



Republic of the Philippines
DEPARTMENT OF ENERGY

DEPARTMENT CIRCULAR NO. _____

**ADOPTING FURTHER AMENDMENTS TO THE WHOLESALE ELECTRICITY
SPOT MARKET (WESM) MANUAL ON DISPUTE RESOLUTION REGARDING
DISPUTES UNDER THE RETAIL RULES**

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 (DC) 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, on 12 March 2021, the Dispute Resolution Administrator (DRA) initiated proposed amendments to the WESM Manual on Dispute Resolution pertaining to the modes of arbitration for disputes under the Retail Rules, among others;

WHEREAS, following the rules change process, the proposal was approved as amended by the Rules Change Committee (per RCC Resolution No. 2021-07) and the PEM Board (per PEM Board Resolution No. 2021-37-05), and was consequently endorsed to the DOE for final approval on 29 July 2021;

WHEREAS, the DOE only partially approved the proposed amendments as expressed in its letter to the PEM Board dated 31 March 2022 and the subsequent promulgation of DOE Department Circular No. 2022-06-0021 dated 20 June 2022, which only approved the following:

- i. Proposed changes on the inclusion of Dispute Resolution between Supplier and Customer under the Retail Rules and the use of Formal Offer Arbitration or “Pendulum Arbitration”;
- ii. Proposed Guidelines for Virtual Hearings and Conference During Arbitration; and
- iii. Revision of the phrase “PEM Board and its Working Groups” to “Governance Arm” as possible impleadable party to a dispute

WHEREAS, the DOE provided comments and recommendations regarding the portion of the proposal it did not adopt which pertains to the kinds of disputes between Suppliers and Customers under the Retail Rules that may be under the scope of the WESM Dispute Resolution Process, and directed the PEM Board and the DRA to

revisit the scope of disputes covered in the proposal which should be limited only within the scope of the Retail Rules;

WHEREAS, the DRA presented to the RCC a summary of response and the proposed revisions to the amendments during the latter’s 217th Meeting on 23 June 2023;

WHEREAS, during the same meeting, the RCC adopted the DRA’s rewording of the proposed new Section 7.3.1 that further clarifies the scope of the arbitrable disputes under the Retail Rules, and likewise concurs with the DRA’s responses to the DOE’s comments to be submitted to the DOE for consideration;

WHEREAS, on 31 July 2023, the PEM Board-approved amendments to the WESM Manual on Dispute Resolution regrading disputes under Retail Rules was submitted to the DOE for 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 on Dispute Resolution regrading disputes under Retail Rules.

Section 1. Amendments to the WESM Manual on Dispute Resolution. The following provisions of the WESM Manua on Dispute Resolution are hereby amended to read as:

SECTION 2 DEFINITIONS, INTERPRETATION AND CONSTRUCTION

2.1 Definitions

xxx xxx xxx

(kk) Retail Rules refer to the rules promulgated by the Department of Energy governing the integration of retail competition in the operations and governance processes of the WESM and the management of the transactions of the Suppliers and Contestable Customers in the WESM, and the operations of the Central Registration Body as defined in Department Circular No. DC2013-01-0002.

(ll) Rules denote the WESM Rules.

(mm) Rules Change Committee refers to xxx

(nn) WESM-Accredited Arbitrator, WESM-Accredited Mediator and WESM-Accredited ADR Support Service Center have the meaning ascribed to them, respectively, in Sections 6 of this Manual.

(oo) WESM dispute means xxx

(pp) WESM Objectives refers to xxx

(qq) WESM Member means xxx

(rr) WESM Participant means xxx

xxx xxx xxx

SECTION 7 GENERAL PROCEDURAL PROVISIONS

xxx xxx xxx

7.3 Disputes Between Supplier and Customer under the Retail Rules

7.3.1 Unless the parties agree otherwise, resolution of the following illustrative cases involving disputes on:

- (i) The commercial aspect of a Retail Supply Contract that involves fees for its early / pre-termination, which does not include the interest of the public;
- (ii) The commercial aspect of a Retail Supply Contract involving price, but which does not include the interest of the public; and
- (iii) The commercial aspect of a Retail Supply Contract involving its period, within the contemplation of the Retail Rules, which does not include the interest of the public

shall be subject to the Final Offer Arbitration Supplementary Rules set forth in Annex H hereto.

xxx xxx xxx

Section 8. 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 9. 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 10. Effectivity. This Circular shall take effect fifteen (15) days following its complete publication in at least two (2) newspapers of general circulation and shall remain in effect until otherwise revoked.

Issued this _____ 2023 at the DOE, Energy Center, Rizal Drive, Bonifacio Global City, Taguig City, Metro Manila.

RAPHAEL P. M. LOTILLA
Secretary