



## RULES CHANGE COMMITTEE

### Revised Proposed General Amendments to the WESM Manual on Dispute Resolution regarding Disputes under the Retail Rules

Effective Date : 21 July 2023

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**WHEREAS**, on 12 March 2021, the Dispute Resolution Administrator (DRA) initiated proposed amendments to the WESM Manual on Dispute Resolution pertaining to the modes of arbitration for disputes under the Retail Rules, among others;

**WHEREAS**, following the rules change process, the proposal was approved as amended by the Rules Change Committee (per RCC Resolution No. 2021-07) and the PEM Board (per PEM Board Resolution No. 2021-37-05), and was consequently endorsed to the DOE for final approval on 29 July 2021;

**WHEREAS**, the DOE only partially approved the proposed amendments as expressed in its letter to the PEM Board dated 31 March 2022 and the subsequent promulgation of DOE Department Circular No. 2022-06-0021 dated 20 June 2022, which only approved the following:

- i. Proposed changes on the inclusion of Dispute Resolution between Supplier and Customer under the Retail Rules and the use of Formal Offer Arbitration or "Pendulum Arbitration";
- ii. Proposed Guidelines for Virtual Hearings and Conference During Arbitration; and
- iii. Revision of the phrase "PEM Board and its Working Groups" to "Governance Arm" as possible impleadable party to a dispute

**WHEREAS**, as for its March 2022 letter, the DOE provided comments and recommendations regarding the portion of the proposal it did not adopt which pertains to the kinds of disputes between Suppliers and Customers under the Retail Rules that may be under the scope of the WESM Dispute Resolution Process, and directed the PEM Board and the DRA to revisit the scope of disputes covered in the proposal which should be limited only within the scope of the Retail Rules;

**WHEREAS**, on 21 June 2023, the DRA submitted a Memorandum to the Rules Change Committee (RCC) dated 16 June 2023 (Annex A) providing his responses to the DOE's comments and recommendations, as well as proposed revisions to the amendments originally submitted to the DOE in July 2022;

**WHEREAS**, the DRA likewise presented to the RCC a summary of his response and the proposed revisions to the amendments during the latter's 217<sup>th</sup> Meeting on 23 June 2023:

DOE's Comments	DRA's Response
1. Provide a mechanism in cases where the party being disputed is the PEM Board or the WESM Governance Committees (WGCs).	<ul style="list-style-type: none"> <li>• The current mode of WESM Dispute Resolution is contemplated to only admit and settle "<i>inter-partes</i>" (between the parties) disputes with subject matters that are civil, commercial or business as distinguished from those that are</li> </ul>

Revised Proposed General Amendments to the WESM Manual on Dispute Resolution  
regarding Disputes under the Retail Rules

DOE's Comments	DRA's Response
	<p>penal, administrative or regulatory/ policy-based in nature.</p> <ul style="list-style-type: none"> <li>Disputes involving the PEM Board and the WGCs may not be the subject of an arbitrable dispute under the WESM Dispute Resolution Framework as it is inconsistent with the premise of commercial arbitration.</li> </ul>
<p>2. Define limitations on the exemptions and/or scope of disputes and consider when members of the PEM Board and the WGCs could remain to be subject to a dispute on matters outside the scope of the WESM Penalty Manual.</p>	<p>There is no urgency in establishing the scope of arbitrable disputes against the PEM Board and the WGCs since aside from these types of disputes being unlikely to occur, the current framework already provides for a mechanism that would allow the DRA to preliminarily assess any dispute and decide whether such dispute is indeed arbitrable or not.</p>
<p>3. Revisit the scope of disputes under the Retail Rules</p>	<p>Limit the scope of arbitrable disputes under the Retail Rules to be considered as <u>commercial</u> in nature. The proposed new provision under Section 7.3.1 of the Dispute Resolution Manual is reworded to clarify that arbitrable disputes between Suppliers and Customers are only those that pertains to the commercial aspects of their Retail Supply Contracts but which does not include the interest of the public (Annex B). Disputes involving "the interest of the public" are excluded from the coverage of the WESM Dispute Resolution Framework as they fall under the original and exclusive jurisdiction of the ERC.</p>

**WHEREAS**, during the same meeting, the RCC adopted the DRA's rewording of the proposed new Section 7.3.1 that further clarifies the scope of the arbitrable disputes under the Retail Rules, and likewise concurs with the DRA's responses to the DOE's comments to be submitted to the DOE for consideration;

**NOW THEREFORE**, we, the undersigned, on behalf of the sectors we represent, hereby resolve, as follows:

**RESOLVED**, that the RCC recommends the submission of the DRA's responses to the DOE regarding the latter's comments provided in its letter to the PEM Board on 31 March 2022, for the DOE's consideration, herein attached as Annex A;

Revised Proposed General Amendments to the WESM Manual on Dispute Resolution  
regarding Disputes under the Retail Rules

**RESOLVED FURTHER**, that the RCC approves the Revised Proposed General Amendments to the WESM Manual on Dispute Resolution regarding Disputes under the Retail Rules attached as Annex B;

**RESOLVED FINALLY**, that the Revised Proposed General Amendments to the WESM Manual on Dispute Resolution regarding Disputes under the Retail Rules are hereby endorsed to the PEM Board for approval, and subsequent submission to the DOE for final approval.

Done this **21st** day of **July 2023**, Pasig City.

Revised Proposed General Amendments to the WESM Manual on Dispute Resolution regarding Disputes under the Retail Rules

Approved by:  
**THE RULES CHANGE COMMITTEE**

Independent Members:

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Chairperson

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Revised Proposed General Amendments to the WESM Manual on Dispute Resolution regarding Disputes under the Retail Rules

 <p><b>NELSON M. DELA CRUZ</b> Nueva Ecija II Area 1 Electric Cooperative, Inc. (NEECO II – Area 1)</p>	 <p><b>RUSSEL S. ALABADO</b> Angeles Electric Corporation (AEC)</p>
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System Operator Member:	
 <p><b>DARRYL LON A. ORTIZ</b> National Grid Corporation of the Philippines (NGCP)</p>	



## ANNEX A

REF NO.: DRA-2023/\_\_\_\_\_

16 June 2023

### MEMORANDUM



**FOR : RULES CHANGE COMMITTEE (RCC)**

**THRU : Atty. Jesusito G. Morillos, Chairperson**

**FROM : Atty. Teodoro Kalaw, IV. C.Arb,  
Dispute Resolution Administrator (DRA)**

**SUBJECT : Study on the Rules Change Proposals by the DRA**

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#### A. Background

1. On 12 March 2021, the DRA submitted to the RCC the following proposed general amendments to the relevant provisions of the WESM Rules and Market Manual on Dispute Resolution which aim to:
  - a. Provide a dispute resolution framework for the Retail Rules;
  - b. Provide guidelines for the conduct of virtual hearings;
  - c. Align the final settlement of WESM disputes and its binding effect with Republic Act No. 9285 or the Alternative Dispute Resolution (ADR Act of 2004) and its Implementing Rules and Regulations (IRR) as well as the Special Rules of Court on ADR; and
  - d. Remove the PEM Board and the WESM Governance Committees (WGCs) as impleadable entities under Clause 7.3.1.1 (c) of the WESM Rules.
2. After deliberations, the RCC issued its Resolution No. 2021-07 on 18 June 2021, containing the following resolutions:
  - a. Adopting the proposed changes on the inclusion of Dispute Resolution between supplier and customer in the Dispute Resolution Manual Issue 6.0;
  - b. Adopt the proposed Guidelines for Virtual Hearings and Conference During Arbitration as Annexes H and I of the Dispute Resolution Manual Issue 6.0;
  - c. On the proposal relative to the final settlement of WESM Disputes:
    - i. Retain WESM Rules Clauses to still allow the parties a remedy against the arbitral award by filing a complaint with the ERC;

- ii. Retain the provisions in the Dispute Resolution Manual allowing a party to file a complaint with the ERC if not satisfied with the arbitral award.
- d. On the removal of the PEM Board and WESM Governance Committees (WGCs) as impleadable parties to a dispute:
  - i. Deny the proposal to delete these entities and instead modify the list to state “Governance Arm” to refer to PEMC instead; pursuant to the definition under DOE DC 2020-10-0021 dated 22 October 2020.

A copy of the RCC Resolution No. 2021-07 dated 18 June 2021 is hereto attached as **Annex A**.

3. The RCC Resolution was thereafter endorsed to the PEM Board which adopted and approved the same for endorsement to the DOE on 30 June 2021.
4. On 31 March 2022, the DOE wrote a letter to the PEM Board with the following comments on the DRA’s proposals:
  - a. **Study the recourse of the WESM Member who disagrees with the outcome of the dispute resolution.** - As to the proposal to state the “Governance Arm” as among the parties subject to a dispute, the DOE stated that in DOE Department Circular Nos. DC2018-01-0021 and DC2020-10-0021, the term “Governance Arm” constitutes the PEM Board and the WESM Governance Committees (WGCs). While the DOE concurs with the proposal, it suggested that a mechanism must be put in place in instances where the party being disputed is the PEM Board or the WGCs.
  - b. **Revisit the proposal to ensure consistency with the allowed exemptions involving Investigation Cases within the WESM Penalty Manual and define possible limitations on these exemptions and / or the scope of dispute resolution** - The DOE stated that the proposal must ensure consistency with the provisions of the WESM Rules relative to those expressly exempted from the coverage or scope of dispute resolution, *i.e. the provisions under the Penalty Manual covering results of the investigation of the Enforcement and Compliance Office (ECO) and decisions of the PEM Board and the Compliance Committee in these matters.*<sup>1</sup> The DOE stated that in upholding governance ethical values, the members of the PEM Board and the WGCs could remain to be subject to a dispute on matters outside the scope of the WESM Penalty Manual.
  - c. **Revisit the scope of disputes under the Retail Rules** – The DOE stated that the inclusion of disputes between the Supplier and Contestable

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<sup>1</sup> Clause 7.2.3.8 of the WESM Rules – “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”

Customer is in conflict with the EPIRA provisions giving original and exclusive jurisdiction to the Energy Regulatory Commission (ERC)<sup>2</sup> over all cases contesting rates, fees, fines and penalties imposed by the ERC and those involving disputes between and among participants or players in the energy sector, i.e. disputes on pricing, contractual terms (period and early pre-termination of the retail supply contract).

Attached hereto and marked as **Annex B** is a copy of the DOE Letter to the PEM Board dated 31 March 2022.

5. Despite the foregoing comments, the DOE endorsed for the Secretary's approval the remaining portions of the DRA's proposed amendments particularly Annex H (Pendulum Arbitration / Formal Offer of Arbitration for Disputes under the Retail Rules) and Annex I (Guidelines for Virtual Hearings) as these merely pertain to the procedural aspects and efficient conduct of dispute proceedings.
6. Thus, after public consultations and deliberations were conducted, the proposed amendments of the DRA were finally approved and DOE Department Circular No. 2022-06-0021 titled, *"Adopting Further Amendments to the Wholesale Electricity Spot Market (WESM) Rules and Manual on Dispute Resolution Administration (DRA),"* was issued on 20 June 2022.

A copy of the DOE Department Circular No. 2022-06-0021 dated 20 June 2022 is hereto attached as **Annex C**.

7. While the DOE approved a majority of the DRA's proposed amendments as contained in DOE DC No. 2022-06-0021, the DRA deems it necessary to comply with the directives of the DOE to conduct further review of its proposals to address the issues raised by the DOE. As such, the DRA hereby submits the following report which discusses its position on the issues raised by the DOE in its letter:

## **B. Report / Discussion**

- i. Study the recourse of the WESM Member who disagrees with the outcome of the dispute resolution and provide a mechanism in cases where the party being disputed is the PEM Board or the WGCs.***
- ii. Define limitations on the exemptions and / or scope of disputes and consider when members of the PEM Board and the WGCs could remain to be subject to a dispute on matters outside the scope of the WESM Penalty Manual.***

8. The original intent of the DRA's proposal is to remove the PEM Board and the WGC members from the list of impleadable parties to a dispute pursuant to the goal to align the provisions of the WESM Dispute Resolution with an agreement-based or commercial arbitration framework.

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<sup>2</sup> Section 43 (u)

9. During the deliberations with the RCC, this proposal was modified and instead of removing the phrase, “*PEM Board and its Working Groups except the Dispute Resolution Administrator*” from the list, it was replaced to reflect the “*Governance Arm*” instead. The RCC resolution reflects the intention to refer to PEMC as the entity with juridical personality instead of the PEM Board and the WGCs; and to make this uniform with the rest of the juridical entities in the list of impleadable parties to a dispute. The DOE adopted this proposal<sup>3</sup> hence the provision under the WESM Rules now reads as follows:

*7.3.1.1 The dispute resolution procedures set out in this clause 7.3 apply to all disputes relating to or in connection with transactions in the WESM which may arise between or among any of the following:*

- (a) The Market Operator;*
  - (b) The System Operator;*
  - (c) The Governance Arm;**
  - (d) WESM members;*
  - (e) Intending WESM members;*
- xxx*

10. While the DOE adopted the proposal, it did not discount the possibility that parties to a dispute, including those who disagree with the outcome of a dispute resolution, may find a cause of action against the members of the PEM Board and the WGCs. In which case, the DOE suggests that a mechanism must be put in place in instances where the party being disputed is the PEM Board or the WGCs.
11. In the same light, the DOE recognizes the current exemption to the scope of WESM Dispute Resolution that excludes from its coverage the decisions of the PEM Board and the relevant WGC on investigation cases falling under the WESM Penalty Manual. However, the DOE suggests that in upholding governance ethical values, the members of the PEM Board and WGCs could remain subject to a dispute if it involves a subject matter that falls outside the scope of the Penalty Manual.
12. Back in 2011, the WESM Dispute Resolution Process (“WESM-DRP”) was shifted in favor of adopting an *agreement-based commercial arbitration* framework as opposed to the previous ERC-delegated *regulatory adjudication* framework. The current mode of WESM Dispute resolution is contemplated to only admit and settle “*inter-partes*” (between the parties) disputes with subject matters that are civil, commercial or business as distinguished from those that are penal, administrative or regulatory/ policy-based in nature. This was

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<sup>3</sup> DOE Department Circular No. 2022-06-0021 titled, “*Adopting Further Amendments to the Wholesale Electricity Spot Market (WESM) Rules and Manual on Dispute Resolution Administration (DRA)*,” issued on 20 June 2022.

stipulated in the WESM Rules under Clause 7.3.1.1 stating that the WESM-DRP shall “*apply to all disputes relating to or in connection with transactions in the WESM*” (e.g., billing and settlement issues). Therefore, a commercial/business/civil dispute among parties to a transaction should have resulted from the operation of the spot market for it to be categorized as a *WESM Dispute*.

13. Noting the intention or rationale for the shift towards adopting an *agreement-based commercial arbitration* framework and having expressly defined what a WESM Dispute is, it is the opinion of the DRA that disputes involving the PEM Board and the WGCs may not be the subject of an arbitrable dispute under the WESM Dispute Resolution Framework as it is inconsistent with the premise of commercial arbitration.
14. As the PEM Board (with the WGCs under its supervision) is mandated to be the governance body of the WESM, its actions will be mostly, if not all, in performance of its ERC-delegated regulatory or "police" powers. Its decisions are mostly administrative or regulatory in nature, as it is responsible for implementing policies prescribed in the WESM Rules and Market Manuals. Therefore, disputes filed against the PEM Board would, at their core, question or undermine the enforcement of the regulatory policies of the market.
15. The nature of such disputes is not civil, commercial or business and since the WESM Dispute Resolution Framework was intended to only resolve civil, commercial or business disputes out of market transactions, conflicts arising out of the decisions of the PEM Board (and the WGCs) even those whose subject matter is outside the scope of the Penalty Manual, may not be cognizable under the WESM Dispute Resolution Process as they fall outside the definition of a WESM Dispute and thus may be deemed inadmissible for resolution through arbitration.
16. Further, the DRA is of the opinion that disputes against the PEM Board and the WGCs are highly unlikely considering that the PEM Board and WGCs do not have a juridical personality. A Board of Directors that can sue and be sued does not exist in law even in contexts outside of the WESM Dispute Resolution Framework.
17. While the foregoing reflects the general opinion of the DRA on the nature of disputes against the PEM Board and the WGCs, it should be emphasized, however, that the DRA does not find the urgency of establishing the scope of arbitrable disputes against the PEM Board and the WGCs since aside from these types of disputes being unlikely to occur, the current framework already provides for a mechanism that would allow the DRA to preliminarily assess any dispute and decide whether such dispute is indeed arbitrable or not.
18. Under Section 5.4.1 (b) of the WESM Dispute Resolution Manual, the DRA has the following powers and functions:

5.4.1. The DRA shall exercise the following powers and functions:

Xx xx

b) Determine preliminarily if the dispute is a WESM dispute under Section 2.1(nn) of this Manual or otherwise falls under the WESM dispute resolution process;

19. Thus, while it is the opinion of the DRA that disputes against the PEM Board and the WGCs fall outside the scope of the WESM Dispute Resolution Framework, nothing prohibits the DRA from making a preliminary determination, after studying the applicable law and relevant facts and evidence on record, as to whether the dispute may indeed be deemed arbitrable under the WESM Dispute Resolution Framework.

**iii. Revisit the scope of disputes under the Retail Rules**

20. The DRA’s proposal as adopted by the RCC and approved by the PEM Board expressly included specific disputes, and delimited at that, for the dispute resolution under the Retail Rules, to wit:

- (i) those involving fees for early/pre-termination of a Retail Supply Contract;
- (ii) disputes involving the Retail Supply Contract price; and
- (iii) disputes related to the Retail Supply Contract period

21. The DOE rejected the foregoing proposal to specify the arbitrable disputes under the Retail Rules on the premise that these fall within the original and exclusive jurisdiction of the Energy Regulatory Commission (ERC) as provided under the EPIRA.

22. In the previous discussions by the DRA, the dual aspects of the WESM Rules and types of breach were discussed as follows:

<b>Terms &amp; Conditions of Market Transaction</b>	<b>Regulatory Policies</b>
<p>WESM Rules as providing the essential elements of contract, as follows:</p> <ol style="list-style-type: none"> <li>1. Defines the <u>subject</u> (i.e., the <b>parties</b> – who consent through their membership application);</li> <li>2. Determines the <u>object</u> (<b>commodity, service</b>); and</li> <li>3. Sets the <u>consideration</u> (i.e., <b>prices</b>);</li> </ol>	<p>WESM Rules prohibit/ penalize:</p> <ol style="list-style-type: none"> <li>1. Abuse of market power/ position;</li> <li>2. Cartelization;</li> <li>3. Anti-Competitive or discriminatory behaviors;</li> <li>4. Price fixing/manipulation;</li> <li>5. Economic &amp; physical</li> </ol>

<b>pricing parameters/mechanism), and the conditions thereof</b>	withholding, etc.
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23. The foregoing table shows that the WESM Rules contain both [i] the essential elements of a contract (in the sale of electricity) or the terms and conditions of market transactions, and [ii] regulatory policies. Noting these two aspects, it is possible that a WESM Member could commit a violation against either or both of these. A violation or “breach” of the provisions of the WESM Rules, therefore, can be understood as either a [i] a breach of the terms and conditions of market transactions (with the provisions of the WESM Rules being understood as partaking the nature of a contract between or among the parties), or [ii] a violation of the regulatory policies (with the provisions of the WESM Rules being the repository of regulatory policies). To illustrate:

<i>Inter partes</i> Disputes  <b>Terms &amp; Conditions of Market Transaction</b>	<i>Violations</i> Cases  <b>Regulatory Policies</b>
Impact on that aspect of the WESM Rules that stipulates the terms and conditions of market transactions, relied upon by WESM Participants – in which case, their SETTLEMENT (i.e., NOTICES, PROCEEDINGS, and AWARDS/DISPUTE RESOLUTION) are placed within the Dispute Resolution framework.	Impact on that aspect of the WESM Rules that prohibits/ penalizes violations of regulatory policies – in which case, their MONITORING, INVESTIGATION, and METING OF PENALTIES or OF MITIGATING MEASURES are placed under the authority of the PEM Board or PEMC’s MAG, ECO, MSC, or like Committees/Units, and ERC, as the case may be.

24. The two types of breach/violations may trigger disputes that may be resolved under either the jurisdiction of the WESM Dispute Resolution Framework (i.e., if “inter-partes” commercial disputes), or under the jurisdiction of regulatory bodies such as the ERC or the DOE (i.e., if disputes on violations of regulatory policies) initially delegated to the PEM Board and/or the WGCs. In the same way, disputes under the Retail Rules may have a commercial aspect to it and may therefore fall within the coverage of an arbitrable dispute under the WESM Dispute Resolution Framework.

25. The idea behind the dual aspect of the WESM Rules is again in line with the objective to harmonize WESM Arbitration with RA 9285 and the shift towards an agreement-based or commercial arbitration framework for the WESM. This does not equate to a departure from the mandates of the EPIRA. The ERC remains to have jurisdiction over WESM policy matters (in its exercise of police-regulation) and quasi-judicial matters between WESM Members and the industry participants.

26. On another note, while the DRA recognizes that the EPIRA confers upon the ERC exclusive and original jurisdiction to hear and decide disputes involving participants and players in the energy sector (Sec. 43 [u], EPIRA), there is also a need to recognize the right of the disputing parties, consistent with the principle of party autonomy enshrined in Sec. 2 of the Alternative Dispute Resolution Act, to agree by contract to submit the resolution of their dispute to some other person, body or institution by a process that they had mutually agreed upon.<sup>4</sup>
27. For example, WESM members as market participants have all categorically agreed in the Market Participation Agreement (which all intending participants execute as part of their application documents to the WESM) to submit their disputes to the dispute resolution process provided under WESM Rule 7.3, which sets forth the dispute resolution framework to resolve their disputes.<sup>5</sup>
28. This submission to the WESM Dispute Resolution Framework also finds basis in DOE Department Circular DC 2013-01-0002 referred to as the “Rules for the Integration of Retail Competition in the Wholesale Electricity Spot Market,” otherwise known as the “Retail Rules,” which expressly state that certain provisions of the WESM Rules shall apply to the governance of the retail market. Specifically, to effectively manage transactions between the Suppliers and Contestable Customers,<sup>6</sup> the Retail Rules provide **that Chapter 7 of the WESM Rules pertaining to WESM Dispute Resolution, shall apply to enforcement and disputes related to the Retail Rules.**<sup>7</sup>
29. Thus, considering that commercial disputes generally fall within the definition of an arbitrable dispute under the WESM Rules and the policy providing basis for the applicability of the WESM Dispute Resolution to disputes under the Retail Rules, it would not be amiss to state that the disputing parties can submit the commercial aspect of their disputes involving retail contracts and transactions to the WESM Dispute Resolution Framework.

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<sup>4</sup> Sec. 2 of the ADR Act provides:

“SECTION 2. *Declaration of Policy.* — It is hereby declared the policy of the State to actively promote party autonomy in the resolution of disputes or the freedom of the parties to make their own arrangements to resolve their disputes. Towards this end, the State shall encourage and actively promote the use of Alternative Dispute Resolution (ADR) as an important means to achieve speedy and impartial justice and declog court dockets. As such, the State shall provide means for the use of ADR as an efficient tool and an alternative procedure for the resolution of appropriate cases. Likewise, the State shall enlist active private sector participation in the settlement of disputes through ADR. This Act shall be without prejudice to the adoption by the Supreme Court of any ADR system, such as mediation, conciliation, arbitration, or xx xx

<sup>5</sup> Section 5.01 of that agreement provides that:

“WESM Rule 7.3 applies to any dispute that arises under this Agreement and is incorporated by reference herein, with such modifications as the context may require.”

<sup>6</sup> Section 1.2.2.2 Department Circular (DC) 2013-01-0002 referred to as the “Rules for the Integration of Retail Competition in the Wholesale Electricity Spot Market,”

<sup>7</sup> Section 1.7 Department Circular (DC) 2013-01-0002 referred to as the “Rules for the Integration of Retail Competition in the Wholesale Electricity Spot Market,”

30. With this, the DRA suggests that in resubmitting the proposal to define the scope of disputes under the Retail Rules, the same should be reworded under Section 7.3 of the WESM Rules as follows:

*Disputes Between Supplier and Customer under the Retail Rules:*

*Unless the parties agree otherwise, resolution of the following **illustrative cases** involving disputes on:*

*(i) **The commercial aspect** of a Retail Supply Contract that involves fees for its early / pre-termination; **which does not include the interest of the public;***

*(ii) **The commercial aspect** of a Retail Supply Contract involving price, **but which does not include the interest of the public;** and*

*(iii) **The commercial aspect** of a Retail Supply Contract involving its period, within the contemplation of the Retail Rules, **which does not include the interest of the public;***

*shall be subject to the Final Offer Arbitration Supplementary Rules set forth in Annex H hereto.*

31. The foregoing proposal as reworded, limits the possible scope of Dispute Resolution under the Retail Rules, as it confines the arbitrable disputes to those which may be considered commercial in nature. It also confirms the nature of disputes that fall within the original and exclusive jurisdiction of the ERC, in that it provides that disputes involving “*the interest of the public*” are excluded from the coverage of the WESM Dispute Resolution Framework. By excluding these disputes, that aspect of the WESM Rules that prohibits/ penalizes violations of regulatory policies are clearly delineated to form part of the original and exclusive jurisdiction of the ERC.

### **C. References**

- Department of Energy issued Department Circular (DC) 2013-01-0002 referred to as the “Rules for the Integration of Retail Competition in the Wholesale Electricity Spot Market,” otherwise known as the “Retail Rules.”
- WESM Rules
- Dispute Resolution Manual Issue No. 9

Revised Proposed General Amendments to the WESM Manual on Dispute Resolution regarding Disputes under the Retail Rules

WESM Manual on Dispute Resolution Issue 9.0					
Title	Section	Original Provision	PEM Board-approved Proposed Amendments	Revised Proposed Amendments	Rationale
Definitions, Interpretation and Construction	Section 2.1. Definitions  Sub-sections (kk) to (qq)	xxx  (kk) Rules denote the WESM Rules.  (ll) Rules Change Committee refers to xxx  (mm) WESM-Accredited Arbitrator, WESM-Accredited Mediator and WESM-Accredited ADR Support Service Center have the meaning ascribed to them, respectively, in Sections 6 of this Manual.  (nn) WESM dispute means xxx  (oo) WESM Objectives refers to xxx  (pp) WESM Member means xxx  WESM Participant means xxx	xxx  (kk) <u>Retail Rules refer to the rules promulgated by the Department of Energy governing the integration of retail competition in the operations and governance processes of the WESM and the management of the transactions of the Suppliers and Contestable Customers in the WESM, and the operations of the Central Registration Body as defined in Department Circular No. DC2013-01-0002.</u>  (ll) <del>(kk)</del> Rules denote the WESM Rules.  (mm) <del>(ll)</del> Rules Change Committee refers to xxx  (nn) <del>(mm)</del> WESM-Accredited Arbitrator, WESM-Accredited Mediator and	(NO CHANGE)  xxx  (kk) <u>Retail Rules refer to the rules promulgated by the Department of Energy governing the integration of retail competition in the operations and governance processes of the WESM and the management of the transactions of the Suppliers and Contestable Customers in the WESM, and the operations of the Central Registration Body as defined in Department Circular No. DC2013-01-0002.</u>  (ll) <del>(kk)</del> Rules denote the WESM Rules.  (mm) <del>(ll)</del> Rules Change Committee refers to xxx	<ul style="list-style-type: none"> <li>To include Retail Rules in the Definitions and refer to them as the rules under DOE Department Circular No. DC2013-01-0002.</li> <li>Renumbering of subsequent provisions</li> </ul>

WESM Manual on Dispute Resolution Issue 9.0					
Title	Section	Original Provision	PEM Board-approved Proposed Amendments	Revised Proposed Amendments	Rationale
			<p>WESM-Accredited ADR Support Service Center have the meaning ascribed to them, respectively, in Sections 6 of this Manual.</p> <p><b>(oo)</b> <del>(nn)</del> WESM dispute means xxx</p> <p><b>(pp)</b> <del>(ee)</del> WESM Objectives refers to xxx</p> <p><b>(qq)</b> <del>(pp)</del> WESM Member means xxx</p> <p><b>(rr)</b> <del>(ee)</del> WESM Participant means xxx</p>	<p><b>(nn)</b> <del>(mm)</del> WESM-Accredited Arbitrator, WESM-Accredited Mediator and WESM-Accredited ADR Support Service Center have the meaning ascribed to them, respectively, in Sections 6 of this Manual.</p> <p><b>(oo)</b> <del>(nn)</del> WESM dispute means xxx</p> <p><b>(pp)</b> <del>(ee)</del> WESM Objectives refers to xxx</p> <p><b>(qq)</b> <del>(pp)</del> WESM Member means xxx</p> <p><b>(rr)</b> <del>(ee)</del> WESM Participant means xxx</p>	
(New Provision)	(New Provision)	(None)	<p><b><u>7.3. Disputes Between Supplier and Customer under the Retail Rules</u></b></p> <p><b><u>7.3.1. Unless the parties agree otherwise, resolution of disputes on:</u></b></p>	<p><b><u>7.3 Disputes Between Supplier and Customer under the Retail Rules:</u></b></p> <p><b><u>7.3.1. Unless the parties agree otherwise, resolution of the following illustrative cases involving disputes on:</u></b></p>	<ul style="list-style-type: none"> <li>To define the kinds of disputes specific to those between the Supplier and Customer under the Retail Rules, to be those considered as only commercial in nature and does not</li> </ul>

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Title	Section	Original Provision	PEM Board-approved Proposed Amendments	Revised Proposed Amendments	Rationale
			<p>(i) <u>fees for early/pre-termination of a Retail Supply Contract;</u></p> <p>(ii) <u>Retail Supply Contract price; and</u></p> <p>(iii) <u>Retail Supply Contract period, within the contemplation of the Retail Rules</u></p> <p><u>shall be subject to the Final Offer Arbitration Supplementary Rules set forth in Annex H hereto.</u></p>	<p>(i) <u>The commercial aspect of a Retail Supply Contract that involves fees for its early / pre-termination of a Retail Supply Contract, which does not include the interest of the public;</u></p> <p>(ii) <u>The commercial aspect of a Retail Supply Contract involving price, but which does not include the interest of the public; and</u></p> <p>(iii) <u>The commercial aspect of a Retail Supply Contract involving its period, within the contemplation of the Retail Rules, which does not include the interest of the public</u></p> <p><u>shall be subject to the Final Offer Arbitration Supplementary Rules set forth in Annex H hereto.</u></p>	<p>involve the interest of the public.</p> <ul style="list-style-type: none"> <li>To provide that the Final Offer Arbitration under the Supplementary Rules in Annex H the default mode for these types of disputes under the Retail Rules.</li> <li>To give primacy to the agreement of the parties, the proposed provision retained the caveat, “<i>unless the parties agree otherwise</i>” to give them the option to choose the conventional mode of arbitration instead.</li> </ul>