



Republic of the Philippines
DEPARTMENT OF ENERGY
(Kagawaran ng Enerhiya)

DEPARTMENT CIRCULAR NO. _____

**ADOPTING FURTHER AMENDMENTS TO THE WHOLESALE ELECTRICITY
SPOT MARKET (WESM) RULES AND MARKET MANUAL ON DISPUTE
RESOLUTION**

WHEREAS, Sections 30 and 37(f) of the Electric Power Industry Reform Act (EPIRA) provides that the Department of Energy (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. DC2002-06-0003;

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

WHEREAS, on 12 March 2021, the WESM's Dispute Resolution Administration (DRA) submitted to the Rules Change Committee (RCC) its proposed general amendments to the WESM Rules and Market Manual regarding dispute resolution, which aims to:

- a. Provide dispute resolution framework in the Retail Rules;
- b. Provide guidelines for virtual hearings and conferences during arbitration;
- c. Align the final settlement of WESM disputes and its binding effect with Republic Act No. 9285 or the Alternative Dispute Resolution (ADR) Act of 2004 and its Implementing Rules and Regulations, and the Special Rules of Court on ADR; and
- d. Remove the PEM Board and the WESM Governance Committees as impleadable entities under Clause 7.3.1.1 (c) of the WESM Rules;

WHEREAS, on 21 May 2021, the RCC during its 179th RCC Meeting reviewed and deliberated on the proposal giving due course to the comments and recommendations received from the market participants and the DRA's corresponding responses to the said comments, and thereafter approved its endorsement to the PEM Board;

WHEREAS, on 30 June 2021, after due evaluation and deliberation, the PEM Board during its 37th Regular Meeting approved for endorsement to the DOE the above stated RCC proposal;

WHEREAS, on 29 July 2020, the PEM Board-approved amendments to the WESM Rules and WESM Manual on DRA were submitted to the DOE for approval in compliance with Chapter 8 of the WESM Rules;

WHEREAS, on _____, the DOE posted the draft Department Circular adopting the proposed amendments in the DOE website to solicit comments and recommendations from the market participants and other interested parties;

WHEREAS, on _____, the DOE conducted public consultations on the abovementioned proposed amendments to solicit inputs and consider comments of stakeholders in the finalization of the same;

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 Rules and Market Manual on DRA:

Section 1. Amendments to the WESM Rules. The following provisions of the WESM Rules are hereby amended:

- a. Clause 7.3.1.1 under Clause 7.3.1 (Application and Guiding Principles) is hereby amended to read as:

“7.3.1.1 The dispute resolution procedures set out in this Clause 7.3 apply to all disputes relating to or in connection with transactions in the *WESM* which may arise between or among any of the following:

- (a) *The Market Operator*;
- (b) *The System Operator*;
- (c) *Governance Arm*;
- (d) *WESM Members*;
- (e) *Intending WESM Members*;

xxx xxx xxx”

Section 2. Amendments to the WESM Market Manual on the Dispute Resolution. The following provisions in the Market Manual on the Dispute Resolution Issue No. 6, are hereby amended:

- a. Section 2.1 (Definitions) under Section 2 (Definitions, Interpretations and Construction) is amended to read as:

“2.1 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 xxx 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 xxx xxx

(pp) WESM Objectives refers to xxx xxx xxx

(qq) WESM Member means xxx xxx xxx

(rr) WESM Participant means xxx xxx xxx”

- b. Section 7.1.1 under Section 7.1 (Disputes Between WESM Members and the System Operator and the Market Operator) is amended to read as:

“7.1.1. When a dispute regarding one of the matters described in this Manual arises between and/or among WESM Members including the System Operator and Market Operator, the parties must go through the following steps:

- (a) Subject to Section 8.3, the parties in dispute should make good faith efforts to amicably settle their dispute between and/or among themselves pursuant to their respective Dispute Management Protocols.
- (b) Should the negotiation fail, any of the parties may refer the matter in dispute to the DRA in accordance with Section 8.4. Such submission shall set in motion the *WESM dispute* resolution process established in this Manual. If the DRA determines that the dispute is a WESM dispute under Section 2.1 (oo) of this Manual, he shall initiate the selection of a mediator under Section 8.5 of this Manual.
- (c) Should mediation efforts fail, the Claimant(s) may file with the DRA a Request under Section 9 to resolve the dispute by arbitration.
- (d) Should the parties decide to dispense with mediation and, provided that there has been a determination by the *Dispute Resolution Administrator* within ninety (90) calendar days from receipt of the dispute that the same is a WESM dispute under Section 2.1(oo) of this Manual, directly proceed to arbitration, the parties may elect to do so subject to the issuance by the *Dispute Resolution Administrator* of a certification stating that mediation is no longer a viable option for the parties.
- (e) Should the parties determine that their particular dispute would be better or more expeditiously resolved by Final Offer Arbitration, they may elect to be bound by the Final Offer Arbitration Supplementary Rules set forth in Annex H hereto subject to the issuance by the *Dispute Resolution Administrator* of a certification of the parties such agreement.”

- c. Section 7.3 and its subsection under Section 7 (General Procedural Provisions) are hereby added to read as:

“7.3 Disputes Between Supplier and Customer under Retail Rules

7.3.1 Unless the parties agree otherwise, resolution of disputes on:

- (i) fees for early/pre-termination of a Retail Supply Contract;
- (ii) Retail Supply Contract price; and
- (iii) Retail Supply Contract period, within the contemplation of the Retail Rules shall be subject to the Final Offer Arbitration Supplementary Rules set forth in Annex H hereto.”

d. New Annex H (Final Offer Arbitration Supplementary Rules) is hereby adopted (*see Attachment A*).

e. New Annex I (Guideline for Virtual Hearings) is hereby adopted (*see Attachment B*).

Section 3. 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 4. Effectivity. This Circular shall take effect fifteen (15) days following its complete publication in at least two (2) newspapers of general circulation or the Official Gazette and shall remain in effect until otherwise revoked. Copies hereof shall be filed with the University of the Philippines Law Center – Office of National Administrative Register (UPLC-ONAR).

Issued on _____ 2021 at the Energy Center, Rizal Drive, Bonifacio Global City, Taguig City, Metro Manila.

ALFONSO G. CUSI
Secretary