



Republic of the Philippines
DEPARTMENT OF ENERGY

DEPARTMENT CIRCULAR NO. DC2018-05-0016 *AL*

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

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

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

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

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

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

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

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

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

WHEREAS, on 08 March 2018, the PEM Board-approved amendments to the WESM Market Manual on Dispute Resolution were submitted to the DOE for final approval, in compliance with Chapter 8 of the WESM Rules;

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

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

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

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

“7.3.8 Interim and Emergency Relief

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

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

“7.3.9 Legal Representation

xxx xxx xxx”

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

“7.3.10 Cost of Dispute Resolution

xxx xxx xxx”

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

“7.3.11 Effect of Resolution

xxx xxx xxx”

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

“7.3.12 Recording and Publication

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

"7.3.13 Limitation of Liability

xxx xxx xxx"

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

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

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

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

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

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

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

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

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

- (d) WESM Members; and

- (e) Intending WESM Members

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

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

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

- (e) Any dispute under or in relation to a contract between two or more persons or entities referred to in Clauses 3.1.1 (a) to (e) where the contract provides that the dispute resolution procedures under the WESM Rules are to apply to any dispute under or in relation to that contract with respect to the application of WESM Rules;

- (f) A dispute under or in relation to the rules and regulations issued by the ERC and DOE under the Act, where such rules and regulations provide that the dispute resolution procedures under the WESM Rules are to apply to any dispute under or in relation to those rules and regulations; or

(g) Any dispute relating to or in connection with a transaction in the WESM.”

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

“6.2.4 WESM ADR Support Service Centers

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

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

(e) Section 7.1.1 under Disputes between WESM Members and the System Operator and the Market Operator is amended to read as –

“7.1.1 When a dispute regarding one of the matters described in this Manual arises between and/or among WESM Members including the System Operator and Market Operator, the parties must go through the following steps:

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(d) Should the parties decide to dispense with mediation and, provided that there has been a determination by the DRA within ninety (90) calendar days from receipt of the dispute that the same is a WESM dispute under Section 2.1(oo) of this Manual, directly proceed to arbitration, the parties may elect to do so subject to the issuance by the *Dispute Resolution Administrator* of a certification stating that mediation is no longer a viable option for the parties.”

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

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

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

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

“8.4.1 To properly refer a dispute to the *Dispute Resolution Administrator* and trigger the procedures established in this Manual, a party must file a written

notice of dispute with the *Dispute Resolution Administrator* by way of a Request for Mediation (RM), in such form as the *Dispute Resolution Administrator* may prescribe. The party filing the RM shall be known as the Claimant/s and shall furnish copies of such notice to all parties involved in the dispute that the party is aware of. The notice shall describe:

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(b) A brief history of the dispute including:

- (i) The nature and time of the dispute;
- (ii) The specific WESM transaction(s) which is/are the subject(s) of the dispute;

xxx xxx xxx”

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

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

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

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

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

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

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

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

“8.5.6 The parties involved shall then choose the mediator by alternately striking off one name at a time from the list with the last name on the list

becoming the mediator. The party which initiated the complaint shall have the right to strike off first from the list.

If the parties fail to select a mediator after five (5) business days from receipt of the list of nominees or within the meeting convened for the purpose, whether conducted in-person or remotely via electronic or similar medium, the *Dispute Resolution Administrator* shall select and appoint the mediator, which selection and appointment are binding and final among the parties.”

(m) New Section 8.5.7 under Mediation is added to read as –

“8.5.7 The Mediator shall, upon his appointment, sign a statement of acceptance, impartiality, independence and agreement to devote as much time and attention to the mediation as the circumstances require in order to achieve the objective of a speedy, effective and fair resolution of the dispute. The Mediator shall disclose in writing to the DRA and to the parties any facts or circumstances which might be of such a nature as to call into question the mediator’s independence as well as any circumstances that could give rise to reasonable doubts as to the mediator’s impartiality.”

(n) New Section 8.5.8 under Mediation is added to read as –

“8.5.8 Appointment of ADR Support Service Center (ASSC)

The *Dispute Resolution Administrator* shall appoint the ASSC who shall assist the mediator in facilitating the mediation proceedings. The ASSC which shall provide administrative support in the case shall be selected on rotation basis among the WESM-accredited ASSCs.

Once the ASSC has been appointed, the *Dispute Resolution Administrator* Secretariat shall turnover to the ASSC the files of the case, and the handling of the account opened for the particular mediation case.”

(o) Original Section 8.5.7 (Fees and Cost) and its sub-sections under Mediation are renumbered and amended accordingly to read as –

“8.5.9 Fees and Cost

8.5.9.1 The party or parties filing a RM shall pay an advance on mediation fees and costs, as set out in the Annex D hereto. No RM shall be processed unless accompanied by the requisite advance. Such advance will be refunded if the *Dispute Resolution Administrator* determines that the RM does not raise a WESM dispute within thirty (30) calendar days from the issuance of the determination.

8.5.9.2 If the *Dispute Resolution Administrator* has determined that the RM raises a WESM dispute, the DRA Secretariat or the ASSC shall request the parties to pay within five (5) business days a deposit in an amount likely to cover the administrative expenses of the Secretariat and the fees and expenses of the Mediator for the Mediation proceedings, as set out in the

Annex C hereto. The Mediation proceedings shall not proceed until payment of such deposit has been received by the Secretariat.

8.5.9.3 In any case where the *Dispute Resolution Administrator* considers that the deposit is not likely to cover the total administrative costs of the Mediation proceedings, the amount of such deposit may be subject to adjustment and/or readjustment. The parties shall be notified in writing by the *Dispute Resolution Administrator* of such determination and the reasons therefor. The *Dispute Resolution Administrator* may stay the Mediation proceedings until the corresponding payments are made by the parties.

8.5.9.4 Upon termination of the Mediation proceedings, the Secretariat shall prepare and render an accounting of the total costs of the proceedings and shall, as the case may be, refund to the parties for any excess payment or bill the parties any balance required pursuant to this Manual.

8.5.9.5 All above deposits and costs shall be borne in equal shares by the parties, unless they agree otherwise in writing. However, any party may be free to, within the period stated in the request for payment of deposit, pay the unpaid balance of such deposits and costs should another party fail to pay its share.

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8.5.9.7 If any of the parties refuse or fail to pay its share of mediation fees and costs, the *Dispute Resolution Administrator* may direct the Market Operator to enforce the settlement of such payment, or request the PEM Board on behalf of the affected party to make a demand for payment, or both.

The *Dispute Resolution Administrator* may declare a failure of mediation in any event the required deposit is not paid."

- (p) Original Section 8.5.8 under Mediation is renumbered and amended accordingly to read as –

"8.5.10 The parties shall have thirty (30) calendar days within which to complete the mediation process, unless the time is extended by mutual agreement. The mediator shall propose and the parties shall agree on the mediation milestones and timetable."

- (q) Original Section 8.5.9 under Mediation is renumbered to read as –

"8.5.11 With the assistance of the mediator, the parties in dispute shall attempt in good faith to resolve their dispute following the procedures and timetable established by the mediator."

- (r) Original Section 8.5.10 under Mediation is renumbered to read as –

"8.5.12 To facilitate the mediation, the mediator may:

- (a) Require the parties to meet for face-to-face discussions, with or without the mediator;
- (b) Act as intermediary between the disputing parties; and/or
- (c) Require the disputing parties to submit written statement of issues and positions.”

(s) Original Section 8.5.11 under Mediation is renumbered to read as –

“8.5.13 If a settlement agreement has been reached by the parties to the dispute, the Mediator shall send within the next five (5) business days, a report of a settlement agreement being reached including, when appropriate, a summary of the settlement agreement to:

- (a) The DRA; and
- (b) The PEM Board.”

(t) Original Section 8.5.12 under Mediation is renumbered to read as –

“8.5.14 If after the meeting described in the previous section the parties are unable to resolve the dispute:

- (a) The parties and/or the Mediator shall sign a declaration that the mediation has failed and is terminated, and the mediator shall send a copy thereof to the DRA; and
- (b) The recommendation of the Mediator, and any statements made by any party in the mediation process, shall have no further force and effect, and shall not be admissible for any purpose, in the arbitration or any administrative or judicial proceeding.”

(u) Original Section 8.5.13 under Mediation is renumbered to read as –

“8.5.15 Upon the written declaration and transmittal thereof that the mediation has failed, the Mediator shall cause the destruction of all documents made in connection with the mediation process. Any statements made or documents submitted during the mediation process shall have no legal effect and shall not be admissible for any purpose, in arbitration, or any administrative or judicial proceeding.”

(v) Original Section 8.5.14 under Mediation is renumbered to read as –

“8.5.16 The agreement reached during a mediation process shall be binding and enforceable on each and all the parties in dispute. The resolution therein shall be considered as an obligation under WESM Rules and shall include, but not limited to:

- (a) any decision on settlement of payment; and/or
- (b) any provision as to specific performance by any of the parties.”

(w) Original Section 8.5.15 under Mediation is renumbered to read as –

“8.5.17 Failure to comply with the agreement reached during the mediation process shall be considered a breach.”

(x) Original Section 8.5.16 under Mediation is renumbered to read as –

“8.5.18 Neither the Mediator, nor the DRA and the members of its Secretariat shall be liable for any loss or damage suffered by a Participant or any other person as a consequence of any act or omission of those persons unless the Mediator, DRA and the members of its Secretariat acted with malice, manifest partiality, bad faith, gross incompetence or gross negligence.”

(y) Section 9.2.1.1 under Request for Arbitration is amended to read as –

“9.2.1.1 Subject to Section 7.1.1 (d) or 8.5.14, as the case may be, a party wishing to have recourse to arbitration under these Arbitration Rules shall submit its Request for Arbitration (RA) to the *Dispute Resolution Administrator*. The Secretariat shall notify the Claimant(s) and Respondent(s) of the receipt of the RA and the date of such receipt.”

(z) Section 9.2.1.3 under Request for Arbitration is amended to read as –

“9.2.1.3 The RA shall contain the following information:

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- (d) specific WESM transaction(s) that is/are the subject of the dispute;
- (e) a statement of the relief sought, together with the amounts of any quantified claims and, to the extent possible, an estimate of the monetary value of any other claims;

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(aa) Section 9.2.1.4 under Request for Arbitration is amended to read as –

“9.2.1.4 Together with the RA, the Claimant/s shall:

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- (b) make payment of an advance on arbitration fees and costs required by Annex E hereto (“Arbitration Costs and Fees”) in force on the date the RA is submitted.

In the event that the Claimant/s fail to comply with either of these requirements, the *Dispute Resolution Administrator* may fix a time limit within which the Claimant/s must comply, failing which, the file shall be closed without prejudice to the Claimant/s’s right to submit the same claims at a later date in another RA.”

(bb) Section 9.2.1.5 under Request for Arbitration is amended to read as –

"9.2.1.5 The Secretariat shall transmit a copy of the RA and the documents annexed thereto to the Respondent for its Answer to the Request once the Secretariat has sufficient copies of the Request and the required advance on arbitration fees and costs pursuant to Section 9.9.1."

- (cc) Section 9.2.2.1 under Answer to the Request: Counterclaims is amended to read as –

"9.2.2.1 Within fifteen (15) calendar days from the receipt of the RA from the Secretariat, the Respondent shall submit an Answer which shall contain the following information:

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- (dd) Section 9.2.2.6 under Answer to the Request: Counterclaims is amended to read as –

"9.2.2.6 The Claimant shall submit a Reply to any counterclaim within ten (10) calendar days from the date of receipt of the counterclaims communicated by the Secretariat. Prior to the transmission of the files of the case to the Arbitral Tribunal, the *Dispute Resolution Administrator* may grant the Claimant no more than one (1) extension of time for submitting the Reply."

- (ee) Section 9.5.2 under Challenge and Replacement of Arbitrators is amended to read as –

"For a challenge to be admissible, it must be submitted by a party either within ten (10) calendar days from receipt by that party of the notification of the appointment or confirmation of the arbitrator, or within ten (10) calendar days from the date when the party making the challenge was informed of the facts and circumstances on which the challenge is based if such date is subsequent to the receipt of such notification."

- (ff) New Section 9.6 under The WESM Arbitration Rules is added to read as –

"Appointment of ADR Support Service Center (ASSC)

Unless an ASSC has already been appointed for the case under Section 8.5.7, the *Dispute Resolution Administrator* shall appoint the ASSC who shall assist the Arbitral Tribunal in facilitating the arbitration proceedings. The ASSC which shall provide administrative support in the case shall be selected on rotation basis among the WESM-accredited ASSCs.

Once the ASSC has been appointed, the *Dispute Resolution Administrator* Secretariat shall turnover to the ASSC the files of the case who shall keep safe and secure custody of the same on behalf of the Arbitral Tribunal, and the handling of the deposit account opened for the purpose of the arbitration."

- (gg) Original Section 9.6 (The Arbitral Proceedings) and its sub-sections under the WESM Arbitration Rules is renumbered and amended to read as –

“9.7 The Arbitral Proceedings

9.7.1 Transmission of the File of the Dispute to the Arbitral Tribunal

The *Dispute Resolution Administrator* Secretariat or the ASSC, as the case may be, shall transmit the file of the arbitration to the Arbitral Tribunal as soon as it has been constituted, provided the advance on fees and costs requested at this stage has been paid.

9.7.2 Proof of Authority

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9.7.3 Place of Arbitration

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9.7.4 Rules Governing the Proceedings

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9.7.5 Applicable Rules of Law

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9.7.6 Conduct of the Arbitration

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9.7.7 Terms of Reference

9.7.7.1 As soon as it has received the file of the arbitration from the *Dispute Resolution Administrator* Secretariat or the ASSC, the Arbitral Tribunal shall draw up, on the basis of documents or in the presence of the parties and in the light of their most recent submissions, a document defining its Terms of Reference.

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- (g) particulars of the applicable procedural rules and, if such is the case, reference to the power conferred by the parties upon the Arbitral Tribunal in accordance with Section 9.7.5.3 to act as *amiable compositeur* (i.e., one having the power to depart from the strict application of rules of law and decide a dispute according to justice and fairness) or to decide *ex aequo et bono* (i.e., according to what is just and fair, or according to equity and good conscience).

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9.7.7.3 However, if any of the parties refuse to take part in drawing up of the Terms of Reference or to sign the same, it shall be submitted to the *Dispute*

Resolution Administrator for approval. When the Terms of Reference have been signed in accordance with Section 9.7.7.2 or approved by the *Dispute Resolution Administrator*, the arbitration shall proceed.

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9.7.8 Case Management Conference and Procedural Timetable

9.7.8.1 When drawing up the Terms of Reference or as soon as possible thereafter, the Arbitral Tribunal shall convene a case management conference to consult the parties on procedural measures that may be adopted pursuant to Section 9.7.6.2. Such measures may include one or more of the case management techniques described in Annex B hereto.

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9.7.9 Establishing the Facts of the Case

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9.7.10 Hearings

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9.7.12 Closing of the Proceedings and Date for Submission of Draft Awards

As soon as possible after the last hearing concerning matters to be decided in an award or the filing of the last authorized submissions concerning such matters, whichever is later, the Arbitral Tribunal shall:

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- (b) inform the Secretariat and the parties of the date by which it expects to submit its draft award to the *Dispute Resolution Administrator* Secretariat for scrutiny as to form and mathematical computations.

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- (hh) Original Section 9.7 (Documents and Other Information) and its sub-sections under The WESM Arbitration Rules are renumbered to read as –

“9.8 Documents and Other Information

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- (ii) Original Section 9.8 (Interim Measures; Awards) and its sub-sections under The WESM Arbitration Rules are renumbered and amended to read as –

“9.9 Interim Measures; Awards

9.9.1 Conservatory and Interim Measures

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9.9.2 Emergency Arbitrator

9.9.2.1 A party that needs urgent interim or conservatory measures that cannot await the constitution of an arbitral tribunal ("Emergency Measures") may make an application for such measures pursuant to the Emergency Arbitrator Rules in Annex C. Any such application shall be accepted only if it is received by the DRA Secretariat prior to the transmission of the file to the arbitral tribunal pursuant to Section 9.6.1 of the Manual and irrespective of whether the party making the application has already submitted its Request for Arbitration.

9.9.2.2 The emergency arbitrator's decision shall take the form of an order. The parties undertake to comply with any order made by the emergency arbitrator.

9.9.2.3 The emergency arbitrator's order shall not bind the arbitral tribunal with respect to any question, issue or dispute determined in the order. The arbitral tribunal may modify, terminate or annul the order or any modification thereto made by the emergency arbitrator.

9.9.2.4 The arbitral tribunal shall decide upon any party's requests or claims related to the emergency arbitrator proceedings, including the reallocation of the costs of such proceedings and any claims arising out of or in connection with the compliance or non-compliance with the order.

9.9.2.5 The Emergency Arbitrator Provisions are not intended to prevent any party from seeking urgent interim or conservatory measures from a competent judicial authority at any time prior to making an application for such measures, and in appropriate circumstances even thereafter, pursuant to the Rules. Any application for such measures from a competent judicial authority shall not be deemed to be an infringement or a waiver of Clause 7.3.1.1 of the WESM Rules. Any such application and any measures taken by the judicial authority must be notified without delay to the DRA Secretariat."

- (jj) Original Section 9.8.2 (Time Limit for the Final Award) and its sub-sections under Interim Measures; Awards are renumbered and amended accordingly to read as –

"9.9.3 Time Limit for the Final Award

9.9.3.1 The Arbitral Tribunal must render its final Award within six (6) months reckoned from the date of the last signature by the Arbitral Tribunal and the parties of the Terms of Reference or, in the case of application of Section 9.7.7.3, the date of the notification to the Arbitral Tribunal by the Secretariat of the approval of the Terms of Reference by the *Dispute Resolution Administrator*, whichever is later.

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9.9.4 Making of the Award

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9.9.5 Award by Consent

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9.9.6 Notification, Deposit and Enforceability of the Award

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9.9.7 Correction and Interpretation of the Award; Remission of Awards

9.9.7.1 On its own initiative, the Arbitral Tribunal may correct a clerical, computational or typographical error, or any errors of similar nature contained in an Award, provided such correction is submitted for approval to DRA within fifteen (15) calendar days of the date of such award.

9.9.7.2 Any application of a party for the correction of an error of the kind referred to in Section 9.8.6.1, or for the interpretation of an Award, must be made to the Secretariat within fifteen (15) calendar days of the receipt of the award by such party, in a number of copies as stated in Section 9.1.2.1. After transmittal of the application to the Arbitral Tribunal, the latter shall grant the other party time not exceeding fifteen (15) calendar days from the receipt of the application by that party, to submit any comments thereon. The Arbitral Tribunal shall submit its decision on the application in draft form to the DRA not later than thirty (30) calendar days following the expiration of the time limit for the receipt of any comments from the other party or within such other period as the DRA may decide.

9.9.7.3 A decision to correct or to interpret the award shall take the form of an addendum and shall constitute part of the Award. The provisions of Sections 9.9.4, 9.9.6 and 9.9.7 apply *mutatis mutandis*.

9.9.7.4 Where a competent authority remits an award to the Arbitral Tribunal, the provisions of Sections 9.9.4, 9.9.6 and 9.9.7 and this Section 9.9.7.4 shall apply *mutatis mutandis* to any addendum or Award made pursuant to the terms of such remission. The *Dispute Resolution Administrator* may take any steps as may be necessary to enable the Arbitral Tribunal to comply with the terms of such remission and may fix an advance payment to cover any additional fees and expenses of the Arbitral Tribunal and any additional Secretariat administrative expenses."

(kk) Original Section 9.9 (Costs and Payments) and its sub-sections under The WESM Arbitration Rules are renumbered and amended accordingly to read as –

9.10 Costs and Payments

9.10.1 Payment to Cover the Fees and Costs of the Arbitration

9.10.1.1 After receipt of the RA under Section 9.2.1.1, the Secretariat may request the Claimant/s to pay a provisional advance payment in an amount intended to cover the fees and costs of the arbitration until the Terms of Reference have been drawn up. Any provisional advance paid will be considered as a partial payment by the Claimant/s of any costs fixed pursuant to this Section 9.9.1.

The provisional advance to be paid by the Claimant/s shall be in accordance with the Schedule of Arbitration Fees and Costs as set forth in Annex E hereto.

9.10.1.2 As soon as practicable, the *Dispute Resolution Administrator* shall fix the advance payment on costs in an amount likely to cover the fees and expenses of the arbitrators and the Secretariat administrative expenses in accordance with the Schedule of Administrative Expenses and Arbitration Fees in effect as set forth in Annex E hereto for the claims which have been referred to it by the parties, unless any claims are made under Section 9.2.4 or 9.2.5 in which case Section 9.10.1.4 shall apply. The advance on costs fixed by the *Dispute Resolution Administrator* pursuant to this Section 9.10.1.2 shall be payable in equal shares by the Claimant/s and the Respondent/s.

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9.10.1.4 Where claims are made under Section 9.2.4 or 9.2.5, the *Dispute Resolution Administrator* shall fix one or more advance payments on costs that shall be payable by the parties as decided by the *Dispute Resolution Administrator*. Where the *Dispute Resolution Administrator* has previously fixed any advance payment on costs pursuant to this Section 9.10.1, any such advance shall be replaced by the advance(s) fixed pursuant to this Section 9.10.1.4, and the amount of any advance previously paid by any party will be considered as a partial payment by such party of its share of the advance(s) on costs as fixed by the *Dispute Resolution Administrator* pursuant to this Section 9.10.1.4.

9.10.1.5 The amount of any advance on costs fixed by the *Dispute Resolution Administrator* pursuant to this Section 9.9.1 may be subject to adjustment and/or readjustment at any time during the arbitration. In all cases, any party shall be free to pay any other party's share of any advance on costs should such other party fail to pay its share.

9.10.1.6 When a request for an advance on costs has not been complied with, and after consultation with the Arbitral Tribunal, the *Dispute Resolution Administrator* may direct the Arbitral Tribunal to suspend its work and set a time limit, which must not be less than fifteen (15) calendar days, on the expiry of which the relevant claims shall be considered as withdrawn. Should an affected party wish to object to this measure, it must make a request within the aforementioned period for the matter to be decided by the DRA. Such party shall not be prevented, on the ground of such withdrawal, from reintroducing the same claims at a later date in another proceeding.

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9.10.2 Decision as to the Costs of the Arbitration

9.10.2.1 The costs of the arbitration shall include the fees and expenses of the arbitrators and the Secretariat administrative expenses, in accordance with the scale in force at the time of the commencement of the arbitration, as well as the fees and expenses of any experts appointed by the Arbitral Tribunal and the reasonable legal and other costs incurred by the parties for the arbitration.

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9.10.2.5 In the event of the withdrawal of all claims or the termination of the arbitration before the rendering of a final Award, the *Dispute Resolution Administrator* shall fix the fees and expenses of the arbitrators and the Secretariat administrative expenses in accordance to the *Guidelines for the ASSC in the Conduct of their Duties in Respect of WESM Arbitration Proceedings*, taking into consideration the relevant stage of the arbitration and the work undertaken by the arbitrators and the Secretariat.”

- (II) Original Section 9.10 (Effect of Award) and its sub-sections under The WESM Arbitration Rules are renumbered to read as –

“9.11 Effect of Award

xxx xxx xxx”

- (mm) Original Section 9.11 (Enforcement) and its sub-sections under The WESM Arbitration Rules are renumbered and amended accordingly to read as –

“9.12 Enforcement

9.12.1 If any of the party refuses, upon receipt of Award rendered by the Arbitral Tribunal, to comply with a payment of compensation or costs, or to fully comply with the decision rendered by the Arbitral Tribunal, the *Dispute Resolution Administrator* may direct the *Market Operator* to enforce any settlement or judgment, or request the *PEM Board* on behalf of the affected party make a demand for payment, or both.”

- (nn) Original Section 9.12 (Recording and Publication) and its sub-sections under The WESM Arbitration Rules are renumbered and amended accordingly to read as –

“9.13 Recording and Publication

9.13.1 When the resolution of a dispute has been made by an Arbitral Tribunal, the chairperson of the Arbitral Tribunal shall, within the next five (5) calendar days, send a report with the details of the resolution to:

- (a) The *Dispute Resolution Administrator*;

- (b) The PEM Board;
- (c) The DOE;
- (d) The ERC; and
- (e) The Market Operator.”

(oo) Section 11.1.1 under Limitation of Liability is amended to read as –

“The arbitrators, any person appointed by the Arbitral Tribunal, the *Dispute Resolution Administrator* and its Secretariat, and the ASSC shall not be liable for any loss or damage suffered by a Participant or any other person as a consequence of any act or omission of those persons unless the arbitrators, any person appointed by the Arbitral Tribunal, the *Dispute Resolution Administrator* and its Secretariat, and the ASSC acted with malice, manifest partiality, bad faith, gross incompetence or gross negligence.”

(pp) Section 3 and its sub-sections under Annex A (ESTABLISHMENT OF DISPUTE MANAGEMENT PROTOCOL) is amended to read as –

“3. NOTICE OF DISPUTE

xxx xxx xxx

3.1 Protocols on sending a Notice of Dispute

xxx xxx xxx

- b. The Notice of Dispute must be signed by an officer who has the proper authority to prepare and sign a Notice of Dispute.

3.2 Protocols on receiving a Notice of Dispute

- a. An acknowledgement of receipt should be properly made by the DMP Focal Person within five (5) calendar days.
- b. The acknowledgement receipt shall be transmitted in accordance with the mode of transmittal depending on the order of preference of receipt mentioned in the other party's DMP.”

(qq) Section 4.1.2 under Annex A (ESTABLISHMENT OF DISPUTE MANAGEMENT PROTOCOL) is amended to read as –

“4.1.2 Time period for Information Request

There should be a response to the request within ten (10) calendar days of receipt of the request.”

(rr) Section 5.1 under Annex A (ESTABLISHMENT OF DISPUTE MANAGEMENT PROTOCOL) is amended to read as –

“5.1 Within fifteen (15) calendar days after the receipt of the Notice of Dispute, the parties must meet by agreement to determine the feasibility of voluntary and amicable settlement of the dispute.”

(ss) Section 5.3 under Annex A (ESTABLISHMENT OF DISPUTE MANAGEMENT PROTOCOL) is amended to read as –

“5.3 During the negotiation stage, the parties have forty five (45) calendar days from the Notice of Dispute to resolve the dispute by themselves. The parties may agree in writing to extend this 45-calendar day period.

Should there be failure of negotiation, either of the parties may file a Request for Mediation to the DRA.”

(tt) New Annex C (EMERGENCY ARBITRATOR RULES) is added to read as –

“ANNEX C

EMERGENCY ARBITRATOR RULES

Article 1 – Application for Emergency Measures

1. A party wishing to have recourse to an emergency arbitrator pursuant to Section 9.8.2 of the Manual shall submit its Application for Emergency Measures (the “Application”) to the DRA Secretariat.

2. The Application shall be supplied in a number of copies sufficient to provide one copy for each party, plus one for the emergency arbitrator, and one for the DRA Secretariat.

3. The Application shall contain the following information:

- a) the name in full, description, address and other contact details of each of the parties;
- b) the name in full, address and other contact details of any person(s) representing the applicant;
- c) a description of the circumstances giving rise to the Application and of the underlying dispute referred or to be referred to arbitration;
- d) a statement of the Emergency Measures sought;
- e) the reasons why the applicant needs urgent interim or conservatory measures that cannot await the constitution of an arbitral tribunal;
- f) any relevant agreements and, in particular, the arbitration agreement;
- g) any agreement as to the place of the arbitration, the applicable rules of law or the language of the arbitration;
- h) proof of payment of the amount referred to in Article 7(1) of this Annex; and
- i) any Request for Arbitration and any other submissions in connection with the underlying dispute, which have been filed with the DRA Secretariat by any of the parties to the emergency arbitrator proceedings prior to the making of the Application.

The Application may contain such other documents or information as the applicant considers appropriate or as may contribute to the efficient examination of the Application.

4. If and to the extent that the DRA considers, on the basis of the information contained in the Application, that the Emergency Arbitrator Provisions apply with reference to Sections 9.8.2.5 and 9.8.2.6 of the Manual, the DRA Secretariat shall transmit a copy of the Application and the documents annexed thereto to the responding party within two (2) working days. If and to the extent that the DRA considers otherwise, the DRA Secretariat shall inform the parties that the emergency arbitrator proceedings shall not take place with respect to some or all of the parties and shall transmit a copy of the Application to them for information within 48 hours.

5. The DRA shall terminate the emergency arbitrator proceedings if a Request for Arbitration has not been received by the DRA Secretariat from the applicant within ten (10) calendar days of the DRA Secretariat's receipt of the Application, unless the emergency arbitrator determines that a longer period of time is necessary.

Article 2 – Appointment of the Emergency Arbitrator; Transmission of the File

1. The DRA shall appoint an emergency arbitrator within as short a time as possible, normally within two (2) calendar days from the DRA Secretariat's receipt of the Application.

2. The emergency arbitrator shall come from the pool of WESM-accredited Arbitrators. Every month, two (2) WESM Arbitrators shall be assigned as stand-by emergency arbitrators, one primary and one alternate, subject to their indication of availability. If a dispute requiring emergency arbitration is filed within the period when the WESM Arbitrator is assigned, he/she will be automatically contacted to handle the case.

3. Upon receipt of the Application for Emergency Arbitration, the DRA Secretariat shall, within one (1) working day, contact the assigned WESM Arbitrator through telephone, electronic mail and courier to confirm their availability and commence their appointment as emergency arbitrator.

4. No emergency arbitrator shall be appointed after the file has been transmitted to the arbitral tribunal pursuant to Section 9.6.1 of the Manual. An emergency arbitrator appointed prior thereto shall retain the power to make an order within the time limit permitted by Article 6(4) of this Annex.

5. Once the emergency arbitrator has been appointed, the DRA Secretariat shall so notify the parties and shall transmit the file to the emergency arbitrator. Thereafter, all written communications from the parties shall be submitted directly to the emergency arbitrator with a copy to the other party and the DRA Secretariat. A copy of any written communications from the emergency arbitrator to the parties shall be submitted to the DRA Secretariat.

6. Every emergency arbitrator shall be and remain impartial and independent of the parties involved in the dispute.

7. Before being appointed, a prospective emergency arbitrator shall sign a statement of acceptance, availability, impartiality and independence. The DRA Secretariat shall provide a copy of such statement to the parties.

8. An emergency arbitrator shall not act as an arbitrator in any arbitration relating to the dispute that gave rise to the Application.

Article 3 – Challenge of an Emergency Arbitrator

1. A challenge against the emergency arbitrator must be made within three (3) calendar days from receipt by the party making the challenge of the notification of the appointment or from the date when that party was informed of the facts and circumstances on which the challenge is based if such date is subsequent to the receipt of such notification.

2. The challenge shall be decided by the DRA after the DRA Secretariat has afforded an opportunity for the emergency arbitrator and the other party or parties to provide comments in writing within five (5) working days.

Article 4 – Place of Emergency Arbitrator Proceedings

1. If the parties have agreed upon the place of the arbitration, such place shall be the place of the emergency arbitrator proceedings. In the absence of such agreement, the DRA shall fix the place of the emergency arbitrator proceedings, without prejudice to the determination of the place of the arbitration pursuant to Section 9.6.3 of the Manual.

2. Any meetings with the emergency arbitrator may be conducted through a meeting in person at any location the emergency arbitrator considers appropriate or by video conference, telephone or similar means of communication.

Article 5 – Proceedings

1. The emergency arbitrator shall establish a procedural timetable for the emergency arbitrator proceedings within as short a time as possible, normally within two (2) calendar days from the transmission of the file to the emergency arbitrator pursuant to Article 2(3) of this Annex.

2. The emergency arbitrator shall conduct the proceedings in the manner which the emergency arbitrator considers to be appropriate, taking into account the nature and the urgency of the Application. In all cases, the emergency arbitrator shall act fairly and impartially and ensure that each party has a reasonable opportunity to present its case.

Article 6 – Order

1. Pursuant to Section 9.8.2.2 of the Manual, the emergency arbitrator's decision shall take the form of an order (the "Order").

2. In the Order, the emergency arbitrator shall determine whether the Application is admissible pursuant to Section 9.8.2.1 of the Manual and whether the emergency arbitrator has jurisdiction to order Emergency Measures.

3. The Order shall be made in writing and shall state the reasons upon which it is based. It shall be dated and signed by the emergency arbitrator.

4. The Order shall be made no later than fifteen (15) calendar days from the date on which the file was transmitted to the emergency arbitrator pursuant to Article 2(3) of this Annex. The DRA may extend the time limit no more than fifteen (15) days and not more than one occasion pursuant to a reasoned request from the emergency arbitrator or on the DRA's own initiative if the DRA decides it is necessary to do so.

5. Within the time limit established pursuant to Article 6(4) of this Annex, the emergency arbitrator shall send the Order to the parties, with a copy to the DRA Secretariat, by any of the means of communication permitted by Section 9.1.2 of the Manual that the emergency arbitrator considers will ensure prompt receipt.

6. The Order shall cease to be binding on the parties upon:

- a) the DRA's termination of the emergency arbitrator proceedings pursuant to Article 1(6) of this Annex;
- b) the acceptance by the DRA of a challenge against the emergency arbitrator pursuant to Article 3 of this Annex;
- c) the arbitral tribunal's final award, unless the arbitral tribunal expressly decides otherwise; or
- d) the withdrawal of all claims or the termination of the arbitration before the rendering of a final award.

7. The emergency arbitrator may make the Order subject to such conditions as the emergency arbitrator thinks fit, including requiring the provision of appropriate security.

8. Upon a reasoned request by a party made prior to the transmission of the file to the arbitral tribunal pursuant to Section 9.6.1 of the Manual, the emergency arbitrator may modify, terminate or annul the Order.

Article 7 – Costs of the Emergency Arbitrator Proceedings

1. The applicant must pay an amount of PHP 250,000, consisting of PHP50,000 for the DRA Secretariat administrative expenses and PHP200,000 for the emergency arbitrator's fees and expenses. Notwithstanding Article 1(5) of this Annex, the Application shall not be notified to the other party/ies until the payment of PHP 250,000 is received by the DRA Secretariat.

2. The DRA may, at any time during the emergency arbitrator proceedings, decide to increase the emergency arbitrator's fees up to PhP 500,000 or the

DRA Secretariat administrative expenses up to PhP 125,000 taking into account, *inter alia*, the nature of the case and the nature and amount of work performed by the emergency arbitrator and the costs of the DRA Secretariat. If the party which submitted the Application fails to pay the increased costs within the time limit fixed by the DRA Secretariat, the Application shall be considered as withdrawn.

3. The emergency arbitrator's Order shall fix the costs of the emergency arbitrator proceedings and decide which of the parties shall bear them or in what proportion they shall be borne by the parties.

4. The costs of the emergency arbitrator proceedings include the DRA Secretariat administrative expenses, the emergency arbitrator's fees and expenses and the reasonable legal and other costs incurred by the parties for the emergency arbitrator proceedings.

5. In the event that the emergency arbitrator proceedings do not take place pursuant to Article 1(5) of this Annex or are otherwise terminated prior to the making of an Order, the DRA shall determine the amount to be reimbursed to the applicant, if any.

Article 8 – General Rule

1. The DRA shall have the power to decide, at the DRA's discretion, all matters relating to the administration of the emergency arbitrator proceedings not expressly provided for in this Annex.

2. In the DRA's absence or otherwise at the DRA's request, a member of the DRA Secretariat so designated by the DRA shall have the power to take decisions on behalf of the DRA. At least 24 hours prior to his/her leave of absence, the DRA shall specify in writing to the DRA Secretariat the powers, if any, he/she will be temporarily authorizing the DRA Secretariat to exercise on his/her behalf in, and for the duration of, his/her absence.

3. In all matters concerning emergency arbitrator proceedings not expressly provided for in this Annex, the DRA and the emergency arbitrator shall act in the spirit of the Rules and this Annex."

(uu) Original Annex C (SCHEDULE OF MEDIATION FEES AND COSTS) is renumbered and amended to read as –

"ANNEX D

SCHEDULE OF MEDIATION FEES AND COSTS

A. The party or parties filing a Request for Mediation shall include with the Request an advance of PHP 50,000 to cover the fees and costs of processing the Request for Mediation. No Request for Mediation shall be processed unless accompanied by the requisite payment. Such advance shall be credited to the Claimant's share of the advance on fees and costs.

B. The administrative expenses of the Secretariat for the Mediation proceedings shall be fixed at the DRA's discretion depending on the tasks carried out by the Secretariat. Such administrative expenses shall not exceed the maximum sum of PHP 150,000. However, the parties are not precluded from agreeing between/among them to disburse beyond the prescribed maximum amount if they or the circumstances of the dispute resolution proceedings so require.

xxx xxx xxx"

(vv) Original Annex D (ARBITRATION COSTS AND FEES) is renumbered and amended to read as –

"ANNEX E

ARBITRATION COSTS AND FEES

Article 1 – Advance on Costs

1. Each request to commence an arbitration pursuant to these Arbitration Rules must be accompanied by an advance to cover the costs of the initial stages of arbitration. Such payment shall be credited to the Claimant's portion of the advance on costs.

2. The provisional advance fixed by the Secretariat according to Section 9.9.1.1 9.10.1.1 of the Manual shall normally not exceed the amount obtained by adding together the Secretariat administrative expenses, the minimum of the fees (as set out in the scale hereinafter) based upon the amount of the claim and the expected reimbursable expenses of the Arbitral Tribunal incurred with respect to the drafting of the Terms of Reference. If such amount is not quantified, the provisional advance shall be fixed at the discretion of the *Dispute Resolution Administrator*. Payment by the Claimant shall be credited to its share of the advance on costs fixed by the *Dispute Resolution Administrator*.

xxx xxx xxx

10. As provided in Section 9.10.1.5 of the Manual, the advance on costs may be subject to adjustment and/or readjustment at any time during the arbitration, in particular to take into account fluctuations in the amount in dispute, changes in the amount of the estimated expenses of the arbitrator, or the evolving difficulty or complexity of arbitration proceedings.

xxx xxx xxx

Article 2 - Costs and Fees

1. Subject to Section 9.10.2.2 of the Manual, the *Dispute Resolution Administrator* shall fix the fees of the arbitrators in accordance with the scale hereinafter set out or, where the amount in dispute is not stated, the Arbitral Tribunal shall fix their fees in accordance with sub-clause 2 below.

2. In setting the arbitrators' fees in a situation where the amount in dispute is not stated, the Arbitral Tribunal shall take into consideration the diligence and efficiency of the arbitrators, the time spent, the rapidity of the proceedings, the complexity of the dispute and the timeliness of the submission of the draft award, so as to arrive at a figure within the limits specified or, in exceptional circumstances (Section 9.10.2.2 of the Manual), at a figure higher or lower than those limits.

xxx xxx xxx

4. The DRA shall fix the Secretariat administrative expenses of each arbitration in accordance with the scale hereinafter set out or, where the amount in dispute is not stated, at its discretion. This does not preclude the parties from agreeing between/among them to disburse beyond the administrative expenses prescribed in the scale, if they or the circumstances of the dispute resolution proceedings so require. Should the parties fail to agree, the Arbitral Tribunal is allowed to fix the administrative fees in the amount they deem fit, subject to the concurrence of the DRA.

xxx xxx xxx

7. If an arbitration terminates before the rendering of a final award, the *Dispute Resolution Administrator* shall fix the fees and expenses of the arbitrators and the Secretariat administrative expenses at its discretion, taking into account the stage attained by the arbitral proceedings and any other relevant circumstances.

xxx xxx xxx

9. In the case of an application under Section 9.9.7.2 of the Manual or of a remission pursuant to Section 9.9.7.4 of the Manual, the *Dispute Resolution Administrator* may fix an advance to cover additional fees and expenses of the Arbitral Tribunal and additional Secretariat administrative expenses and may make the transmission of such application to the Arbitral Tribunal subject to the prior cash payment in full to the Secretariat of such advance. The *Dispute Resolution Administrator* shall fix at its discretion the costs of the procedure following an application or a remission, which shall include any possible fees of the arbitrators and Secretariat administrative expenses.

10. When an arbitration is preceded by an attempt at amicable resolution pursuant to the WESM Dispute Resolution, one half of the Secretariat administrative expenses paid for such ADR proceedings shall be credited to the Secretariat administrative expenses of the arbitration.

xxx xxx xxx"

Article 3 – Schedule of Administrative Expenses and Arbitrator's Fees

1. The Scales Schedule of Administrative Expenses and Arbitrator's Fees set forth below shall be effective upon PEM Board's approval.

xxx xxx xxx

Schedule of Arbitrators' Fees

SUM IN DISPUTE (SID) (in PhP)	FEEES FOR 3 ARBITRATORS (in PhP)
UP TO 100M	500,000
OVER 100M - 200M	500,000 + 0.2% of SID in excess of 100M
OVER 200M -300M	700,000 + 0.2% of SID in excess of 200M
OVER 300M -400M	900,000 + 0.2% of SID in excess of 300M
OVER 400M - 500M	1,100,000 + 0.2% of SID in excess of 400M
OVER 500M - 1B	1,300,000 + 0.15% of SID in excess of 500M
OVER 1B - 2B	2,050,000 + 0.1% of SID in excess of 1B
OVER 2B - 5B	3,050,000 + 0.075% of SID in excess of 2B
OVER 5B - 10B	5,300,000 + 0.05% of SID in excess of 5B
OVER 10B	7,800,000 + 0.025% of SID in excess of 10B

Schedule of Administrative Costs

SUM IN DISPUTE (SID) (in PhP)	ADMINISTRATIVE COSTS (in PhP)
UP TO 100M	200,000
OVER 100M – 200M	200,000 + 0.12% of SID in excess of 100M
OVER 200M – 400M	320,000 + 0.08% of SID in excess of 200M
OVER 400M – 500M	480,000 + 0.04% of SID in excess of 400M

SUM IN DISPUTE (SID) (in PhP)	ADMINISTRATIVE COSTS (in PhP)
OVER 500M	520,000 + 0.02% of SID in excess of 500M

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(ww) Original Annex E (TREASURY SERVICES) is renumbered and amended to read as –

“ANNEX F

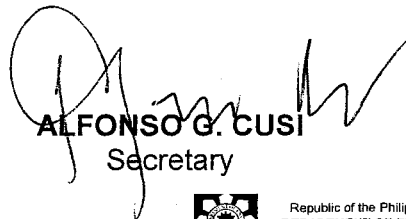
TREASURY SERVICES

xxx xxx xxx”

Section 3. 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 4. 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 ____ May 2018 at the DOE, Energy Center, Rizal Drive, Bonifacio Global City, Taguig City, Metro Manila.


ALFONSO G. CUSI
 Secretary



Republic of the Philippines
 DEPARTMENT OF ENERGY
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