

**REPORT ON THE DISPUTE RESOLUTION
DRA Case No: WESM-ARB-18-01**

In compliance with Clause 7.3.12.2 of the WESM Rules and Section 5.6 of the Dispute Resolution Market Manual, the DRA shall publish in the Market Information Website a Dispute Report, which shall contain the following:

- A. A summarized description of the dispute, identifying the parties and the nature of the dispute, with such details as the DRA may deem necessary to prevent future recurrence of similar disputes without necessarily causing any undue prejudice that may occur as a result of any extensive publication.
- B. The description of the dispute resolution process utilized; and
- C. The results of the award.

NATURE OF THE DISPUTE

Claims for Real-Time Dispatch Underpayment (Paid below offered prices) for the Period Covering January 2011 to September 2017

DESCRIPTION OF THE DISPUTE

The Claimant maintains that it was paid at much lower rates than its price offers for the period covering January 2011 to September 2017, although its facilities complied with the Real-Time Dispatch schedules. It therefore seeks that the Respondent pay the amount of underpayment for each affected trading billing month for the covered period, which is equivalent to the difference between the Claimant's offered prices and the amounts already settled.

PARTIES TO THE DISPUTE

The following are the parties to the dispute:

Claimant : SPC Island Power Corporation and SPC Power Corporation
Respondents: Philippine Electricity Market Corporation (PEMC) ; and
Independent Electricity Market Operator of the Philippines (IEMOP)

COMPOSITION OF THE ARBITRAL TRIBUNAL

The following are the composition of the Arbitral Tribunal:

- Chairperson : Atty. Teodoro Kalaw IV
- Members : Atty. Eduardo Ceniza
- : Atty. Dranyl Jared Amoroso

The appointment of the Arbitral Tribunal was pursuant to Section 9.4 of the WESM Dispute Resolution Manual.

DISPUTE MANAGEMENT PROCESS UTILIZED

The request for arbitration was filed pursuant to Section 9.2.1 of the WESM Dispute Resolution Manual (“DRMM”) Issue 6 in relation to Section 8.5.12(b) of the WESM Rules following the agreement of the Parties to dispense with mediation and commence arbitration. The DRA issued a certification stating that mediation is no longer a viable option for the parties on 5 September 2018.

RESULTS OF THE AWARD

A review of all the scenarios presented by Claimant relating to instances of alleged RTD Underpayment covering the adjusted total amount of claims will have revealed that all such claims rest on the foundational premise that “power plants that were dispatched should be paid according to the Generation Offer Price of the (Locational Marginal Price)” and computational methodology. Given such, and after due deliberation, the Arbitral Tribunal found the arguments of Claimants to be inherently untenable for the following reasons:

- a. The foundational premise is erroneous;
- b. The procedure for computing payments for power generators is already provided in the WESM Rules;
- c. The computational methodology of Claimants would only be feasible if the Price Settlement System as well as Price Substitution Methodologies as provided by the WESM Rules are disregarded;
- d. The WESM Rules actually allow for situations where payments made would be less than according to the Ex-Ante Price/Generation Offer Price;
- e. The Payments for electricity generated, prior to adjustment for settlement purposes, are always due and received by a power generator; and
- f. The Arbitral Tribunal has not given the power to act as *amiabile compositeur* or decide the matter *ex aequo et bono*.

Accordingly, the Arbitral Tribunal finds that Claimants have not proven that they are

entitled to their claims for alleged RTD Underpayments, and therefore correspondingly holds that Claimants are thus not entitled to such alleged RTD Underpayments.

COSTS IN THIS MATTER

In view of the Arbitral Tribunal's prior findings and rulings as explained above, particularly given the good faith belief of both parties with regard to the vigorous assertion of their contractual and legal rights, the Arbitral Tribunal believes that such constitutes sufficient justification for the parties to each bear their own costs. The Arbitral Tribunal therefore holds that the parties shall bear their own respective costs for this arbitration.

FINAL AWARD

The Arbitral Tribunal accordingly decides and awards in full and final disposition of the arbitration, as follows:

1. For lack of merit, the Arbitral Tribunal denies all claims of Claimants.
2. The Claimants have been assessed the costs of the arbitration, as provided in the Terms of Reference and already billed and fully collected by the Dispute Resolution Administrator. Each party shall bear its own costs.
3. All other requests for relief not otherwise disposed of above were denied.

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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.

JESUSITO G. MORALLOS, C.E.,J.D.,MCIArb
Dispute Resolution Administrator