

DRA-ANREP-2016

# Dispute Resolution Administrator 2016 Annual Report

January to December 2016

This report is prepared by the Philippine Electricity Market Corporation-Market Assessment Group for the Dispute Resolution Administrator

February 2017

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**A. 2016 ACCOMPLISHMENTS**

The Dispute Resolution Administrator (DRA) submits this Annual Report covering the activities undertaken and accomplished by the DRA for the year 2016. This report also presents the proposed activities of the DRA for 2017.

**1. Publication of the Updated List of Dispute Management Protocol Focal Persons and Alternates**

Pursuant to Section 8.2 of the Dispute Resolution Market Manual (DRMM), an updated list as of May 2016 of Dispute Management Protocol (DMP) Focal Persons and Alternates together with their respective contact information was published in the Market Information Website. The updated list was the result of the DRA's request posted in the Market Information Website on 02 February 2016 for all Market Participants to submit or update, as necessary, their designated DMP Focal Persons and Alternates who will serve as the first point of contact for the notification of WESM-related disputes.

**2. Attendance to the Seminar on the Role of Administrative Secretaries to the Arbitral Tribunal**

On 24 February 2016, the DRA served as one of the panelists in a seminar focused on the role of Administrative Secretaries to the Arbitral Tribunal jointly organized by the Philippine Institute of Arbitrators and the Hong Kong International Arbitration Centre. The seminar was attended by a number of WESM-accredited Mediators and Arbitrators to be better informed about the expectations from engaging Arbitral Tribunal Administrative Secretaries. The seminar likewise touched upon the potential issues that might come up in the performance of the Administrative Secretary's functions, such as specific tasks the Arbitral Tribunal could appropriately delegate to the former without influencing the arbitrators' own evaluation of the merits of the case.

The information gathered from this seminar served as inputs for the DRA's development of the *Guidelines for the Appointment, Duties and Remuneration of Administrative Secretaries to the Arbitral Tribunal* (see item #2 under On-going Activities).

### **3. Proposed Amendments to the WESM Rules and WESM Manuals on Dispute Resolution and Registration, Suspension and De-registration Criteria and Procedures**

The DRA introduced amendments to the WESM Rules and WESM Manuals on Dispute Resolution and Registration, Suspension and De-registration Criteria and Procedures in order to enhance and refine the dispute resolution process of the WESM and further clarify the kinds of disputes within its jurisdiction. Two proposals were submitted to the Rules Change Committee (RCC) on 29 July 2016, which are briefly described as follows:

*(a) Proposed Amendments to the WESM Rules and WESM Manuals on Dispute Resolution and Registration, Suspension and De-registration Criteria and Procedures regarding WESM Disputes*

Aims to:

- (i) remove the PEM Board as an impleadable entity in WESM Disputes under Clause 7.3.1.1 of the WESM Rules; and
- (ii) delete the disapproval of WESM Membership application as a subject matter of disputes cognizable under WESM Dispute Resolution Process.

*(b) Proposed Amendments to the WESM Rules and WESM Manual on Dispute Resolution regarding Dispute Resolution Process*

Aims to:

- (i) add provisions in the WESM Rules allowing for Emergency Arbitration and its procedures in the DRMM;
- (ii) revise the default schedule of arbitration fees under the applicable section in the DRMM;
- (iii) revise the default schedule of administrative costs under the applicable section in the DRMM; and
- (iv) reflect general revisions throughout various sections in the DRMM, for enhancement and clarity.

The above proposals were presented before the RCC on 03 August 2016 and, upon the RCC's approval, were published in the Market Information Website on 05 August 2016 to solicit comments from Market Participants and WESM stakeholders. Following a 30-working day commenting period from the date of publication, inputs were received from the DOE, SN Aboitiz Power and MERALCO to which the DRA provided responses to

assist the RCC in its deliberation. The RCC deliberated on the proposals on 05 October 2016 and thereafter approved both proposals as embodied in RCC Resolution No. 2016-12 – *Proposed Amendments to the WESM Rules and WESM Manuals on Dispute Resolution and Registration, Suspension and De-registration Criteria and Procedures*.

The RCC-approved proposed amendments were presented to the PEM Board on the 10<sup>th</sup> and 29<sup>th</sup> of November 2016, during which the proposals were approved, as submitted, for endorsement to the DOE except the matter regarding the proposed revised schedule of arbitration fees and administrative costs. The PEM Board remanded said portion of the proposal to the RCC for the latter to further discuss the reasonableness of the proposed increase (PEM Board Resolution 2016-40).

Noting the PEM Board's instructions, the RCC requested from the DRA a written documentation justifying the proposed revised arbitration fees and expenses. The DRA committed to submit said document along with other further proposed amendments related to the fees and costs of WESM Mediation and Arbitration within the 2<sup>nd</sup> Quarter of 2017.

## **B. ON-GOING ACTIVITIES**

### **1. Development of the Guidelines for Alternative Dispute Resolution (ADR) Support Service Centers for WESM Arbitration**

As provided in Section 6.1 of the DRMM, the administrative and logistical tasks required to facilitate WESM Mediation and Arbitration shall be outsourced to a WESM-accredited ADR Support Service Center (ASSC). Due to certain differences in the dispute resolution processes of the WESM from the usual mediation and arbitration processes facilitated by ADR institutions, guidelines were deemed necessary to aid the WESM-accredited ASSC in implementing the rules and procedures of WESM Mediation and Arbitration.

Initiated in late 2015, the development of the *Guidelines for ADR Support Service Centers for WESM Arbitration* ("Guideline") intends to provide the appointed ASSC with clear, practical and methodical instructions for providing support to the Arbitral Tribunal during WESM Arbitration. While the same was patterned after similar guides or practice notes from international ASSCs in Singapore and Hong Kong and the International Chamber of Commerce, certain procedures were revised to tailor-fit to the distinctive administrative and logistical demands of WESM Arbitration. The processes and procedures included in the Guideline are:

- (a) Selection and Appointment of Arbitrators
- (b) Advances and Deposits
- (c) Assistance to Financial Management of the Case
  - (i) Administrative Expenses
  - (ii) Arbitrators' Fees
  - (iii) Interim Payments to Arbitrators
  - (iv) Arbitral Tribunal's Expenses
- (d) Terms of Reference
- (e) Organizing Arbitral Proceedings
  - (i) Time and Place of Arbitration
  - (ii) Confidentiality of Information Relating to Arbitration
  - (iii) Exchange of Communication and Documents
  - (iv) Record of the Hearings
  - (v) Closing of Proceedings and Submission of Draft Awards

The Guideline is currently being drawn-up in conjunction with the drafting of the new proposed amendments to the DRMM relative to WESM Mediation and Arbitration Fees and Costs (see item #3 under On-going Activities), both of which will be carried-over activities in the DRA's Work Plan for 2017.

The counter-part *Guidelines for ADR Support Service Centers for WESM Mediation* will be included in the DRA's activities for 2017.

## **2. Development of the Guidelines on the Appointment, Duties and Remuneration of Administrative Secretaries to the Arbitral Tribunal**

With the consent of parties, Arbitral Tribunals may engage the services of Administrative Secretaries in order to [i] increase the efficiency of arbitration proceedings, [ii] for arbitrators to focus on deliberating on the merits of the case, and [iii] to render awards faster through the Administrative Secretary's performance of such administrative and/or non-substantive tasks as may be directed by the Tribunal related to the resolution of the case. The role of the Administrative Secretary should not be confused with the role of ASSCs, the latter being limited to the provision of organizational, logistical, and administrative needs, and for facilitating in an efficient manner the conduct of the arbitral proceedings.

So as to provide guidance to both the Arbitral Tribunal and Administrative Secretaries, and likewise for the information of parties, the DRA initiated the development of the *Guidelines on the Appointment, Duties and Remuneration of Administrative Secretaries to the Tribunal*, which sets out the policy and practice regarding the engagement of Administrative Secretaries.

The Guidelines is currently for finalization and will be a carried-over activity in the DRA's Work Plan for 2017.

### **3. Drafting of Proposed Amendments to the Dispute Resolution Market Manual relative to Fees and Costs of WESM Mediation and Arbitration**

Due to the framework of WESM Dispute Resolution that differs from typical mediation and arbitration facilitated by ADR Support Service Centers, certain procedures specifically related to the financial phase of the mediation and arbitration were found to be in need of further clarification and amendments to be more suitable within the context of the WESM. The development of procedures related to the proper determination of the WESM Mediator's fees, as well as the receipt and handling of fees and costs for both WESM Mediation and Arbitration was therefore undertaken. The procedures being developed would supplement Annexes C and D of the DRMM.

The new set proposed amendments to the DRMM is intended to be submitted to the RCC within the 2<sup>nd</sup> Quarter of 2017.

## **C. 2017 WORK PLAN**

The Annex provides the details of the DRA's program of activities for 2017.

## **D. THE DISPUTE RESOLUTION ADMINISTRATOR (DRA)**

The DRA is tasked to facilitate the resolution of disputes between or among the parties in accordance with the dispute resolution process approved for the Wholesale Electricity Spot Market (WESM) and the Retail Competition and Open Access (RCOA). The alternative dispute resolution is a process which follows the stages of negotiation, mediation and arbitration.

**Atty. Jesusito G. Morallos**, Senior Partner from Follosco Morallos and Herce Law Offices was appointed by the PEM Board on 01 September 2011 as the Dispute Resolution Administrator for the WESM.

The Market Assessment Group (MAG) acts as the technical and administrative Secretariat of the DRA.

## **E. RESPONSIBILITIES**

The main role and responsibilities of the DRA as set out in the relevant Dispute Resolution Market Manuals, consistent with the requirements of the WESM, RCOA and the IMEM Rules, are as follows:

- A. Administer and ensure the effective implementation and operation of the dispute resolution provisions of the relevant Dispute Resolution Market Manuals;
- B. Determine preliminarily if a dispute is a dispute which falls under the dispute resolution process of the WESM, the RCOA or the IMEM;
- C. Draft and issue standard forms to help expedite the resolution of disputes;
- D. Facilitate the accreditation process of mediators and arbitrations;
- E. Update the list of Accredited Mediators and Arbitrators published in the Market Information Website;
- F. Maintain data, reports and other information regarding the development and results of the disputes referred to the DRA.

**Submitted by:**

Note: This signature has been redacted pursuant to PEMC's Documented Information Management Policy. The full version of the file is available with the DRA Secretariat of PEMC.

**Jesusito G. Morillos, C.E., J.D., MCI Arb**

Dispute Resolution Administrator

**ANNEX  
DRA 2017 WORK PLAN**

Item	Activity	Target	Deliverables	Status	Remarks
1	Development of the <i>Guidelines on the Appointment, Duties and Remuneration of Administrative Secretaries to the Arbitral Tribunal</i>	Mar-2017	procedural guidelines	on-going	carried-over activity from previous year
2	Publication of Updated Directory of DMP Focal Persons and Alternates	May-2017	publication of updated directory of DMP Focal Persons and Alternates		<ul style="list-style-type: none"> <li>• annual activity</li> </ul>
3	Submission of written justification for the Proposed Revision in the Schedule of WESM Arbitration Fees and Costs	May-2017	written documentation		<ul style="list-style-type: none"> <li>• as requested by the RCC</li> <li>• will be submitted in conjunction with new proposed amendments to the DRMM (item #4)</li> </ul>
4	Submission of Proposed Amendments to the WESM Manual on Dispute Resolution regarding WESM Mediation and Arbitration Fees and Costs	May-2017	proposed amendments	on-going	
5	Development of the <i>Guidelines for ADR Support Service Centers for WESM Arbitration</i>	Jun-17	procedural guidelines and flowcharts	on-going	carried-over activity from previous year

Item	Activity	Target	Deliverables	Status	Remarks
6	Development of the <i>Guidelines for ADR Support Service Centers for WESM Mediation</i>	Aug-2017	procedural guidelines and flowcharts	on-going	carried over activity from previous year
7	Exploration of a secure and cost-efficient electronic communication and files exchange platform for the use of WESM-accredited neutrals and multiple parties throughout the course of resolving a case	Sep-2017	matrix of options for possible files exchange platforms		
8	Acquisition of a roster/directory of case stenographers and their respective rates	Oct-2017	roster/directory of stenographers		
9	Research on literature of procedures for dispute avoidance for the Dispute Management Protocol Focal Persons	Nov-2017	informative/ facilitative materials		
10	Awareness campaign for the WESM Dispute Resolution Process among Market Participants	as necessary/ as scheduled	continuous update of FAQs in the Market website, seminar, lectures, etc.		

Item	Activity	Target	Deliverables	Status	Remarks
11	Dissemination of schedules of ADR-related programs, lectures or events organized by external strategic partners (i.e., PIArb, PDRCI, DOJ-OADR) for the continuing education of WESM-accredited Mediators/Arbitrators	as offered/ as scheduled	advisories/notifications/invitations to WESM Mediators/Arbitrators	regular activity	<ul style="list-style-type: none"> <li>• regular activity</li> <li>• subject to the schedule of relevant programs or events</li> </ul>
12	Facilitation of training for WESM-accredited Mediators/Arbitrators on the WESM, the Retail Market and the Reserve Market; update on changes WESM Dispute Resolution Process	as scheduled	training(s)/seminar(s)		subject to the availability of trainings offered
13	Submission of report(s) on dispute case(s)	monthly or as applicable	Dispute Report(s), as needed		