternative Dispute Resolution of the Department of Justice based on the following qualifications:</u></p> <ol style="list-style-type: none"> <u>1. Proven track record and experience in mediation and arbitration proceedings;</u> <u>2. Deep understanding of the electricity industry in the Philippines and the WESM;</u> <u>3. Preferably handled an an electricity industry-related dispute; and</u> <u>4. Must not have been engaged or employed by any</u> 	<p>The new process involves two phases: 1) accreditation and 2) selection. The accreditation shall be undertaken by the DRA from a pool of ADR professionals from certified ADR providers based on certain qualifications. While the selection process is streamlined where the parties are given options in the selection of the mediator and composition of the arbitration panel.</p>	<p><u>7.3.3.1 The Dispute Resolution Administrator shall recommend a procedure for the accreditation of the mediators and arbitrators from certified alternative dispute resolution (ADR) providers by the Office of the Alternative Dispute Resolution of the Department of Justice. Such mediators and arbitrators shall be accredited based on the following qualifications:</u></p> <ol style="list-style-type: none"> <u>1. Proven track record and experience in mediation and arbitration proceedings;</u> <u>2. Deep understanding of the electricity industry in the Philippines and the WESM;</u> <u>3. Preferably handled an an electricity industry-related dispute; and</u> 	<p>-Approved, as amended-</p>
				<p>Revised to clarify that the mediators and arbitrators shall be accredited based on the qualifications cited in the proposed provision.</p>

	<p><u>electric power industry participant, or a company or body related to or associated with a WESM Participant at least one year before the accreditation.</u></p> <p><u>The DRA shall ensure that an updated list of accredited mediators and arbitrators shall be published in the WESM website.</u></p>		<p><u>4. Must not have been engaged or 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 the accreditation.</u></p> <p><u>The DRA shall ensure that an updated list of accredited mediators and arbitrators shall be published in the WESM website.</u></p>	
New Provision	<p><u>7.3.3.2 Upon determination by the Dispute Resolution Administrator that the dispute falls under the WESM dispute resolution process, the DRA shall nominate three (3) possible mediators from the list of accredited mediators considering the following:</u></p> <p><u>(a) The nature and particular</u></p>	<p>This new provision aims to lay down the procedure to be taken in case the DRA determines that the dispute falls under the WESM dispute resolution process.</p>	<p><u>7.3.3.2 Upon determination by the Dispute Resolution Administrator that the dispute falls under the WESM dispute resolution process, the DRA shall assist the parties in selecting nominate three (3) possible the mediators from the list of accredited mediators considering the following:</u></p> <p><u>(a) The nature and</u></p>	<p>-Approved, as amended-</p> <p>Revised to be consistent with the revisions to the proposed Section 7.3.2.1 (f) that the DRA should not be involved in the selection of the mediator and that its role should be limited to providing assistance to the parties in so far as the selection</p>

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	<u>circumstances of the dispute;</u> (b) The mediation expertise; and (c) The availability of time to handle the mediation proceeding.		<u>particular circumstances of the dispute;</u> (b) The mediation expertise; and (c) The availability of time to handle the mediation proceeding.	process is concerned.
New Provision	7.3.3.3 In the event of failure of the mediation process, the DRA shall prepare a list of accredited arbitrators and forward the same to the parties in dispute. The DRA shall include a description of the particular expertise of each of the members in the list.	<p>This suggested provision is consistent with the new procedure where a list of accredited arbitrators shall be forwarded to the parties in case mediation fails.</p>	7.3.3.3 In the event of failure of the mediation process, the DRA shall assist the parties in dispute in selecting three (3) arbitrators prepare from a list of accredited arbitrators and forward the same to the parties in dispute within ten (10) days. The DRA shall include a description of the particular expertise of each of the members in the list.	<p>-Approved, as amended-</p> <p>Revised to be consistent with the revisions to the proposed Section 7.3.2.1 (g) that the DRA should not be involved in the selection of the arbitrators and that its role should be limited to providing assistance to the parties in so far as the selection process is concerned. The provision was likewise revised to provide a specific timeline within which the selection of the arbitrators shall take place.</p>
7.3.3 Dispute Management Systems All of the parties which are listed in clauses 7.3.1.1 (a) to (e) shall implement and adopt a <i>dispute management system</i> which is approved by the <i>PEM Board</i> .	7.3.3 7.3.4 Dispute Management Systems 7.3.4.1 All of the parties which are listed in clauses 7.3.1.1 (a) to (e) shall implement and adopt a dispute management system which is	<p>Renumbering.</p> <p>For clarity, the mechanisms on dispute management system has been wanting. The dispute management system is crucial in the establishment of procedures at the level of the WESM Member. As suggested,</p>	7.3.3 7.3.4 Dispute Management Systems 7.3.4.1 All of the parties which are listed in clauses 7.3.1.1 (a) to (e) shall implement and adopt a dispute management system which is	<p>-Approved, as proposed-</p>

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	<p><u>approved by the PEM Board. All WESM members shall implement and adopt a dispute management system which shall entail a system for managing disputes privately between the parties and without resorting to the formal dispute resolution process.</u></p> <p><u>The dispute management system shall:</u></p> <p>(a) <u>nominate a dispute management system contact to be the first point of contact for the notification of disputes;</u></p> <p>(b) <u>establish the procedures for the service and receipt of notice of dispute and other related notices;</u> <u>and</u></p> <p>(c) <u>set out the protocols for responding to requests for information from</u></p>	<p>the DMS will identify the focal person of the Member and the procedures for the service and receipt of notice of dispute and other related notices.</p>	<p><u>approved by the PEM Board. All WESM members shall implement and adopt a dispute management system which shall entail a system for managing disputes privately between the parties and without resorting to the formal dispute resolution process.</u></p> <p><u>The dispute management system shall:</u></p> <p>(a) <u>nominate a dispute management system contact to be the first point of contact for the notification of disputes;</u></p> <p>(b) <u>establish the procedures for the service and receipt of notice of dispute and other related notices;</u> <u>and</u></p> <p>(c) <u>set out the protocols for responding to requests for information from</u></p>	
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	other WESM member/s in relation to a dispute.		other WESM member/s in relation to a dispute.	
New Provision	7.3.4.2 Each WESM member shall submit a copy of its dispute management system to the DRA and shall be posted in the market website.	All participants will be guided by the DMS of other participants to facilitate the dispute resolution process.	7.3.4.2 Each WESM member shall submit a copy of its dispute management system to the DRA and shall be posted in the market website.	-Approved, as proposed-
7.3.4 Dispute Resolution Process	7.3.4 7.3.5 Dispute Resolution Process	The proposed change will clarify the procedure in case the Dispute Resolution Administrator has determined that the written claim does not fall under the WESM dispute resolution process.	7.3.4 7.3.5 Dispute Resolution Process	-Approved, as proposed-
xxx 7.3.4.6 If the Dispute Resolution Administrator is not reasonably satisfied that the dispute is one to which clause 7.3.1.1 applies, the procedures set out in clause 7.3.4.7 do not apply to the dispute.	xxx 7.3.5.6 7.3.4.6 If the Dispute Resolution Administrator is not reasonably satisfied that the dispute is one to which clause 7.3.1.1 applies, the procedures set out in clause 7.3.4.7 do not apply to the dispute. DRA shall issue a written order stating that the claim is not a dispute covered under clause 7.3.1.1.	Renumbering.	xxx 7.3.5.6 7.3.4.6 If the Dispute Resolution Administrator is not reasonably satisfied that the dispute is one to which clause 7.3.1.1 applies, the procedures set out in clause 7.3.4.7 do not apply to the dispute. DRA shall issue a written order stating that the claim is not a dispute covered under clause 7.3.1.1.	
7.3.4.7 If the Dispute Resolution Administrator is reasonably satisfied that	7.3.5.7 7.3.4.7 If the Dispute Resolution Administrator is reasonably satisfied that	The proposed change will clarify the procedure in case the Dispute Resolution	7.3.5.7 7.3.4.7 If the Dispute Resolution Administrator is reasonably satisfied that	-Approved, as proposed-

<p>the dispute is one to which clause 7.3.1.1 applies, the Dispute Resolution Administrator shall:</p> <p>(a) Appoint a <i>dispute resolution panel</i> in accordance with clause 7.3.5; and</p> <p>(b) Refer the dispute for resolution by the <i>dispute resolution panel</i> appointed under clause 7.3.5, within five <i>business days</i> of receiving any information from the parties to the dispute under clause 7.3.5.4.</p>	<p>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 falls under the WESM dispute resolution process:</p> <p>(a) Appoint a dispute resolution panel in accordance with clause 7.3.5; and</p> <p>(b) Refer the dispute for resolution by the dispute resolution panel appointed under clause 7.3.5, within five business days of receiving any information from the parties to the dispute under clause 7.3.5.4.</p>	<p>Administrator has determined that the written claim falls under the WESM dispute resolution process.</p> <p>Renumbering.</p>	<p>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 falls under the WESM dispute resolution process:</p> <p>(a) Appoint a dispute resolution panel in accordance with clause 7.3.5; and</p> <p>(b) Refer the dispute for resolution by the dispute resolution panel appointed under clause 7.3.5, within five business days of receiving any information from the parties to the dispute under clause 7.3.5.4.</p>	
<p>7.3.4.8 Subject to all time limits specified in clause 7.3.5, nothing in this clause 7.3 precludes the <i>Dispute Resolution Administrator</i> from facilitating resolution of the dispute by agreement between the parties to the satisfaction of the parties without</p>	<p>TO BE DELETED.</p>	<p>For avoidance of doubt and redundancy, a dispute management system is instituted already which will aid the DRA in the resolution of disputes before going through the formal dispute resolution process.</p>		<p>-Approved, as proposed-</p>

appointing or involving a <i>dispute resolution panel</i> .				
7.3.5 The Dispute Resolution Panel	<u>7.3.5 The Dispute Resolution Panel</u> Clauses 7.3.5.1 to 7.3.5.8 are to be DELETED.	The proposed deletion is consistent with the recommended procedure on the selection and accreditation of mediator and arbitrators.		-Approved, as proposed-
7.3.8 Legal Representation Legal representation before the <i>dispute resolution panel</i> may be permitted by the <i>dispute resolution panel</i> where the <i>dispute resolution panel</i> considers it appropriate or desirable.	TO BE DELETED.	This is surplusage and unnecessary since the parties may avail of legal representation at any stage of the dispute resolution process		-Approved, as proposed-
7.3.9 Cost of Dispute Resolution The reasonable costs of the parties to the dispute may be allocated by the <i>dispute resolution panel</i> for payment by one or more parties as part of its resolution.	7.3.9 Cost of Dispute Resolution <u>Unless otherwise agreed upon by the parties,</u> The reasonable costs of the parties <u>to the dispute proceedings</u> may be allocated by the <u>mediator or arbitrators</u> dispute resolution panel for payment by one or more parties as part of <u>the agreement or award, its resolution as may be applicable. The following are considered costs of the proceedings:</u> <u>(a) Professional fees of the</u>	This proposed revision establishes the allocation of the costs of proceedings between the parties and defines what constitutes costs of proceedings.	7.3.9 Cost of Dispute Resolution <u>Unless otherwise agreed upon by the parties,</u> The reasonable costs of the parties <u>to the dispute proceedings</u> may be allocated by the <u>mediator or arbitrators</u> dispute resolution panel for payment by one or more parties as part of <u>the agreement or award, its resolution as may be applicable. The following are considered costs of the proceedings:</u> <u>(a) Professional fees of the</u>	-Approved, as proposed-

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	mediator and arbitrators; (b) Legal expenses; and (c) Administrative costs.		mediator and arbitrators; (b) Legal expenses; and (c) Administrative costs.	
7.3.10 Effect of Resolution xxx 7.3.10.3 If a resolution of the <i>dispute resolution panel</i> applies to a person referred to in clauses 7.3.1.1 (a) to (e) that person shall comply with the resolution of the <i>dispute resolution panel</i> to the extent that the resolution applies to that person, notwithstanding that the person was not a party to the dispute.	7.3.10 Effect of Resolution xxx 7.3.10.3 If a resolution of the <i>dispute resolution panel</i> applies to a person referred to in clauses 7.3.1.1 (a) to (e) that person shall comply with the resolution of the <i>dispute resolution panel</i> to the extent that the resolution applies to that person, notwithstanding that the person was not a party to the dispute.	This provision is violative of due process since a person that not is party to a dispute cannot be coerced to comply with the award.		-Approved, as proposed-
7.3.10.4 If a party to a dispute is not satisfied with the resolution of the <i>dispute resolution panel</i> , the party may file a formal complaint to the <i>ERC</i> .	7.3.10.4 If a party to a dispute is not satisfied with the resolution of the <i>dispute resolution panel</i>, the party may file a formal complaint to the <i>ERC</i>. If a party to a dispute is not satisfied with the award issued by the arbitration panel, the party may file a petition for the modification,	As provided under EPIRA, the ERC shall have jurisdiction over all cases involving disputes between and among participants or players in the energy sector. Such mandate of the ERC is still recognized with its authority to modify, correct and vacate an award based on the grounds provided under the Arbitration Law. In this instance, the ERC will be akin to a Regional Trial Court that will perform review	7.3.10.4 <u>If a party to a dispute is not satisfied with the resolution of the <i>dispute resolution panel</i>, the party may file a formal complaint to the <i>ERC</i>. If a party to a dispute is not satisfied with the award issued by the arbitration panel, the party may file a petition for the modification,</u>	-Disapproved- The RCC agreed to retain the original provision, taking into consideration the fact that the ERC is not an appellate body and that the proposed provision is not part of the powers of the ERC, as defined in the EPIRA.

	<u>correction or setting aside before the ERC pursuant to Section 41 of RA No. 9285.</u>	functions in case a party is not satisfied with the award but only on the limited grounds under the Arbitration Law.	<u>correction or setting aside before the ERC pursuant to Section 41 of RA No. 9285.</u>	
7.3.11 Recording and Publication 7.3.11.1 When the <i>dispute resolution panel</i> resolves a dispute, the <i>chairperson</i> of the <i>dispute resolution panel</i> shall send written details of the resolution of the dispute to the <i>Dispute Resolution Administrator</i> , the <i>PEM Board</i> , the <i>ERC</i> and the <i>Market Operator</i> as soon as practicable.	7.3.11 Recording and Publication 7.3.11.1 When the <u>mediator and/or arbitration panel</u> <i>dispute resolution panel</i> resolves a dispute, <u>as may be applicable</u> , the <u>mediator and/or chairperson</u> of the <u>arbitration dispute resolution panel</u> shall send written details of the resolution of the dispute to the <i>Dispute Resolution Administrator</i> , the <i>PEM Board</i> , <u>the DOE</u> , the <i>ERC</i> and the <i>Market Operator</i> as soon as practicable.	<p>For uniformity with the other provisions, the resolution of disputes is not exclusive with the dispute resolution panel. Further, there is a need to distinguish the dispute resolution panel from the previous framework with the present framework on the usage of mediator and arbitration panel.</p> <p>Also, the DOE, as the supervisor of the electricity industry, is included in the list of entities to be furnished of the details of the resolution of dispute.</p>	7.3.11 Recording and Publication 7.3.11.1 When the <u>mediator and/or arbitration panel</u> <i>dispute resolution panel</i> resolves a dispute, <u>as may be applicable</u> , the <u>mediator and/or chairperson</u> of the <u>arbitration dispute resolution panel</u> shall send written details of the resolution of the dispute to the <i>Dispute Resolution Administrator</i> , the <i>PEM Board</i> , <u>the DOE</u> , the <i>ERC</i> and the <i>Market Operator</i> as soon as practicable.	-Approved, as proposed-
7.3.11.2 Subject to clause 5.3, the details and results of each dispute which the dispute resolution panel resolves (including the reasons why the <i>Dispute Resolution Administrator</i> decided to appoint particular	7.3.11.2 Subject to clause 5.3, the details and results of each dispute which the <u>mediator and/or arbitration panel</u> <u>resolves, as the case may be, except confidential information</u> , <i>dispute resolution panel</i>	<p>For consistency with the other provisions, the dispute resolution process is not exclusive with the dispute resolution panel (suggested to be termed as arbitration panel).</p>	7.3.11.2 Subject to clause 5.3, the details and results of each dispute which the <u>mediator and/or arbitration panel</u> <u>resolves, as the case may be, except confidential information</u> , <i>dispute resolution panel</i>	-Approved, as proposed-

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people to the <i>dispute resolution panel</i>) shall be published and made available to WESM members as soon as practicable after the resolution of the dispute by the <i>dispute resolution panel</i> .	resolves (including the reasons why the <i>Dispute Resolution Administrator</i> decided to appoint particular people to the <i>dispute resolution panel</i>) shall be published and made available to WESM members as soon as practicable after the resolution of the dispute. by the <i>dispute resolution panel</i>.		resolves (including the reasons why the <i>Dispute Resolution Administrator</i> decided to appoint particular people to the <i>dispute resolution panel</i>) shall be published and made available to WESM members as soon as practicable after the resolution of the dispute. by the <i>dispute resolution panel</i>.	
7.3.12 Judicial Review Following <i>ERC</i> resolution of the dispute, any case which involves question of fact may be appealable to the Court of Appeals and those which involves question of law may be directly appealable to the Supreme Court.	TO BE DELETED.	This provision is no longer necessary since the rules on jurisdiction of courts will prevail and in light of the passage of RA No. 9285 also known as "Alternative Dispute Resolution Act of 2004".		-Approved, as proposed-
7.3.13 Limitation of Liability The <i>Dispute Resolution Administrator</i> , <i>dispute resolution panel</i> and its members are not to be liable for any loss or damage suffered or incurred by a Participant or any other person as a consequence of any act or omission of those persons unless the <i>Dispute Resolution</i>	7.3.13 Limitation of Liability The <i>Dispute Resolution Administrator</i> , <i>dispute resolution panel</i> and its members are is not to be liable for any loss or damage suffered or incurred by a Participant or any other person as a consequence of any act or omission of those persons unless the <i>Dispute Resolution</i>	This proposed revision will only cover the limitation of liability in favor of the DRA since the mediators and arbitrators are no longer within the WESM structure.	7.3.13 Limitation of Liability The <i>Dispute Resolution Administrator</i> , <i>dispute resolution panel</i> and its members are is not to be liable for any loss or damage suffered or incurred by a Participant or any other person as a consequence of any act or omission of those persons unless the <i>Dispute Resolution</i>	-Approved, as proposed-

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<i>Administrator, the dispute resolution panel, or its members, as the case may be, acted with malice, manifest impartiality, bad faith, gross incompetence or gross negligence.</i>	<i>Administrator, the dispute resolution panel, or its members, as the case may be, acted with malice, manifest impartiality, bad faith, gross incompetence or gross negligence.</i>		<i>Administrator, the dispute resolution panel, or its members, as the case may be, acted with malice, manifest impartiality, bad faith, gross incompetence or gross negligence.</i>	
7.3.14 Indemnity Notwithstanding clause 7.3.13, except for liability arising from conduct involving malice, partiality, bad faith, gross incompetence or gross negligence, if the Dispute Resolution Administrator, the dispute resolution panel or the members thereof are made liable to pay any amount for loss or damages suffered or incurred by a person referred to in clauses 7.3.1.1 (a) to (f) or any other person as a consequence of any of its acts or omissions in performance of dispute resolution, the <i>PEM Board</i> shall indemnify said persons through an indemnification process to be developed by the <i>PEM Board</i> . (a) For the full amount adjudged; and (b) For costs and expenses incurred by that person in defending itself in the related proceedings.	TO BE DELETED.	The proposed deletion is consistent with the suggestion that the Dispute Resolution Group shall no longer be a PEM Committee.		-Approved, as proposed-

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