



Republic of the Philippines
DEPARTMENT OF ENERGY

DEPARTMENT CIRCULAR NO. DC2021-08-0026 *pr*

**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 the monitoring and assessment of suspected incidents of anti-competitive behavior.

WHEREAS, on 13 January 2017, the RCC during its 123rd RCC Meeting discussed the abovementioned proposals and thereafter approved the publication of the proposed amendments in the WESM market information 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 (127th RCC Meeting), 11 April 2017 (128th RCC Meeting), 19 May 2017 (129th RCC Meeting), 09 June 2017 (130th RCC Meeting), 07 July 2017 (131st RCC Meeting), and 10 August 2017 (132nd 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 with the 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 141st 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 143rd 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 3rd 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 were submitted to the DOE for final approval, in compliance with Chapter 8 of the WESM Rules;

WHEREAS, on 15, 17 and 24 January 2019, the DOE conducted various public consultations on the proposed amendments to solicit inputs and consider comments of stakeholders in the finalization of the amendments;

WHEREAS, on 14 March 2019, the DOE reverted the said proposal to PEMC to seek their recommendations on the comments received from the stakeholders during the public consultation process;

WHEREAS, on 07 June 2019, PEMC through the MSC, after due deliberation of the comments of the stakeholders, sent a letter to the DOE formally submitting their recommendations;

WHEREAS, on 27 August 2019, with respect to the comments of the stakeholders and the response of the MSC, the DOE conducted another public consultation on the revised proposal to ensure transparency and consistency with the objectives of the EPIRA and the WESM;

WHEREAS, on 06 September 2019, the DOE conducted meeting with the ERC and PEMC to deliberate the comments and recommendations received from the stakeholders;

WHEREAS, on 09 October 2019, the MSC sent a letter to the DOE, providing further comments and recommendations to the proposal;

WHEREAS, on 23 June 2020, the DOE issued Special Order SO2020-06-0020 creating a DOE Task Force (TF-IMO) to operationalize the transition to Independent Market Operator as provided for by Section 30 of the EPIRA;

WHEREAS, on 22 October 2020, upon recommendation of the TF-IMO, the DOE issued the Department Circular DC2020-10-0021 which provided for the creation of the *Compliance Committee* tasked to review investigation reports, recommend imposition of penalties if warranted and monitor compliance of WESM Trading Participants to the WESM Rules and Manuals;

NOW THEREFORE, after careful review of the PEM Board-approved proposal and the comments and recommendations received on the same, the DOE, pursuant to its authority under the EPIRA and the WESM Rules, 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 promulgated by the DOE through Department Circular No. DC2016-10-0014 are hereby amended:

- a. Original Clause 1.3.3 (Responsibilities of the System Operator) under Market Operator and System Operator is 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:

xxx xxx xxx

- (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 the Governance Arm 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:

- (a) Monitor activities conducted by *WESM Participants* in the spot market;
 - (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* generally, which reports shall be submitted to the *PEM Board*, the *DOE* and *ERC* upon completion.
 - (c) Propose amendments to the *WESM Rules* in accordance with Chapter 8 with a view to:
 - (i) Improve the efficiency and the effectiveness of the operation of the *WESM*; and
 - (ii) Enhance the prospects for the achievement of the *WESM* objectives.
 - (d) 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 may significantly result in 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 *Market Operator* and *Enforcement and Compliance Office* a written report with supporting data on the

significant event that occurred, immediately within the following trading day. Such report and data submitted shall also serve as compliance by the *Trading Participant* with its reporting obligation under Clause 7.2.2.2."

e. Clause 6.9.4.1 under Market Intervention Report is amended to read as –

"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*."

f. Clause 6.9.5.1 under Market Suspension is amended to read as –

"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 review the circumstances of that event and prepare a Market Suspension Report."

g. 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;
- (c) Other provisions on how disputes are to be resolved; and
- (d) The appointment of an *Enforcement and Compliance Office*, a *Dispute Resolution Administrator* and selection of mediators and arbitrators that shall form part of the arbitration panel.

h. Clause 7.2.1 (Compliance) under Enforcement is amended to read as –

“7.2.1 Compliance

7.2.1.1 The *PEM Board*, in consultation with the *Market Operator* and/or the *System Operator*, shall ensure that all *WESM Members* comply with the *WESM Rules* and *Market Manuals*, in accordance with this Clause 7.2. 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*, which include compliance monitoring and assessment and investigation and review, 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.”

i. Clause 7.2.2 (Breaches of the *WESM Rules* by *WESM Members*) and its Subclauses under Enforcement are 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 of a *WESM Member* with the *WESM Rules* or *Market Manuals* as specified in the *WESM Penalty Manual*, or in any provision of the *WESM Rules* or any *Market Manual* which are subject of sanctions or investigation under 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 means required by the latter, of any possible non-compliance with the *WESM Rules* or *Market Manuals* that it may have committed.”

j. Clauses 7.2.2.3 to 7.2.2.9 under (Breaches of the WESM Rules by WESM Members) are hereby deleted.

k. Clause 7.2.3 (Alleged Breaches of the WESM Rules by the Market Operator or System Operator) and its Subclauses under Enforcement are 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* or the *WESM Governance Committee* 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 probable *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 by the *Enforcement and Compliance Office* confirms the occurrence of a breach, and upon recommendation of the *Compliance Committee*, 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 rectify the breach, prevent its recurrence or mitigate its adverse impact to the WESM.

7.2.3.5 If the *breach* is not remedied or the remedial measures are not implemented in full or in part, the *PEM Board* may file a formal complaint with the ERC and DOE.

7.2.3.6 If the breach is of such a nature that payment of compensation to affected parties is required, the PEM Board on behalf of the affected party may make a demand for payment from the *System Operator* under the *WESM Rules* without prejudice to the fines and penalties that the ERC may impose.

7.2.3.7 Breach committed by the *Market Operator* shall be subject to applicable sanctions or penalties that may be imposed pursuant to the Market Operator Performance Standards promulgated by the DOE.

7.2.3.8 The results of the investigation by the *Enforcement and Compliance Office*, the recommendation of the *Compliance Committee* and 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 Subclauses under Enforcement are amended to read as –

“7.2.4 Enforcement Proceedings

7.2.4.1 The *Enforcement and Compliance Office* shall regularly monitor the activities of the *WESM Members* 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 *Governance Arm* 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 have 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 by the *Enforcement and Compliance Office*, penalties shall immediately be imposed by the *Enforcement and Compliance Office* on the concerned *WESM Member* through issuance of notice of specified penalty by the *PEMC* pursuant to Clause 7.2.5.2. Provided, however, that the *WESM Member* may file a request for reconsideration with the *Enforcement and Compliance Office*.

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

- (a) report of probable *breach* or request for investigation submitted to it by any *WESM Member*, the *Market Operator*, the *System Operator*, or any of the *WESM Governance Committees* or their members;
- (b) a directive from the *PEM Board*, *DOE* or *ERC*, specifically directing investigation for *breach* for possible imposition of sanctions under these *WESM Rules* or implementing *Market Manual*; or
- (c) *motu proprio* by the *Enforcement and Compliance Office*.

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 shall 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* an investigation report setting out its findings of fact relevant to the *breach*, 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:

- (a) review investigation reports submitted by the *Enforcement and Compliance Office* relative to the results of its investigation in accordance with Clause 7.2.4.3, and submit its review of such report, and corresponding recommendations and basis thereof, to the *PEM Board*; and
- (b) act on all appeals filed by the *WESM Member* on the *Enforcement and Compliance Office's* resolution on the *WESM Member's* request for reconsideration.

7.2.4.9 In carrying out its review, under Clause 7.2.4.8 (b), the *Compliance Committee* may recommend to the *PEM Board* to 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; 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. Provided, further, 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 issue a resolution affirming, modifying or reversing the recommendations of the *Compliance Committee*.

In case of conflict between the findings or assessment of the *Enforcement and Compliance Office* and that of the *Compliance Committee*, the *PEM Board* shall resolve the same and determine the appropriate enforcement action.

- 7.2.4.11 If the decision of the *PEM Board* is to penalize the *WESM Member*, the *Enforcement and Compliance Office*, shall issue a notice of penalty to the *WESM Member* in accordance with the *WESM Penalty Manual* adopted pursuant to Clause 7.2.5.5. Provided, however, that the *WESM Member* may file a request for reconsideration to the *PEM Board*.

Provided, further, that the decision or the resolution of the *PEM Board* shall be final and immediately executory, and is binding on the parties to the investigation upon the lapse of the period to file a request for reconsideration or upon issuance of the *PEM Board* resolution on the request for reconsideration by the *WESM Member*."

- m. Clause 7.2.5 (Sanctions) and its Subclauses under Enforcement are 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 assessment 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

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(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) Comply with the financial or non-financial penalties in accordance with the *WESM Penalty Manual* adopted pursuant to Clause 7.2.5.5;
- (ii) Implement 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 be 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 and assessment, the *Enforcement and Compliance Office*, the *Compliance Committee* or the *PEM Board*, depending on which stage of the process the measure is required to be carried out, 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 into 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 is of such a nature that payment of compensation to affected parties is required, the *Market Operator* on behalf of the affected party may make a demand for payment under the *WESM Rules* without prejudice to the sanctions and penalties that the *ERC* may impose.

7.2.5.5 A *WESM Penalty Manual* shall be adopted and promulgated by the *DOE* which shall specify the:

- (a) Acts or omissions constituting *breach* of the *WESM Rules* or *Market Manuals* for which penalties can be imposed;
- (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*; and

- (c) Procedures for and respective obligations of responsible persons or entities in implementing penalties.

The Market Surveillance *Committee* shall review the *WESM Penalty Manual* from time to time as may be necessary, and in consultation with the *Rules Change Committee*, *Compliance Committee* and the *PEM Board*, recommend changes thereto, provided, that changes on the same shall be subject to the approval of the DOE

- n. Clause 7.2.7 (Publication) and its Subclauses under Enforcement are amended to read as –

“7.2.7 Information Disclosure and Confidentiality

7.2.7.1 The *PEM Board* shall adopt guidelines and procedures for the 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 Copies of all investigation reports and related documents shall be submitted to the *DOE* and *ERC* within 15 days from the ratification of the *PEM Board* decision on said report. *The DOE and ERC* shall use such investigation reports and related documents for purposes of policy making and regulation and shall treat the same with utmost confidentiality pursuant to applicable laws and regulations.

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 Committees*.”

- o. Clause 7.2.8 (Appointment of an Enforcement and Compliance Officer) and its Subclauses under Enforcement are 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 Office Head* 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*."

- p. New Clause 7.2.10 (Exemption) and its Subclauses under Enforcement are added to read as –

"7.2.10 Exemption

All *WESM Member* shall be exempted from an investigation and imposition of sanctions for probable *breach* that are committed –

(a) Within the first one (1) month of membership in the *WESM* by said *WESM Member*; or

(b) Within the first one (1) month of the issuance of a new provision of the *WESM Rules* or a new *Market Manual*, or an amendment thereto, with respect to such new provisions, *Market Manual* or amendment, if non-compliance with the same amounts to a *breach*."

Notwithstanding, the DOE may issue a longer exemption period as it may deem necessary, to ensure the readiness of the *WESM Members* and in the implementation of a new policy or program that directly impacts the enforcement of the *WESM Rules* and its *Market Manuals*. For this purpose, the DOE shall issue an advisory to the *Governance Arm* providing such details of exemption as necessary.

- q. New Clause 7.2.11 (Limitation of Liability and Indemnification) and its Subclauses under Enforcement are added to read as –

"7.2.11 Limitation of Liability and Indemnification

7.2.11.1 Unless they acted with malice, manifest partiality, bad faith, gross incompetence or gross negligence, the members of the *PEM Board* and the *Compliance Committee*, and the staff of the *Enforcement and Compliance Office*, and the *PEMC President* shall not be made personally liable for any loss or damage incurred by a *WESM Member* 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.

7.2.11.2 Notwithstanding Clause 7.2.11.1, should any of the persons named in said Clause 7.2.11.1 be made liable for any amount for loss or damage suffered or incurred by any person or entity, the *PEMC* shall indemnify

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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, finally 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.”

- r. 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.”

- s. New term, “Compliance Committee”, is hereby added under Glossary in Chapter 11 –

“Compliance Committee. The committee created by the *PEM Board* pursuant to Clause 1.8.1.1 of the *WESM Rules* primarily tasked to review investigation reports, recommend imposition of penalties if warranted and monitor compliance of *WESM Members* to the *WESM Rules* and *Market Manuals*.”

- t. 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, whether financial or non-financial in nature, and/or take corrective actions, as a consequence of the *breach*.”

- u. 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, remedial measures and other corrective actions.”

- v. New term, “Enforcement and Compliance Office,” is hereby added under Glossary in Chapter 11 –

“Enforcement and Compliance Office. The unit created within PEMC pursuant to Clause 1.4.8, which is primarily responsible for the administration of the enforcement and compliance which shall include monitoring, assessment and investigation of the *WESM Members* in relation to their compliance with the *WESM Rules*.”

- w. New term, “Enforcement and Compliance Office Head,” is hereby added under Glossary in Chapter 11 –

"Enforcement and Compliance Office Head. This is the person appointed pursuant to the *WESM Rules* that will head the *Enforcement and Compliance Office*."

- x. Original Term, "Enforcement and Compliance Officer," under Glossary in Chapter 11 is hereby deleted –

- y. 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."

- z. New term, "Notice of Specified Penalty," is hereby added under Glossary in Chapter 11 –

"Notice of Specified Penalty. Notice issued to a *WESM Member* found in *breach* which directs the payment of a *financial penalty* and/or imposition of a *non-financial penalty* and/or additional *penalties*."

- aa. New term, "WESM Penalty Manual," is hereby added under Glossary in Chapter 11 –

"WESM Penalty Manual. The *Market Manual* that set outs the schedule of possible *breaches* and the corresponding penalties or sanctions that can be imposed, and the manner of carrying out such sanctions."

- bb. Original Appendix C (Appendices to Chapter 7) of the *WESM Rules* is hereby deleted –

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 *WESM Manual on Procedures for Changes to the WESM Rules, Retail Rules and Market Manuals Issue 3.0* 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, Retail*

Rules and Market Manuals, guidelines and issuances governing the WESM. The procedures described in this *Market Manual* shall be read and construed consistent 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*."

- 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 *Rules Change Committee* 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 *Rules Change Committee* through 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 *Market 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 (Assessment of Proposal) under Rules Change Committee is amended to read as –

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"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

(b) xxx

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 *Rules Change Committee*.

xxx xxx xxx

- (d) The written submissions may be provided through printed document, by electronic means or by facsimile, and directed to the *Rules Change 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 Head of the *WESM Governance Committee Secretariat* 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 Guidelines Governing the Constitution of the PEM Board Committees. The following provisions in the WESM Market Manual on Guidelines Governing the Constitution of the PEM Board Committees Issue 3.0 are hereby amended:

- a. Section 1.02 under Article I DEFINITION OF TERMS and its subsections are amended to read as -

"Section 1.02 The following terms and expressions shall have the meanings set forth below:

- (a) "Act" or "EPIRA" xxx
- (b) "Applicable Laws and Rules" xxx
- (c) "Compliance Committee" refers to one of the *WESM Governance Committees* formed to review investigation reports, recommend imposition of penalties if warranted and monitor compliance of WESM Trading Participants to the WESM Rules and Manuals;
- (d) "Dispute Resolution Administrator" xxx
- (e) "Dispute Resolution Group" xxx
- (f) "Dispute Resolution Panel" xxx
- (g) "Distribution Code" xxx
- (h) "Department of Energy" xxx
- (i) "Energy Regulatory Commission" xxx
- (j) "Government" xxx
- (k) "Grid Code" xxx
- (l) "Grid Management Committee" xxx
- (m) "Guidelines" xxx
- (n) "Market Information Website" xxx

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- (o) "Market Manuals" xxx
- (p) "Market Surveillance Committee" or "MSC" refers to one of the *WESM Governance Committees* tasked to monitor and report on the activities in the spot market in accordance with the *WESM Rules*.
- (q) "PEM Auditor" xxx
- (r) "PEM Audit Committee" or "PAC" refers to one of the *WESM Governance Committees* and headed by the PEM Auditor to perform duties in accordance with the *WESM Rules*.
- (s) "PEM Board" xxx
- (t) "Other PEM Board Committees" or "Other Board Committees" xxx
- (u) "Philippine Electricity Market Corporation" is the Governance Arm of the WESM and shall provide the policies and guidelines of the WESM contained in the Implementing Rules and Regulations of the Act, WESM Rules, and such other relevant laws, rules and regulations
- (v) "PEMC Charter" xxx
- (w) "Person" xxx
- (x) "Rules Change Committee" or "RCC" refers to one of the *WESM Governance Committees* to assist the *PEM Board* and the *Department of Energy* in relation to the revision and amendment of the *WESM Rules* and in formulation, revision and amendment of *Market Manuals*, procedures and guidelines.
- (y) "Sector" xxx
- (z) "Technical Committee" or "TC" refers to one of the *WESM Governance Committees* tasked to monitor and review technical matters under and in relation to the *WESM Rules*, the *Grid Code* and *Distribution Code*.
- (aa) "Wholesale Electricity Spot Market" or "WESM" xxx
- (bb) "WESM Governance Committees" refers to the working groups created by the PEM Board pursuant to Clause 1.4.6 of the *WESM Rules*."
- (cc) "WESM Member" xxx
- (dd) "WESM Rules" xxx

Section 4. Amendments to the WESM Market Manual on Dispute Resolution. The following provisions in the WESM Manual on Dispute Resolution 6.0 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 *Retail Rules*.”

c. Term, “PEM 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*.”

d. Term, “Board Selection Committee,” is added under Definitions of Section 2 (Definitions, Interpretation and Construction) 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 5. Amendments to the WESM Market Manual on Technical Committee.

The following provisions in the WESM Manual on Technical Committee Issue 2.0 are hereby amended:

a. Section 1.1.3 under Purpose is amended to read as –

“1.1.3. Establish the scope, guidelines and procedures in providing expert support to other *WESM Governance Committees*, *PEMC* or *WESM Members*,”

b. Section 1.3.3 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 other *WESM Governance Committees*;

xxx xxx xxx”

c. The following terms under Section 2.1 Definitions of Section 2 (Definitions, Interpretation and Construction) are hereby amended to read as –

“Market Manual” means a manual of specific procedures, systems and protocols for the implementation of the *WESM Rules* and *Retail Rules*.”

"Market Surveillance Committee (MSC) refers to the WESM Governance Committee appointed by the *PEM Board* to monitor and report on activities in the spot market in accordance with the WESM Rules."

d. The term PEM Committee under Section 2.1 Definitions 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*."

e. Section 3.1.3 under Responsibilities is amended to read as –

"3.1.3. Upon request, provide the *PEM Board* with recommendations on matters referred to the committee;

(a) Assist the *PEM Board*, *WESM Governance Committees* and *PEMC* with any request for technical review or study deemed to be under the expertise of the committee;

xxx xxx xxx"

f. Section 3.2 (Selection and Appointment) under The Technical Committee is amended to read as –

"3.2. SELECTION AND APPPOINTMENT

The selection and appointment of the *Technical Committee* members shall be in accordance with the *Guidelines Governing the Constitution of the WESM Governance and Board Committees*."

g. Section 4.3.2 under Procedures is amended to read as –

"4.3.2. Any request for technical review or study from *WESM Governance Committees*, *PEMC* or a *WESM Member* shall be submitted to the *Technical Committee*, addressed through the *Market Assessment Group*, using the prescribed Request Form (Annex A)."

Section 6. 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 7. Amendments to the WESM Market Manual on Market Surveillance, Compliance and Enforcement. The WESM Market Manual on Market Surveillance, Issue 1.0 and presented as "Annex B" to this Circular is hereby approved and adopted.

Section 9. 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.

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Section 10. Effectivity. This Circular shall take effect immediately following its complete publication in at least two (2) newspapers of general circulation and shall remain in effect until otherwise revoked. Copies thereof shall be filed with the University of the Philippines Law Center – Office of National Administrative Register (UPLC-ONAR).

Issued on _____ 2021 at the Energy Center, Rizal Drive, Bonifacio Global City, Taguig City.


ALFONSO G. CUSI
Secretary



JUL 30 2021

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PUBLIC

WESM Market Manual

Enforcement and Compliance Issue No. 1.0

Abstract	<p>This manual sets out the approach for enforcement of the obligations of <i>WESM Members</i> under the <i>WESM Rules</i>, the <i>Retail Rules</i> and its <i>Market Manuals</i>, and implements Section 7.2 of the <i>WESM Rules</i> and related provisions. It sets out specifically the guidelines and procedures for monitoring compliance by <i>WESM Members</i> with their obligations under the <i>WESM Rules</i>, the <i>Retail Rules</i> and its <i>Market Manuals</i>, and in the investigation and imposition of sanctions for <i>breach</i>. It also includes the corresponding authorities and responsibilities of the persons and entities involved in the enforcement processes of the WESM. This also sets out the obligations of WESM Compliance Officers designated pursuant to the <i>WESM Rules</i>.</p>
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Document WESM-ECM-001
Identity:
Issue No.: 1.0
Reason for Issue: New Manual
Approval Date:
Publication Date:
Effective Date:

Document Change History

Issue No.	Proponent	Date of Effectivity	Reason for Amendment
1.0	PEMC- Enforcement and Compliance Office		<p>New <i>Market Manual</i> that provides the guidelines and procedures for the implementation of the enforcement and compliance processes of the WESM and the corresponding provisions of the <i>WESM Rules</i> and <i>Retail Rules</i>.</p> <p><i>With the adoption of this Manual, the WESM Market Surveillance, Compliance and Enforcement Market Manual will likewise be amended to, among other things, excise all provisions relating to enforcement and compliance that are set out in this Manual.</i></p>

Document Approval

Issue No.	RCC Approval	RCC Resolution No.	PEM Board Approval	PEM Board Resolution No.
1.0				

Reference Documents

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

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SECTION 1 INTRODUCTION

1.1 PURPOSE

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

1.2 SCOPE OF APPLICATION

- 1.2.1 More specifically, the processes and actions set out in this Manual apply to the enforcement of the following Market Rules –

- a) the *Wholesale Electricity Spot Market Rules*, otherwise known as the *WESM Rules*, and its associated *Market Manuals*; and
- b) the *Retail Rules for the Integration of Retail Competition and Open Access in the Wholesale Electricity Spot Market*, otherwise known as the *Retail Rules*, and its associated *Market Manuals*.

For this purpose, they shall be collectively referred to as Market Rules in this Manual.

- 1.2.2 The processes set out in this Manual apply to all *WESM Members*, including *Trading Participants*, the *System Operator*, *Market Operator*, as well as, the service providers.
- 1.2.3 The investigation procedures set out in this Manual will also apply in cases where the *Enforcement and Compliance Office* is directed by the PEM Board, Department of Energy (DOE) or the Energy Regulatory Commission (ERC) to conduct investigations for subject matters and purposes involving *WESM Members* and their participation in the WESM, other than what is covered by this Manual and for which no procedures were prescribed.

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

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

2.2 REFERENCES

- 2.2.1 This Manual shall be read in conjunction with the *Market Rules*, including but not limited to the documents listed in the Reference Documents table of this Manual.

2.3 INTERPRETATION

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

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

- 3.1.1 Section 30 of Republic Act No. 9136 expressly provides that the *WESM Rules* shall specify the procedures for, among other things, the surveillance and assurance of compliance of the participants with the Market Rules. The formation of the market's governing body is likewise mandated to be included in the Market Rules as part of the procedures for administering the market.
- 3.1.2 These mandates are reiterated in the EPIRA Implementing Rules and Regulations, or the EPIRA-IRR. The EPIRA-IRR, Rule 9 similarly directs the inclusion in the *WESM Rules* of the procedures for assurance of compliance with the rules among market participants and the formation of a governing body.¹ The same Rule 9 likewise states that the Market Rules shall be formulated as to provide for adequate sanctions in cases of *breaches* of the *WESM Rules*.²
- 3.1.3 Pursuant to the legal mandate discussed above, the *WESM Rules* provide for the manner by which they are to be enforced, including particularly the imposition of sanctions for *breach* and the requirements and procedures before sanctions can be imposed.³ The *WESM Rules* likewise provide for the design and promulgation of a penalty scheme that will be applied in case of *breach*.⁴
- 3.1.4 The *WESM Rules* also expressly provide that *WESM Members*, upon having registered with the *Market Operator* as such, are bound by the *WESM Rules*.⁵
- 3.1.5 Meanwhile, the *Retail Rules* expressly provide that Chapter 1 of the *WESM Rules* shall apply with respect to the governance of the integration of retail competition in the *WESM*, the operations of the *Central Registration Body* and the participation and transactions in the *WESM* of *Suppliers* and *Contestable Customers*.⁶ It is also expressly provided that the enforcement of the *Retail Rules* shall also be in accordance with Chapter 7 of the *WESM Rules*.⁷

¹ EPIRA-IRR, Rule 9, Section 5 (c) (iii)

² EPIRA-IRR, Rule 9, Section 5 (b) (iv)

³ *WESM Rules*, Clause 1.8.1 and Section 7.2

⁴ *WESM Rules*, Clause 1.6.3

⁵ *WESM Rules*, Clause 2.2.2

⁶ *Retail Rules*, Clause 1.5.1

⁷ *Retail Rules*, Clause 1.7

3.2 ENFORCEMENT OF THE MARKET RULES

- 3.2.1 The *WESM Rules* establish a governance structure for the *WESM* which includes, among other things, a structure for carrying out enforcement and compliance functions. The establishment of such governance structure is pursuant to the EPIRA which, provides that the procedures for administering the market which are to be set out in the *WESM Rules* include the formation of a governing body.⁸
- 3.2.2 In line with this, the *WESM Rules* prescribe the respective mandates of the Philippine Electricity Market Board and the *Compliance Committee* in respect to enforcement and compliance. The *WESM Rules* also provide for the creation of an *Enforcement and Compliance Office* to assist the Board in carrying out its enforcement and compliance functions. The *Enforcement and Compliance Office* is a unit within the Philippine Electricity Market Corporation (PEMC).

3.3 SCOPE OF MARKET ENFORCEMENT AND SANCTIONS

- 3.3.1 The sanctions that may be imposed by authority of and the enforcement process prescribed in the *WESM Rules* are for *breaches* of the *Market Rules*. The specific approach to enforcement is described in more detail in Section 5 of this Manual.

3.4 ENFORCEMENT ACTIONS UNDER THE *WESM RULES*

- 3.4.1 *WESM Rules* Clause 1.8.1 provides that the Rules are to be enforceable in accordance with its Chapter 7.
- 3.4.2 In addition, however, the *Market Rules* also authorize the *Market Operator* to impose sanctions and penalties for some specific non-compliance or behavior. These specifically pertain to non-compliances with registration and membership requirements by *WESM Members*: defaults in payments and prudential requirements by Trading Participants, and to *breaches* and unethical acts by *Metering Services Providers*. More specifically –
- a) Non-compliances with the *WESM* registration requirements give ground for the *Market Operator* to take punitive action, and the sanctions that can be imposed include suspension or deregistration of the *WESM Member* from the *WESM*.⁸

⁸ WESM Manual on Registration, Suspension and De-registration Criteria and Procedures

- b) Non-compliances pertaining to prudential requirements⁹ and to payments to the *Market Operator* are considered as events of default¹⁰ and similarly give grounds for the *Market Operator* to suspend or deregister the erring *WESM Member* from the WESM.
- c) *Breach* and unethical act or conduct by a *Metering Services Provider* also gives ground for deregistration of the erring *Metering Service Provider* by the *Market Operator*.¹¹ The *Market Operator* is also authorized under the *WESM Rules* to develop a process of penalties and sanctions for *Meter Services Provider* whose *meter data* is incorrect beyond reasonable limits.¹²

⁹ *WESM Rules* Section 3.15.5, 3.15.6 and 3.15.10 in relation to Section 3.15

¹⁰ *WESM Rules* Section 3.14.11

¹¹ *WESM Rules* Clauses 4.7.2 and 4.7.5

¹² *WESM Rules* Clauses 4.7.3, 4.7.4 and 4.7.5 and *Retail Rules* 4.1.3



SECTION 4 RESPONSIBILITIES

4.1 PHILIPPINE ELECTRICITY MARKET BOARD

- 4.1.1 Within the Market, the *PEM Board* shall have the primary authority and responsibility to enforce the *Market Rules*. In this respect, the *PEM Board* shall be responsible for deciding outcomes of investigations that are brought to it, particularly, authorizing the imposition of sanctions for *breach*, unless otherwise delegated, and directing the implementation of any remedial or mitigation measures, pursuant to the procedures set out in this Manual.
- 4.1.2 The *PEM Board* shall exercise its authority to enforce the rules in the manner set out in the *Market Rules*, and in the *WESM Penalty Manual*. It shall carry out this function in conjunction with the *Compliance Committee*, and the *Enforcement and Compliance Office*, which are by themselves granted specific authorities under the *Market Rules*, and the *WESM Penalty Manual*. As such, the *PEM Board* shall not exercise its authority in a manner as to limit the corresponding authority granted to the *Compliance Committee*, and the *Enforcement and Compliance Office*.
- 4.1.3 The *PEM Board* shall meet, deliberate, resolve and vote on the investigations for *breach*, particularly imposition of penalties, sanctions, and remedial measures based on the recommendations of the *Compliance Committee* and results of the investigations by the *Enforcement and Compliance Office*, and all matters pertaining to enforcement and compliance, in the same manner as it meets, deliberates, resolves and votes on matters submitted to or coming within its authority, unless such act of imposing penalties, sanctions and remedial measures is authorized to be carried out by the *Compliance Committee* or the *Enforcement and Compliance Office* under the *WESM Penalty Manual* or other relevant *Market Manuals*. It may, at its discretion, adopt its own internal procedures for handling of investigations and other enforcement-related matters referred to it.

4.2 COMPLIANCE COMMITTEE

- 4.2.1 Within the limits set out in this Manual and in addition to its functions as set out in the *Market Rules* and the *Compliance Committee Manual*, the *Compliance Committee* has the following authority and obligation in respect to enforcement of the *Market Rules*. Its enforcement authority includes the authority to:
- a) Review reports of investigations of breaches to 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;
- b) Review and monitor the compliance of the *Enforcement and Compliance Office* with the reportorial requirements pursuant to the WESM Rules, Market Manuals, and other applicable laws, rules, regulations, or issuances;
 - c) Review and monitor the compliance by the *Market Operator* and the *System Operator* with their obligations pursuant to the *WESM Rules* and *Market Manuals*, or any coordinating or operating agreements, or protocols which may be established governing the performance of their functions and obligations under the *WESM Rules* and *Market Manuals*.
 - d) Propose amendments to the WESM Rules or Market Manuals 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 or Market Manuals under Chapter 8; and
 - f) Recommend to the *PEM Board* the imposition of penalties for *breaches* other than those arising from and determined through the compliance monitoring and assessment by *Enforcement and Compliance Office*, and implementation of remedial measures as a consequence of such *breach*, based on outcomes of investigation carried out by the *Enforcement and Compliance Office*.

4.3 ENFORCEMENT AND COMPLIANCE OFFICE

4.3.1 The *Enforcement and Compliance Office* shall assist the *PEM Board* in the enforcement of the *Market Rules*, and shall have the following authority and responsibility –

- a) Administer the WESM enforcement processes, with authority and responsibility that includes, but is not limited to –
 - i. monitoring of compliance amongst *WESM Members*, and, based on the result of its own monitoring and assessment, imposing specified penalties therefor in accordance with the *Market Rules* and the *WESM Penalty Manual*;
 - ii. deciding on a request for reconsideration filed by any *WESM Member* of the findings or results of the compliance monitoring and assessment activities as may be authorized under the *Market Rules* and the *WESM Penalty Manual*;
 - iii. investigating *breach*, submitting the results of its investigations and making recommendations on sanctions and penalties, and remedial measures, as it deems appropriate based on the results of its investigations; and

iv. evaluating applications for exemptions and submitting recommendations on possible action on the application, and monitoring implementation of approved compliance plans.

- b) Require from *WESM Members*, the *Market Operator*, and the *System Operator* the submission of data, documents, and other forms of information that it needs in the course of its monitoring and investigation;
- c) Obtain data, documents, and other forms of information that it needs for its monitoring and investigations from persons, agencies, or entities other than those stated in the foregoing paragraph;
- d) Obtain expert advice or technical assistance, and other information from *WESM Governance Committees*, as it deems necessary, to aid in its investigation and monitoring;
- e) Prepare and issue notices, memoranda, and reports in respect of its own functions and authority; and
- f) Assist the *PEM Board* in enforcing approved penalties and sanctions, as well as in implementing *remedial measures*.

4.3.2 The *Enforcement and Compliance Office* shall exercise the foregoing authority and functions under the supervision and control of the *PEM Board*. Neither the *Compliance Committee* nor the Board shall, however, act in such a manner as to prevent, unreasonably delay, or exert undue influence over, the performance by the *Enforcement and Compliance Office* of its functions.

4.3.3 In addition to the foregoing functions, the *Enforcement and Compliance Office* shall also be responsible for:

- a) Continuously developing systems and procedures to deter *breaches* of the *Market Rules* and further evolve enforcement of penalties consistent with the objectives of the *WESM*;
- b) Implementing compliance activities intended to promote consultation and voluntary compliance, to deter *breaches* of the *Market Rules* by *WESM Members* and to further evolve enforcement of penalties consistent with the objectives of the *WESM*;
- c) Assisting the *Market Surveillance Committee* in designing penalty levels and in reviewing and recommending changes, as appropriate, to the *WESM Penalty Manual*;
- d) Serving as primary support unit of the Compliance Committee;
- e) Keeping the *PEM Board* informed on compliance-related matters;
- f) Notifying the *ERC* and the *DOE* of investigations on and confirmed *breaches* by *WESM Members*;
- g) Undertaking other compliance-related activities directed by the *PEM Board*;

- h) Receiving and managing all compliance-related communications such as reports, notices, self-reports, requests for investigations, reports of probable *breach* and complaints;
- i) Maintaining a compliance database in accordance with this Manual, publishing information in the market information website, and disseminating information to various parties;
- j) Performing all other actions required of it under this *Manual*; and
- k) Overall, providing secretariat and technical support to the *PEM Board* in matters pertaining to investigations, and other enforcement and compliance matters.

4.4 PEMC PRESIDENT

4.4.1 The PEMC President shall have the following functions in respect to enforcement and compliance in the market –

- a) Appoint the *Enforcement and Compliance Office* staff;
- b) Exercise administrative supervision over the *Enforcement and Compliance Office* and its performance of the duties and responsibilities under this Manual; and
- c) Issue notices and receive notices or authorize receiving of notices required in this Manual to be issued by or to the *Market Operator* in accordance with internal business processes of PEMC.

4.5 MARKET ASSESSMENT GROUP

4.5.1 The Market Assessment Group shall –

- a) Make available to the *Enforcement and Compliance Office*, the *Compliance Committee*, and the *PEM Board* its market assessment and monitoring reports and data as well as other market and dispatch data and reports received by it in the course of performing its market monitoring functions; and
- b) Provide technical assistance or expertise, if so requested, in relation to any investigation or enforcement action being undertaken.

4.6 WESM GOVERNANCE COMMITTEES

4.6.1 Any of the WESM Governance Committees or any of their members shall, if called upon or requested -

- a) Provide technical expertise or assistance in relation to any investigation or enforcement action being undertaken; and

- b) Provide or make available its reports, data or information that can aid in any investigation or compliance monitoring being undertaken.

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

4.7 MARKET OPERATOR

4.7.1 The *Market Operator* shall –

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

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

4.8 SYSTEM OPERATOR

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

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

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

4.9 WESM MEMBERS

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

SECTION 5 WESM ENFORCEMENT PROCEEDINGS AND ACTIONS**5.1 DEFINITION OF BREACH**

- 5.1.1 A non-compliance with the *Market Rules* is categorized as a *breach* if it is of such nature that its occurrence can cause adverse impact on or threaten the efficiency of the scheduling and dispatch processes of the WESM and the ability of the WESM to meet its objectives. In these cases, ensuring the efficiency of the WESM and prevention of any adverse impact to either the market or the power system is more important.
- 5.1.2 More specifically, the non-compliances that are categorized as *breaches* covered by *enforcement* under this Manual are as follows –
- a) Non-compliances with the *Market Rules* which are specified as *breach* in and are subject of sanctions under the *WESM Penalty Manual*; ¹³ and
 - b) Non-compliances with provisions of the *Market Rules* which are expressly provided as subject to sanctions under said provisions of the *Market Rules* although they may not be specifically listed in the *WESM Penalty Manual*.
- 5.1.3 Any *enforcement action* taken under this Manual does not imply enforcement of the Philippine Grid Code, the Philippine Distribution Code, other rules and regulations which likewise govern or regulate the WESM or the *WESM Members*, and therefore does not prejudice and is likewise not prejudiced by the taking of any action authorized under such codes, rules and regulations. This is notwithstanding that such codes, rules and regulations also impose sanctions on the same acts or omissions that constitute a *breach* of the *Market Rules* or *Market Manuals* as defined above.

5.2 ENFORCEMENT PROCEEDINGS

- 5.2.1 WESM *enforcement proceedings* refer to the activities or processes that are carried out to establish and determine the occurrence of *breach* and the corresponding *enforcement action* that will be carried out as a consequence of the *breach*. These include the processes for compliance monitoring and assessment, investigation for *breach* and imposition of *enforcement actions*. The timeline and the entities responsible and/or accountable for the *enforcement proceedings* are summarized in Appendices I and II of this Manual.

¹³ See *WESM Penalty Manual*.

- 5.2.2 **Compliance monitoring and assessment**, as described in this Manual, is an integral part of *enforcement proceedings* in the WESM. Compliance monitoring under this Manual shall be carried out by the *Enforcement and Compliance Office* and shall be primarily for the purpose of determining the occurrence of *breach* of the *Market Rules*. Assessment is done by taking into consideration all the relevant and verified market data and information from the *Market Operator*, the *System Operator*, the *WESM Members*, among others, with the end in view of determining the appropriate *enforcement actions*, if warranted. The compliance monitoring and assessment carried out for other purposes, such as for measuring performance standards or for audit compliance or for market assessment and surveillance, is not covered or restricted by this Manual.
- 5.2.3 **Investigations for breach committed by WESM Members** may be initiated by the *Enforcement and Compliance Office*, from a *notice of probable breach* by the *Market Operator* or the *System Operator*, or by *request for investigation* from other *WESM Members* or *WESM Governance Committees*. Investigation may also be initiated from the directive of the *PEM Board*, *DOE* or *ERC*. This is carried out by the *Enforcement and Compliance Office* which shall afford the party being investigated sufficient opportunities to respond to the investigation. Investigation reports of the *Enforcement and Compliance Office* are reviewed by the *Compliance Committee*. The results of the investigation, as reviewed, are then submitted to the *PEM Board*, which has the authority to impose sanctions and penalties, and to require that remedial measures be carried out.
- 5.2.4 **Investigation of the Market Operator and the System Operator.** The investigation of the *Market Operator* and the *System Operator* by the *Enforcement and Compliance Office* shall be in accordance with the relevant provisions of the *Enforcement and Compliance Manual*. The *PEM Board*, as it may deem necessary, may thereafter file a formal complaint with the *ERC* and the *DOE*.
- 5.2.5 **Imposition of specified penalties** by the *Enforcement and Compliance Office*, as may be authorized by the *Market Rules* and the *WESM Penalty Manual*, is carried out if a breach is determined after the concerned *WESM Member* is afforded adequate opportunities to respond to the initial finding of probable breach. This is imposed upon finding of breach as a result of compliance monitoring and assessment, as initiated by the *Enforcement and Compliance Office*.
- 5.2.6 **Imposition of sanctions and penalties** by the *PEM Board* is carried out in the accordance with the *WESM Penalty Manual* and is based on the recommendations of the *Compliance Committee*. The latter submits recommendations based on its findings of facts on an investigation which, in turn,

is based on its review of the results of the investigations by the *Enforcement and Compliance Office*. The investigations referred to herein are those initiated in accordance with Section 7.3.1 of this Manual.

- 5.2.7 **Imposition of Penalties on the Market Operator and the System Operator.** The penalty for breach of the *Market Rules* by the *Market Operator* or the *System Operator* shall be determined and imposed by the Energy Regulatory Commission based on the results of the investigation by the *Enforcement and Compliance Office* and the formal complaint of the PEM Board.
- 5.2.8 **Implementation of remedial measures** can be prescribed by the *Enforcement and Compliance Office* or the *Compliance Committee* as provisional measures while an investigation for *breach* is ongoing. Final remedial measures are determined and imposed by the *PEM Board* based on the outcomes of an investigation.

5.3 ENFORCEMENT ACTIONS FOR BREACH

- 5.3.1 **Enforcement actions** are the actions that can be authorized to be done as consequences of a *breach*. These include the imposition of sanctions and penalties or requiring implementation of remedial measures. In appropriate cases, filing of a complaint or petition to initiate regulatory action may also be authorized.
- 5.3.2 **Financial and non-financial penalties.** The financial and non-financial penalties that can be imposed for *breaches* covered by this Manual are those set out in the *WESM Penalty Manual*.
- 5.3.3 **Remedial measures.** To ensure continuing compliance, to prevent recurrence of *breach*, or to prevent or mitigate adverse impact on the market or the power system, it may be necessary to require a *WESM Member* to take remedial measures. Such measures may be required to be implemented before, during and after an investigation. The remedial measures that can be imposed shall be determined on a case by case basis, and may be directed by either the *Enforcement and Compliance Office*, the *Compliance Committee* or the *PEM Board*, depending on which stage of the process the measure is required to be carried out.
- 5.3.4 **Initiation of regulatory action.** In cases of *breach* by the *System Operator* or the *Market Operator*, the *PEM Board* may initiate a complaint with the *ERC* and *DOE* if either party fails to rectify the *breach* or the *breach* is incapable of rectification.

SECTION 6 PROCEDURES FOR COMPLIANCE MONITORING AND ASSESSMENT

6.1 GUIDING PRINCIPLES

- 6.1.1 The *Enforcement and Compliance Office* shall regularly monitor compliance by *WESM Members* with the *Market Rules* to determine if an act or omission that may constitute probable *breach* covered by this Manual may have been committed. The monitoring shall cover all *WESM Members* and all categories of *breach* described in Section 5.1 as covered by the *enforcement* process set out in this Manual.
- 6.1.2 The *Enforcement and Compliance Office* shall carry out compliance monitoring and assessment by examining readily available and verifiable market and dispatch data and reports and such other information it can obtain from the *DOE* and the *ERC* and their attached agencies or offices, and other government agencies with jurisdiction over the *WESM Member* or its operations.
- 6.1.3 The *Enforcement and Compliance Office* shall, for this purpose, establish a detailed process or procedure of compliance monitoring and assessment and prescribe a reply format or template that may be accomplished by the *WESM Member* as part of the monitoring process. In developing the procedure, the *Enforcement and Compliance Office* shall ensure that the right of the *WESM Member* to due process shall be protected by giving them adequate time and opportunity to respond to any allegations of probable *breach* of the *Market Rules*, and to be informed of the results of the compliance monitoring and assessment.
- 6.1.4 If, as a result of its compliance monitoring and assessment, and after taking into account all the market data and information cited in Section 6.4.1, the reasons provided by the concerned *WESM Member* and all the supporting documents submitted in relation thereto under Section 6.3.2, the *Enforcement and Compliance Office* determines that there is a *breach* committed by a *WESM Member*, and shall issue the *Notice of Specified Penalty* through the PEMC President in accordance with the *WESM Penalty Manual*. Where remedial measures are required, it shall cause the implementation of the same in accordance with Section 7.1.5.
- 6.1.5 A *WESM Member* may seek a reconsideration or appeal of the findings contained in the compliance monitoring and assessment report in accordance with the procedures and subject to the requirements provided in the *WESM Penalty Manual*.

6.2 FLAGGING OF PROBABLE BREACH

- 6.2.1 The *Enforcement and Compliance Office* shall conduct the daily initial compliance monitoring of the breach of the *Market Rules*. The notice of non-compliance will be sent to the concerned *WESM Members* through their respective *WESM Compliance Officers* on a daily basis or in such frequency as may hereafter be set by the *WESM Rules* or other *Market Manuals*.
- 6.2.2 The flagging or the notification of the probable breach can be implemented or satisfied through a system that automatically checks for non-conformance.

6.3 SUBMISSION OF REPLY AND SUPPORTING DOCUMENTS

- 6.3.1 The *WESM Member* shall have three (3) business days from receipt of the non-compliance notice or flagging of probable breach to respond thereto.
- 6.3.2 The explanations of the *WESM Member* shall be accompanied by supporting documents. If the information indicated in the reply is/are incomplete or not supported by appropriate and relevant supporting documents, the *Enforcement and Compliance Office* shall immediately coordinate with the contact person or authorized representatives of the concerned trading participants to address the lack of information or supporting documents.
- 6.3.3 If the *WESM Member* fails or refuses to submit or provide to the *Enforcement and Compliance Office* any information in its possession or known to it during the compliance monitoring, the *Enforcement and Compliance Office* shall proceed with the assessment of compliances as set forth in the succeeding section based solely on the available data or information.

6.4 VALIDATION AND ASSESSMENT

- 6.4.1 The *Enforcement and Compliance Office* shall, on a daily basis, conduct validation, verification, and assessment of the compliances by the *WESM Member* by taking into account the submissions of the *WESM Members*, the data and information provided by or obtained from the *Market Operator*, the *System Operator*, and other agencies or entities, as may be applicable.
- 6.4.2 The *Enforcement and Compliance Office* may, from time to time, require the *WESM Member* to submit additional documents or information to clarify the reasons or explanations provided by the latter.
- 6.4.3 The *Enforcement and Compliance Office* shall complete its validation and assessment of a specific billing or monitoring period by the 15th of the month

following the month subject of the monitoring unless a different period of monitoring and assessment is hereafter set by the *Market Manuals* or due to unforeseen events or incidents which are beyond the control of the *Enforcement and Compliance Office*.

- 6.4.4 The *Enforcement and Compliance Office* shall maintain a compliance database that contain all the files and documents used in relation to its monitoring and assessment activity.

6.5 ISSUANCE OF REPORT

- 6.5.1 The *Enforcement and Compliance Office* shall, based on the available market data at the time of the assessment, prepare the compliance monitoring and assessment report which shall:

- a) contain or provide, among others, a finding whether the concerned *WESM Member* is compliant with the *Market Rules*;
- b) contain or provide the penalty amounts, if any, as a result of the finding of breach;
- c) cover one billing month unless a different period or duration is set by other *Market Manuals*;
- d) be issued to the concerned *WESM Member* with respect to each facility or plant that is subject of monitoring, as applicable; and
- e) be issued not later than the 15th day of the month following the month subject of the monitoring. For instance, the monitoring covers the September billing month, the report shall be issued not later than 15 October.

- 6.5.2 If there is a finding of breach by the *Enforcement and Compliance Office* based on its validation and assessment, the report shall likewise be accompanied by a *Notice of Specified Penalty*. The service of *Notice of the Specified Penalty* and the effect thereof, including the collection of penalties, are provided in the *WESM Penalty Manual*.

6.6 RECONSIDERATION AND/OR APPEAL

- 6.6.1 The filing of Request for Reconsideration or Appeal, the grounds, formal requirements, and resolution or decision thereon are set forth in the *WESM Penalty Manual*.

6.7 ISSUANCE OF NOTICE OF SPECIFIED PENALTY

- 6.7.1 The *Notice of Penalty* shall be issued by the *Enforcement and Compliance Office* through PEMC President in accordance with the *WESM Penalty Manual*.

SECTION 7 PROCEDURES FOR INVESTIGATION AND REVIEW**7.1 GUIDING PRINCIPLES**

- 7.1.1 Investigations under this Manual refer to investigations which emanate from the request for investigations or notice of probable breach filed by the *Market Operator*, the *System Operator*, or other *WESM Members*. These do not include any monitoring activities initiated by the *Enforcement and Compliance* itself which are already being dealt with under the preceding Section of this Manual.
- 7.1.2 Notwithstanding the provision of Sections 5.2.3 and 7.1.1, the *Enforcement and Compliance Office* may, *motu proprio*, initiate investigation if it has reasonable grounds to believe that a particular act or omission by any *WESM Member*, *Market Operator*, or *System Operator* constitutes a probable breach of the *Market Rules*, and which is not otherwise included or covered by the compliance monitoring activities referred to in Chapter 6 of this Manual.
- 7.1.3 The investigations under this Manual are inquisitorial and the proceedings are summary in nature and are not carried out in an adversarial manner. For this purpose, the *Enforcement and Compliance Office* has the authority to obtain information and technical or expert advice from various sources, including but not limited to the *Market Operator*, *System Operator*, the various *WESM Governance Committees*, and other entities and agencies to aid in its investigation. This authority notwithstanding, it is the responsibility of the party being investigated to ensure that all information in its possession are made available for the investigation. If the party investigated fails to present or provide to the *Enforcement and Compliance Office* any information in its possession or known to it during the formal investigation, such party is deemed to have waived the presentation of such information and the same may not thereafter serve as basis for review of the results of the investigation of the *Enforcement and Compliance Office*.
- 7.1.4 An investigation shall be carried out in a manner that ensures that all parties concerned are given the opportunity to be heard. This requirement shall be fulfilled by strict compliance with the procedures set out in this Manual.
- 7.1.5 Sanctions or penalties may be imposed and remedial measures may be implemented after an investigation or upon finding of a probable breach as a result of the compliance monitoring and assessment carried out by the *Enforcement and Compliance Office* in accordance with this Manual.

- 7.1.6 No dispute resolution proceeding may be initiated upon the results of an investigation, including the findings of fact, the determination of whether a *breach* has been committed, and the sanctions, penalties and remedial measures imposed, and any and all actions taken by the *Enforcement and Compliance Office*, , *Compliance Committee*, and *PEM Board* in respect to an investigation.
- 7.1.7 Investigations shall be initiated within two (2) years from occurrence of the act or omission constituting the probable *breach*. For example, investigation of an event occurring on 01 January 2014 shall be initiated not later than 01 January 2016 which is the end of the two-year period.
- 7.1.8 Unless the *PEM Board* authorizes a longer period, the *Enforcement and Compliance Office* shall complete an investigation of a case and submit its investigation report as set out in Section 7.7 not later than twenty-four (24) months from the issuance of the *notice investigation*. The *PEM Board*, at its discretion and on written request by the *Enforcement and Compliance Office*, may allow a longer period for an investigation to be completed if it is satisfied that the right of the parties investigated to due process will be prejudiced if a longer period is not allowed. Where a case is remanded pursuant to Section 7.10 and, for this reason, the *Enforcement and Compliance Office* is unable to complete the investigation within the twenty-four-month period, the *PEM Board* shall, upon request of the latter, allow a longer period for the investigation to be completed.

7.2 INITIATION OF INVESTIGATION

- 7.2.1 An investigation is initiated upon the endorsement to the *Enforcement and Compliance Office* of a report of probable breach or a *request for investigation* on the WESM Member that is subject of the investigation or upon a directive from the *PEM Board*, the *DOE* or *ERC*. The related procedures on investigation, such as, issuance of notice of investigation, submission by the parties, conduct of ocular inspections, and implementation of the decisions, set forth in Sections 7.3 to 7.12 of this Manual shall apply.
- 7.2.2 A *notice of investigation* shall be issued upon either one of the following –
- A *report of probable breach* submitted by the *System Operator* or the *Market Operator*; or
 - A *request for investigation* submitted by any *WESM Governance Committee* or any *WESM Member*; or
 - A directive from the *PEM Board*, *DOE* or *ERC* specifically directing investigation for *breach* for possible imposition of sanctions under the *WESM Rules* or the *WESM Penalty Manual*; or

- d) Initiation of investigation by the *Enforcement and Compliance Office* in accordance with Section 7.1.2 of this Manual.

7.2.3 If the *Market Operator* or the *System Operator* monitors the occurrence of probable *breach* by a *WESM Member*, it may submit to the *Enforcement and Compliance Office* a *report of probable breach*. This shall be in writing and shall clearly specify, at the minimum, –

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

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

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

7.2.5 A *request for investigation* or *report of probable breach* may cover more than one occurrence of the same type of *breach*. Where the acts or omission constituting the probable *breach* occurs several times over one *WESM* billing period, the *report of probable breach* or *request for investigation* shall, to the extent practicable, cover all occurrences for at least one billing period. Submission shall be made within such period as to allow the *Enforcement and Compliance Office* reasonable period within which to initiate an investigation within the two-year period prescribed in Section 7.1.7. In any case, no investigation can be initiated two (2) years after the occurrence of the act or omission regardless that the *request for investigation* or the *report for probable breach* was submitted before the lapse of the two-year period.

- 7.2.6 Immediately upon receipt of the *report of probable breach* or *request for investigation*, the *Enforcement and Compliance Office* shall determine whether the specific acts or omissions referred to are already covered in a formal investigation it has or intends to initiate as a result of its compliance monitoring under Section 6.2. If so included, it shall notify the party submitting the *report of probable breach* or *request for investigation* that an investigation has been or will be initiated and that no separate investigation shall thus be initiated.
- 7.2.7 If the *request for investigation* or *report of probable breach* is not covered by a formal investigation initiated or intended to be initiated, the *Enforcement and Compliance Office* shall verify if the same substantially contains the information required in Section 7.2.4 or 7.2.5. If not, it shall return the same to the requesting party which shall then rectify the identified shortcomings and submit a new *request for investigation* or *report of probable breach* no later than five (5) business days from receipt of the notice from the *Enforcement and Compliance Office*. If no revision is received within the five-day period, the matter shall be deemed abandoned and no investigation shall be initiated upon such request or report.
- 7.2.8 If the *Enforcement and Compliance Office* determines that the *request for investigation* or *report of probable breach* is complete, it shall immediately initiate a formal investigation in accordance with this *Manual*. The *Enforcement and Compliance Office* shall not unreasonably withhold confirmation or delay any action required in this paragraph.
- 7.2.9 Where the conduct of an investigation is directed by the *PEM Board*, *DOE* or *ERC*, the *Enforcement and Compliance Office* shall initiate formal investigation in accordance with this *Manual* no later than ten (10) working days from receipt of the order, resolution, decision or any such other document containing the directive, unless a different period is directed.
- 7.2.10 The directive from the *PEM Board*, *DOE* or *ERC* to conduct an investigation will be carried out in accordance with this *Manual* only if the directive clearly specifies that the investigation is for the purpose of a possible imposition by the *PEM Board* of sanctions and penalties pursuant to the *WESM Penalty Manual* or the *WESM Rules*. Where the investigation directed is not for such purpose or is for fact-finding purposes only, the investigation shall be carried out in accordance with the directive. In such case, the procedures set out in this *Manual* shall only have suppletory effect.
- 7.2.11 Where the *Enforcement and Compliance Office* is uncertain as to whether or not the *PEM Board*, *DOE* or *ERC* directive is clearly for the conduct of an

investigation under this Manual, it shall seek clarification of the same and the period stated in Section 7.2.8 shall be reckoned from the date that the clarification has been received by *Enforcement and Compliance Office*.

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

7.3 NOTICE OF INVESTIGATION

- 7.3.1 The *Preliminary Notice of Investigation* shall be issued to and served on the *WESM Member* that will be investigated within five (5) business days from receipt of the endorsement of request for investigation or directive from the *PEM Board*, *DOE* or *ERC*, as the case may be, and shall clearly state, at the minimum, the following –
- a) type of *breach* alleged to have been committed and the provision of the *Market Rules* alleged to have been *breached*;
 - b) acts or omission constituting the possible *breach*;
 - c) generation or customer facility or resource involved; and
 - d) time or trading interval and the trading day when the possible *breach* occurred.
- 7.3.2 If the investigation is initiated upon a *report of probable breach*, *request for investigation* or *PEM Board*, *DOE* or *ERC* directive, but is already covered or is being covered by the compliance monitoring by the *Enforcement and Compliance Office*, the *notice of investigation*, in addition to the requirement set in the immediately preceding paragraph, shall also state the market and dispatch data and report which served as bases for the initiation of the investigation and upon which a verification of the contents of the notice can be made.
- 7.3.3 If the investigation is initiated upon a *report of probable breach*, *request for investigation* or *PEM Board*, *DOE* or *ERC* directive, copies of the same shall be attached to the *notice of investigation*.

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

7.4 SUBMISSION BY PARTIES

- 7.4.1 The *WESM Member* being investigated shall submit its reply to the investigation within ten (10) working days from receipt of the *notice of investigation*.
- 7.4.2 The reply shall clearly state the party's explanations and the relevant data, records and other documents to support the explanations. To ensure completeness of the reply, the *Enforcement and Compliance Office* may prescribe a reply format or template. Copies of all supporting data, records and other documents duly certified by the custodian of such data, records or documents shall be submitted with the reply.
- 7.4.3 The *WESM Member* being investigated may submit additional or supplemental reply, data, documents or records to the *Enforcement and Compliance Office* at any time before completion of investigation as referred to Section 7.7 of this Manual.
- 7.4.4 If the investigation was initiated upon a *request for investigation*, the party that submitted the *request for investigation* may submit additional information to the *Enforcement and Compliance Office*, with copies furnished to the *WESM Member* being investigated, within ten (10) working days from its receipt of the copy of the *notice of investigation*.
- 7.4.5 The *Enforcement and Compliance Office* may, at its discretion, request for the submission of additional explanations, data, records, or other documents from the party investigated or the party that requested the investigation. The request shall be issued in writing and shall state the period within which the same should be submitted which shall not be less than five (5) working days from receipt of the request. The party so directed shall comply with any request for additional submission.
- 7.4.6 The party that fails to submit its reply and/or any additional submission within the periods stated is deemed to have waived its right to submit its reply or additional submission.
- 7.4.7 If the investigation was initiated upon a *request for investigation*, copies of all submissions by the parties shall be furnished to the party that submitted the



request for investigation or the *WESM Member* being investigated, as applicable. The responsibility to furnish copies shall be that of the party making the submission.

7.5 CONFERENCES AND OCULAR INSPECTIONS

- 7.5.1 Conferences and ocular inspections of facilities involved in the investigation may be conducted upon discretion of the *Enforcement and Compliance Office* through appropriate notice to the party or upon request of the party being investigated. Said notice or request shall specify the desired date and time of the activity.

7.6 REQUEST FOR INFORMATION AND TECHNICAL ADVICE

- 7.6.1 For the purpose of obtaining comprehensive information to aid in its investigation, the *Enforcement and Compliance Office* has the authority to –
- a) Request information from the *System Operator*, the *Market Operator*, or other *WESM Members*, regardless that they are not parties to the investigation;
 - b) Request from the *Market Assessment Group* any information that may be in its possession as a result of the exercise of its monitoring and assessment functions; and
 - c) Request information or data from the *DOE*, the *ERC*, and other government agencies that have jurisdiction over the *WESM Member* or the *WESM*.
- 7.6.2 The *Enforcement and Compliance Office* may also request the *Market Operator* or the *System Operator*, or any *WESM Governance Committee* other than the *Compliance Committee*, to provide technical or expert advice on any issues that is subject of or relevant to an investigation.

7.7 COMPLETION OF FORMAL INVESTIGATION

- 7.7.1 The formal investigation shall be completed not later than one hundred fifty (150) business days from the receipt of the request for investigation as endorsed by the requesting party.
- 7.7.2 An *investigation report* shall be issued on or before the end of the period referred to in the preceding paragraph. It shall clearly set out the following –
- d) Summary of preliminary matters and procedures carried out in the investigation, from the initiation of the investigation to the completion of the formal investigation;

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

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

7.7.4 The investigation report and its annexes shall be submitted by the *Enforcement and Compliance Office* to the *Compliance Committee* by serving copies of the same to each committee member.

7.8 REVIEW OF INVESTIGATION

7.8.1 The *Compliance Committee* shall review all investigation reports submitted by the *Enforcement and Compliance Office* on its next scheduled meeting after the receipt of the investigation report. The review report of the *Compliance Committee* shall be submitted to the *PEM Board* together with the investigation report of the *Enforcement and Compliance Office* within thirty (30) business days upon receipt of the investigation report.

7.8.2 The review report of the *Compliance Committee* shall clearly state whether it agrees or disagrees with the investigation report of the *Enforcement and Compliance Office* and the basis therefor. The *Compliance Committee* may likewise recommend to the *PEM Board* that the case be remanded to the *Enforcement and Compliance Office* for further investigations.

7.9 DECISION

- 7.9.1 The *PEM Board* shall, within thirty (30) working days from receipt of the review report of the *Compliance Committee*, render a decision approving, disapproving or modifying the sanctions, remedial measures, and other recommendations or remanding the case to the *Enforcement and Compliance Office* for further investigation.
- 7.9.2 The copy of the *PEM Board* decision on the investigation, accompanied by a copy of the Investigation Report of the *Enforcement and Compliance Office*, and the Review Report of the *Compliance Committee*, upon which the decision is based, shall be provided to the concerned trading participant or the party being investigated.

7.10 REMAND OF CASES

- 7.10.1 If a case is remanded to the *Enforcement and Compliance Office* by the *PEM Board*, it shall rectify the identified shortcomings or carry out further investigation and revise its investigation report accordingly, in accordance with the procedures set out in this Section.
- 7.10.2 Within five (5) working days from receipt of the notice of the remand, the *Enforcement and Compliance Office* shall notify the party investigated of the remand and the reasons therefor. If the investigation was initiated upon a *request for investigation* or a *notice of probable breach*, the parties that submitted the same shall likewise be notified of the remand.
- 7.10.3 The *Enforcement and Compliance Office*, as it deems appropriate, may conduct conferences and ocular inspections; require submission of market data and reports from the *Market Operator* or the *System Operator*, or the *Market Assessment Group*, or other *WESM Members*; request technical assistance from the *Market Assessment Group*, the *Market Operator*, the *System Operator* or any *WESM Governance Committee*; or require additional submissions from the party being investigated. These shall be carried out following the applicable procedures set out Sections in 7.4.5, 7.5.1, and 7.6.
- 7.10.4 The *Enforcement and Compliance Office* shall submit a revised investigation report to the *PEM Board* within thirty (30) business days from remand of the case. The revised investigation report shall clearly set out the procedures undertaken and the changes in the findings, assessment and recommendations.

7.11 REQUEST FOR RECONSIDERATION OF THE PEM BOARD DECISION

- 7.11.1 The filing of any request for reconsideration of the *PEM Board* Decision shall be governed by the relevant provisions of the *WESM Penalty Manual*.

7.12 NOTICE AND IMPLEMENTATION OF THE PEM BOARD DECISION

- 7.12.1 The decision or resolution of the *PEM Board* becomes final and executory, and is binding on the parties to the investigation –
- a. upon the lapse of the period within which to file a request for reconsideration as set forth in the *WESM Penalty Manual*, and no request for reconsideration was filed; or
 - b. upon issuance of the resolution on the Request for Reconsideration by the *PEM Board*.
- 7.12.2 Upon finality of the decision or resolution of the *PEM Board* Decision, the *PEM Board*, through its Corporate Secretary, shall immediately notify the *Enforcement and Compliance Office*, the *Compliance Committee* and the concerned parties of its decision or resolution. The Corporate Secretary of the *PEM Board* shall issue a certification of the relevant resolution or the excerpt of the minutes of the meeting of *PEM Board*.
- 7.12.3 The *Enforcement and Compliance Office* shall thereafter take the following actions –
- a) Issue a notice of penalty to the party investigated in accordance with the requirements provided in the *WESM Penalty Manual*.
 - b) Provide a copy of the notice to the Market Operator to cause the billing and collection of the amount due.
 - c) Where remedial measures are required, cause the implementation of the same in accordance with Section 7.14.
 - d) Notify the *Compliance Committee*, ERC, and DOE of the action taken on the investigation. The notification submitted shall serve as a compliance with the obligation of the *PEM Board* set out in *WESM Rules* Clause 1.4.5.1 (e).

7.13 INVESTIGATION OF THE *MARKET OPERATOR* AND THE *SYSTEM OPERATOR*

- 7.13.1 Any provision in this *Manual* to the contrary notwithstanding, the investigation of the *System Operator* or the *Market Operator* for probable *breach* of the *Market Rules* shall be carried out in accordance with Sections 7.3 to 7.10.
- 7.13.2 A *WESM Member* or the *WESM Governance Committee* that has reasonable grounds to believe that the *Market Operator* or the *System Operator* may be in *breach* of the *Market Rules* shall submit a notice to the *PEM Board* of the probable *breach*.
- 7.13.3 The notice shall be submitted within such period as to allow the *Enforcement and Compliance Office* reasonable period within which to initiate an investigation within the two-year period prescribed in Section 7.1.7. No investigation can be initiated two (2) years after occurrence of the act or omission regardless that the notice was submitted prior to the lapse of the two-year period.
- 7.13.4 The notice to be submitted to the *PEM Board* shall be in writing and shall clearly set out the –
- a) the specific provision of the *Market Rules* alleged to have been breached;
 - b) the specific acts or omissions constituting the possible *breach*; and
 - c) the periods, specifying if applicable the trading dates and trading intervals in which the act or omission occurred.
- 7.13.5 Upon receipt of the notice, the *PEM Board* shall verify if the same substantially contains the information required in the preceding section. If not, it shall return the same to the requesting party which shall then rectify the shortcomings and submit a new notice no later than five (5) working days from the receipt of the notice from the *PEM Board*. If no revision is received within the five-day period, the matter shall be deemed abandoned and no investigation shall be initiated upon such notice.
- 7.13.6 Upon determination by the *PEM Board* that the *Market Operator* or the *System Operator* may have committed a probable breach, it shall notify the *Enforcement and Compliance Office* to initiate an investigation.
- 7.13.7 The *Enforcement and Compliance Office* determines shall commence the investigation by issuing the *notice of investigation* to the *System Operator* or the *Market Operator*, as applicable. The *notice of investigation* shall be issued in the same manner as provided for in Section 7.3.



- 7.13.8 The *System Operator* or the *Market Operator* shall submit its reply within the same period and the same manner as provided for in Section 7.4.
- 7.13.9 The formal investigation shall be conducted by the *Enforcement and Compliance Office* in the same manner as set out in Sections 7.5 to 7.7, as these are applicable. After the *Enforcement and Compliance Office* completes its investigation, it shall prepare an investigation report clearly setting out the matters required in Sections 7.7.2 and 7.7.3, and submit the same to the *Compliance Committee* in accordance with Section 7.7.4.
- 7.13.10 The *Compliance Committee* shall review the investigation report submitted by the *Enforcement and Compliance Office* and submit its investigation review report to the *PEM Board* in accordance with Section 7.8.
- 7.13.11 Upon the results of the investigation, the *PEM Board* shall determine whether a *breach* has been committed. If it determines that a *breach* has been committed, it shall determine the remedial measures that should be carried out by the *System Operator* or the *Market Operator* to rectify the *breach*, prevent its recurrence or mitigate its impact. If it determines that no *breach* has been committed, it shall direct the closure of the investigation.
- 7.13.12 The copy of the decision of the *PEM Board* shall be provided to the concerned parties, and implemented in the same manner as that set out in Section 7.9.
- 7.13.13 If remedial measures are required to be implemented, the *Enforcement and Compliance Office*, the *Compliance Committee*, or the *PEM Board* shall cause the notification thereof to the concerned parties in accordance with Section 7.14. If the *breach* is not remedied or the remedial measures are not implemented in full or in part, the *PEM Board* may file a formal complaint to the *ERC* and the *DOE*.

7.14 REMEDIAL MEASURES

- 7.14.1 Remedial measures are tasks or actions that are required of a *WESM Member* being investigated or found in *breach* for the purpose of mitigating or preventing the adverse impact of *breach* or to prevent recurrence of the *breach*. They may be required when the act or omission subject of the investigation may –
- a) Negatively impact trading in the *WESM* and would likely prevent orderly and efficient trading or settlement;
 - b) Lead to unfair or unreasonable *WESM* prices;

- c) Cause material negative impact on the viability and sustainability of the WESM or the functions of the *Market Operator* if not immediately remedied; or
- d) Cause material negative impact on the system or the functions of the *System Operator* if not immediately remedied.

- 7.14.2 It is understood, however, that compliance by a party investigated with remedial measures that were required while an investigation or the compliance monitoring and assessment is still pending is not deemed an admission of the *breach*.
- 7.14.3 A *WESM Member* may be required to implement remedial measures by the *Enforcement and Compliance Office*, the *Compliance Committee* or the *PEM Board*.
- 7.14.4 The *Enforcement and Compliance Office* or the *Compliance Committee* may require that remedial measures be carried out pending completion of an investigation if it determines that the immediate implementation of such measures is necessary to prevent or mitigate an adverse impact caused by the acts or omissions of the *WESM Member* that are subject of the investigation. Where directed by the *Enforcement and Compliance Office* or the *Compliance Committee* the remedial measures are implemented as provisional remedies until the *PEM Board* finally decides on the final remedial measures that have to be implemented.
- 7.14.5 The *Enforcement and Compliance Office* may require implementation of remedial measures at any time during the compliance monitoring and assessment or after it initiates an investigation and before it completes and submits its investigation report.
- 7.14.6 The *Compliance Committee* may require a *WESM Member* to implement remedial measures in the course of its review of an investigation and before it submits its investigation review report to the *PEM Board*. The Committee shall inform the *Enforcement and Compliance Office* of the remedial measures that are required to be implemented.
- 7.14.7 The final remedial measure directed by the *PEM Board* shall be contained in the *notice of penalty* served on the *WESM Member*. For provisional remedial measures directed by the *Enforcement and Compliance Office* or the *Compliance Committee*, a *notice of provisional remedial measures* shall be issued by the *Enforcement and Compliance Office* and served on the *WESM Member*.



- 7.14.8 If the remedial measure required is of such nature that can be immediately implemented or started, the *WESM Member* so directed shall implement the same immediately upon receipt of the notice. Within five (5) working days from receipt of the relevant notice, the party shall notify the *Enforcement and Compliance Office* in writing that the measure required has been implemented or started and the details of the implementation.
- 7.14.9 If the remedial measure required is of such nature that it cannot be immediately implemented and completed, the *WESM Member* so directed shall, within five (5) business days from receipt of the relevant *notice*, submit its compliance plan to the *Enforcement and Compliance Office*. The plan shall detail the manner and period within which the party concerned shall implement and complete the remedial measure. As appropriate, the plan shall specify the manner by which the *WESM Member* intends to mitigate any adverse effect, to operate or modify its equipment or facility, or to otherwise conduct its operations in order to carry out or accomplish the remedial measure.
- 7.14.10 The *Enforcement and Compliance Office* shall monitor the compliance by the *WESM Member* to ensure that the remedial measures are implemented as directed. As part of its monitoring, the *Enforcement and Compliance Office* may issue such reminders or notices to the *WESM Member* as it deems appropriate from time to time. The *WESM Member* may also be required to submit periodic reports of its compliance, as well as to allow ocular inspection of its facilities if appropriate.
- 7.14.11 Upon complete implementation of the compliance plan or lapse of the period within which the compliance plan is required to be implemented, the *Enforcement and Compliance Office* shall submit a report to the *PEM Board* detailing the results of the implementation.
- 7.14.12 A failure to implement the required remedial measure, in whole or in part, shall be considered a *breach* and shall be subject to penalties as set out in the *WESM Penalty Manual*. The sanction shall be imposed by the *PEM Board*, upon recommendation of the *Enforcement and Compliance Office*, without need of further investigation.

7.15 COSTS

- 7.15.1 The *PEM Board* shall decide on the costs associated with any investigation and with the implementation of decisions and remedial measures that will be shouldered by *WESM Member* involved in the investigation. The costs to be imposed shall be in accordance with a schedule of costs and charges that the

PEM Board shall determine and review from time to time. The schedule of costs and charges, and any changes on it, shall be published in the market information website before it takes effect.

- 7.15.2 Notwithstanding the foregoing, the costs associated with the day-to-day operations of the *Enforcement and Compliance Office*, the *Market Assessment Group*, and the *Compliance Committee* shall not be passed on to a *WESM Member* as cost associated with any investigation, decision or remedial measure. These shall instead be included in the annual revenue requirements of the *PEMC* which shall be defrayed through the market fees.

7.16 SERVICE OF NOTICES AND REPORTS

- 7.16.1 All notices required to be issued to and served on *WESM Members* under this Section shall be issued to and served on the *WESM Member* through its *WESM Compliance Officer* as appears on the records of the *Enforcement and Compliance Office*, or if none is designated, through any one of the main contact persons, president or chief executive officer of the *WESM Member* as appears in the records of the *Market Operator*. At its discretion, *WESM Member* may also designate another person as its authorized representative for a specific investigation, provided that such designation shall be considered as made for that investigation only.
- 7.16.2 All notices shall be served at the office addresses of the above-named persons as this information appears in the records of the *Enforcement and Compliance Office* or the *Market Operator*. *WESM Members* have the obligation to ensure that their contact information provided to the *Enforcement and Compliance Office* and to the *Market Operator* is current at all times regardless that they are not subject of any investigation.
- 7.16.3 Service of notices and reports by the *Enforcement and Compliance Office* to all specified recipients as well as all notices and submissions to the *Enforcement and Compliance Office* may be made by personal service, postal mail, or by electronic mail. Personal service includes service by in-house or third party messengerial services or by commercial couriers. Service is deemed to have been made upon: (a) actual delivery if made by personal service; or (b) upon deposit in the post office if by postal mail, notwithstanding in either case that the same was returned undelivered or that the intended recipient refused the delivery; or (c) by actual receipt and acknowledgment by the intended recipients by electronic mail.



SECTION 8 NON-COMPLIANCE REPORT

8.1 RATIONALE

- 8.1.1 The compliance monitoring and assessment of the market obligations of the *WESM Members* is one of the enforcement processes established under this Manual.
- 8.1.2 Self-reports by *WESM Members* of their possible non-compliances will provide the *Enforcement and Compliance Office* the information that it will need to more effectively carry out its compliance monitoring tasks. This will also help in lessening the possibility that the monitoring and screening by the *Enforcement and Compliance Office* of *WESM Member* compliance will result in error arising from incomplete information. This is particularly important considering that the results of the compliance monitoring may lead to the initiation an investigation for a possible *breach*.

8.2 SCOPE OF APPLICATION

- 8.2.1 This section shall only apply to obligations of *WESM Members* which, if not complied with, shall constitute a *breach* as defined in this Manual and in the *WESM Penalty Manual* as well as relevant provisions of the *Market Rules*.

8.3 NON-COMPLIANCE REPORTS

- 8.3.1 *WESM Members* that were or that expect to be unable to comply with an obligation under the *Market Rules*, which if not complied with may constitute a *breach*, are required to submit to the *Enforcement and Compliance Office* a *non-compliance report* in a prescribed form and following the procedures set out in this Section.
- 8.3.2 To avoid duplication of reports, the significant event reports and supporting data submitted by *Trading Participants* or *WESM Members* in compliance with the requirements of *WESM Rules* Clause 3.5.11.7 shall serve as non-compliance report for the event being reported. The *Enforcement and Compliance Office* may, however, require the *Trading Participant* or *WESM Members* to submit additional information or data in accordance with Section 8.4 of this Manual.
- 8.3.3 For the avoidance of doubt, no non-compliance report needs to be submitted to the *Enforcement and Compliance Office* in accordance with this Manual for the following non-compliances –

- a) Failure to comply with prudential requirements, or the occurrence of any event of default, or failure to pay sums of money to the *Market Operator* pursuant to Chapter 3 of the *WESM Rules*, or price determination methodologies approved by the ERC for use in the WESM, and associated *Market Manuals*; or
- b) Failure to comply with requirements for registration in or for continuing membership in the WESM pursuant to Chapter 2 of the *WESM Rules* and associated *Market Manuals*, and in the *Retail Rules*.

8.4 CONTENTS OF NON-COMPLIANCE REPORTS

- 8.4.1 The non-compliance report shall contain the following information, it being understood that these are high level descriptions of the contents of the report and that the *Enforcement and Compliance Office* may prescribe more specific information or detail –
- a) The rule or obligation that has not been complied with or that with which the *WESM Member* expects it may not be able to comply;
 - b) The specific facility involved;
 - c) The date and time or trading interval that the non-compliance has occurred;
 - d) The reasons for the non-compliance;
 - e) Where appropriate, the measures taken or proposed to be taken to mitigate the impact of the non-compliance, as well as to avoid recurrence in the future; and
 - f) Where appropriate, the reporting *WESM Member* shall submit additional information, records or documents that will support the facts being reported.
- 8.4.2 The *Enforcement and Compliance Office* may prescribe the format of the report and the details of the information that it requires for the purpose of facilitating submission and evaluation of the reports, and may modify the same from time to time. The *Enforcement and Compliance Office* shall notify all *WESM Members* of the prescribed format and required information. The *Enforcement and Compliance Office* shall ensure that the report format shall not be unduly burdensome on the part of the *WESM Member*.
- 8.4.3 If the *Enforcement and Compliance Office* determines that the report submitted is not in the prescribed format, or not all the required information was provided, it shall notify the *WESM Member* and require that the shortcomings be rectified. The *WESM Member* so directed shall submit a revised non-compliance report or submit the missing information no later than three (3) working days upon being notified.

8.5 SUBMISSION OF NON-COMPLIANCE REPORTS

- 8.5.1 Unless the *Enforcement and Compliance Office* provides for a different period, non-compliance reports shall be submitted on the business day after a non-compliance has occurred. Where appropriate, the non-compliance report for a trading day shall include all non-compliances or events that occurred during the trading day being reported.
- 8.5.2 The *WESM Member* may also submit a non-compliance report when it expects the occurrence of event/s that may result in a possible non-compliance with its obligations in the WESM. When a non-compliance report was submitted in advance of an event, the *WESM Member* shall not be required to submit another report pursuant to the foregoing section, unless the actual circumstances varied from what was previously reported. In such case, the *WESM Member* shall submit a revised non-compliance report no later than the business day after the event or occurrence of the non-compliance.
- 8.5.3 Non-compliance reports shall be submitted in the manner prescribed by the *Enforcement and Compliance Office* which shall notify all *WESM Members* of a prescribed report format. The *Enforcement and Compliance Office* may not, however, refuse to accept a report by reason that same was not submitted in the prescribed manner, but may only require rectification pursuant to Section 8.4.3.
- 8.5.4 The *Market Operator* or the *Enforcement and Compliance Office* may, if practicable, develop and provide a facility that will allow *WESM Members* to submit non-compliance reports through electronic means. If provided, such facility shall be made available to all *WESM Members* without discrimination and subject only to compliance with registration and access requirements that will be set by the *Market Operator* or the *Enforcement and Compliance Office*. If a facility is so provided, all reports shall be submitted through such facility.

8.6 ACTION ON NON-COMPLIANCE REPORTS

- 8.6.1 The *Enforcement and Compliance Office* shall evaluate non-compliance reports submitted by *WESM Members* as part of the compliance monitoring and assessment procedure set out in Section 6 of this Manual. As provided for in Section 6, non-compliance reports, and all the supporting documents related thereto, shall be among the information that shall be considered and assessed together with all the market data made available to the *Enforcement and Compliance Office* in determining whether or not a *Notice of Specified Penalty* is issued against a *WESM Member*. For this reason, the *Notice of Specified Penalty* may be issued as a result of compliance monitoring and assessment without need of a formal investigation. The *Notice of Specified Penalty* to be issued for

this purpose shall be signed by the *PEMC President* in accordance with Section 3.2 of the *WESM Penalty Manual*.

- 8.6.2 A finding of *breach* may thus be made and enforcement action may be taken against a *WESM Member* on the basis of the non-compliance report and its supporting documents submitted by the *WESM Member*, the market data and information from the *Market Operator*, the *System Operator*, and other relevant market data.
- 8.6.3 The non-compliance reports submitted by *WESM Members* or any information contained therein may also be made available by *Enforcement and Compliance Office* to other units within PEMC or to any *WESM Governance Committee* to be utilized for market assessment, surveillance and audit purposes.

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

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

9.2 WESM MEMBER INTERNAL COMPLIANCE

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

9.3 WESM COMPLIANCE OFFICERS

- 9.3.1 All *WESM Members*, as well as the *Market Operator* shall designate a *WESM Compliance Officer* within their respective organizations and shall comply with obligations set forth in Clause 7.2.9 of the *WESM Rules*.
- 9.3.2 In January of each year, and at any time a new *WESM Compliance Officer* is designated, the *WESM Member* shall submit the names of its *WESM Compliance Officer* and such other details and in such form as may be required by the *Enforcement and Compliance Office*. They shall ensure that information submitted is current at all times. The *Enforcement and Compliance Office* shall maintain a registry of the incumbent *WESM Compliance Officers* of all *WESM Members*. A *WESM Member* shall be responsible for ensuring that the information submitted to the *Enforcement and Compliance* is current at all times.
- 9.3.3 It is required that the person to be appointed as *WESM Compliance Officer* should have an understanding of the *WESM* compliance requirements of their organization, and is of a position that he or she is able to recognize possible non-compliances and has sufficient authority to resolve the same. As such, he or she should occupy a senior management position such as those pertaining, but not limited, to legal, risk management, regulatory or compliance.

9.4 OBLIGATIONS OF WESM COMPLIANCE OFFICERS

- 9.4.1 As prescribed in *WESM Rules* Clause 7.2.9.2, *WESM Compliance Officers* shall:
- a) Monitor the activities and transactions in the *WESM* of his or her organization and carry out measures to ensure compliance by his or her organization with the *EPIRA*, its Implementing Rules and Regulations, the *Market Rules*; and, for this purpose, put in place necessary procedures and guidelines;
 - b) Keep abreast with developments in the *WESM*, including amendments to *Market Rules* as well as issues raised by the *WESM Governance Committees* and the *PEM Board* affecting his or her organization's compliance, and ensure that relevant personnel and units within his or her organization are informed of and, if appropriate, will implement changes in the organization's internal systems and processes to comply with amendments to *Market Rules* and to resolve issues raised;
 - c) From time to time and if it deems it necessary or appropriate, propose amendments to the *Market Rules* to enhance or develop the *WESM*



enforcement and compliance and to promote good commercial and technical practices;

- d) Be the main point of contact that is responsible in coordinating with the *Enforcement Compliance Office* on all matters relating to the WESM enforcement, compliance and governance, including the provision of the necessary information and data, as may be required by any of the *WESM Governance Committees* and by the *Enforcement and Compliance Office*;
- e) Submit to the *Enforcement and Compliance Office* a report of his/her organization's compliance with *Market Rules* covering such period, but not less frequent than annually, and in such form as may be prescribed by the *Enforcement and Compliance Office*.

9.5 ANNUAL WCO REPORT

- 9.5.1 Pursuant to *WESM Rules* Clause 7.2.9.2, all *WESM Compliance Officers* shall submit a report to the *Enforcement and Compliance Office* which shall state the compliance activities undertaken and the enforcement-related issues and concerns that have arisen during a calendar year.
- 9.5.2 The report shall be submitted to the *Enforcement and Compliance Office* in such form and number of copies as the latter may require. The reports shall be submitted not later than 31 January of the following year, or on such other period as the *Enforcement and Compliance Office* may set from time to time. The *Enforcement and Compliance Office* shall notify all *WESM Members*, from time to time, of the form and number of copies required, and the period for submission of the report if a date other than 31 January is set.
- 9.5.3 An annual consolidated report shall be submitted by the *Enforcement and Compliance Office* to the *DOE* and the *PEM Board* no later than sixty (60) days from the last day for submission of reports by the *WESM Compliance Officers*.



SECTION 10 INFORMATION DISCLOSURE AND RECORDS MANAGEMENT

10.1 SCOPE OF APPLICATION

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

10.2 INFORMATION DISCLOSURE AND PUBLICATION

- 10.2.1 The *Enforcement and Compliance Office* shall publish the following information in the market information website –
- a) List of investigations initiated, including the parties and facilities involved, the possible *breach* subject of the investigation, and the status of the investigation;
 - b) Summarized description of the results of an investigation, including the names of the parties and facilities involved, the nature of the *breach* confirmed in the investigation, penalties or sanctions imposed, and remedial measures required; and
- 10.2.2 Copies of investigation reports and investigation review reports prepared in respect to an investigation for breach shall be provided by the *Enforcement and Compliance Office* upon request and, if so required by the *Enforcement and Compliance Office*, upon payment of reasonable fees to defray cost of retrieval, reproduction and transmittal –
- 10.2.3 Notwithstanding the foregoing, copies of records and documents submitted by a party in respect to an investigation, may not be provided to any other party without the written consent of the owner of such record or document or the party that submitted the same. Thus, where such records or document are annexed to an investigation or assessment report, the copies of the latter that will be disseminated will exclude such records or documents. This prohibition, however, does not cover data, documents or records that are otherwise published or disseminated by the *Market Operator* or other parties.

10.3 REPORTING REQUIREMENTS

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

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

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

10.4 COMPLIANCE DATABASE AND RECORDS RETENTION

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

- a) Records of investigations, including but not limited to the investigation reports and their attachments, the investigation review reports, *PEM Board* action on investigations, data and records used in the investigation, submissions of parties investigated, and notices and communications issued and received pertaining to an investigation.
- b) Non-compliance reports and supporting documents submitted by *WESM Members*.
- c) Monthly and periodic reports required to be prepared and published or disseminated by the *Enforcement and Compliance Office* under this Manual.

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

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

Record	Start of Retention Period	Retention Period
Records of investigation cases	Date of final action on the case, <i>i.e.</i> , final <i>PEM Board</i> approval	10 years
Non-compliance reports of <i>WESM Members</i>	Date of submission of report	10 years
Records of applications for exemption	Date of the final action on the application, <i>i.e.</i> , final <i>PEM Board</i> action	10 years
Monthly and periodic reports	Date of first publication or first dissemination	5 years
Reports published in market information website	Date of first publication or first dissemination	5 years

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

- 11.1.1 The members of the *PEM Board* and the *Compliance Committee*, whether acting individually or jointly, the *Enforcement and Compliance Office Head* and the members of the staff of the *Enforcement and Compliance Office*, and the PEMC President shall not be made personally liable for any loss or damage incurred by a *WESM Member*, the *Market Operator* or the *System Operator* or any other person as a consequence of any act or omission undertaken in the performance of the duties and responsibilities contained in this Manual, other *Market Rules*. This is except when the person acted with malice, manifest partiality, bad faith, gross incompetence or gross negligence.

11.2 INDEMNIFICATION

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



SECTION 12 AMENDMENT, PUBLICATION AND EFFECTIVITY

12.1 AMENDMENTS

- 12.1.1 Any amendments to this Manual shall be approved by the *DOE*, following the procedures for changes to Market Manuals set out in the *WESM Rules* and in the relevant *Market Manual*.

12.2 PUBLICATION AND EFFECTIVITY

- 12.2.1 This *Market Manual*, as it may be amended from time to time, shall be published in the market information website maintained by the Market Operator.
- 12.2.2 This *Market Manual* or any amendments thereto shall become effective upon approval of the *DOE* in accordance with *WESM Rules* Clause 8.6.4. The date of effectivity shall be indicated in this document.

SECTION 13 GLOSSARY

Term or Abbreviation	Definition
Breach	Act or omission that constitutes a violation or non-compliance with any provision of the <i>Market Rules</i> that are expressly provided for as subject of sanctions and penalties if committed.
Compliance Monitoring and Assessment	An integral part of <i>enforcement proceedings</i> in the WESM that is initiated and carried out by the <i>Enforcement and Compliance Office</i> , primarily for the purpose of determining the occurrence of <i>breach</i> of the <i>Market Rules</i> . Assessment is done by taking into consideration all the relevant and verified market data and information from the <i>Market Operator</i> , the <i>System Operator</i> , the <i>WESM Members</i> , among others, with the end in view of determining the appropriate <i>enforcement actions</i> , if warranted.
Compliance plan	A plan detailing the actions or tasks required to be carried out by a <i>WESM Member</i> to implement a remedial measure.
Enforcement	This is the process by which a <i>WESM Member</i> found in <i>breach</i> is imposed penalties, which may be financial or non-financial in nature, and/or required to take corrective actions or remedial measures as a consequence of the <i>breach</i> .
Enforcement action	This is an action carried out against a <i>WESM Member</i> as a consequence of the <i>breach</i> by that <i>WESM Member</i> of the <i>WESM Rules</i> or <i>Market Manuals</i> , which may include imposition of penalties, carrying out remedial measures and other corrective actions.
Enforcement and Compliance Office	The unit created within PEMC pursuant to <i>WESM Rules</i> Clause 1.4.8, which is primarily responsible for the administration of the enforcement and compliance which shall include monitoring, assessment and investigation of the <i>WESM Members</i> in relation to their compliance with the <i>WESM Rules</i> .
Enforcement and Compliance Office Head	This is the person appointed pursuant to the <i>WESM Rules</i> that will head the <i>Enforcement and Compliance Office</i> .
Enforcement proceeding	This is the activity or series of activities carried out to establish and determine the occurrence of <i>breach</i> and the corresponding enforcement action that will be carried out as a consequence of the <i>breach</i> , and includes monitoring, assessment, investigation and imposing enforcement actions.
Exemption	This is the authority granted by the <i>PEM Board</i> exempting a <i>WESM Member</i> from sanctions for non-compliance with an

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

Term or Abbreviation	Definition
	service providers within their respective organizations pursuant to and the perform the functions set out in <i>WESM Rules</i> Clause 7.2.9.
WESM Penalty Manual, or Penalty Manual	The <i>Market Manual</i> that set outs the schedule of possible <i>breaches</i> and the corresponding penalties or sanctions that can be imposed, and the manner of carrying out such sanctions.

APPENDIX I
**COMPLIANCE MONITORING, INVESTIGATION, RECONSIDERATION, AND APPEAL PROCESS TIMELINE
EMANATING FROM COMPLIANCE MONITORING ACTIVITY OF ECO¹⁴**

Activities	Responsible	Facility/Mode/ Process	Recipient	Timeline/ Frequency	Reference Manual/ Document
1. Initial Flagging of Probable Breach	ECO IEMOP through	NMMS-CMON	TP	Near Real-Time	EC Manual
2. Submission of Reply and Supporting Documents	TP	CPEMS	ECO	3 business days from initial flagging of probable breach	EC Manual
3. Validation and Assessment	ECO	CPEMS	N/A	Daily	EC Manual
4. Issuance of CMAR	ECO	CPEMS	TP	On or before 15 th day of the month following the covered billing month	EC Manual
5. Issuance of Notice of Specified Penalty	PEMC President	Manual	TP IEMOP	Simultaneous with the Issuance of CMAR	WESM Penalty Manual
6. Implementation of the Notice of the Specified Penalty (Issuance of billing)	IEMOP	Manual	TP	3 business days from receipt of the Notice of Specified Penalty	WESM Penalty Manual
7. Payment of Penalty	TP	Manual	IEMOP	12 business days from receipt of billing and collection	WESM Penalty Manual
8. Filing of Request for Reconsideration	TP	Manual	ECO	15 business days from receipt of the CMAR	WESM Penalty Manual

¹⁴ The compliance monitoring and assessment activity referred to herein pertains only the Possible Non-Compliance with the Offered Capacity Compliance Rules and the Dispatch Conformance Standards Under the Enhanced WESM Design

Activities	Responsible	Facility/Mode/ Process	Recipient	Timeline/ Frequency	Reference Manual/ Document
9. Resolution of the Request for Reconsideration	ECO	Manual	TP IEMOP	15 business days from receipt of request for reconsideration	WESM Penalty Manual
10. Issuance of Notice of Specified Penalty or Revocation of the previously-issued Notice of Penalty	PEMC President	Manual	TP IEMOP	Simultaneous with the Issuance of Resolution of Request for Reconsideration	WESM Penalty Manual
11. Implementation of the Resolution of the Request for Reconsideration/ Notice of Specified Penalty/ Revocation (Collect or Refund)	IEMOP	Manual	TP	Immediately upon receipt	WESM Penalty Manual
12. Filing of Appeal	TP	Manual	MSC	10 business days from receipt of the Resolution of the Request for Reconsideration	WESM Penalty Manual and MS Manual
13. Issuance of Order to Elevate the Original Records of the Case	MSC	Manual	ECO TP	20 business days from receipt of Appeal	WESM Penalty Manual and MS Manual
14. Elevation of the Original Records of the Case	ECO	Manual	MSC	5 business days from receipt of the Order	WESM Penalty Manual and MS Manual
15. Decision on Appeal	MSC	Manual	TP ECO	30 working days from receipt of the Original Records of the Case as elevated to it by ECO	WESM Penalty Manual and MS Manual

Activities	Responsible	Facility/Mode/ Process	Recipient	Timeline/ Frequency	Reference Manual/ Document
16. Issuance of Notice of Specified Penalty or Revocation of the previously-issued Notice of Penalty	PEMC President	Manual	TP IEMOP	<ul style="list-style-type: none"> Simultaneous with the Issuance of the Decision on Appeal 	WESM Penalty Manual and EC Manual
17. Implementation of the Decision on Appeal/ Notice of Specified Penalty/ Revocation (Collect or Refund)	IEMOP	Manual	TP	Immediately upon receipt	WESM Penalty Manual

ACRONYMS

NMMS-CMON	New Market Management System – Compliance Monitoring Module
CPEMS	Compliance Post-Evaluation Monitoring System
AMS	Accounts Management System
TP	Trading Participant
MSC	Market Surveillance Committee
IEMOP	Independent Electricity Market Operator of the Philippines
ECO	Enforcement and Compliance Office

APPENDIX II
INVESTIGATION, RECONSIDERATION, AND APPEAL PROCESS TIMELINE
EMANATING FROM THE REQUESTS FOR INVESTIGATION¹⁵

Activities	Responsible	Facility/Mode/ Process	Recipient	Timeline/ Frequency	Reference Manual/ Document
1. Filing of Request for Investigation (RFI)	Any WESM Member, Market Operator, WESM Governance Committees (except CC), ECO (<i>motu proprio</i>)	Manual	ECO	Within 2 years from occurrence of the act or omission constituting the probable breach.	EC Manual
2. Issuance of Preliminary Notice of Investigation (PNI)	ECO	Manual	TP (entity subject of RFI)	5 business days from receipt of the RFI	EC Manual
3. Investigation Proper	ECO	Manual	TP (entity subject of RFI)	Not more than 120 business days from receipt of RFI	EC Manual
4. Completion of Formal Investigation	ECO	Manual	TP (entity subject of RFI)	Not more than 150 business days from receipt of RFI	EC Manual
5. Issuance of Investigation Report	ECO	Manual	CC	Within the period set for the completion of Formal Investigation	EC Manual
6. Review of the Investigation Report	CC	Manual	N/A	Within thirty (30) business days from receipt of the Investigation Report	EC Manual and MS Manual
7. Preparation and Submission of Review Report	CC	Manual	PEM Board	Within thirty (30) business days from receipt of the Investigation Report	EC Manual and MS Manual

¹⁵ The compliance monitoring and assessment activity referred to herein pertains only the Possible Non-Compliance with the Offered Capacity Compliance Rules and the Dispatch Conformance Standards Under the Enhanced WESM Design



Activities	Responsible	Facility/Mode/ Process	Recipient	Timeline/ Frequency	Reference Manual/ Document
8. PEM Board Review of the CC Review Report and ECO Investigation Report	PEM Board	Manual	N/A	Within thirty (30) working days upon receipt of the MSC Review Report and ECO Investigation Report	EC Manual and CC Manual
9. Issuance of Notice of Remand, if necessary	PEM Board	Manual	ECO	Immediately upon review of the Reports	EC Manual
10. Submission of Revised Investigation Report (in case of remand)	ECO	Manual	PEM Board	Within thirty (30) business days from receipt of the remand	EC Manual
11. PEM Board Review of the Investigation Report (in case of remand)	PEM Board	Manual	N/A	Within thirty (30) working days upon receipt of the Revised Investigation Report	EC Manual and CC Manual
12. Board Action on the Investigation and Issuance of Notice of Board Action (PEM Board Resolution on Investigation Report)	PEM Board	Manual	PEMC	<ul style="list-style-type: none"> • Within thirty (30) working days from receipt of the MSC Review Report and ECO Investigation Report; or • Within thirty (30) working days from receipt of the Revised Investigation Report of the ECO (in case of remand). 	EC Manual and CC Manual
13. Notification of the PEM Board's Resolution	PEMC	Manual	TP	Upon receipt of PEM Board Resolution on Investigation Report	WESM Penalty Manual
14. Issuance of Notice of Specified Penalty	PEMC President	Manual	TP IEMOP	Simultaneous with the Issuance of Notice of PEM Board's Resolution	WESM Penalty Manual and EC Manual

Activities	Responsible	Facility/Mode/ Process	Recipient	Timeline/ Frequency	Reference Manual/ Document
15. Implementation of the Notice of the Specified Penalty (Issuance of billing)	IEMOP	Manual	TP	3 business days from receipt of the Notice of Specified Penalty	WESM Penalty Manual
16. Payment of Penalty	TP	Manual	IEMOP	12 business days from receipt of billing and collection	WESM Penalty Manual
17. Filing of Request for Reconsideration	TP	Manual	PEM Board (through Corporate Secretary)	15 business days from receipt of the Notice of the PEM Board Resolution	WESM Penalty Manual and EC Manual
18. Endorsement of the Request for Reconsideration	PEM Board (through Corporate Secretary)	Manual	ECO	Immediately upon receipt of Request for Reconsideration	EC Manual
19. Submission of Revised Investigation Report	ECO	Manual	PEM Board	Within 30 business days from endorsement of the PEM Board	WESM Penalty Manual and EC Manual
20. Resolution of the Request for Reconsideration	PEM Board	Manual	PEMC	30 working days from receipt of the Revised Investigation Report	WESM Penalty Manual
21. Issuance of Notice of Specified Penalty or Revocation of the previously-issued Notice of Penalty	PEMC President	Manual	TP IEMOP	<ul style="list-style-type: none"> Simultaneous with the Issuance of Resolution of Request for Reconsideration 	WESM Penalty Manual and EC Manual



Activities	Responsible	Facility/Mode/ Process	Recipient	Timeline/ Frequency	Reference Manual/ Document
22. Implementation of the Resolution of the Request for Reconsideration/ Notice of Specified Penalty/ Revocation (Collect or Refund)	IEMOP	Manual	TP	Immediately upon receipt	WESM Penalty Manual

**PUBLIC****WESM Market Manual**

Market Surveillance
Issue 1.0

Abstract	This document covers the procedures and detailed requirements, data exchange, reports and activities for market monitoring, assessment and surveillance.
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Document Identity:	WESM-MSM-001
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Document Change History

Issue No.	Proponent	Date of Effectivity	Reason for Amendment
1.0	MSC		<p>Original</p> <p>This <i>Market Manual</i> was developed and adopted and promulgated in reference to the <i>Market Surveillance, Compliance and Enforcement Manual Issue 3.0</i>.</p> <p>This Market Manual was promulgated by the DOE in line with its mandate pursuant to the WESM Rules and in line with the following objectives:</p> <p>The amendment was made for the following reasons:</p> <ol style="list-style-type: none">1) To focus the provisions on market monitoring and surveillance in consideration of the proposed WESM Market Manual on Enforcement and Compliance Issue 1.0, on enforcement and compliance.2) Inclusion of retail market monitoring as well as the incorporation and operationalization of the procedures set forth in the ERC-PEMC protocol in cases of anti-competitive behavior.

Document Approval

Issue No.	RCC Approval	RCC Resolution No.	PEM Board Approval	PEM Board Resolution No.	Date of DOE Approval	DOE Circular No.
1.0						

Reference Documents

Document ID	Document Title
	WESM Rules
	Memorandum of Agreement between the ERC and PEMC dated 31 January 2008
	Catalogue of Market Monitoring Data and Indices
	Catalogue of Retail Market Monitoring Data and Indices

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SECTION 1 INTRODUCTION

1.1. PURPOSE

1.1.1 This Manual establishes the principles of the *WESM Rules* and *Retail Rules* on market monitoring, assessment and surveillance. The same also provides the procedures for the conduct of activities related to market monitoring, assessment and surveillance to implement the said rules.

1.1.2 This Manual also details the responsibilities of the *PEM Board*, *Market Surveillance Committee*, *Market Assessment Group*, *WESM Members*, *Market Operator*, *System Operator* and other *WESM Governance Committees* as established in the *WESM Rules* and *Retail Rules*.

1.2. SCOPE

This Manual covers all related procedures and activities concerning market monitoring, assessment and surveillance as follows:

- (a) All activities and procedures, including the functions, authority and reports of the Market Surveillance Committee, Enforcement and Compliance Office and the Market Assessment Group; and
- (b) Rules on access to information and data management.

1.3. REVIEW AND UPDATES

1.3.1. The PEM Board, with the assistance of the Market Assessment Group and the Market Surveillance Committee, shall maintain this Manual under review, to identify any need for updates and amendments.

1.3.2. Amendments to the provisions of this Manual shall be in accordance with Chapter 8 of the *WESM Rules* and the Manual of Procedures for Changes to the *WESM Rules*, *Retail Rules* and *Market Manuals*.

SECTION 2 DEFINITIONS, INTERPRETATION AND CONSTRUCTION

2.1. DEFINITION OF TERMS

Unless otherwise defined in this *Manual*, any terms and acronyms used in this *Manual* shall have the same definition as that in the *WESM Rules*.

Act means Republic Act No. 9136, also known as the Electric Power Industry Reform Act (EPIRA) of 2001.

Applicable Law, Rules and Regulations shall include the Act or EPIRA and its IRR, the Philippine Grid Code, the Philippine Distribution Code, the Competition Rules, the WESM Rules and Market Manuals and such other codes, rules, regulations, and issuances related to the WESM.

Administered Price means a price imposed by the Market Operator to the Trading Participants during market suspension and intervention to be used for settlements which price is determined in accordance with the methodology developed and published by the Market Operator and approved by the ERC.

Anti-Competitive Behavior means any act or omission, or combination thereof, that constitutes anti-competitive behavior or abuse of market power as defined in Section 45 of the Act, and its IRR and the Philippine Competition Act, and its IRR.

Breach means act or omission that constitutes a violation or non-compliance with any provision of the WESM Rules and Market Manuals that are expressly provided for as subject of sanctions or penalties if committed.

Compliance Committee refers to one of the WESM Governance Committees tasked to review investigation reports, recommend imposition of penalties if warranted and monitor compliance of WESM Trading Participants to the WESM Rules and Manuals;

Constraint means a limitation on the capability of any combination of network elements, loads, generating units or Ancillary Service Providers such that it is, or is deemed by the System Operator to be unacceptable to adopt the pattern of transfer, consumption, generation or production of electrical power or other services that would be most desirable if the limitation were removed, as defined in the WESM Rules.

Customer means person who: (a) engages in the activity of purchasing electricity supplied through a transmission or distribution system other than where all that person's electricity requirements are purchased from a Supplier; and (b) registers with the Market Operator in that capacity under Clause 2.3.2 of the WESM Rules.

DOE refers to the Department of Energy, the government agency created pursuant to Republic Act No. 7638 whose expanded functions are provided in the Act.

Enforcement and Compliance Office refers to the unit created within PEMC pursuant to WESM Rules Clause 1.4.8, which is primarily responsible for the administration of the enforcement and compliance, which includes monitoring, assessment and investigation of the WESM Members in relation to their individual compliances with the WESM Rules.

ERC refers to the Energy Regulatory Commission, the independent quasi-judicial regulatory body created by the Act.

Generation Company means a person or entity authorized by the ERC to operate facilities used in the generation of electricity, and registered with the Market Operator in that capacity in accordance with Clause 2.3.1 of the WESM Rules.

Intervention Report means the report prepared by the Market Surveillance Committee and submitted to the PEM Board in accordance with Section 5.3 of this Manual.

IRR means the Implementing Rules and Regulations of the Act.

Market Assessment Group is a PEMC unit established pursuant to the WESM Rules to serve as the primary support unit of the WESM Governance Committees, which include the Market Surveillance Committee, which regularly prepares assessment reports on the overall performance and competitiveness of the WESM.

Market Assessment Report means the periodic report prepared by the Market Assessment Group and submitted to the Market Surveillance Committee.

Market Information Website means the facility established by the Market Operator on the electronic communication system on which it may publish information which is then made available to and may be accessed by the WESM members.

Market Intervention means a measure taken by the System Operator when the grid is in the alert or emergency state as established in the Grid Code, arising from a threat to system security, force majeure event or emergency, or by the Market Operator in relation to the simulation or implementation of its business continuity or disaster and recovery procedures provided in Clause 6.8.1 of the WESM Rules. During such event, Administered Prices shall be used for settlements.

Market Manual means a manual of specific procedures, systems and protocols for the implementation of the WESM Rules and Retail Rules.

Market Assessment System means the system to be used by the Market Assessment Group in collecting, storing and processing monitoring data and other information necessary for the Market Surveillance Committee to carry out its functions.

Market Operator means the Independent Market Operator of the Philippines (IEMOP), or such other entity that may later be designated as the operator of the WESM.

Market Surveillance Committee refers to the WESM Governance Committee tasked under WESM Rules _____ to monitor, assess and report on the activities and developments in the WESM.

Market Suspension means an event wherein the ERC declares the operation of the spot market to be suspended in cases of natural calamities or national and international security emergencies.

Over-Riding Constraints means constraints imposed by the Market Operator, as required by the System Operator, relative to the power flow, energy generation of a

specific facility in the Grid to address system security threat, mitigate the effects of a system emergency, address the need to dispatch generating units to comply with systems, regulatory and commercial test requirements, in accordance with Clause 3.5.13 of the WESM Rules and this Manual.

PEM Audit Committee refers to the WESM Governance Committee appointed by the PEM Board to conduct audits of the operation of the spot market and undertake the functions and activities set out in the WESM Rules and PEM Audit Market Manual.

PEM Board refers to the Board of Directors of the PEMC that is responsible for governing the WESM.

Philippine Electricity Market Corporation or PEMC refers to the governance arm of the WESM.

Retail Rules means the rules promulgated by the DOE governing the integration of retail competition in the operation and governance processes of the WESM and the management of the transactions of Suppliers and Contestable Customers in the WESM, and the operations of the Central Registration Body.

Review Document on Over-Riding Constraints means the report prepared by the Market Surveillance Committee in accordance with Section 5.5 of this Manual.

Review Report means the report prepared by the Market Surveillance Committee and submitted to the PEM Board in accordance with Section 5.7 of this Manual.

Rules Amendment Review Document means the document prepared by the Market Surveillance Committee whenever requested by the Rules Change Committee to review a proposed amendment to the WESM Rules, Retail Rules or the Market Manuals.

Rules Change Committee refers to the WESM Governance Committee established by WESM Rule 8.2 to review and propose amendments to the WESM Rules.

Trading Participant means a customer or a generation company.

WESM Governance Committee refers to a working group- created by the PEM Board pursuant to Clause 1.4.6 of the WESM Rules.

WESM Member means a person who is registered with the Market Operator in accordance with Clauses 2.3 and 2.4 of the WESM Rules.

WESM Rules means the detailed rules that govern the administration and operation of the WESM.

2.2. INTERPRETATION AND CONSTRUCTION

- 2.2.1. Any Annex to this Manual shall be considered an integral part hereof.
- 2.2.2. Any reference to "this *Market Manual*" or "this *Manual*" is a reference to the whole of this Market Surveillance Manual, including all its Annexes.
- 2.2.3. The singular includes the plural and vice versa.
- 2.2.4. The words "such as", "include", "including", "for example" and "in particular" shall be construed as being by way of illustration or emphasis only and shall not limit or prejudice the generality of any foregoing words.
- 2.2.5. Headings in this Manual are for convenience only and shall not affect the construction and interpretation of the provisions of this Manual.
- 2.2.6. Any reference to any law, regulation made under any law, rules or codes shall be to that item as amended, modified, revised or replaced from time to time.
- 2.2.7. The provisions in this *Manual*, the *WESM Rules* and other *Market Manuals* shall be read, construed and interpreted in such a manner as to harmonize and reconcile each and every provision thereof. In the event of inconsistency, the *WESM Rules* shall prevail.
- 2.2.8. Should any provision of this *Manual* be declared invalid or nullified by any court or authority of competent jurisdiction, by final judgment, the other provisions not affected by the declaration of invalidity or nullity, shall continue to be in full force and effect.

SECTION 3 RESPONSIBILITIES

3.1. MARKET SURVEILLANCE COMMITTEE

In accordance with the *WESM Rules*, the Market Surveillance Committee shall have the following responsibilities:

- (a) Monitor activities conducted by *WESM Participants* in the *spot market*. As such, the Market Surveillance Committee shall develop monitoring data and indices necessary to effectively carry out its market surveillance function, as well as prepare a catalogue thereof, and continuously enhance the same as it deems appropriate, in view of findings and issues established or determined during the market surveillance process;
- (b) Prepare and Submit Monthly Monitoring Reports, Quarterly Retail Market Monitoring Reports, Annual Reports to the *PEM Board*, the *DOE* and the *ERC*, as the case may be, as required under this Market Manual, which shall include the following:
 - (i) Market Assessment Report;
 - (ii) Retail Market Assessment Report;

- (iii) Over-riding Constraints Report; and
 - (iv) Apparent or suspected incidents of *anti-competitive behavior* or abuse of market power by any *WESM Participant/Member*
- (c) Prepare and submit special market reports as may be directed by the *PEM Board*, *DOE* or *ERC*;
- (d) Review an event of *market intervention* or *market suspension*, as defined under Chapter 6 of the *WESM Rules*, and prepare the corresponding Market Intervention or Market Suspension Report to be submitted to the *PEM Board*;
- (e) Propose amendments to the *WESM Rules* in accordance with Chapter 8;
- (f) Upon request, assist the *Rules Change Committee* in reviewing proposed amendments to the *WESM Rules* and *Market Manuals*, and make recommendations on the expected impact and necessity of the amendment proposal;
- (g) Annually review and propose changes, as appropriate, to the *WESM Penalty Manual* pursuant to Clause 7.2 of the *WESM Rules*.

3.2. PEM BOARD

The *PEM Board* through the various Governance Committees that it has created shall, among others, oversee and monitor the activities of the Market Operator and the *System Operator* to ensure that they fulfill their responsibilities under the *WESM Rules* and act in a manner consistent therewith.

3.3. MARKET ASSESSMENT GROUP

In accordance with the *WESM Rules*, the *Market Assessment Group* shall, among others, have the following authorities and responsibilities:

- (a) Regularly collect monitoring data from the *Market Operator*, *System Operator*, and *WESM Members*, and process monitoring indices;
- (b) Provide aggregation and analysis on monitoring data and monitoring indices;
- (c) Organize and administer the Market Assessment System;
- (d) Prepare and submit Market Assessment Reports for submission to the *Market Surveillance Committee*;
- (e) Prepare and submit special market reports as directed by the *Market Surveillance Committee*;
- (f) Provide technical and logistical support to the *Market Surveillance Committee*
- (g) Promptly provide all data, information, reports and other documentation requested by the *Market Surveillance Committee* or *Enforcement and Compliance Office*;
- (h) Maintain a record of each incident leading to an Over-Riding Constraint and provide the Market Surveillance Committee a summary of said incidents during its periodic monitoring meetings;

- (i) Inform the *Market Surveillance Committee* on policy developments, amendments to the *WESM Rules* and *Market Manuals*, and decisions of the *PEM Board* relevant to the market monitoring and surveillance functions; and
- (j) Recommend to the *Market Surveillance Committee* the adoption or modification of market monitoring indices.

3.4. MARKET OPERATOR

In accordance with the *WESM Rules*, the Market Operator shall, among others, have the following responsibilities:

- (a) Monitor the daily trading activities in the *WESM* and determine whether or not such activities are performed in accordance with the *WESM Rules*;
- (b) Notify the Market Surveillance Committee whenever it has knowledge of acts or omissions which may reasonably constitute a Breach of the *WESM Rules* or *Market Manuals*;
- (c) Promptly provide all data, information, reports and other documentation requested by the *DOE*, *ERC*, *PEM Board*, *Market Surveillance Committee*, *Compliance Committee*, *Enforcement and Compliance Office* or *Market Assessment Group*.

3.5. SYSTEM OPERATOR

In accordance with the *WESM Rules*, the *System Operator* shall, among others, have the following responsibilities:

- (a) Monitor the operation and practices of *WESM Members* during the coordination, operational planning and real time operation of the electricity system to assess compliance with the *WESM Rules*;
- (b) Notify the Market Surveillance Committee whenever it has knowledge of acts or omissions which may reasonably constitute a Breach of the *WESM Rules* or *Market Manuals*;
- (c) Promptly provide all data, information, reports and other documentation requested by the *DOE*, *ERC*, *PEM Board*, *Market Surveillance Committee*, *Compliance Committee*, *Enforcement and Compliance Office* or *Market Assessment Group*.

3.6. OTHER WESM GOVERNANCE COMMITTEES

In accordance with the *WESM Rules*, the other *WESM Governance Committees* shall, among others, have the following responsibilities:

- (a) Notify the Market Surveillance Committee whenever they have knowledge of acts or omissions which may possibly constitute to a Breach of the *WESM Rules* and *WESM Manuals*;



- (b) Notify the Market Surveillance Committee when they have knowledge of acts or omissions constituting possible abuse of market power or anti-competitive behavior.
- (c) Provide assistance and technical expertise to other WESM Governance Committees when so requested; and
- (d) Promptly provide all data, information, reports and other documentation requested by DOE, ERC, PEM Board, WESM Governance Committees, Market Assessment Group or Enforcement and Compliance Office.

3.7. WESM MEMBERS AND PARTICIPANTS

Whenever required by the *Market Surveillance Committee*, the *Enforcement and Compliance Office* or *Market Assessment Group*, a *WESM Member* shall timely submit requested information and data and documents to enable the *Market Surveillance Committee* to effectively carry out its functions and responsibilities under this *Manual*.

SECTION 4 MARKET MONITORING

4.1. MARKET ASSESSMENT

4.1.1. The *Market Assessment Group* shall prepare monthly and annual Market Assessment Reports for submission to the *Market Surveillance Committee*, which shall include:

(a) An assessment of the development of the market including:

- (i) Analysis and aggregation of monitoring data;
- (ii) Analysis and evolution of monitoring indices; and
- (iii) Recommendations, as necessary.

(b) Such other matters related to market monitoring and assessment, including without limitation:

- (i) Generation mix: generation capacity per type of fuel and per type of flexibility (base load, peak, intermittent);
- (ii) Load behavior and trend: (energy and peak demand);
- (iii) Generation capacity availability and trend; and
- (iv) Adequacy of reserve.

4.1.2. The *Market Assessment Group* shall prepare quarterly and annual Retail Market Assessment Reports for submission to the *Market Surveillance Committee*, which shall include the following:

(a) An assessment of the development of the market including:

- (i) Analysis and aggregation of monitoring data;
- (ii) Analysis and evolution of monitoring indices; and
- (iii) Recommendations, as necessary.

- (b) Such other matters related to market monitoring and assessment, including without limitation:
- (i) Load profile;
 - (ii) Demand trend;
 - (iii) Market concentration; and
 - (iv) Activities of the suppliers and contestable customers.

4.1.3. The *Market Surveillance Committee* shall review and prepare periodic reports for submission to the *PEM Board*, the *DOE* and the *ERC*, as the case may be.

4.1.4. Upon submission to the *PEM Board*, the above-mentioned *Market Assessment Reports* shall be published in the *WESM market information website*.

4.2. MARKET MONITORING DATA AND INDICES

4.2.1. Monitoring Data

4.2.1.1. The *Market Assessment Group* shall regularly collect, organize and maintain the monitoring data.

4.2.1.2. The *Market Assessment Group* shall adopt procedures and formats for the regular submission of monitoring data after providing an opportunity for affected parties to review and comment on such procedures. A party to whom such procedures apply shall establish mechanisms to ensure that the corresponding monitoring data is prepared and submitted, or ready to be accessed, within the time and in the formats specified.

4.2.1.3. A party required to provide regular monitoring data shall submit it within the timeframe and in the formats specified by the *Market Assessment Group* and may not contest its authority to obtain the data prescribed in the monitoring data catalogue.

4.2.1.4. The monitoring data shall be used by the *Market Assessment Group* to calculate monitoring indices and to conduct analysis required by the *Market Surveillance Committee* for the purpose of monitoring:

- (a) The functioning of the *WESM* and the retail market in different periods or intervals and market conditions;
- (b) The behavior of trading participants; and
- (c) The conduct and performance of the Market Operator and System Operator.

4.2.1.5. The *Market Assessment Group*, from time to time, shall recommend to the *Market Surveillance Committee* modifications to the catalogue of monitoring data and indices. The *Market Surveillance Committee* shall consult the *Market Operator*, the *System Operator* and *WESM Members*, and shall provide them an opportunity to comment on the modifications.

4.2.2. Monitoring Indices

- 4.2.2.1. The set of monitoring indices developed by the *Market Surveillance Committee* provides indication of market trends, performance and possible drivers, and signals, which require more in-depth analysis.
- 4.2.2.2. The *Market Surveillance Committee* shall utilize the monitoring indices as indicated in the *Market Manuals* to analyze the monitoring data or other information collected.
- 4.2.2.3. In enhancing or expanding the monitoring indices, the *Market Surveillance Committee* may receive recommendations from the PEM Board, and other interested parties.

4.3. PERIODIC MONITORING BY THE MARKET SURVEILLANCE COMMITTEE

- 4.3.1. The *Market Surveillance Committee* shall meet at least once every month to carry out a review of the Market Assessment Report and the Retail Market Assessment Report submitted by the *Market Assessment Group*, and the preparation of the Monthly Monitoring Report and Retail Market Monitoring Report to be submitted to the *PEM Board*.
- 4.3.2. Subject to existing health protocols issued by the National Government and/or local government units by reason of the COVID-19 pandemic, meetings of the *Market Surveillance Committee* shall be held "onsite" at the PEMC office premises or "online" via remote communication. The PEMC shall ensure that adequate space and facilities are allocated to the *Market Surveillance Committee* for this purpose.
- 4.3.3. Prior to each periodic monitoring meeting of the *Market Surveillance Committee*, the *Market Assessment Group* shall submit the Market Assessment Reports corresponding to the period, for *Market Surveillance Committee's* approval.
- 4.3.4. In the periodic monitoring meetings, the *Market Surveillance Committee* shall:
 - (a) Assess market monitoring indices and price trends in the WESM and the Retail Market to evaluate whether spot prices and reserve prices are in line with those that may be expected in an effectively competitive market; Identify market outcomes or pricing situations that are inefficient or contrary to competition or the WESM objectives;
 - (b) Identify market outcomes or pricing situations that are inefficient or contrary to competition or the WESM Objectives;
 - (c) Assess monitoring indices, the behavior and strategies in bids and offers and, as appropriate, the relationship of those bids or offers to marginal or other costs;

- (d) Pursuant to Section 3.1 of this Manual, provide a report to the *Enforcement and Compliance Office* of certain acts or omissions which may possibly constitute a Breach of the WESM Rules or Market Manuals, or which may possibly constitute anti-competitive behavior or abuse of market power, recommend to the PEMC President the issuance of a Notice of Possible Commission of anti-competitive behavior for submission to the *ERC*.
 - (e) Identify any need for, and recommend the implementation of, measures to remedy or mitigate possible anti-competitive behavior or abuse of market power, anomalous conditions, market defects or problems in the spot market and/or rectify or correct the same through amendments to WESM and Retail Rules and Market Manuals;
 - (f) Review from time to time the market design and propose necessary amendments to the *WESM Rules, Retail Rules and Market Manuals*; and
 - (g) Review reports and recommendations of the *Market Assessment Group*, and take appropriate action thereon including preparing corresponding reports.
- 4.3.5. The *Market Surveillance Committee* may, from time to time, meet with the *PEM Board* or the President of PEMC to discuss its views with respect to the decisions made by the *PEM Board* in relation to previous findings and recommendations of the Market Surveillance Committee.
- 4.3.6. The *Market Surveillance Committee* may request meetings with the *DOE* or *ERC* to obtain clarifications and discuss views and experiences in relation to its findings and recommendations.
- 4.3.7. The *Market Surveillance Committee* shall prepare a Monthly Monitoring Report at the end of each periodic monitoring meeting which shall contain:
 - (a) An assessment of monitoring indices and changes to the monitoring data or monitoring indices, if any;
 - (b) Conclusions and recommendations on the efficiency and adequacy of the *WESM Rules and Retail Rules* and, when necessary, recommendations on amendments to the said *Rules* or the *Market Manuals*;
 - (c) Conclusions and recommendations regarding price trends, market monitoring indices, market behavior and outcomes of the market as a whole, trends in bids and offers and the behavior of trading participants possessing market power or setting the market prices;
 - (d) Evaluation and initial recommendations on special or unusual circumstances or behaviors or results since the previous periodic monitoring meeting;
 - (e) When necessary, recommendations on preventive or mitigation measures;
 - (f) Evaluations and conclusions resulting from a review of Market Assessment Group reports; and
 - (g) Approved Market Assessment Report.
- 4.3.8. The *Market Surveillance Committee* shall submit to the *PEM Board* the following:
 - (a) Monthly Monitoring Report, not later than one week after its approval;

- (b) Quarterly Retail Market Monitoring Report, not later than one week after its approval;
- (c) Annual Retail Market Monitoring Report, within the first quarter of the succeeding year;
- (d) Annual Market Assessment Report, within the third quarter of the succeeding year; and
- (e) Annual Report, which contains its accomplishments and work plan, within the first quarter of the succeeding year.

4.3.9. The *Market Surveillance Committee* shall transmit a copy of the Monthly Monitoring Report, Annual Market Assessment Report, Quarterly Retail Market Monitoring Report and Annual Retail Market Monitoring Report to the *DOE* and *ERC*.

4.4. ISSUANCE OF NOTIFICATION OF POSSIBLE ANTI-COMPETITIVE BEHAVIOR

If the *Market Surveillance Committee* determines that an act or omission possibly constitutes anti-competitive behavior or abuse of market power, the *Market Surveillance Committee* shall recommend to the PEMC President the issuance of a Notice of Possible Commission of Anti-Competitive behavior. Said issuance may contain adequate preventive or mitigation measures, when necessary, until the Investigation is concluded to protect effective competition and fair prices and outcomes in the *WESM* and the retail market.

SECTION 5 OTHER REVIEW FUNCTIONS

5.1. REVIEW OF THE WESM RULES AND RETAIL RULES

- 5.1.1. In the performance of its market surveillance function, the *Market Surveillance Committee* shall from time to time study and analyze the effectiveness of particular *WESM Rules* and *Retail Rules and Market Manuals*, and if necessary, recommend amendments thereto in order to:
- (a) Improve the overall competitiveness in and the effective operation of the *WESM* and retail market;
 - (b) Increase the transparency and efficiency of the *WESM* and retail market;
 - (c) Enhance the conditions and economic signals to achieve the *WESM* and retail market Objectives; and
 - (d) Mitigate distortions, flaws or problems that may negatively affect the efficient and transparent operation of a competitive power market.
- 5.1.2. Any amendment proposal shall be submitted in accordance with the *WESM Rules* and relevant *Market Manual*.

5.2. REVIEW OF THE PROPOSED AMENDMENTS TO THE WESM RULES, RETAIL RULES AND MARKET MANUALS

Upon the request of the *Rules Change Committee*, or as otherwise provided in the *Manual of Procedures for Changes to the WESM Rules, Retail Rules and Market Manuals*, the *Market Surveillance Committee* shall also review and give its opinion and recommendations on proposed amendments to the *WESM Rules, Retail Rules and Market Manuals*.

5.3. REVIEW OF MARKET INTERVENTION

5.3.1. The *Market Surveillance Committee* shall conduct a review upon the occurrence of any of the following events:

- (a) An Intervention declared by the *System Operator* as established in the Grid Code, due to:
 - (i) An emergency;
 - (ii) A threat to system security; or
 - (iii) An event of force majeure;
- (b) An intervention declared by the *Market Operator* due to force majeure, which includes:
 - (i) Market system hardware or software failure that makes it impossible to receive or process market offer/bid information or produce market schedules due to erroneous real-time status input data or dispatch the system in accordance with the *WESM Rules*; and
 - (ii) Interruption in the operations of market software used by the *Market Operator* to support various processes in the *WESM* during the simulation of the business continuity plan and disaster recovery procedures, or any other event, circumstance or occurrence in nature of, or similar in effect to any of the foregoing.

5.3.2. When any of the events occurs as described above, the *Market Operator* or the *System Operator*, as the case may be, shall forthwith notify the *Market Surveillance Committee* through the Market Assessment Group of such event in writing.

5.3.3. 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, which shall include:

- (a) All data and information regarding the event, including those provided by the *System Operator* or the *Market Operator*;
- (b) Assessment and recommendations, as applicable, on:
 - (i) The adequacy of the provisions of the *WESM Rules* relevant to the event, and its proposed amendments, if any;

- (ii) The appropriateness of actions taken by the *System Operator* and/or *Market Operator* in relation to the event;
 - (iii) The impact and possible costs incurred by *WESM Members* as a consequence of the event; and
 - (iv) Potential breaches by *WESM Members*.
- 5.3.4. Upon the request of the *Market Surveillance Committee*, the *System Operator*, *Market Operator*, and/or concerned *WESM Members* shall provide such data or information, including requiring the representatives of the latter to appear before it, to enable the *Market Surveillance Committee* to complete its review.
- 5.3.5. The *Market Surveillance Committee* may request a third party to provide necessary data or information including requiring representatives of the latter to appear before it, to enable the *Market Surveillance Committee* to complete its review, or to act as resource person relative thereto.
- 5.3.6. The *Market Surveillance Committee's* Market Intervention Report shall be submitted to the PEM Board for review and approval, within a reasonable period, provided that the initial report shall be submitted within thirty (30) working days after the *MSC* has received the notification from the *Market Operator* or the *System Operator*.
- 5.3.7. A copy of the approved Market Intervention Report shall be transmitted by the *PEM Board* to the *ERC* and *DOE*, and be furnished to any interested persons upon request, in accordance with Section 8 of this Manual.

5.4. REVIEW OF MARKET SUSPENSION

- 5.4.1. Within ten (10) business days following a notice by the Market Operator of a declaration of Market Suspension by the *ERC* under Clause 6.9.1.1 of the *WESM Rules*, the *Market Surveillance Committee* shall convene and review such declaration and prepare a report to assess:
 - (a) The adequacy of the relevant provisions of the *WESM Rules* in relation to the event or events which occurred;
 - (b) The appropriateness of actions taken by the *System Operator* and the *Market Operator* in relation to the event or events which occurred;
 - (c) The costs incurred by *WESM Members* as a consequence of responding to the event or events; and
 - (d) Any finding of potential, fault of any *WESM Participant* including a preliminary recommendation for further evaluation by the PEM Auditor.
- 5.4.2. Upon the request of the *Market Surveillance Committee*, the *System Operator*, *Market Operator*, and/or concerned *WESM Members* shall provide such data or information including requiring the latter's representatives to appear before it, to enable the *Market Surveillance Committee* to complete its review.

- 5.4.3. The *Market Surveillance Committee* may request a third party to provide necessary data or information including requiring the latter's representative to appear before it, to enable the Market Surveillance Committee to complete its review, or to act as resource person relative thereto.
- 5.4.4. The *Market Surveillance Committee's* Market Suspension Report shall be submitted to the *PEM Board* for review and approval.
- 5.4.5. A copy of the approved *Market Surveillance Committee* Market Suspension Report shall be transmitted by the *PEM Board* to the *ERC* and *DOE*, and shall be furnished to any interested persons upon request, in accordance with Section 8 of this Manual.

5.5. REVIEW OF OVER-RIDING CONSTRAINTS

- 5.5.1. The *System Operator* shall provide the *Market Surveillance Committee*, through the *Market Assessment Group*, with the details of the over-riding constraint imposed (e.g. date, trading interval, reasons for the imposition) under a standard form prescribed by the *Market Surveillance Committee* within the next two (2) business days. The *Market Surveillance Committee* may require from the *System Operator* additional information, as it may deem necessary.
- 5.5.2. The *Market Assessment Group* shall maintain a record of each over-riding event and any significant impact thereof on the market, which shall be reported to the *Market Surveillance Committee* on a monthly basis. During its review of the over-riding constraints imposed by the *System Operator*, the *Market Surveillance Committee* may require additional information to further assess the event.
- 5.5.3. The *Market Operator* or a *WESM Member* may also request the *Market Surveillance Committee* to review a decision to impose or relax an over-riding constraint.
- 5.5.4. The request shall be submitted to the *Market Surveillance Committee* and shall include:
 - (a) The identification of the party requesting the review;
 - (b) The identification of the incident, including the date, trading intervals and conditions, when the over-riding constraint was imposed
 - (c) The reason for the request, describing the specific issues or concerns to be reviewed; and
 - (d) Any other matter or relevant information considered significant by the requesting party to be taken into consideration by the *Market Surveillance Committee* in its review of the incident.
- 5.5.5. The *Market Assessment Group* shall verify that all necessary information has been submitted. Within the next five (5) business days, the *Market Assessment Group* shall:

- (a) If the request is complete, acknowledge receipt and inform the requesting party that the request will be submitted for review to the *Market Surveillance Committee*; or
 - (b) If the request is incomplete, inform the requesting party of the deficiency and request for submission of the required data.
- 5.5.6. The *Market Surveillance Committee* shall conduct its review on the imposition of an over-riding constraint, and thereafter transmit to the requesting party, copy furnished the *PEM Board*, the report containing the following:
- (a) Whether the imposition of over-riding constraint was reasonably justified;
 - (b) Whether a trading participant was adversely affected by the imposition of the over-riding constraint; and
 - (c) Conclusion and recommendations, if any.

SECTION 6 MITIGATION MEASURES

The Market Surveillance Committee may recommend to the PEMC the imposition of mitigation measures to address possible:

- (a) Breaches of the WESM Rules; and
- (b) Acts or omissions constituting possible Anti-Competitive Behavior

SECTION 7 ACCESS TO INFORMATION AND DATA MANGEMENT

- 7.1. To perform its functions, responsibilities and achieve its objectives under this Market Manual, the Market Surveillance Committee and Market Assessment Group shall have continuing authority to request and access any relevant data, information, report or document that a WESM member or WESM participant, the Market Operator or System Operator may have in its possession.
- 7.2. The Market Surveillance Committee and Market Assessment Group are authorized to request, with appropriate deadlines, the submission of data, documents and other information necessary for the accomplishment of their respective functions under this Manual.
- 7.3. Each WESM Member or WESM Participant, the Market Operator and the System Operator shall submit, in a timely manner and in the required format, such data, documents and other information referred to in the monitoring data, or requested by the Market Surveillance Committee or Market Assessment Group in relation to its functions under this Manual. Every submission of information or data pursuant to this Manual shall be accompanied by a written declaration that such information or data

are valid, accurate, and complete and based on authentic documents. The name and designation of the individual submitting the informational data shall be indicated in such declaration.

7.4. A request for information by the Market Surveillance Committee, Enforcement and Compliance Office and Market Assessment Group shall:

- (a) Be in writing;
- (b) Indicate the reason for the request;
- (c) Specify the document or information requested and, when applicable, the format;
- (d) Specify a reasonable time within which the information must be provided; and

Provide other relevant information or clarification to ensure that the request is understood by the Recipient.

SECTION 8 CONFIDENTIALITY

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- 8.1. Each member of the *Market Surveillance Committee* and the *Market Assessment Group* shall enter into a confidentiality undertaking, in accordance with the terms prescribed by the *PEM Board*.
- 8.2. To carry out its responsibilities, the *Market Surveillance Committee* and the *Market Assessment Group* shall have the right to access and review confidential or commercially-sensitive data available from a *WESM Member* or *WESM Participant*, the *Market Operator* or *System Operator*.
- 8.3. If a *WESM Member* or *WESM Participant*, the *System Operator* or the *Market Operator* marks or claims that a document or information requested is confidential, the party shall provide the reasons that justify such confidentiality treatment.
- 8.4. The *Market Surveillance Committee* or *Market Assessment Group*, as the case may be, shall review the confidentiality claim in line with the *WESM Rules* and other Applicable Law, Rules and Regulations. If the claim is valid, the requirements for the protection of such document or information, as may be necessary to ensure the confidentiality and commercial value of such document or information, shall be established.

- 8.5. The *Market Surveillance Committee* and the *Market Assessment Group* shall implement procedures as may be reasonable and necessary to protect the confidentiality and commercial value of documents or other information acquired and not use the same for other purposes other than which it was obtained.
- 8.6. All reviews and reports to be submitted to the *PEM Board* shall not, as far as practicable, contain any confidential or commercially-sensitive information.
- 8.7. Reports to be published or disseminated to the Compliance Committee, *ERC*, *DOE* or to any person requesting a copy of any report prepared pursuant to this Manual shall be subject to the exclusion of portions thereof, which are determined by the Compliance Committee as confidential or commercially sensitive information.
- 8.8. The members of the *Market Surveillance Committee*, Enforcement and *Compliance Office* and *Market Assessment Group* as the case may be, shall prepare a version of their Reports, deleting information they have determined to be confidential, to enable its dissemination and publication.
- 8.9. Monitoring indices and the results and evolution of monitoring indices shall be published in the Market Information Website. These are not confidential information.

SECTION 9 LIMITATION OF LIABILITY AND INDEMNIFICATION

- 9.1. Members of the *PEM Board* and other *PEMC officers and staff*, Market Surveillance Committee, *Enforcement and Compliance Office*, and the Market Assessment Group, as the case may be, shall not be made personally liable for any loss, liability or damage suffered or incurred by a WESM member, the System Operator, the Market Operator or any other person by reason of a disclosure of information in reports prepared as a result of the exercise of assessment, monitoring and compliance functions undertaken in accordance with the WESM Rules, Retail Rules or this Market Manual, unless they have acted with malice, manifest partiality, evident bad faith, gross incompetence or gross negligence.
- 9.2. Should any member of the *PEM Board* and other *PEMC officers and staff*, Market Surveillance Committee, *Enforcement and Compliance Office*, Market Assessment Group, as the case may be, be adjudged liable for any amount for liability or damage suffered or incurred by any person or entity, the PEMC shall hold them free and harmless from such loss, liability or damage, and shall fully 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, evident bad faith, gross incompetence or gross negligence. Said indemnification shall cover:
- (a) The full amount adjudged; and
 - (b) The costs and expenses incurred by the person involved in defending himself/herself or itself, as the case may be, in the related proceedings.



SECTION 10	AMENDMENT, PUBLICATION AND EFFECTIVITY
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10.1 AMENDMENTS

- 10.1.1 Any amendments to this *Manual* shall be approved by the *DOE*, following the procedures for changes to Market Manuals set out in the *WESM Rules* and in the relevant *Market Manual*.

10.2 PUBLICATION AND EFFECTIVITY

- 10.2.1 This *Manual*, as it may be amended from time to time, shall be published in the market information website maintained by the Market Operator.

This *Manual* or any amendments thereto shall become effective upon approval of the *DOE* in accordance with *WESM Rules* Clause 8.6.4. The date of effectivity shall be indicated in this document.