



Republic of the Philippines
DEPARTMENT OF ENERGY

DEPARTMENT CIRCULAR NO. DC2021-08-0026 *pc*

**ADOPTING FURTHER AMENDMENTS TO THE WHOLESALE ELECTRICITY
SPOT MARKET (WESM) RULES AND ITS MARKET MANUALS FOR THE
IMPLEMENTATION OF ENHANCEMENTS TO WESM DESIGN AND
OPERATIONS
(Provisions for Market Surveillance, Enforcement and Compliance)**

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 Rules Change Committee (RCC) received various proposed amendments to the WESM Rules and WESM Market Manuals in connection with market surveillance, enforcement and compliance submitted by the Philippine Electricity Market Corporation (PEMC) and the Market Surveillance Committee (MSC);

WHEREAS, the proposal of PEMC aims to:

- a. clarify the roles and functions of the PEM Board, the Enforcement and Compliance Office, the Market Surveillance Committee and other WESM organizational units that are involved in the enforcement and compliance processes in the WESM;
- b. clarify the coverage of enforcement and compliance;
- c. enhance the processes for monitoring and investigation of possible *breach* of the market rules and manuals; and
- d. clarify the sanctions that can be imposed as a consequence of a *breach*.

WHEREAS, the proposal of MSC aims to enhance the market surveillance processes pertaining to:

- a. market monitoring, assessment and surveillance; and
- b. harmonization of the market surveillance processes with the Energy Regulatory Commission (ERC)-PEMC Protocol pertaining to the monitoring and assessment of suspected incidents of anti-competitive behavior.

WHEREAS, on 13 January 2017, the RCC during its 123rd RCC Meeting discussed the abovementioned proposals and thereafter approved the publication of the proposed amendments in the WESM market information website to solicit comments from market participants and other interested parties;

WHEREAS, the RCC reviewed and deliberated on the proposals during its regular meetings held on 17 March 2017 (127th RCC Meeting), 11 April 2017 (128th RCC Meeting), 19 May 2017 (129th RCC Meeting), 09 June 2017 (130th RCC Meeting), 07 July 2017 (131st RCC Meeting), and 10 August 2017 (132nd RCC Meeting), respectively, giving due course to the comments and recommendations received from the market participants and the DOE;

WHEREAS, the PEMC and MSC requested to defer the finalization of the proposed amendments to the market rules related to market surveillance, enforcement and compliance until the MSC has finalized its proposed amendments to the WESM Penalty Manual, which amendments are expected to affect and necessitate further changes to the proposed provisions for the Market Manual on Market Surveillance and Market Manual on Enforcement and Compliance;

WHEREAS, on 24 May 2018, the MSC together with the Enforcement and Compliance Office drafted the proposed amendments to the WESM Penalty Manual;

WHEREAS, the PEMC and MSC submitted to the RCC their further amendments to the proposals on 15 May 2018 and 01 June 2018, respectively;

WHEREAS, on 01 June 2018, the RCC during its 141st RCC Meeting discussed the additional submission of PEMC and MSC, and thereafter approved the publication of the proposals in the WESM website to solicit comments from market participants and other interested parties;

WHEREAS, on 03 August 2018, the RCC during its 143rd RCC Meeting deliberated on and finalized the proposed amendments giving due course to the comments and recommendations received from the market participants, and thereafter approved for endorsement to the PEM Board;

WHEREAS, on 30 August 2018, after due evaluation and deliberation, the PEM Board during its 3rd Regular PEM Board Meeting approved for endorsement to the DOE the above stated RCC proposal;

WHEREAS, on 07 September 2018, the PEM Board-approved amendments to the WESM Rules, Market Manual on Market Surveillance, Market Manual on Enforcement and Compliance, and other affected Market Manuals were submitted to the DOE for final approval, in compliance with Chapter 8 of the WESM Rules;

WHEREAS, on 15, 17 and 24 January 2019, the DOE conducted various public consultations on the proposed amendments to solicit inputs and consider comments of stakeholders in the finalization of the amendments;

WHEREAS, on 14 March 2019, the DOE reverted the said proposal to PEMC to seek their recommendations on the comments received from the stakeholders during the public consultation process;

WHEREAS, on 07 June 2019, PEMC through the MSC, after due deliberation of the comments of the stakeholders, sent a letter to the DOE formally submitting their recommendations;

WHEREAS, on 27 August 2019, with respect to the comments of the stakeholders and the response of the MSC, the DOE conducted another public consultation on the revised proposal to ensure transparency and consistency with the objectives of the EPIRA and the WESM;

WHEREAS, on 06 September 2019, the DOE conducted meeting with the ERC and PEMC to deliberate the comments and recommendations received from the stakeholders;

WHEREAS, on 09 October 2019, the MSC sent a letter to the DOE, providing further comments and recommendations to the proposal;

WHEREAS, on 23 June 2020, the DOE issued Special Order SO2020-06-0020 creating a DOE Task Force (TF-IMO) to operationalize the transition to Independent Market Operator as provided for by Section 30 of the EPIRA;

WHEREAS, on 22 October 2020, upon recommendation of the TF-IMO, the DOE issued the Department Circular DC2020-10-0021 which provided for the creation of the *Compliance Committee* tasked to review investigation reports, recommend imposition of penalties if warranted and monitor compliance of WESM Trading Participants to the WESM Rules and Manuals;

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 various Market Manuals:

Section 1. Amendments to the WESM Rules. The following provisions in the WESM Rules promulgated by the DOE through Department Circular No. DC2016-10-0014 are hereby amended:

a. Original Clause 1.3.3 (Responsibilities of the System Operator) under Market Operator and System Operator is amended to read as –

“1.3.4 Responsibilities of the System Operator

Under these *Rules*, the *System Operator* shall have the following functions and responsibilities:

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- (d) Implement the transitory provisions specified in Chapter 10;
- (e) Perform those actions that are required to be taken prior to the *spot market commencement date* as specified in the *WESM Rules* and Clause 10.4; and
- (f) Identify and report to the Governance Arm and the DOE any apparent or possible non-compliance with the *WESM Rules* and *Market Manuals* by any *WESM Member*.

b. Clause 1.6.2 (Responsibilities of the Market Surveillance Committee) under Market Surveillance Committee is amended to read as –

"1.6.2 Responsibilities of the Market Surveillance Committee

The *Market Surveillance Committee* shall from time to time as necessary and appropriate or whenever the *PEM Board* directs:

- (a) Monitor activities conducted by *WESM Participants* in the spot market;
- (b) Prepare periodic reports, which outline:
 - (i) Activities of *WESM Participants* in the *spot market*,
 - (ii) Apparent or suspected incidents of *anti-competitive behavior* by any *WESM Participant*, and
 - (iii) Matters concerning the operation of the *spot market* generally, which reports shall be submitted to the *PEM Board*, the *DOE* and *ERC* upon completion.
- (c) Propose amendments to the *WESM Rules* in accordance with Chapter 8 with a view to:
 - (i) Improve the efficiency and the effectiveness of the operation of the *WESM*; and
 - (ii) Enhance the prospects for the achievement of the *WESM* objectives.
- (d) Assist the Rules Change Committee in relation to its assessment of proposals to amend the *WESM Rules* under Chapter 8."

c. Original Clause 1.6.3 (Design and Promulgation of Penalties) under Market Surveillance Committee is hereby deleted.

d. Clause 3.5.11.7 under Revision of Market Offers/Bids, Nomination of Loading Levels, and Projected Outputs is amended to read as –

"3.5.11.7 *Trading Participants* shall immediately advise the *System Operator* and the *Market Operator* of any circumstances which may significantly result in material adverse change in the state of their facilities in any *dispatch interval* of any *trading day* in the current *week-ahead market horizon*.

After the occurrence of the significant event referred to above, the *Trading Participant* shall submit to the *Market Operator* and *Enforcement and Compliance Office* a written report with supporting data on the

significant event that occurred, immediately within the following trading day. Such report and data submitted shall also serve as compliance by the *Trading Participant* with its reporting obligation under Clause 7.2.2.2.”

e. Clause 6.9.4.1 under Market Intervention Report is amended to read as –

“6.9.4.1 Upon the occurrence of one or more of the following events:

- (a) *Market intervention*;
- (b) An event which, in the *System Operator's* reasonable opinion, is or may be a threat to *system security*;
- (c) A force majeure event; or
- (d) An emergency,

and upon receipt of the notification from the *Market Operator* or the *System Operator*, the *Market Surveillance Committee* shall conduct a review, and shall prepare a Market Intervention Report including:

- (a) The adequacy of the provisions of the *WESM Rules* relevant to the event, and its proposed amendments, if any;
- (b) The appropriateness of actions taken by the *System Operator* and/or the *Market Operator* in relation to the event;
- (c) The impact and possible costs incurred by *WESM members* as a consequence of the event; and
- (d) Potential breaches by *WESM Members*.”

f. Clause 6.9.5.1 under Market Suspension is amended to read as –

“6.9.5.1 Within ten (10) *business days* following a declaration by the *ERC* under Clause 6.9.1.1, the *Market Surveillance Committee*, shall review the circumstances of that event and prepare a Market Suspension Report.”

g. Clause 7.1 (Scope of Chapter 7) under Enforcement and Disputes is amended to read as –

“7.1 SCOPE OF CHAPTER 7

In line with the principles of self-governance, expeditious, just and least expensive disposition of disputes and *breaches* of the *WESM Rules* or *Market Manuals* and considering the continuous nature of the 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 process for *enforcement* of the *WESM Rules* and *Market Manuals* including:
 - (i) The procedures and responsibilities for carrying out *enforcement proceedings*, including the monitoring of

compliance with the *WESM Rules and Market Manuals*, investigation of probable *breach*, and imposition of sanctions; and

(ii) The *enforcement actions* that can be taken as consequences of a *breach*, and the procedures and responsibilities for imposing and implementing the same;

(c) Other provisions on how disputes are to be resolved; and

(d) The appointment of an *Enforcement and Compliance Office*, a *Dispute Resolution Administrator* and selection of mediators and arbitrators that shall form part of the arbitration panel.

h. Clause 7.2.1 (Compliance) under Enforcement is amended to read as –

“7.2.1 Compliance

7.2.1.1 The *PEM Board*, in consultation with the *Market Operator* and/or the *System Operator*, shall ensure that all WESM Members comply with the *WESM Rules and Market Manuals*, in accordance with this Clause 7.2. The *PEM Board* shall carry out this function in conjunction with the *Compliance Committee* and the *Enforcement and Compliance Office*

7.2.1.2 The guidelines and procedures for carrying out the *enforcement proceedings*, which include compliance monitoring and assessment and investigation and review, and for implementing the *enforcement actions* and other provisions of this Clause 7.2 shall be set out in a *Market Manual* that shall be promulgated and amended in accordance with Chapter 8.”

i. Clause 7.2.2 (Breaches of the WESM Rules by WESM Members) and its Subclauses under Enforcement are amended to read as –

“7.2.2 Breaches of the *WESM Rules and Market Manuals* by *WESM Members*

7.2.2.1 The *enforcement proceedings* and *enforcement actions* set out in this Clause 7.2 may only be carried out for non-compliances of a *WESM Member* with the *WESM Rules or Market Manuals* as specified in the *WESM Penalty Manual*, or in any provision of the *WESM Rules* or any *Market Manual* which are subject of sanctions or investigation under this Clause 7.2.

7.2.2.2 Subject to Clause 3.5.11.7, a *WESM Member* shall notify the *Enforcement and Compliance Office*, in such form and means required by the latter, of any possible non-compliance with the *WESM Rules or Market Manuals* that it may have committed.”

j. Clauses 7.2.2.3 to 7.2.2.9 under (Breaches of the WESM Rules by WESM Members) are hereby deleted.

k. Clause 7.2.3 (Alleged Breaches of the WESM Rules by the Market Operator or System Operator) and its Subclauses under Enforcement are amended to read as-

“7.2.3 Alleged Breaches of the WESM Rules by the *Market Operator* or the *System Operator*

7.2.3.1 If a *WESM Member* or the *WESM Governance Committee* has reasonable grounds to believe that *the Market Operator* or the *System Operator* is in *breach* of the *WESM Rules*, the *WESM Member* shall notify in writing the *PEM Board* of the probable *breach*.

7.2.3.2 If the *PEM Board* considers that the *Market Operator* or the *System Operator* has committed a *breach* of the *WESM Rules*, the *PEM Board* shall direct the *Enforcement and Compliance Officer* to investigate the alleged breach as soon as possible.

7.2.3.3 The guidelines and procedures for investigation of the *System Operator* or the *Market Operator* shall be set out in the *Market Manual* adopted pursuant to Clause 7.2.1.2.

7.2.3.4 If the investigation carried out by the *Enforcement and Compliance Office* confirms the occurrence of a breach, and upon recommendation of the *Compliance Committee*, the *PEM Board* shall cause the issuance of a notice to the *Market Operator* or the *System Operator* to remedy the breach and carry out measures to rectify the breach, prevent its recurrence or mitigate its adverse impact to the *WESM*.

7.2.3.5 If the *breach* is not remedied or the remedial measures are not implemented in full or in part, the *PEM Board* may file a formal complaint with the *ERC* and *DOE*.

7.2.3.6 If the breach is of such a nature that payment of compensation to affected parties is required, the *PEM Board* on behalf of the affected party may make a demand for payment from the *System Operator* under the *WESM Rules* without prejudice to the fines and penalties that the *ERC* may impose.

7.2.3.7 Breach committed by the *Market Operator* shall be subject to applicable sanctions or penalties that may be imposed pursuant to the *Market Operator Performance Standards* promulgated by the *DOE*.

7.2.3.8 The results of the investigation by the *Enforcement and Compliance Office*, the recommendation of the *Compliance Committee* and the

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decision of the *PEM Board* and all actions by these parties in accordance with this Clause 7.2.3 shall not be subject to dispute resolution under Clause 7.3.

- I. Clause 7.2.4 (Investigations) and its Subclauses under Enforcement are amended to read as –

“7.2.4 Enforcement Proceedings

7.2.4.1 The *Enforcement and Compliance Office* shall regularly monitor the activities of the *WESM Members* in the *WESM* to make a preliminary determination if a probable *breach* of the *WESM Rules* or *Market Manuals* may have been committed by any *WESM Member*.

7.2.4.2 The monitoring and determination of *breach* by the *Enforcement and Compliance Office* under Clause 7.2.4.1 shall be made on the basis of available information, including but not limited to:

- (a) Market and dispatch data and reports from the *Market Operator* and the *System Operator*;
- (b) Information contained in non-compliance reports submitted by the *WESM Member* pursuant to Clause 7.2.2.2 and other reports submitted by the *WESM Member* to *Governance Arm* and to the *Market Operator* pursuant to these *WESM Rules* and relevant *Market Manuals*; and
- (c) Data and reports from the *DOE*, *ERC*, or other government agencies that have jurisdiction over the *WESM Member* or over its operations, if such data and reports have been made available to the *Enforcement and Compliance Office*.

The *Enforcement and Compliance Office* shall ensure that the necessary verification or assessment of compliance or non-compliance is performed and that due process is observed in the conduct of compliance monitoring and assessment. Upon finding of breach by the *Enforcement and Compliance Office*, penalties shall immediately be imposed by the *Enforcement and Compliance Office* on the concerned *WESM Member* through issuance of notice of specified penalty by the *PEMC* pursuant to Clause 7.2.5.2. Provided, however, that the *WESM Member* may file a request for reconsideration with the *Enforcement and Compliance Office*.

7.2.4.3 The *Enforcement and Compliance Office* shall initiate an investigation against a *WESM Member* upon:

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- (a) report of probable *breach* or request for investigation submitted to it by any *WESM Member*, the *Market Operator*, the *System Operator*, or any of the *WESM Governance Committees* or their members;
- (b) a directive from the *PEM Board*, *DOE* or *ERC*, specifically directing investigation for *breach* for possible imposition of sanctions under these *WESM Rules* or implementing *Market Manual*; or
- (c) *motu proprio* by the *Enforcement and Compliance Office*.

7.2.4.4 An investigation shall be initiated no later than two (2) years from the date of the occurrence of the act or omission constituting the probable *breach*, and after the lapse of two (2) years, no investigation shall be carried out in respect of said act or omission.

7.2.4.5 The investigation shall be carried out strictly in accordance with this Clause 7.2 and the *Market Manual* adopted pursuant to Clause 7.2.1.2.

7.2.4.6 In carrying out its investigations, the *Enforcement and Compliance Officer* shall accord the parties opportunity to be heard.

7.2.4.7 After completing its investigation, the *Enforcement and Compliance Office* shall submit to the *Compliance Committee* an investigation report setting out its findings of fact relevant to the *breach*, its assessment as to whether a *breach* has been committed, and its recommendations on the appropriate *enforcement actions* that can be carried out.

7.2.4.8 The *Compliance Committee* shall:

- (a) review investigation reports submitted by the *Enforcement and Compliance Office* relative to the results of its investigation in accordance with Clause 7.2.4.3, and submit its review of such report, and corresponding recommendations and basis thereof, to the *PEM Board*; and
- (b) act on all appeals filed by the *WESM Member* on the *Enforcement and Compliance Office's* resolution on the *WESM Member's* request for reconsideration.

7.2.4.9 In carrying out its review, under Clause 7.2.4.8 (b), the *Compliance Committee* may recommend to the *PEM Board* to remand the case to the *Enforcement and Compliance Office* if it determines that:

- (a) the procedures set out in this Clause 7.2 and in the *Market Manual* adopted pursuant to Clause 7.2.1.2 were not complied with; or
- (b) the data or any part thereof relied upon by the *Enforcement and Compliance Office* in its findings and assessment is not valid; or
- (c) further investigation is required to consider additional or new information that was not previously considered or not made available

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to the *Enforcement and Compliance Office* and which it believes may materially affect the findings of the investigation if such information is to be considered; or

- (d) it disagrees with the findings of facts or the assessment of the *Enforcement and Compliance Office*; Provided, however, that the *Compliance Committee* and the *Enforcement and Compliance Office* shall endeavor in good faith to resolve any conflicting findings and assessment. Provided, further, that if no resolution is arrived at, the matter shall be included in the report to be submitted by the *Compliance Committee* to the *PEM Board* pursuant to Clause 7.2.4.8.

- 7.2.4.10 The *PEM Board* shall issue a resolution affirming, modifying or reversing the recommendations of the *Compliance Committee*.

In case of conflict between the findings or assessment of the *Enforcement and Compliance Office* and that of the *Compliance Committee*, the *PEM Board* shall resolve the same and determine the appropriate enforcement action.

- 7.2.4.11 If the decision of the *PEM Board* is to penalize the *WESM Member*, the *Enforcement and Compliance Office*, shall issue a notice of penalty to the *WESM Member* in accordance with the *WESM Penalty Manual* adopted pursuant to Clause 7.2.5.5. Provided, however, that the *WESM Member* may file a request for reconsideration to the *PEM Board*.

Provided, further, that the decision or the resolution of the *PEM Board* shall be final and immediately executory, and is binding on the parties to the investigation upon the lapse of the period to file a request for reconsideration or upon issuance of the *PEM Board* resolution on the request for reconsideration by the *WESM Member*."

- m. Clause 7.2.5 (Sanctions) and its Subclauses under Enforcement are amended to read as –

"7.2.5 Enforcement Actions

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- 7.2.5.2 In line with the principles stated in Clause 7.1:

- (a) The *Enforcement and Compliance Office* may impose penalties upon completion of its compliance monitoring and assessment and after consideration of all the information referred to in Clause 7.2.4.2 following the procedures provided in the *WESM Penalty Manual*; and

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(b) The *PEM Board* acting upon the results of the investigation by the *Enforcement and Compliance Office* and recommendations of the *Compliance Committee* submitted pursuant to Clause 7.2.4.8, may direct upon any *WESM Member*, other than the *System Operator* or the *Market Operator*, any of the following enforcement actions for *breach* of any provision of the *WESM Rules* or *Market Manuals*:

- (i) Comply with the financial or non-financial penalties in accordance with the *WESM Penalty Manual* adopted pursuant to Clause 7.2.5.5;
- (ii) Implement remedial measures to prevent recurrence of or mitigate any adverse impact of the *breach*;
- (iii) Cessation of the act, activity or practice constituting the *breach*, or carrying out of an act, activity or practice the omission of which constitutes the *breach*; or
- (iv) Any other corrective action, as may be appropriate given the circumstances surrounding the *breach*.

The imposition of penalties by the *PEM Board* shall be without prejudice to the authority of *ERC* to impose fines and penalties pursuant to Section 46 of the *Act*.

7.2.5.3 In the course of an investigation or compliance monitoring and assessment, the *Enforcement and Compliance Office*, the *Compliance Committee* or the *PEM Board*, depending on which stage of the process the measure is required to be carried out, may require the *WESM Member* undergoing investigation to take remedial measures within a reasonable period to mitigate the adverse impact of the act or omission constituting the *breach* taking into consideration all the attendant circumstances surrounding the *breach* including the nature and extent of damages or injuries caused as well as the quickest possible time required to carry out the remedial measure.

7.2.5.4 If the breach is of such a nature that payment of compensation to affected parties is required, the *Market Operator* on behalf of the affected party may make a demand for payment under the *WESM Rules* without prejudice to the sanctions and penalties that the *ERC* may impose.

7.2.5.5 A *WESM Penalty Manual* shall be adopted and promulgated by the *DOE* which shall specify the:

- (a) Acts or omissions constituting *breach* of the *WESM Rules* or *Market Manuals* for which penalties can be imposed;
- (b) Penalties, financial and non-financial, that can be imposed for each type of *breach*, which should be commensurate to the nature and gravity of the *breach*; and

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- (c) Procedures for and respective obligations of responsible persons or entities in implementing penalties.

The Market Surveillance *Committee* shall review the *WESM Penalty Manual* from time to time as may be necessary, and in consultation with the *Rules Change Committee*, *Compliance Committee* and the *PEM Board*, recommend changes thereto, provided, that changes on the same shall be subject to the approval of the DOE

- n. Clause 7.2.7 (Publication) and its Subclauses under Enforcement are amended to read as –

“7.2.7 Information Disclosure and Confidentiality

7.2.7.1 The *PEM Board* shall adopt guidelines and procedures for the treatment of information provided and generated under this Clause 7.2, which guidelines and procedures shall be included in the *Market Manual* that will be promulgated pursuant Clause 7.2.1.2.

7.2.7.2 Any report or other documentation referred to in this Clause 7.2 may be used in any proceeding under or in relation to the *WESM Rules* or for the purpose of commencing any such proceeding.

7.2.7.3 Copies of all investigation reports and related documents shall be submitted to the *DOE* and *ERC* within 15 days from the ratification of the *PEM Board* decision on said report. *The DOE and ERC* shall use such investigation reports and related documents for purposes of policy making and regulation and shall treat the same with utmost confidentiality pursuant to applicable laws and regulations.

The *Enforcement and Compliance Office* shall publish a monthly report setting out a summary for the period covered by the report of all actions and rulings made during that period in relation to the enforcement of the *WESM Rules* in the *market information website*, with copies furnished to the *DOE*, *ERC*, the *PEM Board* and the *Compliance Committees*.”

- o. Clause 7.2.8 (Appointment of an Enforcement and Compliance Officer) and its Subclauses under Enforcement are amended to read as –

“7.2.8 Enforcement and Compliance Office

7.2.8.1 The President of *PEMC*:

- (a) With the concurrence of the *PEM Board*, shall appoint a person to act as *Enforcement and Compliance Office Head* that will head the *Enforcement and Compliance Office* created pursuant to Clause 1.4.8.1; and

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(b) Exercise administrative supervision over the *Enforcement and Compliance Office*."

- p. New Clause 7.2.10 (Exemption) and its Subclauses under Enforcement are added to read as –

"7.2.10 Exemption

All *WESM Member* shall be exempted from an investigation and imposition of sanctions for probable *breach* that are committed –

- (a) Within the first one (1) month of membership in the *WESM* by said *WESM Member*; or
(b) Within the first one (1) month of the issuance of a new provision of the *WESM Rules* or a new *Market Manual*, or an amendment thereto, with respect to such new provisions, *Market Manual* or amendment, if non-compliance with the same amounts to a *breach*."

Notwithstanding, the DOE may issue a longer exemption period as it may deem necessary, to ensure the readiness of the *WESM Members* and in the implementation of a new policy or program that directly impacts the enforcement of the *WESM Rules* and its *Market Manuals*. For this purpose, the DOE shall issue an advisory to the *Governance Arm* providing such details of exemption as necessary.

- q. New Clause 7.2.11 (Limitation of Liability and Indemnification) and its Subclauses under Enforcement are added to read as –

"7.2.11 Limitation of Liability and Indemnification

7.2.11.1 Unless they acted with malice, manifest partiality, bad faith, gross incompetence or gross negligence, the members of the *PEM Board* and the *Compliance Committee*, and the staff of the *Enforcement and Compliance Office*, and the *PEMC President* shall not be made personally liable for any loss or damage incurred by a *WESM Member* or any other person as a consequence of any act or omission undertaken in the performance of the duties and responsibilities contained in this Clause 7.2 as well as in the *Market Manual* adopted pursuant to Clause 7.2.1.2 and the *WESM Penalty Manual* adopted pursuant to Clause 7.2.5.5.

7.2.11.2 Notwithstanding Clause 7.2.11.1, should any of the persons named in said Clause 7.2.11.1 be made liable for any amount for loss or damage suffered or incurred by any person or entity, the *PEMC* shall indemnify

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said persons through an indemnification process to be developed by the *PEM Board*; provided, however, that the indemnification shall exclude any liability arising out of conduct involving malice, manifest partiality, bad faith, gross incompetence or gross negligence; and provided, finally that said indemnification shall cover the full amount adjudged, and the costs and expenses incurred by the person involved in defending himself or herself in the related proceedings."

- r. New term, "Breach," is hereby added under Glossary in Chapter 11 –

"Breach. Any act or omission that constitutes a violation of or a non-compliance with any provision of the *WESM Rules* and its associated *Market Manuals*, which are expressly provided for as subject of sanctions if committed."

- s. New term, "Compliance Committee", is hereby added under Glossary in Chapter 11 –

"Compliance Committee. The committee created by the *PEM Board* pursuant to Clause 1.8.1.1 of the *WESM Rules* primarily tasked to review investigation reports, recommend imposition of penalties if warranted and monitor compliance of *WESM Members* to the *WESM Rules* and *Market Manuals*."

- t. New term, "Enforcement," is hereby added under Glossary in Chapter 11 –

"Enforcement. This is the process by which a *WESM Member* found in *breach* of the *WESM Rules* or *Market Manuals* is imposed penalties, whether financial or non-financial in nature, and/or take corrective actions, as a consequence of the *breach*."

- u. New term, "Enforcement action," is hereby added under Glossary in Chapter 11 –

"Enforcement action. This is an action carried out against a *WESM Member* as a consequence of the *breach* by that *WESM Member* of the *WESM Rules* or *Market Manuals*, which may include imposition of penalties, remedial measures and other corrective actions."

- v. New term, "Enforcement and Compliance Office," is hereby added under Glossary in Chapter 11 –

"Enforcement and Compliance Office. The unit created within *PEMC* pursuant to Clause 1.4.8, which is primarily responsible for the administration of the enforcement and compliance which shall include monitoring, assessment and investigation of the *WESM Members* in relation to their compliance with the *WESM Rules*."

- w. New term, "Enforcement and Compliance Office Head," is hereby added under Glossary in Chapter 11 –

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"Enforcement and Compliance Office Head. This is the person appointed pursuant to the *WESM Rules* that will head the *Enforcement and Compliance Office*."

- x. Original Term, "Enforcement and Compliance Officer," under Glossary in Chapter 11 is hereby deleted –
- y. New term, "Enforcement proceeding," is hereby added under Glossary in Chapter 11 –

"Enforcement proceeding. This is the activity carried out to establish and determine the occurrence of *breach* and the corresponding enforcement action that will be carried out as a consequence of the *breach*, and includes monitoring, assessment, investigation and imposing enforcement actions."

- z. New term, "Notice of Specified Penalty," is hereby added under Glossary in Chapter 11 –

"Notice of Specified Penalty. Notice issued to a *WESM Member* found in *breach* which directs the payment of a *financial penalty* and/or imposition of a *non-financial penalty* and/or additional *penalties*."

- aa. New term, "WESM Penalty Manual," is hereby added under Glossary in Chapter 11 –

"WESM Penalty Manual. The *Market Manual* that set outs the schedule of possible *breaches* and the corresponding penalties or sanctions that can be imposed, and the manner of carrying out such sanctions."

- bb. Original Appendix C (Appendices to Chapter 7) of the *WESM Rules* is hereby deleted –

Section 2. Amendments to the WESM Market Manual on Procedures for Changes to the WESM Rules, Retail Rules and Market Manuals. The following provisions in the *WESM Manual on Procedures for Changes to the WESM Rules, Retail Rules and Market Manuals Issue 3.0* are hereby amended:

- a. Section 1.1 (Purpose) under Introduction is amended to read as –

"1.1 PURPOSE

xxx xxx xxx

- (b) Describes the responsibilities and undertakings required of the *DOE*, the *PEM Board*, the *Rules Change Committee*, the other *WESM Governance Committees*, any *WESM Member* and of any interested parties in the initiation, evaluation, and approval or disapproval of any amendment, review or interpretation of the *WESM Rules, Retail*

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Rules and Market Manuals, guidelines and issuances governing the WESM. The procedures described in this *Market Manual* shall be read and construed consistent the *WESM Rules*."

- b. Term, "WESM Governance Committee," under Definitions in Section 2 is amended to read as –

"WESM Governance Committee refers to the working groups created by the *PEM Board* pursuant to Clause 1.4.6 of the *WESM Rules*."

- c. Term, "WESM Governance Committee Secretariat," under Definitions in Section 2 is amended to read as –

"WESM Governance Committee Secretariat refers to the support group tasked to handle administrative matters of the *WESM Governance Committees*."

- d. Section 5.2 (Form and contents of proposal) under Proposals for Rules Change is amended to read as –

"5.2. Form and contents of proposal – The proposal shall:

- (a) be in writing addressed to the *Rules Change Committee* through the *WESM Governance Committee Secretariat*, using the prescribed Rules Change Proposal Form;

xxx xxx xxx"

- e. Section 5.3 (To whom submitted) under Proposals for Rules Change is amended to read as –

"5.3 To whom submitted

- (a) The proposals shall be submitted to the *Rules Change Committee* through the *WESM Governance Committee Secretariat* which shall check for the completeness of the proposal and its compliance with the formal requirements set forth in Section 5.2 of this *Market Manual*. Only proposals which are made in the prescribed form shall be accepted and considered as submitted.

xxx xxx xxx

- (c) Incomplete proposals or those which do not comply with the formal requirements shall be denied due course, and the *WESM Governance Committee Secretariat* shall notify the proponent of the denial citing the grounds therefor. The proponent may re-submit the proposal and comply with the formal requirements."

- f. Section 6.1.1 (Assessment of Proposal) under Rules Change Committee is amended to read as –

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"6.1.1 Assessment of Proposal

- (a) Upon endorsement of the *WESM Governance Committee Secretariat*, the *Rules Change Committee* shall give due course to the proposal in the next *Rules Change Committee* meeting.

xxx xxx xxx"

- g. Section 6.1.2 (Consultation and referral to Other Committees and Persons) under Rules Change Committee is amended to read as –

"6.1.2 Consultation and referral to Other Committees and Persons

xxx xxx xxx

- (b) xxx

xxx xxx xxx

- (v) other *WESM Governance Committees*, where the proposal affects any matter falling under their respective competence;

xxx xxx xxx"

- h. Section 6.1.3 (Written Submissions) under Rules Change Committee is amended to read as –

"6.1.3 Written Submissions

xxx xxx xxx

- (b) Only written submissions submitted and actually received by the *WESM Governance Committee Secretariat* within the prescribed period shall be validly considered by the *Rules Change Committee*.

xxx xxx xxx

- (d) The written submissions may be provided through printed document, by electronic means or by facsimile, and directed to the *Rules Change Committee* through the *WESM Governance Committee Secretariat*."

- i. Section 9.2 (Custodian of Records) under Reports and Records is amended to read as –

"9.2 CUSTODIAN OF RECORDS

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The Head of the *WESM Governance Committee Secretariat* shall have official custody and charge of the records prepared for or in connection with the rules change process, including but not limited to the journal and minutes of deliberations of the Committee or the *PEM Board*. The Head of the *WESM Governance Committee Secretariat* shall keep and maintain the official version of all the amendments made pursuant to these *Manual*."

Section 3. Amendments to the WESM Market Manual on Guidelines Governing the Constitution of the PEM Board Committees. The following provisions in the WESM Market Manual on Guidelines Governing the Constitution of the PEM Board Committees Issue 3.0 are hereby amended:

a. Section 1.02 under Article I DEFINITION OF TERMS and its subsections are amended to read as -

"Section 1.02 The following terms and expressions shall have the meanings set forth below:

- (a) "Act" or "EPIRA" xxx
- (b) "Applicable Laws and Rules" xxx
- (c) "Compliance Committee" refers to one of the *WESM Governance Committees* formed to review investigation reports, recommend imposition of penalties if warranted and monitor compliance of WESM Trading Participants to the WESM Rules and Manuals;
- (d) "Dispute Resolution Administrator" xxx
- (e) "Dispute Resolution Group" xxx
- (f) "Dispute Resolution Panel" xxx
- (g) "Distribution Code" xxx
- (h) "Department of Energy" xxx
- (i) "Energy Regulatory Commission" xxx
- (j) "Government" xxx
- (k) "Grid Code" xxx
- (l) "Grid Management Committee" xxx
- (m) "Guidelines" xxx
- (n) "Market Information Website" xxx

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- (o) "Market Manuals" xxx
- (p) "Market Surveillance Committee" or "MSC" refers to one of the *WESM Governance Committees* tasked to monitor and report on the activities in the spot market in accordance with the *WESM Rules*.
- (q) "PEM Auditor" xxx
- (r) "PEM Audit Committee" or "PAC" refers to one of the *WESM Governance Committees* and headed by the PEM Auditor to perform duties in accordance with the *WESM Rules*.
- (s) "PEM Board" xxx
- (t) "Other PEM Board Committees" or "Other Board Committees" xxx
- (u) "Philippine Electricity Market Corporation" is the Governance Arm of the WESM and shall provide the policies and guidelines of the WESM contained in the Implementing Rules and Regulations of the Act, *WESM Rules*, and such other relevant laws, rules and regulations
- (v) "PEMC Charter" xxx
- (w) "Person" xxx
- (x) "Rules Change Committee" or "RCC" refers to one of the *WESM Governance Committees* to assist the *PEM Board* and the *Department of Energy* in relation to the revision and amendment of the *WESM Rules* and in formulation, revision and amendment of *Market Manuals*, procedures and guidelines.
- (y) "Sector" xxx
- (z) "Technical Committee" or "TC" refers to one of the *WESM Governance Committees* tasked to monitor and review technical matters under and in relation to the *WESM Rules*, the *Grid Code* and *Distribution Code*.
- (aa) "Wholesale Electricity Spot Market" or "WESM" xxx
- (bb) "WESM Governance Committees" refers to the working groups created by the PEM Board pursuant to Clause 1.4.6 of the *WESM Rules*."
- (cc) "WESM Member" xxx
- (dd) "WESM Rules" xxx

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Section 4. Amendments to the WESM Market Manual on Dispute Resolution. The following provisions in the WESM Manual on Dispute Resolution 6.0 are hereby amended:

- a. Section 1.3.3 under Review and Updates is amended to read as –

"1.3.3 Amendment proposals to this Manual may arise from:

(a) The *PEM Board*, upon its own initiative or upon a recommendation by a *WESM Governance Committee*;

xxx xxx xxx"

- b. Term, "Market Manual," under Definition of Section 2 (Definitions, Interpretation and Construction) is amended to read as –

"Market Manual means a manual of specific procedures, systems and protocols for the implementation of the *WESM Rules* and *Retail Rules*."

- c. Term, "PEM Committee," under Definitions of Section 2 (Definitions, Interpretation and Construction) is amended to read as –

"WESM Governance Committee refers to the working groups created by the *PEM Board* as pursuant to Clause 1.4.6 of the *WESM Rules*."

- d. Term, "Board Selection Committee," is added under Definitions of Section 2 (Definitions, Interpretation and Construction) to read as –

"The Board Selection Committee refers to the committee composed of at least three (3) members of the *PEM Board*, one of whom should be an Independent *PEM Board* director, which is tasked to review and evaluate the qualifications of all persons nominated to any *WESM Governance Committee* requiring appointment by the *PEM Board*."

- e. Section 5.2.3 under Selection and Appointment is amended to read as –

"5.2.3 The *Board Selection Committee* shall pre-screen and shortlist all candidates nominated and request from those that it considers compliant with the qualification requirements, the submission of an expression of interest with their qualifications and experience."

- f. Section 5.2.4 under Selection and Appointment is amended to read as –

"5.2.4 The *Board Selection Committee* will review the submissions received and select the person best qualified and complies with the independence requirements. In determining the list of nominees, the *Board Selection Committee* shall consider foreign professionals only if 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

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lack of local experts and if his service will promote the advancement of the *WESM*.”

g. Section 5.2.5 under Selection and Appointment is amended to read as –

“5.2.5 Upon receipt of the list of qualified nominees from the *Board Selection Committee*, the *PEM Board* shall post in the Market Information Website and make available to all *WESM Members* the list of nominees.”

h. Section 5.2.6 under Selection and Appointment is amended to read as –

“5.2.6 The *PEM Board* shall, by resolution, approve and confirm the *DRA* recommended by the *Board Selection Committee* from among the list of qualified nominees.”

i. Section 5.5.4 under Term of Appointment is amended to read as –

“5.5.4 Upon receipt of written notice of resignation or before the end of the term of the *DRA*, the *PEM Board*, through the Board Selection Committee, shall forthwith select a replacement who meets the established qualifications and requisites of the new *DRA* to be appointed.”

Section 5. Amendments to the WESM Market Manual on Technical Committee.

The following provisions in the WESM Manual on Technical Committee Issue 2.0 are hereby amended:

a. Section 1.1.3 under Purpose is amended to read as –

“1.1.3. Establish the scope, guidelines and procedures in providing expert support to other *WESM Governance Committees*, *PEMC* or *WESM Members*.”

b. Section 1.3.3 Review and Updates is amended to read as –

“1.3.3. Amendment proposals to this Manual may arise from:

(a) The *PEM Board*, upon its own initiative or upon a recommendation by other *WESM Governance Committees*;

xxx xxx xxx”

c. The following terms under Section 2.1 Definitions of Section 2 (Definitions, Interpretation and Construction) are hereby amended to read as –

“Market Manual” means a manual of specific procedures, systems and protocols for the implementation of the *WESM Rules* and *Retail Rules*.”

"Market Surveillance Committee (MSC) refers to the WESM Governance Committee appointed by the *PEM Board* to monitor and report on activities in the spot market in accordance with the *WESM Rules*."

d. The term *PEM Committee* under Section 2.1 Definitions is amended to read as –

"*WESM Governance Committee* refers to the working groups created by the *PEM Board* pursuant to Clause 1.4.6 of the *WESM Rules*."

e. Section 3.1.3 under Responsibilities is amended to read as –

"3.1.3. Upon request, provide the *PEM Board* with recommendations on matters referred to the committee;

(a) Assist the *PEM Board*, *WESM Governance Committees* and *PEMC* with any request for technical review or study deemed to be under the expertise of the committee;

xxx xxx xxx"

f. Section 3.2 (Selection and Appointment) under The Technical Committee is amended to read as –

"3.2. SELECTION AND APPOINTMENT

The selection and appointment of the *Technical Committee* members shall be in accordance with the *Guidelines Governing the Constitution of the WESM Governance and Board Committees*."

g. Section 4.3.2 under Procedures is amended to read as –

"4.3.2. Any request for technical review or study from *WESM Governance Committees*, *PEMC* or a *WESM Member* shall be submitted to the *Technical Committee*, addressed through the *Market Assessment Group*, using the prescribed Request Form (Annex A)."

Section 6. Adoption of the WESM Market Manual on Enforcement and Compliance. The *WESM Market Manual on Enforcement and Compliance* Issue No. 1.0 and presented as "Annex A" to this Circular is hereby approved and adopted.

Section 7. Amendments to the WESM Market Manual on Market Surveillance, Compliance and Enforcement. The *WESM Market Manual on Market Surveillance*, Issue 1.0 and presented as "Annex B" to this Circular is hereby approved and adopted.

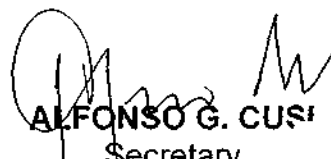
Section 9. Separability Clause. If for any reason, any section or provision of this Circular is declared unconstitutional or invalid, such parts not affected shall remain valid and subsisting.

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Section 10. Effectivity. This Circular shall take effect immediately 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 on _____ 2021 at the Energy Center, Rizal Drive, Bonifacio Global City, Taguig City.


ALFONSO G. CUSI
Secretary



JUL 31 2021

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