



Republic of the Philippines
DEPARTMENT OF ENERGY
(Kagawaran ng Enerhiya)

DEPARTMENT CIRCULAR NO. _____

**ADOPTING FURTHER AMENDMENTS TO THE WHOLESALE ELECTRICITY
SPOT MARKET (WESM) RULES AND ENFORCEMENT AND COMPLIANCE
MANUAL IN ALIGNMENT WITH THE PENALTY MANUAL REVISIONS**

WHEREAS, Sections 30 and 37(f) of Republic Act (RA) No. 9136 or the Electric Power Industry Reform Act (EPIRA) provide that the Department of Energy (DOE), jointly with the electric power industry participants, shall establish the WESM and formulate the detailed rules governing the operations thereof;

WHEREAS, on 28 June 2002, the DOE, with the endorsement of the electric power industry participants, promulgated the WESM Rules through Department Circular (DC) No. DC2002-06-003;

WHEREAS, any changes, amendments, and modifications to the WESM Rules, including its Market Manuals, shall be undertaken in accordance with the provisions of Chapter 8 thereof;

WHEREAS, the WESM Rules provide for the manner by which they are to be enforced, including particularly the imposition of sanctions for breach and the requirements and procedures before sanctions can be imposed, and the design and promulgation of a penalty scheme that will be applied in case of breach;

WHEREAS, the Enforcement and Compliance Manual (ECM) sets out the guidelines and procedures for monitoring compliance by WESM Members with their obligations under the WESM Rules, the Retail Rules and its Market Manuals, and in the investigation and imposition of sanctions for breach;

WHEREAS, Clause 7.2.5.4 of the WESM Rules and Section 3.6 of the WESM Penalty Manual require the Market Operator (MO) to implement the Notice of Specified Penalties served on it and distribution of the collected financial penalties in accordance with the guidelines it shall develop pursuant to Section 6 of said Manual;

WHEREAS, on 12 September 2023, Philippine Electricity Market Corporation (PEMC) submitted proposed amendments to WESM Rules and ECM in alignment with the Penalty Manual, which seeks to:

- A. On Collection and Utilization of Financial Penalty
 - 1) Transfer the responsibility to collect penalties from the Market Operator to the WESM Governance Arm;
 - 2) Change the provisions regarding utilization of penalty collected;
 - 3) Change the timeline for the implementation of the enforcement sanction (exhaustion of remedies before penalty collection); and
 - 4) Transfer of Provisions/Section on RR and Appeal from Penalty to EC Manual.

B. On Enforcement and Compliance

- 1) Transfer all provisions relating to enforcement remedies, i.e., Request for Reconsideration and Appeal proceedings, from the Penalty Manual to Enforcement and Compliance Manual;
- 2) Change the timeline for response to non-compliance notice and issuance of the compliance monitoring and assessment report; and
- 3) Include provisions or revision to provide clarity on the need for verification of the request for investigation, report of probable breach, and directive or order to investigate as prerequisite to the issuance of the notice of investigation.

WHEREAS, the DOE, cognizant that the intent of the proposed amendment is consistent with the objectives of the EPIRA and the WESM, drafted a circular to solicit comments and recommendations from interested parties;

NOW, THEREFORE, after careful review of the proposed amendments and the comments received on the same, the DOE, pursuant to its authority under the EPIRA and the WESM Rules, hereby adopts, issues, and promulgates the following amendments to the WESM Rules and Enforcement and Compliance Manual:

Section 1. Amendments to the WESM Rules. The following provisions of the WESM Rules are hereby amended to read as:

SECTION 7 ENFORCEMENT AND DISPUTES

7.2 Enforcement

7.2.4 Enforcement Proceedings

7.2.4.1 xxx xxx xxx

7.2.4.2 xxx xxx xxx

The *Enforcement and Compliance Office* shall ensure that the necessary verification or assessment of compliance or non-compliance is performed, and that due process is observed in the conduct of compliance monitoring and assessment. Upon finding of breach by the *Enforcement and Compliance Office*, penalties shall be imposed by the *Enforcement and Compliance Office* on the concerned *WESM Member* pursuant to Clause 7.2.5.2 through issuance of notice of specified penalty by the President of the *WESM Governance Arm*; provided, however, that it shall be issued to the said *WESM Member* after it has been afforded the adequate opportunity to avail of the enforcement remedies provided by the relevant *Market Manual*.

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7.2.4.11 If the decision of the *PEM Board* is to penalize the *WESM Member*, the President of the *WESM Governance Arm* shall issue

a notice of penalty to the *WESM Member* in accordance with the *WESM Penalty Manual* adopted pursuant to Clause 7.2.5.5; provided that it shall be issued to the said *WESM Member* after it has been afforded the adequate opportunity to avail of the enforcement remedies provided by the relevant *Market Manual*.

7.2.5 Enforcement Actions

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7.2.5.4 If the breach is of such a nature that payment of compensation to affected parties is required, the *WESM Governance Arm* on behalf of the affected party may make a demand for payment under the *WESM Rules* without prejudice to the sanctions and penalties that the *ERC* may impose.

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

- (a) Acts or omissions constituting *breach* of the *WESM Rules* or *Market Manuals* for which penalties can be imposed;
- (b) Penalties, financial and non-financial, that can be imposed for each type of breach, which should be commensurate to the nature and gravity of the breach; ~~and~~
- (c) Utilization of financial penalty collected; and
- (d) Procedures for and respective obligations of responsible persons or entities in implementing penalties.

SECTION 11 GLOSSARY

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Enforcement proceeding - This is the activity or series of activities carried out to establish and determine the occurrence of *breach* and the corresponding enforcement action that will be carried out as a consequence of the *breach*, and includes monitoring, assessment, investigation, reconsideration and appeal proceedings, and imposition of enforcement actions.

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Section 2. Amendments to the WESM Manual on Enforcement and Compliance.
The following provisions of the WESM Manual on Enforcement and Compliance are hereby amended to read as:

SECTION 3 LEGAL AND REGULATORY FRAMEWORK

3.1 Legal Basis

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- 3.1.3 Pursuant to the legal mandate discussed above, the *WESM Rules* provide for the manner by which they are to be enforced, including particularly the imposition of sanctions for *breach* and the requirements and procedures before sanctions can be imposed.[3] The *WESM Rules* likewise provide for the design and promulgation of a penalty scheme that will be applied in case of *breach*.[4]

Footnote:

[3] WESM Rules, Clauses 7.1 and Section 7.2

[4] WESM Rules, Clause 7.2.5.5

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3.2 Enforcement of The Market Rules

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

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3.4 Enforcement Actions Under the WESM Rules

- 3.4.1 *WESM Rules* Clause 1.9.1 provides that the Rules are to be enforceable in accordance with its Chapter 7.

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SECTION 4 RESPONSIBILITIES

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4.2 Compliance Committee

- 4.2.1 Within the limits set out in this Manual and in addition to its functions as set out in the *Market Rules* and the *Compliance Committee Manual*, the *Compliance Committee* has the following authority and obligation in respect to enforcement of the Market Rules. Its enforcement authority includes the authority to:
- a) Review reports of investigations of breaches to the *WESM Rules* and *Market Manuals* carried out by the *Enforcement and Compliance Office* and, based on the results of such investigation, decide on the outcomes of the investigation and recommend imposition of sanctions or penalties if warranted;
 - b) Review and monitor the compliance of the *Enforcement and Compliance Office* with the reportorial requirements pursuant to the *WESM Rules*, *Market Manuals*, and other applicable laws, rules, regulations, or issuances;
 - c) Review and monitor the compliance by the *Market Operator* and the *System Operator* with their obligations pursuant to the *WESM Rules* and *Market Manuals*, or any coordinating or operating agreements, or protocols which may be established governing the performance of their functions and obligations under the *WESM Rules* and *Market Manuals*;
 - d) Review and approve the guidelines for the *WESM Compliance Officers'* competence standards and certification program;
 - e) Propose amendments to the *WESM Rules* or *Market Manuals* in accordance with chapter 8 with a view to:
 - (i) Improving the efficiency and the effectiveness of the operation of the *WESM*; and
 - (ii) Improving or enhancing the prospects for the achievement of the *WESM* objectives;
 - (f) Assist the *Rules Change Committee* in relation to its assessment of proposals to amend the *WESM Rules* or *Market Manuals* under Chapter 8; and
 - (g) Recommend to the *PEM Board* the imposition of penalties for *breaches* other than those arising from and determined through the compliance monitoring and assessment by *Enforcement and Compliance Office*, and implementation of remedial measures as a consequence of such *breach*, based on outcomes of investigation carried out by the *Enforcement and Compliance Office*.

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4.4 President of the WESM Governance Arm

- 4.4.1 The President of the *WESM Governance Arm* shall have the following functions in respect to enforcement and compliance in the market –
- a) Appoint the *Enforcement and Compliance Office* staff;
 - b) Exercise administrative supervision over the *Enforcement and Compliance Office* and its performance of the duties and responsibilities under this Manual; and
 - c) Issue and receive notices or authorize receiving of notices required in this Manual and the *WESM Penalty Manual* to the *Market Operator or the System Operator* in accordance with internal business processes of the *WESM Governance Arm*.

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SECTION 5 WESM ENFORCEMENT PROCEEDINGS AND ACTIONS

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5.2 Enforcement Proceedings

- 5.2.1 WESM *enforcement proceedings* refer to the activities or processes that are carried out to establish and determine the occurrence of *breach* and the corresponding *enforcement action* that will be carried out as a consequence of the *breach*. These include the processes for compliance monitoring and assessment, investigation for *breach*, proceedings relating to reconsideration and appeal and imposition of *enforcement actions*. The timeline and the entities responsible and/or accountable for the *enforcement proceedings* are summarized in Appendix I of this Manual.
- 5.2.2 xxx xxx xxx
- 5.2.3 Investigations for breach committed by WESM Members may be initiated by the *Enforcement and Compliance Office*, from a report of probable breach by the *Market Operator* or the *System Operator*, or by request for investigation from other *WESM Members* or *WESM Governance Committees*. Investigation may also be initiated from the directive of the *PEM Board*, *DOE* or *ERC*. This is carried out by the *Enforcement and Compliance Office* which shall afford the party being investigated sufficient opportunities to respond to the investigation. Investigation reports of the *Enforcement and Compliance Office* are reviewed by the *Compliance Committee*. The results of the investigation, as

reviewed, are then submitted to the *PEM Board*, which has the authority to impose sanctions and penalties, and to require that remedial measures be carried out.

- 5.2.4 Investigation of the Market Operator and the System Operator. The investigation of the *Market Operator* and the *System Operator* by the *Enforcement and Compliance Office* shall be in accordance with Clause 7.2.3 of the *WESM Rules* and the relevant provisions of the *Enforcement and Compliance Manual*. The *PEM Board*, as it may deem necessary, may thereafter file a formal complaint with the *ERC* and the *DOE*.
- 5.2.5 xxx xxx xxx
- 5.2.6 Imposition of sanctions and penalties by the *PEM Board* is carried out in accordance with the *WESM Penalty Manual* and is based on the recommendations of the *Compliance Committee*. The latter submits recommendations based on its findings of facts on an investigation which, in turn, is based on its review of the results of the investigations by the *Enforcement and Compliance Office*. The investigations referred to herein are those initiated in accordance with Section 7.2.1 of this Manual.
- 5.2.7 xxx xxx xxx
- 5.2.8 xxx xxx xxx
- 5.2.9 Reconsideration or Appeal. A request for reconsideration or appeal may be filed by a *WESM Member* upon receipt of the compliance report or resolution finding or confirming a finding of *breach* of the *Market Rules* and/or *Manuals*. This shall be filed within the prescribed timeline and in accordance with the requirements and procedures provided in Section 9 of this Manual.

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SECTION 6 PROCEDURES FOR COMPLIANCE MONITORING AND ASSESSMENT

6.1 Guiding Principles

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- 6.1.4 If, as a result of its compliance monitoring and assessment, and after taking into account all the market data and information cited in Section 6.4.1, the reasons provided by the concerned *WESM*

Member and all the supporting documents submitted in relation thereto under Section 6.3.2, the *Enforcement and Compliance Office* determines that there is a *breach* committed by a *WESM Member*, it shall issue a compliance report and notify the *WESM Member* of its findings and the corresponding penalty. Where remedial measures are required, it shall cause the implementation of the same in accordance with Section 7.14.

- 6.1.5 A *WESM Member* may seek a reconsideration or appeal of the findings contained in the compliance monitoring and assessment report in accordance with the procedures and subject to the requirements provided in Section 9 of this Manual.

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6.3 Submission of Reply and Supporting Documents

- 6.3.1 The *WESM Member* shall have five (5) *business days* from receipt of the non-compliance notice or flagging of probable breach to respond thereto unless a different period is prescribed in the relevant *Market Manual*.

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6.4 Validation and Assessment

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- 6.4.2 The *Enforcement and Compliance Office* may, from time to time, require the *WESM Member* to submit additional documents or information, conduct conferences or plant visits to clarify or validate the reasons or explanations provided by the latter.

- 6.4.3 The *Enforcement and Compliance Office* shall complete its validation and assessment of a specific billing or monitoring period within forty-five (45) *business days* from the end of the calendar month covered in the monitoring unless a different period is prescribed for validation and assessment in the relevant *Market Manuals* or due to unforeseen events or incidents which are beyond the control of the *Enforcement and Compliance Office*. For instance, the validation and assessment for September billing period shall be completed not later than the 15th day of November.

Such a period may, however, be extended due to *force majeure* or any unforeseen events or incidents that are beyond the control of the *Enforcement and Compliance Office*.

6.4.4 If during or after the conduct of compliance monitoring, validation, and assessment, the *Enforcement and Compliance Office* or the *Compliance Committee* finds that a certain act or omission needs to be addressed immediately through remedial measures to mitigate or avoid its potential adverse effect in the WESM, the provision of Section 7.14 shall apply.

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

6.5 Issuance of Report

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

- a) contain or provide, among others, a finding whether the concerned *WESM Member* is compliant with the *Market Rules*;
- b) contain or provide the penalty amounts, if any, as a result of the finding of breach;
- c) cover one billing month unless a different period or duration is set by other *Market Manuals*;
- d) be issued to the concerned *WESM Member* with respect to each facility or plant that is subject of monitoring, as applicable; and
- e) be issued within the period stated in Section 6.4.3 of this Manual.

6.5.2 The penalty or sanction stated in the report shall be implemented following the procedures set forth in Section 9.5 of this Manual.

6.6 Reconsideration and/or Appeal of the Compliance Monitoring Findings

6.6.1 The filing of Request for Reconsideration or Appeal, the grounds, formal requirements, and resolution or decision thereon are set out in Section 9 of this Manual.

SECTION 7 PROCEDURES FOR INVESTIGATION AND REVIEW

7.1 Guiding Principles

7.1.1 Investigations under this Manual refer to investigations which emanate from the request for investigations by *WESM Members* or *WESM Governance Committee*, or *report of probable breach* filed by the Market Operator, or the System Operator. These do not include any monitoring activities initiated by the Enforcement and Compliance itself which are already being dealt with under the preceding Section of this Manual.

7.1.2 Notwithstanding the provision of Sections 5.2.3 and 7.1.1, the *Enforcement and Compliance Office* may, *motu proprio*, initiate investigation if it has reasonable grounds to believe that a particular act or omission by any WESM Member, constitutes a probable breach of the Market Rules or Market Manuals, and which is not otherwise included or covered by the compliance monitoring activities referred to in Chapter 6 of this Manual.

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7.1.8 Investigations may be initiated against an entity which had become a *WESM Member* of record at any time within the two-year prescriptive period regardless of the status of its membership at the time of the filing of the *request for investigation* or *report of probable breach*. For example, Company A was a WESM Member which committed a possible breach of the *Market Rules* or *Market Manual*. A case may nonetheless be filed against Company A despite cessation of its membership in the WESM provided that the act or omission constituting a breach was committed within the two-year prescriptive period and while it was still a member thereof.

7.1.9 Unless the *PEM Board* authorizes a longer period, the *Enforcement and Compliance Office* shall complete an investigation of a case and submit its investigation report within the period prescribed in Section 7.8. The *PEM Board*, at its discretion and on written request by the *Enforcement and Compliance Office*, may allow a longer period for an investigation to be completed if it is satisfied that the right of the parties investigated to due process will be prejudiced if a longer period is not allowed. Where a case is remanded pursuant to Section 7.10 and, for this reason, the *Enforcement and Compliance Office* is unable to complete the investigation within the prescribed period, the *PEM Board* shall, upon request of the former, allow a longer period for the investigation to be completed.

7.2 Initiation of Investigation

7.2.1 An investigation may be initiated upon either one of the following –

- a) A *report of probable breach* submitted by the *System Operator* or the *Market Operator*, or
- b) A *request for investigation* submitted by any *WESM Governance Committee* or any *WESM Member*, or
- c) A directive from the *PEM Board*, *DOE* or *ERC* specifically directing investigation for *breach* for possible imposition of sanctions under the *WESM Rules* or the *WESM Penalty Manual*; or
- d) Initiation of investigation by the *Enforcement and Compliance*

Office in accordance with Section 7.1.2 of this Manual.

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

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

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- 7.2.4 A *request for investigation* or *report of probable breach* may cover more than one occurrence of the same type of *breach*.

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- 7.2.5 Upon receipt of the *report of probable breach* or *request for investigation*, the *Enforcement and Compliance Office* shall –

- a) Determine whether the alleged act or omission pertains to a possible violation of the *Market Rules* and/or *Market Manuals*. If it pertains to a possible violation of the *Philippine Grid Code*, the *Philippine Distribution Code*, other rules and regulations which likewise govern or regulate the WESM or the *WESM Member*, it shall notify the party submitting the *report of probable breach* or *request for investigation* that the request investigation is beyond the scope and authority of the *Enforcement and Compliance Office* and that no investigation shall thus be initiated.
- b) Determine whether the alleged acts or omissions referred to are already covered in a formal investigation it has or intends to initiate as a result of its compliance monitoring under Section 6.2. If so included, it shall notify the party submitting the *report of probable breach* or *request for investigation* that an investigation has been or will be initiated and that no separate investigation shall thus be initiated.

- 7.2.6 If the *request for investigation* or *report of probable breach* is determined to be within the scope of authority and there is no

separate or ongoing investigation being conducted for the same subject matter and involving the same parties, the *Enforcement and Compliance Office* shall verify further if the same substantially contains the information required in Section 7.2. If not, it shall return the same to the requesting party which shall then rectify the identified shortcomings and submit a new *request for investigation* or *report of probable breach* no later than five (5) business days from receipt of the notice from the *Enforcement and Compliance Office*. If no revision is received within the five-day period, the matter shall be deemed abandoned and no investigation shall be initiated upon such request or report.

- 7.2.7 If the *Enforcement and Compliance Office* determines that the *request for investigation* or *report of probable breach* is complete, it shall proceed with the formal investigation in accordance with this *Manual*. The *Enforcement and Compliance Office* shall not unreasonably withhold confirmation or delay any action required in this paragraph.
- 7.2.8 The directive from the *PEM Board, DOE* or *ERC* to conduct an investigation will be carried out in accordance with this *Manual* only if the directive clearly specifies that the investigation is for the purpose of a possible imposition by the *PEM Board* of sanctions and penalties pursuant to the *WESM Penalty Manual* or the *WESM Rules*. Where the investigation directed is not for such purpose or is for fact-finding purposes only, the investigation shall be carried out in accordance with the directive. In such case, the procedures set out in this *Manual* shall only have supplementary effect.
- 7.2.9 Where the *Enforcement and Compliance Office* is uncertain as to whether or not the *PEM Board, DOE* or *ERC* directive is clearly for the conduct of an investigation under this *Manual*, it shall seek clarification of the same and the period stated in Section 7.3.1 shall be reckoned from the date that the clarification has been received by *Enforcement and Compliance Office*.
- 7.2.10 If the acts or omissions required to be investigated by the *PEM Board, DOE* or *ERC* are already covered, in whole or in part, by an investigation or by the compliance monitoring and assessment activity already initiated or intended to be initiated by the *Enforcement and Compliance Office*, it may, if appropriate, consolidate or integrate the data or information used in the compliance monitoring, or the results thereof, in the investigation so that no overlapping investigations or monitoring activities shall be carried out, and shall notify the agency directing the investigation and the parties being investigated of such consolidation or the results of the previous compliance monitoring and assessment. If necessary, an amended *Notice of investigation* shall be issued.

7.2.11 The foregoing verification process shall be completed within five (5) *business days* from receipt of request for investigation, *report of probable breach*, directive, or order to investigate, or clarification to investigate under Section 7.2.9.

7.2.12 If after due verification, the *Enforcement and Compliance Office* determines that the request for investigation, *report of probable breach*, directive or order to investigate is in accordance with the requirements set out in this Manual, it shall give due course thereto and proceed with the formal investigation by issuing a *notice of investigation* in accordance with Section 7.3.

7.3 Notice of Investigation

7.3.1 The *Notice of investigation* shall be issued to and served on the *WESM Member* that will be investigated within five (5) business days from the completion of the verification process as set out in Section 7.2.11.

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7.7 Completion of Formal Investigation

7.7.1 The formal investigation shall be completed not later than one hundred fifty (150) business days from the issuance of a *notice of investigation* under Section 7.3 of this Manual.

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7.8 Review of Investigation

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

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

7.9 Decision

- 7.9.1 The *PEM Board* shall, within thirty (30) working days from receipt of the resolution of the *Compliance Committee*, render a decision approving, disapproving or modifying the sanctions, remedial measures, and other recommendations or remanding the case to the *Enforcement and Compliance Office* for further investigation.
- 7.9.2 If the case is remanded by the *PEM Board* to the *Enforcement and Compliance Office* and the latter, after further investigation, submits its revised investigation report, the *PEM Board* shall render its final decision within the same period specified in the preceding Section.
- 7.9.3 The copy of the *PEM Board's* final decision on the investigation, accompanied by a copy of the Investigation Report of the *Enforcement and Compliance Office*, and the Resolution of the *Compliance Committee*, upon which the decision is based, shall be provided to the concerned trading participant or the party being investigated.

7.10 Remand of Cases

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- 7.10.2 The *Enforcement and Compliance Office*, as it deems appropriate, may conduct conferences and ocular inspections; require submission of market data and reports from the *Market Operator* or the *System Operator*, or the *Market Assessment Group*, or other *WESM Members*; request technical assistance from the *Market Assessment Group*, the *Market Operator*, the *System Operator* or any *WESM Governance Committee*; or require additional submissions from the party being investigated. These shall be carried out following the applicable procedures set out Sections in 7.4.5, 7.5.1, and 7.6.
- 7.10.3 The *Enforcement and Compliance Office* shall submit a revised investigation report to the *PEM Board* within thirty (30) business days from remand of the case. The revised investigation report shall clearly set out the procedures undertaken and the changes in the findings, assessment and recommendations.

7.11 Request for Reconsideration of the PEM Board Decision

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7.12 Notice and Implementation of the PEM Board Decision

- 7.12.1 The *PEM Board*, through its Corporate Secretary, shall notify the *Enforcement and Compliance Office*, of its decision or the action taken by PEM Board on a particular investigation case by issuing a certification in relation thereto within five (5) *business days* from the ratification of the *PEM Board* resolution.
- 7.12.2 Within ten (10) *business days* from the receipt of the certification of *PEM Board* resolution on investigation, the *Enforcement and Compliance Office* in support to the *PEM Board's* responsibility under the *WESM Rules*, shall
- a. Issue the notice of action taken by the *PEM Board* to the concerned *WESM Member*, which notice shall be accompanied by the Investigation Report and all its appendices. Said notice shall be signed by the President of the *WESM Governance Arm*.
 - b. Where remedial measures are required, cause the implementation of the same in accordance with Section 7.14.
 - c. Notify the *Compliance Committee*, ERC, and DOE of the action taken on the investigation. The notification submitted under this Section shall serve as the compliance of the *PEM Board* with the obligation set out in *WESM Rules* Clause 1.4.5.1 (f).

7.13 Investigation of the Market Operator and the System Operator

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- 7.13.12 The copy of the decision of the *PEM Board* shall be provided to the concerned parties, and implemented in the same manner as that set out in Sections 7.9 and 7.12.

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7.14 Remedial Measures

- 7.14.1 Remedial measures are tasks or actions that are required of a *WESM Member* being investigated or found in *breach* for the purpose of mitigating or preventing the adverse impact of breach or to prevent recurrence of the *breach*. They may be required when the act or omission subject of the investigation may –
- a) Negatively impact trading in the *WESM* and would likely prevent orderly and efficient trading or settlement;
 - b) Lead to unfair or unreasonable *WESM* prices;
 - c) Cause material negative impact on the viability and sustainability of the *WESM* or the functions of the *Market Operator* if not immediately remedied; or

- d) Cause material negative impact on the system or the functions of the *System Operator* if not immediately remedied.

If the remedial measures are of such nature that would require participation or implementation on the part of another *WESM Member* or the *Market Operator*, the same shall likewise be governed by the succeeding provisions of this Manual.

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- 7.14.3 A *WESM Member* or the *Market Operator* may be required to implement remedial measures by the *Enforcement and Compliance Office*, the *Compliance Committee* or the *PEM Board*.

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7.15 Costs

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

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SECTION 9 RECONSIDERATION AND APPEAL PROCEEDINGS AND IMPLEMENTATION OF ENFORCEMENT ACTIONS

9.1 Reconsideration Under the Compliance Monitoring and Assessment Proceedings

- 9.1.1 Period and Ground for Filing a Request for Reconsideration. The concerned *WESM Member* may request for reconsideration of the results of the compliance monitoring and assessment, subject to the following conditions:
 - a. The request shall be filed within fifteen (15) *Business Days* from the receipt of the said compliance monitoring and assessment report;
 - b. A request for reconsideration shall be based on the ground that the finding of *breach* is not supported by substantial evidence; and/or the computation is incorrect, or the penalties

imposed are not in accordance with the *Penalty Manual* and *Market Rules*;

- c. The request for reconsideration shall be filed with the *Enforcement and Compliance Office*.

9.1.2 *Form and Contents of the Request for Reconsideration and Notice thereof.* The request shall:

- a. Be made in writing and signed by the *WESM Compliance Officer* of the *WESM Member* concerned, and shall be made under oath;
- b. State the date when the compliance monitoring and assessment report sought to be considered was received by the *WESM Member*;
- c. State that the findings of breach by the *Enforcement and Compliance Office* is not supported by substantial evidence, and/or the computation is incorrect, or the penalties imposed are not in accordance with the *Penalty Manual* and *Market Rules*; and
- d. Contain the evidence to support the reversal of the findings of breach by the *Enforcement and Compliance Office*.

Failure to provide the complete requirements pursuant to this clause shall cause the *Enforcement and Compliance Office* to immediately deny the request for reconsideration.

9.1.3 *Resolution on the Request for Reconsideration.*

- a. A request for reconsideration shall be resolved by the *Enforcement and Compliance Office* within sixty (60) *Business Days* from receipt thereof. This shall be done through a *Resolution* which shall clearly state the facts of the case and the reasons supporting its findings and conclusions. The *Resolution* shall be signed by the Head of the *Enforcement and Compliance Office*. A copy of the *Resolution* shall be served on the concerned *WESM Member*.
- b. Copies of the *Resolution* will be furnished to the *PEM Board* and the *Compliance Committee*. Should this *Resolution* require implementation of a directive on the part of the *Market Operator* and/or the *System Operator*, a copy of said notice shall likewise be sent to the *System Operator* and/or *Market Operator* for appropriate action.

9.2 Reconsideration Under the Investigation Proceedings

- 9.2.1 *Ground for Filing a Request for Reconsideration.* A *WESM Member* that is penalized under Section 7.9 of this Manual may submit a request for reconsideration of the *PEM Board* decision on the investigation on the following grounds –

- a. Review of the findings of facts of the Enforcement and Compliance Office or for consideration of additional data that was already existing at the time of the original investigation but was not presented during such investigation due to justifiable reasons; or
- b. Legal issues, including but not limited to issues on the conclusions of the Enforcement *and Compliance Office* or the *Compliance Committee*, but does not require review of factual findings, or the propriety of the penalty or other measures approved to be imposed by the *PEM Board*.

9.2.2 *Form and Contents.* The request for reconsideration shall:

- a. Be made in writing and signed by the *WESM Compliance Officer* of the *WESM Member* concerned, and shall be made under oath;
- b. Clearly state the grounds for the request for reconsideration and the findings of facts or the conclusions or resolution that are sought to be reviewed and reconsidered. The request shall be accompanied by supporting data and affidavits;
- c. Contain the evidence to support the request for reconsideration; and
- d. Be submitted to the *PEM Board*, through the Office of the Corporate Secretary within fifteen (15) *Business Days* from receipt of the notice of the *PEM Board* action.

All requests that were timely filed will be immediately endorsed to the *Enforcement and Compliance Office* for further investigation.

9.2.3 *Reconsideration Proceedings.*

- a. *The Enforcement and Compliance Office* shall evaluate the endorsed request and carry out further investigations. In conducting further investigations, the *Enforcement and Compliance Office* may require submission of additional information or obtain information from parties other than the requesting party or conduct an ocular inspection of relevant facilities or conference with the requesting party or other relevant parties.
- b. Within sixty (60) *Business Days* from endorsement of the request for reconsideration, the *Enforcement and Compliance Office* shall submit a case review report to the *Compliance Committee* containing the additional findings of fact, assessment, and recommendations.

The Compliance Committee shall review the report submitted by the *Enforcement and Compliance Committee* and shall submit its resolution and recommendations to the *PEM Board* within thirty (30) *business days* from receipt of the case review report.

9.2.4 *Resolution on the Request for Reconsideration.*

- a. *The PEM Board shall decide on the request for reconsideration within thirty (30) Business Days from receipt of the case review report and resolution submitted by the Compliance Committee.*
- b. *The decision of the PEM Board on the request for reconsideration shall be served upon the concerned WESM Member and the party filing the request for investigation. No further request for reconsideration or appeal shall be allowed.*

9.3 Appeal

9.3.1 The Resolution issued by the *Enforcement and Compliance Office* under Section 9.1.3 may be appealed by the concerned *WESM Member* by filing an Appeal Memorandum with the *Compliance Committee* within fifteen (15) *Business Days* from receipt of the resolution on the Request for Reconsideration.

9.3.2 *Ground for Appeal.* The appeal shall be based only on the ground that the *Enforcement and Compliance Office* has committed abuse of discretion in issuing the resolution, or the *penalty/ies* the *Enforcement and Compliance Office* had imposed is not in accordance with this Manual.

9.3.3 *Form and Contents of the Appeal*

- a. Be made in writing and signed by the *WESM Compliance Officer* of the *WESM Member* concerned, and shall be made under oath;
- b. State the date when the resolution being appealed was received by the *WESM Member*; and
- c. Explain how the *Enforcement and Compliance Office* committed an abuse of discretion in issuing the Resolution or that the *penalty/ies* imposed by the *Enforcement and Compliance Office* is not in accordance with this Manual.

Failure on the part of the *WESM Member* concerned to provide the foregoing requirements shall cause outright dismissal of the appeal by the *Compliance Committee*.

9.3.4 *Decision on the Appealed Case.*

The *Compliance Committee* shall resolve the appealed case within thirty (30) *business days* from receipt of the original records of the case by issuing a decision duly signed by its Chairperson.

A copy of the decision shall be served on the concerned *WESM Member*, the *Enforcement and Compliance Office* and the *PEM*

Board. If the decision requires implementation of a directive on the part of the *Market Operator* or the *System Operator*, a copy of said Decision shall likewise be sent to the *System Operator* for appropriate action.

9.4 Service of Request for Reconsideration, Appeal, and Decision

The filing or service of Request for Reconsideration, Appeal, and the resolutions or decisions made in relation thereto, may be made by personal service, postal mail, or by electronic mail.

9.5 Implementation of the Enforcement Actions

- 9.5.1 Subject to the provisions set out in Sections 9.5.2 and 9.5.3, the appropriate enforcement action relative to a finding of breach shall be implemented through the issuance of a *Notice of Specified Penalty*.

The penalty or sanction for breach of the *Market Rules* or *Market Manuals* may nonetheless be enforced against a former *WESM Member* despite cessation of, or change in, its membership in the WESM provided that the act or omission constituting a breach was committed within the two-year prescriptive period and while it was still a member thereof.

- 9.5.2 The *Notice of Specified Penalty* shall be issued by the *WESM Governance Arm* to the concerned WESM Member within five (5) business days from the date that the finding of breach or the resolution or decision on a case becomes final and executory.

- 9.5.3 The finding, resolution or decision relating to compliance monitoring or investigation case becomes final and executory –
- a. Upon the lapse of the period to file the *Request for Reconsideration* and no *Request for Reconsideration* is perfected.
 - b. Upon issuance of the resolution on *Request for Reconsideration* by the *Enforcement and Compliance Office* relative to a case emanating from compliance monitoring and assessment activity, and no *Appeal* is perfected;
 - c. Upon issuance of the resolution on *Appeal* by the *Compliance Committee* relative to a case emanating from compliance monitoring and assessment activity.
 - d. Upon issuance of the resolution on the *Request for Reconsideration* by the *PEM Board* relative to a case emanating from request for investigation or report of probable breach filed by any WESM Member, the Market Operator, or the System Operator.

- 9.5.4 The provisions relating to the service of *Notice of Specified Penalty* as well as the impact of non-payment of penalties and/or interest are provided in the *WESM Penalty Manual*.

SECTION 10 WESM MEMBER INTERNAL COMPLIANCE

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10.3 xxx xxx xxx

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SECTION 11 INFORMATION DISCLOSURE AND RECORDS MANAGEMENT

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SECTION 12 LIMITATION OF LIABILITY AND INDEMNIFICATION

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SECTION 13 AMENDMENT, PUBLICATION AND EFFECTIVITY

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13.1.1 xxx xxx xxx

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13.2.1 xxx xxx xxx

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SECTION 14 GLOSSARY

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Enforcement action - This is an action carried out against a *WESM Member* as a consequence of the *breach* by that *WESM Member* of the *WESM Rules* or *Market Manuals*, which may include imposition of penalties, carrying out remedial measures and other corrective actions.

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

Exemption - This is the authority granted by the *PEM Board* exempting a *WESM Member* from sanctions for non-compliance with an obligation, which would otherwise amount to a *breach* if no exemption was granted.

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Notice of Investigation - A notice issued by the *Enforcement and Compliance Office* to a *WESM Member* to initiate a formal investigation for possible *breach*.

Notice of Probable Breach - Written report submitted by any *WESM Member* or *WESM Governance Committees* to notify the *PEM Board* of a probable breach by the *Market Operator* or *System Operator*.

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APPENDIX I COMPLIANCE MONITORING AND ASSESSMENT PROCESS

I-A: CMA – MONITORING, VALIDATION, AND REPORTING PROCESS
FLOWCHART

I-B: CMA-RECONSIDERATION PROCESS FLOWCHART

I-C: CMA-APPEAL PROCESS FLOWCHART

I-D: CMA-IMPLEMENTATION OF ENFORCEMENT ACTION PROCESS
FLOWCHART

APPENDIX II INVESTIGATION PROCESS

II-A: INVESTIGATION-RFI VERIFICATION PROCESS FLOWCHART

II-B: FORMAL INVESTIGATION PROCESS FLOWCHART

II-C: RECONSIDERATION PROCESS FLOWCHART

II-D: IMPLEMENTATION OF ENFORCEMENT ACTION PROCESS
FLOWCHART

Section 3. Repealing Clause. The provisions of other circulars, orders, issuances, rules, and regulations which are inconsistent with the provisions of this Circular, are hereby repealed, amended, modified, or superseded accordingly.

Section 4. Separability Clause. If, for any reason, any section or provision of this Circular is declared unconstitutional or invalid, such parts not affected shall remain valid and subsisting.

Section 5. Effectivity. This Circular shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation. A copy of this Circular shall be filed with the University of the Philippines Law Center – Office of the National Administrative Register.

Issued this _____ at the DOE, Energy Center, Rizal Drive, Bonifacio Global City, Taguig City, Metro Manila.

RAPHAEL P.M. LOTILLA
Secretary