



Republic of the Philippines  
**DEPARTMENT OF ENERGY**

**DEPARTMENT CIRCULAR NO. \_\_\_\_\_**

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

**WHEREAS**, Sections 30 and 37(f) of the Electric Power Industry Reform Act (EPIRA) provides that the DOE, jointly with the electric power industry participants, shall establish the Wholesale Electricity Spot Market (WESM) and formulate the detailed rules governing the operations thereof;

**WHEREAS**, on 28 June 2002, the DOE, with the endorsement of the electric power industry participants, promulgated the WESM Rules through Department Circular No. DC2002-06-003;

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

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

**WHEREAS**, the proposal of PEMC aims to:

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

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

- (a) market monitoring, assessment and surveillance; and

(b) harmonization of the market surveillance processes with the Energy Regulatory Commission (ERC)-PEMC Protocol pertaining to investigation of anti-competitive behavior;

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

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

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

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

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

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

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

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

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

**WHEREAS**, on \_\_\_\_\_ 2019, the DOE conducted various public consultation on the said proposed amendments to ensure transparency and consistency with the objectives of the EPIRA and the WESM;

**WHEREAS**, the DOE reviewed the said PEM Board-approved proposal and the comments and recommendations from the public consultation, made further revisions on the proposed amendments for consistency with the objectives of the WESM such as transparency and efficiency;

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

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

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

“1.3.4 Responsibilities of the System Operator

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

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

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

“1.6.2 Responsibilities of the Market Surveillance Committee

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

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- (b) Prepare periodic reports, which outline:

- (i) activities of *WESM Participants* in the *spot market*,  
(ii) apparent or suspected incidents of *anti-competitive behavior* by any *WESM Participant*, and

- (iii) matters concerning the operation of the *spot market*, which reports shall be submitted to the *PEM Board*, the *DOE* and *ERC* upon completion;

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- (c) Review reports of investigation of breaches of the *WESM Rules* and *Market Manuals* carried out by the *Enforcement and Compliance Office* and, based on the results of such investigation, decide on the outcomes of the investigation and recommend imposition of sanctions or penalties if warranted.
  - (d) From time to time if the Market Surveillance Committee in its discretion deems necessary or appropriate, propose amendments to the *WESM Rules* in accordance with chapter 8 with a view to:
    - (i) Improving the efficiency and the effectiveness of the operation of the *WESM*; and
    - (ii) Improving or enhancing the prospects for the achievement of the *WESM* objectives.
  - (e) Assist the Rules Change Committee in relation to its assessment of proposals to amend the *WESM Rules* under chapter 8.”
- (c) Original Clause 1.6.3 (Design and Promulgation of Penalties) under Market Surveillance Committee is hereby deleted.
- (d) Clause 3.5.11.7 under Revision of Market Offers/Bids, Nomination of Loading Levels, and Projected Outputs is amended to read as –

“3.5.11.7 *Trading Participants* shall immediately advise the *System Operator* and the *Market Operator* of any circumstances which threaten a significant probability of material adverse change in the state of their facilities in any *dispatch interval* of any *trading day* in the current *week-ahead market horizon*.

After the occurrence of the significant event referred to above, the *Trading Participant* shall submit to the *Enforcement and Compliance Office* a written report with supporting data of the significant event that occurred not later than the following trading day and such report and data so submitted shall serve as compliance by the *Trading Participant* of its reporting obligation under Clause 7.2.2.2. The same report and data may also be made available to the *Market Operator*.”

- (e) Clause 6.9 (Market Suspension) and its sub-clauses under Intervention and Market Suspension is amended to read as –

“6.9 MARKET INTERVENTION REPORT

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

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

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

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

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#### 6.9.5 Market Suspension Report

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

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

#### “7.1 SCOPE OF CHAPTER 7

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

- (a) The responsibilities for ensuring that all *WESM Members* comply with the *WESM Rules*;
- (b) The process for *enforcement* of the *WESM Rules* and *Market Manuals* including:
  - (i) The procedures and responsibilities for carrying out *enforcement proceedings*, including the monitoring of compliance with the *WESM Rules* and *Market Manuals*, investigation of probable *breach*, and imposition of sanctions; and

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

xxx xxx xxx”

- (g) Clause 7.2.1 (Compliance) under Enforcement is amended to read as –

“7.2.1 Compliance

7.2.1.1 *PEMC*, in consultation with the *Market Operator* and/or the *System Operator*, shall do all things reasonably necessary to ensure that all *WESM Members* comply with the *WESM Rules* and *Market Manuals*; and, for this purpose, shall be responsible for *enforcement* of the *WESM Rules* and *Market Manuals* in accordance with this Clause 7.2; Provided that the *PEM Board* shall carry out this function in conjunction with the *Compliance Committee* and the *Enforcement and Compliance Office*.

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

- (h) Clause 7.2.2 (Breaches of the *WESM Rules* by *WESM Members*) and its sub-clauses under Enforcement is amended to read as –

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

7.2.2.1 The *enforcement proceedings* and *enforcement actions* set out in this Clause 7.2 may only be carried out for non-compliances with the *WESM Rules* or *Market Manuals* which are specified in the *WESM Penalty Manual* as subject of sanctions, or specified in any provision of the *WESM Rules* or any *Market Manual* as subject of sanctions or investigation under this Clause 7.2; Provided, however, that non-compliances with provisions of the *WESM Rules* or any *Market Manual* that is specified as subject of an action by the *Market Operator* without need of investigation under this Clause 7.2 shall not be subject of any *enforcement proceeding* or *enforcement action* set out in this Clause 7.2.

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

7.2.2.3 The *PEM Board* may, upon application of a *WESM Member* and recommendation by the *Enforcement and Compliance Office*, exempt said *WESM Member* from an investigation and imposition of sanctions for probable *breach* that are committed –

- (a) Within the first three months of membership in the *WESM* by said *WESM Member*; or
- (b) Within the first three months of the issuance of a new provision of this *WESM Rules* or a new *Market Manual*, or an amendment thereto, with respect to such new rule, market manual or amendment, if non-compliance with the same amounts to a *breach*;

Provided, however, that no investigation for breach has been initiated pursuant to Clause 7.2.4.3.”

- (i) Clause 7.2.3 (Alleged Breaches of the *WESM Rules* by the Market Operator or System Operator) and its sub-clauses under Enforcement is amended to read as –

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

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

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

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

7.2.3.4 If the investigation carried out pursuant to Clause 7.2.3.3 confirms the occurrence of a *breach*, the *PEM Board* shall cause the issuance of a notice to the *Market Operator* or the *System Operator* to remedy the *breach* and carry out measures to prevent its recurrence and to mitigate its adverse impact.

7.2.3.5 The notice issued under clause 7.2.3.4 shall be copy furnished to:

- (a) The *DOE*; and
- (b) The *ERC*.

7.2.3.6 If the breach is of such a nature that the *PEM Board* determines that payment of compensation to affected parties is required, it may, on behalf of the affected party, make a demand for payment from the *Market Operator* or the *System Operator* ensuring, however, that the amount of compensation to be imposed will not affect the viability and sufficiency of resources for the normal and efficient operation of the *Market Operator* or the *System Operator* and without prejudice to the fines and penalties that the *ERC* may impose.

7.2.3.7 If a breach by the *Market Operator* or the *System Operator* is not rectified within a reasonable time from the notice issued under clause 7.2.3.4 or is incapable of rectification, the *PEM Board* may file a formal complaint to the *ERC*.

7.2.3.8 The results of the investigation by the *Enforcement and Compliance Office*, the decision of the *PEM Board* and all actions by these parties in accordance with this Clause 7.2.3 shall not be subject to dispute resolution under Clause 7.3.”

- (i) Clause 7.2.4 (Investigations) and its sub-clauses under Enforcement is amended to read as –

“7.2.4 Enforcement Proceedings

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

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

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

The *Enforcement and Compliance Office* shall ensure that the necessary verification or assessment of compliance or non-compliance is performed and that due process is observed in the conduct of compliance monitoring and assessment. Upon finding of breach, penalties may immediately be imposed by the *Enforcement and Compliance Office* on the concerned *WESM Member* pursuant to clause 7.2.5.2.

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

- (a) report of possible breach or request for investigation submitted to it by any *WESM Member*, the *Market Operator*, the *System Operator*, or any of the *WESM* committees or their members; or



- (b) a directive from the Energy Regulatory Commission specifically directing investigation for breach for possible imposition of sanctions under these Rules or implementing manual.

Provided, however, that the *PEM Board* or any of its members, or the *Compliance Committee* or any of its members may not request for or initiate an investigation.

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

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

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

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

7.2.4.8 The *Compliance Committee* shall review the following:

- (a) status of the compliance monitoring and assessment activities and implementation of sanctions by the *Enforcement and Compliance Office* on a periodic basis;
- (b) results of the investigation initiated in accordance with clause 7.2.4.3, and the recommendations of the *Enforcement and Compliance Office* to confirm if a *breach* has been committed and shall, thereafter, submit its report and corresponding recommendations to the *PEM Board* as follows:
- i. if it confirms that a breach has been committed, it shall recommend the imposition of the proper penalty in accordance with the WESM Penalty Manual adopted pursuant to Clause 7.2.5.5 and other enforcement actions in accordance with Clause 7.2.5; or
  - ii. if it confirms that no breach has been committed, it shall recommend the closure of the enforcement proceeding; and
  - iii. if there is conflict between its own findings or assessment and that of the Enforcement and Compliance Office, it shall include in its report a statement of the conflict in the findings or assessment and the matters that are to be submitted to the *PEM Board* for resolution.

7.2.4.9 In carrying out its review, under clause 7.2.4.8 (b), the *Compliance Committee* shall remand the case to the *Enforcement and Compliance Office* if it determines that:

- (a) the procedures set out in this Clause 7.2 and in the *Market Manual* adopted pursuant to Clause 7.2.1.2 were not complied with in whole or in part; or
- (b) the data or any part thereof relied upon by the *Enforcement and Compliance Office* in its findings and assessment is not valid; or
- (c) further investigation is required to consider additional or new information that was not previously considered or not made available to the *Enforcement and Compliance Office* and which it believes may materially affect the findings of the investigation if such information is to be considered; or
- (d) it disagrees with the findings of facts or the assessment of the *Enforcement and Compliance Office*, provided, however, that the *Compliance Committee* and the *Enforcement and Compliance Office* shall endeavor in good faith to resolve any conflicting findings and assessment, and provided, furthermore, that if no resolution is arrived at, the matter shall be included in the report to be submitted by the *Compliance Committee* to the *PEM Board* pursuant to Clause 7.2.4.8.

7.2.4.10 The *PEM Board* shall act on the recommendations of the *Compliance Committee* to:

- (a) if a *breach* has been committed, determine the appropriate *enforcement action* that shall be carried out, in accordance with Clause 7.2.5.2 and the *WESM Penalty Manual* adopted pursuant to Clause 7.2.5.5, and cause the implementation of the same; or
- (b) if no breach has been committed, direct the closure of the *enforcement proceeding*; and
- (c) if there is a conflict between the findings or assessment of the *Enforcement and Compliance Office* and that of the *Compliance Committee*, resolve the same and make its own findings or assessment.

7.2.4.11 The decision of the *PEM Board* shall be final and immediately executory upon its issuance.”

- (k) Clause 7.2.5 (Sanctions) and its sub-clauses under Enforcement is amended to read as –

“7.2.5 Enforcement Actions

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7.2.5.2 In line with the principles stated in Clause 7.1:

- (a) The *Enforcement and Compliance Office* may impose penalties upon completion of its compliance monitoring and after consideration of all the information referred to in clause 7.2.4.2 following the procedures provided in the *WESM Penalty Manual*; and
- (b) The *PEM Board* acting upon the results of the investigation by the *Enforcement and Compliance Office* and recommendations of the *Compliance Committee* submitted pursuant to Clause 7.2.4.8, may direct upon any *WESM Member*, other than the *System Operator* or the *Market Operator*, any of the following enforcement actions for breach of any provision of the *WESM Rules* or *Market Manuals*:
- i. Imposition of financial or non-financial penalties in accordance with the *WESM Penalty Manual* adopted pursuant to Clause 7.2.5.5;
  - ii. Implementation of remedial measures to prevent recurrence of or mitigate any adverse impact of the breach;
  - iii. Cessation of the act, activity or practice constituting the breach, or carrying out of an act, activity or practice the omission of which constitutes the breach; or
  - iv. Any other corrective action, as may appropriate given the circumstances surrounding the breach.

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

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

7.2.5.4 If the breach by any *WESM Member* has resulted in a financial loss to any Trading Participant and a corresponding financial gain to another Trading Participant, the *PEM Board*, upon application by the aggrieved Trading Participant submitted no later than one year from the final disposition of the breach and upon recommendation by the *Enforcement and Compliance Office* and the *Market Operator*, may require the payment of compensation to the party suffering financial loss by the party that financially benefited from the breach; Provided, however, that financial loss or benefit shall be understood as pertaining to a Trading Participant's transactions in the *WESM* and is readily determinable in the *WESM* settlements.

7.2.5.5 A *WESM Penalty Manual* shall be adopted and promulgated by the Department of Energy, and which shall specify the:

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

The *Market Surveillance Committee* shall design and review the *WESM Penalty Manual* from time to time as may be necessary, and in consultation with the Rules Change Committee and the PEM Board.”

- (l) Clause 7.2.7 (Publication) and its sub-clauses under Enforcement is amended to read as –

“7.2.7 Information Disclosure and Confidentiality

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

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

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

- (m) Clause 7.2.8 (Appointment of an Enforcement and Compliance Officer) and its sub-clauses under Enforcement is amended to read as –

“7.2.8 Enforcement and Compliance Office

7.2.8.1 The President of PEMC:

- (a) With the concurrence of the *PEM Board*, shall appoint a person to act as *Enforcement and Compliance Officer* that will head the *Enforcement and Compliance Office* created pursuant to Clause 1.4.8.1; and
- (b) Exercise administrative supervision over the *Enforcement and Compliance Office*.

7.2.8.2 Subject to Clause 7.2.8.1, the *PEM Board* shall exercise supervision and control over the *Enforcement and Compliance Office* in the performance

by the latter of its functions as provided for in these *WESM Rules* and in relevant *Market Manuals*.”

- (n) Clause 7.2.9 (Designation of a Compliance Officer for WESM Member, Market Operator and System Operator) and its sub-clauses under Enforcement is amended to read as –

“7.2.9 Designation of a Compliance Officer for WESM Member, Market Operator and System Operator

7.2.9.1 All *WESM Members*, and the *Market Operator* shall designate a WESM Compliance Officer in their respective organizations; *Provided* that the person so appointed should have an understanding of the *WESM* compliance requirements of his or her organization, and occupies a senior management position in the organization that he or she is able to recognize possible non-compliances and has sufficient authority to resolve the same.

7.2.9.2 The *WESM* Compliance Officer shall:

- (a) Monitor the activities and transactions in the *WESM* of his or her organization and carry out measures to ensure compliance with the EPIRA, its Implementing Rules and Regulations, the *WESM Rules* and *Market Manuals*; and put in place necessary procedures and guidelines for this purpose;
  - (b) From time to time and if *he or she* deems it necessary or appropriate, propose amendments to the *WESM Rules* and *WESM Market Manuals* to enhance or develop the *WESM* enforcement and compliance and to promote good commercial and technical practices;
  - (c) Be responsible in coordinating with the *Enforcement Compliance Office* (ECO), 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 Governance Committees* and by the *Enforcement and Compliance Office*; and
  - (d) Submit to the *Enforcement and Compliance Office* a report of his or her organization’s compliance with *WESM 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*.”
- (o) New Clause 7.2.10 (Limitation of Liability and Indemnification) and its sub-clauses under Enforcement is added to read as –

“7.2.10 Limitation of Liability and Indemnification

7.2.10.1 Unless they acted with malice, manifest partiality, bad faith, gross incompetence or gross negligence, the members of the *Market Surveillance Committee*, the *Enforcement and Compliance Officer* and the members of the staff of the *Enforcement and Compliance Office* shall not be made personally liable for any loss or damage incurred by a *WESM Member* or any other person as a consequence of any act or omission undertaken in the

performance of the duties and responsibilities contained in this Clause 7.2 as well as in the *Market Manual* adopted pursuant to Clause 7.2.1.2 and the *WESM Penalty Manual* adopted pursuant to Clause 7.2.5.5 Manual.

7.2.10.2 Notwithstanding Clause 7.2.10.1, should any of the persons named in said Clause 7.2.10.1 be made liable for any amount for loss or damage suffered or incurred by any person or entity, the *PEMC* shall indemnify said persons through an indemnification process to be developed by the *PEM Board*; provided, however, that the indemnification shall exclude any liability arising out of conduct involving malice, manifest partiality, bad faith, gross incompetence or gross negligence; and provided, final that said indemnification shall cover the full amount adjudged, and the costs and expenses incurred by the person involved in defending himself or herself in the related proceedings.”

(p) New term, “Breach,” is hereby added under Glossary in Chapter 11 –

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

(q) New term, “Enforcement,” is hereby added under Glossary in Chapter 11 –

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

(r) New term, “Enforcement action,” is hereby added under Glossary in Chapter 11 –

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

(s) New term, “Enforcement and Compliance Office,” is hereby added under Glossary in Chapter 11 –

“Enforcement and Compliance Office. This is the unit created within *PEMC* pursuant to Clause 1.4.8.1, headed by the *Enforcement and Compliance Officer*, which primarily provides technical and investigative support to the *PEM Board* in carrying out their respective enforcement and compliance functions.”

(t) Term, “Enforcement and Compliance Officer,” under Glossary in Chapter 11 is amended to read as –

“Enforcement and compliance officer. This is the person appointed pursuant to Clause 7.2.8.1 that will head the *Enforcement and Compliance Office* and that will be responsible for providing support to the performance by the *PEM Board* of their enforcement and compliance functions.”

- (u) New term, “Enforcement proceeding,” is hereby added under Glossary in Chapter 11 –

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

- (v) New term, “WESM Governance Committees,” is hereby added under Glossary in Chapter 11 –

“WESM Governance Committees. Refers to working groups created by the PEM Board pursuant to Clause 1.4.6 of the *WESM Rules*. The *WESM Governance Committees* are as follows: *Dispute Resolution Administrator*, *Market Surveillance Committee*, *Compliance Committee*, *PEM Audit Committee*, *Rules Change Committee* and *Technical Committee*.”

- (w) New term, “WESM Penalty Manual,” is hereby added under Glossary in Chapter 11 –

“WESM Penalty Manual. The *Market Manual* promulgated by the *Market Surveillance Committee* in consultation with the *Rules Change Committee*, the *Enforcement and Compliance Office* and the *PEM Board*, pursuant to Clause 7.2.5.5 that set out the schedule of possible *breaches* and the corresponding penalties or sanctions that can be imposed, and the manner of carrying out such sanctions.”

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

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

“1.1 PURPOSE

xxx    xxx    xxx

- (b) Describes the responsibilities and undertakings required of the DOE, the PEM Board, the Rules Change Committee, the other WESM Governance Committees, any WESM Member and of any interested parties in the initiation, evaluation, and approval or disapproval of any amendment, review or interpretation of the WESM Rules, manuals of procedures, guidelines and issuances governing the WESM. The procedures described

in this Manual shall be read and construed consistent with the WESM Rules.”

(b) Term, “WESM Governance Committee,” under Definitions in Section 2 is amended to read as –

“WESM Governance Committee refers to the working groups created by the PEM Board pursuant to Clause 1.4.6 of the WESM Rules. The WESM Governance Committees are as follows: Dispute Resolution Administrator, Market Surveillance Committee, PEM Audit Committee, Rules Change Committee and Technical Committee.”

(c) Term, “WESM Governance Committee Secretariat,” under Definitions in Section 2 is amended to read as –

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

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

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

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

xxx xxx xxx”

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

“5.3 To whom submitted

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

xxx xxx xxx

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



(f) Section 6.1.1 (Initial determination) under Rules Change Committee is amended to read as –

“6.1.1 Assessment of Proposal

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

xxx xxx xxx”

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

“6.1.2 Consultation and referral to Other Committees and Persons

xxx xxx xxx

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

xxx xxx xxx”

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

“6.1.3 Written Submissions

xxx xxx xxx

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

xxx xxx xxx

d) The written submissions may be provided through printed document, by electronic means or by facsimile, and directed to the Committee through the WESM Governance Committee Secretariat.”

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

“9.2 CUSTODIAN OF RECORDS

The Head of the WESM Governance Committee Secretariat shall have official custody and charge of the records prepared for or in connection with the rules change process, including but not limited to the journal and minutes of deliberations of the Committee or the PEM Board. The Chairperson shall keep

and maintain the official version of all the amendments made pursuant to these Manual.”

### **Section 3. Amendments to the WESM Market Manual on Dispute Resolution.**

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

(a) Section 1.3.3 under Review and Updates is amended to read as –

“1.3.3 Amendment proposals to this Manual may arise from:

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

xxx xxx xxx”

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

“Market Manual means a manual of specific procedures, systems and protocols for the implementation of the WESM Rules and for the WESM Governance Committees and the Enforcement and Compliance Officer.”

(c) Term, “WESM Governance Committee,” under Definitions of Section 2 (Definitions, Interpretation and Construction) is amended to read as –

“WESM Governance Committee refers to the working groups created by the PEM Board as pursuant to Clause 1.4.6 of the WESM Rules. The WESM Governance Committees are as follows: Dispute Resolution Administrator, Market Surveillance Committee, PEM Audit Committee, Rules Change Committee and Technical Committee.”

(d) Term, “Selection Committee,” under Definitions of Section 2 (Definitions, Interpretation and Construction) is amended to read as –

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

(e) Section 5.2.3 under Selection and Appointment is amended to read as –

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

(f) Section 5.2.4 under Selection and Appointment is amended to read as –

“5.2.4 The Board Selection Committee will review the submissions received and select the person best qualified and complies with the independence requirements. In determining the list of nominees, the Board Selection Committee shall consider foreign professionals only if such professional is known to be an outstanding expert or specialist in the particular field and that the services of such foreigner is urgently necessary either for lack of local experts and if his service will promote the advancement of the WESM.”

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

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

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

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

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

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

**Section 4. Adoption of the WESM Market Manual on Enforcement and Compliance.** The WESM Market Manual on Enforcement and Compliance Issue No. 1.0 and presented as Annex A to this Circular is hereby approved and adopted.

**Section 5. Amendments to the WESM Market Manual on Market Surveillance, Compliance and Enforcement.** The WESM Market Manual on Market Surveillance, Issue 4.0 and presented as Annex B to this Circular is hereby approved and adopted.

**Section 6. Amendments to the WESM Market Manual on PEM Audit.** The WESM Market Manual on PEM Audit Issue No. 3.0 and presented as Annex C to this Circular is hereby approved and adopted.

**Section 7. Amendments to the WESM Market Manual on Guidelines Governing the Constitution of the PEM Board Committees.** The WESM Market Manual on Constitution of the WESM Governance and Board Committees Issue 3.0 and presented as Annex D to this Circular is hereby approved and adopted.

**Section 8. Amendments to the WESM Market Manual on Technical Committee.** The WESM Market Manual on Technical Committee Issue No. 3.0 and presented as Annex E to this Circular is hereby approved and adopted.

**Section 9. Amendments to the WESM Market Manual on Catalogue of Market Monitoring Data and Indices.** The WESM Market Manual on Catalogue of Market Monitoring Data and Indices Issue No. 2.0 and presented as Annex F to this Circular is hereby approved and adopted.

**Section 10. Amendments to the WESM Market Manual on Consultation Guidelines.** The WESM Market Manual Consultation Guidelines Issue No. 2.0 and presented as Annex G to this Circular is hereby approved and adopted.

**Section 11. Separability Clause.** If for any reason, any section or provision of this Circular is declared unconstitutional or invalid, such parts not affected shall remain valid and subsisting.

**Section 12. Effectivity.** This Circular shall take effect 15 days following its complete publication in at least two (2) newspapers of general circulation and shall remain in effect until otherwise revoked.

Issued this \_\_\_\_ June 2018 at the DOE, Energy Center, Rizal Drive, Bonifacio Global City, Taguig City, Metro Manila.

**ALFONSO G. CUSI**  
Secretary