

# PROPOSED PENALTY MANUAL 2.0

January 2019

DOE Public Consultation



# Outline

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- Legal Framework
- Salient Features
- Comparison with Financial Penalty Issue 1.0
- Penalty Assessment
- Schedule of Breaches and Penalties
- Penalty Imposition
- Reconsideration and Appeal
- Utilization of Penalty Fund
- Open Forum/Discussion



# Legal Framework

# Legal Framework

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**EPIRA  
§ 30**

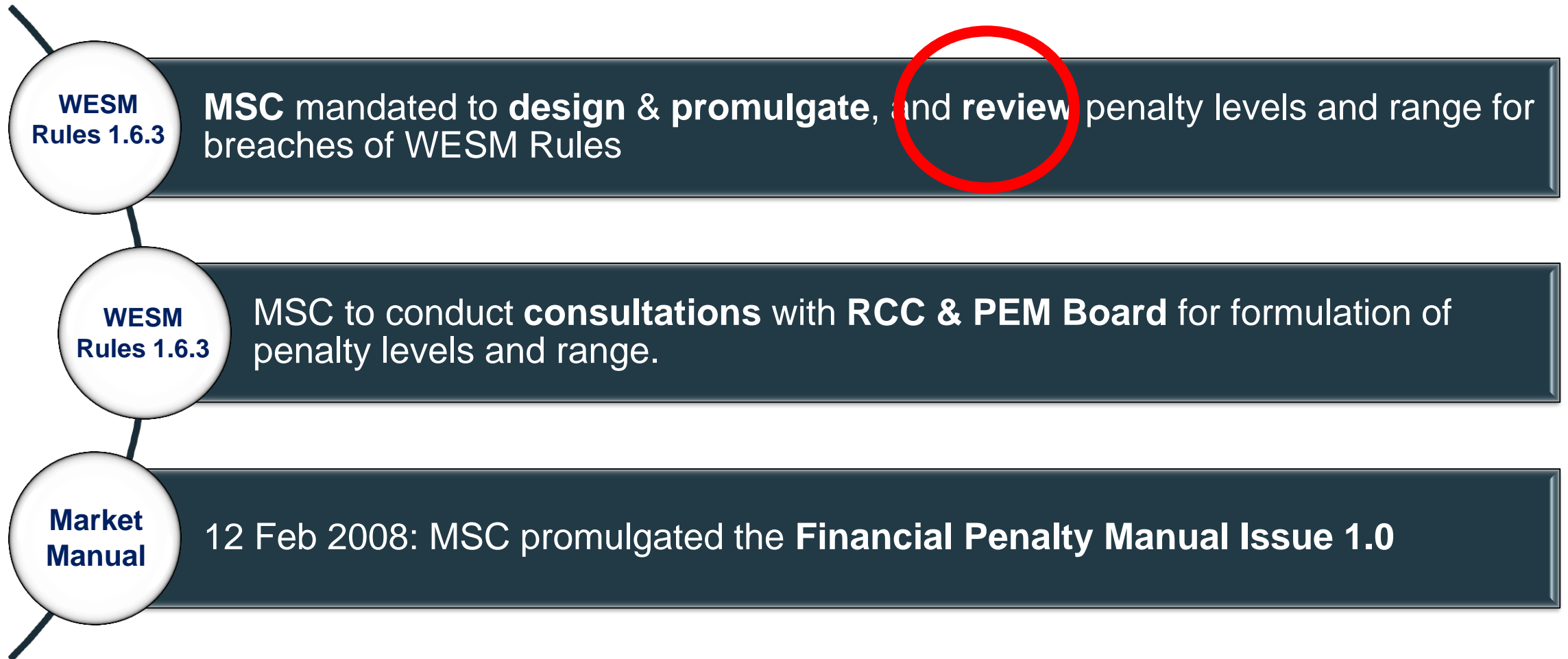
Market rules to provide for the **surveillance** and **assurance of compliance** with the rules

**EPIRA-IRR,  
Rule 5, § 9**

Market rules shall be formulated to provide **adequate sanctions** in case of breach

# Legal Framework

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# Salient Features

# Salient Features

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## 1. Definition and clarification of the scope of application of the penalty system

- **Scope of Application**
  - Covers breaches of the WESM Rules and Retail Rules
  - Not applicable for anti-competitive behavior or abuse of market power

# Salient Features

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## 2. Penalty levels and qualifying circumstances

- **Revision of penalty levels**
  - Covers both non-financial and financial penalties, taking into consideration the nature of the breach and circumstances surrounding the breach
- **Revision to and clarification of qualifying circumstances to be considered in determining the applicable penalty level in case of actual breach**



# Salient Features

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## 3. Schedule of breaches and corresponding applicable penalties

- **Clarification of the application of the penalty system particularly the categories of non-compliances that the penalty system applies**
  - Includes the schedule of breach and corresponding applicable penalties and penalty levels
  - Penalties may only be imposed for non-compliances that are included in the schedule of breaches

# Salient Features

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## 4. DOE promulgation of the WESM Penalty Manual

- DOE promulgation of WESM Penalty Manual, instead of the MSC, in consultation with RCC, PEM Board and Stakeholders

## 5. PEMC authority to administer & impose penalty

- PEMC Management, instead of the PEM Board, to administer and impose penalty, to streamline the process and mitigate conflict of interest

# Salient Features

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## 6. Shortened Monitoring & Assessment Process

- The process is designed to be comprehensive enough to cover the validation, assessment, and analysis of data to avoid prolonged investigation and penalty imposition process.

## 7. Request for reconsideration/appeal process

- Penalty already executory but can be requested for reconsideration or may be appealed



# Comparisons

# Comparisons

Criteria	Financial Penalty Manual 1.0	Penalty Manual Issue 2.0
<b><i>Definition of breach</i></b>	<ul style="list-style-type: none"> <li>▪ Not defined</li> </ul>	<ul style="list-style-type: none"> <li>▪ With schedule and definition of breach</li> </ul>
<b><i>Penalty levels and amounts</i></b>	<ul style="list-style-type: none"> <li>▪ PhP 100,000 – PhP 50M applicable to all types of breach</li> </ul>	<ul style="list-style-type: none"> <li>▪ Four penalty levels</li> <li>▪ Applicable penalty levels for each type of breach is specified</li> <li>▪ Financial penalty amounts:               <ul style="list-style-type: none"> <li>❖ Fixed amount</li> <li>❖ Formula based</li> </ul> </li> </ul>

# Comparisons

Criteria	Financial Penalty Manual 1.0	Penalty Manual Issue 2.0
<p><b><i>Criteria for determining applicable penalty amount</i></b></p>	<ul style="list-style-type: none"> <li>▪ History</li> <li>▪ Severity</li> <li>▪ Impact on market</li> <li>▪ Impact on other participants</li> </ul>	<ul style="list-style-type: none"> <li>▪ Frequency of occurrence</li> <li>▪ Occurrence during emergency conditions, market intervention or suspension</li> <li>▪ Posing a threat to system security or market scheduling processes</li> <li>▪ Offer for settlement (upon issuance of notice of investigation)</li> <li>▪ Self reporting (prior to investigation)</li> </ul>



# Penalty Assessment

# Penalty Assessment

## Penalty Level

Level	Description
L1 – Formal Warning or Reprimand	Written; enjoins the WESM member from doing the act or omission that constitutes the breach. Notice of Reprimand issued
L2 – Financial Penalties	<ul style="list-style-type: none"><li><input type="checkbox"/> Pre-set according to each type of breach;</li><li><input type="checkbox"/> May be a fixed amount or formula-based</li><li><input type="checkbox"/> Stated in the Schedule of Breach and Penalties</li><li><input type="checkbox"/> Notice of Financial Penalty issued</li></ul>
L3 – Escalated Financial Penalties	Higher financial penalty; consider the conditions under which they may be imposed; Notice of Financial Penalty issued
L4 - Exclusion	<ul style="list-style-type: none"><li><input type="checkbox"/> Suspension. Suspended from participating or providing services; disconnected from the grid, if applicable. Notice of Suspension issued</li><li><input type="checkbox"/> Deregistration. Already suspended, deregistered, and disconnected from the grid, if applicable. Notice of Deregistration issued</li></ul>



# Penalty Assessment

## Qualifying Circumstances

Item	Description
Frequency of Occurrence	<ul style="list-style-type: none"> <li><input type="checkbox"/> First-time Occurrence</li> <li><input type="checkbox"/> Isolated Occurrence</li> <li><input type="checkbox"/> Recurring or repetitive occurrence</li> </ul>
Extent of Deviation	<ul style="list-style-type: none"> <li><input type="checkbox"/> Where degree of deviation from the requirement can vary and is quantifiable.</li> <li><input type="checkbox"/> Penalty level shall depend on the extent of the deviation</li> </ul>
Non-Compliance During Emergency Condition, Suspension, or Intervention	<ul style="list-style-type: none"> <li><input type="checkbox"/> Higher penalty level shall be imposed.</li> <li><input type="checkbox"/> This qualifying circumstance is given priority over frequency of occurrence</li> </ul>

# Penalty Assessment

## Qualifying Circumstances

Item	Description
Threat to market processes, power system security and reliability	<ul style="list-style-type: none"> <li><input type="checkbox"/> To be determined by the MO and the SO.</li> <li><input type="checkbox"/> Requires consideration of the potential adverse impact of the breach (not the actual impact at the time of occurrence)</li> <li><input type="checkbox"/> Considered only where it becomes necessary to prevent the potential adverse impact from happening.</li> </ul>
Offer for Settlement	<ul style="list-style-type: none"> <li><input type="checkbox"/> Approved in accordance with the ECO Manual</li> <li><input type="checkbox"/> A penalty level next lower to the applicable level may be imposed</li> </ul>
Self Reports	<ul style="list-style-type: none"> <li><input type="checkbox"/> Lower penalty may be applied in where the participant reported the occurrence of the breach prior to issuance of non-compliance notice.</li> <li><input type="checkbox"/> Voluntarily reporting of breach</li> </ul>

# Penalty Assessment

## Frequency of Occurrence

Frequency	Description
<b>First-time</b>	Has not committed the same type of breach in respect to the facility: (a) since registration in WESM; or (b) since promulgation of the new provision of, or substantial amendment to the market rules
<b>Isolated</b>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Do not indicate persistence or repetitive acts or omissions of the same nature</li> <li><input type="checkbox"/> Non-compliances with exemption granted under WESM Rules/market manuals – not considered</li> </ul>
<b>Recurring or Repetitive</b>	<ul style="list-style-type: none"> <li><input type="checkbox"/> More often than the isolated occurrence frequency level within a reference period.</li> <li><input type="checkbox"/> Reference period: within the billing month, 12-month period, etc.</li> <li><input type="checkbox"/> Non-compliances with exemption granted under WESM Rules/market manuals – not considered</li> </ul>



# Schedule of Breaches & Penalties

# Schedule of Breaches and Penalties

Breach	Penalty Levels (L)
1. Failure to submit offers/to <b>submit offers</b> equivalent to maximum available capacity (scheduled generating units).	L1 – L4; PhP10,000 – PhP 20,000/breach
2. Failure to submit nominations for <b>target loading levels</b> (non-scheduled units).	L1 – L4; PhP1,000 – PhP 2,000/breach
3. Failure to submit nominations for <b>projected output</b> (must dispatch & priority dispatch).	L1 – L4; PhP1,000 – PhP 2,000/breach
4. Failure to comply with <b>forecast accuracy standards</b> (must dispatch units).	L1 – L4; PhP1M – PhP 2M/breach

# Schedule of Breaches & Penalties

Breach	Penalty Levels
5. Failure to comply with <b>dispatch conformance standards</b> (scheduled and priority dispatch units)	L1 – L4; Formula: Nodal Price x (Deviation – Dispatch Threshold)
6. Failure to comply with <b>System Operator dispatch instructions</b>	L1 – L4; PhP10,000 – PhP 20,000/breach
7. Failure to comply with <b>dispatch schedule</b> when <b>restricted</b> (must dispatch unit).	L1 – L4; PhP10,000 – PhP 20,000/breach
8. Failure to comply with dispatch instructions to <b>restrict output or ramp rate</b> when grid is not in normal state (must dispatch and priority dispatch)	L3 – L4; PhP 20,000/breach

# Schedule of Breaches & Penalties

Breach	Penalty Levels
<p>9. <b>Non-submission of data, report or information</b> (network service providers, DUs, contestable customers, metering services providers).</p>	<p>L1 – L3; PhP5,000 – PhP 10,000/breach</p>
<p>10. Failure to comply with other mandatory provisions of the WESM Rules and market manuals, and subsequent amendments.</p>	<p>L1 – L4; PhP5,000 – PhP 10,000/breach</p>
<p>11. Failure to implement <b>remedial measures</b> required as a consequence of breach (automatic penalty).</p>	<p>L1 – L4; PhP5,000 – PhP 10,000/breach</p>
<p>12. Failure to pay <b>financial penalty amount</b> (automatic penalty).</p>	<p>Prevailing interest rate applied in WESM settlements</p>



## Penalty Imposition, Reconsideration & Appeal

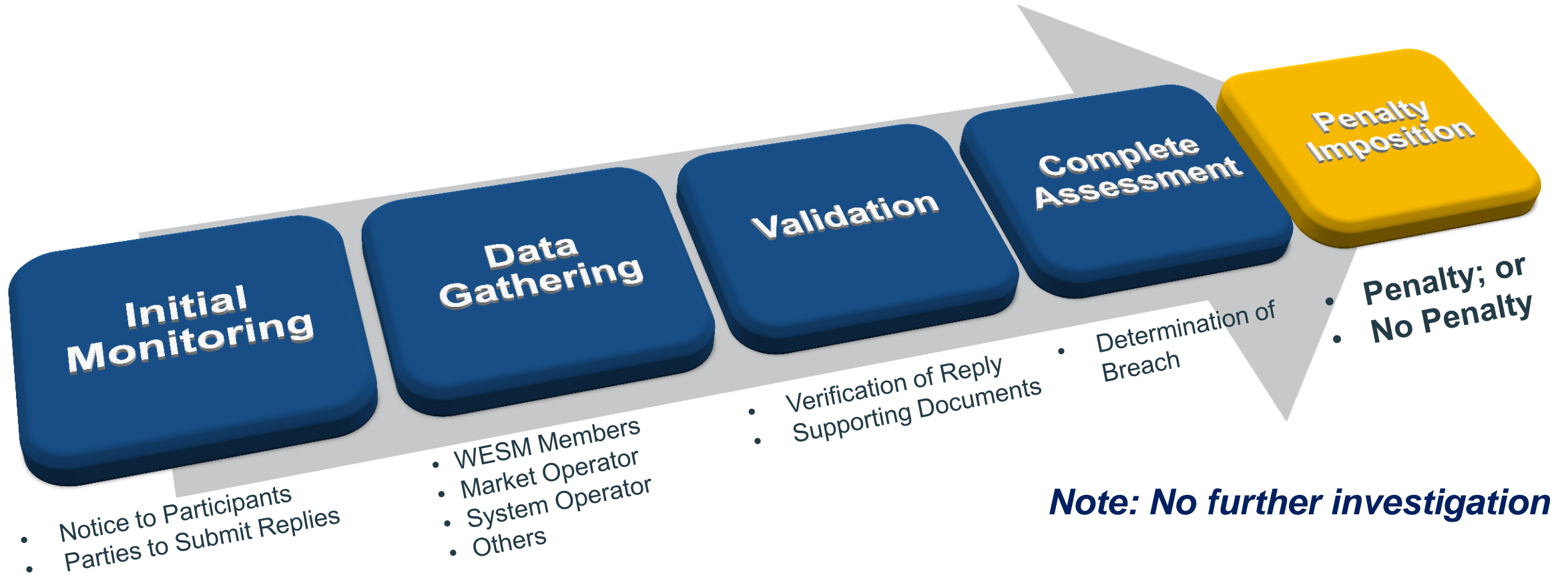


# Penalty Imposition

Basis	Trigger	Considerations
<b><i>Compliance Monitoring</i></b>	Daily monitoring activities of ECO	<ul style="list-style-type: none"> <li>▪ Comprehensive monitoring</li> <li>▪ Applicable to must-offer rule and non-compliance with RTD schedule/dispatch instructions of the System Operator</li> <li>▪ Validation, assessment, and analysis</li> <li>▪ Data or information from trading participants, the Market Operator, the System Operator, etc.</li> <li>▪ Right to due process is protected</li> <li>▪ No need for further investigation</li> <li>▪ Notice of Specified Penalty may be issued upon finding of breach</li> </ul>
<b><i>Investigation</i></b>	<ul style="list-style-type: none"> <li>▪ Report of probable breach; request for investigation</li> <li>▪ ERC directives</li> </ul>	<ul style="list-style-type: none"> <li>▪ Investigation Proper</li> <li>▪ Data gathering, validation, assessment, and analysis</li> <li>▪ Conference/ocular inspection, if necessary</li> <li>▪ Notice of Specified Penalty may be issued upon finding of breach</li> </ul>

# Penalty Imposition

## Compliance Monitoring and Assessment

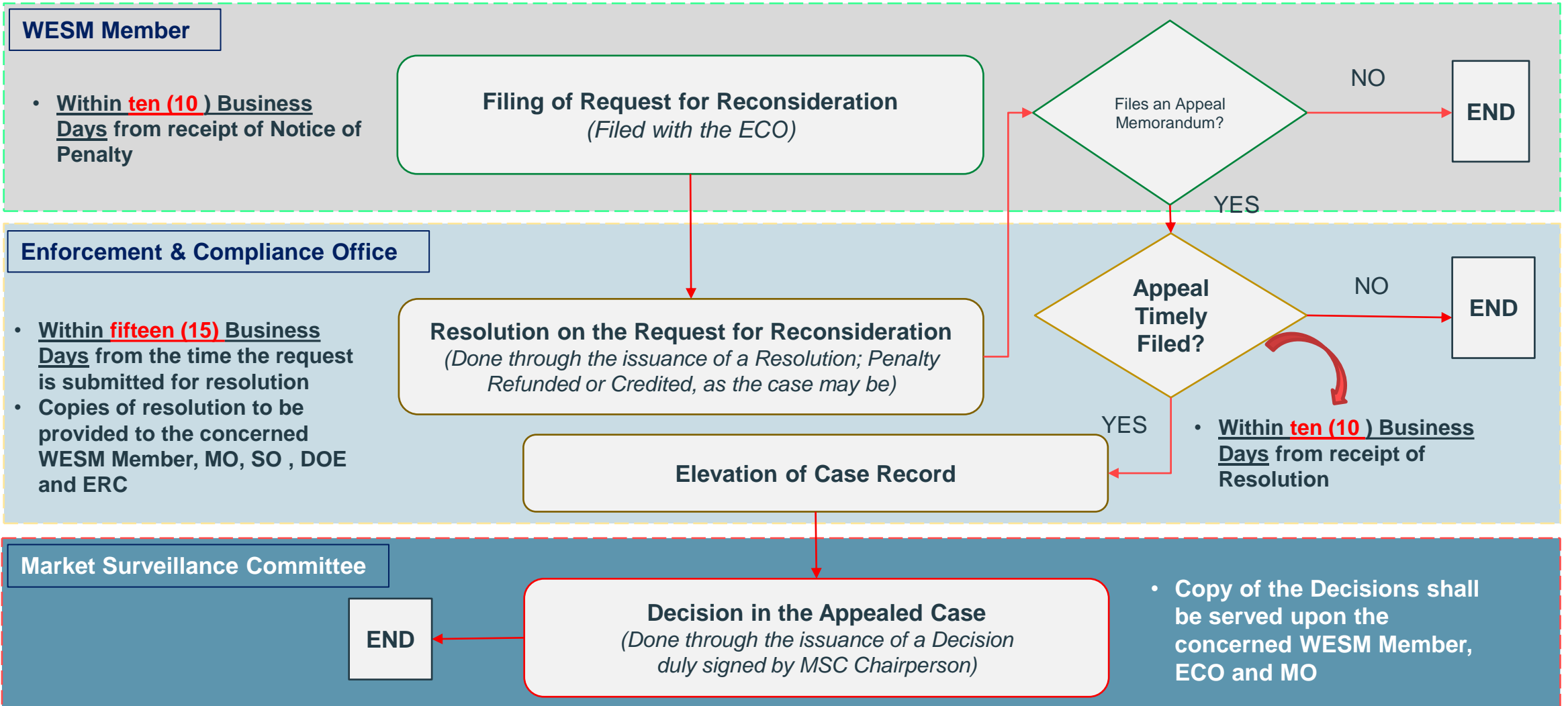


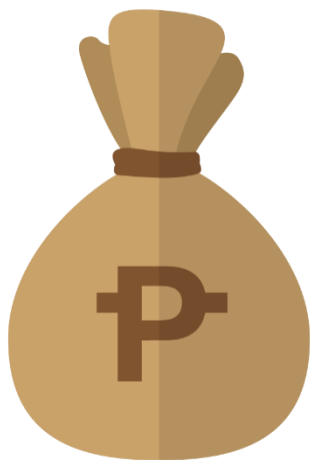
# Penalty Imposition

## Investigation Procedure



# Reconsideration and Appeal





# Utilization of Penalty Fund

# Utilization of Penalty Fund

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- Maintenance
- Permitted Uses
- Not Permitted
- Preparation of Utilization Plan
- Consultations
- Approval and Publication of Utilization Plan
- Implementation, Evaluation, and Revision of Plan
- Audit

# Utilization of Penalty Fund

Provisions	Description
<b>On Maintenance of PF</b>	By PEMC. The said fund shall not be commingled with other funds or amounts that come into PEMC's possession.
<b>On Audit</b>	Shall be subject to regular financial audit
<b>On Permitted Uses</b>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Primarily for projects that directly redound to the benefit of electricity consumers</li> <li><input type="checkbox"/> Training and education of WESM Members;</li> <li><input type="checkbox"/> Conduct of technical studies or research to support market development, rules change proposal, and other market studies, and the publication of the results of these studies; and</li> <li><input type="checkbox"/> Development and acquisition of information technology systems to support enforcement and compliance, market assessment and surveillance, in the WESM.</li> </ul>

# Utilization of Penalty Fund

Provisions	Description
<b>On Uses Not Permitted</b>	<ul style="list-style-type: none"><li><input type="checkbox"/> Compensation of or grant of monetary or other benefits for carrying out their obligations pertaining to enforcement and compliance in the WESM</li><li><input type="checkbox"/> Revenue requirements of PEMC for the operation and governance of the WESM which are to be defrayed from the market fees;</li><li><input type="checkbox"/> Cost of investigation of an actual breach by a WESM Member;</li><li><input type="checkbox"/> Compensation of WESM Members and other parties disadvantaged by a breach committed by another WESM Member;</li><li><input type="checkbox"/> Distribution to specific group of WESM Members, electricity end-users or consumers, government agencies, or other entities and individuals such as but not limited to charitable organizations or uses; and</li><li><input type="checkbox"/> Commercial purposes or to fund or provide capital to any business activity.</li></ul>



# Utilization of Penalty Fund

Provisions	Description
<p><b>On Preparation of Utilization Plan</b></p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> With description of the activities or projects to be undertaken, duration of each activity or project, and expected milestones, and cost of each activity or project, ensuring that the same shall be fully funded from available penalty fund.</li> <li><input type="checkbox"/> Shall not overlap with other planned or existing activities or projects of PEMC</li> <li><input type="checkbox"/> PEMC may prepare a utilization plan for each project or activity to be undertaken, or for each category of projects. A single utilization plan may also cover all projects or activities programmed to be undertaken over a specified period.</li> </ul>
<p><b>On Consultations</b></p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> With WESM Members and the WESM Governance Committees;</li> <li><input type="checkbox"/> Publish a notice in the market information website for comments</li> <li><input type="checkbox"/> If deems necessary, conduct a public consultation to be participated in by WESM Members and WESM committees as a venue for presentation and discussion of the proposed <i>utilization plan</i>, and of the comments and suggestions received.</li> </ul>

# Utilization of Penalty Fund

Provisions	Description
<p><b>On Approval and Publication of Utilization Plan</b></p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> To be approved by PEM Board. Must ensure that –               <ul style="list-style-type: none"> <li>✓ The activities and projects included in the plan fall under any of the permitted uses and does not fall under any of the uses not permitted</li> <li>✓ The publications and consultations required were complied with.</li> </ul> </li> <li><input type="checkbox"/> Approved plan to be published in the market information website</li> </ul>
<p><b>Implementation, Evaluation, and Revision of the Utilization Plan</b></p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> PEMC to implement;</li> <li><input type="checkbox"/> PEMC to submit to the PEM Board periodic reports on the implementation of the <i>utilization plan, and to be published</i> in the market information website</li> <li><input type="checkbox"/> PEMC may revise, as deems necessary subject to approval of PEM Board</li> <li><input type="checkbox"/> If revision is not included in original scope, to be submitted for consultations again.</li> </ul>

# END OF PRESENTATION

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