

Dispute
Resolution
Counsellor
Singapore Wholesale
Electricity Market

**Report by
Dispute Resolution Counsellor**

January to March 2003

12 May 2003

**This is an edited version of a report prepared for the
Energy Market Company Pte Ltd and the Energy Market Authority.**

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INTRODUCTION

This is a report by the Dispute Resolution Counsellor (“DRC”) on dispute resolution in relation to the Singapore wholesale electricity markets in the first three months of market operation from 1 January 2003 to 31 March 2003.

DISPUTE RESOLUTION PROCESS

The dispute resolution process under the Singapore Electricity Market Rules (the “market rules”) applies essentially to the following types of disputes:

- (a) a dispute:
 - (i) between the Energy Market Company Pte Ltd (“EMC”) and a market participant or market support services licensee or between the Power System Operator (“PSO”) and a market participant or market support services licensee;
 - (ii) between the EMC and the PSO;
 - (iii) between a market participant and another market participant or a market support services licensee (in this case, the dispute resolution process applies by agreement of the parties);
- (b) a disagreement with the EMC over a final settlement statement;
- (c) a dispute arising from a request for compensation from the PSO.

DISPUTE RESOLUTION INSTITUTIONS

The dispute resolution institutions in the Singapore wholesale electricity markets comprise the Dispute Resolution Counsellor (“DRC”) and Disputes and Compensation Resolution Panels (“DCRP”).

Dispute Resolution Counsellor

The market rules establish the office of the DRC. The DRC is an independent person appointed by the EMC Board. For purposes of making the appointment, the EMC Board is required to select a person that:

- (a) has a degree in law from a recognized university, has held a certificate to practice as an advocate and solicitor of the Supreme Court of Singapore for a period of not less than seven years and holds a current certificate to practice law in Singapore;
- (b) has a detailed understanding and experience of dispute resolution practice and procedures, including mediation and arbitration rules, practices and procedures applicable in or outside of Singapore;
- (c) has the capacity to determine the most appropriate alternative dispute resolution procedures in particular circumstances; and

- (d) has an understanding of the Singapore electricity industry or the capacity to acquire such an understanding within a reasonable time.

The role of the DRC is to facilitate dispute resolution in the Singapore wholesale electricity markets. In the First Stage Dispute Resolution Process, if parties are unable to resolve inconsistencies between their dispute management systems, they can request the DRC to determine which procedures or alternative dispute resolution mechanism is to prevail. The parties can invite the DRC to facilitate the resolution of a dispute, for instance, by acting as mediator.

The DRC also has a role to play in the Second Stage Dispute Resolution Process. Disputes to be resolved at this stage are referred to the DRC. The DRC is the point of contact for the parties to exchange documents describing the dispute. He considers if the dispute satisfies certain pre-conditions for resolution. He also assists the parties in appointing a DCRP to resolve their dispute, by providing them with a list of names for selection and nominating the chairperson when there is a three-person panel. Any applications by third parties wishing to intervene in a dispute are considered and decided by the DRC. Once a dispute is resolved, the DRC liaises with the DCRP to furnish a record of the dispute resolution details to the EMC, with a summary for publication.

The EMC Board identified the DRC just before the commencement of the Singapore wholesale electricity markets. My term of office formally commenced upon market start on 1 January 2003.

Disputes and Compensation Resolution Panels

A DCRP is appointed whenever necessary to resolve a dispute. The market rules provide for the DRC to appoint a group of persons from which a DCRP may be selected.

The DRC is required to employ the services of an independent expert arbitrator to make such appointments. Upon market start, I appointed Mr Chandra Mohan, a Nominated Member of Parliament and past President of the Law Society of Singapore, as the independent expert arbitrator for this purpose.

A person who is to be appointed to the group from which a DCRP may be selected is required under the market rules to:

- (a) have an understanding of dispute resolution practice and procedures, including mediation and arbitration rules, practices and procedures applicable in or outside of Singapore;
- (b) have the capacity to determine the most appropriate alternative dispute resolution procedures in particular circumstances; and
- (c) have an understanding of the Singapore electricity industry or the capacity to acquire such an understanding within a reasonable time.

The person is also required to have at least one or more of the following qualifications:

- (a) knowledge of the operation of wholesale electricity markets;
- (b) a qualification and experience in economics;
- (c) experience in energy or money market trading or any other commodity market trading;
- (d) experience in power system operation; or

- (e) a degree in law from a recognized university, has held a certificate to practice as an advocate and solicitor of the Supreme Court of Singapore for a period of not less than five years and holds a current certificate to practice law in Singapore.

The role of a DCRP is to resolve disputes in the Second Stage Dispute Resolution Process under the market rules. The market rules provide for a DCRP to select the form of dispute resolution process that it considers appropriate in the circumstances. However, at this stage, mediation is not an option.

With wholesale electricity markets being new to Singapore, the persons who potentially qualify for membership of the DCRP group are limited. For purposes of market start, I identified the following persons with legal backgrounds and extensive experience in conducting arbitrations to act as the initial members of the group from which a DCRP may be selected:

- (a) Associate Professor Lawrence Boo
- (b) Mr Naresh Mahtani
- (c) Associate Professor Tan Cheng Han
- (d) Mr Tan Ching Tiong
- (e) Mr George Tan

They were formally appointed upon market start on 1 January 2003.

MARKET ASSESSMENT UNIT

The Market Assessment Unit (“MAU”) supports the dispute resolution process for the Singapore wholesale electricity markets and assists the DRC and DCRPs in discharging their functions.

The market rules provide for the MAU to be established by the EMC and composed of full-time EMC staff. The MAU team was established a few months before market start. Pursuant to the market rules, the MAU reports to and is under the management and administration of the EMC. The MAU also reports to and takes direction from the Chair of the Market Surveillance and Compliance Panel on all matters pertaining to market monitoring and investigation.

I have been working closely with the MAU in considering dispute resolution issues since taking on the role of the DRC.

DISPUTES

Immunity in the First Three Months

The market rules provide that in the initial 3 months of market operation,

- (a) the EMC or the PSO is not liable to a market participant or market support services licensee, and
- (b) a market participant or market support services licensee is not liable to the EMC or the PSO,

for any claim arising out of any act or omission in the execution or purported execution of any function, power or duty under the market rules or manuals, except where such claims arise out of wilful misconduct or negligence.

No claims arising out of wilful misconduct or negligence occurring during the period January to March 2003 have been brought to my attention.

Requests for Assistance and Dispute Referrals

Parties who wish to raise a dispute under the First Stage Dispute Resolution Process do so by serving a notice of dispute on the party or parties. They do not have to serve a notice of dispute with the DRC. However, they may request the DRC to assist in mediating the dispute or resolving conflicts between their different dispute management systems. During the period January to March 2003, I did not receive any requests for such assistance.

A party desiring to have a dispute resolved under the Second Stage Dispute Resolution Process has to refer the dispute to the DRC. During the period January to March 2003, I did not receive any dispute referrals.

EDUCATION AND DEVELOPMENT

Although there was no significant dispute resolution activity during the first three months of market operation, we have devoted our efforts towards education and development.

Mediation Forum

On 11 February 2003, the DRC and the MAU organised a Mediation Forum. The purpose was to explain to market participants and service providers how disputes may be effectively resolved through mediation, and the costs and procedures that parties can expect. The DRC and MAU have drawn up the form of Mediation Agreement which is to be used if the DRC is requested to mediate a dispute. A copy is attached as Attachment 1. It includes the Mediation Procedure and also the Code of Conduct applicable to the DRC as mediator. Copies of the Mediation Agreement were disseminated to participants at the forum for information.

Study Visit to Australia

From 17 to 20 February 2003, the EMA and EMC made a visit to Australia to study different aspects of their electricity market. Dispute resolution was one of the areas of focus. The DRC was invited by the Energy Market Authority to attend the study visit and the Manager, MAU was also nominated by the EMC to attend. Representatives from the National Electricity Code Administrator ("NECA"), the National Electricity Management Company ("NEMMCO") and the National Electricity Tribunal shared their experiences on dispute resolution in relation to the Australian National Electricity Market. We found the study visit educative, providing the DRC and the MAU with several ideas for improving the dispute resolution process in the Singapore context.

Review of Dispute Resolution Process

With the insights gained from the study visit to Australia, the DRC and the MAU have begun to review the dispute resolution arrangements for the Singapore wholesale electricity markets. The main thrust of the review is to enable disputes to be effectively resolved in an expeditious and cost-effective manner for the parties involved. We are looking into areas where we can assist market participants and service providers with relevant education on dispute resolution. Providing greater transparency to the market with appropriate reporting on dispute resolution activities is also an important priority.

CONCLUSION

The first three months have been a useful period for setting up the necessary institutions for dispute resolution, sharing information on the dispute resolution process with the market, understanding the issues which may arise and reviewing our dispute resolution process to make improvements. My focus as DRC is to have the dispute resolution process and the institutions supporting it stand the market in good stead to deal efficiently with disputes when called upon to do so.

I would like to express my thanks to the MAU for the wonderful support which they have given me since my appointment.



George Lim
Dispute Resolution Counsellor

Attachment 1



**DISPUTE RESOLUTION COUNSELLOR
SINGAPORE WHOLESALE ELECTRICITY MARKET
MEDIATION SERVICES**

MEDIATION AGREEMENT

THIS AGREEMENT is made between:

(1) _____, Dispute Resolution Counsellor, Singapore Wholesale Electricity Market c/o Market Assessment Unit, 9 Raffles Place, #22-01 Republic Plaza, Singapore 048619 (the "DRC")

(2) _____ of

(3) _____ of

WHEREAS

(A) The Parties wish to attempt in good faith to resolve their dispute through mediation and have pursuant to the Singapore Electricity Market Rules invited the DRC to assist in facilitating the resolution of the dispute through mediation.

(B) The DRC has agreed to provide mediation services to the Parties.

IT IS AGREED as follows:

1 Submission to Mediation

1.1 The Parties agree to refer their dispute and related matters to the DRC for mediation.

2 Mediation Procedure

2.1 The DRC and the Parties agree to abide by the Mediation Procedure attached as Annex A.

3 Code of Conduct

3.1 The DRC agrees to abide by the Code of Conduct attached as Annex B.

4 Settlement

4.1 The Parties agree to give effect to the terms of any settlement reached through the mediation.

5 Authorised Representatives

5.1 The Parties have authorised the following persons to represent them in the mediation and settlement of the dispute:

(a) Name of Party: _____

Authorised Representative

Name: _____

NRIC or Passport No.: _____

(b) Name of Party: _____

Authorised Representative

Name: _____

NRIC or Passport No.: _____

6 Waiver of Liability

6.1 In consideration of the DRC providing the mediation services sought, the Parties agree as follows:

(a) The Parties shall not make any claim whatsoever against the DRC or his agents for any matter in connection with or in relation to:

(i) the mediation;

(ii) the services provided by the DRC or his agents for the mediation; or

(iii) the dispute between the Parties;

- (b) The DRC and his agents shall not be liable to the Parties for any act or omission in connection with or in relation to the mediation or the services provided by the DRC or his agents for the mediation, unless the act or omission is fraudulent or involves wilful misconduct.

Dated _____

Signed by:

THE PARTIES

Signature: _____
Name of signatory: _____
Designation: _____
for and on behalf of: _____

Signature: _____
Name of signatory: _____
Designation: _____
for and on behalf of: _____

DISPUTE RESOLUTION COUNSELLOR

Signature: _____
Name of signatory: _____

**DISPUTE RESOLUTION COUNSELLOR
SINGAPORE WHOLESALE ELECTRICITY MARKET
MEDIATION SERVICES**

MEDIATION PROCEDURE

1 Applicability

- 1.1 This Mediation Procedure shall apply to the mediation services provided by the Dispute Resolution Counsellor ("DRC") of the Singapore Wholesale Electricity Market.

2 Initiating the Mediation

- 2.1 Parties to a dispute who wish pursuant to the Singapore Electricity Market Rules to invite the DRC to assist in facilitating the resolution of a dispute through mediation shall make a written request to:

Dispute Resolution Counsellor
c/o Market Assessment Unit
9 Raffles Place
#22-01 Republic Plaza
Singapore 048619
Fax: 6533 0340
Email: mau@emcsg.com.

Such a request shall state the nature of the dispute and the names, addresses, contact numbers and electronic mail addresses of the parties to the dispute, their representatives and advisers.

- 2.2 Where not all the parties to a dispute have made a written request to the DRC to initiate mediation, the DRC shall attempt –
- (a) within 7 days from the date of request contact the remaining party(ies) to ascertain if they wish to participate in the mediation process; and
 - (b) within 14 days from the date of request inform all parties whether all parties to the dispute have agreed to have the DRC assist in facilitating the resolution of the dispute through mediation.

This paragraph shall cease to apply upon the dispute or any part of it being referred to the DRC for resolution under the second stage dispute resolution process pursuant to section 3.6.1 of Chapter 3 of the Singapore Electricity Market Rules.

- 2.3 Subject to any disclosure made by the DRC under paragraph 2.4, where all parties to a dispute have agreed to have the DRC assist in facilitating the resolution of the dispute through mediation, they shall prior to the carrying out of the mediation enter into the Mediation Agreement.
- 2.4 The DRC shall disclose any circumstances which under the Code of Conduct may prevent him from providing mediation services to the parties. If such circumstances exist, the DRC shall decline to provide mediation services to the parties, unless the parties otherwise agree in writing to have the DRC provide the mediation services.

3 The Parties

- 3.1 The Parties shall appoint authorized persons to represent them in the mediation and settlement of the dispute.

4 The DRC as Mediator

- 4.1 The DRC shall, in consultation with the parties where necessary:
- (a) organise a venue for the mediation (being a venue situated at the office premises of the Energy Market Company Pte Ltd unless the parties agree to an alternative venue and to bear the expenses associated with the use of such alternative venue);
 - (b) assign a date for the mediation;
 - (c) organise an exchange of summaries of cases and documents;
 - (d) determine the steps to be taken during the mediation proceedings;
 - (e) steer the mediation proceedings towards finding a mutually acceptable solution for the parties; and
 - (f) assist the parties in the drawing up of any written settlement agreement.
- 4.2 Unless expressly requested by all the parties, the DRC will not make any ruling or finding with respect to the dispute.

5 Exchange of Information

- 5.1 The parties shall exchange through the DRC, at least 5 days before the mediation, the following:
- (a) a concise summary stating its case (the "Summary"); and
 - (b) copies of all documents referred to in the Summary that the party wishes to rely on at the mediation.

- 5.2 Each party may also send to the DRC, or bring to the mediation documents which it wishes to disclose only to the DRC, stating clearly in writing that the contents of these documents are to be kept confidential by the DRC.

6 The Mediation

- 6.1 The mediation will be conducted in confidence. Unless otherwise agreed by the parties, only the DRC and his agents and the parties and their representatives and advisers will be permitted to be present during the mediation.
- 6.2 No transcript, formal record or audio-visual recording will be made of the mediation proceedings.
- 6.3 The DRC may obtain expert advice on technical matters with the consent of the parties, who shall bear the expenses incurred.
- 6.4 The DRC may conduct joint meetings with all or separate meetings with each of the parties, whether before or during the mediation.

7 Settlement Agreement / Recommendation of Terms of Settlement

- 7.1 No settlement reached in the mediation shall be binding unless it is in writing and signed on behalf of the parties.

8 Termination

- 8.1 Any of the parties may withdraw from the mediation at any time by giving notice of withdrawal in writing to the DRC and the other parties.
- 8.2 The mediation shall terminate when –
- (a) a party withdraws from the mediation;
 - (b) a written settlement agreement is concluded;
 - (c) the DRC decides that continued mediation is unlikely to result in settlement; or
 - (d) the DRC decides that he should withdraw from the mediation for any reason stated in the Code of Conduct.

9 Confidentiality

9.1 All persons involved in the mediation shall keep confidential and not disclose or use for any other purpose -

- (a) the fact that the mediation is to take place or has taken place;
- (b) any views expressed, or suggestions or proposals for settlement made by another party of the DRC in the course of the mediation;
- (c) the fact that another party had or had not been willing to accept a proposal for settlement made by another party or the DRC; and
- (d) all information (whether oral or in writing) produced for or arising in relation to the mediation, including any settlement agreement,

except if required to do so by law, or with the consent of the parties, or if directly necessary to implement and enforce any settlement agreement.

9.2 All communications made and views expressed in the mediation, and all documents or any other information produced for or arising in relation to the mediation, shall be privileged, and shall not be admissible as evidence or discoverable in any proceedings unless they would have in any event been admissible or discoverable.

9.3 The parties shall not call the DRC or any of his agents as a witness, consultant, arbitrator or expert in any proceedings in relation to the dispute.

10 Fees and Expenses

10.1 The parties shall bear the DRC's fees for providing the mediation services in equal shares. The fees will be charged as follows:

- (a) for 1 day (ie 8 hours) or part thereof - S\$2,500 for each party
- (b) for every additional 0.5 day (ie 4 hours) or part thereof - S\$750 for each party

Goods and services tax at the prevailing rate is payable on such fees.

10.2 Each party will bear its own expenses of participating and the fees of its advisers in the mediation.

Annex B

**DISPUTE RESOLUTION COUNSELLOR
SINGAPORE WHOLESALE ELECTRICITY MARKET
MEDIATION SERVICES**

CODE OF CONDUCT

1 Applicability

- 1.1 This Code of Conduct shall apply to the Dispute Resolution Counsellor ("DRC") of the Singapore Wholesale Electricity Market in his provision of mediation services.

2 Competence

- 2.1 The DRC shall, before agreeing to provide mediation services, be satisfied that he will be able to conduct the mediation expeditiously and impartially.

3 Impartiality

- 3.1 The DRC shall be impartial and fair to the parties, and be seen to be so. He shall disclose to the parties information which may lead to the impression that he may not be impartial or fair, including, that -
- (a) he has acted in any capacity for any of the parties;
 - (b) he has a financial interest (direct or indirect) in any of the parties or the outcome of the mediation;
 - (c) he has any confidential information about the parties or the dispute under mediation derived from sources outside the mediation.
- 3.2 The DRC (or any member of his firm or company) shall not act for any of the parties subsequently in any matter related to or arising out of the subject matter of the mediation without the written informed consent of all the parties.

4 Settlement

- 4.1 The DRC shall ensure that any settlement agreement reached is recorded in writing and signed by the parties unless the parties request otherwise.

5 Withdrawal

5.1 The DRC shall withdraw the provision of mediation services to the parties –

- (a) when he realises that he has committed a breach of any of the terms of this Code of Conduct;
- (b) if there is a written request to do so by any of the parties; or
- (c) when he is required by any of the parties to do anything in breach of this Code of Conduct.

5.2 The DRC has the discretion to withdraw the provision of mediation services to the parties if –

- (a) any of the parties breaches the Mediation Agreement;
- (b) any of the parties acts unconscionably;
- (c) in his opinion, there is no reasonable prospect of a settlement; or
- (d) the parties allege that he is in breach of this Code of Conduct.