

PUBLIC

# WESM Manual

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## Enforcement and Compliance Issue No. 1.0

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Abstract	This manual sets out the approach for enforcement of the obligations of <i>WESM Members</i> under the <i>WESM Rules</i> and <i>Market Manuals</i> , and implements Section 7.2 of the <i>WESM Rules</i> and related provisions. It sets out specifically the guidelines and procedures for monitoring compliance by <i>WESM Members</i> with their obligations under the <i>WESM Rules</i> and <i>Market Manuals</i> , and in the investigation and imposition of sanctions for <i>breach</i> . The corresponding authorities and responsibilities of the persons and entities involved in the enforcement processes of the WESM. This also sets out the obligations of WESM Compliance Officers designated pursuant to the <i>WESM Rules</i> .
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1.0	PEMC- <i>Enforcement and Compliance Office</i>		<p>New <i>Market Manual</i> that provides the guidelines and procedures for the implementation of the enforcement and compliance processes of the WESM and the corresponding provisions of the <i>WESM Rules and Retail Rules</i>.</p> <p><i>With the adoption of this Manual, the WESM Market Surveillance, Compliance and Enforcement Market Manual will likewise be amended to, among other things, excise all provisions relating to enforcement and compliance that are set out in this Manual.</i></p>

**Document Approval**

<b>Issue No.</b>	<b>RCC Approval</b>	<b>RCC Resolution No.</b>	<b>PEM Board Approval</b>	<b>PEM Board Resolution No.</b>
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**Reference Documents**

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	Wholesale Electricity Spot Market Rules ( <i>WESM Rules</i> )
	<i>Retail Rules</i> for the Integration of Retail Competition and Open Access in the Wholesale Electricity Spot Market ( <i>Retail Rules</i> )
	WESM Penalty Manual

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**SECTION 1 INTRODUCTION****1.1 PURPOSE**

- 1.1.1 This Manual sets out the framework and processes by which compliance with the rules and *Market Manuals* governing the Wholesale Electricity Spot Market are enforced. It sets out more particularly the processes for monitoring compliance, and for investigation of *breaches* and imposition of corresponding sanctions and penalties, and other consequences of *breach*.

**1.2 SCOPE OF APPLICATION**

- 1.2.1 More specifically, the processes and actions set out in this Manual apply to the enforcement of the following market rules –
- a) the *Wholesale Electricity Spot Market Rules*, otherwise known as the *WESM Rules*, and its associated *Market Manuals*; and
  - b) the *Retail Rules for the Integration of Retail Competition and Open in the Wholesale Electricity Spot Market*, otherwise known as the *Retail Rules*, and its associated *Market Manuals*.
- 1.2.2 For brevity and unless the context provides otherwise, the reference to *market rules* and *Market Manuals* in this Manual shall collectively pertain to the sets of rules and *Market Manuals*, specified in the preceding paragraph.
- 1.2.3 The processes set out in this Manual apply to all *WESM Members*, including *Trading Participants*, service providers and the *System Operator*, as well as the *Market Operator*.
- 1.2.4 The investigation procedures set out in this Manual will also apply in cases where the *Enforcement and Compliance Office* or the *Enforcement and Compliance Officer* of the WESM is directed by the Energy Regulatory Commission to conduct investigations for subject matter and purposes involving *WESM Members* and their participation in the WESM, other than what is covered by this Manual and for which no procedures were prescribed.

### 1.2.5 This Manual does not cover the following –

- a) Processes for managing compliance with WESM registration requirements, and treatment of events of default associated with prudential requirements, billing and settlements, and payments due to the *Market Operator*, as well as the processes surrounding imposition of sanctions on, suspension, and deregistration of *Metering Services Providers*. The processes for managing compliance with registration, prudential requirements and WESM settlements are covered in separate *Market Manuals*, while *Metering Services Providers* are not within the scope of the enforcement and compliance in the WESM.
- b) Treatment of disputes among *WESM Members* or disputes involving the *Market Operator* or the *System Operator*, which are covered by the WESM dispute resolution processes under Clause 7.3 of the *WESM Rules*. Correspondingly, *breaches* that are covered by the enforcement actions set out in this Manual as well as the conduct and results of the enforcement proceedings and actions set out in this Manual shall not be subject of a dispute under the WESM dispute resolution processes.
- c) Enforcement of the obligations set out in the *WESM Rules* that pertain to the performance and audit of the *Market Operator* as well as the audit of metering arrangements, which are within the mandate and processes of the *PEM Audit Committee*.
- d) The processes set out in this Manual shall not apply to the enforcement of other rules and other *Market Manuals* that do not form part of the *WESM Rules* or *Retail Rules* and their implementing *Market Manuals*. It is understood that such other rules or other *Market Manuals* shall be enforced according to their own provisions. Consistent with this, this Manual does not apply to the enforcement of rules and *Market Manuals* governing the Interim Mindanao Electricity Market (IMEM) and the renewable energy market. Enforcement and compliance in these markets and the performance by the *Enforcement and Compliance Office* and the *PEM Board* of their enforcement-related functions shall be in accordance with the terms of their respective rules and *Market Manuals*.



**SECTION 2 DEFINITIONS, REFERENCES AND INTERPRETATION****2.1 DEFINITIONS**

- 2.1.1 All terms and abbreviations used in this Manual that are defined in the *WESM Rules* and the *Retail Rules* shall have the same meaning as defined in the latter, unless the context otherwise provides or the said term or abbreviation is otherwise defined in the Glossary of this Manual. This shall be regardless of whether or not the term or abbreviation is italicized.
- 2.1.2 Where italicized and unless the context otherwise provides, the term or abbreviation shall have the definition given in the Glossary of this Manual, and which definition shall prevail over any other definition contained in the *WESM Rules*, the *Retail Rules* or other issuances.

**2.2 REFERENCES**

- 2.2.1 This Manual shall be read in association with the *WESM Rules*, *Retail Rules* and the various *Market Manuals* approved for use in the WESM, including but not limited to the documents listed in the Reference Documents table of this Manual.
- 2.2.2 It is understood that references to the *WESM Rules*, the *Retail Rules*, and the EPIRA and its Implementing Rules and Regulations made in this Manual, particularly in its footnotes, are based on the most recent amendments of these issuances when this Manual was first promulgated.

**2.3 INTERPRETATION**

- 2.3.1 Unless otherwise stated in this Manual, the rules of interpretation set out in Chapter 9 of the *WESM Rules* shall also apply to this Manual.

**SECTION 3 LEGAL AND REGULATORY FRAMEWORK****3.1 LEGAL BASIS**

- 3.1.1 Section 30 of Republic Act No. 9136 expressly provides that the wholesale electricity spot market rules shall provide for the procedures for, among other things, the surveillance and assurance of compliance of the participants with the market rules. The formation of the market's governing body is likewise mandated to be included in the market rules as part of the procedures for administering the market.
- 3.1.2 These mandates are reiterated in the EPIRA Implementing Rules and Regulations, or the EPIRA-IRR. The EPIRA-IRR, Rule 9 similarly directs the inclusion in the *WESM Rules* of the procedures for assurance of compliance with the rules among market participants and the formation of a governing body.<sup>1</sup> The same Rule 9 likewise states that the market rules shall be formulated as to provide for adequate sanctions in cases of *breaches* of the *WESM Rules*.<sup>2</sup>
- 3.1.3 Pursuant to the legal mandate discussed above, the *WESM Rules* provide for the manner by which they are to be enforced, including particularly the imposition of sanctions for *breach* and the requirements and procedures before sanctions can be imposed.<sup>3</sup> The *WESM Rules* likewise provide for the design and promulgation of a penalty scheme that will be applied in case of *breach*.<sup>4</sup>
- 3.1.4 The *WESM Rules* also expressly provide that *WESM Members*, upon having registered with the *Market Operator* as such, are bound by the *WESM Rules*.<sup>5</sup>
- 3.1.5 Meanwhile, the *Retail Rules* expressly provide that Chapter 1 of the *WESM Rules* shall apply with respect to the governance of the integration of retail competition in the WESM, the operations of the *Central Registration Body* and the participation and transactions in the WESM of suppliers and contestable

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<sup>1</sup> EPIRA-IRR, Rule 9, Section 5 (c) (iii)

<sup>2</sup> EPIRA-IRR, Rule 9, Section 5 (b) (iv)

<sup>3</sup> *WESM Rules*, Clause 1.8.1 and Section 7.2

<sup>4</sup> *WESM Rules*, Clause 1.6.3

<sup>5</sup> *WESM Rules*, Clause 2.2.2

customers.<sup>6</sup> It is also expressly provided that the enforcement of the *Retail Rules* shall also be in accordance with Chapter 7 of the *WESM Rules*.<sup>7</sup>

### 3.2 ENFORCEMENT OF THE MARKET RULES

- 3.2.1 The Energy Regulatory Commission is mandated by the EPIRA to enforce the rules and regulations governing the operations of the WESM and the activities of the *Market Operator* and other market participants. This is for the purpose of ensuring greater supply and rational pricing of electricity.<sup>8</sup> This mandate of the ERC is reiterated in the EPIRA-IRR.<sup>9</sup>
- 3.2.2 Concurrently, the *WESM Rules* establish a governance structure for the WESM which includes, among other things, a structure for carrying out enforcement and compliance functions. The establishment of such governance structure is pursuant to the EPIRA which, as discussed in the previous paragraphs, provides that the procedures for administering the market which are to be set out in the *WESM Rules* include the formation of a governing body.<sup>10</sup>
- 3.2.3 In line with this, the *WESM Rules* prescribes the respective mandates of the Philippine Electricity Market Board and the *Market Surveillance Committee* in respect to enforcement and compliance. The *WESM Rules* also provide for the creation of an *Enforcement and Compliance Office* and the appointment of and *Enforcement and Compliance Officer*, both of which are to assist the Board in carrying out its enforcement and compliance functions. The *Enforcement and Compliance Office* is a unit within the Philippine Electricity Market Corporation.<sup>11</sup>

### 3.3 SCOPE OF WESM ENFORCEMENT AND SANCTIONS

- 3.3.1 The sanctions that may be imposed by authority of and the enforcement process prescribed in the *WESM Rules* are for *breaches* of the *WESM Rules*, the *Retail Rules* and their implementing *Market Manuals*. The specific

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<sup>6</sup> *Retail Rules*, Clause 1.5.1

<sup>7</sup> *Retail Rules*, Clause 1.6.2

<sup>8</sup> EPIRA, Section 43 (c)

<sup>9</sup> EPIRA-IRR, Rule 3, Section 4 (i)

<sup>10</sup> EPIRA, Section 30, 2<sup>nd</sup> paragraph (c) and EPIRA-IRR, Rule 9, Section 5 (c) (iii)

<sup>11</sup> *WESM Rules*, Chapter 1

approach to enforcement is described in more detail in Section 5 of this Manual.

- 3.3.2 *Breaches* of other rules and regulations that also affect the operations of the WESM or that govern *WESM Member*, but are not part of the *WESM Rules* or the *Retail Rules*, are not covered by sanctions and enforcement process authorized under the *WESM Rules*. This is notwithstanding that the acts or omissions that are subject of sanctions under the *WESM Rules* may also amount to a *breach* of or are subject to sanctions under these other rules or regulation.
- 3.3.3 The scope of enforcement and sanctions under the *WESM Rules* also does not extend to cases of *anti-competitive behavior* or abuse or misuse of market power by market participants. This is notwithstanding that an act or omission constituting a *breach* of the *WESM Rules* may also constitute *anti-competitive behavior* or abuse of market power.
- 3.3.4 It is understood, further, that the authority of the structures within the WESM to enforce the *WESM Rules* and to impose sanctions is without prejudice to the original jurisdiction of the ERC to enforce the *WESM Rules* and to impose fines and penalties for violations of the EPIRA. Any enforcement action, sanction and penalties under the *WESM Rules*, therefore, should not be understood as precluding or limiting the exercise of the ERC of its original jurisdiction.

### **3.4 ENFORCEMENT ACTIONS UNDER THE *WESM RULES***

- 3.4.1 *WESM Rules* Clause 1.8.1 provides that the Rules are to be enforceable in accordance with its Chapter 7. Chapter 7 of the *WESM Rules* describes the processes for enforcement and the corresponding authorities and responsibilities of the *PEM Board*, the *Market Surveillance Committee* and the *Enforcement and Compliance Office*.<sup>12</sup>
- 3.4.2 In addition, however, the *WESM Rules* and some *Market Manuals* also authorize the *Market Operator* to impose sanctions and penalties for some specific non-compliance or behavior. These specifically pertain to non-compliances with registration and membership requirements by *WESM Members*; defaults in payments and prudential requirements by Trading

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<sup>12</sup> The enforcement processes are set out in *WESM Rules* Section 7.2.

Participants, and to *breach* and unethical act by *Metering Services Providers*.  
More specifically –

- a) Non-compliances with the WESM registration requirements give ground for the *Market Operator* to take punitive action, and the sanctions that can be imposed include suspension or deregistration of the *WESM Member* from the WESM.<sup>13</sup>
- b) Non-compliances pertaining to prudential requirements<sup>14</sup> and to payments to the *Market Operator* are considered as events of default<sup>15</sup> and similarly give grounds for the *Market Operator* to suspend or deregister the erring *WESM Member* from the WESM.
- c) *Breach* and unethical act or conduct by a *Meter Services Provider* also gives ground for deregistration of the erring *Meter Services Provider* by the *Market Operator*.<sup>16</sup> The *Market Operator* is also authorized under the *WESM Rules* to develop a process of penalties and sanctions for *Meter Services Provider* whose *meter data* is incorrect beyond reasonable limits.<sup>17</sup>

3.4.3 Where the *WESM Rules* and relevant *Market Manuals* authorize the *Market Operator* to impose sanctions, the imposition of the prescribed sanctions is always an automatic action by the *Market Operator* and is not required to be carried out through the processes set out in Chapter 7 of the *WESM Rules*. Notably, the sanctions imposed by the *Market Operator* follow automatically from the mere occurrence of the non-compliance or event of default.

3.4.4 Thus, enforcement under Chapter 7 of the *WESM Rules* which is to be implemented through this Manual is to be understood as pertaining to non-compliances with the *WESM Rules* and *Market Manuals* other than those for which the *Market Operator* is authorized to impose automatic sanctions. This distinction in the treatment of non-compliances is made as to ensure that a category of non-compliance is not simultaneously subject of sanctions carried out by the *Market Operator* and of sanctions under Chapter 7. For example, as non-compliance with prudential requirements is already subject to

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<sup>13</sup> WESM Manual on Criteria and Procedures for Registration, Suspension and Deregistration

<sup>14</sup> *WESM Rules* Section 3.15.5, 3.15.6 and 3.15.10 in relation to Section 3.15.7

<sup>15</sup> *WESM Rules* Section 3.14.11

<sup>16</sup> *WESM Rules* Clauses 4.7.2 and 4.75

<sup>17</sup> *WESM Rules* Clauses 4.7.3, 4.7.4 and 4.7.5

sanctions, i.e., suspension and deregistration, by the *Market Operator*, then these can no longer be made subject of enforcement under Chapter 7. To do otherwise will result in the same act constituting the non-compliance being sanctioned twice.

- 3.4.5 The specific approach to enforcement is described in more detail in Section 5 of this Manual.

**SECTION 4 RESPONSIBILITIES****4.1 PHILIPPINE ELECTRICITY MARKET BOARD**

- 4.1.1 Within the WESM, the *PEM Board* shall have the primary authority and responsibility to enforce the *WESM Rules*<sup>18</sup> and the *Retail Rules*<sup>19</sup> (collectively, the *market rules*) and their implementing *Market Manuals* (collectively, the *Market Manuals*). In this respect, the *PEM Board* shall be responsible for deciding outcomes of investigations that are brought to it, particularly, authorizing the imposition of sanctions for *breach*, and directing compensation and remedial or mitigation measures, pursuant to the procedures set out in this Manual.
- 4.1.2 The *PEM Board* shall exercise its authority to enforce the *market rules* in the manner set out in the *WESM Rules*, this Manual and in the *WESM Penalty Manual*. It shall carry out this function in conjunction with the *Market Surveillance Committee* and the *Enforcement and Compliance Office*, which are by themselves granted specific authorities under the *WESM Rules*, this Manual and the *WESM Penalty Manual*. As such, the *PEM Board* shall not exercise its authority in a manner as to limit the corresponding authority granted to the *Market Surveillance Committee* and the *Enforcement and Compliance Office*.
- 4.1.3 The *PEM Board*, in relation to its mandate of overseeing compliance within the WESM, shall also have the following functions and responsibilities –
- a) Initiating and receiving independent operational audits;
  - b) Authorizing market notices, memoranda and reports in respect of its own decisions and functions;
  - c) Appointing the *Enforcement and Compliance Officer*, upon the recommendation of the PEMC President; and
  - d) Creating working groups from among its members or engaging services of experts as it deems necessary and expedient, for the purpose of carrying out its enforcement-related functions.
- 4.1.4 The *PEM Board* shall meet, deliberate, resolve and vote on the investigations for *breach*, particularly imposition of penalties, sanctions, and remedial

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<sup>18</sup> *WESM Rules* Clause 1.4.5.2 and Clause 7.2

<sup>19</sup> *Retail Rules* Clause 1.7

measures based on the recommendations of the *Market Surveillance Committee* and results of the investigations by the *Enforcement and Compliance Office*, and all matters pertaining to enforcement and compliance, in the same manner as it meets, deliberates, resolves and votes on matters submitted to or coming within its authority, unless such act of imposing penalties, sanctions and remedial measures is authorized to be carried out by the Market Surveillance Committee or the Enforcement and Compliance Office under the *WESM Penalty Manual* or other relevant *Market Manual*. It may, at its discretion, adopt its own internal procedures for handling of investigations and other enforcement- related matters referred to it.

## **4.2 MARKET SURVEILLANCE COMMITTEE**

4.2.1 Within the limits set out in this Manual and in addition to its functions as set out in the *WESM Rules* and the Market Surveillance Manual, the *Market Surveillance Committee* has the following authority and obligation in respect to enforcement of the *WESM Rules*. Its enforcement authority includes the authority to –

- a) Review reports of investigations and decide on the outcome of each case based on the findings of facts and the recommendations of the *Enforcement and Compliance Office*;
- b) Recommend to the *PEM Board* the imposition of penalties for *breaches* other than those arising from, and determined through the compliance monitoring and assessment by ECO, and implementation of remedial measures as a consequence of such *breach*, based on outcomes of investigation carried out by the *Enforcement and Compliance Office*;
- c) Decide on or resolve a request for reconsideration of the Notice of Specified Penalties filed by any concerned *WESM Member* in accordance with the relevant provisions of the *WESM Penalty Manual*;
- d) Authorize issuance of notices, reports and memoranda in respect of its own decisions and functions;
- e) Regularly review and promulgate changes, as appropriate, to the *WESM Penalty Manual* pursuant to *WESM Rules* Clause 7.2.

4.2.2 The *Market Surveillance Committee* shall carry out its enforcement functions in conjunction with the *PEM Board* and the *Enforcement and Compliance Office*, as provided for in the *WESM Rules*, this Manual and the *WESM Penalty Manual*. It shall not carry out its authority in a manner as to undermine



the respective authorities granted to the *PEM Board* and the *Enforcement and Compliance Office*.

4.2.3 The *Market Surveillance Committee* shall adopt its own requirements and procedures for meetings, including notices, quorum and voting requirements. It is understood, however, that time is of the essence in respect to the enforcement processes in the WESM. Thus, the *Market Surveillance Committee's* internal procedures may allow, among other things, that –

- a) Notices of meetings and other communications can be issued by electronic means, such as email, web postings, fax and other forms of telecommunications; as well as by traditional means such as by hand through personal delivery by private couriers, messengers or messengerial services, or by postal mail.
- b) Resolution of investigations and other compliance-related matters can be carried out through referendum, and without need of face to face meetings.
- c) Meetings can be conducted through electronic means, such as through teleconferencing and other similar technologies.
- d) Other procedures can be adopted as would facilitate resolution and decisions on enforcement and compliance matters brought before it.

### **4.3 ENFORCEMENT AND COMPLIANCE OFFICE**

4.3.1 The *Enforcement and Compliance Office*, together with the *Market Surveillance Committee*, shall assist the *PEM Board* in the enforcement of the *WESM Rules* and other market rules, and shall have the following authority and responsibility–

- a) Administer the WESM enforcement processes, with authority and responsibility that includes, but is not limited to –
  - i. monitoring of compliance amongst *WESM Members*, and, based on the result of its own monitoring and assessment, to imposing specified penalties therefor in accordance with the *WESM Penalty Manual*;
  - ii. deciding on a request for reconsideration filed by any *WESM Member* of the *Notice of Specified Penalty* arising from its compliance monitoring and assessment activities as may be authorized under the *WESM Penalty Manual*;

- iii. investigating *breach*, submitting the results of its investigations and making recommendations on sanctions and penalties, compensation and remedial measures, as it deems appropriate based on the results of its investigations; and
  - iv. evaluating applications for exemptions and submitting recommendations on possible action on the application, and monitoring implementation of approved compliance plans.
- b) Require from *WESM Members*, the *Market Operator*, and the *System Operator* the submission of data, documents, and other forms of information that it needs in the course of its monitoring and investigation;
  - c) Obtain data, documents, and other forms of information that it needs for its monitoring and investigations from persons, agencies, or entities other than those stated in the foregoing paragraph;
  - d) Obtain expert advice or technical assistance, and other information from *WESM* committees, as it deems necessary to aid in its investigation and monitoring;
  - e) Prepare and issue notices, memoranda, and reports in respect of its own functions and authority;
  - f) Assist the *PEM Board* and the working groups it may create in carrying out enforcement and compliance functions;
  - g) Assist the *PEM Board* in enforcing approved penalties and sanctions, as well as in implementing collection and payment of compensation, and compliance with *remedial measures*.
- 4.3.2 The *Enforcement and Compliance Office* shall exercise the foregoing authority and functions under the supervision and control of the *PEM Board*. Neither the *Market Surveillance Committee* nor the Board shall, however, act in such a manner as to prevent, unreasonably delay, or exert undue influence over, the performance by the *Enforcement and Compliance Office* of its functions.
- 4.3.3 In addition to the foregoing functions, the *Enforcement and Compliance Office* shall also be responsible for -
- a) Continuously developing systems and procedures to deter *breaches* of the *WESM Rules* and further evolve enforcement of penalties consistent with the objectives of the *WESM*;

- b) Implementing compliance activities intended to promote consultation and voluntary compliance, to deter *breaches* of the *WESM Rules* by *WESM Members* and to further evolve enforcement of penalties consistent with the objectives of the WESM;
- c) Assisting the *Market Surveillance Committee* in designing penalty levels and in reviewing and recommending changes, as appropriate, to the *WESM Penalty Manual*;
- d) Keeping the *PEM Board* informed on compliance-related matters;
- e) Notifying the ERC and the DOE of investigations on and confirmed *breaches* by *WESM Members*;
- f) Undertaking other compliance-related activities directed by the *PEM Board*;
- g) Receiving and managing all compliance-related communications such as reports, notices, self-reports, requests for investigations, reports of probable *breach* and complaints;
- h) Maintaining a compliance database in accordance with this Manual, publishing information in the market information website, and disseminating information to various parties;
- i) Perform all other actions required of it under this Manual; and
- j) Overall, providing secretariat and technical support to the *PEM Board* in matters pertaining to investigations, and other enforcement and compliance matters.

4.3.4 The *Enforcement and Compliance Office* shall be headed by an *Enforcement and Compliance Officer* who shall oversee and supervise the day-to-day performance by the *Enforcement and Compliance Office* of its functions. All reports, notices and memoranda required to be issued by the *Enforcement and Compliance Office* shall be authorized and signed by said officer or, in his/her absence, by the person specifically designated by the *Enforcement and Compliance Officer* or the PEMC President. The *Enforcement and Compliance Officer* shall be appointed by the *PEM Board*, upon the recommendation of the PEMC President.

4.3.5 Control and supervision over the day-to-day performance by the *Enforcement and Compliance Office* and the *Enforcement and Compliance Officer* of their functions shall be exercised by the *PEM Board*. The PEMC President shall have administrative supervision over the *Enforcement and Compliance Office* and the *Enforcement and Compliance Officer*.

#### 4.4 **PEMC PRESIDENT**

- 4.4.1 The PEMC President shall have the following functions in respect to enforcement and compliance in the WESM –
- a) Recommend to the Board the appointment of the *Enforcement and Compliance Officer*;
  - b) Appoint the *Enforcement and Compliance Office* staff, other than the *Enforcement and Compliance Officer*;
  - c) Exercise administrative supervision over the *Enforcement and Compliance Officer* and the *Enforcement and Compliance Office* and their performance of their respective duties and responsibilities under this Manual; and
  - d) Issue notices and receive notices or authorize receiving of notices required in this Manual to be issued by or to the *Market Operator* in accordance with internal business processes of PEMC.

#### **4.5 MARKET ASSESSMENT GROUP**

- 4.5.1 The Market Assessment Group shall –
- a) Make available to the *Enforcement and Compliance Office*, the *Market Surveillance Committee*, and the *PEM Board* its market assessment and monitoring reports and data as well as other market and dispatch data and reports received by it in the course of its performing its market monitoring functions;
  - b) Provide technical assistance or expertise, if so requested, in relation to any investigation or enforcement action being undertaken; and
  - c) Provide secretariat support to the *Market Surveillance Committee* as it carries out its functions under this Manual.

#### **4.6 WESM GOVERNANCE COMMITTEES**

- 4.6.1 Any of the WESM Governance Committees or any of their members shall, if called upon or requested, -
- a) Provide technical expertise or assistance in relation to any investigation or enforcement action being undertaken; and
  - b) Provide or make available its reports, data or information that can aid in any investigation or compliance monitoring being undertaken.

4.6.2 If, in the course of the performance of its functions, a WESM Governance Committee or any of its members has reason to believe that a *WESM Member* may have committed a *breach*, it may submit a *request for investigation* in accordance with the procedures set out in this Manual.

#### 4.7 MARKET OPERATOR

4.7.1 The *Market Operator* shall -

- a) Make available to the *Enforcement and Compliance Office*, the *Market Surveillance Committee* and the *PEM Board* data, reports and other information received or generated by it or that comes into its custody in the course of its market operations;
- b) Provide technical assistance or expertise, if so requested, in relation to any investigation or enforcement action being undertaken;
- c) Together with the *Enforcement and Compliance Office*, be responsible for determining compensation that shall be collected and paid as a consequence of a *breach*; and
- d) Perform the actions required of it under this Manual.

4.7.2 If, in the course of the performance of its functions, the *Market Operator* has reason to believe that a *WESM Member* may have committed a *breach*, it may initiate an investigation by submitting a *notice of probable breach* in accordance with the procedures set out in this Manual.

#### 4.8 SYSTEM OPERATOR

4.8.1 The *System Operator* shall, if called upon or requested, -

- a) Make available to the *Enforcement and Compliance Office*, the *Market Surveillance Committee* and the *PEM Board* data, reports and other information received or generated by it or that comes into its custody in the course of its operations;
- b) Provide technical assistance or expertise, if so requested, in relation to any investigation or enforcement action being undertaken; and
- c) Perform the actions required of it under this Manual.

4.8.2 If, in the course of the performance of its functions, the *System Operator* has reason to believe that a *WESM Member* may have committed a *breach*, it

may initiate an investigation by submitting a *notice of probable breach* in accordance with the procedures set out in this Manual.

#### **4.9 WESM MEMBERS**

- 4.9.1 By having registered in the WESM, a *WESM Member* has undertaken to comply, in good faith, with the *market rules* and *Market Manuals* and as such, is bound by this Manual and the *WESM Penalty Manual*, and all notices and decisions issued by authority of these manuals.
- 4.9.2 If called upon or requested, a *WESM Member* shall strictly comply with directives and notices issued in relation to any *enforcement action* and *enforcement proceeding* being carried out.
- 4.9.3 Any *WESM Member* may initiate an investigation by submitting a *request for investigation* in accordance with the procedures set out in this Manual if it has reason to believe that another *WESM Member* may have committed a *breach*.

**SECTION 5 WESM ENFORCEMENT PROCEEDINGS AND ACTIONS****5.1 RATIONALE**

5.1.1 *Enforcement* in the WESM refers to the process by which a *WESM Member* found in *breach* of the *market rules* and *Market Manuals* is imposed penalties or sanctions, which may be financial or non-financial in nature, and/or required to take remedial measures or pay compensation, as a consequence of the *breach*.

5.1.2 *Enforcement* in the WESM rests on the concept of absolute liability, in that –

- a) The acts or omissions that constitute the *breach* are those that can be established as directly attributable to the *WESM Member*, and
- b) The acts or omissions pertain to compliances with the *market rules* and *Market Manuals* to which the *WESM Member* agreed to be bound by having registered in the WESM, and for *WESM Members* that are trading participants, by also having acquiesced to the WESM *market participation agreement*.

5.1.3 Prevention of the act or omission is of paramount importance given its potential impact on the market or on the reliability and security of the power system, and thus, intent, or fault, or exercise of diligence is not a consideration in respect to a finding of *breach*.

**5.2 DEFINITION OF BREACH**

5.2.1 A non-compliance with the *market rules* and *Market Manuals* is categorized as a *breach* if it is of such nature that its occurrence can cause adverse impact on or threaten the efficiency of the scheduling and dispatch processes of the WESM and the ability of the WESM to meet its objectives. In these cases, ensuring the efficiency of the WESM and prevention of any adverse impact to either the market or the power system is more important.

5.2.2 Accordingly, not all non-compliances with the provisions of the *market rules* or *Market Manuals* are considered as *breach* that are subject to the *enforcement proceedings* and *enforcement actions* set out in this Manual.

- 5.2.3 By limiting the definition of a *breach*, WESM *enforcement* under this Manual will focus on obligations set out in the *market rules* and *Market Manuals* with which *WESM Members* are expected to fully or completely comply, and not simply to employ due diligence to ensure compliance. This is so, the focus being to preserve the integrity and efficiency of the market or the security and reliability of the power system. This is regardless of intent or fault or exercise of diligence.
- 5.2.4 As discussed in Section 3 of this Manual, there are also mandatory obligations set out in the *market rules* which are subject to sanctions that are enforced by the *Market Operator*. In these instances, the prescribed sanction is imposed by the *Market Operator* upon occurrence of the non-compliance and without need of an investigation. While these are mandatory obligations, non-compliance with these are not categorized as *breach* for purposes of *enforcement* under this Manual. Their exclusion is in order that the non-compliance will not be sanctioned twice.
- 5.2.5 More specifically then, the non-compliances that are categorized as *breaches* covered by *enforcement* under this Manual are as follows –
- a) Non-compliances with the *market rules* and *Market Manuals* which are specified as *breach* in and are subject of sanctions under the *WESM Penalty Manual*;<sup>20</sup> and
  - b) Non-compliances with provisions of the *market rules* or *Market Manuals* which are expressly provided as subject to sanctions under said provisions of the *market rules* or *Market Manuals* although they may not be specifically listed in the *WESM Penalty Manual*.
- 5.2.6 For the avoidance of doubt, the following acts or omissions or non-compliances are not classified as *breaches* that are covered by the *enforcement actions* and *enforcement proceedings* set out in this Manual –
- a) Non-compliance with registration requirements and membership criteria, which is subject of a sanction specified to be imposed by the *Market Operator* as set out in relevant *Market Manuals*.<sup>21</sup>

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<sup>20</sup> See *WESM Penalty Manual*.

<sup>21</sup> See *WESM Manual: Criteria and Procedures for Registration, Suspension and Deregistration*, otherwise known as the WESM Registration Manual.



- b) Events of default pertaining to prudential requirements and payment obligations to the *Market Operator* which are subject of sanctions specified to be imposed by the *Market Operator* under the *WESM Rules*.<sup>22</sup>
- c) Non-payment of amounts due to paid to the *Market Operator* for market transactions, including but not limited to payment of settlement amount as defined in Chapter 3 of the *WESM Rules*, in relevant price determination methodologies approved for application in the WESM and in other *Market Manuals*. This does not include payment of financial penalties and compensation as a consequence of a *breach* covered by this Manual as the treatment of such non-payment is categorized as *breach* in and is covered under the WESM Penalty Manual.
- d) *Breach* of the *WESM Rules* and unethical act of wholesale *Metering Services Providers* for which penalties and sanctions are specified in the *WESM Rules* Chapter 4 as to be imposed by the *Market Operator*.
- e) Non-compliance with performance standards, including but not limited to those imposed for the *Market Operator* and other WESM service providers, which may or may not be subject of market audit requirements and processes.
- f) Matters which the parties agree to submit to dispute resolution under relevant laws, the *WESM Rules* and relevant *Market Manual*.
- g) Subject to paragraph 5.2.5 (b), non-compliances that are not specified as subject of sanctions in the *WESM Penalty Manual*.

5.2.7 Any *enforcement action* taken under this Manual does not imply enforcement of the Philippine Grid Code, the Philippine Distribution Code, other rules and regulations which likewise govern or regulate the WESM or the *WESM Members*, and therefore does not prejudice and is likewise not prejudiced by the taking of any action authorized under such codes, rules and regulations. This is notwithstanding that such codes, rules and regulations also impose sanctions on the same acts or omissions that constitute a *breach* of the *market rules* or *Market Manuals* as defined above.

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<sup>22</sup> See Chapter 3, *WESM Rules*.

### 5.3 ENFORCEMENT PROCEEDINGS

- 5.3.1 WESM *enforcement proceedings* refer to the activities or processes that are 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*. These include the processes for compliance monitoring and assessment, investigation for *breach* and imposition of *enforcement actions*.
- 5.3.2 **Compliance monitoring and assessment**, as described in this Manual, is an integral part of *enforcement proceedings* in the WESM. Compliance monitoring under this Manual shall be carried out by the *Enforcement and Compliance Office* and shall be primarily for the purpose of determining the occurrence of *breach* of the *market rules* and *Market Manuals*. Assessment is done by taking into consideration all the relevant and verified market data and information from the *Market Operator*, the *System Operator*, the *WESM Members*, among others, with the end in view of determining the appropriate *enforcement actions*, if warranted. The compliance monitoring and assessment carried out for other purposes, such as for measuring performance standards or for audit compliance or for market assessment and surveillance, is not covered or restricted by this Manual.
- 5.3.3 **Investigations for *breach*** committed by *WESM Members* may be initiated as a result of the compliance monitoring by the *Enforcement and Compliance Office*, from a *notice of probable breach* by the *Market Operator* or the *System Operator*, or by *request for investigation* from other *WESM Members* or *WESM Committees*. This is carried out by the *Enforcement and Compliance Office* which shall afford the party being investigated sufficient opportunities to respond to the investigation. Investigation reports of the *Enforcement and Compliance Office* are reviewed by the *Market Surveillance Committee*. The results of the investigation, as reviewed, are then submitted to the *PEM Board*, which has the authority to impose sanctions and penalties, and to require that remedial measures be carried out.
- 5.3.4 **Imposition of specified penalties** by the *Enforcement and Compliance Office*, as may be authorized by the *WESM Penalty Manual*, is carried out if a breach is determined after the concerned *WESM Member* is afforded adequate opportunities to respond to the initial finding of probable breach in accordance with the internal business process, as may be established hereafter.

5.3.5 **Imposition of sanctions and penalties** by the *PEM Board* is carried out in the accordance with the *WESM Penalty Manual* and is based on the recommendations of the *Market Surveillance Committee*. The latter submits recommendations based on its findings of facts on an investigation which, in turn, is based on its review of the results of the investigations by the *Enforcement and Compliance Office*. The investigations referred to herein are those initiated in accordance with clause 6.4.2 of this Manual.

5.3.6 **Implementation of remedial measures** can be prescribed by the *Enforcement and Compliance Office* or the *Market Surveillance Committee* as provisional measures while an investigation for *breach* is ongoing. Final remedial measures are determined and imposed by the *PEM Board* based on the outcomes of an investigation.

5.3.7 **Determination and payment of compensation** is done through a separate process and not in the course of an investigation for *breach*. *WESM Trading Participants* that are financially disadvantaged as a result of a *breach* by another *WESM Member* may separately apply for payment of compensation. Claims for compensation are evaluated jointly by the *Market Operator* and the *Enforcement and Compliance Office*, and approved by the *PEM Board*.

#### 5.4 ENFORCEMENT ACTIONS FOR BREACH

5.4.1 *Enforcement actions* are the actions that can be authorized as consequences of a *breach*. These include the imposition of sanctions and penalties, directing payment of compensation or requiring implementation of remedial measures. In appropriate cases, filing of a complaint or petition to initiate regulatory action may also be authorized.

5.4.2 **Financial and non-financial penalties.** The financial and non-financial penalties that can be imposed for *breaches* covered by this Manual are those set out in the *WESM Penalty Manual*.

5.4.3 **Compensation of affected WESM Trading Participants.** Compensation is the payment made by a *WESM Member* that is financially benefitted as a result of a *breach* to another *WESM Member* that was financially disadvantaged as a result of the same *breach*. Compensation of affected or aggrieved *WESM Member* applies particularly to the types of *breach* where the direct financial impact of the *breach* on another *WESM Member* is readily

determinable from the WESM settlement processes. The manner by which compensation is determined and to whom compensation will be made are set out in this Manual.

- 5.4.4 **Remedial measures.** To foster continuing compliance, to prevent recurrence of *breach*, or to prevent or mitigate adverse impact on the market or the power system, it may be necessary to require a *WESM Member* to take remedial measures. Such measures may be required to be implemented before, during and after an investigation. The remedial measures that can be imposed shall be determined on a case by case basis, and may be directed by either the *Enforcement and Compliance Office*, the *Market Surveillance Committee* or the *PEM Board*, depending on which stage of the process the measure is required to be carried out.
- 5.4.5 **Initiation of regulatory action.** In cases of *breach* by the *System Operator* or the *Market Operator*, the *PEM Board* may initiate a complaint with the ERC if either party fails to rectify the *breach* or the *breach* is incapable of rectification.

**SECTION 6 PROCEDURES FOR MONITORING, INVESTIGATION AND REVIEW****6.1 GUIDING PRINCIPLES**

- 6.1.1 Investigations under this Manual are inquisitorial and the proceedings are summary in nature and are not carried out in an adversarial manner. For this purpose, the *Enforcement and Compliance Office* has the authority to obtain information and technical or expert advice from various sources, including but not limited to the *Market Operator*, *System Operator*, the various WESM committees, and other entities and agencies to aid in its investigation. This authority notwithstanding, it is the responsibility of the party being investigated to ensure that all information in its possession are made available for the investigation. If the party investigated fails to present or provide to the *Enforcement and Compliance Office* any information in its possession or known to it during the formal investigation, such party is deemed to have waived the presentation of such information and the same may not thereafter serve as basis for review of the results of the investigation of the *Enforcement and Compliance Office*.
- 6.1.2 An investigation shall be carried out in a manner that ensures that all parties concerned are given the opportunity to be heard. This requirement shall be fulfilled by strict compliance with the procedures set out in this Manual.
- 6.1.3 Sanctions or penalties may be imposed and remedial measures may be implemented after an investigation or upon finding of a probable breach as a result of the compliance monitoring and assessment carried out by the *Enforcement and Compliance Office* in accordance with this Manual.
- 6.1.4 No dispute resolution proceeding may be initiated upon the results of an investigation, including the findings of fact, the determination of whether a *breach* has been committed, and the sanctions, penalties and remedial measures imposed, and any and all actions taken by the *Enforcement and Compliance Office*, *Market Surveillance Committee*, and *PEM Board* in respect to an investigation. This includes a dispute resolution under Clause 7.3 of the *WESM Rules*.
- 6.1.5 Investigations shall be initiated within two (2) years from occurrence of the act or omission constituting the probable *breach*. For example, investigation of an

event occurring on 01 January 2014 shall be initiated not later than 01 January 2016 which is the end of the two-year period.

- 6.1.6 Unless the *PEM Board* authorizes a longer period, the *Enforcement and Compliance Office* shall complete an investigation of a case and submit its investigation report as set out in Section 6.10 not later than twenty-four (24) months from the issuance of the *notice investigation*. The *PEM Board*, at its discretion and on written request by the *Enforcement and Compliance Office*, may allow a longer period for an investigation to be completed if it is satisfied that the right of the parties investigated to due process will be prejudiced if a longer period is not allowed. Where a case is remanded pursuant to Section 6.12 and, for this reason, the *Enforcement and Compliance Officer* is unable to complete the investigation within the twenty-four-month period, the *PEM Board* shall, upon request of the latter, allow a longer period for the investigation to be completed.

## 6.2 SERVICE

- 6.2.1 All notices required to be issued to and served on *WESM Members* under this Section 6 shall be issued to and served on the *WESM Member* through its *WESM Compliance Officer* as appears on the records of the *Enforcement and Compliance Office*, or if none is designated, through any one of the main contact person, president or chief executive officer of the *WESM Member* as appears in the records of the *Market Operator*. At its discretion, *WESM Member* may also designate another person as its authorized representative for a specific investigation, provided that such designation shall be considered as made for that investigation only.
- 6.2.2 All notices shall be served at the office addresses of the above-named persons as this information appears in the records of the *Enforcement and Compliance Officer* or the *Market Operator*. *WESM Members* have the obligation to ensure that their contact information provided to the *Enforcement and Compliance Office* and to the *Market Operator* is current at all times regardless that they are not subject of any investigation.
- 6.2.3 All submissions to the *Enforcement and Compliance Office* pursuant to the procedures set out in this Section shall be served on it through the offices of the *Market Operator*, unless a different address is notified.

- 6.2.4 Service of notices and reports by the *Enforcement and Compliance Office* to all specified recipients as well as all notices and submissions to the *Enforcement and Compliance Office* may be made by personal service or by postal mail. Personal service includes service by in-house or third party messenger services or by commercial couriers. Service is deemed to have been made upon actual delivery if made by personal service, or upon deposit in the post office if by postal mail, notwithstanding in either case that the same was returned undelivered or that the intended recipient refused the delivery.
- 6.2.5 The foregoing notwithstanding, the *Enforcement and Compliance Office* may also serve notices and allow submissions by electronic mail or by other electronic means. It is provided however, that the *notice of investigation*, relevant *notice of penalty*, and the report on the results of the investigation shall always be served on the relevant *WESM Member* by personal service or by postal mail at their respective offices and may not be served by electronic means.

### 6.3 COMPLIANCE MONITORING AND ASSESSMENT

- 6.3.1 The *Enforcement and Compliance Office* shall regularly monitor compliance by *WESM Members* with the *market rules* and *Market Manuals* to determine if an act or omission that may constitute probable *breach* covered by this Manual may have been committed. The monitoring shall cover all *WESM Members* and all categories of *breach* described in Section 5.2.5 as covered by the *enforcement* process set out in this Manual.
- 6.3.2 The *Enforcement and Compliance Office* shall carry out compliance monitoring and assessment by examining readily available and verifiable market and dispatch data and reports, which, for avoidance of doubt, shall include the following –
- a) Input and output data submitted or transmitted to and generated by the *Market Management System* of the *Market Operator*;
  - b) Post-dispatch reports of the *Market Operator* and the *System Operator*;
  - c) Market information and reports published in the market information website; and
  - d) Information contained in non-compliance reports, and other relevant reports submitted by a *WESM Member* pursuant to this Manual, or other reports or forms submitted by a *WESM Member* to the *Enforcement and*

*Compliance Office* or the *Market Operator* pursuant to other *Market Manuals* or provisions of the market rules. All the reasons or explanations provided therein must be accompanied by valid supporting documents.

The *Enforcement and Compliance Office* shall, for this purpose, establish a detailed process or procedure of compliance monitoring and assessment and prescribe a reply format or template that may be accomplished by the *WESM Member* as part of the monitoring process. In developing the procedure, the *Enforcement and Compliance Office* shall ensure that the right of the *WESM Member* to due process shall be protected by giving them adequate time and opportunity to respond to any allegations of probable *breach* of the WESM Rules and/or market manuals, and to be informed of the results of the compliance monitoring and assessment.

- 6.3.3 The *Enforcement and Compliance Office* may also consider information and reports that it can obtain from the DOE and the ERC and their attached agencies or offices, and other government agencies with jurisdiction over the *WESM Member* or its operations. Such information and reports may be considered if these are readily available without restriction to and verifiable by the *Enforcement and Compliance Office* as well as the *WESM Member* covered by the monitoring.
- 6.3.4 The *Enforcement and Compliance Office* may also obtain expert advice or technical assistance from any WESM Committee, the *System Operator* or the *Market Operator*, as it deems necessary to aid in its monitoring.
- 6.3.5 The *Enforcement and Compliance Office* shall, for this purpose, establish a detailed process or procedure of compliance monitoring and assessment and prescribe a reply format or template that may be accomplished by the *WESM Member* as part of the monitoring process. In developing the procedure, the *Enforcement and Compliance Office* shall ensure that the right of the *WESM Member* to due process shall be protected by giving them adequate time and opportunity to respond to any allegations of probable *breach* of the WESM Rules and/or market manuals, and to be informed of the results of the compliance monitoring and assessment.
- 6.3.6 If, as a result of its compliance monitoring and assessment, and after taking into account all the market data and information cited in Sections 6.3.2 to 6.3.4, the reasons provided by the concerned *WESM Member* and all the



supporting documents submitted in relation thereto, the *Enforcement and Compliance Office* determines that there is a *breach* committed by a *WESM Member*, it shall issue the *Notice of Specified Penalty* in accordance with the *WESM Penalty Manual*. Where remedial measures are required, it shall cause the implementation of the same in accordance with Section 6.17.

- 6.3.7 A *WESM Member* may seek a reconsideration or appeal of the *Notice of Specified Penalty* in accordance with the procedures and subject to the requirements provided in Section 4.13 of the *WESM Penalty Manual*.

#### **6.4 INITIATION OF INVESTIGATION**

- 6.4.1 An investigation is initiated upon the endorsement to the *Enforcement and Compliance Office* of a report of probable breach or a *request for investigation* on the *WESM Member* that is subject of the investigation or upon a directive from the ERC. The related procedures on investigation, such as, issuance of notice of investigation, submission by the parties, conduct of ocular inspections, and implementation of the decisions, set forth in Sections 6.5 to 6.14 of this Manual shall apply.
- 6.4.2 A *notice of investigation* shall be issued upon either one of the following –
- a) A *report of probable breach* submitted by the *System Operator* or the *Market Operator*, or
  - b) A *request for investigation* submitted by any *WESM committee* or any *WESM Member*, or
  - c) A directive from the ERC specifically directing investigation for *breach* for possible imposition of sanctions under the *WESM Rules* or the *WESM Penalty Manual*.
- 6.4.3 The *PEM Board* or the *Market Surveillance Committee*, or any of their respective members, may not initiate or cause the initiation of an investigation.
- 6.4.4 If the *Market Operator* or the *System Operator* monitors the occurrence of probable *breach* by a *WESM Member*, it may submit to the *Enforcement and Compliance Office* a *report of probable breach*. This shall be in writing and shall clearly specify, at the minimum, –

- a) the type of *breach* and the rule or *Market Manual* alleged to have been *breached*;
- b) the specific acts or omission constituting the possible *breach*;
- c) the *WESM Member* involved;
- d) the generating unit or customer facility involved; and
- e) the periods, specifying if applicable the trading dates and trading intervals, in which the act or omission occurred.

6.4.5 If a *WESM Committee*, other than the *Market Surveillance Committee*, *WESM Member* or any party believes that a *breach* may have been committed by any *WESM Member*, it may submit a *request for investigation* to the *Enforcement and Compliance Office*. This shall be in writing and shall clearly specify, at the minimum –

- a) the party submitting the request, with complete contact details;
- b) the type of *breach* and the rule or *Market Manual* alleged to have been *breached*;
- c) the specific act or omission constituting the possible *breach*;
- d) the *WESM Member* involved;
- e) the generating unit or customer facility involved; and
- f) the periods, including if applicable the trading dates and trading intervals, in which the act or omission occurred.

6.4.6 A *request for investigation* or *report of probable breach* may cover more than one occurrence of the same type of *breach*. Where the acts or omission constituting the probable *breach* occurs several times over one *WESM* billing period, the *report of probable breach* or *request for investigation* shall, to the extent practicable, cover all occurrences for at least one billing period. Submission shall be made within such period as to allow the *Enforcement and Compliance Office* reasonable period within which to initiate an investigation within the two-year period prescribed in Section 6.1.5. In any case, no investigation can be initiated two (2) years after the occurrence of the act or omission regardless that the *request for investigation* or the *report for probable breach* was submitted before the lapse of the two-year period.

6.4.7 Immediately upon receipt of the *report of probable breach* or *request for investigation*, the *Enforcement and Compliance Office* shall determine whether the specific acts or omissions referred to are already covered in a

formal investigation it has or intends to initiate as a result of its compliance monitoring under Section 6.3. If so included, it shall notify the party submitting the *report of probable breach* or *request for investigation* that an investigation has been or will be initiated and that no separate investigation shall thus be initiated.

- 6.4.8 If the *request for investigation* or *report of probable breach* is not covered by a formal investigation initiated or intended to be initiated, the *Enforcement and Compliance Office* shall verify if the same substantially contains the information required in the preceding Section 6.4.4 or Section 6.4.5. If not, it shall return the same to the requesting party which shall then rectify the identified shortcomings and submit a new *request for investigation* or *report of probable breach* no later than five (5) business days from receipt of the notice from the *Enforcement and Compliance Office*. If no revision is received within the five-day period, the matter shall be deemed abandoned and no investigation shall be initiated upon such request or report.
- 6.4.9 If the *Enforcement and Compliance Office* determines that the *request for investigation* or *report of probable breach* is complete, it shall immediately initiate a formal investigation in accordance with this *Manual*. The *Enforcement and Compliance Office* shall not unreasonably withhold confirmation or delay any action required in this paragraph.
- 6.4.10 Where the conduct of an investigation is directed by the ERC, the *Enforcement and Compliance Office* shall initiate formal investigation in accordance with this Manual no later than ten (10) working days from receipt of the order, resolution, decision or any such other document containing the directive, unless a different period is directed.
- 6.4.11 The directive from the ERC to conduct an investigation will be carried out in accordance with this Manual only if the directive clearly specifies that the investigation is for the purpose of a possible imposition by the *PEM Board* of sanctions and penalties pursuant to the *WESM Penalty Manual* or the *WESM Rules*. Where the investigation directed is not for such purpose or is for fact-finding purposes only, the investigation shall be carried out in accordance with the directive. In such case, the procedures set out in this Manual shall only have suppletory effect.

6.4.12 Where the *Enforcement and Compliance Office* is uncertain as to whether or not the ERC directive is clearly for the conduct of an investigation under this Manual, it shall seek clarification of the same and the period stated in Section 6.4.10 shall be reckoned from the date that the clarification has been received by *Enforcement and Compliance Office*.

6.4.13 If the acts or omissions required to be investigated by the ERC are already covered, in whole or in part, by an investigation or by the compliance monitoring and assessment activity already initiated or intended to be initiated by the *Enforcement and Compliance Office*, it may, if appropriate, consolidate or integrate the data or information used in the compliance monitoring, or the results thereof, in the investigation so that no overlapping investigations or monitoring activities shall be carried out, and shall notify the agency directing the investigation and the parties being investigated of such consolidation or the results of the previous compliance monitoring and assessment. If necessary, an amended *Preliminary Notice of Investigation* shall be issued.

## 6.5 NOTICE OF INVESTIGATION

6.5.1 The *notice of investigation* shall be issued to and served on the *WESM Member* that will be investigated and shall clearly state, at the minimum, the following –

- a) type of *breach* alleged to have been committed and the provision of the *market rules* or *Market Manual* alleged to have been *breached*;
- b) acts or omission constituting the possible *breach*;
- c) generation or customer facility or resource involved; and
- d) time or trading interval and the trading day when the possible *breach* occurred.

6.5.2 If the investigation is initiated upon a *report of probable breach, request for investigation* or ERC directive, but is already covered or is being covered by the compliance monitoring by the *Enforcement and Compliance Office*, the *notice of investigation*, in addition to the requirement set in the immediately preceding paragraph, shall also state the market and dispatch data and report which served as bases for the initiation of the investigation and upon which a verification of the contents of the notice can be made.

6.5.3 If the investigation is initiated upon a *report of probable breach, request for investigation* or ERC directive, copies of the same shall be attached to the *notice of investigation*.

6.5.4 Copies of the *notices of investigation* shall be furnished to the party that submitted the *request for investigation* or *report of probable breach*, as well as to the ERC.

## **6.6 SUBMISSION BY PARTIES**

6.6.1 The *WESM Member* being investigated shall submit its reply to the investigation within ten (10) working days from receipt of the *notice of investigation*.

6.6.2 The reply shall clearly state the party's explanations and the relevant data, records and other documents to support the explanations. To ensure completeness of the reply, the *Enforcement and Compliance Office* may prescribe a reply format or template. Copies of all supporting data, records and other documents duly certified by the custodian of such data, records or documents shall be submitted with the reply.

6.6.3 The *WESM Member* being investigated may submit additional or supplemental reply, data, documents or records to the *Enforcement and Compliance Office* at any time before the issuance of the notice of completion of investigation pursuant to Section 6.9.1 of this Manual.

6.6.4 If the investigation was initiated upon a *request for investigation*, the party that submitted the *request for investigation* may submit additional information to the *Enforcement and Compliance Office*, with copies furnished to the *WESM Member* being investigated, within ten (10) working days from its receipt of the copy of the *notice of investigation*.

6.6.5 The *Enforcement and Compliance Office* may, at its discretion, request for the submission of additional explanations, data, records, or other documents from the party investigated or the party that requested the investigation. The request shall be issued in writing and shall state the period within which the same should be submitted which shall not be less than five (5) working days from receipt of the request. The party so directed shall comply with any request for additional submission.

6.6.6 The party that fails to submit its reply and/or any additional submission within the periods stated is deemed to have waived its right to submit its reply or additional submission.

6.6.7 If the investigation was initiated upon a *request for investigation*, copies of all submissions by the parties shall be furnished to the party that submitted the *request for investigation* or the *WESM Member* being investigated, as applicable. The responsibility to furnish copies shall be that of the party making the submission.

## **6.7 CONFERENCES AND OCULAR INSPECTIONS**

6.7.1 Conferences and ocular inspections of facilities involved in the investigation may be conducted upon notice by the *Enforcement and Compliance Office* or upon request by the party being investigated.

6.7.2 The party investigated may request for the conduct of a conference or ocular inspection in its reply or in any subsequent written request submitted to the *Enforcement and Compliance Office*. The request shall state the desired date and time of the activity. The request must be submitted before the *Enforcement and Compliance Office* issues notice of completion of formal investigation pursuant to Section 6.9.1.

6.7.3 If a conference or ocular inspection is to be conducted whether at the instance of the *Enforcement and Compliance Office* or on request of the *WESM Member*, the *Enforcement and Compliance Office* shall issue the notice of conference or notice of ocular inspection which shall clearly state the date, time and venue of the activity, and all parties that are expected to participate in or be present during the activity. If parties other than the *Enforcement and Compliance Office* and the party being investigated are requested to participate in the activity, the notice shall also be served on such other parties.

6.7.4 The notice of conference or notice of ocular inspection shall be served on all parties not later than five (5) working days before the scheduled date of the activity. The notice shall also be published in the market information website within the same period.

6.7.5 Unless the *WESM Member* being investigated requests for conduct of a conference or ocular inspection, the conduct of such activity is not mandatory.

## **6.8 REQUEST FOR INFORMATION AND TECHNICAL ADVICE**

6.8.1 For the purpose of obtaining comprehensive information to aid in its investigation, the *Enforcement and Compliance Office* has the authority to –

- a) Request information from the *System Operator*, the *Market Operator*, or other *WESM Members*, regardless that they are not parties to the investigation;
- b) Request from the Market Assessment Group any information that may be in its possession as a result of the exercise of its monitoring and assessment functions; and
- c) Request information or data from the DOE, the ERC, and other government agencies that have jurisdiction over the *WESM Member* or the WESM.

6.8.2 The *Enforcement and Compliance Office* may also request the *Market Operator* or the *System Operator*, or any WESM Committee other than the *Market Surveillance Committee*, to provide technical or expert advice on any issues that is subject of or relevant to an investigation.

## **6.9 COMPLETION OF FORMAL INVESTIGATION**

6.9.1 After the *Enforcement and Compliance Office* has completed obtaining the information it requires for the investigation and after the *WESM Member* investigated has submitted its reply and required additional information or the lapse of the period for submitting the same, the *Enforcement and Compliance Office* shall notify the *WESM Member* investigated of the completion of the formal investigation. The notice shall be accompanied by a list of all information that were obtained for the investigation. The issuance of the notice signifies the completion of the formal investigation and the *Enforcement and Compliance Office* shall thereafter proceed with the preparation of the Investigation Report pursuant to Section 6.10.

6.9.2 Copies of the notice of completion shall also be furnished to the party that submitted the relevant *request for investigation* or *notice of probable breach*.

## **6.10 INVESTIGATION REPORT**

6.10.1 After the *Enforcement and Compliance Office* completes its investigation and has issued the notice of completion of the investigation in accordance with Section 6.9, it shall prepare an *investigation report* that clearly sets out the following –

- a) Summary of preliminary matters and procedures carried out in the investigation, from the initiation of the investigation to the completion of the formal investigation;
- b) List of information considered in the investigation and upon which the findings of fact are based, and the sources of such information;
- c) Findings of fact relating to the *breach*, as admitted by the parties or determined in the course of the investigation;
- d) Assessment and opinion, and the basis therefor;
- e) On the basis of its findings, assessment and opinion, determination of the existence or non-existence of a *breach*;
- f) Recommended penalties or sanctions, if existence of a *breach* is confirmed; and
- g) Recommended remedial measures and other *enforcement actions*, as it deems appropriate under the circumstances of the case.

6.10.2 Copies of the data, records, reports and other documents relied upon and examined in the investigation and which served as bases for the findings, assessment and recommendations of the *Enforcement and Compliance Office* shall be made as annexes of the investigation report.

6.10.3 The investigation report and its annexes shall be submitted by the *Enforcement and Compliance Office* to the *Market Surveillance Committee* by serving copies of the same to each committee member through the Market Assessment Group.

## **6.11 REVIEW OF INVESTIGATION**

6.11.1 The *Market Surveillance Committee* shall review all investigation reports submitted by the *Enforcement and Compliance Office*.

6.11.2 On its next scheduled meeting after receipt of investigation report submitted by the *Enforcement and Compliance Office*, the *Market Surveillance Committee* shall make a preliminary determination if the investigation report



submitted is sufficient for review or if it is necessary to remand the case to the *Enforcement and Compliance Office*. A case may be remanded if the Committee determines that –

- a) The procedures for investigation prescribed in this Manual were not complied with in whole or in part;
- 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 by or was not made available to the *Enforcement and Compliance Office* and which the *Market Surveillance Committee* believes may materially affect the findings of the investigation if such information is to be considered.

6.11.3 If a case is remanded to it, the *Enforcement and Compliance Office* shall carry out the procedures set out in Section 6.12 of this Manual.

6.11.4 After completing its review, the *Market Surveillance Committee* shall submit to the *PEM Board* its investigation review report which clearly states –

- a) Its assessment as to whether or not the *Enforcement and Compliance Office* has complied with the procedures prescribed in this Manual;
- b) Its assessment as to whether the data relied upon by the *Enforcement and Compliance Office* are valid;
- c) Its findings of facts on the investigation taking into consideration the results of investigation presented in the Investigation Report;
- d) Its assessment as to whether or not *breach* is committed or not and the basis for such conclusion on the basis of such findings of facts;
- e) If it disagrees with the findings, conclusions and/or recommendations of the *Enforcement and Compliance Office*, the findings, conclusions or recommendations to which it disagrees and the bases for such disagreements; and
- f) If warranted, recommendations for sanctions, remedial measures and other *enforcement actions*, taking into consideration the recommendations of the ECO on these matters.

6.11.5 The investigation review report of the *Market Surveillance Committee* shall be submitted to the *PEM Board* together with the investigation report or, if the

case is remanded pursuant to this section, the revised investigation report submitted by the *Enforcement and Compliance Office*. The copies of the reports submitted to the *PEM Board* shall include all its annexes and attachments.

## 6.12 REMAND OF CASES

6.12.1 If a case is remanded to the *Enforcement and Compliance Office*, it shall rectify the identified shortcomings or carry out further investigation and revise its investigation report accordingly, in accordance with the procedures set out in this Section.

6.12.2 Within five (5) working days from receipt of the notice of the remand, the *Enforcement and Compliance Office* shall notify the party investigated of the remand and the reasons therefor. If the investigation was initiated upon a *request for investigation* or a *notice of probable breach*, the parties that submitted the same shall likewise be notified of the remand.

6.12.3 The *Enforcement and Compliance Office*, as it deems appropriate, may conduct conferences and ocular inspections; require submission of market data and reports from the *Market Operator* or the *System Operator*, or the *Market Assessment Group*, or other *WESM Members*; request technical assistance from the *Market Assessment Group*, the *Market Operator*, the *System Operator* or any *WESM Committee*; or require additional submissions from the party being investigated. These shall be carried out following the applicable procedures set out Sections 6.6, 6.7 and 6.8.

6.12.4 The *Enforcement and Compliance Office* shall submit a revised investigation report to the *Market Surveillance Committee*. The revised investigation report shall clearly set out the procedures undertaken and the changes in the findings, assessment and recommendations. Upon receipt of the revised investigation report, the *Market Surveillance Committee* shall then proceed with the review as set out in Section 6.11. It may not remand the case again to the *Enforcement and Compliance Office*.

6.12.5 If the *Enforcement and Compliance Office* disagrees with the reasons specified by the *Market Surveillance Committee* as bases for the remand, it shall submit to the *Committee* a report stating the reasons for its disagreement. The *Enforcement and Compliance Office*, however, may not

unreasonably refuse to rectify the shortcomings or conduct further investigation as notified by the *Market Surveillance Committee*.

6.12.6 The *Market Surveillance Committee* and the *Enforcement and Compliance Office* shall take all measures to resolve their conflicting positions. If no resolution is arrived at despite reasonable efforts, the *Market Surveillance Committee* shall proceed with the completion of its review and prepare and submit its Investigation Review Report in accordance with Sections 6.11.4 and 6.11.5 of this Manual.

### **6.13 DECISION**

6.13.1 The *PEM Board* shall render a decision on any investigation carried out under this Manual based on the results of the investigation conducted by the *Enforcement and Compliance Office* and the review by the *Market Surveillance Committee*.

6.13.2 If the *Market Surveillance Committee* confirms a finding of *breach*, the *PEM Board* shall render a decision approving, disapproving or modifying the sanctions, remedial measures, and other recommendations submitted by the *Market Surveillance Committee* and the *Enforcement and Compliance Office* in their respective reports.

6.13.3 If the *Market Surveillance Committee* confirms that no *breach* has been committed, the *PEM Board* shall confirm the completion of the investigation and closure of the case.

6.13.4 If there is a disagreement between the *Market Surveillance Committee* and the *Enforcement and Compliance Office* with respect to any findings, conclusions and recommendations and the matter is not resolved pursuant to Sections 6.12.5 and 6.12.6, the *PEM Board* shall review the results of the investigation, including the findings of facts and recommendations, and decide on the outcome of the case.

6.13.5 In reviewing a case pursuant to Section 6.13.4, the *PEM Board* may, at its discretion, create an *ad hoc committee* or working group from among its members to review the same and submit recommendations for final action by the *PEM Board*.

6.13.6 Upon conduct of a review pursuant to the preceding Sections 6.13.4 and 6.13.5, the *PEM Board* shall then render its decision in accordance with this Section 6.13.

6.13.7 The decision of the *PEM Board* is final and executory and is binding on the parties to the investigation. Upon its finality, the same shall be implemented by the *Enforcement and Compliance Office* in the manner provided for in Section 6.14 of this Manual.

#### **6.14 NOTICE, FINALITY AND IMPLEMENTATION OF THE *PEM BOARD* DECISION**

6.14.1 The *PEM Board*, through its Secretary, shall immediately notify the *Enforcement and Compliance Office* of its decision. The Secretary of the *PEM Board* shall issue a certification of the relevant resolution or the excerpt of the minutes of the meeting of *PEM Board*. The Secretary of the *PEM Board* shall likewise notify the *Market Surveillance Committee*.

6.14.2 Upon receipt of the certification issued by the *PEM Board* Secretary, the *Enforcement and Compliance Office* shall notify *WESM Member* investigated of the *PEM Board* action by serving on such *WESM Member* copy of the following –

- a) Certification of the resolution or excerpt of the meeting of *PEM Board*; and
- b) Record of the results of the investigation consisting of the Investigation review report submitted by the *Market Surveillance Committee* to the *PEM Board* and the Investigation report and its annexes.

6.14.3 After issuance of the notice of the *PEM Board's* decision to the party investigated pursuant to Section 6.14.2, the *Enforcement and Compliance Office* shall take the following actions –

- a) Notify the *Market Surveillance Committee*, ERC, and DOE of the action taken on the investigation. The notification submitted shall serve as a compliance with the obligation of the *PEM Board* set out in *WESM Rules* Clause 1.4.5.1 (e) to notify the ERC of any action it has taken in respect to a *breach*.
- b) Where financial or non-financial penalties are approved, cause the issuance of the relevant *notice of penalty* and the implementation of the

same in accordance with the requirements and procedures set out in the WESM Penalty Manual.

- c) Where remedial measures are required, cause the implementation of the same in accordance with Section 6.17.

## **6.15 INVESTIGATION OF THE *MARKET OPERATOR* AND THE *SYSTEM OPERATOR***

6.15.1 Any provision in this Manual to the contrary notwithstanding, the investigation of the *System Operator* or the *Market Operator* for probable *breach* of the *market rules* and *Market Manuals* shall be carried out in accordance with this Section 6.15.

6.15.2 A *WESM Member* that has reasonable grounds to believe that the *Market Operator* or the *System Operator* may be in *breach* of the *market rules* or *manuals* shall submit a notice to the *Enforcement and Compliance Office*, of the probable *breach*.

6.15.3 The notice shall be submitted within such period as to allow the *Enforcement and Compliance Office* reasonable period within which to initiate an investigation within the two-year period prescribed in Section 6.1.5. No investigation can be initiated two (2) years after occurrence of the act or omission regardless that the notice was submitted prior to the lapse of the two-year period.

6.15.4 The notice to be submitted to the *PEM Board* shall be in writing and shall clearly set out the –

- a) the specific provision of the *market rules* or *Market Manuals* alleged to have been *breached*;
- b) the specific acts or omissions constituting the possible *breach*; and
- c) the periods, specifying if applicable the trading dates and trading intervals in which the act or omission occurred.

6.15.5 Upon receipt of the notice, the *Enforcement and Compliance Office* shall verify if the same substantially contains the information required in Section 6.15.4. If not, it shall return the same to the requesting party which shall then rectify the shortcomings and submit a new notice no later than five (5) working days from the receipt of the notice from the *Enforcement and Compliance*

*Office*. If no revision is received within the five-day period, the matter shall be deemed abandoned and no investigation shall be initiated upon such notice.

- 6.15.6 The *Enforcement and Compliance Office* shall notify the *PEM Board* of the receipt of a notice immediately upon receipt thereof.
- 6.15.7 If the *Enforcement and Compliance Office* determines that the notice submitted is complete, it shall initiate the investigation by issuing the *notice of investigation* to the *System Operator* or the *Market Operator*, as applicable. The *notice of investigation* shall be issued in the same manner as provided for in Section 6.5.
- 6.15.8 The *System Operator* or the *Market Operator* shall submit its reply within the same period and the same manner as provided for in Section 6.6.
- 6.15.9 The formal investigation shall be conducted by the *Enforcement and Compliance Office* in the same manner as set out in Sections 6.6, 6.7, 6.8 and 6.9, as these are applicable. After the *Enforcement and Compliance Office* completes its investigation, it shall prepare an investigation report clearly setting out the matters required in Sections 6.10.1 and 6.10.2, and submit the same to the *Market Surveillance Committee* in accordance with Section 6.10.3.
- 6.15.10 The *Market Surveillance Committee* shall review the investigation report submitted by the *Enforcement and Compliance Office* in accordance with Sections 6.11 and 6.12 and submit its investigation review report to the *PEM Board* in accordance with Section 6.11.5.
- 6.15.11 Upon the results of the investigation, the *PEM Board* shall determine whether a *breach* has been committed. If it determines that a *breach* has been committed, it shall determine the remedial measures that should be carried out by the *System Operator* or the *Market Operator* to rectify the *breach*, prevent its recurrence or mitigate its impact. If it determines that no *breach* has been committed, it shall direct the closure of the investigation.
- 6.15.12 The decision of the *PEM Board* shall be notified and implemented in the same manner as that set out in Section 6.14.

- 6.15.13 If remedial measures are required to be implemented, these shall be notified and implemented in accordance with Section 6.17. 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 to the ERC.
- 6.15.14 A *Trading Participant* that believes that it was financially disadvantaged as a direct consequence of the *breach* by the *System Operator* or the *Market Operator*, may submit an application for compensation. The application shall be submitted and disposed of in accordance with Section 7 of this Manual. If the party required to pay compensation is the *Market Operator*, the *PEM Board* shall create a working group from among its members to determine the compensation due. The amount of compensation that will be imposed should not affect the viability and sufficiency of the resources for the normal operations of the *Market Operator* or the *System Operator*.

## 6.16 OFFER FOR SETTLEMENT OF PENALTIES

- 6.16.1 Except where the investigation was initiated upon directive of the ERC pursuant to Section 6.4.10, the *WESM Member* that was issued a *notice of investigation* may submit an offer for settlement of the applicable penalties without investigation, or if an investigation has commenced, before the completion of the investigation.
- 6.16.2 The offer shall be in writing and shall be submitted to the *Enforcement and Compliance Office* within the same period for submitting a reply under Section 6.6.1 or any anytime thereafter but before the *WESM Member* is notified of the completion of the formal investigation pursuant to Section 6.9 of this Manual or before the issuance of the *Notice of Specified Penalty* under Section 6.3.7 hereof. An offer for settlement that is submitted after the *Enforcement and Compliance* has issued the notice of completion or the *Notice of Specified Penalty* shall not be considered.
- 6.16.3 If the offer does not cover all the occurrences of probable *breach* that are included in the *notice of investigation*, the written offer shall clearly specify the occurrences of probable *breach* that is covered in the offer. The offer shall also describe the remedial measures that the *WESM Member* intends to implement or has implemented to rectify the *breach*, prevent its recurrence or to mitigate its impact and the corresponding compliance plan.

- 6.16.4 If the offer was submitted within the period stated in Section 6.16.2, the *Enforcement and Compliance Office* shall examine the offer to determine whether the information provided are complete and whether remedial measures are required to be implemented. The *Enforcement and Compliance Office* may then require submission of additional information and of a compliance plan if none was submitted or the revision of the compliance plan that was submitted as it deems appropriate.
- 6.16.5 Within fifteen (15) working days from receipt of the offer, the *Enforcement and Compliance Office* shall submit a report to the *Market Surveillance Committee* clearly specifying –
- a) The coverage of the offer for settlement, particularly the occurrences of *breach* that are included in the offer;
  - b) The recommended penalties determined in accordance with the *WESM Penalty Manual* and taking into consideration the qualifying circumstances surrounding the *breach* that can be inferred from the *request for investigation* or the *notice of probable breach* and the offer and other submissions of the *WESM Member*; and
  - c) The remedial measures recommended and corresponding compliance plan.
- 6.16.6 Upon receipt of the report, the *Market Surveillance Committee* shall review the same and determine the appropriate penalties and remedial measures, and shall submit its recommendations to the *PEM Board*. Upon receipt of the report of the *Market Surveillance Committee* or at its regular meeting immediately following the date of receipt, the *PEM Board* shall render its decision approving the penalties, which shall be determined in accordance with the *WESM Penalty Manual* and, if applicable, the remedial measures that will be imposed on the *WESM Member*. It shall then direct the issuance of the *notice of penalty* and implementation of its decision in accordance with Section 6.14 of this Manual. The decision of the *PEM Board* shall be final and executory.
- 6.16.7 The offer for settlement shall only have the effect of terminating the investigation or the compliance monitoring and assessment activity of the *Enforcement and Compliance Office* in respect to all occurrences of possible *breach* that is covered in the offer. It shall not have the effect of preventing any claim and grant of compensation under Section 7 of this Manual.



6.16.8 If the offer for settlement does not cover all occurrences of probable *breach* included in the *notice of investigation*, the investigation of the remaining occurrences will continue in accordance with this Manual.

## 6.17 REMEDIAL MEASURES

6.17.1 Remedial measures are tasks or actions that are required of a *WESM Member* being investigated or found in *breach* for the purpose of mitigating or preventing the adverse impact of *breach* or to prevent recurrence of the *breach*. They may be required when the act or omission subject of the investigation may –

- a) Negatively impact trading in the WESM and would likely prevent orderly and efficient trading or settlement;
- b) Lead to unfair or unreasonable WESM prices;
- c) Cause material negative impact on the viability and sustainability of the WESM or the functions of the *Market Operator* if not immediately remedied; or
- d) Cause material negative impact on the system or the functions of the *System Operator* if not immediately remedied.

6.17.2 It is understood, however, that compliance by a party investigated with remedial measures that were required while an investigation or the compliance monitoring and assessment is still pending under Sections 6.17.4, 6.17.5 and 6.17.6 is not deemed an admission of the *breach*.

6.17.3 A *WESM Member* may be required to implement remedial measures by the *Enforcement and Compliance Office*, the *Market Surveillance Committee* or the *PEM Board*.

6.17.4 The *Enforcement and Compliance Office* or the *Market Surveillance Committee* may require that remedial measures be carried out pending completion of an investigation if it determines that the immediate implementation of such measures is necessary to prevent or mitigate an adverse impact caused by the acts or omissions of the *WESM Member* that are subject of the investigation. Where directed by the *Enforcement and Compliance Office* or the *Market Surveillance Committee*, the remedial

measures are implemented as provisional remedies until the *PEM Board* finally decides on the final remedial measures that have to be implemented.

- 6.17.5 The *Enforcement and Compliance Office* may require implementation of remedial measures at any time during the compliance monitoring and assessment or after it initiates an investigation and before it completes and submits its investigation report pursuant to Section 6.10 of this Manual.
- 6.17.6 The *Market Surveillance Committee* may require a *WESM Member* to implement remedial measures in the course of its review of an investigation and before it submits its investigation review report to the *PEM Board* pursuant to Section 6.11 of this Manual. The Committee shall inform the *Enforcement and Compliance Office* of the remedial measures that are required to be implemented.
- 6.17.7 The final remedial measure directed by the *PEM Board* shall be contained in the *notice of penalty* served on the *WESM Member*. For provisional remedial measures directed by the *Enforcement and Compliance Office* or the *Market Surveillance Committee*, a *notice of provisional remedial measures* shall be issued by the *Enforcement and Compliance Office* and served on the *WESM Member*.
- 6.17.8 If the remedial measure required is of such nature that can be immediately implemented or started, the *WESM Member* so directed shall implement the same immediately upon receipt of the notice. Within five (5) working days from receipt of the relevant notice, the party shall notify the *Enforcement and Compliance Office* in writing that the measure required has been implemented or started and the details of the implementation.
- 6.17.9 If the remedial measure required is of such nature that it cannot be immediately implemented and completed, the *WESM Member* so directed shall, within five business days from receipt of the relevant *notice*, submit its compliance plan to the *Enforcement and Compliance Office*. The plan shall detail the manner and period within which the party concerned shall implement and complete the remedial measure. As appropriate, the plan shall specify the manner by which the *WESM Member* intends to mitigate any adverse effect, to operate or modify its equipment or facility, or to otherwise

conduct its operations in order to carry out or accomplish the remedial measure.

- 6.17.10 The *Enforcement and Compliance Office* shall monitor the compliance by the *WESM Member* to ensure that the remedial measures are implemented as directed. As part of its monitoring, the *Enforcement and Compliance Office* may issue such reminders or notices to the *WESM Member* as it deems appropriate from time to time. The *WESM Member* may also be required to submit periodic reports of its compliance, as well as to allow ocular inspection of its facilities if appropriate.
- 6.17.11 Upon complete implementation of the compliance plan or lapse of the period within which the compliance plan is required to be implemented, the *Enforcement and Compliance Office* shall submit a report to the *PEM Board* detailing the results of the implementation.
- 6.17.12 A failure to implement the required remedial measure, in whole or in part, shall be considered a *breach* and shall be subject to penalties as set out in the *WESM Penalty Manual*. The sanction shall be imposed by the *PEM Board*, upon recommendation of the *Enforcement and Compliance Office*, without need of further investigation.

## **6.18 COSTS**

- 6.18.1 The *PEM Board* shall decide on the costs associated with any investigation and with the implementation of decisions and remedial measures that will be shouldered by *WESM Member* involved in the investigation. The costs to be imposed shall be in accordance with a schedule of costs and charges that the *PEM Board* shall determine and review from time to time. The schedule of costs and charges, and any changes on it, shall be published in the market information website before it takes effect.
- 6.18.2 Notwithstanding the foregoing, the costs associated with the day-to-day operations of the *Enforcement and Compliance Office*, the *Market Assessment Group*, and the *Market Surveillance Committee* shall not be passed on to a *WESM Member* as cost associated with any investigation, decision or remedial measure. These shall instead be included in the annual revenue requirements of the *PEMC* which shall be defrayed through the market fees.

**SECTION 7 COMPENSATION****7.1 GUIDING PRINCIPLES**

- 7.1.1 The objective of granting compensation to a *WESM Member* under this Manual is not penal. For this reason, it is not the intention to impose punitive results such as would be the case where a party is required to pay compensation without having benefited from a *breach*. The objective of compensation is to put a party in the same or similar position that party would have been if the *breach* had not occurred. This objective applies whether the party suffered a loss or received windfall gain as a consequence of the *breach*.
- 7.1.2 Parties to a compensation claim shall be *WESM Trading Participants*, i.e., generation companies or customer trading participants, that suffered a financial loss or that benefited financially directly as a result of a *breach*. Financial loss or benefit shall be understood as pertaining to the *Trading Participants'* transactions in the WESM and is readily determinable from the WESM settlements. The party claiming compensation may or may not have been the party that submitted a request for investigation.
- 7.1.3 An award of compensation shall only be made against a trading participant that benefited financially as a direct result of a *breach* (i.e., the payer) and shall only be awarded in favor of a trading participant that suffered a financial loss as a direct result of *breach* (i.e., the payee). The amount of the award shall not be more than how much the payer has benefitted financially as a direct result of the *breach* and as determined in accordance with this section.
- 7.1.4 Given the foregoing, not all types of *breach* may justify an award of compensation.

**7.2 APPLICATION FOR COMPENSATION**

- 7.2.1 A *WESM Trading Participant* that suffered a financial loss directly as a result of a *breach* by another *WESM Member* may apply for compensation by submitting a formal claim with the *Enforcement and Compliance Office*. The claim must relate directly to a *breach* by a *WESM Member* that is confirmed upon an investigation carried out under this Manual.

- 7.2.2 A claim for compensation must be made within one (1) year from the date of the publication in the market information website of the *PEM Board* decision with respect to the investigation of the relevant *breach*. For the avoidance of doubt, the publication shall be that required to be made under Section 10.2 of this Manual. Such claim shall be pursued only in accordance with the provisions of this Section 7, and may not be submitted for dispute resolution.
- 7.2.3 After the said one-year period, no further claim for compensation may be made in respect to such *breach*.
- 7.2.4 The claim shall clearly specify the *breach* that is the basis for the claim for compensation and how it caused a loss on the requesting party, and the nature and amount of the loss incurred. The requesting trading participant shall provide such information as it deems appropriate or necessary to prove its claim.
- 7.2.5 Within fifteen (15) working days from receipt of the claim, the *Enforcement and Compliance Office* shall assess the request to determine if the information provided is complete and shall, within the same period, notify the requesting party if additional information is required to evaluate the claim. The requesting party shall submit such additional information as may be required within the period specified by *Enforcement and Compliance Office*.
- 7.2.6 The *Enforcement and Compliance Office* shall notify the *PEM Board*, through the Board's Secretary, of the submission of a claim within a reasonable period from receipt of the same.

### **7.3 EVALUATION AND APPROVAL OF CLAIM**

- 7.3.1 The *Enforcement and Compliance Office* and the *Market Operator* shall evaluate the claim for compensation and determine whether or not compensation may be due. If it is determined that compensation may be warranted, a determination shall also be made if there are other trading participants that will be affected by the claim.
- 7.3.2 The *Enforcement and Compliance Office* shall notify all the *Trading Participants* identified pursuant to Section 7.3.1 of the claim and whether they will be required to pay or will be entitled to receive compensation.

- 7.3.3 Within ten (10) working days from receipt of the notice, the *Trading Participants* so notified shall submit their written comment or contest. If the *Trading Participant* that received the notice agree with the determination of compensation, it shall notify the *Enforcement and Compliance Office* in writing of its conformity. If it disagrees with the determination, it shall submit a written contest in accordance with the procedures set out in this section.
- 7.3.4 A trading participant that wishes to contest the determination of compensation shall submit its written contest within ten (10) working days from receipt of the notice issued pursuant to Section 7.3.2. If no contest is received within said period, the requirement to pay compensation or the award of compensation in respect to the party that failed to submit a contest shall no longer be subject of a contest.
- 7.3.5 The written contest shall clearly set out the grounds for the same and shall be accompanied by such information to support the grounds raised. No contest may be made and received for the purpose of contesting the findings on the *breach* that was the basis for the claim for compensation. The contest shall be limited to the determination of the compensation or the amounts calculated.
- 7.3.6 The *Enforcement and Compliance Office* and the *Market Operator* shall evaluate all contests submitted. For this purpose, they may require submission of additional information from the parties submitting the claim or the contest as well as from other *WESM Members* and the *System Operator*, and may conduct conferences and ocular inspections.
- 7.3.7 The services of independent third parties with the necessary expertise may be engaged to further evaluate a claim or a contest.
- 7.3.8 After completing the evaluation, the *Enforcement and Compliance Office* and the *Market Operator* shall jointly submit an assessment report to the *PEM Board*, which shall include, among other things, recommendations on whether to grant compensation, the trading participants against whom compensation shall be collected and to whom the same shall be paid, and the corresponding amounts.

7.3.9 Upon receipt of the assessment report, the *PEM Board* shall act on the same either approving, disapproving or modifying the recommendations contained in the report.

#### **7.4 PAYMENT AND COLLECTION OF COMPENSATION**

7.4.1 Compensation approved by the *PEM Board* shall be collected from and paid to the trading participants by the *Market Operator* through the WESM settlement processes.

7.4.2 Collection and payment shall, as much as practicable, be carried out on the billing period immediately succeeding the date of approval by the *PEM Board* of the claim for compensation, unless the *PEM Board* specifies a different period.

7.4.3 The *Market Operator* shall notify the *PEM Board* and the *Enforcement and Compliance Office* of the collection and payment of compensation, or if it is unable to implement the same within the period stated in the foregoing paragraph, the reason for the same.

7.4.4 Failure of a *Trading Participant* to pay the compensation due from it constitutes a *breach* and shall be subject to *penalty* as set out in the *WESM Penalty Manual* without need of investigation. The imposition of the *penalty* shall be decided by the *PEM Board* upon recommendation of the *Enforcement and Compliance Office*.

**SECTION 8 NON-COMPLIANCE REPORT AND EXEMPTIONS****8.1 RATIONALE**

- 8.1.1 The compliance monitoring and assessment of the market obligations of the *WESM Members* are among the enforcement processes established under this Manual.
- 8.1.2 Self-reports by *WESM Members* of their possible non-compliances will provide the *Enforcement and Compliance Office* the information that it will need to more effectively carry out its compliance monitoring tasks. This will also help in lessening the possibility that the monitoring and screening by the *Enforcement and Compliance Office* of *WESM Member* compliance will result in error arising from incomplete information. This is particularly important considering that the results of the compliance monitoring may result in the initiation an investigation for possible *breach*.
- 8.1.3 While it is required of *WESM Members* to ensure compliance with their market obligations, it is recognized that there will be circumstances where exempting a *WESM Member* from sanctions would be fair and reasonable. This is particularly true where new rules are implemented that would require *WESM Members* to carry out changes to their internal processes, infrastructure and systems. A similar situation may also apply to newly-registered *WESM Members* which are still in the process of establishing their internal processes and infrastructure.

**8.2 SCOPE OF APPLICATION**

- 8.2.1 The provisions of this section shall apply to all *WESM Members*. The provisions of this section referring to exemption shall also apply to persons or entities that have submitted an application for membership or registration in the WESM.
- 8.2.2 This section shall only apply to obligations of *WESM Members* which, if not complied with, shall constitute a *breach* as defined in this Manual and in the *WESM Penalty Manual* as well as relevant provisions of the *market rules* or *Market Manuals*.



### 8.3 NON-COMPLIANCE REPORTS

- 8.3.1 *WESM Members* that were or that expect to be unable to comply with an obligation under the *market rules* and *Market Manuals*, which if not complied with may constitute a *breach*, are required to submit to the *Enforcement and Compliance Office* a *non-compliance report* in the form and following the procedures set out in this Section 8.
- 8.3.2 To avoid duplication of reports, the significant event reports and supporting data submitted by *Trading Participants* in compliance with the requirements of *WESM Rules* Clause 3.5.11.7 shall serve as non-compliance report for the event being reported. The *Enforcement and Compliance Office* may, however, require the *Trading Participant* to submit additional information or data in accordance with Section 8.4 of this Manual.
- 8.3.3 For the avoidance of doubt, no non-compliance report need to be submitted in accordance with this Manual for the following non-compliances –
- a) Failure to comply with prudential requirements, or the occurrence of any event of default, or failure to pay sums of money to the *Market Operator* pursuant to Chapter 3 of the *WESM Rules*, or price determination methodologies approved by the ERC for use in the WESM, and associated *Market Manuals*; or
  - b) Failure to comply with requirements for registration in or for continuing membership in the WESM pursuant to Chapter 2 of the *WESM Rules* and associated *Market Manuals*, and in the *Retail Rules*.

### 8.4 CONTENTS OF NON-COMPLIANCE REPORTS

- 8.4.1 The non-compliance report shall contain the following information, it being understood that these are high level descriptions of the contents of the report and that the *Enforcement and Compliance Office* may prescribe more specific information or detail –
- a) The rule or obligation that has not been complied with or that with which the *WESM Member* expects it may not be able to comply;
  - b) The specific facility involved;
  - c) The date and time or trading interval that the non-compliance has occurred;

- d) The reasons for the non-compliance;
- e) Where appropriate, the measures taken or proposed to be taken to mitigate the impact of the non-compliance, as well as to avoid recurrence in the future; and
- f) Where appropriate, the reporting *WESM Member* shall submit additional information, records or documents that will support the facts being reported.

8.4.2 The *Enforcement and Compliance Office* may prescribe the format of the report and the details of the information that it requires for the purpose of facilitating submission and evaluation of the reports, and may modify the same from time to time. The *Enforcement and Compliance Office* shall notify all *WESM Members* of the prescribed format and required information. The *Enforcement and Compliance Office* shall ensure that the report format shall not be unduly burdensome on the part of the *WESM Member*.

8.4.3 If the *Enforcement and Compliance Office* determines that the report submitted is not in the prescribed format or that not all the required information was provided, it shall notify the *WESM Member* and require that the shortcomings be rectified. The *WESM Member* so directed shall submit a revised non-compliance report or submit the missing information no later than three (3) working days upon being notified.

## **8.5 SUBMISSION OF NON-COMPLIANCE REPORTS**

8.5.1 Unless the *Enforcement and Compliance Office* provides for a different period, non-compliance reports shall be submitted on the business day after a non-compliance has occurred. Where appropriate, the non-compliance report for a trading day shall include all non-compliances or events that occurred during the trading day being reported.

8.5.2 The *WESM Member* may also submit a non-compliance report when it expects the occurrence of event/s that may result in a possible non-compliance with its obligations in the WESM. When a non-compliance report was submitted in advance of an event, the *WESM Member* shall not be required to submit another report pursuant to the foregoing section, unless the actual circumstances varied from what was previously reported. In such case, the *WESM Member* shall submit a revised non-compliance report no later than the business day after the event or occurrence of the non-compliance.

- 8.5.3 Non-compliance reports shall be submitted in the manner prescribed by the *Enforcement and Compliance Office* which shall notify all *WESM Members* of a prescribed report format. The *Enforcement and Compliance Office* may not, however, refuse to accept a report by reason that same was not submitted in the prescribed manner, but may only require rectification pursuant to Section 8.4.3.
- 8.5.4 The *Market Operator* or the *Enforcement and Compliance Office* may, if practicable, develop and provide a facility that will allow *WESM Members* to submit non-compliance reports through electronic means. If provided, such facility shall be made available to all *WESM Members* without discrimination and subject only to compliance with registration and access requirements that will be set by the *Market Operator* or the *Enforcement and Compliance Office*. If a facility is so provided, all reports shall be submitted through such facility.

## 8.6 ACTION ON NON-COMPLIANCE REPORTS

- 8.6.1 The *Enforcement and Compliance Office* shall evaluate non-compliance reports submitted by *WESM Members* as part of the compliance monitoring and assessment procedure set out in Section 6 of this Manual. As provided for in Section 6, non-compliance reports, and all the supporting documents related thereto, shall be among the information that shall be considered and assessed together with all the market data made available to the *Enforcement and Compliance Office* in determining whether or not a *Notice of Specified Penalty* is issued against a *WESM Member*. For this reason, the *Notice of Specified Penalty* may be issued as a result of compliance monitoring and assessment without need of a formal investigation.
- 8.6.2 A finding of *breach* may thus be made and enforcement action may be taken against a *WESM Member* on the basis of the non-compliance report and its supporting documents submitted by the *WESM Member*, the market data and information from the *Market Operator*, the *System Operator*, and other relevant market data.
- 8.6.3 The non-compliance reports submitted by *WESM Members* or any information contained therein may also be made available by *Enforcement and Compliance Office* to other units within PEMC or to any *WESM Committee* to be utilized for market assessment, surveillance and audit purposes.

## 8.7 EXEMPTIONS

8.7.1 Exemption from sanctions may be granted under the following circumstances and periods –

- a) Within the first three (3) months of membership in the WESM, with respect to any obligation under the *market rules* or *Market Manuals* which amounts to a *breach* if not complied with; or
- b) Within the first three (3) months of the issuance of a *market rule* or *Market Manual* or of an amendment thereto, with respect to such new rule, manual or amendment if non-compliance with the same amounts to a *breach*. No exemption shall be applied for or approved, however, if a transition period during which no sanctions or penalties for *breach* can be imposed has been expressly directed.

8.7.2 The *PEM Board* may grant an exemption if all of the following circumstances are present –

- a) The party filing the application for exemption establishes to the satisfaction of the *PEM Board* that there are reasonable grounds for its inability to comply with the obligation in question; and that the exemption is not unreasonable under the circumstances.
- b) The party filing the application submits a compliance plan which will enable it to comply with the obligation in question upon expiration of the exemption period.
- c) The non-compliance will have no adverse effects on the market processes, on the operations of the power system, and on other *WESM Members*, and will not adversely impact on the ability of the *Market Operator* to administer the WESM or the *System Operator* to operate the power system.
- d) The non-compliance will not result in increased costs for the *System Operator*, the *Market Operator* or any *WESM Member*.

8.7.3 The duration of the exemption that may be granted shall not be longer than the periods as stated in Section 8.7.1 of this Manual, although the *PEM Board* may, in exceptional circumstances, allow for a longer duration. Exceptional

circumstances, for this purpose, shall refer to circumstances where it is not practicable for the *WESM Member* to attain full compliance within the periods stated in Section 8.7.1. As it takes time before an application for exemption can be granted, exemptions which are granted may be made effective retroactive to the date of submission of an application or on such other date as the *PEM Board* may determine.

## **8.8 APPLICATION FOR EXEMPTION**

- 8.8.1 A *WESM Member* that wishes to seek exemption shall submit its application to the *Enforcement and Compliance Office* no later than fifteen calendar days after the effectivity date of membership in the WESM or of the new *market rule* or *Market Manual*. No application shall be accepted after the stated periods. Where practicable, the application may be submitted prior to the effective date of membership of the new *WESM Member* or effectivity date of the new or amended *market rule* or *Market Manual*. An applicant for *WESM Membership* may also submit its application for exemption together with its application for WESM registration or at any time prior to approval of its application for registration. In the latter case, however, the approval of the application for exemption shall be contingent on the approval of WESM registration.
- 8.8.2 No application for exemption shall, however, be submitted and approved when a *notice of investigation* has already been issued by the *Enforcement and Compliance Office* pursuant to Section 6 of this Manual. In the latter case, the *WESM Member* shall instead participate in the investigation carried out by the *Enforcement and Compliance Office*.
- 8.8.3 The application shall be submitted to the *Enforcement and Compliance Office* and shall contain the following information and shall be accompanied by supporting data or documents –
- a) The specific provision, requirement or procedure of the *market rule* or *Market Manuals* that the *WESM Member* or applicant is unable to comply with;
  - b) The reasons for the possible non-compliance;
  - c) The duration of the non-compliance, specifying, to the extent practicable, the trading intervals and dates; and
  - d) The facilities involved.

8.8.4 The application must be accompanied by a compliance plan that specifies the concrete measures that the *WESM Member* shall accomplish to resolve the factors giving rise or causing the non-compliance and to mitigate any adverse impact that the non-compliance may cause. The compliance plan shall specify the activities to be undertaken and the timetable for implementing the same.

## **8.9 ACTION ON APPLICATION FOR EXEMPTION**

8.9.1 The *Enforcement and Compliance Office* shall evaluate the application and the accompanying compliance plan, to establish if all the circumstances set out in Section 8.7.2 are present. In carrying out its evaluation, the *Enforcement and Compliance Office* may seek technical assistance or advice from the *Market Operator*, the *System Operator*, the *Market Surveillance Committee* and other WESM committees. By having filed an application, the *WESM Member* waives confidentiality of any information it has provided with its application, it being understood that the *Enforcement and Compliance Office* may disclose the same to the *Market Operator*, the *System Operator*, the *Market Surveillance Committee* and other WESM committees.

8.9.2 The *Enforcement and Compliance Office* shall also seek the conformity of the *Market Operator* and the *System Operator* of the exemption if, in its opinion, the obligation affects market processes or the operations of the power system. Objection by the *Market Operator* or the *System Operator* to the grant of exemption can be a sufficient ground for disapproval of the application for exemption.

8.9.3 No later than fifteen (15) calendar days from receipt of the application, the *Enforcement and Compliance Office* shall submit to the *PEM Board* an assessment report which shall be based on information that has been made available to it. The assessment report, shall set out clearly its recommendation on whether to grant exemption and the reasons therefor. If an exemption is recommended, the duration of the exemption and the compliance plan that need to be carried out by the *WESM Member* shall likewise be detailed in the report.

8.9.4 Acting on the assessment report and recommendations of the *Enforcement and Compliance Office*, the *PEM Board* shall decide whether to grant the exemption.

- 8.9.5 Should it decide to grant the exemption, the *PEM Board* shall likewise specify the exemption period and approve the compliance plan that will be required to be implemented by the *WESM Member*. If it disapproves the application, the *PEM Board* shall set out the reasons for the disapproval. The *PEM Board*, through the Board Secretary, shall immediately notify the *Enforcement and Compliance Office* of its action.
- 8.9.6 Within three (3) working days from receipt of the notice from the *PEM Board*, the *Enforcement and Compliance Office* shall notify the *WESM Member* in writing of the action of the *PEM Board*. If the exemption is granted, the notice to be issued to the *WESM Member* shall clearly set out the exemption period and the approved compliance plan. If the exemption is not granted, the notice shall set the out the reasons for the disapproval. Copies of the notice and approved compliance plan, if applicable, shall be furnished to the *System Operator*, the *Market Operator*, the *Market Surveillance Committee*, the DOE and the ERC.

#### **8.10 EFFECTS OF GRANT OR DISAPPROVAL OF EXEMPTION**

- 8.10.1 If an exemption is approved, the *WESM Member* shall not be subject of any enforcement proceeding for any non-compliance of the specified obligation that occurs within the approved exemption period.
- 8.10.2 Notwithstanding the grant of exemption, the *WESM Member* may be made liable to pay for compensation as a consequence of a non-compliance, in accordance with Section 7.
- 8.10.3 If an exemption is not granted, the *WESM Member* may, upon an investigation carried out pursuant to Section 6, be liable for sanctions for *breach* of the obligation subject of the application, including those that occurred prior and during the period that the application was pending. The *WESM Member* may also be liable for payment of compensation determined in accordance with Section 7.

#### **8.11 IMPLEMENTATION OF COMPLIANCE PLAN**

- 8.11.1 If an exemption is granted, the *WESM Member* shall carry out the measures and tasks set out in the approved compliance plan, and shall ensure that full compliance is achieved within the period specified.

8.11.2 The *Enforcement and Compliance Office* shall monitor the implementation of the compliance plan, and, for this purpose. For this purpose, it may require submission of periodic reports from the *WESM Member*, conduct ocular inspections of the facilities of the *WESM Member*, obtain information from the *Market Operator*, the *System Operator* or other parties or agencies, and take any other action as it deems necessary to carry out the monitoring.

8.11.3 Within a reasonable time after the lapse of the exemption period, the *Enforcement and Compliance Office* shall notify the *PEM Board* of the results of the implementation by the *WESM Member* of the compliance plan.

## **8.12 REVOCATION OF EXEMPTION**

8.12.1 The exemption granted shall be automatically revoked upon lapse of the exemption period, without need of notice from the *PEM Board* or the *Enforcement and Compliance Office*. After the lapse of the period, the *WESM Member* is expected to comply with the obligation for which it was previously exempted and shall be liable for sanctions in case of *breach*.

8.12.2 Upon recommendation of the *Enforcement and Compliance Office* or upon its own initiative, the *PEM Board* may revoke the exemption granted prior to the lapse of the exemption period if the *WESM Member* is unable to implement the compliance plan or is unable to put in place the measures directed pursuant to this Section 8 or it has determined that such exemption will or has resulted in adverse effects on the market or the operations of the power system or is otherwise unreasonable under the circumstances. The *Enforcement and Compliance Office* shall submit its recommendation to the *PEM Board* upon the results of its monitoring under Section 8.11.2.



**SECTION 9 WESM MEMBER INTERNAL COMPLIANCE****9.1 GUIDING PRINCIPLES**

- 9.1.1 By having registered to participate in the WESM as either a service provider or trading participant, all *WESM Members* have the primary obligation to comply with the *market rules* and *Market Manuals*. Such obligation likewise extends to compliance with other rules and regulations of other regulatory agencies where compliance with such will, in turn, impact on WESM compliance. Among other things, this includes compliance with environmental standards, such as emission standards for coal power plants, licensing requirements, franchise conditions and reportorial requirements of various government agencies.
- 9.1.2 Fostering a culture of compliance is encouraged through proactive compliance by *WESM Members* of their obligations under the *market rules* and *Market Manuals*. Proactive compliance can lead to fewer *breaches* and, in turn, to less frequent imposition of *penalties*.
- 9.1.3 Towards achieving the objective of fostering a culture of compliance, the *WESM Rules* Clause 7.2.9.1 directs that each *WESM Member*, the *Market Operator*, the *System Operator*, *Metering Services Providers* and other service providers shall designate a WESM Compliance Officer in their respective organizations.

**9.2 WESM MEMBER INTERNAL COMPLIANCE**

- 9.2.1 *WESM Members* are encouraged to develop and maintain an in-house compliance program within their organizations with the end in view to ensuring that their relevant personnel, systems and processes, infrastructure and organizational activities are geared to, in turn, achieving and ensuring WESM compliance. Among other things, it is encouraged that in-house compliance activities include processes for readily detecting occurrence of probable *breach*, and for implementing corrective and preventive measures once detected.
- 9.2.2 Compliance programs should also cover counterparties and other third parties whose dealings can impact on the ability of the *WESM Member* to ensure WESM compliance.

9.2.3 Compliance activities should also include education of employees, counterparties and other relevant third parties on the operations of the WESM and on provisions of *market rules* and *Market Manuals* relevant to their respective operations and activities and how such operations and activities, in turn, impact on WESM compliance.

### **9.3 WESM COMPLIANCE OFFICERS**

9.3.1 All *WESM Members*, including *Trading Participants*, *System Operator*, and other service providers, as well as the *Market Operator* shall designate a WESM Compliance Officer within their respective organizations.

9.3.2 On January of each year, and at any time a new WESM Compliance Officer is designated, the *WESM Member* shall submit the names of its WESM Compliance Officer and such other details and in such form as may be required by the *Enforcement and Compliance Office*. They shall ensure that information submitted is current at all times. The *Enforcement and Compliance Office* shall maintain a registry of the incumbent WESM Compliance Officers of all *WESM Members*. A *WESM Member* shall be responsible for ensuring that the information submitted to the Enforcement and Compliance is current at all times.

9.3.3 It is required that the person to be appointed as WESM Compliance Officer should have an understanding of the WESM compliance requirements of their organization, and is of a position that he or she is able to recognize possible non-compliances and has sufficient authority to resolve the same. As such, he or she should occupy a senior management position such as those pertaining, but not limited, to legal, risk management, regulatory or compliance, but should not be directly involved in the day-to-day activities related to trading transactions in the WESM.

### **9.4 OBLIGATIONS OF WESM COMPLIANCE OFFICERS**

9.4.1 As prescribed in *WESM Rules* Clause 7.2.9.2, WESM Compliance Officers shall –

- (a) Monitor the activities and transactions in the WESM of his or her organization and carry out measures to ensure compliance by his or her organization with the EPIRA, its Implementing Rules and

Regulations, the *market rules* and *Market Manuals*; and, for this purpose, put in place necessary procedures and guidelines;

- (b) Keep abreast with developments in the WESM, including amendments to *market rules* and *Market Manuals* as well as issues raised by the WESM governance committees and the *PEM Board* affecting his or her organization's compliance, and ensure that relevant personnel and units within his or her organization are informed of and, if appropriate, will implement changes in the organization's internal systems and processes to comply with amendments to *market rules* and *Market Manuals*, and to resolve issues raised;
- (c) From time to time and if it deems it necessary or appropriate, propose amendments to the *market rules* and *Market Manuals* to enhance or develop the WESM enforcement and compliance and to promote good commercial and technical practices;
- (d) Be the main point of contact that is responsible in coordinating with the *Enforcement Compliance Office* on all matters relating to the WESM enforcement, compliance and governance, including the provision of the necessary information and data, as may be required by any of the *WESM* committees and by the *Enforcement and Compliance Office*;
- (e) Submit to the *Enforcement and Compliance Office* a report of his/her organization's compliance with *market rules* and *Market Manuals* covering such period, but not less frequent than annually, and in such form as may be prescribed by the *Enforcement and Compliance Office*.

## 9.5 ANNUAL WCO REPORT

- 9.5.1 Pursuant to *WESM Rules* Clause 7.2.9.2 (d), all WESM Compliance Officers shall submit a report to the *Enforcement and Compliance Office* which shall state the compliance activities undertaken and the enforcement-related issues and concerns that have arisen during a calendar year.
- 9.5.2 The report shall be submitted to the *Enforcement and Compliance Office* in such form and number of copies as the latter may require. The reports shall be submitted not later than 31 January of the following year, or on such other period as the *Enforcement and Compliance Office* may set from time to time. The *Enforcement and Compliance Office* shall notify all *WESM Members*,

from time to time, of the form and number of copies required, and the period for submission of the report if a date other than 31 January is set.

- 9.5.3 An annual consolidated report shall be submitted by the *Enforcement and Compliance Office* to the DOE and the *PEM Board* no later than sixty (60) days from the last day for submission of reports by the WESM Compliance Officers.

**SECTION 10 INFORMATION DISCLOSURE AND RECORDS MANAGEMENT****10.1 SCOPE OF APPLICATION**

10.1.1 The provisions of this section refer only to the obligation of the *Enforcement and Compliance Office* in respect to the handling of information and records that comes to its possession as it carries out its functions under this Manual, as well as to its obligation to prepare, disseminate and publish reports.

**10.2 INFORMATION DISCLOSURE AND PUBLICATION**

10.2.1 The *Enforcement and Compliance Office* shall publish the following information in the market information website –

- a) List of investigations initiated, including the parties and facilities involved, the possible *breach* subject of the investigation, and the status of the investigation;
- b) Summarized description of the results of an investigation, including the names of the parties and facilities involved, the nature of the *breach* confirmed in the investigation, penalties or sanctions imposed, and remedial measures required;
- c) List of application for exemptions received, including the names of the applicants, and summarized description of the exemption applied for and approved; and
- d) List of applications for compensation received, including names of applicants and summarized description of compensation approved and names of parties receiving and paying compensation.

10.2.2 Copies of the following shall be provided by the *Enforcement and Compliance Office* upon request and, if so required by the *Enforcement and Compliance Office*, upon payment of reasonable fees to defray cost of retrieval, reproduction and transmittal –

- a) Investigation reports and investigation review reports prepared in respect to an investigation for *breach*; and
- b) Assessment reports issued in respect to an application for exemption.

10.2.3 Notwithstanding the foregoing, copies of records and documents submitted by a party in respect to an investigation, application for exemption or claim for compensation may not be provided to any other party without the written

consent of the owner of such record or document or the party that submitted the same. Thus, where such records or document are annexed to an investigation or assessment report, the copies of the latter that will be disseminated will exclude such records or documents. This prohibition, however, does not cover data, documents or records that are otherwise published or disseminated by the *Market Operator* or other parties.

### 10.3 REPORTING REQUIREMENTS

10.3.1 The *Enforcement and Compliance Office* shall submit a monthly report to the *PEM Board*, the *Market Surveillance Committee*, the DOE and the ERC containing information on the following –

- a) Status of investigations, applications for exemptions, and claims for compensation being carried out, with summarized description of the same;
- b) Summary of the results of non-compliance monitoring carried out;
- c) Summary of the development of non-compliance issues and enforcement processes;
- d) Recommendations that may arise from the experiences and observations in administering the compliance and enforcement procedures; and
- e) Issues and problems arising from the implementation of the procedures and provisions established in this Manual.

10.3.2 The *Enforcement and Compliance Office* shall likewise prepare, publish and disseminate such report as may be required of it from time to time by the *PEM Board*, DOE or ERC in respect to enforcement and compliance in the WESM; or such report as the *Enforcement and Compliance Office* may deem appropriate or necessary from time to time.

### 10.4 COMPLIANCE DATABASE AND RECORDS RETENTION

10.4.1 Subject to the required retention period set out in this Section, the *Enforcement and Compliance Office* shall organize and maintain a compliance database that shall contain, the following –

- a) Records of investigations, including but not limited to the investigation reports and their attachments, the investigation review reports, *PEM Board* action on investigations, data and records used in the investigation, submissions of parties investigated, and notices and communications issued and received pertaining to an investigation.

- b) Non-compliance reports and supporting documents submitted by *WESM Members*.
- c) Records of applications for exemptions, including applications submitted, assessment reports and PEM action on applications, notices and communications issued and received, compliance monitoring reports, and all other documents and records generated and received pertaining to an application for exemption.
- d) Records of claims for compensation, including requests, comments and contests submitted, and reports on the results of the evaluation of the claim for compensation, action of the *PEM Board*, and all other documents and records generated and received pertaining to a claim for compensation.
- e) Monthly and periodic reports required to be prepared and published or disseminated by the *Enforcement and Compliance Office* under this Manual.

10.4.2 Access to the database shall be limited to the *Enforcement and Compliance Office*, although copies of records contained therein which are not covered by prohibited disclosure may be provided to other parties upon request.

10.4.3 The foregoing records required to be maintained in the compliance database shall be retained in electronic form for the periods set out in the following table.

<b>Record</b>	<b>Start of Retention Period</b>	<b>Retention Period</b>
Records of investigation cases	Date of final action on the case, i.e., final <i>PEM Board</i> approval	10 years
Non-compliance reports of <i>WESM Members</i>	Date of submission of report	10 years
Records of applications for exemption	Date of the final action on the application, i.e., final <i>PEM Board</i> action	10 years
Records of claims for	Date of final action on the	10 years

<b>Record</b>	<b>Start of Retention Period</b>	<b>Retention Period</b>
compensation	claim, i.e., final action by the <i>PEM Board</i>	
Monthly and periodic reports	Date of first publication or first dissemination	5 years
Reports published in market information website	Date of first publication or first dissemination	5 years



**SECTION 11 LIMITATION OF LIABILITY AND INDEMNIFICATION****11.1 LIMITATION OF LIABILITY**

11.1.1 The members of the *PEM Board* and the *Market Surveillance Committee*, whether acting individually or jointly, the *Enforcement and Compliance Officer* and the members of 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*, the *Market Operator* or the *System Operator* or any other person as a consequence of any act or omission undertaken in the performance of the duties and responsibilities contained in this Manual, other *Market Manuals* and the *market rules*. This is except when the person acted with malice, manifest partiality, bad faith, gross incompetence or gross negligence.

**11.2 INDEMNIFICATION**

11.2.1 Should any of the persons named in Section 11.1.1 be made liable for any amount for loss or damage suffered or incurred by any person or entity as a consequence of any of its acts or omissions in the performance of its duties as prescribed in this Manual, other *Market Manuals* and the *market rules*, the PEMC shall indemnify said persons through an indemnification process to be developed by the *PEM Board*. It is provided, however, that the indemnification shall exclude any liability arising out of conduct involving malice, manifest partiality, bad faith, gross incompetence or gross negligence. 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.

**SECTION 12 AMENDMENT, PUBLICATION AND EFFECTIVITY****12.1 AMENDMENTS**

12.1.1 This Manual shall be amended in consultation with the *Enforcement and Compliance Office* and the *Market Surveillance Committee*, and in accordance with the relevant provisions of the *WESM Rules* and relevant *Market Manual* on revision or amendments of *Market Manuals*.

12.1.2 Without limiting the persons or entities which may initiate amendments of this Manual, amendment of this Manual may be initiated upon submission of proposals by the *Enforcement and Compliance Office*, the *Market Surveillance Committee*, any WESM Committee, the *Market Operator*, the *System Operator*, or any other *WESM Member*.

12.1.3 Without limiting the grounds upon which this Manual may be amended, amendments to this Manual shall be made to make this Manual consistent with –

- a) EPIRA and its Implementing Rules and Regulations if any amendments thereto will affect enforcement and compliance in the WESM;
- b) The *market rules*, the WESM Penalty Manual, and other *Market Manuals* if any amendments thereto will affect enforcement and compliance in the WESM;
- c) Issuances of the ERC concerning enforcement of the *WESM Rules*; and
- d) Issuances of the DOE affecting enforcement of the *WESM Rules*.

**12.2 PUBLICATION**

12.2.1 This Manual shall be published in the market information website in accordance with the provisions of the relevant *Market Manual* on publication of *Market Manuals* approved for implementation in the WESM.

**12.3 EFFECTIVITY**

12.3.1 This Manual and any amendments thereto shall become effective upon publication and in accordance with the provisions of the *WESM Rules* and relevant *Market Manual* on procedures and effectivity of changes to *Market Manuals*.

**SECTION 13 GLOSSARY**

<b>Term or Abbreviation</b>	<b>Definition</b>
Breach	Act or omission that constitutes a violation or non-compliance with any provision of the <i>market rules</i> and <i>Market Manuals</i> that are expressly provided for as subject of sanctions and penalties if committed.
Compensation	Sum of money required to be collected from a WESM trading participant and paid to another WESM trading participant that was, respectively, benefitted financially and adversely affected financially as a direct consequence of a <i>breach</i> by a <i>WESM Member</i> .
Compliance plan	A plan detailing the actions or tasks required to be carried out by a <i>WESM Member</i> to implement a remedial measure.
Enforcement	This is the process by which a <i>WESM Member</i> found in <i>breach</i> is imposed penalties, which may be financial or non-financial in nature, and/or required to take corrective actions or remedial measures, or pay compensation, as a consequence of the <i>breach</i> .
Enforcement action	This is an action carried out against a <i>WESM Member</i> as a consequence of the <i>breach</i> by that <i>WESM Member</i> of the <i>WESM Rules</i> or <i>Market Manuals</i> , which may include imposition of penalties, payment of compensation, carrying out remedial measures and other corrective actions.
Enforcement and Compliance Office	This is the unit created within PEMC pursuant to the <i>WESM Rules</i> , headed by the <i>Enforcement and Compliance Officer</i> , which primarily provides technical and investigative support to the <i>Market Surveillance Committee</i> and the <i>PEM Board</i> in carrying out their respective enforcement and compliance functions.
Enforcement and Compliance Officer	This is the person appointed pursuant to the <i>WESM Rules</i> that will head the <i>Enforcement and Compliance Office</i> .
Enforcement proceeding	This is the activity or series of activities carried out to establish and determine the occurrence of <i>breach</i> and the corresponding enforcement action that will be carried out as a consequence of the <i>breach</i> , and includes monitoring, assessment, investigation and imposing enforcement

Term or Abbreviation	Definition
	actions.
Exemption	This is the authority granted by the <i>PEM Board</i> exempting a <i>WESM Member</i> from sanctions for non-compliance with an obligation, which would otherwise amount to a <i>breach</i> if no exemption was granted.
Market participation agreement	The agreement required by the <i>Market Operator</i> to be executed by a <i>WESM Member</i> upon its registration in the WESM that, among other things, obliges the <i>WESM Member</i> to comply with the <i>WESM Rules</i> .
Market Manuals	This refers collectively to the <i>Market Manuals</i> approved for use in the WESM to implement the <i>WESM Rules</i> and the <i>Retail Rules</i> .
Market rules	This refers collectively to the <i>WESM Rules</i> and the <i>Retail Rules</i> to which this Manual applies.
Non-compliance report	A report submitted pursuant to Section 8 of this Manual by a <i>WESM Member</i> that is unable to comply with any of its obligation under the <i>WESM Rules</i> or <i>Market Manuals</i> .
Notice of provisional remedial measure	A notice in writing issued by the <i>Enforcement and Compliance Office</i> directing a <i>WESM Member</i> to implement a remedial measure pending completion of an investigation.
Notice of investigation	Formal notice issued by the <i>Enforcement and Compliance Office</i> to a <i>WESM Member</i> to initiate an investigation for possible <i>breach</i> .
Remedial measure	An action or task required to be carried out by a <i>WESM Member</i> to reduce or remove adverse impact of a <i>breach</i> (i.e., mitigation), or prevent the recurrence of a <i>breach</i> (i.e., prevention), or the cessation of an act or activity constituting or causing a <i>breach</i> or an action or task carried out leading to such cessation (i.e., correction).
Report of probable breach	Written report submitted to the <i>Enforcement and Compliance Office</i> by the <i>Market Operator</i> or the <i>System Operator</i> to notify the <i>Enforcement and Compliance Office</i> of probable <i>breach</i> by a <i>WESM Member</i> for purposes of initiating an investigation.
Request for investigation	Written request submitted to the <i>Enforcement and Compliance Office</i> by any <i>WESM Member</i> , WESM Committee, or any other party, other than the <i>Market</i>

<b>Term or Abbreviation</b>	<b>Definition</b>
	<i>Operator or System Operator</i> , to notify the <i>Enforcement and Compliance Office</i> of possible <i>breach</i> by a <i>WESM Member</i> for purposes of initiating an investigation.
WESM Compliance Officer	Person designated by <i>WESM Members</i> , <i>System Operator</i> , <i>Market Operator</i> , <i>Metering Services Provider</i> and any other WESM service providers within their respective organizations pursuant to and the perform the functions set out in <i>WESM Rules</i> Clause 7.2.9.
WESM Penalty Manual, or Penalty Manual	This is the manual promulgated by the <i>WESM Market Surveillance Committee</i> that sets out the sanctions that can be imposed for each category <i>breach</i> of the <i>WESM Rules</i> and associated manuals, and the manner of carrying out such sanctions.