



Republic of the Philippines
DEPARTMENT OF ENERGY

DEPARTMENT CIRCULAR NO. _____

**ADOPTING FURTHER AMENDMENTS TO THE WHOLESALE ELECTRICITY
SPOT MARKET (WESM) MARKET MANUAL ON GOVERNING THE
CONSTITUTION OF PEM BOARD COMMITTEES**

WHEREAS, Sections 30 and 37(f) of the Electric Power Industry Reform Act (EPIRA) provides that the DOE, jointly with the electric power industry participants, shall establish the Wholesale Electricity Spot Market (WESM) and formulate the detailed rules governing the operations thereof;

WHEREAS, on 28 June 2002, the DOE, with the endorsement of the electric power industry participants, promulgated the WESM Rules through Department Circular No. DC2002-06-003;

WHEREAS, any changes, amendments, and modifications to the WESM Rules including its Market Manuals shall be undertaken in accordance with the provisions of Chapter 8 thereof;

WHEREAS, the WESM Manual on the Guidelines Governing the Constitution of PEM Board Committees (WESM-GDL) provides for the qualifications and disqualifications of members of the PEM Board Committees and process of their selection and appointment;

WHEREAS, in a letter dated 20 August 2020, the PEM Board formally endorsed to the DOE the proposed amendments to the WESM-GDL seeking the adoption of independence qualification for WGC Members, and revision of WGC Memberships among others;

WHEREAS, the DOE remanded the proposal thru a letter dated 23 September 2021 directing PEMC to further enhance and review the formation of WESM WGCs and revisit the independence criteria as major consideration in the composition to ensure consumer protection, enhance the competitive operation of the WESM, and promote investor confidence;

WHEREAS, in a letter dated 04 May 2022, the PEM Board submitted the revised proposal amending the WESM-GDL, for the DOE's final approval, in compliance with Chapter 8 of the WESM Rules;

NOW THEREFORE, after careful review of the PEM Board-approved proposal and the comments and recommendations received on the same, the DOE, pursuant to its authority under the EPIRA and the WESM Rules, hereby adopts, issues, and promulgates the following amendments to the WESM Manual Governing the Constitution of the PEM Board Committees:

Section 1. Amendments to the WESM Manual Governing the Constitution of the PEM Board Committees. The Guidelines Governing the Constitution of PEM Board Committees is renamed as *Guidelines Governing the Constitution of WESM Governance Committees* and its provisions are hereby amended to read as follows:

Section 1. Definition of Terms

1.1 Unless otherwise defined in this section or the context provides otherwise, the terms used in this Market Manual shall bear the same meaning as defined in the WESM Rules.

1.2 The following terms and expressions shall have the meanings set forth below:

- (a) “Applicable Laws and Rules.” Include the EPIRA and its Implementing Rules, the WESM Rules, the Philippine Grid Code, Philippine Distribution Code and all other laws, rules and regulations relating to or affecting the WESM.
- (b) “Guidelines.” This document otherwise called: “Guidelines Governing the Constitution of the WESM Governance Committees.”
- (c) “PEMC Articles of Incorporation and By-laws.” The legal documents establishing the creation of the *Philippine Electricity Market Corporation* that was approved by the Securities and Exchange Commission on 18 November 2003.
- (d) “Governance Arm Website.” The facility established by the Governance Arm to publish information, which is available to and may be accessed by WESM Members and the public.
- (e) “Person.” A natural person.
- (f) “Sector.” Refers to the Generation, Distribution, Transmission or Supply Sector.

1.3 Rules of Construction. Unless the context otherwise requires:

- (a) The *Applicable Laws* are incorporated herein by reference.
- (b) Words importing the singular include the plural and vice versa.
- (c) Section headings are for convenience only and do not affect the interpretation of these *Guidelines* and the *WESM Rules*.
- (d) In the event that any capitalized terms above or any provision in these *Guidelines* conflict with the *WESM Rules*, the latter shall govern.
- (e) A rule or provision which defines a term without express reference to EPIRA or the WESM Rules, or to a portion thereof, defines such term for all purposes as used in EPIRA and in the WESM Rules.

Section 2. Formation of the Committees

- 2.1 *WESM Governance Committees.* The *PEM Board* shall form working groups and appoint qualified members who shall act as the following:
- (a) PEM Audit Committee;
 - (b) Market Surveillance Committee;
 - (c) Technical Committee;
 - (d) Rules Change Committee;
 - (e) Dispute Resolution Administrator; and
 - (f) Compliance Committee.
- 2.2 The *PEM Board* shall approve an annual budget allocation for the *WESM Governance Committees*, in support of their duties and functions.
- 2.3 The *WESM Governance Committees* shall primarily assist the *PEM Board*, the *DOE*, and the *ERC* in the formulation of policies that will help in the achievement of the *WESM* objectives of establishing a sustainable, competitive, efficient, transparent and reliable market for electricity where:
- (a) An atmosphere of transparency and fair competition exists among *WESM* Members;
 - (b) Trading of electricity is facilitated among *WESM* Members within the spot market;
 - (c) Qualified third parties are granted Open Access to the power system in accordance with the *EPIRA*;
 - (d) Prices are governed as far as practicable by commercial and market forces; and
 - (e) Efficiency is encouraged.
- 2.4 All *WESM Governance Committees*, in the performance of its functions, shall be guided by the provisions of and principles under the *EPIRA* and its implementing rules, the *WESM* Rules and the *PEMC Articles of Incorporation and By-laws*. Each *WESM Governance Committee* shall establish *Market Manuals* to govern their respective operations geared towards achieving the purpose for which said *WESM Governance Committees* have been created.
- The said manual, upon approval of the *PEM Board* and promulgation by the *DOE*, shall have the force and effect of the rules and regulations of the *WESM* as *Market Manual*.
- 2.5 *DOE* Representation in the *WESM Governance Committees.* The *Department of Energy* as the agency primarily responsible to implement the *EPIRA* and its implementing rules and the *WESM* Rules shall be represented in all *WESM Governance Committees* for the purpose of facilitating and providing policy support and guidance for the development of the *WESM*.

2.6 Other Resolutions. Except as may otherwise be provided in the *WESM Rules*, in any *Market Manual* or in the *PEMC Articles of Incorporation and By-laws*, the *PEM Board* may prescribe, among others:

- (a) Any additional duties and responsibilities of the Committees;
- (b) Changes in or fix the remuneration to be paid to members of the Committees;
- (c) Any revisions, amendments, supplements or improvement on the provisions relating to or the establishment of ethical standards to be observed by members of the Committees;
- (d) The terms and conditions of the confidentiality agreement to be entered into by members of the Committees;
- (e) The terms and conditions of agreements prohibiting independent members to accept or agree employment or contract services with another party which may conflict with the performance of independent member's obligation as members of the Committees;
- (f) The terms and conditions upon which the Committee may employ services of a consultant or an expert;
- (g) The manner in which the activities of the Committees may be audited.

Section 3. Vacancy, Nomination, Selection and Appointment of *WESM Governance Committee* Members

3.1. Vacancy

3.1.1. A position in the *WESM Governance Committee* is rendered vacant due to any of the following circumstances:

- (a) Expiration of term of office, subject to Section 3.09 below on Hold-over;
- (b) Death;
- (c) Resignation; and
- (d) Removal from office, upon two third (2/3) votes of the Board of Directors constituting a quorum due to:
 - (i) Disqualification or failure to meet the qualification requirements provided herein;
 - (ii) illness or disability which requires recovery for more than three (3) months or similar circumstance;
 - (iii) Just and lawful reasons as the *PEM Board* may determine after notice and hearing and through a resolution, excluding those who abstain voluntarily or are required under the *PEMC Charter* to abstain; and
 - (iv) Conduct unbecoming of a Member of the Committee in accordance with Section 10 of these *Guidelines*.

3.1.2. Any vacancy shall be filled by an appointment by the *PEM Board* and the appointee shall serve only the unexpired portion thereof.

3.2. Nomination

3.2.1. In case of a vacancy, the *WESM Governance Committee* Chairperson, any member thereof, or *PEMC* shall give notice to the *PEM Board* immediately upon occurrence of the vacancy or within one month prior to the effectivity of the expiration of term of office of the concerned member.

3.2.2. The *PEM Board* shall then cause the publication of notice of such vacancy or solicit nominations for the position.

3.2.3. Nominations shall be submitted to the *PEM Board* or to any person designated by the *PEM Board*.

3.2.4. All nominations shall be in a form (Appendix [A]) and manner as may be prescribed by the *PEM Board*.

3.2.5. Nomination for sectoral representatives shall be coming from the respective sectors to be represented in the committee in accordance with these Guidelines or applicable rules.

3.2.6. A WESM Member represented in, or nominated to, more than one Sector shall choose only one Sector to represent and must accordingly withdraw or decline the nomination in the other Sector/s.

3.2.7. Any WESM Member may nominate qualified individuals as Independent members in any of the Committees requiring an independent member.

3.2.8. A qualified individual may self-nominate as Independent member in any Committees requiring an independent member.

3.3. Selection

3.3.1. The *PEM Board* shall pre-screen and shortlist all candidates nominated to become a member of the relevant Committee in accordance with the qualifications and disqualifications set forth in these *Guidelines* and applicable laws and rules.

3.3.2. In the determination of the list of candidates, the *PEM Board* shall consider foreign professionals, if and only if during the pre-screening and evaluation process, they have proven that such professional is known to be an outstanding expert or specialist in the particular field and that the services of such foreigner is urgently necessary either for lack of local experts or if his or her service will promote the advancement of the Spot Market.

The foreign professional should comply with the applicable laws and regulations of the Philippines for his or her practice, and shall furnish the *PEM Board* of proof of compliance.

- 3.4. Publication of Nominees. Upon screening of the nominees submitted within the allowable time as prescribed by the *PEM Board*, the latter shall cause the publication of the list of the qualified nominees in the *Governance Arm* website.
- 3.5. Interview of the Nominees. After the publication of the shortlisted nominees and upon verification and resolution of opposition thereof, if any, the *PEM Board* may opt to conduct further assessment of the shortlisted nominees through personal interview or any other means as the *PEM Board* may consider appropriate. The *PEM Board* shall rate them in accordance with a scoring system provided for this purpose.
- 3.6. Appointment of *WESM Governance Committee* Members and Chairpersons. The *PEM Board* shall appoint the members and the Chairpersons of the *WESM Governance Committees* from among the list of qualified nominees.
- 3.7 Declaration/Undertaking. No person shall commence or continue to assume office as a member of any of the Committees unless a duly accomplished form of undertaking (Appendix [B]) has been submitted.
- 3.8 Periodic evaluation of qualification and performance. The Board shall require a regular assessment and report of the performance and qualifications of all members of the Committees consistent with Section 10.03 of these Guidelines.
- 3.9 Hold Over Provision. Any member of the committee whose appointment has expired shall continue to hold office, with all the rights and obligation attached to the position, until his/ her replacement has been duly appointed.

Section 4. Qualifications, Disqualifications, and Criteria for *WESM Governance Committee* Members

4.1. Common Qualifications. In addition to the specific requirements provided under this Guidelines and pertinent laws and rules, each member of a *WESM Governance Committee* shall possess the following qualifications:

- (a) Must be a natural person;
- (b) Must be of legal age;
- (c) Must be of sound mind; and
- (d) Must at least be a college graduate, and with at least ten (10) years of relevant experience in their field of expertise.

4.2. Disqualification. The following persons are disqualified from being appointed

as a member of any of the *WESM Governance Committees*:

- (a) Those convicted by final judgment, local or overseas, for an offense involving moral turpitude or fraudulent act or transgression;
- (b) Those convicted by final judgment to have intentionally violated, or willfully aided, abetted, counseled, caused or induced another to commit a violation of any of the Applicable Laws;
- (c) Those judicially declared to be insolvent;
- (d) Those convicted by final judgment for an offense punishable by imprisonment for a period exceeding six (6) years and more;
- (e) Those with permanent residence in a foreign country or those who have acquired the right to reside abroad and continue to avail of the same right after appointment in the Committee;
- (f) Those removed from office, private or government, as a result of an administrative case; or
- (g) Other grounds as may be duly determined by the Board or pertinent rules and regulations

4.3. Criteria for Independence. A person shall be deemed independent if that person:

- (a) is not a director, officer, employee, contractor, consultant, agent, adviser, legal counsel, manager, or shareholder of a *WESM Member* or *System Operator*;
- (b) is not a spouse or relative of a person within the fourth civil degree of consanguinity or affinity, of a director, officer, manager, or shareholder of a *WESM Member* or *System Operator* or an official or employee of Philippine government, its agencies or instrumentalities;
- (c) is not an officer, manager, director, shareholder, agent, employee, consultant, adviser, legal counsel, or contractor of, or is not a person directly or indirectly through one or more intermediary controls, is controlled by a company, affiliate, or any other entity related to or associated with a *WESM Member* or *System Operator* where:
 - (i) a related company or body is a parent, holding company, subsidiary or affiliate of the *WESM Member* or *System Operator*; and
 - (ii) an associate is a person who is a director, officer, manager or shareholder of that related company or entity or a relative of such a person within the fourth civil degree of affinity or consanguinity; and
 - (iii) an affiliate is any person that, alone or together with any other person, directly or indirectly through one or more intermediaries controls or is controlled by, or is under the common control with another person; The term shareholder shall exclude a member of an electric cooperative who is not involved in its operation and management and an end-user required to subscribe to or purchase

- a share in a distribution utility as an incident to the provision of service by the same distribution utility, and provided the interest of the end-user is not more than the minimum required to avail of the distribution utility's service;
- (d) is not an official or employee of the Philippine government, or its agencies or instrumentalities, but this will not apply to members of the academe in public schools and universities; and
- (e) has not been employed as an officer, or in a supervisory or managerial capacity, by any electric power industry participant, or a company within one (1) year prior to the nomination date.

Section 5. *PEM Audit Committee*

5.1. Composition. The *PEM Audit Committee* shall consist of at least three (3) members, headed by the Chairperson, with qualifications as prescribed under these *Guidelines* and pertinent rules. All members of the *PEM Audit Committee* shall be Independent as defined in this Manual.

5.2. Appointment. The *PEM Board* shall appoint the members and the Chairperson of the *PEM Audit Committee*.

The PEM Board shall endeavor to appoint persons with expertise necessary to ensure that combined expertise of the members of the PEM Audit Committee covers the areas of their concerned functions and responsibilities.

5.3 Qualifications. In addition to the qualification requirements under other provisions of these Guidelines and pertinent laws and rules:

- (a) Members of the PEM Audit Committee must have sufficient relevant experience in one or more of the following fields:
 - (i) Power industry;
 - (ii) Economics;
 - (iii) Risk management;
 - (iv) Information technology and information systems; and/or
 - (v) In such other fields as may be relevant to and required in the performance of the responsibilities of the PEM Audit Committee.
- (b) Members of the PEM Audit Committee must be independent of the Philippine electric power industry.

5.4 Responsibilities. The PAC shall:

- (a) Be responsible for the conduct of audits of the procedures, persons, systems of the *Market Operator* and the *Metering Services Providers* as they are relevant to the spot market or as may be deemed necessary by the PAC;

- (b) Test and check any enhancements or updates in the market infrastructure including any new items or version of software provided by the *Market Operator* for use by *WESM Members*;
- (c) Review any procedures and practices which are covered by the *WESM Rules* at the direction of the *PEM Board*;
- (d) Recommend changes to the *WESM Rules*, *Retail Rules* and relevant *Market Manuals* where the PAC identified deficiencies as a consequence of an audit, review, test, check or other form of review;
- (e) Review the security arrangements and requirement of metering installations in consultation with the *Market Operator* and *Metering Service Providers*;
- (f) Publish on the *Governance Arm* website the results of any findings and recommendations under this Section; and
- (g) Perform all other functions and duties referred to in the *WESM Rules* and in accordance with applicable laws and rules.

5.5. Term of Office

The term of office of each member of the *PEM Audit Committee* shall be for three (3) years; provided that the initial members of the Audit Committee shall be appointed for the following terms: The Chairperson for three (3) years; one member for two (2) years and the other member for one (1) year. The members of the *PEM Audit Committee* may be eligible for reappointment but in no case shall a member serve for more than two three (3) consecutive terms.

Service by a member for less than one year shall not be considered one term.

5.6 Conduct of Business, Voting and Procedures. The *PEM Audit Committee* may promulgate its respective rules of procedure in accordance with the purpose for which each committee is created and always consistent with the EPIRA, the *WESM Rules*, the PEMC Charter and these Guidelines.

- (a) The presence of majority of all members shall constitute a quorum for the transaction of business.
- (b) The majority vote of all members is required to constitute a valid committee decision. Thus, in case of disagreement, absence of a member or a vacancy, no decision shall be valid except made by a unanimous vote of the majority of all members.
- (c) In case of a vacancy, the remaining members shall continue to perform its functions and duties provided that there is a quorum.
- (d) In case of absence of the Chairperson for a particular meeting, any member may temporarily act as Chairperson.
- (e) In case of permanent vacancy in the position of the Chairperson, the members shall elect from among themselves an acting Chairperson so as not to interrupt its proceedings or operation, subject to subsequent reporting and approval of the Board. The Acting Chairperson herein appointed shall serve until a new one is appointed in accordance with these Guidelines.

- (f) In the event of a deadlock, the Chairperson of the Committee shall be entitled to a second or casting vote.

Section 6 Market Surveillance Committee

6.1. Composition. The *Market Surveillance Committee* shall consist of at least five (5) members.

6.2. Appointment. The PEM Board appoints the members and the Chairperson of the *Market Surveillance Committee*.

The *PEM Board* shall endeavor to appoint persons with expertise necessary to ensure that combined expertise of the members of the Market Surveillance Committee covers the areas of their concerned functions and responsibilities.

6.3. Qualifications. In addition to the qualification requirements under other provisions of these Guidelines and pertinent laws and rules:

- (a) A member of the Market Surveillance Committee must have sufficient relevant experience in one or more of the following areas:
 - (i) Competitive wholesale electricity markets or financial or commodity markets;
 - (ii) Philippine law and regulations pertaining to electricity;
 - (iii) Competition laws and policies;
 - (iv) Power system operations;
 - (v) Economics; and/or
 - (vi) In such other fields as may be relevant to and required in the performance of the responsibilities of the Market Surveillance Committee.
- (b) Members of the Market Surveillance Committee must be Independent of the Philippine electric power industry and of the Government.

6.4. Responsibilities. The *Market Surveillance Committee* is tasked to monitor and report on activities in the spot market in accordance with the *WESM Rules* and shall have the following specific duties and functions:

- (a) Monitor activities conducted by the WESM Members in the Spot Market.
- (b) Prepare periodic reports, which outline:
 - (i) Activities of WESM Members in the Spot Market;
 - (ii) Apparent or suspected incidents of anti-competitive behavior by any WESM Member;
 - (iii) Matters concerning the operation of the Spot Market generally, which reports, upon its completion, shall be submitted to the PEM

Board, the DOE, and ERC, subject to Clause 5.3 of the WESM Rules,

- (c) Assist the *PEM Board* or the *Enforcement and Compliance Office* to investigate and gather evidence of:
 - (i) Unusual or suspicious behavior or activities of *WESM Members* in the Spot Market;
 - (ii) Suspected or alleged breaches of the WESM Rules by WESM Members; and
 - (iii) Suspected or alleged anti-competitive behavior.
- (d) From time to time, if the Market Surveillance Committee in its discretion deems necessary or appropriate, propose amendments to the WESM Rules with a view to:
 - (i) Improving the efficiency and the effectiveness of the operation of the WESM; and
 - (ii) Improving or enhancing the prospects for the achievement of the WESM objectives.
- (e) Assist the Rules Change Committee in relation to its assessment of proposals to amend the WESM Rules relative to market behavior concerns.
- (f) Review any decision by the Market Operator to impose or relax constraints under clause 3.5.13.1 or 3.5.13.2 of the WESM Rules at the request of the Market Operator, the System Operator or any WESM Member.
- (g) Upon the occurrence of one or more of the events described in clause 6.9.4.1 of the WESM Rules, investigate the circumstances of that event and prepare a report to assess:
 - (i) The adequacy of the relevant provisions of the WESM Rules in relation to the event or events which occurred;
 - (ii) The appropriateness of actions taken by the System Operator and the Market Operator in relation to the event or events which occurred;
 - (iii) The costs incurred by WESM Members as a consequence of responding to the event or events; and
 - (iv) Any finding of potential, fault of any WESM Participant including a preliminary recommendation for further evaluation by the PEM Audit Committee.
- (h) Design and promulgate the penalty levels and the appropriate range of penalties, for breaches and non-compliance of WESM Rules, anti-competitive behavior, and abuse of market power.
- (i) Investigate, upon request of Enforcement and Compliance Officer, a failure of a WESM Member to comply with a directive or request to provide information under clause 7.2.4.1 of the WESM Rules.

- (j) (j) The Market Surveillance Committee shall perform all other functions and duties referred to in the WESM Rules and in accordance with applicable laws and rules.

6.5. Term of Office. The term of office of each member of the Market Surveillance Committee shall be for three (3) years: provided that the initial members of the Committee shall be appointed for the following terms: (i) the Chairperson for three (3) years; two members for two (2) years; and the remaining two members for one (1) year. The members of the MSC may be eligible for reappointment but in no case shall a member serve for more than three (3) consecutive terms.

Service by a member for less than one year shall not be considered one term.

6.6. Conduct of Business, Voting and Procedure. The Market Surveillance Committee may promulgate its own rules of procedure in accordance with the purpose for which each committee is created and always consistent with the EPIRA, the WESM Rules, the PEMC Articles of Incorporation its By-Laws and these Guidelines.

- (a) The presence of majority of all members shall constitute a quorum for the transaction of business.
- (b) The vote of the majority of those present constituting a quorum shall be sufficient for a valid committee decision.
- (c) In case of a vacancy, the remaining members shall continue to perform its functions and duties provided that there is a quorum.
- (d) In case of absence of the Chairperson for a particular meeting, a temporary Chairperson shall be elected by the majority of the members present constituting a quorum.
- (e) In case of permanent vacancy in the position of the Chairperson, the members shall elect from among themselves an acting Chairperson so as not to interrupt its proceedings or operation, subject to subsequent reporting and approval of the Board.
- (f) The Acting Chairperson herein appointed shall serve until a new one is appointed in accordance with these Guidelines.
- (g) In the event of a deadlock, the Chairperson of the Committee shall be entitled to a second or casting vote.

Section 7 Rules Change Committee.

7.1. Composition. The Rules Change Committee shall consist of 15 members:

- (a) One (1) member representing the Market Operator;
- (b) One (1) member representing the Transmission Sector;
- (c) Four (4) members representing the Distribution Utilities, two (2) of whom coming from the Electric Cooperatives, and the other two (2) from private utilities registered under the WESM Rules;

- (d) One (1) member representing the Supply Sector registered under the WESM Rules;
- (e) Four (4) members representing the Generation Sector registered under the WESM Rules; and
- (f) Four (4) members representing the Independent Sector.

7.2. Appointment. The PEM Board appoints the members and the Chairperson of the RCC.

The Chairperson of the Rules Change Committee shall be chosen from among the Independent Members of the Committee.

The PEM Board shall endeavor to appoint persons with expertise necessary to ensure that combined expertise of the members of the Rules Change Committee covers the areas of their concerned functions and responsibilities.

7.3. Qualifications In addition to the qualification requirements under other provisions of these Guidelines and pertinent laws and rules:

- (a) A member of the Rules Change Committee must:
 - (i) have a level of technical or commercial knowledge and expertise in the operation of power systems and electricity markets;
 - (ii) not be a Director of the PEM Board;
 - (iii) be a director, officer or an employee of a registered WESM Member, in the Sector, or the Market Operator, the System Operator which such member represents;
 - (iv) not have any of the disqualifications under Section 4.02 of these Guidelines.
- (b) In no event shall a company, firm or business have more than one representative in the Rules Change Committee within the same Sector and neither shall a company, firm or business which is already represented in the Committee in one Sector be represented by an individual in any other Sector regardless of whether the company, firm or business has interests or is a member in more than one Sector.
- (c) The PEM Board shall from time to time appoint a Chairperson of the Rules Change Committee from among the independent members of the Committee.

7.4. Responsibilities. The Rules Change Committee, tasked to assist the PEM Board and the DOE in relation to the revision and amendment of the WESM Rules in accordance with chapter 8 of the WESM Rules, and the formulation, revision and amendment of market manuals, procedures and guidelines, shall have the following specific duties and functions:

- (a) Assess whether the rule modification proposals are:
 - (i) Consistent with the WESM objectives;

- (ii) Feasible;
 - (iii) Not unreasonably costly to implement;
 - (iv) A more appropriate or better means of achieving the criteria set out in paragraph
 - (v) (i) to (iii) above, where the effect of the change to the WESM Rules will be to
 - (vi) replace an existing rule; and
 - (vii) Made in accordance with Chapter 8 of the WESM Rules.
- (b) Submit proposed rules change to the PEM Board for approval.
 - (c) Develop and make available to WESM Members a periodic report required under the WESM Rules.
 - (d) The Rules Change Committee member shall be responsible to give information or accordingly keep their respective sectors properly updated on any or all matters involving rules change or WESM/Market concerns.
 - (e) The Rules Change Committee shall perform all other functions and duties referred to in the WESM Rules and in accordance with applicable laws and rules.

7.5. Term of Office. The term of office of the members of the RCC shall be for three (3) years. The members of the RCC may be eligible for reappointment but in no case shall his reappointment be made a member serve more than three (3) consecutive terms.

Service by a member for less than one year shall not be considered one term.

7.6. Vacancy.

In addition to the requirements in Section 3.1.2 in filling up the vacancy, the *PEM Board* shall appoint a person belonging to the same Sector or membership category under Section 7.1, following the nomination and selection process as provided under these *Guidelines*.

7.7 Conduct of Business, Voting and Procedure. The Rules Change Committee may promulgate its own rules of procedure in accordance with the purpose for which each committee is created and always consistent with the EPIRA, the WESM Rules the PEMC Articles of Incorporation its By-Laws and these Guidelines.

- (a) The presence of majority of all members shall constitute a quorum for the transaction of business.
- (b) The vote of the majority of those present constituting a quorum shall be sufficient for a valid committee decision.
- (c) In case of a vacancy, the remaining members shall continue to perform its functions and duties provided that there is a quorum.

- (d) In case of absence of the Chairperson for a particular meeting, a temporary Chairperson shall be elected by the majority of the members present constituting a quorum.
- (e) In case of permanent vacancy in the position of the Chairperson, the members shall elect from among themselves an acting Chairperson so as not to interrupt its proceedings or operation, subject to subsequent reporting and approval of the Board. The Acting Chairperson herein appointed shall serve until a new one is appointed in accordance with these Guidelines.
- (f) In the event of a deadlock, the Chairperson of the Committee shall be entitled to a second or casting vote.
- (g) Rules Change Committee Members cannot vote by proxy at Rules Change Committee meetings.

7.7. Additional Ground for Termination. In addition to grounds for termination of services and/or disqualification set forth under other provisions of these Guidelines, and pertinent laws and rules, the PEM Board may remove a member of the Rules Change Committee at any time if the person ceases to represent the Sector to which he has been appointed.

7.8. Nomination.

- (a) All nominees to the *Rules Change Committee* shall be submitted to the *PEM Board* by the respective Sector which is intended to be represented therein.
- (b) If a person is nominated in more than one Sector, the *PEM Board* shall have the discretion to require additional documentary evidence or other requirements to ensure that such nominee represents the best interest of the Sectors, and decide which Sector the nominee is most qualified for.
- (c) Any WESM Member may nominate qualified individual/s as Independent Member/s of the Rules Change Committee.

Section 8 Technical Committee

8.1. Composition. The *Technical Committee* shall consist of three (3) independent members, one (1) member representing the System Operator, one (1) member representing the Market Operator, one (1) member representing the Generation Sector, and one (1) member representing the Distribution Sector.

The Chairperson of the *Technical Committee* shall be an independent member.

8.2. Appointment. The *PEM Board* appoints the members and the Chairperson of the *Technical Committee*.

The *PEM Board* shall endeavor to appoint persons with expertise necessary to ensure that combined expertise of the members of the *Technical Committee* covers the areas of their concerned functions and responsibilities.

The Chairperson of the *Technical Committee* shall be chosen from among the independent members of the Committee.

8.3. Qualifications. In addition to the qualification requirements under Section 4.3 of this *Guidelines* and pertinent laws and rules, the independent members of the *Technical Committee* shall have sufficient relevant experience in one or more of the following fields:

- (a) Electrical Engineering with expertise in power industry;
- (b) Information Technology;
- (c) Economics; or
- (d) Such other fields as may be relevant to and required in the performance of the responsibilities of the *Technical Committee*.

8.4. Responsibilities. The *Technical Committee*, tasked to monitor and review technical matters under and in relation to the WESM Rules, the Grid Code and Distribution Code, shall have the following specific duties and functions:

- (a) Monitor technical matters relating to the operation of the Spot Market;
- (b) Provide a report on any matter of a technical nature relating to any WESM Member which in the reasonable opinion of the Technical Committee, causes:
 - (i) That WESM Member to be unable to comply with the WESM Rules; or
 - (ii) unintended or distortionary effects to the operation of the WESM;
- (c) Assist the PEM Board by providing expertise in relation to:
 - (i) Information technology;
 - (ii) Metering technology and metering data; and
 - (iii) Any other matter of a technical nature relating to the Spot Market;
- (d) Propose amendments to the WESM Rules in relation to technical matters, with a view to:
 - (i) Improving the efficiency and the effectiveness of the operation of the Spot Market; and
 - (iii) Improving or enhancing the prospects for the achievement of the WESM objectives;
- (e) Assist the RCC in relation to its assessment of proposals of a technical nature to amend the WESM Rules.
- (f) The Technical Committee shall perform all other functions and duties referred to in the WESM Rules and in accordance with applicable laws and rules.

8.5. Term of Office. The term of office of each member of the *Technical Committee* shall be for three (3) years. The members of the *Technical Committee* may be eligible for reappointment but in no case shall a member serve for more than three (3) consecutive terms.

Service by a member for less than one year shall not be considered one term.

8.6 Conduct of Business, Voting and Procedures

- (a) The presence of majority of all members shall constitute a quorum for the transaction of business.
- (b) The majority of those present constituting a quorum shall be sufficient for a valid committee decision.
- (c) In case of a vacancy, the remaining members shall continue to perform its functions and duties provided that there is a quorum.
- (d) In case of absence of the Chairperson for a particular meeting, a temporary Chairperson shall be elected by the majority of the members present constituting a quorum.
- (e) In case of permanent vacancy in the position of the Chairperson, the members shall elect from among themselves an acting Chairperson so as not to interrupt its proceedings or operation, subject to subsequent reporting and approval of the Board. The Acting Chairperson herein appointed shall serve until a new one is appointed in accordance with these Guidelines.

Section 9 Dispute Resolution Administrator

9.1. Appointment. The *PEM Board* shall appoint a person to act as the *Dispute Resolution Administrator*.

9.2. Qualifications. In addition to the qualification requirements under other provisions of these Guidelines and pertinent laws and rules, the *Dispute Resolution Administrator* must:

- (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) Have knowledge and sufficient relevant experience in one or more of the following fields:
 - (i) Operations of wholesale electricity markets;
 - (ii) Economics;
 - (iii) Energy or money market trading or any other commodity market trading;
 - (iv) Power system operations;
 - (v) Philippine law and regulations pertaining to electricity; and/or
 - (vi) In such other fields as may be relevant to and required in the

- performance of the responsibilities of the Dispute Resolution Group
- (e) Be an Independent of Philippine electric power industry.
 - (f) At least one member must belong to the law profession with a minimum of five years of experience.

9.3. Responsibilities. The *Dispute Resolution Administrator* is tasked to facilitate the amicable resolution of disputes between parties in accordance with the *WESM* dispute resolution process and, in addition to the responsibilities under applicable rules, shall have the following specific duties and functions:

- a) To facilitate the mediation and arbitration of disputes arising from or in connection with or in relation to one or more of the following:
 - (i) The *Market Operator*;
 - (ii) The *System Operator*;
 - (iii) The *PEM Board* and its *WESM Governance Committees*, except the *Dispute Resolution Administrator*;
 - (iv) *WESM Members*; and
 - (v) *Intending WESM Members*.

- b) To facilitate the mediation and arbitration of disputes arising from or in connection with or in relation to one or more of the following:
 - (i) A dispute under or in relation to a contract between two or more persons or entities referred to above where that contract provides that the dispute resolution procedures under the *WESM Rules* are to apply to any dispute under or in relation to that contract with respect to the application of the *WESM Rules*; or
 - (ii) A dispute under or in relation to other rules and regulations issued by the DOE and ERC 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 those rules and regulations; or
 - (iii) The failure of an entity or entities to act or behave in a manner consistent with the *WESM Rules*; or
 - (iv) An obligation to settle payment under the *WESM Rules*.

9.4. Term of Office.

The *DRA* shall be appointed for a fixed term of five (5) years and shall be eligible for re-appointment for one additional fixed term.

Service by the *DRA* for less than one year shall not be considered one term.

9.5 Conduct of Business, Voting and Procedure. The *Dispute Resolution Administrator* may promulgate rules of procedure in accordance with the purpose for which each *WESM Governance Committee* is created and always consistent with the *EPIRA*, the *WESM Rules*, the *PEMC Articles of Incorporation its By-Laws* and these *Guidelines*. The dispute resolution process shall be guided by the applicable rules and processes based on the *Dispute Resolution Manual*.

Section 10 The Compliance Committee

10.1. Composition. The *Compliance Committee* shall consist of three (3) members. The members of the *Compliance Committee* shall all be independent. At least one (1) member of the committee shall be a lawyer.

10.2. Appointment. The *PEM Board* shall appoint the members and the Chairperson of the *Compliance Committee*. The *PEM Board* shall endeavor to appoint persons with the expertise necessary to ensure that the expertise of the *Compliance Committee* covers the functions and responsibilities of the *Compliance Committee*.

10.3. Qualifications. In addition to the qualification requirements under other provisions of these guidelines, pertinent laws and rules, a member of the *Compliance Committee* must have sufficient relevant experience in one or more of the following fields:

- (a) Competitive wholesale electricity markets or financial or commodity markets;
- (b) Philippine laws and regulations pertaining to electricity;
- (c) Competition laws and policies;
- (d) Power system operations;
- (e) Economics; or
- (f) Such other fields as may be relevant for the *Compliance Committee* to perform its tasks.

10.4. Responsibilities. The *Compliance Committee* shall from time to time, as necessary, and as appropriate, or whenever the *PEM Board* directs:

- (a) Review reports of investigation of breaches of the *WESM Rules* and *Market Manuals* carried out by the *Enforcement and Compliance Office* and, based on the results of such investigation, decide on the outcomes of the investigation and recommend imposition of sanctions or penalties if warranted;
- (b) Review and monitor the compliance of *Enforcement and Compliance Office* with the reportorial requirements pursuant to the *WESM Rules*, *Market Manuals*, and other applicable laws, rules, regulations, or issuances;

- (c) Review and monitor the compliance by the *Market Operator* and the *System Operator* with their obligations pursuant to the *WESM Rules* and *Market Manuals*, or any coordinating or operating agreements, or protocols which may be established governing the performance of their functions and obligations under the *WESM Rules* and *Market Manuals*;
- (d) Propose amendments to the *WESM Rules* or *Market Manuals* in accordance with Chapter 8 with a view of: (i) Improving the efficiency and the effectiveness of the operation of the *WESM*; and (ii) Improving or enhancing the prospects for the achievement of the *WESM* objectives;
- (e) Assist the *Rules Change Committee* in relation to its assessment of proposals to amend the *WESM Rules* or *Market Manuals* under Chapter 8: and
- (f) Perform such other functions as may be required by relevant *Market Manuals*.

10.5. Term of Office. The term of office of each member of the *Compliance Committee* shall be for three (3) years. The members of the *Compliance Committee* may be eligible for reappointment but in no case shall a member serve for more than three (3) consecutive terms.

Service by a member for less than one year shall not be considered one term.

10.6. Conduct of Business, Voting and Procedure. The *Compliance Committee* may promulgate its own rules of procedure in accordance with the purpose for which each committee is created and always consistent with the *EPIRA*, the *WESM Rules*, the *PEMC Articles of Incorporation its By-Laws* and these *Guidelines*.

- (a) The presence of majority of all members shall constitute a quorum for the transaction of business.
- (b) The vote of the majority of those present constituting a quorum shall be sufficient for a valid committee decision.
- (c) In case of a vacancy, the remaining members shall continue to perform its functions and duties provided that there is a quorum; provided that, the lack of a lawyer among the remaining members shall not affect the existence of a quorum for the purpose of allowing the Committee to continue to function in the interim; provided further that, the vacancy shall be filled within the timeline prescribed in this Manual.
- (d) In case of absence of the Chairperson for a particular meeting, a temporary Chairperson shall be elected by the majority of the members present constituting a quorum.
- (e) In case of permanent vacancy in the position of the Chairperson, the members shall elect from among themselves an acting Chairperson so as not to interrupt its proceedings or operation, subject to subsequent reporting and approval of the Board. The Acting Chairperson herein appointed shall serve until a new one is appointed in accordance with these *Guidelines*.

- (f) In the event of a deadlock, the Chairperson of the Committee shall be entitled to a second or casting vote.

Section 11 Standards of Conduct for Members of the Committees

11.1. To enable the *WESM Governance Committees* to discharge their collective responsibilities under the *WESM Rules*, each member shall:

- (a) Maintain independence and objectivity;
- (b) Conduct himself honestly, fairly, ethically and with integrity;
- (c) Contribute views based on his unique skills and experience;
- (d) Bring to the attention of the PEM Board the perspective of the Sector (if any) that he represents, while continuing to act in the best interest of the *WESM*;
- (e) Comply and act consistently with the statutory and contractual obligations of the *PEMC*;
- (f) Perform in a fair and non-discriminatory manner, all functions and duties specifically delegated to him under the *WESM Rules*, any *Market Manuals* or by the *PEM Board*;
- (g) Avoid actual or potential conflicts of interest by refraining from participating in any activity that could:
 - i. Promote activities in conflict with, or otherwise damaging to, the objectives of the *WESM*;
 - ii. Utilize *WESM* resources, property or know-how, in any outside venture;
 - iii. Take advantage of his position as member of a *WESM Governance Committee* in the conduct of an outside business;
 - iv. Conduct business transactions with *PEMC* or the Market Operator in a manner which might be considered against the best interests of *WESM*.
- (h) Promptly declare to the *PEM Board* or to the appropriate Committee to which he belongs, any conflicts of interest, potential or actual, and abstain from discussion and voting on any related matter.
- (i) Report to the *PEM Board* any suspected illegal or unethical behavior of a *WESM Member*; and
- (j) Keep all confidential information, including proprietary and market sensitive information, confidential and not to use such information for personal gain or benefit.

11.2. A breach of any of the foregoing standards of conduct shall be a ground for disqualification under Section 4.2 of these *Guidelines*.

11.3. Performance Evaluation. The *PEM Board*, through the *PEMC* President, shall regularly evaluate the performance of the *WESM Governance Committees* in accordance with a standard duly set for this purpose.

11.4. Committee Honoraria. The *PEM Board* has the authority to formulate company policy and guidelines for the grant of privileges, per diems and other benefits for the *WESM Governance Committee* members and subject to the availability of fund.

Section 12 Limitations of Liabilities and Indemnification

12.1 The Committees and their members shall not be liable for any loss or damage suffered or incurred by a *WESM Member* or any other person as a consequence of any act or omission of those persons in the performance of their functions unless the Committee or its members, as the case may be, acted with malice, manifest partiality, bad faith, gross incompetence or gross negligence.

12.2 Except for liability arising out of conduct involving malice, manifest partiality, bad faith, gross incompetence or gross negligence, if any of the Committees or the members thereof is made liable to pay any amount for loss or damage suffered or incurred by any person or entity as a consequence of any of its acts or omissions in the performance of its duties, the *PEMC* shall indemnify said persons through an indemnification process to be developed by the *PEM Board*.

Section 13 Amendments

Any amendments to this Manual on Guidelines Governing the Constitution of the *WESM Governance Committees* shall be approved by the *DOE*, following the procedures for changes to *Market Manual* set out in the *WESM Rules* and in the relevant *Market Manual*.

Section 14 Separability Clause

Should any provision or section of this Manual on Guidelines Governing the Constitution of the *WESM Governance Committees* be declared unconstitutional or contrary to law, the parts not so declared shall remain in full force and effect.

Section 15 Publication and Effectivity

This Market Manual, as it may be amended from time to time, shall be published in the Governance Arm Website.

This Market Manual or any amendments thereto shall become effective upon approval of the *DOE* in accordance with the *WESM Rules* Clause 8.6.4. The date of effectivity shall be indicated in this document.

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 valid and subsisting.

Section 3. Repealing Clause. Except insofar as may be manifestly inconsistent herewith, nothing in this Circular shall be construed as to repeal any mechanisms already existing or responsibilities already provided for under existing rules.

Section 4. Effectivity. This Circular shall take fifteen (15) days following its complete publication in at least two (2) newspapers of general circulation and shall remain in effect until otherwise revoked. Copies thereof shall be filed with the University of the Philippines Law Center – Office of National Administrative Register (UPLC-ONAR).

Issued this ____ 2022 at the DOE, Energy Center, Rizal Drive, Bonifacio Global City, Taguig City, Metro Manila.

ALFONSO G. CUSI
Secretary