

**[DEPARTMENT CIRCULAR NO. DC2018-05-0016,
June 28, 2018]**

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

*Adopted: 18 May 2018
Date Filed: 28 June 2018*

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, 14 September 2017 the Dispute Resolution Administrator (DRA) submitted and presented to the Rules Change Committee (RCC) the Proposed Amendments to the WESM Rules and WESM Market Manual on Dispute Resolution;

WHEREAS, the DRA's proposal aims to enhance the procedures in the WESM mediation and arbitration and to update the provisions for schedule of arbitration fees and administrative costs;

WHEREAS, during the same meeting on 14 September 2017, the RCC approved the publication of the said DRA's proposal in the WESM website to solicit comments from market participants and other interested parties;

WHEREAS, on 10 November 2017, the RCC during its 135th RCC Meeting deliberated on the said proposal giving due course to the comments received from market participants and the DOE, which thereafter, finalized and approved the proposal for endorsement to the PEM Board;

WHEREAS, on 28 February 2018, after due evaluation and deliberation, the PEM Board during its 132nd PEM Board Meeting approved for endorsement to the DOE the above stated RCC proposal;

WHEREAS, on 08 March 2018, the PEM Board-approved amendments to the WESM Market Manual on Dispute Resolution were submitted to the DOE for final approval,

in compliance with Chapter 8 of the WESM Rules;

WHEREAS, the DOE reviewed the said PEM Board-approved proposal, made minor revisions, and considered it consistent with the objectives of the WESM such as transparency and efficiency;

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

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

(a) New Clause 7.3.8 under Disputes on Application for Registration is added to read as -

“7.3.8 Interim and Emergency Relief

A party in need of urgent interim or conservatory relief prior to the constitution of the tribunal may apply for such relief pursuant to the procedures set forth in the Dispute Resolution Market Manual.”

(b) Original Clause 7.3.8 (Legal Representation) under Disputes on Application for Registration is renumbered to read as –

“7.3.9 Legal Representation

xxx xxx xxx”

(c) Original Clause 7.3.9 (Cost of Dispute Resolution) under Disputes on Application for Registration is renumbered to read as –

(d) Original Clause 7.3.10 (Effect of Resolution) and its sub-clauses under Disputes on Application for Registration is renumbered to read as –

“7.3.11 Effect of Resolution

xxx xxx xxx”

(e) Original Clause 7.3.11 (Recording and Publication) and its sub-clauses under Disputes on Application for Registration is renumbered to read as –

“7.3.12 Recording and Publication

xxx xxx xxx”

(f) Original Clause 7.3.12 (Limitation of Liability) under Disputes on Application for Registration is renumbered to read as –

“7.3.13 Limitation of Liability

xxx xxx xxx”

Section 2. Amendments to the WESM Market Manual on Dispute Resolution.

The following provisions in the Dispute Resolution Market Manual are hereby amended:

(a) The term "DRA Secretariat" is added under Section 2.1 Definitions to read as –

"DRA Secretariat refers to the Market Assessment Group tasked to assist the DRA in the performance of his/her responsibilities under the WESM Rules."

(b) Original term "Secretariat" under Section 2.1 Definitions is amended to read as –

"ADR Support Service Center (ASSC) refers to the WESM-accredited ADR secretariat appointed to a particular case assisting the Mediator and/or Arbitral Tribunal."

(c) Section 3.1.1 under Dispute Categories and Parties is amended to read as –

"3.1.1 As established in the WESM Rules, the provisions and procedures in this Manual shall apply in the case of disputes that may arise between or among any of the following parties:

xxx xxx xxx

(c) The PEM Board and its working groups, except the Dispute Resolution Administrator;

(d) WESM Members; and (e) Intending WESM Members

For disputes arising under or in connection with or in relation to one or more of the following:

xxx xxx xxx

(c) Any act, omission or behavior by any of the parties mentioned above in a manner inconsistent with the WESM Rules;

(d) Any obligation to settle payment under the WESM Rules;

(e) Any dispute under or in relation to a contract between two or more persons or entities referred to in Clauses 3.1.1 (a) to (e) where the 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 WESM Rules;

(f) A dispute under or in relation to the rules and regulations issued by the ERC and 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 those rules and regulations; or (g) Any dispute relating to or in connection with a transaction in the WESM."

(d) Section 6.2.4 under Selection and Accreditation is amended to read as –

"6.2.4 WESM ADR Support Service Centers

6.2.4.1 Only those companies or organizations which have adequate facilities, trained staff, tested organization and systems, and have the experience in administering ADR cases, may be eligible for accreditation as WESM ADR Support Service Centers (ASSC).

xxx xxx xxx

6.2.4.2 Pending the availability of ASSC/s having the qualifications prescribed in this Manual and their being duly accredited as such, the DRA shall tap individuals he/she deems could adequately provide the needed support services on an ad hoc/temporary basis until such time that said services are required or the case is closed, whichever comes first."

(e) Section 7.1.1 under 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:

xxx xxx xxx

(d) Should the parties decide to dispense with mediation and, provided that there has been a determination by the DRA 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."

(f) Original Section 7.3.1 under Disputes on Application for Registration is hereby deleted.

(g) Section 8.3.2 under Negotiation is amended to read as –

"8.3.2 Parties shall be represented by individuals of sufficiently senior status in their organization and/or other representatives, duly authorized in writing to negotiate the matter in dispute and to participate in the negotiation procedures."

(h) Section 8.4.1 under Referral of Dispute to the DRA is amended to read as –

"8.4.1 To properly refer a dispute to the Dispute Resolution Administrator and trigger the procedures established in this Manual, a party must file a written notice of dispute with the Dispute Resolution Administrator by way of a Request for Mediation (RM), in such form as the Dispute Resolution Administrator may prescribe. The party filing the RM shall be known as the Claimant/s and shall furnish copies of such notice to all parties involved in the dispute that the party is aware of. The notice shall describe:

xxx xxx xxx

(b) A brief history of the dispute including:

(i) The nature and time of the dispute;

(ii) The specific WESM transaction(s) which is/are the subject(s) of the dispute;

xxx xxx xxx"

(i) Section 8.4.3 under Referral of Dispute to the DRA is amended to read as –

"8.4.3 Within ninety (90) calendar days from the receipt of the RM, the DRA will assess the RM and determine whether the allegations and issues contained therein are considered a WESM dispute under Section 2.1 (nn) of this Manual covered by the dispute resolution procedures under the WESM Rules, taking into account:

xxx xxx xxx"

j) Section 8.4.5 under Referral of Dispute to the DRA is amended to read as –

"8.4.5 If the Dispute Resolution Administrator makes a preliminary determination that the dispute is a WESM dispute under Section 2.1 (nn) of this Manual, he/she shall request the Market Operator for information as to which other WESM Members may be affected by the dispute.

The Dispute Resolution Administrator shall notify all other relevant parties that may be involved in or affected by the dispute, whether or not identified in the Claimant/s's RM, in such form as the Dispute Resolution Administrator may prescribe and may, where applicable, transmit a copy of the RM within five (5) calendar days from receipt thereof."

(k) New Section 8.4.6 under Referral of Dispute to the DRA is added to read as –

"8.4.6 The Dispute Resolution Administrator may summon all parties to attend a compulsory meeting, whether conducted in-person or remotely via electronic or similar medium, for the purpose of expediently identifying which parties intend to participate in the mediation, and selecting and appointing the mediator in accordance to Section 8.5.6."

(I) Section 8.5.6 under Mediation is amended to read as –

"8.5.6 The parties involved shall then choose the mediator by alternately striking off one name at a time from the list with the last name on the list becoming the mediator. The party which initiated the complaint shall have the right to strike off first from the list.

If the parties fail to select a mediator after five (5) business days from receipt of the list of nominees or within the meeting convened for the purpose, whether conducted in-person or remotely via electronic or similar medium, the Dispute Resolution Administrator shall select and