



# **DISPUTE RESOLUTION ADMINISTRATOR 2021 ANNUAL REPORT**

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**January 2021 to December 2021**

**JANUARY 2021**

**PEMC** *Go*

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## **I. 2021 ACCOMPLISHMENTS**

The Dispute Resolution Administrator (DRA) submits this Annual Report covering the activities undertaken and accomplished by the DRA for the year 2021.

### **A. Appointment of Emergency Arbitrators for 2021**

In accordance with the WESM Dispute Resolution Manual<sup>1</sup> (DRMM), the DRA has appointed Emergency Arbitrators for each month for the year 2021.

The Emergency Arbitrators come from the pool of WESM-accredited Arbitrators and were assigned as stand-by emergency arbitrators for each month. This was done to present an alternative but temporary remedy to parties who seek urgent relief and could no longer await the constitution of the arbitral tribunal. They were tasked to handle the disputes and / or resolve the urgent relief prayed for during the specific month they were assigned to.

### **B. Updated List of Dispute Management Protocol Focal Persons and Alternates**

Pursuant to Section 8.2 of the WESM Dispute Resolution Manual, the DRA requested Market Participants to submit or update their designated Dispute Management Protocol (DMP) Focal Persons and Alternates who will serve as the first point of contact for the notification of WESM-related disputes.

An updated list as of December 2021 of the DMP Focal Persons and Alternates together with their respective contact information was published in the market information website.

### **C. Participation in the Annual General Membership Meeting**

The DRA participated in the online Annual General Membership Meeting by presenting the accomplishments of the DRA for the past years.

### **D. Assistance in the Drafting and Presentation of the Renewable Energy Market (REM) Dispute Resolution Manual Issue No 1**

Upon request of the Renewable Energy Market (REM) Governance Committee, the DRA rendered assistance in the drafting of the Renewable

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<sup>1</sup> ANNEX C. EMERGENCY ARBITRATORS; Article. 2 Appointment of the Emergency Arbitrator



Energy Market (REM) Dispute Resolution Manual Issue No 1 which was submitted to the Department of Energy (DOE) for approval. The DRA also participated in the presentation of the proposed draft to the PEM Board and the Public Consultations held by the DOE.

The DRA contributed valuable insights to the type of dispute resolution applicable to the Renewable Energy Market and determined which of the WESM Dispute Resolution processes may be adopted by the REM and incorporated in the REM Dispute Resolution Manual.

#### **E. Publication of the updated list of Frequently Asked Questions (FAQs)**

In line with its duty to ensure the effective implementation and operation of WESM Dispute Resolution, the DRA has completed its updated list of Frequently Asked Questions (FAQs) on the WESM Dispute Management Framework and caused the publication of the same in the new PEMC website. This would allow the Market Participants to keep abreast of the concepts or any update on the WESM Dispute Resolution processes

#### **F. WESM Dispute Resolution Training Materials**

The DRA has submitted to PEMC the relevant training materials for inclusion in the PEMC Training Program and Plan. This is in line with the DRA's goal to contribute to the awareness of the WESM Dispute Resolution Framework.

## **II. ONGOING ACTIVITIES**

### **A. DRA Proposals for Amendments to the WESM Rules and Dispute Resolution Manual**

Since the fourth (4<sup>th</sup>) quarter of 2020, the DRA has continuously worked on the proposed amendments to the WESM Rules and the Dispute Resolution Manual Issue No. 6. These proposed amendments are as follows:

#### **1. Dispute Resolution for the Retail Rules**

The first proposal for amendment of the Dispute Resolution Manual (DRM) Issue No. 6 introduces a variant mode of arbitration that is specific to the types of disputes that are contemplated within the "Rules for the Integration of Retail Competition in the Wholesale Electricity Spot Market," otherwise known as the "Retail Rules." They are consistent with the goal to integrate retail competition into the WESM and apply the



provisions of the WESM Rules to effectively govern the enforcement and dispute resolution under the Retail Rules.

## **2. Guidelines for Virtual Hearings**

The second proposal for amendment of the DRM seeks to streamline the procedures for the conduct of WESM Dispute Resolution proceedings and provide guidelines for virtual hearings and conferences during arbitration. The guidelines are being made available with reference to any dealings during a circumstance that prevents physical meetings between the participants and provide procedural measures that can mitigate the effect of delays to the arbitral process, including delays caused by the COVID-19 pandemic.

## **3. Final Settlement of WESM Disputes and its Binding Effect**

The third proposal seeks to amend provisions of the WESM Rules and the DRM to make them consistent with the provisions of Republic Act No. 9285 and the Special Rules of Court on ADR which recognize the nature of an arbitral award being final and binding among the participants. The objective of the proposal is to harmonize the provisions of the WESM Rules and the DRM with Republic Act No. 9285 and the Special Rules of Court on ADR to be consistent with the principles of an agreement-based arbitration and give primacy to party autonomy.

## **4. Removal of the PEM Board and the WESM Governance Committees as Impleadable Entities under Clause 7.3.1.1 (c) of the WESM Rules**

Similar to the third proposal, this last proposal also intends to align the relevant provisions of the WESM Rules related to WESM Dispute Resolution with the agreement-based or commercial arbitration framework as it was contemplated to be. The proposal seeks to remove the PEM Board and all the WESM Governance Committees from the list enumerating the parties to a WESM dispute under Clause 7.3.1.1 of the WESM Rules. This is under the principle that the actions of the PEM Board and the WESM Governance Committees are mostly, if not all, in performance of their ERC-delegated regulatory or "police" powers therefore, disputes filed against them would question or undermine the enforcement of the regulatory policies of the market.

## **B. Awareness Campaign**

Aside from the FAQ's published in the website, the mock arbitration video or information video is also an activity planned by the DRA in line with its objective to implement an awareness campaign for the Market Participants for them to be familiar with the WESM Dispute Resolution Process.

## **C. Virtual Seminars for the Continuous Education and Training for the Accredited Pool of Mediators, Arbitrators and Dispute Management Protocol (DMP) Focal Persons**

The DRA has initiated proposals for consideration of PEMC Management in terms of the logistical and financial requirements for the conduct of virtual seminars as part of its awareness campaign among the Market Participants. There are continuous plans to regularly collaborate with various networks and the country's top alternative dispute resolution practitioners for the conduct of trainings and seminars for the DMP Focal Persons and the continuing education of the WESM-Accredited Mediators and Arbitrators. These activities and plans include:

1. Continuous coordination with PIArb for alternative methods to showcase the processes of WESM Arbitration.
2. Continuous coordination with various entities to consider the possibility of featuring WESM Arbitration in Arbitration Conventions and participation in other ADR-related programs, lectures or events organized by external strategic partners for the continuing education of the DMP Focal Persons and WESM-accredited Mediators/Arbitrators.
3. Preparation for the conduct of seminars for the WESM Pool of Accredited WESM Mediators and Arbitrators on the topics of WESM Updates and amendments to the Dispute Resolution Manual relative to Retail Rules and the Renewable Energy Market.

## **III. DRA WORK PLAN**

Annex A provides details of the DRA's program of activities for 2022 consistent with PEMC's Corporate Strategic Plan for 2022 to 2024 which was approved by the PEM Board in January 2022.



#### **IV. THE DISPUTE RESOLUTION ADMINISTRATOR**

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

Atty. Teodoro Kalaw IV, C.Arb. was appointed by the PEM Board on November 2021 as the Dispute Resolution Administrator for the WESM.

#### **V. RESPONSIBILITIES**

The main role and responsibilities of the DRA as set out in the WESM Dispute Resolution Manual, consistent with the requirements of the WESM and the Retail Market, are as follows:

- i. Administer and ensure the effective implementation and operation of the dispute resolution provisions of the WESM Dispute Resolution Manual;
- ii. Determine preliminarily if a dispute is one which falls under the dispute resolution process of the WESM and the Retail Market;
- iii. Draft and issue standard forms to help expedite the resolution of disputes;
- iv. Facilitate the accreditation process of mediators and arbitrations;
- v. Update the list of Accredited Mediators and Arbitrators published in the market information website; and
- vi. Maintain data, reports and other information regarding the development and results of the disputes referred to the DRA.

**Submitted by:**



**Atty. Teodoro Kalaw IV, C.Arb.**  
Dispute Resolution Administrator

## **ANNEX A**

### **DISPUTE RESOLUTION ADMINISTRATOR WORK PLAN 2022**



## MISSION: GOVERNANCE

### GOAL 2: EFFICIENCY AND GOVERNANCE

#### Desired Outcomes/Goals:

1. The operations and performance of PEMC, the market, the market operator and service providers are among the best in the global electricity markets.
2. PEM Board and WESM Governance Committees attain timely, responsive and strategic goals that are consistent with the market objectives and the changing electricity landscape.

**Goal 7:** Disputes among the market participants are expeditiously resolved and effectively implemented/ enforced within the market, if not avoided.

#### Strategies:

1. Promote good faith and adherence to the Dispute Management Protocol (DMP) to prevent controversies escalating to full blown disputes
2. Ensure proper and efficient handling of disputes

No.	Strategy	Output	Timeline
1	Submit the 2021 Annual Report and 2022 Work Plan to the PEM Board	2021 Annual Report and 2022 Work Plan	March 2022

2	Approval of the Proposed Further Amendments to the WESM Rules and the WESM Dispute Resolution Manual on the following: A. Dispute Resolution for the Retail Rules B. Guidelines on Virtual Hearings C. Removal of the PEM Board and the WESM Governance Committees as Impleadable Entities under Clause 7.3.1.1 (c) of the WESM Rules	Approved DOE Circular	Q2 2022 dependent on DOE Approval and Issuance of Circular
3	Conduct of Seminar for the WESM Pool of Accredited WESM Mediators and Arbitrators involving WESM updates, latest amendments to the Dispute Resolution Manual and new procedures for Dispute Resolution for the Retail Rules and Renewable Energy Market.	Training/seminar for the WESM Accredited Pool of Arbitrators and Mediators	Q2 2022
4	Creation of Protocols for the Continuous Mandatory Continuing Education of the WESM Pool of Accredited Mediators and Arbitrators	Protocols on the Conduct of Seminars as a Requirement for the continuous accreditation of the WESM Mediators and Arbitrators	Q2 2022
5	Conduct of Seminar for the DMP Focal Persons involving WESM updates and procedures involving Dispute Management Protocols.	Training/seminar for the DMP Focal Persons	Q2 2022
6	Awareness campaign for the WESM Dispute Resolution Process among Market Participants	<ul style="list-style-type: none"> <li>Information Video on WESM Arbitration</li> <li>Survey Questionnaire on Stakeholders' / WESM Members' Reception / Position on the Efficiency / Effectivity of the WESM Dispute Resolution (and / or Avoidance) Framework</li> </ul>	Q3 2022
7	Proposed Further Amendments to the WESM Dispute Resolution Manual regarding the inclusion of the ad hoc support services during arbitration	Discussion Paper and Presentation Materials	Q4 2022



8	Appointment of Emergency Arbitrators for 2022	Appointment of Emergency Arbitrators for 2022	Q2 2022
9	Annual Publication of Updated Directory of DMP Focal Persons and Alternates	Published DMP Focal Person and Alternates	Q4 2022
10	Dissemination of schedules of ADR-related programs, lectures or events organized by external strategic partners for the continuing education of WESM accredited Mediators/Arbitrators	Email dissemination of available activities to the WESM-accredited Mediators/Arbitrators	as offered/ as scheduled