



# **DISPUTE RESOLUTION ADMINISTRATOR 2019 ANNUAL REPORT**

**January 2019 to December 2019**

**JANUARY 2020**



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## I. 2019 ACCOMPLISHMENTS

The Dispute Resolution Administrator (DRA) submits this Annual Report covering the activities undertaken and accomplished by the DRA for the year 2019.

### A. Administration of Arbitration

The DRA administered the conduct of two (2) arbitration proceedings, as follows:

Cases	Subject of Dispute
<b>WESM-Arb-18-01</b>	Claims for RTD Underpayment
<b>WESM-Arb-18-02</b>	Claims for Settlement as Must-Run Unit

The foregoing cases were the first to be administered under the *agreement-based arbitration* framework of WESM Dispute Resolution introduced in 2012 whereby the parties are given a certain degree of freedom on the arbitration procedures that would be appropriate to their needs. The mediators and arbitrators are also outsourced from an accredited pool of expert/experienced/pioneering/trained ADR (Alternative Dispute Resolution) providers rather than from a high-cost-maintenance organic unit of PEMC.

As prescribed in the WESM Manual on Dispute Resolution, the parties first went through mediation before deciding to dispense with it and aptly proceed straight to arbitration. The following activities were conducted in the administration of mediation and arbitration.

- *Arbitration Proceedings for WESM-Arb-18-01 and WESM-Arb-18-02*

<b>Duration</b>	on-going (beginning 28 October 2018 until 12 August 2019)
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Process	Sub-Activities
Filing of Request for Arbitration	Receipt by DRA from Claimant of Request for Arbitration
	Receipt by DRA from Claimant of advance on arbitration fees and costs
	DRA issuance to Claimant of Acknowledgement Receipt of initial fee
	Exchange of communications between DRA and parties to enjoin additional (indispensable) party

Process	Sub-Activities
	Filing by Claimant of Request for Arbitration (RA) against additional Respondent; filing of Answer to RA by additional Respondent
Selection and Appointment of Arbitrators	Parties' nomination and selection of two (2) arbitrators
	Notification of selected WESM Arbitrators of their being selected
	Confirmation by selected arbitrators of availability, competence or familiarity, and disclosure of conflict of interest (if any); appointment of first two arbitrators
	Selection of 3 <sup>rd</sup> arbitrator by first two arbitrators; confirmation by 3 <sup>rd</sup> arbitrator; appointment
	Constitution of Arbitral Tribunal
Appointment of <i>ad hoc</i> ADR Support Service Provider	Engagement and appointment of <i>ad hoc</i> ADR Support Service Provider (i.e., arbitration administrative secretariat)
Pre-arbitration activity (2019)	Conduct of Case Management Conference
	Drafting of Terms of Reference by Arbitral Tribunal; finalization and approval of Terms of Reference by Arbitral Tribunal and parties
Arbitration Proper	From 11 February 2019 to 10 August 2019 The Final Award was issued on 13 August 2019.
Post Arbitration Activity	This includes the accounting of expenses and completion of other administrative requirements (i.e., submission of DRA report to the PEM Board, DOE and ERC.

## 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 August 2019 DMP Focal Persons and Alternates together with their respective contact information was published in the market information website.

## C. DRA Arbitration Flowchart

Following the conduct and conclusion of arbitration, the DRA reviewed its process on the *Guidelines Constituting the Ad-Hoc Secretariat Support*. The review focused on the ways forward regarding the engagement of an Ad-Hoc Secretariat, adjustments to the arbitration fees in consideration of the actual expenses incurred during the arbitration. The DRA likewise conducted a benchmarking on stenographic fees.

The DRA likewise improved the arbitration process flow in view of the actual experience during the arbitration.

## **II. ONGOING ACTIVITY**

### **A. Appointment of Emergency Arbitrators for 2020**

In accordance with Article 2 Appointment of the Emergency Arbitrator of the WESM Dispute Resolution Manual (DRMM), the DRA is required to appoint an emergency arbitrator within a short time as possible, normally within two (2) calendar days from the DRA Secretariat's receipt of an Application.

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

In December 2019, the DRA formally requested selected members of the WESM Accredited arbitrators' conformance to their proposed schedule as the Emergency Arbitrator of the month. Once completed, the list of Emergency Arbitrators shall be published in the WESM Website.

## **II. DRA WORK PLAN**

Annex A provides details of the DRA's program of activities for 2020 consistent with PEMC's Corporate Strategic Plan for 2019-2021 which was approved by the PEM Board on 27 March 2019.

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

#### **IV. 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:**



**Jesusito G. Morillos, C.E., J.D., MCIArb**  
Dispute Resolution Administrator

## **DISPUTE RESOLUTION ADMINISTRATOR WORK PLAN 2020**

## MISSION: GOVERNANCE

**Desired Outcome:** Empowered Governance: PEM Board and Governance Committees attain timely, responsive and strategic goals that are consistent with the market objectives and the changing electricity landscape.

**Goal No. 4 - Indicator:** Disputes among the market participants are expeditiously resolved and effectively implemented/enforced within the Market, if not avoided.

No.	Strategy	Output	Timeline
1	Submit the 2019 Annual Report and 2020 Work Plan to the PEM Board	2019 Annual Report and 2020 Work Plan	February 2020
2	Prepare and submit to CPC or ECO a training material on WESM Dispute Resolution Framework for inclusion in the PEMC Training Program and Plan	WESM Dispute Resolution Framework Training Material	February 2020
3	Develop and maintain a registry of downstream/ outsourced service providers	Registry of downstream/ outsourced service providers	February 2020
4	Proposed Further Amendments to the WESM Dispute Resolution Manual regarding Dispute Resolution for the Retail Market among others	Proposed amendments to the Dispute Resolution Market Manual to the RCC	March 2020
5	Registry of DRA templates, boiler plates, pro-forma template, forms, etc with serial numbers	Registry of DRA's Documents and Records	April 2020
7	Annual Publication of Updated Directory of DMP Focal Persons and Alternates	Published DMP Focal Person and Alternates	Q2 2020
8	Awareness campaign for the WESM Dispute Resolution Process among Market Participants	1. Mock video on WESM Arbitration 2. Published FAQs on WESM Dispute Management Framework 3. Include the arbitration framework in the WCO Summit in September 2020 or during the Annual General Membership Meeting in June 2020.	Q3 2020



No.	Strategy	Output	Timeline
9	Conduct of Seminar for the WESM Pool of Accredited WESM Mediators and Arbitrators on the following topics: 1. Negotiation and Mediation 2. Emergency Arbitration 3. Dispute avoidance modes	Training/seminar for the WESM Governance Committees, Pool of Arbitrators and Mediators and PEMC Officers	Q4 2020
10	Facilitation of training for WESM-accredited Mediators/Arbitrators on the WESM, the Retail Market and the Reserve Market; update on changes WESM Dispute Resolution Process.	training(s)/seminar(s) advisories/notifications/ invitations to WESM Mediators/Arbitrators	Regular activity per schedule
11	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