

**WHOLESALE ELECTRICITY SPOT MARKET
RULES CHANGE COMMITTEE**

RESOLUTION NO. 2017-12

**Proposed Amendments to the WESM Manual on Dispute Resolution regarding
Mediation and Arbitration Procedures**

WHEREAS, the Rules Change Committee (RCC) received the Proposed Amendments to the WESM Manual on Dispute Resolution regarding Mediation and Arbitration Procedures on 04 September 2017 from the Dispute Resolution Administrator (DRA);

WHEREAS, the DRA presented the proposal to the RCC during the latter's 133rd meeting held on 14 September 2017;

WHEREAS, the proposal sought to fill-in procedural gaps in the WESM mediation and arbitration procedures, specifically related to the following:

- procedures to be undertaken if a dispute is filed for arbitration without first going through mediation;
- parties' payment of advances on mediation and arbitration fees and costs;
- procedures for the selection and appointment of mediator; and
- selection and appointment of ADR Support Service Centers (ASSC)

WHEREAS, the foregoing proposed amendments were integrated into the previous amendments to the WESM Manuals on Dispute Resolution and Registration, Suspension and De-registration Criteria and Procedures as approved by the PEM Board for endorsement to the DOE on 29 November 2016¹;

WHEREAS, during the same meeting on September 14, the RCC approved the publication of the proposal in the market information website to solicit comments from Market Participants and stakeholders;

WHEREAS, comments were received from the DOE and MERALCO within the prescribed thirty-working day commenting period from the date of the publication of the proposal;

WHEREAS, the RCC deliberated on the proposal during its 135th Meeting on 10 November 2017, giving due consideration to the comments received;

¹ PEM Board Resolution No. 2016-40 dated 29 November 2016

WHEREAS, the RCC agreed to make changes to the proposed amendments, as follows:

- a) Provide that parties may likewise duly authorize representatives other than those individuals with sufficiently senior status to participate in the negotiation;
- b) Provide a specific timeline, ninety (90) calendar days, within which the DRA must be able to issue a determination whether a Request for Mediation (or Request for Arbitration if the parties dispense with mediation) involves a WESM dispute;
- c) Prescribe a specific timeline, thirty (30) calendar days, within which a party shall be refunded of its advance/deposit on the fees and costs of the mediation if the DRA determines that the party's Request for Mediation does not involve a WESM dispute; and
- d) Specify that the DRA shall refer to the *Guidelines for ASSCs in the Conduct of their Duties in Respect of WESM Arbitration Proceedings* in fixing the fees and costs of arbitration if the proceedings are terminated before the rendering of a final award, which *Guidelines* provide a percentage of fees and costs to be paid by the parties depending on the work already undertaken by the arbitrators and the ASSC;

NOW THEREFORE, we, the undersigned in behalf of the sector we represent, hereby resolve as follows:


RESOLVED, that the Proposed Amendments to the WESM Manual on Dispute Resolution regarding Mediation and Arbitration Procedures is hereby approved by the RCC;

RESOLVED FURTHER, that the attached Annex of the Proposed Amendments to the WESM Manual on Dispute Resolution regarding Mediation and Arbitration Procedures is hereby endorsed to the PEM Board for approval and endorsement to the DOE.

Done this 08 December 2017, Pasig City.

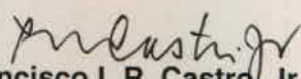
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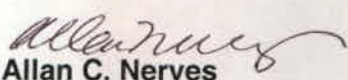
Approved by:
RULES CHANGE COMMITTEE



Maila Lourdes G. de Castro
Chairperson
Independent

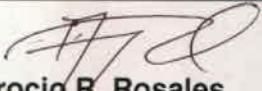
Members:

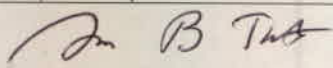
Concepcion I. Tanglao
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Abner B. Tolentino
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Power Sector Assets and Liabilities Management
Corporation (PSALM)

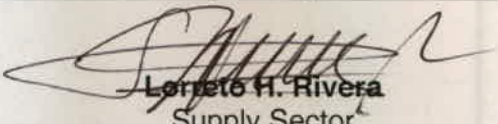

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NorthWind Power Development Corporation


Ciprinilo C. Meneses
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(MERALCO)

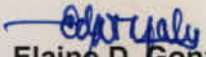

Jose P. Santos
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Distribution Sector
Mactan Electric Company
(MECO)


Ludovico D. Lim
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Antique Electric Cooperative, Inc.
(ANTECO)


Lorneto H. Rivera
Supply Sector
TeaM (Philippines) Energy Corporation
(TPEC)

Noted by:


Elaine D. Gonzales
Manager – Market Data and Analysis

Proposed Amendments to the WESM Manual on Dispute Resolution regarding Mediation and Arbitration Procedures

NOTE: Shaded provisions were already approved by the PEM Board (PEM Board Resolution No. 2016-40 dated 29 November 2016) and were only included to ensure that the new set of proposed amendments are consistent with the previous ones. Only the unshaded portions are the new proposed amendments.

Section and Title	Original Provision/ PEM Board-approved Amendments (2016)	Proposed Amendment	Rationale
General Amendments: 1. 'MO', 'SO' and 'DRA' were replaced with 'Market Operator', 'System Operator' and 'Dispute Resolution Administrator', respectively, to be consistent with the proper naming format in all Manuals; and 2. Re-numbering for section on Definition due to insertion of the term "DRA Secretariat".			
2. DEFINITIONS, INTERPRETATION AND CONSTRUCTION			
2.1 Definitions	(New)	<u>DRA Secretariat refers to the Market Assessment Group tasked to assist the DRA in the performance of his/her responsibilities under the WESM Rules.</u>	To clarify that the secretariat or staff assisting the DRA is different from the secretariat that supports the mediator and arbitrators during proceedings.
2.1 (kk) Definitions	Secretariat refers to the WESM-accredited ADR Support Service Center appointed to a particular case assisting the Mediator and/or Arbitral Tribunal.	Secretariat <u>ADR Support Service Center (ASSC)</u> refers to the WESM-accredited ADR Support Service Center <u>secretariat</u> appointed to a particular case assisting the Mediator and/or Arbitral Tribunal.	To provide definition for ASSC.

Section and Title	Original Provision/ PEM Board-approved Amendments (2016)	Proposed Amendment	Rationale
3. APPLICATION			
3.1.1 Dispute Categories and Parties	<p>3.1.1 As established in the WESM Rules, the provisions and procedures in this Manual shall apply in the case of disputes that may arise between or among any of the following parties:</p> <p>xxx</p> <p>(e) Persons or entities that applied for registration as WESM Member and whose application has been denied by the MO provided, however, that any person seeking relief under this Manual shall agree to be bound by all Applicable Law, Rules and Regulations notwithstanding the denial of application.</p> <p>For disputes arising under or in connection with or in relation to one or more of the following:</p> <p>xxx</p> <p>(c) The failure of a person to become registered as a WESM Member;</p> <p>xxx</p>	<p>3.1.1 As established in the WESM Rules, the provisions and procedures in this Manual shall apply in the case of disputes that may arise between or among any of the following parties:</p> <p>xxx</p> <p>(e) Persons or entities that applied for registration as WESM Member and whose application has been denied by the MO provided, however, that any person seeking relief under this Manual shall agree to be bound by all Applicable Law, Rules and Regulations notwithstanding the denial of application.</p> <p>For disputes arising under or in connection with or in relation to one or more of the following:</p> <p>xxx</p> <p>(e) The failure of a person to become registered as a WESM Member;</p> <p>(d) – (h) xxx as renumbered to (c) - (g)</p>	<p>To remove the disapproval of application for WESM Membership as a subject matter of WESM dispute as this issue is more administrative (and/or policy direction/application) than commercial in nature, hence, not arbitrable.</p>

NOTE: Shaded provisions were already approved by the PEM Board (PEM Board Resolution No. 2016-40 dated 29 November 2016) and were only included to ensure that the new set of proposed amendments are consistent with the previous ones. Only the unshaded provisions are the new proposed changes.

Section and Title	Original Provision/ PEM Board-approved Amendments (2016)	Proposed Amendment	Rationale
6. THE WESM-ACCREDITED MEDIATORS, ARBITRATORS AND SERVICE PROVIDERS			
6.2.4 WESM ADR Support Service Centers	<p>Only those companies or organizations which have adequate facilities, trained staff, tested organization and systems, and have the experience in administering ADR cases, may be eligible for accreditation as WESM ADR Support Service Centers.</p> <p>The DRA shall submit a list of recommended companies or organizations for the approval of the PEM Board as accredited WESM ADR Support Service Centers.</p> <p>In the selection of a WESM-Accredited ADR Support Service Center for a particular case, the DRA shall consider the convenience of the parties and the least cost to them.</p>	<p>6.2.4.1 Only those companies or organizations which have adequate facilities, trained staff, tested organization and systems, and have the experience in administering ADR cases, may be eligible for accreditation as WESM ADR Support Service Centers (ASSC).</p> <p>The DRA shall submit a list of recommended companies or organizations for the approval of the PEM Board as accredited WESM ADR Support Service Centers.</p> <p>In the selection of a WESM-Accredited ADR Support Service Center for a particular case, the DRA shall consider the convenience of the parties and the least cost to them.</p> <p><u>6.2.4.2 Pending the availability of ASSC/s having the qualifications prescribed in this Manual and their being duly accredited as such, the DRA shall tap individuals he/she deems could adequately provide the needed support services on an <i>ad hoc</i>/temporary basis until such time that said services are</u></p>	To provide a mechanism through which a case secretariat may be outsourced if no ASSC is accredited.

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		<u>required or the case is closed, whichever comes first.</u>	
7.1 Disputes Between WESM Members and the System Operator and the Market Operator			
7.1.1	<p>7.1.1 When a dispute regarding one of the matters described in this Manual arises between and/or among WESM Members including the SO and MO, the parties must go through the following steps:</p> <p>xxx</p> <p>(d) Should the parties decide to dispense with mediation and directly proceed to arbitration, the parties may elect to do so subject to the issuance by the DRA of a certification stating that mediation is no longer a viable option for the parties.</p>	<p>7.1.1 When a dispute regarding one of the matters described in this Manual arises between and/or among WESM Members including the <u>System Operator</u> and <u>Market Operator</u>, the parties must go through the following steps:</p> <p>xxx</p> <p>(d) Should the parties decide to dispense with mediation and, <u>provided that there has been a determination by the DRA within ninety (90) calendar days from receipt of the dispute that the same is a WESM dispute under Section 2.1(nn) of this Manual,</u> directly proceed to arbitration, the parties may elect to do so subject to the issuance by the <u>Dispute Resolution Administrator</u> of a certification stating that mediation is no longer a viable option for the parties.</p>	To provide that the DRA must still make a preliminary determination within a prescribed period whether a Request for Arbitration involves a WESM dispute if a party dispenses with undergoing mediation.

NOTE: Shaded provisions were already approved by the PEM Board (PEM Board Resolution No. 2016-40 dated 29 November 2016) and were only included to ensure that the new set of proposed amendments are consistent with the previous ones. Only the unshaded provisions are the new proposed changes.

Section and Title	Original Provision/ PEM Board-approved Amendments (2016)	Proposed Amendment	Rationale
7.3 Disputes on Application for Registration			
7.3.1 Disputes on Application for Registration	<p>7.3.1 Disputes on the rejection of an application for registration to participate in the WESM shall be governed by the following:</p> <p>(a) Subject to section 8.3, the parties should make good faith efforts to amicably settle their dispute between and/or among themselves.</p> <p>(b) Should the negotiation fail, any of the parties may refer the matter in dispute to the DRA in accordance with Section 8.4 of this Manual. Such submission shall set in motion the WESM dispute resolution process established in this Manual. If the DRA determines that the dispute is a WESM dispute under Section 2.1 (nn) of this Manual, the DRA shall initiate the selection of a mediator under Section 8.5 of this Manual.</p> <p>(c) Should mediation efforts fail, the Intending Member(s) may file with the DRA a Request under Section 9 of this Manual to resolve the dispute by arbitration.</p>	<p><i>(Whole section proposed to be deleted)</i></p> <p>7.3.1 Disputes on the rejection of an application for registration to participate in the WESM shall be governed by the following:</p> <p>(a) Subject to section 8.3, the parties should make good faith efforts to amicably settle their dispute between and/or among themselves.</p> <p>(b) Should the negotiation fail, any of the parties may refer the matter in dispute to the DRA in accordance with Section 8.4 of this Manual. Such submission shall set in motion the WESM dispute resolution process established in this Manual. If the DRA determines that the dispute is a WESM dispute under Section 2.1 (nn) of this Manual, the DRA shall initiate the selection of a mediator under Section 8.5 of this Manual.</p> <p>(c) Should mediation efforts fail, the Intending Member(s) may file with the DRA a Request under Section 9 of this Manual to resolve the dispute by arbitration.</p>	<p>To remove the disapproval of application for WESM Membership as a subject matter of WESM dispute as this issue is more administrative (and/or policy direction/application) than commercial in nature, hence, not arbitrable.</p>

NOTE: Shaded provisions were already approved by the PEM Board (PEM Board Resolution No. 2016-40 dated 29 November 2016) and were only included to ensure that the new set of proposed amendments are consistent with the previous ones. Only the unshaded provisions are the new proposed changes.

Section and Title	Original Provision/ PEM Board-approved Amendments (2016)	Proposed Amendment	Rationale
	(d) Should the parties decide to dispense with mediation and proceed to arbitration directly, the parties may elect to do so subject to the issuance by the DRA of a certification stating that mediation is no longer a viable option for the parties.	(d) Should the parties decide to dispense with mediation and proceed to arbitration directly, the parties may elect to do so subject to the issuance by the DRA of a certification stating that mediation is no longer a viable option for the parties.	
8.3 Negotiation			
8.3.2	8.3.2 Parties shall be represented by individuals of sufficiently senior status in their organization, and duly authorized in writing to negotiate the matter in dispute and to participate in the negotiation procedures.	Parties shall be represented by individuals of sufficiently senior status in their organization and/or other representatives , and duly authorized in writing to negotiate the matter in dispute and to participate in the negotiation procedures.	To allow parties to be represented during negotiations by duly authorized individuals who do not necessarily occupy senior positions in their organization.
8.4 Referral of Dispute to the <u>Dispute Resolution Administrator</u>			
8.4.1	To properly refer a dispute to the DRA and trigger the procedures established in this Manual, a party must file a written notice of dispute with the DRA by way of a Request for Mediation (RM), in such form as the DRA may prescribe. The party filing the RM shall be known as the Claimant/s and shall furnish copies of such notice to all parties involved in the dispute that the party is aware of. The notice shall describe:	To properly refer a dispute to the <u>Dispute Resolution Administrator</u> and trigger the procedures established in this Manual, a party must file a written notice of dispute with the <u>Dispute Resolution Administrator</u> by way of a Request for Mediation (RM), in such form as the <u>Dispute Resolution Administrator</u> may prescribe. The party filing the RM shall be known as the Claimant/s and shall furnish copies of such notice to all parties involved in the dispute	To explicitly state the required information to be included in the Request for Mediation.

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Section and Title	Original Provision/ PEM Board-approved Amendments (2016)	Proposed Amendment	Rationale
	<p>(a) The names of all other parties involved in the dispute; and</p> <p>(b) A brief history of the dispute including:</p> <p>(i) The nature and time of the dispute;</p> <p>(ii) The summary and grounds of the dispute;</p> <p>(iii) The listing of all unresolved issues, with their description, factual background, arguments and claims including, if possible, an assessment of its value.</p> <p>xxx</p>	<p>that the party is aware of. The notice shall describe:</p> <p>(a) The names of all other parties involved in the dispute; and</p> <p>(b) A brief history of the dispute including:</p> <p>(i) The nature and time of the dispute;</p> <p>(ii) <u>The specific WESM transaction(s) which is/are the subject(s) of the dispute;</u></p> <p>(iii) The summary and grounds of the dispute;</p> <p>(iv) The listing of all unresolved issues, with their description, factual background, arguments and claims including, if possible, an assessment of its value.</p> <p>xxx</p>	
8.4.3	The DRA will assess the RM and determine whether the allegations and issues contained therein are considered a <i>WESM dispute</i> under Section 2.1 (nn) of this Manual covered by the dispute resolution procedures under the WESM Rules, taking into account:	<u>Within ninety (90) calendar days from the receipt of the RM,</u> the DRA will assess the RM and determine whether the allegations and issues contained therein are considered a <i>WESM dispute</i> under Section 2.1 (nn) of this Manual covered by the dispute resolution procedures under the WESM Rules, taking into account:	To prescribe a sufficient period where the DRA can evaluate whether or not the RM involves a WESM dispute, which is admissible for resolution through WESM mediation.

NOTE: Shaded provisions were already approved by the PEM Board (PEM Board Resolution No. 2016-40 dated 29 November 2016) and were only included to ensure that the new set of proposed amendments are consistent with the previous ones. Only the unshaded provisions are the new proposed changes.

Section and Title	Original Provision/ PEM Board-approved Amendments (2016)	Proposed Amendment	Rationale
	(a) The type of dispute; and (b) The parties involved.	(a) The type of dispute; and (b) The parties involved.	
8.4.5	If the DRA makes a preliminary determination that the dispute is a <i>WESM dispute</i> under Section 2.1 (nn) of this Manual, he/she shall notify all other relevant parties that may be involved in or affected by the dispute, whether or not identified in the Claimant/s's RM, in such form as the DRA may prescribe and may, where applicable, transmit a copy of the RM within five (5) days from receipt thereof.	If the <u>Dispute Resolution Administrator</u> makes a preliminary determination that the dispute is a <i>WESM dispute</i> under Section 2.1 (nn) of this Manual, he/she shall <u>request the Market Operator for information as to which other WESM Members may be affected by the dispute.</u> <u>The Dispute Resolution Administrator shall</u> notify all other relevant parties that may be involved in or affected by the dispute, whether or not identified in the Claimant/s's RM, in such form as the <u>Dispute Resolution Administrator</u> may prescribe and may, where applicable, transmit a copy of the RM within five (5) <u>calendar</u> days from receipt thereof.	To adopt the same procedure in WESM arbitration in which the DRA shall request the Market Operator to identify other affected parties in the dispute other than those cited in the Request for Mediation, as the filer of the request may not necessarily know other affected parties in the WESM transaction subject for dispute due to the gross pool nature of the market.
8.4.6	(New)	<u>The Dispute Resolution Administrator may summon all parties to attend a compulsory meeting, whether conducted in-person or remotely via electronic or similar medium, for the purpose of expediently identifying which parties intend to participate in the mediation, and</u>	To specify an expedient and practical manner of facilitating the identification of parties who intend to join the mediation and the selection and appointment of the mediator.

NOTE: Shaded provisions were already approved by the PEM Board (PEM Board Resolution No. 2016-40 dated 29 November 2016) and were only included to ensure that the new set of proposed amendments are consistent with the previous ones. Only the unshaded provisions are the new proposed changes.

Section and Title	Original Provision/ PEM Board-approved Amendments (2016)	Proposed Amendment	Rationale
		<u>selecting and appointing the mediator in accordance to Section 8.5.6.</u>	
8.5 Mediation			
8.5.6	The parties involved shall then choose the mediator by alternately striking off one name at a time from the list with the last name on the list becoming the mediator. The party which initiated the complaint shall have the right to strike off first from the list.	<p>The parties involved shall then choose the mediator by alternately striking off one name at a time from the list with the last name on the list becoming the mediator. The party which initiated the complaint shall have the right to strike off first from the list.</p> <p><u>If the parties fail to select a mediator after five (5) business days from receipt of the list of nominees or within the meeting convened for the purpose, whether conducted in-person or remotely via electronic or similar medium, the <i>Dispute Resolution Administrator</i> shall select and appoint the mediator, which selection and appointment are binding and final among the parties.</u></p>	To ensure that the appointment of the mediator and/or the mediation proceeding is not hampered or hindered by a party's failure to participate in the selection of a mediator.
8.5.7	(Insertion of new section)	<u>8.5.7 The Mediator shall, upon his appointment, sign a statement of acceptance, impartiality, independence and agreement to devote as much time and attention to the mediation as the circumstances require in order to achieve the objective of a speedy, effective and</u>	To specify the required submissions from the appointed mediator, similar with the requirements from appointed arbitrators.

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Section and Title	Original Provision/ PEM Board-approved Amendments (2016)	Proposed Amendment	Rationale
		<u>fair resolution of the dispute. The Mediator shall disclose in writing to the DRA and to the parties any facts or circumstances which might be of such a nature as to call into question the mediator's independence as well as any circumstances that could give rise to reasonable doubts as to the mediator's impartiality.</u>	
8.5.8	<i>(Insertion of new section)</i>	<p><u>8.5.8 Appointment of ADR Support Service Center (ASSC)</u></p> <p><u>The Dispute Resolution Administrator shall appoint the ASSC who shall assist the mediator in facilitating the mediation proceedings. The ASSC which shall provide administrative support in the case shall be selected on rotation basis among the WESM-accredited ASSCs.</u></p> <p><u>Once the ASSC has been appointed, the Dispute Resolution Administrator Secretariat shall turnover to the ASSC the files of the case, and the handling of the account opened for the particular mediation case.</u></p>	To add a provision on the appointment and manner of appointing an Alternative Dispute Resolution Support Service Center.

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Section and Title	Original Provision/ PEM Board-approved Amendments (2016)	Proposed Amendment	Rationale
8.5.7 Fees and Cost	Fees and Cost	8.5.7 8.5.9 Fees and Cost	Re-numbering
8.5.7.1	The party or parties filing a RM shall pay a non-refundable registration fee, as set out in the Annex C hereto. No RM shall be processed unless accompanied by the requisite payment.	8.5.7.1 8.5.9.1 The party or parties filing a RM shall pay an non-refundable registration fee advance on mediation fees and costs , as set out in the Annex C D hereto. No RM shall be processed unless accompanied by the requisite advance . <u>Such advance will be refunded if the Dispute Resolution Administrator determines that the RM does not raise a WESM dispute within thirty (30) calendar days from the issuance of the determination.</u>	<ul style="list-style-type: none"> ▪ Re-numbering ▪ 'Advance' on fees and costs, rather than 'registration fee' is deemed the more appropriate term to describe the Claimant's payment as it will be credited to its overall share in the fees and costs of the mediation. • To ensure that there is an adequate and readily available financial resource to cover the conduct of the early stages of mediation.
8.5.7.2	Following the receipt of a RM, the DRA shall request the parties to pay a deposit in an amount likely to cover the administrative expenses of the Secretariat and the fees and expenses of the Mediator for the Mediation proceedings, as set out in the Annex C hereto. The Mediation proceedings shall not proceed until payment of such deposit has been received by the Secretariat.	8.5.7.2 8.5.9.2 Following the receipt of a RM, <u>If the Dispute Resolution Administrator has determined that the RM raises a WESM dispute,</u> the DRA Secretariat or the ASSC shall request the parties to pay <u>within five (5) business days</u> a deposit in an amount likely to cover the administrative expenses of the Secretariat and the fees and expenses of the Mediator for the Mediation proceedings, as set out in the Annex C hereto. The Mediation proceedings shall not	<ul style="list-style-type: none"> ▪ Re-numbering ▪ To establish a more efficient timeline when the parties shall be requested to pay their respective shares in the mediation fees and costs.

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Section and Title	Original Provision/ PEM Board-approved Amendments (2016)	Proposed Amendment	Rationale
		proceed until payment of such deposit has been received by the Secretariat.	
8.5.7.3	In any case where the DRA considers that the deposit is not likely to cover the total costs of the Mediation proceedings, the amount of such deposit may be subject to readjustment. The parties shall be notified in writing by the DRA of such determination and the reasons therefor. The DRA may stay the Mediation proceedings until the corresponding payments are made by the parties.	8.5.7.3 8.5.9.3 In any case where the <i>Dispute Resolution Administrator</i> considers that the deposit is not likely to cover the total administrative costs of the Mediation proceedings, the amount of such deposit may be subject to adjustment and/or readjustment. The parties shall be notified in writing by the <i>Dispute Resolution Administrator</i> of such determination and the reasons therefor. The <i>Dispute Resolution Administrator</i> may stay the Mediation proceedings until the corresponding payments are made by the parties.	<ul style="list-style-type: none"> Re-numbering To indicate that the parties' deposit covering the mediation costs may be adjusted or re-adjusted to allow some degree of flexibility since the timetable and planned number of mediation sessions may be re-considered depending on the progress of the mediation.
8.5.7.4	Upon termination of the Mediation proceedings, the Secretariat shall settle the total costs of the proceedings and shall, as the case may be, return to the parties for any excess payment or bill the parties for any balance required pursuant to this Manual.	8.5.7.4 8.5.9.4 Upon termination of the Mediation proceedings, the Secretariat shall settle prepare and render an accounting of the total costs of the proceedings and shall, as the case may be, return refund to the parties for any excess payment or bill the parties for any balance required pursuant to this Manual.	<ul style="list-style-type: none"> Re-numbering To clarify the responsibility of the case secretariat (i.e., ASSC) regarding the handling of mediation fees and costs.
8.5.7.5	All above deposits and costs shall be borne in equal shares by the parties,	8.5.7.5 8.5.9.5 All above deposits and costs shall be borne in equal shares by the parties,	<ul style="list-style-type: none"> Re-numbering

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Section and Title	Original Provision/ PEM Board-approved Amendments (2016)	Proposed Amendment	Rationale
	unless they agree otherwise in writing. However, any party may be free to pay the unpaid balance of such deposits and costs should another party fail to pay its share.	unless they agree otherwise in writing. However, any party may be free to, <u>within the period stated in the request for payment of deposit,</u> pay the unpaid balance of such deposits and costs should another party fail to pay its share.	<ul style="list-style-type: none"> To denote that a specific time period will be provided within which parties should pay the deposit.
8.5.7.6	A party's other expenditure shall remain the responsibility of that party.	8.5.7.6 8.5.9.6 xxx	Re-numbering
8.5.7.7	If any of the parties refuse to comply with the payment of the mediation costs, the DRA may direct the MO to enforce the settlement of such payment, or request the PEM Board on behalf of the affected party to make a demand for payment, or both.	<p>8.5.7.7 8.5.9.7 If any of the parties refuse <u>or fail</u> to comply with the payment of the <u>pay its share of</u> mediation <u>fees and</u> costs, the <u>Dispute Resolution Administrator</u> may direct the <u>Market Operator</u> to enforce the settlement of such payment, or request the PEM Board on behalf of the affected party to make a demand for payment, or both.</p> <p><u>The Dispute Resolution Administrator may declare a failure of mediation in any event the required deposit is not paid.</u></p>	<ul style="list-style-type: none"> Re-numbering To provide that the DRA may declare a failure of mediation if proceeding further would be hindered/ hampered due to lack of funds occasioned by the failure or refusal of a party/ies in paying their share of the fees and costs. <p>This also allows the resolution of the dispute to proceed to its logical next step (e.g., arbitration).</p>
8.5.8	The parties shall have ten (10) business days to complete the mediation process, unless the time is extended by mutual agreement. The mediator shall propose the mediation procedures and timetable to	8.5.8 8.5.10 The parties shall have ten (10) thirty (30) calendar days <u>within which</u> to complete the mediation process, unless the time is extended by mutual agreement. The mediator shall propose <u>and the parties shall agree on</u> the mediation	<ul style="list-style-type: none"> Re-numbering To provide the parties and the mediator flexibility in time as the conduct of the mediation reasonably require.

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Section and Title	Original Provision/ PEM Board-approved Amendments (2016)	Proposed Amendment	Rationale
	finalize the mediation within the specified deadline.	procedures <u>milestones</u> and timetable, to finalize the mediation within the specified deadline.	
8.5.9 to 8.5.16	8.5.9 to 8.5.16 xxx	8.5.9 <u>8.5.11</u> xxx 8.5.10 <u>8.5.12</u> xxx 8.5.11 <u>8.5.13</u> xxx 8.5.12 <u>8.5.14</u> xxx 8.5.13 <u>8.5.15</u> xxx 8.5.14 <u>8.5.16</u> xxx 8.5.15 <u>8.5.17</u> xxx 8.5.16 <u>8.5.18</u> xxx	<ul style="list-style-type: none"> Re-numbering
9.2. Commencing the Arbitration			
9.2.1.1	Subject to Section 8.5.12(b), a party wishing to have recourse to arbitration under these Arbitration Rules shall submit its Request for Arbitration (RA) to the DRA. The Secretariat shall notify the Claimant(s) and Respondent(s) of the receipt of the RA and the date of such receipt.	Subject to Section <u>7.1.1 (d) or 8.5.12(b) 8.5.14, as the case may be</u> , a party wishing to have recourse to arbitration under these Arbitration Rules shall submit its Request for Arbitration (RA) to the <u>Dispute Resolution Administrator</u> . The Secretariat shall notify the Claimant(s) and Respondent(s) of the receipt of the RA and the date of such receipt.	<ul style="list-style-type: none"> To recognize that an arbitration may be commenced without going through mediation first in certain circumstances as specified in the referenced provisions. To clarify the responsible entity to accomplish the procedure.

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Section and Title	Original Provision/ PEM Board-approved Amendments (2016)	Proposed Amendment	Rationale
9.2.1.3	<p>The RA shall contain the following information:</p> <p>(a) the name in full, description, address and other contact details of each of the parties;</p> <p>(b) the name in full, address and other contact details of any person(s) representing the Claimant(s) in the arbitration;</p> <p>(c) a description of the nature and circumstances of the dispute giving rise to the claims and of the basis upon which the claims are made;</p> <p>(d) a statement of the relief sought, together with the amounts of any quantified claims and, to the extent possible, an estimate of the monetary value of any other claims;</p> <p>(e) any relevant agreements;</p> <p>(f) any nomination of an arbitrator required by Section 9.4.2; and</p>	<p>The RA shall contain the following information:</p> <p>--xxx--</p> <p>(c) a description of the nature and circumstances of the dispute giving rise to the claims and of the basis upon which the claims are made;</p> <p><u>(d) specific WESM transaction(s) that is/are the subject of the dispute:</u></p> <p>(d) (e) a statement of the relief sought, together with the amounts of any quantified claims and, to the extent possible, an estimate of the monetary value of any other claims;</p> <p>(e) (f) any relevant agreements;</p> <p>(f) (g) any nomination of an arbitrator required by Section 9.4.2; and</p> <p>(g) (h) all relevant particulars and any observations or proposals as to the place and/or conduct of the arbitration.</p> <p>The Claimant/s may submit such other documents or information with the RA as it</p>	<ul style="list-style-type: none"> ▪ To explicitly specify the required information that is the basis or subject of the WESM dispute. ▪ Re-numbering

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Section and Title	Original Provision/ PEM Board-approved Amendments (2016)	Proposed Amendment	Rationale
	<p>(g) all relevant particulars and any observations or proposals as to the place and/or conduct of the arbitration.</p> <p>The Claimant/s may submit such other documents or information with the RA as it considers appropriate or that may contribute to the efficient resolution of the dispute.</p>	considers appropriate or that may contribute to the efficient resolution of the dispute.	
9.2.1.4	<p>Together with the RA, the Claimant/s shall:</p> <p>(a) submit the number of copies thereof required by Section 9.1.2.1; and</p> <p>(b) make payment of the filing fee required by Annex D hereto ("Arbitration Costs and Fees") in force on the date the RA is submitted.</p> <p>In the event that the Claimant/s fail to comply with either of these requirements, the DRA may fix a time limit within which the Claimant/s must comply, failing which, the file shall be closed without prejudice to the Claimant/s's right to submit the same claims at a later date in another RA.</p>	<p>Together with the RA, the Claimant/s shall:</p> <p>(a) submit the number of copies thereof required by Section 9.1.2.1; and</p> <p>(b) make payment of the filing fee an advance on arbitration fees and costs required by Annex D E hereto ("Arbitration Costs and Fees") in force on the date the RA is submitted.</p> <p>In the event that the Claimant/s fail to comply with either of these requirements, the Dispute Resolution Administrator may fix a time limit within which the Claimant/s must comply, failing which, the file shall be closed without prejudice to the Claimant/s's right to submit the same claims at a later date in another RA.</p>	<ul style="list-style-type: none"> To clarify that the Claimant's initial payment upon submission of a Request for Arbitration is the provisional advance on arbitration fees and costs

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Section and Title	Original Provision/ PEM Board-approved Amendments (2016)	Proposed Amendment	Rationale
9.2.1.5	The Secretariat shall transmit a copy of the RA and the documents annexed thereto to the Respondent for its Answer to the Request once the Secretariat has sufficient copies of the Request and the required filing fee.	9.2.1.5 The Secretariat shall transmit a copy of the RA and the documents annexed thereto to the Respondent for its Answer to the Request once the Secretariat has sufficient copies of the Request and the required filing fee advance on arbitration fees and costs pursuant to Section 9.9.1.	To clarify that the Claimant's initial payment upon submission of a Request for Arbitration is the provisional advance on arbitration fees and costs.
9.2.2 Answer to the Request: Counterclaims			
9.2.2.1 Answer to the Request: Counterclaims	9.2.2.1 Within fifteen (15) days from the receipt of the RA from the Secretariat, the Respondent shall submit an Answer which shall contain the following information: (a) its name in full, description, address and other contact details; xxx	9.2.2.1 Within fifteen (15) calendar days from the receipt of the RA from the Secretariat, the Respondent shall submit an Answer which shall contain the following information: (a) its name in full, description, address and other contact details; xxx	To clarify the timeline of the subject mediation procedure.
9.2.2.6	The Claimant shall submit a Reply to any counterclaim within ten (10) days from the date of receipt of the counterclaims communicated by the Secretariat. Prior to the transmission of the file to the Arbitral Tribunal, the DRA may grant the Claimant no more than one (1) extension of time for submitting the Reply.	The Claimant shall submit a Reply to any counterclaim within ten (10) calendar days from the date of receipt of the counterclaims communicated by the Secretariat. Prior to the 'transmission of the files of the case' to the Arbitral Tribunal, the Dispute Resolution Administrator may grant the Claimant no more than one (1) extension of time for submitting the Reply.	<ul style="list-style-type: none"> For clarity (The addition of 'calendar' is from the previous proposal.)

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Section and Title	Original Provision/ PEM Board-approved Amendments (2016)	Proposed Amendment	Rationale
9.5 Challenge and Replacement of Arbitrators			
9.5.2	For a challenge to be admissible, it must be submitted by a party either within ten (10) days from receipt by that party of the notification of the appointment or confirmation of the arbitrator, or within ten (10) days from the date when the party making the challenge was informed of the facts and circumstances on which the challenge is based if such date is subsequent to the receipt of such notification.	For a challenge to be admissible, it must be submitted by a party either within ten (10) calendar days from receipt by that party of the notification of the appointment or confirmation of the arbitrator, or within ten (10) calendar days from the date when the party making the challenge was informed of the facts and circumstances on which the challenge is based if such date is subsequent to the receipt of such notification.	To clarify the timeline of the subject mediation procedure.
9.6	<i>(Insertion of new section)</i>	<u>Appointment of ADR Support Service Center (ASSC)</u> <u>Unless an ASSC has already been appointed for the case under Section 8.5.7, the Dispute Resolution Administrator shall appoint the ASSC who shall assist the Arbitral Tribunal in facilitating the arbitration proceedings. The ASSC which shall provide administrative support in the case shall be selected on rotation basis among the WESM-accredited ASSCs.</u>	To provide for the appointment of ADR Support Service Provider who shall assist the Arbitral Tribunal. This provision particularly intends to cover situations when parties dispense with mediation and go directly to arbitration.

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Section and Title	Original Provision/ PEM Board-approved Amendments (2016)	Proposed Amendment	Rationale
		Once the ASSC has been appointed, the <u>Dispute Resolution Administrator</u> Secretariat shall turnover to the ASSC the files of the case who shall keep safe and secure custody of the same on behalf of the Arbitral Tribunal, and the handling of the deposit account opened for the purpose of the arbitration.	
9.6 The Arbitral Proceedings	9.6 The Arbitral Proceedings	9.6 <u>9.7</u> The Arbitral Proceedings	Re-numbering
9.6.1 Transmission of the File of the Dispute to the Arbitral Tribunal	The Secretariat shall transmit the file of the dispute to the Arbitral Tribunal as soon as it has been constituted, provided the advance on costs requested by the Secretariat at this stage has been paid.	9.6.1 <u>9.7.1</u> The <u>Dispute Resolution Administrator</u> Secretariat <u>or the ASSC, as the case may be,</u> shall transmit the file of the dispute <u>arbitration</u> to the Arbitral Tribunal as soon as it has been constituted, provided the advance on <u>fees and</u> costs requested by the Secretariat at this stage has been paid.	For clarity
9.6.2 Proof of Authority	Proof of Authority xxx	9.6.2 <u>9.7.2</u> xxx	Re-numbering

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Section and Title	Original Provision/ PEM Board-approved Amendments (2016)	Proposed Amendment	Rationale
9.6.3 Place of Arbitration 9.6.3.1 to 9.6.3.3	Place of Arbitration 9.6.3.1 xxx 9.6.3.2 xxx 9.6.3.3 xxx	9.6.3 9.7.3 Place of Arbitration 9.6.3.1 9.7.3.1 xxx 9.6.3.2 9.7.3.2 xxx 9.6.3.3 9.7.3.3 xxx	Re-numbering
9.6.4 Rules Governing the Proceedings	9.6.4 Rules Governing the Proceedings xxx	9.6.4 9.7.4 Rules Governing the Proceedings xxx	Re-numbering
9.6.5 Applicable Rules of Law 9.6.5.1 to 9.6.5.3	Applicable Rules of Law 9.6.5.1 xxx 9.6.5.2 xxx 9.6.5.3 xxx	9.6.5 9.7.5 Applicable Rules of Law 9.6.5.1 9.7.5.1 xxx 9.6.5.2 9.7.5.2 xxx 9.6.5.3 9.7.5.3 xxx	Re-numbering
9.6.6 Conduct of the Arbitration 9.6.6.1 to 9.6.6.5	Conduct of the Arbitration 9.6.6.1 xxx 9.6.6.2 xxx 9.6.6.3 xxx 9.6.6.4 xxx 9.6.6.5 xxx	9.6.6 9.7.6 Conduct of the Arbitration 9.6.6.1 9.7.6.1 xxx 9.6.6.2 9.7.6.2 xxx 9.6.6.3 9.7.6.3 xxx 9.6.6.4 9.7.6.4 xxx 9.6.6.5 9.7.6.5 xxx	Re-numbering
9.6.7 Terms of Reference	Terms of Reference	9.6.7 9.7.7 Terms of Reference	Re-numbering

NOTE: Shaded provisions were already approved by the PEM Board (PEM Board Resolution No. 2016-40 dated 29 November 2016) and were only included to ensure that the new set of proposed amendments are consistent with the previous ones. Only the unshaded provisions are the new proposed changes.

Section and Title	Original Provision/ PEM Board-approved Amendments (2016)	Proposed Amendment	Rationale
9.6.7.1	<p>As soon as it has received the file of the dispute from the Secretariat, the Arbitral Tribunal shall draw up, on the basis of documents or in the presence of the parties and in the light of their most recent submissions, a document defining its Terms of Reference. This document shall include the following particulars:</p> <p>xxx</p> <p>(g) particulars of the applicable procedural rules and, if such is the case, reference to the power conferred by the parties upon the Arbitral Tribunal in accordance with Section 9.6.5.3 to act as <i>amiable compositeur</i> (i.e., one having the power to depart from the strict application of rules of law and decide a dispute according to justice and fairness) or to decide <i>ex aequo et bono</i> (i.e., according to what is just and fair, or according to equity and good conscience).</p>	<p>9.6.7.1 9.7.7.1 As soon as it has received the file of the dispute arbitration from the Dispute Resolution Administrator Secretariat or the ASSC, the Arbitral Tribunal shall draw up, on the basis of documents or in the presence of the parties and in the light of their most recent submissions, a document defining its Terms of Reference.</p> <p>xxx</p> <p>(g) particulars of the applicable procedural rules and, if such is the case, reference to the power conferred by the parties upon the Arbitral Tribunal in accordance with Section 9.6.5.3 9.7.5.3 to act as <i>amiable compositeur</i> (i.e., one having the power to depart from the strict application of rules of law and decide a dispute according to justice and fairness) or to decide <i>ex aequo et bono</i> (i.e., according to what is just and fair, or according to equity and good conscience).</p>	For clarity and proper referencing
9.6.7.2	The Terms of Reference shall be signed by the parties and the Arbitral Tribunal. xxx	9.6.7.2 9.7.7.2 xxx	Re-numbering
9.6.7.3	However, if any of the parties refuse to take part in drawing up of the Terms of	9.6.7.3 9.7.7.3 However, if any of the parties refuse to take part in drawing up of the	Re-numbering and for proper referencing

NOTE: Shaded provisions were already approved by the PEM Board (PEM Board Resolution No. 2016-40 dated 29 November 2016) and were only included to ensure that the new set of proposed amendments are consistent with the previous ones. Only the unshaded provisions are the new proposed changes.

Section and Title	Original Provision/ PEM Board-approved Amendments (2016)	Proposed Amendment	Rationale
	Reference or to sign the same, it shall be submitted to the Dispute Resolution Administrator for approval. When the Terms of Reference have been signed in accordance with Section 9.6.7.2 or approved by the DRA, the arbitration shall proceed.	Terms of Reference or to sign the same, it shall be submitted to the <i>Dispute Resolution Administrator</i> for approval. When the Terms of Reference have been signed in accordance with Section 9.6.7.2 9.7.7.2 or approved by the <i>Dispute Resolution Administrator</i> , the arbitration shall proceed.	
9.6.7.4	After the Terms of Reference have been signed by the parties and the Arbitral Tribunal or approved by DRA, xxx	9.6.7.4 9.7.7.4 xxx	Re-numbering
9.6.8	Case Management Conference and Procedural Timetable	9.6.8 9.7.8 Case Management Conference and Procedural Timetable	Re-numbering
9.6.8.1	When drawing up the Terms of Reference or as soon as possible thereafter, the Arbitral Tribunal shall convene a case management conference to consult the parties on procedural measures that may be adopted pursuant to Section 9.6.6.2. Such measures may include one or more of the case management techniques described in Annex B hereto.	9.6.8.1 9.7.8.1 When drawing up the Terms of Reference or as soon as possible thereafter, the Arbitral Tribunal shall convene a case management conference to consult the parties on procedural measures that may be adopted pursuant to Section 9.6.6.2 9.7.6.2 . Such measures may include one or more of the case management techniques described in Annex B hereto.	Re-numbering and for proper referencing
9.6.8.2 to 9.6.8.4	9.6.8.2 xxx 9.6.8.3 xxx 9.6.8.4 xxx	9.6.8.2 9.7.8.2 xxx 9.6.8.3 9.7.8.3 xxx 9.6.8.4 9.7.8.4 xxx	Re-numbering

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Section and Title	Original Provision/ PEM Board-approved Amendments (2016)	Proposed Amendment	Rationale
9.6.9 Establishing the Facts of the Case 9.6.9.1 to 9.6.9.6	Establishing the Facts of the Case 9.6.9.1 xxx 9.6.9.2 xxx 9.6.9.3 xxx 9.6.9.4 xxx 9.6.9.5 xxx 9.6.9.6 xxx	9.6.9 9.7.9 Establishing the Facts of the Case 9.6.9.1 9.7.9.1 xxx 9.6.9.2 9.7.9.2 xxx 9.6.9.3 9.7.9.3 xxx 9.6.9.4 9.7.9.4 xxx 9.6.9.5 9.7.9.5 xxx 9.6.9.6 9.7.9.6 xxx	Re-numbering
9.6.10 Hearings 9.6.10.1 to 9.6.10.4	Hearings 9.6.10.1 xxx 9.6.10.2 xxx 9.6.10.3 xxx 9.6.10.4 xxx	9.6.10 9.7.10 Hearings 9.6.10.1 9.7.10.1 xxx 9.6.10.2 9.7.10.2 xxx 9.6.10.3 9.7.10.3 xxx 9.6.10.4 9.7.10.4 xxx	Re-numbering
9.6.11	Except as to conduct of the proceeding or the rendering to the decision itself, the Arbitral Tribunal may refer to an appropriate committee, office or entity of the WESM, who are not among the disputing parties, the interpretation of or clarification on any of the Applicable Law, Rules or Regulations, standards, requirement, pricing methodology, tariff, principle, plan or criterion. xxx	9.6.11 9.7.11 xxx	Re-numbering

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Section and Title	Original Provision/ PEM Board-approved Amendments (2016)	Proposed Amendment	Rationale
9.6.12 Closing of the Proceedings and Date for Submission of Draft Awards	<p>9.6.12 Closing of the Proceedings and Date for Submission of Draft Awards</p> <p>As soon as possible after the last hearing concerning matters to be decided in an award or the filing of the last authorized submissions concerning such matters, whichever is later, the Arbitral Tribunal shall:</p> <p>(a) declare the proceedings closed with respect to the matters to be decided in the award; and</p> <p>(b) inform the Secretariat and the parties of the date by which it expects to submit its draft award to DRA Secretariat for scrutiny as to form and mathematical computations.</p> <p>After the proceedings are closed, no further submission or argument may be made, or evidence produced, with respect to the matters to be decided in the award, unless requested or authorized by the Arbitral Tribunal.</p>	<p>9.6.12 9.7.12 Closing of the Proceedings and Date for Submission of Draft Awards</p> <p>As soon as possible after the last hearing concerning matters to be decided in an award or the filing of the last authorized submissions concerning such matters, whichever is later, the Arbitral Tribunal shall:</p> <p>xxx</p> <p>(b) inform the Secretariat and the parties of the date by which it expects to submit its draft award to the Dispute Resolution Administrator Secretariat for scrutiny as to form and mathematical computations.</p> <p>xxx</p>	Re-numbering and for clerical correction
9.7	<p>Documents and Other Information</p> <p>9.7.1 xxx</p>	<p>9.7 9.8 Documents and Other Information</p> <p>9.7.1 9.8.1 xxx</p>	Re-numbering

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Section and Title	Original Provision/ PEM Board-approved Amendments (2016)	Proposed Amendment	Rationale
Documents and Other Information	9.7.2 xxx 9.7.3 xxx	9.7.2 9.8.2 xxx 9.7.3 9.8.3 xxx	
9.8 Interim Measures; Awards	Interim Measures; Awards	9.8 9.9 Interim Measures; Awards	Re-numbering
9.8.1 Conservatory and Interim Measures	Conservatory and Interim Measures	9.8.1 9.9.1 Conservatory and Interim Measures	Re-numbering
9.8.1.1 to 9.8.1.4	9.8.1.1 xxx 9.8.1.2 xxx 9.8.1.3 xxx 9.8.1.4 xxx	9.8.1.1 9.9.1.1 xxx 9.8.1.2 9.9.1.2 xxx 9.8.1.3 9.9.1.3 xxx 9.8.1.4 9.9.1.4 xxx	Re-numbering
9.8.2	(Insertion of new section)	Section 9.9.2 - Emergency Arbitrator <u>9.9.2.1 A party that needs urgent interim or conservatory measures that cannot await the constitution of an arbitral tribunal ("Emergency Measures") may make an application for such measures pursuant to the Emergency Arbitrator Rules in Annex C. Any such application shall be accepted only if it is received by the DRA Secretariat prior to the transmission of the file to the arbitral tribunal pursuant to Section 9.6.1 of the</u>	Insertion of a new section to add the process and procedures for calling upon an emergency arbitrator if a party requires urgent interim relief that cannot await the constitution of an arbitral tribunal. (These procedures were adopted from the Arbitration Rules of the International Chamber of Commerce.)

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Section and Title	Original Provision/ PEM Board-approved Amendments (2016)	Proposed Amendment	Rationale
		<p><u>Manual and irrespective of whether the party making the application has already submitted its Request for Arbitration.</u></p> <p><u>9.9.2.2 The emergency arbitrator's decision shall take the form of an order. The parties undertake to comply with any order made by the emergency arbitrator.</u></p> <p><u>9.9.2.3 The emergency arbitrator's order shall not bind the arbitral tribunal with respect to any question, issue or dispute determined in the order. The arbitral tribunal may modify, terminate or annul the order or any modification thereto made by the emergency arbitrator.</u></p> <p><u>9.9.2.4 The arbitral tribunal shall decide upon any party's requests or claims related to the emergency arbitrator proceedings, including the reallocation of the costs of such proceedings and any claims arising out of or in connection with the compliance or non-compliance with the order.</u></p> <p><u>9.9.2.5 The Emergency Arbitrator Provisions are not intended to prevent any party from seeking urgent interim or conservatory measures from a</u></p>	

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Section and Title	Original Provision/ PEM Board-approved Amendments (2016)	Proposed Amendment	Rationale
		<u>competent judicial authority at any time prior to making an application for such measures, and in appropriate circumstances even thereafter, pursuant to the Rules. Any application for such measures from a competent judicial authority shall not be deemed to be an infringement or a waiver of Clause 7.3.1.1 of the WESM Rules. Any such application and any measures taken by the judicial authority must be notified without delay to the DRA Secretariat.</u>	
9.8.2 Time Limit for the Final Award	Time Limit for the Final Award	9.8.2 <u>9.9.3</u> Time Limit for the Final Award	Re-numbering
9.8.2.1	The Arbitral Tribunal must render its final Award within six (6) months reckoned from the date of the last signature by the Arbitral Tribunal and the parties of the Terms of Reference or, in the case of application of Section 9.6.7.3, the date of the notification to the Arbitral Tribunal by the Secretariat of the approval of the Terms of Reference by the DRA, whichever is later.	9.8.2.1 <u>9.9.3.1</u> The Arbitral Tribunal must render its final Award within six (6) months reckoned from the date of the last signature by the Arbitral Tribunal and the parties of the Terms of Reference or, in the case of application of Section 9.6.7.3 <u>9.7.7.3</u> , the date of the notification to the Arbitral Tribunal by the Secretariat of the approval of the Terms of Reference by the <u>Dispute Resolution Administrator</u> , whichever is later.	Re-numbering and for proper referencing

NOTE: Shaded provisions were already approved by the PEM Board (PEM Board Resolution No. 2016-40 dated 29 November 2016) and were only included to ensure that the new set of proposed amendments are consistent with the previous ones. Only the unshaded provisions are the new proposed changes.

Section and Title	Original Provision/ PEM Board-approved Amendments (2016)	Proposed Amendment	Rationale
9.8.2.2	The DRA may extend the time limit pursuant to a reasonable request from the Arbitral Tribunal or on its own initiative if it decides it is necessary to do so.	9.8.2.2 <u>9.9.3.2</u> xxx	Re-numbering
9.8.3 Making of the Award 9.8.3.1 to 9.8.3.3	Making of the Award 9.8.3.1 xxx 9.8.3.2 xxx 9.8.3.3 xxx	9.8.3 <u>9.9.4</u> Making of the Award 9.8.3.1 <u>9.9.4.1</u> xxx 9.8.3.2 <u>9.9.4.2</u> xxx 9.8.3.3 <u>9.9.4.3</u> xxx	Re-numbering
9.8.4 Award by Consent	Award by Consent xxx	9.8.4 <u>9.9.5</u> xxx	Re-numbering
9.8.5 Notification, Deposit and Enforceability of the Award 9.8.5.1 to 9.8.5.4	Notification, Deposit and Enforceability of the Award 9.8.5.1 xxx 9.8.5.2 xxx 9.8.5.3 xxx 9.8.5.4 xxx	9.8.5 <u>9.9.6</u> Notification, Deposit and Enforceability of the Award 9.8.5.1 <u>9.9.6.1</u> xxx 9.8.5.2 <u>9.9.6.2</u> xxx 9.8.5.3 <u>9.9.6.3</u> xxx 9.8.5.4 <u>9.9.6.4</u> xxx	Re-numbering
9.8.6 Correction and Interpretation of the Award; Remission of Awards	Correction and Interpretation of the Award; Remission of Awards	9.8.6 <u>9.9.7</u> Correction and Interpretation of the Award; Remission of Awards	Re-numbering

NOTE: Shaded provisions were already approved by the PEM Board (PEM Board Resolution No. 2016-40 dated 29 November 2016) and were only included to ensure that the new set of proposed amendments are consistent with the previous ones. Only the unshaded provisions are the new proposed changes.

Section and Title	Original Provision/ PEM Board-approved Amendments (2016)	Proposed Amendment	Rationale
9.8.6.1	9.8.6.1 On its own initiative, the Arbitral Tribunal may correct a clerical, computational or typographical error, or any errors of similar nature contained in an Award, provided such correction is submitted for approval to DRA within fifteen (15) days of the date of such award.	9.9.7.1 On its own initiative, the Arbitral Tribunal may correct a clerical, computational or typographical error, or any errors of similar nature contained in an Award, provided such correction is submitted for approval to DRA within fifteen (15) calendar days of the date of such award.	Re-numbering. To clarify the timeline of the subject arbitration procedure.
9.8.6.2	9.8.6.2 Any application of a party for the correction of an error of the kind referred to in Section 9.8.6.1, or for the interpretation of an Award, must be made to the Secretariat within fifteen (15) days of the receipt of the award by such party, in a number of copies as stated in Section 9.1.2.1. After transmittal of the application to the Arbitral Tribunal, the latter shall grant the other party time not exceeding fifteen (15) days from the receipt of the application by that party, to submit any comments thereon. The Arbitral Tribunal shall submit its decision on the application in draft form to the DRA not later than thirty (30) days following the expiration of the time limit for the receipt of any comments from the other party or within such other period as the DRA may decide.	9.9.7.2 Any application of a party for the correction of an error of the kind referred to in Section 9.8.6.1, or for the interpretation of an Award, must be made to the Secretariat within fifteen (15) calendar days of the receipt of the award by such party, in a number of copies as stated in Section 9.1.2.1. After transmittal of the application to the Arbitral Tribunal, the latter shall grant the other party time not exceeding fifteen (15) calendar days from the receipt of the application by that party, to submit any comments thereon. The Arbitral Tribunal shall submit its decision on the application in draft form to the DRA not later than thirty (30) calendar days following the expiration of the time limit for the receipt of any comments from the other party or within such other period as the DRA may decide.	Re-numbering. To clarify the timeline of the subject arbitration procedure.

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Section and Title	Original Provision/ PEM Board-approved Amendments (2016)	Proposed Amendment	Rationale
9.8.6.3	A decision to correct or to interpret the award shall take the form of an addendum and shall constitute part of the Award. The provisions of Sections 9.8.3, 9.8.5 and 9.8.6 apply <i>mutatis mutandis</i> .	9.8.6.3 9.9.7.3 A decision to correct or to interpret the award shall take the form of an addendum and shall constitute part of the Award. The provisions of Sections 9.8.3 9.9.4 , 9.8.5 9.9.6 and 9.8.6 9.9.7 apply <i>mutatis mutandis</i> .	Re-numbering an for proper referencing
9.8.6.4	Where a competent authority remits an award to the Arbitral Tribunal, the provisions of Sections 9.8.3, 9.8.5 and 9.8.6 and this Section 9.8.6.4 shall apply <i>mutatis mutandis</i> to any addendum or Award made pursuant to the terms of such remission. The DRA may take any steps as may be necessary to enable the Arbitral Tribunal to comply with the terms of such remission and may fix an advance payment to cover any additional fees and expenses of the Arbitral Tribunal and any additional Secretariat administrative expenses.	9.8.6.4 9.9.7.4 Where a competent authority remits an award to the Arbitral Tribunal, the provisions of Sections 9.8.3 9.9.4 , 9.8.5 9.9.6 and 9.8.6 9.9.7 and this Section 9.8.6.4 9.9.7.4 shall apply <i>mutatis mutandis</i> to any addendum or Award made pursuant to the terms of such remission. The Dispute Resolution Administrator may take any steps as may be necessary to enable the Arbitral Tribunal to comply with the terms of such remission and may fix an advance payment to cover any additional fees and expenses of the Arbitral Tribunal and any additional Secretariat administrative expenses.	Re-numbering an for proper referencing
9.9			
Costs and Payments	9.9 Costs and Payments	9.9 9.10 Costs and Payments	Re-numbering
9.9.1	Advance Payment to Cover the Costs of the Arbitration	9.9.1 9.10.1 Advance Payment to Cover the Fees and Costs of the Arbitration	Re-numbering and for clarity

NOTE: Shaded provisions were already approved by the PEM Board (PEM Board Resolution No. 2016-40 dated 29 November 2016) and were only included to ensure that the new set of proposed amendments are consistent with the previous ones. Only the unshaded provisions are the new proposed changes.

Section and Title	Original Provision/ PEM Board-approved Amendments (2016)	Proposed Amendment	Rationale
Advance Payment to Cover the Costs of the Arbitration			
9.9.1.1	After receipt of the RA, the Secretariat may request the Claimant/s to pay a provisional advance payment in an amount intended to cover the costs of the arbitration until the Terms of Reference have been drawn up. Any provisional advance paid will be considered as a partial payment by the Claimant/s of any costs fixed by the DRA pursuant to this Section 9.9.1.	9.9.1.1 9.10.1.1 After receipt of the RA under Section 9.2.1.1 , the Secretariat may request the Claimant/s to pay a provisional advance payment in an amount intended to cover the fees and costs of the arbitration until the Terms of Reference have been drawn up. Any provisional advance paid will be considered as a partial payment by the Claimant/s of any costs fixed by the DRA pursuant to this Section 9.9.1. <u>The provisional advance to be paid by the Claimant/s shall be in accordance with the Schedule of Arbitration Fees and Costs as set forth in Annex E hereto.</u>	<ul style="list-style-type: none"> Re-numbering To clarify the basis of the amount of provisional advance to be paid by the Claimant.
9.9.1.2	As soon as practicable, the DRA shall fix the advance payment on costs in an amount likely to cover the fees and expenses of the arbitrators and the Secretariat administrative expenses for the claims which have been referred to it by the parties, unless any claims are made under Section 9.2.4 or 9.2.5 in which case Section 9.9.1.4 shall apply. The advance on costs fixed by the DRA pursuant to this	9.9.1.2 9.10.1.2 As soon as practicable, the Dispute Resolution Administrator shall fix the advance payment on costs in an amount likely to cover the fees and expenses of the arbitrators and the Secretariat administrative expenses in accordance with the Schedule of Administrative Expenses and Arbitration Fees in effect as set forth in Annex E hereto for the claims which have been referred to it by the parties, unless any	<ul style="list-style-type: none"> Re-numbering For clarity and proper referencing

NOTE: Shaded provisions were already approved by the PEM Board (PEM Board Resolution No. 2016-40 dated 29 November 2016) and were only included to ensure that the new set of proposed amendments are consistent with the previous ones. Only the unshaded provisions are the new proposed changes.

Section and Title	Original Provision/ PEM Board-approved Amendments (2016)	Proposed Amendment	Rationale
	Section 9.9.1.2 shall be payable in equal shares by the Claimant/s and the Respondent/s.	claims are made under Section 9.2.4 or 9.2.5 in which case Section 9.9.1.4 9.10.1.4 shall apply. The advance on costs fixed by the <i>Dispute Resolution Administrator</i> pursuant to this Section 9.9.1.2 9.10.1.2 shall be payable in equal shares by the Claimant/s and the Respondent/s.	
9.9.1.3	Where counterclaims are submitted by the Respondent/s under Section 9.2.2 or otherwise, the DRA may fix separate advance payments on costs for the claims and the counterclaims. xxx	9.9.1.3 9.10.1.3 xxx	Re-numbering
9.9.1.4	Where claims are made under Section 9.2.4 or 9.2.5, the DRA shall fix one or more advance payments on costs that shall be payable by the parties as decided by the DRA. Where the DRA has previously fixed any advance payment on costs pursuant to this Section 9.9.1, any such advance shall be replaced by the advance(s) fixed pursuant to this Section 9.9.1.4, and the amount of any advance previously paid by any party will be considered as a partial payment by such party of its share of the advance(s) on costs as fixed by the DRA pursuant to this Section 9.9.1.4.	9.9.1.4 9.10.1.4 Where claims are made under Section 9.2.4 or 9.2.5, the <i>Dispute Resolution Administrator</i> shall fix one or more advance payments on costs that shall be payable by the parties as decided by the <i>Dispute Resolution Administrator</i> . Where the <i>Dispute Resolution Administrator</i> has previously fixed any advance payment on costs pursuant to this Section 9.9.1 9.10.1 , any such advance shall be replaced by the advance(s) fixed pursuant to this Section 9.9.1.4 9.10.1.4 , and the amount of any advance previously paid by any party will be considered as a partial payment by such party of its share of the advance(s) on costs as fixed by the <i>Dispute Resolution</i>	Re-numbering and for proper referencing

NOTE: Shaded provisions were already approved by the PEM Board (PEM Board Resolution No. 2016-40 dated 29 November 2016) and were only included to ensure that the new set of proposed amendments are consistent with the previous ones. Only the unshaded provisions are the new proposed changes.

Section and Title	Original Provision/ PEM Board-approved Amendments (2016)	Proposed Amendment	Rationale
		Administrator pursuant to this Section 9.9.1.4 9.10.1.4 .	
9.9.1.5	The amount of any advance on costs fixed by the DRA pursuant to this Section 9.9.1 may be subject to readjustment at any time during the arbitration. In all cases, any party shall be free to pay any other party's share of any advance on costs should such other party fail to pay its share.	9.9.1.5 9.10.1.5 The amount of any advance on costs fixed by the <i>Dispute Resolution Administrator</i> pursuant to this Section 9.9.1 may be subject to adjustment and/or readjustment at any time during the arbitration. In all cases, any party shall be free to pay any other party's share of any advance on costs should such other party fail to pay its share.	Re-numbering and for clarity
9.9.1.6 9.9.1.7	9.9.1.6 When a request for an advance on costs has not been complied with, and after consultation with the Arbitral Tribunal, the DRA may direct the Arbitral Tribunal to suspend its work and set a time limit, which must not be less than fifteen (15) days, on the expiry of which the relevant claims shall be considered as withdrawn. xxx	9.9.1.6 9.10.1.6 When a request for an advance on costs has not been complied with, and after consultation with the Arbitral Tribunal, the <i>Dispute Resolution Administrator</i> may direct the Arbitral Tribunal to suspend its work and set a time limit, which must not be less than fifteen (15) calendar days, on the expiry of which the relevant claims shall be considered as withdrawn. xxx 9.9.1.7 9.10.1.7 xxx	Re-numbering and to clarify the timeline of the subject mediation procedure.
9.9.2	Decision as to the Costs of the Arbitration	9.9.2 9.10.2 Decision as to the Costs of the Arbitration	Re-numbering

NOTE: Shaded provisions were already approved by the PEM Board (PEM Board Resolution No. 2016-40 dated 29 November 2016) and were only included to ensure that the new set of proposed amendments are consistent with the previous ones. Only the unshaded provisions are the new proposed changes.

Section and Title	Original Provision/ PEM Board-approved Amendments (2016)	Proposed Amendment	Rationale
Decision as to the Costs of the Arbitration			
9.9.2.1 to 9.9.2.4	<p>9.9.2.1 The costs of the arbitration shall include the fees and expenses of the arbitrators and the Secretariat administrative expenses fixed by the DRA, in accordance with the scale in force at the time of the commencement of the arbitration, as well as the fees and expenses of any experts appointed by the Arbitral Tribunal and the reasonable legal and other costs incurred by the parties for the arbitration.</p> <p>9.9.2.2 xxx</p> <p>9.9.2.3 xxx</p> <p>9.9.2.4 xxx</p>	<p>9.9.2.1 9.10.2.1 The costs of the arbitration shall include the fees and expenses of the arbitrators and the Secretariat administrative expenses fixed by the DRA, in accordance with the scale in force at the time of the commencement of the arbitration, as well as the fees and expenses of any experts appointed by the Arbitral Tribunal and the reasonable legal and other costs incurred by the parties for the arbitration.</p> <p>9.9.2.2 9.10.2.2 xxx</p> <p>9.9.2.3 9.10.2.3 xxx</p> <p>9.9.2.4 9.10.2.4 xxx</p>	<ul style="list-style-type: none"> • Re-numbering • The fees and costs of the arbitration shall be in accordance to the Schedule of Arbitration Fees and Costs set out in the Manual.
9.9.2.5	In the event of the withdrawal of all claims or the termination of the arbitration before the rendering of a final Award, the DRA shall fix the fees and expenses of the arbitrators and the Secretariat administrative expenses.	<p>9.9.2.5 9.10.2.5 In the event of the withdrawal of all claims or the termination of the arbitration before the rendering of a final Award, the <i>Dispute Resolution Administrator</i> shall fix the fees and expenses of the arbitrators and the Secretariat administrative expenses in accordance <i>to the Guidelines for the ASSC in the Conduct of their Duties in</i></p>	<ul style="list-style-type: none"> • To clarify the basis of the payments to be made to the arbitrators and the ADR Support Service Center if the arbitration was not completed.

NOTE: Shaded provisions were already approved by the PEM Board (PEM Board Resolution No. 2016-40 dated 29 November 2016) and were only included to ensure that the new set of proposed amendments are consistent with the previous ones. Only the unshaded provisions are the new proposed changes.

Section and Title	Original Provision/ PEM Board-approved Amendments (2016)	Proposed Amendment	Rationale
		<u>Respect of WESM Arbitration Proceedings, taking into consideration the relevant stage of the arbitration and the work undertaken by the arbitrators and the Secretariat.</u>	
9.10 Effect of Award	9.10 Effect of Award 9.10.1 xxx 9.10.2 xxx	9.10 9.11 Effect of Award 9.10.1 9.11.1 xxx 9.10.2 9.11.2 xxx	<ul style="list-style-type: none"> Re-numbering
9.11 Enforcement	9.11 Enforcement	9.11 9.12 Enforcement	<ul style="list-style-type: none"> Re-numbering
9.11.1	9.11.1 If any of the party refuses, upon receipt of Award rendered by the Arbitral Tribunal, to comply with a payment of compensation or costs, or to fully comply with the decision rendered by Arbitral Tribunal, the DRA may direct the MO to enforce any settlement or judgment, or request the PEM Board on behalf of the affected party make a demand for payment, or both.	9.11.1 9.12.1 If any of the party refuses, upon receipt of Award rendered by the Arbitral Tribunal, to comply with a payment of compensation or costs, or to fully comply with the decision rendered by <u>the</u> Arbitral Tribunal, the <u>Dispute Resolution Administrator</u> may direct the <u>Market Operator</u> to enforce any settlement or judgment, or request the <u>PEM Board</u> on behalf of the affected party make a demand for payment, or both.	<ul style="list-style-type: none"> Re-numbering, for clarity and clerical correction
9.12 Recording and Publication	9.12 Recording and Publication	9.12 9.13 Recording and Publication	Re-numbering

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Section and Title	Original Provision/ PEM Board-approved Amendments (2016)	Proposed Amendment	Rationale
9.12.1	<p>9.12.1 When the resolution of a dispute has been made by an Arbitral Tribunal, the chairperson of the Arbitral Tribunal shall, within the next five (5) business days, send a report with the details of the resolution to:</p> <p>(a) The DRA; (b) The PEM Board; (c) The ERC; and (d) The MO.</p>	<p>9.12.1 9.13.1 When the resolution of a dispute has been made by an Arbitral Tribunal, the chairperson of the Arbitral Tribunal shall, within the next five (5) business calendar days, send a report with the details of the resolution to:</p> <p>(a) The <u>Dispute Resolution Administrator</u>, (b) The PEM Board; (c) The DOE; (d) The ERC; and (ed) The Market Operator.</p>	<ul style="list-style-type: none"> (Replacement of 'business' with 'calendar' is from the previous proposal.) To include the DOE as recipient of the Arbitral Tribunal Report.
11. MISCELLANEOUS			
11.1 Limitation of Liability			
11.1.1	<p>The arbitrators, any person appointed by the Arbitral Tribunal, the DRA and its Secretariat shall not be liable for any loss or damage suffered by a Participant or any other person as a consequence of any act or omission of those persons unless the arbitrators, any person appointed by the Arbitral Tribunal, the DRA and its Secretariat acted with malice, manifest partiality, bad faith, gross incompetence or gross negligence.</p>	<p>The arbitrators, any person appointed by the Arbitral Tribunal, the <u>Dispute Resolution Administrator</u> and its Secretariat, and the ASSC shall not be liable for any loss or damage suffered by a Participant or any other person as a consequence of any act or omission of those persons unless the arbitrators, any person appointed by the Arbitral Tribunal, the <u>Dispute Resolution Administrator</u> and its Secretariat, and the ASSC acted with malice, manifest partiality, bad faith, gross incompetence or gross negligence.</p>	For clarity

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Section and Title	Original Provision/ PEM Board-approved Amendments (2016)	Proposed Amendment	Rationale
ANNEX A ESTABLISHMENT OF DISPUTE MANAGEMENT PROTOCOL			
3. NOTICE OF DISPUTE			
Annex A, 3.1. (b) Protocols on sending a Notice of Dispute	3.1 xxx b. The Notice of Dispute must be sent within the time limit set out under the Dispute Resolution Market Manual (DRMM).	3.1 xxx b. The Notice of Dispute must be sent within the time limit set out under the Dispute Resolution Market Manual (DRMM). e <u>b.</u> xxx	To remove inconsistent provision; the DRMM does not specify any 'time limit' in this stage of the Negotiation.
3.2 Protocols on receiving a Notice of Dispute	3.2 a. An acknowledgement of receipt should be properly made by the DMP Focal Person. b. In case the dispute is already outside the time limit set out under the DRMM, the receiving party must notify the other party of the same within ten (10) business days from receipt of the Notice of Dispute. c. The acknowledgement receipt shall be transmitted in accordance with the mode of transmittal depending on the	3.2 a. An acknowledgement of receipt should be properly made by the DMP Focal Person <u>within five (5) calendar days.</u> b. In case the dispute is already outside the time limit set out under the DRMM, the receiving party must notify the other party of the same within ten (10) business days from receipt of the Notice of Dispute. e. <u>b.</u> The acknowledgement receipt shall be transmitted in accordance with the mode of transmittal depending on the order of	<ul style="list-style-type: none"> To clarify the timeline of the subject mediation procedure. To remove inconsistent provision; the DRMM does not specify any 'time limit' in this stage of the Negotiation.

NOTE: Shaded provisions were already approved by the PEM Board (PEM Board Resolution No. 2016-40 dated 29 November 2016) and were only included to ensure that the new set of proposed amendments are consistent with the previous ones. Only the unshaded provisions are the new proposed changes.

Section and Title	Original Provision/ PEM Board-approved Amendments (2016)	Proposed Amendment	Rationale
	order of preference of receipt mentioned in the other party's DMP.	preference of receipt mentioned in the other party's DMP.	
4. REQUESTS FOR INFORMATION			
4.1.2. Time period for Information Request	4.1.2. Time period for Information Request There should be a response to the request within ten (10) business days of receipt of the request.	4.1.2. Time period for Information Request There should be a response to the request within ten (10) calendar days of receipt of the request.	To expedite the accomplishment of the subject procedure.
5. NEGOTIATION			
NEGOTIATION Annex A, 5.3.	5.1 Within fifteen (15) business days after the receipt of the Notice of Dispute, the parties must meet by agreement to determine the feasibility of voluntary and amicable settlement of the dispute.	5.1 Within fifteen (15) calendar days after the receipt of the Notice of Dispute, the parties must meet by agreement to determine the feasibility of voluntary and amicable settlement of the dispute.	To expedite the accomplishment of the subject procedure.
	5.3 During the negotiation stage, the parties have forty five (45) business days from the Notice of Dispute to resolve the dispute by themselves. The parties may agree in writing to extend this 45-business day period.	5.3 During the negotiation stage, the parties have forty five (45) calendar days from the Notice of Dispute to resolve the dispute by themselves. The parties may agree in writing to extend this 45- calendar day period.	To be consistent with Section 8.3.3. of the DRMM
	Should there be failure of negotiation, either of the parties may file a Statement of Claim to the DRA.	Should there be failure of negotiation, either of the parties may file a Statement of Claim Request for Mediation to the DRA.	To specify the proper required form in commencing the Mediation stage.

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Section and Title	Original Provision/ PEM Board-approved Amendments (2016)	Proposed Amendment	Rationale
Annex C	<i>(Insertion of a new Annex)</i>	<p><u>ANNEX C – EMERGENCY ARBITRATOR RULES</u></p> <p><u>Article 1 - Application for Emergency Measures</u></p> <p><u>1 A party wishing to have recourse to an emergency arbitrator pursuant to Section 9.8.2 of the Manual shall submit its Application for Emergency Measures (the “Application”) to the DRA Secretariat.</u></p> <p><u>2 The Application shall be supplied in a number of copies sufficient to provide one copy for each party, plus one for the emergency arbitrator, and one for the DRA Secretariat.</u></p> <p><u>3 The Application shall contain the following information:</u></p> <p><u>a) the name in full, description, address and other contact details of each of the parties;</u></p> <p><u>b) the name in full, address and other contact details of any person(s) representing the applicant;</u></p>	<p>Insertion of a new Annex section to add the process and procedures of calling upon an emergency arbitrator if a party requires urgent interim relief that cannot await the constitution of an arbitral tribunal.</p>

NOTE: Shaded provisions were already approved by the PEM Board (PEM Board Resolution No. 2016-40 dated 29 November 2016) and were only included to ensure that the new set of proposed amendments are consistent with the previous ones. Only the unshaded provisions are the new proposed changes.

Section and Title	Original Provision/ PEM Board-approved Amendments (2016)	Proposed Amendment	Rationale
		<p>c) <u>a description of the circumstances giving rise to the Application and of the underlying dispute referred or to be referred to arbitration;</u></p> <p>d) <u>a statement of the Emergency Measures sought;</u></p> <p>e) <u>the reasons why the applicant needs urgent interim or conservatory measures that cannot await the constitution of an arbitral tribunal;</u></p> <p>f) <u>any relevant agreements and, in particular, the arbitration agreement;</u></p> <p>g) <u>any agreement as to the place of the arbitration, the applicable rules of law or the language of the arbitration;</u></p> <p>h) <u>proof of payment of the amount referred to in Article 7(1) of this Annex; and</u></p> <p>i) <u>any Request for Arbitration and any other submissions in connection with the underlying dispute, which have been filed</u></p>	

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Section and Title	Original Provision/ PEM Board-approved Amendments (2016)	Proposed Amendment	Rationale
		<p><u>with the DRA Secretariat by any of the parties to the emergency arbitrator proceedings prior to the making of the Application.</u></p> <p><u>The Application may contain such other documents or information as the applicant considers appropriate or as may contribute to the efficient examination of the Application.</u></p> <p>4 <u>If and to the extent that the DRA considers, on the basis of the information contained in the Application, that the Emergency Arbitrator Provisions apply with reference to Sections 9.8.2.5 and 9.8.2.6 of the Manual, the DRA Secretariat shall transmit a copy of the Application and the documents annexed thereto to the responding party within two (2) working days. If and to the extent that the DRA considers otherwise, the DRA Secretariat shall inform the parties that the emergency arbitrator proceedings shall not take place with respect to some or all of the parties and shall transmit a copy of the</u></p>	

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Section and Title	Original Provision/ PEM Board-approved Amendments (2016)	Proposed Amendment	Rationale
		<u>Application to them for information within 48 hours.</u> 5 The DRA shall terminate the emergency arbitrator proceedings if a Request for Arbitration has not been received by the DRA Secretariat from the applicant within ten (10) calendar days of the DRA Secretariat's receipt of the Application, unless the emergency arbitrator determines that a longer period of time is necessary.	
		<u>Article 2 - Appointment of the Emergency Arbitrator; Transmission of the File</u> 1 The DRA shall appoint an emergency arbitrator within as short a time as possible, normally within two (2) calendar days from the DRA Secretariat's receipt of the Application. 2 The emergency arbitrator shall come from the pool of WESM-accredited Arbitrators. Every month, two (2) WESM Arbitrators shall be assigned as stand-by emergency arbitrators, one primary and one alternate,	

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Section and Title	Original Provision/ PEM Board-approved Amendments (2016)	Proposed Amendment	Rationale
		<p><u>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.</u></p> <p>3 <u>Upon receipt of the Application for Emergency Arbitration, the DRA Secretariat shall, within one (1) working day, contact the assigned WESM Arbitrator through telephone, electronic mail and courier to confirm their availability and commence their appointment as emergency arbitrator.</u></p> <p>4 <u>No emergency arbitrator shall be appointed after the file has been transmitted to the arbitral tribunal pursuant to Section 9.6.1 of the Manual. An emergency arbitrator appointed prior thereto shall retain the power to make an order within the time limit permitted by Article 6(4) of this Annex.</u></p> <p>5 <u>Once the emergency arbitrator has been appointed, the DRA Secretariat</u></p>	

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Section and Title	Original Provision/ PEM Board-approved Amendments (2016)	Proposed Amendment	Rationale
		<p><u>shall so notify the parties and shall transmit the file to the emergency arbitrator. Thereafter, all written communications from the parties shall be submitted directly to the emergency arbitrator with a copy to the other party and the DRA Secretariat. A copy of any written communications from the emergency arbitrator to the parties shall be submitted to the DRA Secretariat.</u></p> <p><u>6 Every emergency arbitrator shall be and remain impartial and independent of the parties involved in the dispute.</u></p> <p><u>7 Before being appointed, a prospective emergency arbitrator shall sign a statement of acceptance, availability, impartiality and independence. The DRA Secretariat shall provide a copy of such statement to the parties.</u></p> <p><u>8 An emergency arbitrator shall not act as an arbitrator in any arbitration relating to the dispute that gave rise to the Application.</u></p>	

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Section and Title	Original Provision/ PEM Board-approved Amendments (2016)	Proposed Amendment	Rationale
		<p><u>Article 3 - Challenge of an Emergency Arbitrator</u></p> <p><u>1 A challenge against the emergency arbitrator must be made within three (3) calendar days from receipt by the party making the challenge of the notification of the appointment or from the date when that party was informed of the facts and circumstances on which the challenge is based if such date is subsequent to the receipt of such notification.</u></p> <p><u>2 The challenge shall be decided by the DRA after the DRA Secretariat has afforded an opportunity for the emergency arbitrator and the other party or parties to provide comments in writing within five (5) working days.</u></p>	
		<p><u>Article 4 - Place of Emergency Arbitrator Proceedings</u></p> <p><u>1 If the parties have agreed upon the place of the arbitration, such place shall be the place of the emergency arbitrator proceedings. In the</u></p>	

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		<p><u>absence of such agreement, the DRA shall fix the place of the emergency arbitrator proceedings, without prejudice to the determination of the place of the arbitration pursuant to Section 9.6.3 of the Manual.</u></p> <p>2 <u>Any meetings with the emergency arbitrator may be conducted through a meeting in person at any location the emergency arbitrator considers appropriate or by video conference, telephone or similar means of communication.</u></p>	
		<p><u>Article 5 - Proceedings</u></p> <p>1 <u>The emergency arbitrator shall establish a procedural timetable for the emergency arbitrator proceedings within as short a time as possible, normally within two (2) calendar days from the transmission of the file to the emergency arbitrator pursuant to Article 2(3) of this Annex.</u></p> <p>2 <u>The emergency arbitrator shall conduct the proceedings in the manner which the emergency arbitrator considers to be</u></p>	

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		<p><u>appropriate, taking into account the nature and the urgency of the Application. In all cases, the emergency arbitrator shall act fairly and impartially and ensure that each party has a reasonable opportunity to present its case.</u></p>	
		<p><u>Article 6 - Order</u></p> <p><u>1 Pursuant to Section 9.8.2.2 of the Manual, the emergency arbitrator's decision shall take the form of an order (the "Order").</u></p> <p><u>2 In the Order, the emergency arbitrator shall determine whether the Application is admissible pursuant to Section 9.8.2.1 of the Manual and whether the emergency arbitrator has jurisdiction to order Emergency Measures.</u></p> <p><u>3 The Order shall be made in writing and shall state the reasons upon which it is based. It shall be dated and signed by the emergency arbitrator.</u></p> <p><u>4 The Order shall be made no later than fifteen (15) calendar days from the date on which the file was transmitted</u></p>	

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		<p><u>to the emergency arbitrator pursuant to Article 2(3) of this Annex. The DRA may extend the time limit no more than fifteen (15) days and not more than one occasion pursuant to a reasoned request from the emergency arbitrator or on the DRA's own initiative if the DRA decides it is necessary to do so.</u></p> <p>5 <u>Within the time limit established pursuant to Article 6(4) of this Annex, the emergency arbitrator shall send the Order to the parties, with a copy to the DRA Secretariat, by any of the means of communication permitted by Section 9.1.2 of the Manual that the emergency arbitrator considers will ensure prompt receipt.</u></p> <p>6 <u>The Order shall cease to be binding on the parties upon:</u></p> <p>a) <u>the DRA's termination of the emergency arbitrator proceedings pursuant to Article 1(6) of this Annex;</u></p> <p>b) <u>the acceptance by the DRA of a challenge against the emergency</u></p>	

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Section and Title	Original Provision/ PEM Board-approved Amendments (2016)	Proposed Amendment	Rationale
		<p><u>arbitrator pursuant to Article 3 of this Annex;</u></p> <p><u>c) the arbitral tribunal's final award, unless the arbitral tribunal expressly decides otherwise; or</u></p> <p><u>d) the withdrawal of all claims or the termination of the arbitration before the rendering of a final award.</u></p> <p><u>7 The emergency arbitrator may make the Order subject to such conditions as the emergency arbitrator thinks fit, including requiring the provision of appropriate security.</u></p> <p><u>8 Upon a reasoned request by a party made prior to the transmission of the file to the arbitral tribunal pursuant to Section 9.6.1 of the Manual, the emergency arbitrator may modify, terminate or annul the Order.</u></p>	
		<p><u>Article 7 - Costs of the Emergency Arbitrator Proceedings</u></p> <p><u>1 The applicant must pay an amount of PHP250,000, consisting of PHP50,000 for the DRA Secretariat</u></p>	

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		<p><u>administrative expenses and PHP200,000 for the emergency arbitrator's fees and expenses. Notwithstanding Article 1(5) of this Annex, the Application shall not be notified to the other party/ies until the payment of PHP250,000 is received by the DRA Secretariat.</u></p> <p>2 <u>The DRA may, at any time during the emergency arbitrator proceedings, decide to increase the emergency arbitrator's fees up to PhP 500,000 or the DRA Secretariat administrative expenses up to PhP 125,000 taking into account, <i>inter alia</i>, the nature of the case and the nature and amount of work performed by the emergency arbitrator and the costs of the DRA Secretariat. If the party which submitted the Application fails to pay the increased costs within the time limit fixed by the DRA Secretariat, the Application shall be considered as withdrawn.</u></p> <p>3 <u>The emergency arbitrator's Order shall fix the costs of the emergency arbitrator proceedings and decide</u></p>	

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		<p><u>which of the parties shall bear them or in what proportion they shall be borne by the parties.</u></p> <p>4 <u>The costs of the emergency arbitrator proceedings include the DRA Secretariat administrative expenses, the emergency arbitrator's fees and expenses and the reasonable legal and other costs incurred by the parties for the emergency arbitrator proceedings.</u></p> <p>5 <u>In the event that the emergency arbitrator proceedings do not take place pursuant to Article 1(5) of this Annex or are otherwise terminated prior to the making of an Order, the DRA shall determine the amount to be reimbursed to the applicant, if any.</u></p>	
		<p>Article 8 - General Rule</p> <p>1 <u>The DRA shall have the power to decide, at the DRA's discretion, all matters relating to the administration of the emergency arbitrator proceedings not expressly provided for in this Annex.</u></p>	

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		<p>2 <u>In the DRA's absence or otherwise at the DRA's request, a member of the DRA Secretariat so designated by the DRA shall have the power to take decisions on behalf of the DRA. At least 24 hours prior to his/her leave of absence, the DRA shall specify in writing to the DRA Secretariat the powers, if any, he/she will be temporarily authorizing the DRA Secretariat to exercise on his/her behalf in, and for the duration of, his/her absence.</u></p> <p>3 <u>In all matters concerning emergency arbitrator proceedings not expressly provided for in this Annex, the DRA and the emergency arbitrator shall act in the spirit of the Rules and this Annex.</u></p>	
ANNEX C SCHEDULE OF MEDIATION COSTS	ANNEX C SCHEDULE OF MEDIATION COSTS	ANNEX C D SCHEDULE OF MEDIATION FEES AND COSTS	<ul style="list-style-type: none"> To indicate the that the section likewise covers mediation fees Re-numbering
A.	The party or parties filing a Request for Mediation shall include with the Request a non-refundable registration fee of	The party or parties filing a Request for Mediation shall include with the Request a non-refundable registration fee an advance	<ul style="list-style-type: none"> To be consistent with Section 8.5.9.1 (originally 8.5.7.1)

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	PHP50,000 to cover the costs of processing the Request for Mediation. No Request for Mediation shall be processed unless accompanied by the requisite payment.	of PHP50,000 to cover the fees and costs of processing the Request for Mediation. No Request for Mediation shall be processed unless accompanied by the requisite payment. <u>Such advance shall be credited to the Claimant's share of the advance on fees and costs.</u>	<ul style="list-style-type: none"> • 'Advance' on fees and costs, rather than 'registration fee' is deemed the more appropriate term to describe the Claimant's payment as it will be credited to its overall share in the fees and costs of the mediation. • To ensure that there is an adequate and readily available financial resource to cover the conduct of the early stages of mediation.
B.	B. The administrative expenses of the Secretariat for the Mediation proceedings shall be fixed at the DRA's discretion depending on the tasks carried out by the Secretariat. Such administrative expenses shall not exceed the maximum sum of PHP150,000.	B. The administrative expenses of the Secretariat for the Mediation proceedings shall be fixed at the DRA's discretion depending on the tasks carried out by the Secretariat. Such administrative expenses shall not exceed the maximum sum of PHP150,000. <u>However, the parties are not precluded from agreeing between/among them to disburse beyond the prescribed maximum amount if they or the circumstances of the dispute resolution proceedings so require.</u>	To provide flexibility to the parties in setting the administrative expenses during mediation, according to their requirements.

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Section and Title	Original Provision/ PEM Board-approved Amendments (2016)	Proposed Amendment	Rationale
ANNEX D ARBITRATION COSTS AND FEES	ANNEX D ARBITRATION COSTS AND FEES	ANNEX-D ANNEX E ARBITRATION COSTS AND FEES	Re-numbering
Article 1 - Advance on Costs			
1	1. Each request to commence an arbitration pursuant to the Rules must be accompanied by a filing fee of PHP50,000. Such payment is non-refundable and shall be credited to the Claimant's portion of the advance on costs.	1. Each request to commence an arbitration pursuant to these Arbitration Rules must be accompanied by a filing fee an advance of PHP50,000 to cover the costs of the initial stages of arbitration . Such payment is non-refundable and shall be credited to the Claimant's portion of the advance on costs.	<ul style="list-style-type: none"> To clarify that the Claimant's initial payment is a provisional advance on the overall arbitration fees and costs that would be credited to its share of fees and costs with the other parties. The amount of provisional advance shall be in accordance to the Schedule of Arbitration Fees and Costs set out in the Manual.
2	2. The provisional advance fixed by the Secretariat according to Section 9.9.1.1 of the Manual shall normally not exceed the amount obtained by adding together the Secretariat administrative expenses, the minimum of the fees (as set out in the scale hereinafter) based upon the amount of the claim and the expected reimbursable expenses of the Arbitral Tribunal incurred with respect to the drafting of the Terms of Reference. If such amount is not quantified, the provisional advance shall be fixed at the discretion of	2. The provisional advance fixed by the Secretariat according to Section 9.9.1.1 9.10.1.1 of the Manual shall normally not exceed the amount obtained by adding together the Secretariat administrative expenses, the minimum of the fees (as set out in the scale hereinafter) based upon the amount of the claim and the expected reimbursable expenses of the Arbitral Tribunal incurred with respect to the drafting of the Terms of Reference. If such amount is not quantified, the provisional advance shall be fixed at the	Re-numbering and for clarity.

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Section and Title	Original Provision/ PEM Board-approved Amendments (2016)	Proposed Amendment	Rationale
	the DRA. Payment by the Claimant shall be credited to its share of the advance on costs fixed by the DRA.	discretion of the <u>Dispute Resolution Administrator</u> . Payment by the Claimant shall be credited to its share of the advance on costs fixed by the <u>Dispute Resolution Administrator</u> .	
10.	As provided in Section 9.9.1.5 of the Manual, the advance on costs may be subject to readjustment at any time during the arbitration, in particular to take into account fluctuations in the amount in dispute, changes in the amount of the estimated expenses of the arbitrator, or the evolving difficulty or complexity of arbitration proceedings.	As provided in Section 9.9.1.5 9.10.1.5 of the Manual, the advance on costs may be subject to adjustment and/or readjustment at any time during the arbitration, in particular to take into account fluctuations in the amount in dispute, changes in the amount of the estimated expenses of the arbitrator, or the evolving difficulty or complexity of arbitration proceedings.	Re-numbering and for clarity.
Article 2 - Costs and Fees			
1.	Subject to Section 9.9.2.2 of the Manual, the DRA shall fix the fees of the arbitrators in accordance with the scale hereinafter set out or. Where the amount in dispute is not stated, the Arbitral Tribunal shall fix their fees in accordance with sub-clause 2 below.	Subject to Section 9.9.2.2 9.10.2.2 of the Manual, the <u>Dispute Resolution Administrator</u> shall fix the fees of the arbitrators in accordance with the scale hereinafter set out or-, Ww where the amount in dispute is not stated, the Arbitral Tribunal shall fix their fees in accordance with sub-clause 2 below.	For proper referencing and clerical correction

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Section and Title	Original Provision/ PEM Board-approved Amendments (2016)	Proposed Amendment	Rationale
2.	In setting the arbitrators' fees in a situation where the amount in dispute is not stated, the Arbitral Tribunal shall take into consideration the diligence and efficiency of the arbitrators, the time spent, the rapidity of the proceedings, the complexity of the dispute and the timeliness of the submission of the draft award, so as to arrive at a figure within the limits specified or, in exceptional circumstances (Section 9.9.2.2 of the Manual), at a figure higher or lower than those limits.	In setting the arbitrators' fees in a situation where the amount in dispute is not stated, the Arbitral Tribunal shall take into consideration the diligence and efficiency of the arbitrators, the time spent, the rapidity of the proceedings, the complexity of the dispute and the timeliness of the submission of the draft award, so as to arrive at a figure within the limits specified or, in exceptional circumstances (Section 9.9.2.2 9.10.2.2 of the Manual), at a figure higher or lower than those limits.	For proper referencing
	4. The DRA shall fix the Secretariat administrative expenses of each arbitration in accordance with the scale hereinafter set out or, where the amount in dispute is not stated, at its discretion. In exceptional circumstances, the DRA may fix the Secretariat administrative expenses at a lower or higher figure than that which would result from the application of such scale, provided that such expenses shall normally not exceed the maximum amount of the scale.	4. The DRA shall fix the Secretariat administrative expenses of each arbitration in accordance with the scale hereinafter set out or, where the amount in dispute is not stated, at its discretion. In exceptional circumstances, the DRA may fix the Secretariat administrative expenses at a lower or higher figure than that which would result from the application of such scale, provided that such expenses shall normally not exceed the maximum amount of the scale. <u>This does not preclude the parties from agreeing between/among them to disburse beyond the administrative expenses prescribed in the scale, if they or the</u>	To provide flexibility to the parties in setting the administrative expenses during arbitration, according to their requirements.

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		<u>circumstances of the dispute resolution proceedings so require. Should the parties fail to agree, the Arbitral Tribunal is allowed to fix the administrative fees in the amount they deem fit, subject to the concurrence of the DRA.</u>	
7.	If an arbitration terminates before the rendering of a final award, the Arbitral Tribunal shall fix the fees and expenses of the arbitrators and the Secretariat administrative expenses at its discretion, taking into account the stage attained by the arbitral proceedings and any other relevant circumstances.	If an arbitration terminates before the rendering of a final award, the Arbitral Tribunal <u>Dispute Resolution Administrator</u> shall fix the fees and expenses of the arbitrators and the Secretariat administrative expenses at its discretion, taking into account the stage attained by the arbitral proceedings and any other relevant circumstances.	To clarify that the DRA shall be the one to set the partial payments to arbitrators and the ADR Support Service Center should the arbitration terminates before the rendering of final award
9.	In the case of an application under Section 9.8.6.2 of the Manual or of a remission pursuant to Section 9.8.6.4 of the Manual, the DRA may fix an advance to cover additional fees and expenses of the Arbitral Tribunal and additional Secretariat administrative expenses and may make the transmission of such application to the Arbitral Tribunal subject to the prior cash payment in full to the Secretariat of such advance. The DRA shall fix at its discretion	In the case of an application under Section 9.8.6.2 <u>9.9.7.2</u> of the Manual or of a remission pursuant to Section 9.8.6.4 <u>9.9.7.4</u> of the Manual, the <u>Dispute Resolution Administrator</u> may fix an advance to cover additional fees and expenses of the Arbitral Tribunal and additional Secretariat administrative expenses and may make the transmission of such application to the Arbitral Tribunal subject to the prior cash payment in full to the Secretariat of such	For proper referencing

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	the costs of the procedure following an application or a remission, which shall include any possible fees of the arbitrators and Secretariat administrative expenses.	advance. The <u>Dispute Resolution Administrator</u> shall fix at its discretion the costs of the procedure following an application or a remission, which shall include any possible fees of the arbitrators and Secretariat administrative expenses.	
10.	When an arbitration is preceded by an attempt at amicable resolution pursuant to the WESM ADR Rules, one half of the Secretariat administrative expenses paid for such ADR proceedings shall be credited to the Secretariat administrative expenses of the arbitration.	When an arbitration is preceded by an attempt at amicable resolution pursuant to the WESM ADR Rules <u>Dispute Resolution</u> , one half of the Secretariat administrative expenses paid for such ADR proceedings shall be credited to the Secretariat administrative expenses of the arbitration.	For clarity
ANNEX E TREASURY SERVICES	ANNEX E TREASURY SERVICES xxx	ANNEX-E <u>ANNEX F</u> TREASURY SERVICES xxx	Re-numbering

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