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MEMORANDUM

For: Atty. Maila Lourdes G. De Castro
Chairperson, Rules Change Committee

Thru: PEM Committee Secretariat

From: Oscar E. Ala
CEO and Chairman, PEMC Transition Committee

Date: 11 May 2018

Subject: Proposed Further Amendments to the ECO Manual

We respectfully submit to the Rules Change Committee (RCC) the Request for Amendment of the Enforcement and Compliance Manual (ECO Manual) and its accompanying Discussion Paper.

We understand that the proposed ECO Manual was already approved by the RCC in August 2017 but has not been endorsed yet to the PEM Board and DOE for approval. Further amendments to the ECO Manual are now being proposed to align the enforcement procedures set therein with the related procedure proposed by the Market Surveillance Committee in the Penalty Manual 2.0 that allows the issuance of the Notice of Specified Penalty by the Enforcement and Compliance Office without a need of a formal investigation, provided that due process in compliance monitoring activity is strictly observed.

The summary of the proposal for further amendments is found in the Discussion Paper, as well as, in the Matrix of Amendments.

We thank you for your continued support to the WESM.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Oscar E. Ala', is written over a horizontal line.

OSCAR E. ALA
CEO and Chairman, PEMC Transition Committee





**Wholesale Electricity
Spot Market**

**Proposed Further Amendments to the
Enforcement and Compliance Manual
To Align with the Proposed WESM Penalty Manual 2.0**

Philippine Electricity Market Corporation

May 2018

I. SUMMARY OF THE PROPOSED CHANGE

This provides for further amendments to the Enforcement and Compliance Manual (ECO Manual), which was already approved by the Rules Change Committee (RCC) in August 2017. Further amendments to the ECO Manual are being proposed to align the enforcement procedures related to the compliance monitoring and assessment with the procedure proposed by the Market Surveillance Committee (MSC) in the Penalty Manual 2.0 that allows the issuance of the Notice of Specified Penalty by the Enforcement and Compliance Office (ECO) without need of a formal investigation.

In order to ensure that due process is observed before a Notice of Specified Penalty is issued, the following are proposed to be included in the ECO Manual:

- The compliance monitoring and assessment activity shall be comprehensive enough to cover not only the data gathering for the determination of probable breach of the WESM Rules or market manuals but also the validation, assessment, and analysis of the submitted data or information from trading participants, the Market Operator, the System Operator, and such other relevant information from various sources. This is to give adequate and due process to the concerned trading participants.
- The compliance monitoring and assessment activity should primarily consider the market data and information obtained from the trading participants, the Market Operator, and the System Operator, and from other relevant sources.
- The ECO is obliged to develop a detailed internal business procedure and to prescribe a reply format or template that may be accomplished by the WESM Members as part of the monitoring process. It shall ensure that the right of the WESM Members to due process is protected by giving them adequate time and opportunity to respond to any allegations of probable breach of the WESM Rules and/or market manuals, and to be informed of the results thereof.
- The concerned WESM Member may seek a reconsideration of the Notice of Specified Penalty in accordance with the procedures and subject to the requirements provided in Penalty Manual 2.0.
- It further clarifies the relevant roles and responsibilities of PEM Board, the MSC, and ECO, with respect to enforcement proceedings and actions.

II. BACKGROUND

A) Filing for Approval to Submit Proposed Change (Original). In November 2016, ECO filed with PEMC-Office of the President a request for approval to submit to the RCC the proposals for the following –

- Amendments to WESM Rules Chapter 7 and related provisions in Chapters 1 and 3; and
- Adoption of WESM Enforcement and Compliance Manual, which will effectively amend the WESM Market Surveillance, Compliance and Enforcement Market Manual.

The proposed adoption of the ECO Manual will require an amendment of the current Market Surveillance, Compliance and Enforcement Market Manual (MSCEMM). The MSCEMM provides that amendments to the same shall be initiated by the Market

Surveillance Committee, although the Enforcement and Compliance Office may also recommend proposals for change.

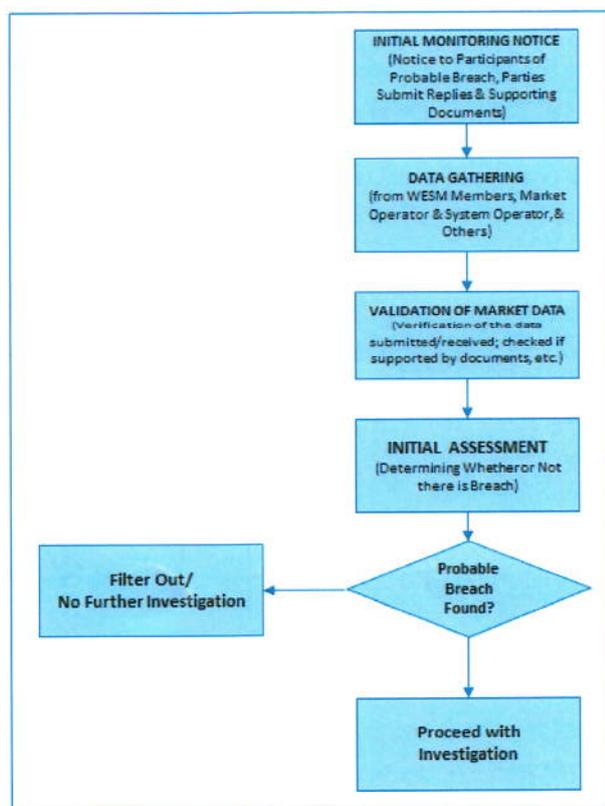
The amendments were then proposed to align the enforcement and compliance processes with the changes that are expected when the enhanced market design will be implemented to ensure that the Enforcement and Compliance Office, Market Assessment Group and the Market Surveillance Committee are better equipped to manage enforcement and compliance processes under the enhanced market design.

B) RCC Approval. In August 2017, the Rules Change Committee approved the ECO Manual.

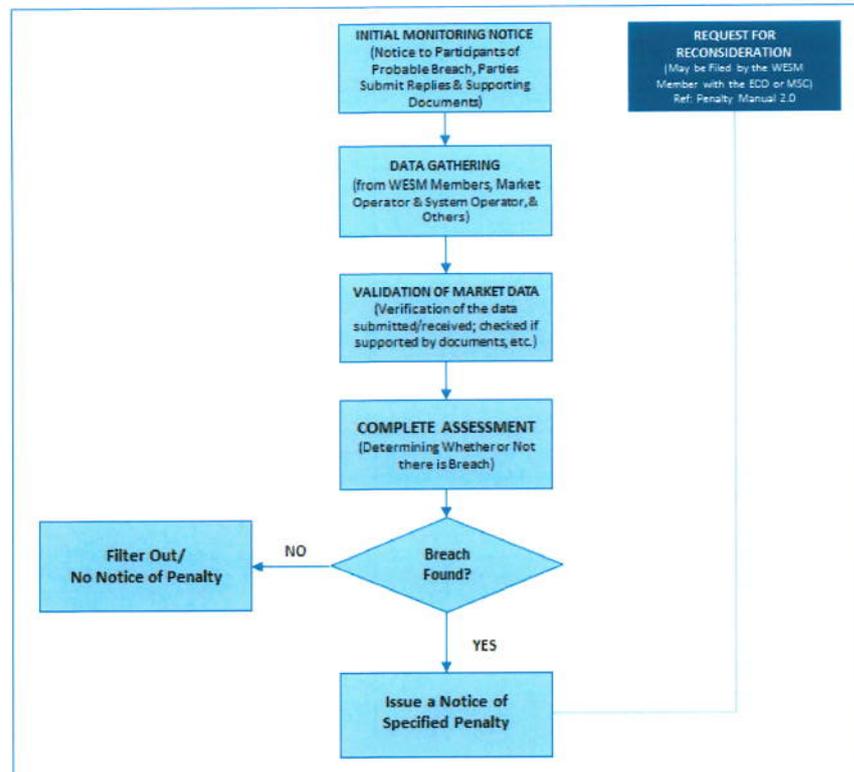
C) Endorsement to the PEM Board and DOE – Deferred/Held in Abeyance. The MSC further examined the proposed changes to the WESM Penalty Manual and decided to study further the possibility of imposing a Specified Penalty upon finding of a probable breach by ECO as a result of its own compliance monitoring and assessment activity without need of a formal investigation. Pending such study by the MSC, the ECO Manual, even though approved by the RCC, could not yet be endorsed to the PEM Board and to the DOE for approval as the ECO Manual needs to be consistent with the proposed procedure on imposition of penalties. The study of MSC now forms part of the proposed rules change on WESM Penalty Manual initiated by the Committee, which is scheduled to be submitted in the next RCC meeting in June 2018.

D) Change in the Enforcement Procedure and Action.

1) Original Procedure on Compliance Monitoring. Compliance monitoring under this concept shall be carried out primarily for the purpose of determining the occurrence of probable breach with the end in view of initiating further enforcement proceedings if warranted.



- 2) **Change in the Procedure on Compliance Monitoring and Assessment.** The compliance monitoring and assessment under this revised concept should be comprehensive enough to cover the validation, assessment, and analysis of the submitted data or information from trading participants, the Market Operator, the System Operator, and such other relevant information from various sources. This is to give adequate and due process to the trading participants.



A WESM Member may seek a reconsideration of the Notice of Specified Penalty in accordance with the procedures and subject to the requirements provided in the WESM Penalty Manual.

III. THE PROPOSED RULES CHANGE

Reference	Subject of Change
Section 4.1.4	<p>On Responsibilities of the PEM Board</p> <p>To align with the proposed amendment to the <i>WESM Penalty Manual</i> that allows the <i>Enforcement and Compliance Office</i> to implement the imposition of penalties as a result of its compliance monitoring and assessment activity. For purposes of imposing penalties as a result thereof, the implementation does not need to be cleared by the Board as long as it is authorized by the <i>WESM Penalty Manual</i>.</p>
Section 4.2.1	<p>On Responsibilities of the Market Surveillance Committee</p> <p>To align with the proposed <i>Penalty Manual 2.0</i> that provides for the responsibility of MSC to decide or resolve the request for reconsideration that may be filed by the concerned WESM Member in accordance with the procedures set in the proposed <i>Penalty Manual 2.0</i>.</p>

Reference	Subject of Change
Section 4.3.1	<p>On Responsibilities of ECO</p> <p>To align with the proposed amendment to the <i>WESM Penalty Manual</i> that allows the <i>Enforcement and Compliance Office</i> to: (a) implement the imposition of penalties as a result of its compliance monitoring and assessment activity; and (b) to decide or resolve the request for reconsideration that may be filed by the concerned WESM Member in accordance with the procedures set in the proposed Penalty Manual 2.0.</p>
Sections 5.3.1, 5.3.2, 6.3, 8.1.1, and 8.6.1	<p>On Compliance Monitoring Term</p> <p>Global change: Monitoring of compliance – changed to “<i>Compliance Monitoring And Assessment</i>”</p>
Section 5.3.2 and 8.6.1	<p>On Enforcement Proceedings – Compliance Monitoring and Assessment Concept</p> <p>To align with the proposed amendment to the WESM Penalty Manual and to broaden the concept of the compliance monitoring by extending it to a <u>complete assessment process</u>, which is an integral part of the process of determining whether a breach is committed by the WESM Members.</p>
Section 5.3.4	<p>On Enforcement Proceedings – Imposition of Specified Penalties</p> <p>To align with the proposed amendment to the <i>WESM Penalty Manual</i> that allows the <i>Enforcement and Compliance Office</i> to implement the imposition of penalties as a result of its compliance monitoring and assessment activity.</p>
Section 5.3.5	<p>On Enforcement Proceedings – Imposition of Sanctions by PEM Board</p> <p>Added provision – to clarify that the sanctions or penalties carried out by the PEM Board only refers to those investigations, which are initiated through a report of Market Operator/System Operator, or through a request for investigation.</p>
Section 6.1.3	<p>On Guiding Principles</p> <p>To align with the proposed amendment to the <i>WESM Penalty Manual</i> that allows the <i>Enforcement and Compliance Office</i> to implement the imposition of penalties as a result of its compliance monitoring and assessment activity, without need of a formal investigation.</p>
Section 6.3.2	<p>On Compliance Monitoring and Assessment</p> <p>To clarify that all information submitted by the concerned WESM Member should be supported by relevant documents as part of the validation or assessment process.</p>

Reference	Subject of Change
Section 6.3.5 and 8.6.1	<p>On Compliance Monitoring and Assessment Proposed additional provision – to require the Enforcement and Compliance Office to establish its own compliance monitoring and assessment procedure in order to ensure that due process is observed during compliance monitoring and assessment activity.</p>
Section 6.3.6	<p>On Compliance Monitoring and Assessment To authorize the <i>Enforcement and Compliance Office</i> to implement the imposition of penalties as a result of its compliance monitoring and assessment activity, without need of a formal investigation; and to implement remedial measures, if required.</p>
Section 6.4.1 and 6.4.2	<p>On Initiation of Investigation</p> <ul style="list-style-type: none"> • To clarify that the investigation by the Enforcement and Compliance Office is initiated by: report of probable breach, request for Investigation, or directive of ERC. • The compliance monitoring and assessment does not result in the initiation of investigation. It is, by itself, a basis for imposition of penalties in accordance with the proposed Penalty Manual 2.0. • The provisions of 6.5 to 6.14 shall only apply to investigation procedure only and not to compliance monitoring and assessment activity of ECO.
Section 6.4.13 and 6.5.2	<p>On Initiation and Notice of Investigation To avoid duplication of or overlapping investigations, the compliance monitoring and assessment activity, which may likewise cover the same subject matter, should also be looked into before proceeding with the investigation.</p>
Section 6.16.2	<p>On Offer for Settlement To also allow the offer for settlement of parties before the completion of the compliance monitoring and assessment activity by the Enforcement and Compliance Office or before the issuance of the Notice of Specified Penalty.</p>
Section 6.16.7	<p>On Offer for Settlement To state the impact of settlement offer also on the compliance monitoring and assessment activity.</p>
Section 16.17.2 and 16.7.5	<p>On Remedial Measures Remedial measures may be undertaken not only during or after the investigation, but also during compliance monitoring and assessment.</p>

IV. BACKGROUND AND DESCRIPTION OF THE PROPONENT

The Philippine Electricity Market Corporation serves as the governance arm of the WESM. This function includes the administration of the enforcement and compliance processes of the WESM. This is carried out primarily through the Enforcement and Compliance Office, as well as the Market Assessment Group. Both are organic units of PEMC.

The board of directors of PEMC, which constitutes the PEM Board, is the body that is authorized to impose sanctions in case of breach and, generally, to enforce the WESM Rules in accordance with Chapter 7 of the rules.

The Market Surveillance Committee is one of the WESM governance committees created and its members appointed in accordance with Chapter 2 of the WESM Rules. Among other things, it plays a major role in the enforcement and compliance processes of the WESM, in conjunction with the PEMC Enforcement and Compliance Office and Market Assessment Group.

V. CONCLUSIONS AND RECOMMENDATIONS

- 1) Adoption of ECO Manual.** It is recommended that the proposed ECO Manual be adopted together with the proposed amendments to WESM Rules Chapter 1 and 7 and the proposed Market Surveillance Manual, and the WESM Penalty Manual.
- 2) Proposed Date and Conditions for Effectivity**
 - a) The aforesaid further amendments to the ECO Manual is anchored on the procedure recently proposed by the MSC in Penalty Manual 2.0. With this, it is proposed that said further amendments to ECO Manual be adopted upon the approval or promulgation of the Penalty Manual 2.0.
 - b) The proposal, if approved, will result in significant changes in the enforcement and compliance processes in the WESM, and as such, will require a re-structuring of the PEMC Enforcement and Compliance Office, as well as the development or acquisition by PEMC of appropriate infrastructure to aid ECO in its compliance monitoring and investigation processes. With the foregoing it is further proposed that the ECO Manual, upon its adoption, be made effective on the start of the billing period after completion of the re-structuring of the ECO and other relevant PEMC units.

VI. REFERENCES

1. Wholesale Electricity Market Rules (WESM Rules)
2. WESM Market Surveillance, Compliance and Enforcement Market Manual (MSEMM)
3. Proposed WESM Penalty Manual 2.0