

[DOE DEPARTMENT CIRCULAR NO. DC2012-02-0001, February 15, 2012]

ADOPTING FURTHER AMENDMENTS TO THE WESM RULES

WHEREAS, Rule 8.6 of the Wholesale Electricity Spot Market (WESM) Rules provides for the approval by the Department of Energy (DOE) of proposals for any WESM Rules changes upon endorsement by the Philippine Electricity Market (PEM) Board;

WHEREAS, on 02 November 2011, proposed changes to the WESM Rules on dispute resolution provisions were submitted to the Rules Change Committee (RCC);

WHEREAS, the proposed changes will provide for a new dispute resolution framework for WESM-related disputes;

WHEREAS, on its various meetings, the RCC deliberated the proposed changes to the WESM Rules incorporating comments from various stakeholders;

WHEREAS, on 11 January 2012, the RCC approved for submission to the PEM Board changes in the WESM Rules concerning provisions on dispute resolution; and

WHEREAS, on 24 January 2012, the PEM Board approved the proposed changes to the WESM Rules for endorsement to the DOE.

NOW, THEREFORE, pursuant to its authority under the WESM Rules, the DOE hereby issues, adopts and promulgates the following amendments to the WESM Rules:

Section 1. Amendments to the WESM Rules.

1.1 Clause 1.4.6 is amended to read –

1.4.6 Formation of Committees

The *PEM* Board shall form working groups and appoint qualified personnel who shall act as the following:

(a)The *PEM* Auditor to conduct audits of the operation of the spot market and of the Market Operator in accordance with clause 1.5;

- (b) A *Market Surveillance Committee* to monitor and report on activities in the spot market in accordance with clause 1.6;**
- (c) A *Technical Committee* to monitor and review technical matters under and in relation to the *WESM Rules*, the *Grid Code* and *Distribution Code* in accordance with clause 1.7;**
- (d) A *Rules Change Committee* to assist the *PEM Board* and the *DOE* in relation to the revision and amendment of the *WESM Rules* in accordance with chapter 8, and the formulation, revision, amendment of market manuals, procedures and guidelines; and**
- (e) A *Dispute Resolution Administrator* to facilitate the resolution of the dispute between and among the parties within a specified period of time in accordance with the dispute resolution process under clause 7.3.**

1.2 Clause 3.3.3.7 is amended to read –

3.3.3.7 Any dispute between the System Operator and the *Ancillary Services Provider* in relation to the determination of a payment for spot market ancillary services shall be determined by the *Dispute Resolution Administrator* in accordance with clause 7.3, unless otherwise provided in the *Ancillary Services Procurement Agreement (ASPA)*.

1.3 Clause 7.1 is amended to read –

7.1 In line with the principles of self-governance, expeditious, just and least expensive disposition of disputes and considering the continuous nature of transactions and operations of the *WESM*, this chapter sets out:

- (a) The responsibilities for ensuring that all *WESM* members comply with the *WESM Rules*;**

- (b) The procedures on how the alleged breaches will be dealt with including:
 - (1) The correct party to whom notice of an alleged breach of the *WESM Rules by a WESM Member* shall be given;**
 - (2) The manner in which an alleged breach is to be investigated;**
 - (3) The manner in which a breach is to be sanctioned;****
- (c) Other provisions on how disputes are to be resolved; and**
- (d) The appointment of an *Enforcement and Compliance Officer, a Dispute Resolution Administrator* and selection of mediators and arbitrators that shall form part of the arbitration panel.**

1.4 Clause 7.3.1.1 is amended to read –

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) The *PEM Board* and its Working Groups, except the *Dispute Resolution Administrator*;**
- (d) *WESM* members;**
- (e) Intending *WESM* members;**
- (f) Persons who have been notified by the *Market Operator* under clause 2.5.6.1 on the following grounds:
 - (1) an application for registration as a *WESM* member has been unsuccessful;****

- (2) the application or interpretation of the *WESM Rules*;**
- (3) the application under or in relation to a contract between two or more persons or entities referred to in clauses 7.3.1.1 (a) to (f) where that contract provides that the dispute resolution procedures under the *WESM Rules* are to apply to any dispute under or in relation to the contract with respect to the application of the *WESM Rules*;**
- (4) a dispute under or in relation to the rules and regulations issued by the *ERC* and the *DOE* 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 that industry code or rules and regulations;**
- (5) the failure of an entity or entities referred to in clauses 7.3.1.1 (a) to (e) to act or behave in a manner consistent with the *WESM Rules*;**
- (6) an obligation to settle payment under the *WESM Rules*;**

The aforementioned parties shall bind themselves with the effect of submitting any dispute, controversy or claim arising out of or relating to, a WESM transaction to which they are or will be a party for settlement by arbitration in accordance with the dispute resolution provisions provided herein.

1.5 Clause 7.3.1.3 is amended to read –

7.3.1.3 Where a dispute of a kind set out in clause 7.3.1.1 arises, the parties concerned shall comply with the dispute management protocol set out in this Chapter.

1.6 Clause 7.3.2 is amended to read –

7.3.2 Appointment of Dispute Resolution Administrator (DRA)

7.3.2.1 The PEM Board shall appoint a person to act as the *Dispute Resolution Administrator*, who shall have the following responsibilities:

- (a) Administer and ensure the effective implementation and operation of the *WESM* dispute resolution process;**
- (b) Determine preliminarily if the dispute falls under the *WESM* dispute resolution process;**
- (c) Draft and issue standard forms and documents to help expedite the resolution of disputes;**
- (d) Facilitate the accreditation process of mediators and arbitrators;**
- (e) Update the list of accredited mediators and arbitrators published in the website;**
- (f) Refer the case to the mediator selected by the parties in dispute from the accredited pool of mediators; and**
- (g) Refer the case to the arbitration panel composed of arbitrators selected by the parties in dispute from the accredited list of arbitrators.**

1.7 Clause 7.3.2.2 is amended to read –

7.3.2.2 The *Dispute Resolution Administrator* shall have the following qualifications”

- (a) At least five years’ experience in alternative dispute resolution practice and procedures which do not involve litigation;**
- (b) At least five years’ experience in the electric power industry; and**
- (c) Not been employed by any electric power industry [participant, or a company or body related to or associated with a *WESM* Participant at least one year before appointment.**

The *DRA* not to be employed by and does not accept employment with any electric