

Notice of Market Rules Modification

Paper No.:	EMC/RCP/58/2011/308
Rule Reference:	Market Rules/Chapter 3 Section 3.15.1
Proposer:	Energy Market Company
Date Received by EMC:	13 September 2011
Category Allocated:	1
Status:	Approved by EMA
Effective Date:	23 December 2011

The EMC Board initiated a review of the current dispute resolution procedures (DRP) on 22 July 2011. EMC received three proposals.

Proposal 1: Introduction of additional arbitration procedures (proposed by the DRC)

Introduce a detailed set of arbitration procedures as an appendix to Chapter 3 of the Market Rules.

Given the costs of including these arbitration procedures in the Market Rules, and there has been no arbitration case to-date, the RCP **recommends** that the DRC use these additional proposed procedures as a guide in carrying out arbitration. After the guide has been refined with adequate experience, the RCP can then consider if they should be included in the Market Rules.

Proposal 2: Changes to qualifications of Dispute Resolution and Compensation Panel(DRCP) (proposed by the PSO)

To require that at least one DRCP member possess experience in power systems operations. The RCP recommends that the existing criteria be **retained** and instead, have the DRC appoint a member with experience in power system operations when selecting members to the DRCP.

Proposal 3: Align the process for selecting a mediator with that of selecting the arbitration tribunal (proposed by the PSO)

The selection process can be aligned on 2 fronts:

- a. Allow parties to dispute to select a mediator or allow DRC to select the arbitration tribunal
- b. Enable 3 mediators to be selected under mediation or restrict the number of members on the arbitration tribunal to 1 arbitrator

The RCP recommends keeping the 2 processes separate and retaining the existing selection criteria.

DRC's comments on RCP's decision

The above RCP decisions were sent to the DRC for comments. For proposal 1, he reverted with a counter-proposal to make a reference to the arbitration procedures instead of including these procedures as part of the Market Rules.

EMC recommends that the RCP do not support the DRC's counter-proposal for the following reasons:

- RCP has indicated preference for these additional arbitration procedures to be used as a guide.
- Chapter 3, Section 3.9.21 already provides for the arbitration tribunal to decide on what procedures to follow. Thus, the arbitration tribunal can use the proposed additional procedures as appropriate

In summary, EMC does not recommend any changes for this DRP review. The next review will be carried out in 3 years' time, by 31 December 2014.

The RCP unanimously **recommends** that the EMC Board:

- do not support** the DRC's counter-proposal to make a reference to the SEM Arbitration Rules in the Market Rules;
- adopt the rule modification to update** the timeline for the next review to 31 December 2014 under Chapter 3, Section 3.15.1 of the Market Rules as set out in Annex 4;

Date considered by Rules Change Panel: 08 November 2011

Date considered by EMC Board: 25 November 2011

Date considered by Energy Market Authority: 19 December 2011

Proposed rule modification:

See attached paper.

Reasons for rejection/referral back to Rules Change Panel (if applicable):

PAPER NO. : **BD/xx/2011/xx**

RCP PAPER NO. : **EMC/RCP/58/2011/RC308**

SUBJECT : **REVIEW OF DISPUTE RESOLUTION PROCEDURES**

FOR : **DECISION**

PREPARED BY : **NERINE TEO**
SENIOR ECONOMIST, MARKET ADMINISTRATION

REVIEWED BY : **PAUL POH LEE KONG**
SVP, MARKET ADMINISTRATION

DATE OF MEETING : **8 November 2011**

Executive Summary

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The RCP unanimously **recommends** that the EMC Board:

- a. **do not support** the DRC's counter-proposal to make a reference to the SEM Arbitration Rules in the Market Rules;
- b. **seek** EMA's approval to **update** the timeline for the next review to 31 December 2014 under Chapter 3, Section 3.15.1 of the Market Rules as set out in Annex 4;
- c. **recommend** that the updated timeline in Annex 4 come into force **one business day** after the date on which the approval of the Authority is published by the EMC.

1. Introduction

The Singapore Electricity Market Rules¹ provide for a set of Dispute Resolution Procedures (DRP), as summarised in Annex A. These procedures aim to resolve disputes between parties in the Singapore Wholesale Electricity Market (SWEM) amicably and avoid incurring unnecessary costs.

To ensure continued relevance of these procedures, Chapter 3, Section 3.15 of the Market Rules requires a review of the DRP by 31 December 2011. The EMC Board thus initiated this review by publishing a notice on 22 July 2011, inviting interested parties to submit proposals to improve these procedures. The review is conducted by the RCP in consultation with the Dispute Resolution Counselor (DRC) and should consider the following:

- Whether the current procedures are fair and effective;
- Whether any additional procedures are necessary; and
- Any other matter that the EMC considers appropriate.

EMC received proposals from the DRC and the PSO², as follows:

Proposal 1: Introduce a detailed set of arbitration procedures to the Market Rules (proposed by the DRC)

Proposal 2: Require that at least one member of the Dispute Resolution and Compensation Panel possess experience in power systems operation

Proposal 3: Align the process for selecting a mediator with that of selecting the arbitration tribunal

Section 2 to Section 5 respectively presents EMC's analysis and the RCP's discussion on each of the above proposals. Section 6 summarises the RCP

2. Proposal 1: Introduction of a detailed set of arbitration procedures to the Market Rules

The DRC proposed to include a comprehensive set of Arbitration Rules as an Appendix to the current section on arbitration in the Market Rules. This section summarises and presents and analysis of this proposal. The RCP's discussion and recommendations are presented in section 2.4.

2.1 Background on Current Arbitration Provision

Arbitration is invoked under the following circumstances in the Market Rules:

- When parties to a dispute are unable to make a resolution under the negotiation and/or mediation phase
- When mediation is not an appropriate means of resolving a dispute
- Disputes over final settlement statements
- Compensation relating to sections referred to in Chapter 3, Section 3.3.1.5 of the Market Rules

¹ Section 3 of Chapter 3

² Refer to Annex 2 and Annex 3 for details of the DRC's and PSO's proposal respectively

Chapter 3, Section 3.9 reflects current procedures and obligations that parties to a dispute should adhere to in the event of arbitration. It also provides broad guidelines on the procedures for arbitration and powers of the arbitration tribunal. It does not prescribe all detailed procedures on how an arbitration proceeding should be carried out. Instead, Chapter 3, Section 3.9.21 states:

Chapter 3, Section 3.9.21

3.9.21 Once the application period to intervene in section 3.9.19.3 has expired, the *arbitration tribunal* shall consider the applications received. Then, taking into account the urgency of the matter, it shall decide:

3.9.21.1 where and when it will hold the arbitration; and

3.9.21.2 what procedures it will follow.

This section thus empowers the arbitration tribunal with discretion on the arbitration procedures to abide by.

2.2. Proposed Arbitration Rules

The DRC has proposed to expand on the current arbitration provisions. This would form an Appendix to Chapter 3 of the Market Rules. These proposed set of Arbitration Rules are intended to provide clarity and elaborate on arbitration proceedings, obligations of parties involved in the arbitration and powers of the tribunal. The DRC's proposal is attached in Appendix 2 and summarised in Table 1.

Table 1: Proposed Changes by Dispute Resolution Counsellor

Proposed Section	Summary of Proposed Change	Purpose
MARKET RULES CHAPTER 3		
3.9.1	Parties to agree that arbitration proceedings shall be conducted based on the Singapore Electricity Market Arbitration Rules	<ul style="list-style-type: none"> To link the Market Rules to the proposed Arbitration Rules
PROPOSED SINGAPORE ELECTRICITY MARKET ARBITRATION RULES		
1	State information a complainant has to submit when filing for a Notice of Arbitration	<ul style="list-style-type: none"> To elaborate on information required in Notice of Arbitration Already covered by section 3.9.3 of Chapter 3
2.1	<u>Fulfillment of conditions as determined by the DRC</u> <ul style="list-style-type: none"> If the DRC writes to parties that conditions for an arbitration under Chapter 3, Section 3.9.6 have not been met, then proceedings shall be deemed terminated. 	<ul style="list-style-type: none"> To stipulate that arbitration proceedings ends when conditions not met.
2.2.1 -2.2.2	<u>Appointment of arbitration tribunal by parties to dispute</u> <ul style="list-style-type: none"> Parties to dispute are to appoint 1 or 3 persons from the arbitration panel to form the arbitration tribunal within 20 business days of DRC's notification that conditions under Section 3.9.6 have been met and notify the DRC thereafter 	<ul style="list-style-type: none"> States process undertaken by parties to dispute to appoint arbitration tribunal Already covered by section 3.9.11/12 of

Proposed Section	Summary of Proposed Change	Purpose
	<ul style="list-style-type: none"> Upon notification from parties to dispute, DRC to inform arbitrator of date of appointment. 	Chapter 3
2.2.3	<u>Failure to appoint arbitration tribunal</u> <ul style="list-style-type: none"> If parties fail to appoint arbitration tribunal within 20 days, DRC to appoint 1 person (or 3 persons if requested by any party to dispute) from arbitration panel to form the arbitration tribunal and notify parties to dispute. 	<ul style="list-style-type: none"> States process undertaken by DRC if parties to dispute fails to appoint arbitration tribunal Already covered by section 3.9.13 of Chapter 3
2.2.4-2.2.7	<u>Replacement of Arbitrator</u> <ol style="list-style-type: none"> Conflict of Interest <ul style="list-style-type: none"> Arbitrators are to declare any conflict of interest that may arise prior to and during the proceedings to the DRC. DRC may replace arbitrator with conflict of interest with another person from the arbitration panel. Replaced arbitrator shall not dispute/challenge DRC's decision Demise/Resignation <ul style="list-style-type: none"> DRC has the power to replace any arbitrator upon the demise of the arbitrator, when the arbitrator resigns or refuses to act in accordance with the Market Rules or in capacity as an arbitrator 	<ul style="list-style-type: none"> States conditions under which DRC may replace appointed arbitrators Mostly covered by section 3.9.16/17 of Chapter 3
3.1-3.2	<u>Conduct of Proceedings</u> <ul style="list-style-type: none"> Arbitration tribunal to complete arbitration as soon as practicable and are given discretion to ensure just, expeditious, economical and final determination of dispute Following appointment, arbitration tribunal shall meet parties to dispute to discuss procedures for subsequent proceedings Meeting should include discussion timeline for submission of Statement of Case, the Defence and Counterclaim and Reply by the Parties 	<ul style="list-style-type: none"> Provides a guideline on how the tribunal may conduct its first meeting and subsequent proceedings First point is already covered by section 3.9.25 of Chapter 3
3.3	<u>Intervention by persons potentially affected by arbitration determination</u> <ul style="list-style-type: none"> Any person that may be affected by the arbitration determination may intervene in the proceedings provided that person: <ul style="list-style-type: none"> has an interest in dispute subject applied within deadline set out in the Market Rules has written to inform Parties of his application to intervene 	<ul style="list-style-type: none"> States conditions that a person must meet if he/she intends to intervene in the dispute proceedings Already covered by section 3.9.19/20 of Chapter 3
4.1-4.7	<u>Statement of Claim</u> <ul style="list-style-type: none"> Complainant shall submit to the arbitration tribunal and respondent, a Statement of Case that contains at least the statement of facts, contentions of law and facts in support of claim, relief claimed and 	<ul style="list-style-type: none"> Offers a guideline on information that must be reflected in Statement of Claim, Statement of Defence

Proposed Section	Summary of Proposed Change	Purpose
	<p>quantifiable items of claim.</p> <p><u>Statement of Defence and Counterclaim</u></p> <ul style="list-style-type: none"> • Respondent shall submit to the Complainant and arbitration tribunal, a Statement of Defence and Counterclaim (if any) that contains at least a statement of facts to support defence of claim and contentions of law in defending claim. • Counterclaim, if applicable, should include information required in Statement of Claim. <p><u>Reply and Defence to Counterclaim</u></p> <ul style="list-style-type: none"> • Complainant should submit to the arbitration tribunal and respondent, a Reply and Defence to Counterclaim that contains a confirmation/denial of Respondent's Defence, statement of facts and contentions of law in support of reply and a defence to the Counterclaim (if applicable) <p><u>Submission of Statements</u></p> <ul style="list-style-type: none"> • All statements should be submitted within period specified by arbitration tribunal and accompanied by copies of supporting documents not previously submitted by any Party • Other Parties should be kept copied in any communication. • Arbitration shall proceed even if Respondent/Complainant fails to submit their respective statements 	<p>and Counterclaim and Reply and Defence to Counterclaim</p>
5.1-5.5	<p><u>Attendance at Hearing</u></p> <ul style="list-style-type: none"> • The arbitration tribunal shall hold a hearing for presentation of evidence and/or oral submissions by the Parties unless Parties have agreed on a documents-only arbitration. Under the latter situation, Parties need not attend hearings unless deemed necessary by the tribunal. • Meeting/hearing shall proceed if a Party fails to appear without providing any reasons for absence. • Persons not involved in proceedings shall not be admitted at hearing except under an arbitration tribunal agreement. <p><u>Hearing Schedule</u></p> <ul style="list-style-type: none"> • The arbitration tribunal shall fix the date, time and place of hearing as soon as practicable unless a person affected by the determination has applied to intervene in the proceedings. Under such circumstances, the tribunal shall only determine the date, time and place after the expiry of application period for intervention. 	<ul style="list-style-type: none"> • Describes details of hearing, including attendance, hearing schedules and close of hearing.

Proposed Section	Summary of Proposed Change	Purpose															
	<p><u>Close of Hearing</u></p> <ul style="list-style-type: none"> Hearing may be closed when the arbitration tribunal is satisfied all parties have presented their respective cases. Parties are not allowed to make further submissions unless requested or allowed by the tribunal. Arbitration tribunal may reopen hearing on its own motion or upon a Party's application if Award has not been made. 																
6.1-6.3	<p><u>Witness</u></p> <ul style="list-style-type: none"> Arbitration tribunal may allow/refuse/limit the appearance of any witness at the hearing. A witness may be cross examined by each of the Parties and by the arbitration tribunal Arbitration tribunal may direct witnesses to present testimony as either a signed statement or sworn affidavit. If the witness fails to attend a hearing for cross examination, the tribunal may place weight on this testimony as it deems fit or exclude it altogether. 	<ul style="list-style-type: none"> Describes the scope under which a witness may be used. 															
7	<p><u>Tribunal-appointed expert or assessor</u></p> <ul style="list-style-type: none"> The tribunal may, with the Parties' consent, appoint an expert or assessor to assist it on technical issues during the arbitration. Each Party may be required to provide the expert/assessor with information or relevant documents, goods or property for inspection. 	<ul style="list-style-type: none"> Describes the scope under which an expert may be used. Already covered by section 3.9.23 of Chapter 3 															
8	<p><u>Powers of the Arbitration Tribunal</u></p> <ul style="list-style-type: none"> Beyond the powers set out in the Market Rules and other proposed rules, the arbitration tribunal is also given the following authority. <table border="1" data-bbox="419 1350 1137 1980"> <thead> <tr> <th data-bbox="419 1350 499 1411">No.</th> <th data-bbox="507 1350 699 1411">Related Aspect</th> <th data-bbox="707 1350 1137 1411">Arbitration Tribunal's Authority</th> </tr> </thead> <tbody> <tr> <td data-bbox="419 1422 499 1512">a</td> <td data-bbox="507 1422 699 1512">Related Disputes</td> <td data-bbox="707 1422 1137 1512"> <ul style="list-style-type: none"> Consolidate 2 or more disputes in the same proceeding </td> </tr> <tr> <td data-bbox="419 1523 499 1612">b</td> <td data-bbox="507 1523 699 1612">Authority over Parties</td> <td data-bbox="707 1523 1137 1612"> <ul style="list-style-type: none"> Direct a Party to do anything or not do anything and specify a time limit </td> </tr> <tr> <td data-bbox="419 1624 499 1870">c./d.</td> <td data-bbox="507 1624 699 1870">Property/ Items</td> <td data-bbox="707 1624 1137 1870"> <ul style="list-style-type: none"> Order a Party to make any property or item available for an expert/assessor's inspection Order the preservation, storage, sale or disposal of any property/item which is the focus of the dispute </td> </tr> <tr> <td data-bbox="419 1881 499 1980">e.</td> <td data-bbox="507 1881 699 1980">Documents</td> <td data-bbox="707 1881 1137 1980"> <ul style="list-style-type: none"> Order any Party to produce documents in his possession or control which are relevant </td> </tr> </tbody> </table>	No.	Related Aspect	Arbitration Tribunal's Authority	a	Related Disputes	<ul style="list-style-type: none"> Consolidate 2 or more disputes in the same proceeding 	b	Authority over Parties	<ul style="list-style-type: none"> Direct a Party to do anything or not do anything and specify a time limit 	c./d.	Property/ Items	<ul style="list-style-type: none"> Order a Party to make any property or item available for an expert/assessor's inspection Order the preservation, storage, sale or disposal of any property/item which is the focus of the dispute 	e.	Documents	<ul style="list-style-type: none"> Order any Party to produce documents in his possession or control which are relevant 	<ul style="list-style-type: none"> Sets out additional powers that the tribunal may have beyond that reflected in the Market Rules
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			to the dispute and supply copies to other Parties	
	f.	Statements	<ul style="list-style-type: none"> Allow any Party to amend claims, defences and counterclaims 	
	g.	Time Limits	<ul style="list-style-type: none"> Extend or shorten time limits under these arbitration rules or in the directions of the tribunal 	
	h.	Agreements	<ul style="list-style-type: none"> Correct any contract or arbitration agreement arising from applicable law 	
	i./j..	Security	<ul style="list-style-type: none"> Order any Party to provide security for legal or other costs and for all or any amount in dispute 	
	k.	Arbitration proceeding	<ul style="list-style-type: none"> Proceed with arbitration even if any Party fails to or refuses to attend any meeting/hearing, comply with these arbitration Rules or comply with tribunal's orders/direction or partial Award made 	
	l.	Injunction	<ul style="list-style-type: none"> At request of a Party, issue an injunction or interim relief it deems fit Order Party seeking relief to provide security for relief sought 	
	m.	General Authority	<ul style="list-style-type: none"> Rule on its jurisdiction including objections to an arbitration agreement 	
9.1	<u>Disagreement on the Award</u> <ul style="list-style-type: none"> Determination of any issue shall be made by the majority if the tribunal (if made up of 3 persons) should there be a disagreement Dissenting person may write reasons for his dissent Signatures of majority of tribunal is sufficient for the issue of the Award if dissenting member refuses/fails to sign the Award and reason for omitted signature is stated. 			<ul style="list-style-type: none"> States the determination process of an Award if there is a dissenting tribunal member

Proposed Section	Summary of Proposed Change	Purpose
9.2-9.4	<u>Issuing an Award</u> <ul style="list-style-type: none"> • Tribunal may make interim or separate awards on different times and issues. • Tribunal should consider limits on liability in accordance with the Market Rules or contract when assessing quantum of damages against any Party • Award shall be made in writing 45 business days within the close of the hearing, stating reasons for the Award. 	<ul style="list-style-type: none"> • Describes the process undertaken in issuing an award.
9.5	<u>Interest Rates on Award</u> <ul style="list-style-type: none"> • Tribunal may award simple or compound interest on any sum at an interest rate and for a period that the tribunal deems appropriate 	<ul style="list-style-type: none"> • Provides for the tribunal to include interest rate on an award amount
9.6	<u>Consent Award</u> <ul style="list-style-type: none"> • If a settlement is reached before the Award is made, the Tribunal may, upon the request of a Party, make a Consent Award which would include the terms of settlement. • Tribunal shall thereafter be discharged and proceedings concluded upon payment of outstanding costs of arbitration. 	<ul style="list-style-type: none"> • Describes procedures in the event a Consent Award is made
10.	<u>Extension of Time for Publication of Award</u> <ul style="list-style-type: none"> • The tribunal shall inform the DRC and Parties of the extended estimated time if Award may not be made within time limits provided under the arbitration rules. 	<ul style="list-style-type: none"> • To allow tribunal to extend time limit for deciding on the Award
11	<u>Correction of Award</u> <ul style="list-style-type: none"> • The tribunal may correct any clerical, computational, typographical errors within 20 business days of the date of Award. • A Party may request for tribunal to correct any such errors within 20 business days of the receipt of the Award, keeping the DRC and other Parties informed. Any Party may thereafter comment on such request within 10 business days. If tribunal considers request to be justified, it shall make the correction within 20 business days of receipt of the request. 	<ul style="list-style-type: none"> • Provides for typographical and computational errors to be corrected.
12.1-12.2	<u>Costs of Arbitration</u> <ul style="list-style-type: none"> • Award shall include amount, proportion and Parties responsible for payment of costs of arbitration • Costs include tribunal's fees, expenses, costs of expert/assessor appointed and any other costs incurred by tribunal under arbitration. 	<ul style="list-style-type: none"> • States arbitration costs determination procedures
12.3-12.4	<u>Parties Responsible for Costs</u> <ul style="list-style-type: none"> • Parties are equally responsible for costs prior to the publication of an Award • Parties are jointly and severally responsible for costs until they have been paid in full. If a Party has paid for all or any part of the costs, but is subsequently not liable for these costs, this Party can recover this amount from the liable Party. 	<ul style="list-style-type: none"> • Describes Parties' responsibility of Costs of Arbitration

Proposed Section	Summary of Proposed Change	Purpose
13	<u>Party's Legal Costs and Other Expenses</u> <ul style="list-style-type: none"> • Arbitration tribunal may order that Parties pay for all or part of the legal costs incurred by another Party. 	<ul style="list-style-type: none"> • Provides for legal costs to be recovered
14	<u>Exclusion of Liability</u> <ul style="list-style-type: none"> • EMC, its directors and staff, the DRC and the tribunal are <ul style="list-style-type: none"> ○ Neither liable for any claims arising from the proceedings, nor required to make any statement to any person in connection with the proceedings. ○ Not required to act as a witness unless where the EMC is a party in the proceedings 	<ul style="list-style-type: none"> • This section excludes EMC, its staff and directors, the DRC and the tribunal from any liabilities arising from the proceedings.
15	<u>Confidentiality</u> <ul style="list-style-type: none"> • All Parties and the tribunal are to keep all matters arising from the proceedings confidential except for certain conditions such as required by the Market Rules, when making an application to the Singapore Court or to comply with Singapore laws and requirement by any regulatory body. 	<ul style="list-style-type: none"> • This is a confidentiality clause for the arbitration proceedings.
16	<u>General Provisions</u> <ul style="list-style-type: none"> • Arbitration Rules are supplementary to the Market Rules in the event of any conflict or inconsistencies. 	<ul style="list-style-type: none"> • States that the Market Rules shall take precedence over these Arbitration Rules.

2.3 Analysis of Proposed Arbitration Rules

The DRC's proposal involves substantial and comprehensive amendments to the current arbitration provisions, as reflected in Table 1. As such, rather than analysing each proposed rule, there is a need to evaluate if these provisions, in its entirety, should be included in the Market Rules at this juncture of the rule change process. These can be examined from 3 aspects, namely costs involved, comprehensiveness of current arbitration provisions, and the lack of arbitration cases.

a. Costs involved

Under the current rules change procedure, any proposed rule changes have to be subjected to legal review. Given the extensiveness of the proposed rules, we have first requested for an estimate from our legal advisors on the cost of this review. They have reverted with a cost estimate of **\$60,000**, provided the following conditions hold:

1. Review should not exceed more than 6 months from start to end, with end being publication of proposed rule changes for industry consultation
2. Radical/revolutionary changes will not be instructed in the course of the project

EMC would also have to seek EMA's approval for additional legal budget for these expenses.

Market participants and service providers would also need to expend resources to review these proposed Rules.

b. Comprehensiveness of current arbitration provisions

As discussed in Section 2.1, the current Market Rules already provide broad guidelines on procedures for arbitration and powers of the arbitration tribunal. While the Market Rules do not prescribe all detailed procedures on how an arbitration proceeding should be carried out, Section 3.9.21 empowers the arbitration tribunal with discretion on the arbitration procedures to adhere to.

While there is merit in including the proposed additional detailed procedures in the Market Rules, the challenge lies in determining how much of these details should be included in the Market Rules. It also raises the question of whether these procedures can encompass all eventualities in an arbitration proceeding and if it cannot be done, should consideration then be given to the current approach of empowering the arbitration tribunal with discretion on the arbitration procedures.

c. Likely occurrence of arbitration

There has been no arbitration case since the start of the SWEM in 2003, which suggests that the current arbitration rules have not been applied to real cases. As such, it is more effective to allow actual cases to surface such that these additional proposed arbitration rules can be put to the test before considering whether these proposed rules should be included in the Market Rules.

2.4 RCP's discussion and recommendations on Proposal 1

The RCP considered the DRC's proposal, discussed above, at the 57th RCP Meeting held on 12 September 2011.

The general consensus amongst RCP members was to give discretion to the arbitration tribunal and the DRC to determine the specifics of the arbitration procedures. This is because disputing parties of a case may prefer a particular framework over another and it would be hard to amend the procedures once they have been included in the Market Rules. The proposed arbitration procedures can instead be used as a guide.

The RCP also commended the DRC's efforts put into these arbitration rules and his intent to use this review process as a platform to seek the industry's comments.

RCP's Recommendations

Given the costs of including these proposed arbitration rules as part of the Market Rules, coupled with the premise that no arbitration case has arisen thus far, the RCP decided not to include the proposed arbitration rules as part of the Market Rules.

Instead, the RCP recommends that the DRC use these additional proposed procedures as a guide in carrying out arbitration. After the guide has been refined with adequate experience, the RCP can then consider if they should be incorporated into the Market Rules.

3. Proposal 2: Require that at least one member of the Dispute Resolution and Compensation Panel (DRCP) possess experience in power systems operation

3.1 Current Qualification Criteria

Chapter 3, Section 3.5.5 of the Market Rules states following:

Chapter 3, Section 3.5.5

- 3.5.5 Each member of the *dispute resolution and compensation panel* shall have **at least one** of the following:
- 3.5.5.1 knowledge of the operation of *wholesale electricity markets*;
 - 3.5.5.2 qualification and experience in economics;
 - 3.5.5.3 experience in energy or money market trading or any other commodity market trading;
 - 3.5.5.4 experience in *power system* operation; or
 - 3.5.5.5 a degree in law and practiced as an advocate and solicitor of the Supreme Court of Singapore for at least five years; or
 - 3.5.5.6 a degree in law and has acted as an arbitrator or mediator in the resolution of disputes.

This section of the Market Rules asserts that the DCRP should be made up of members with at least 1 of the 6 disciplines stated in Sections 3.5.5.1 to 3.5.5.6. This selection criterion implies that it is not necessary for the DCRP to be made up of members with experience in all 6 fields.

3.2 Proposed Requirement for a DCRP Member to have Experience in Power System Operations

PSO proposes to amend this criterion to require that at least 1 member possess experience in power system operations. PSO suggests that this change would enable Panel members to be in a better position to provide the mediation or arbitration service as members would be able to fully comprehend disputes relating to power system operations.

3.3 Analysis

PSO's proposal has merit in ensuring that the DRCP is made up of a diverse range of experience and expertise. It also prevents a situation under which all DRCP members possess similar background. However, instead of restricting this proposed change to only requiring a member to have experience in "power system operation, it might be advantageous to extend this requirement to all 6 disciplines. Nevertheless, it may be challenging to implement this requirement from an operational perspective.

DRC's Views

EMC sought the DRC's view on PSO's proposal. The DRC commented that:

PSO's proposal can be implemented in practice by enlarging the panel to include some members with experience in power system operation. Are many around who are independent candidates?

He also added that there is no need for a rule change to implement the proposal.

In response to EMC's suggestion to extend PSO's proposal to all six disciplines, the DRC believes that:

It is possible but would mean that the panel will be very large.

3.4 RCP's discussion and recommendations on Proposal 2

At the 57th RCP Meeting, EMC sought the RCP's views on the following:

- a. Should DRCP be made up of at least 1 member with experience in power system operations?
- b. Should proposal be extended to include all 6 disciplines?
- a. Should the current structure of Chapter 3, Section 3.5.5 of the Market Rules be retained and instead, request for the DRC to appoint members with experience in power system operations to the DRCP?

EMC also requested for the PSO to assist the DRC by providing him with potential list of candidates with experience in power system operations.

In response to the considerations above, the RCP's discussion centered on the avenues available to ensure that a DRCP member has experience in power system operations. The RCP was advised that this is possible through increasing the size of the DRCP.

RCP's Recommendations

The RCP agreed to **retain** the existing criteria and instead, have the DRC appoint a member with experience in power system operations when selecting members to the DRCP.

4. Proposal 3: Changes to Selection of Mediator and Arbitration Tribunal

4.1 Current Selection Process for Mediator and for the Arbitration Tribunal

Currently, the selection process for a mediator is reflected under Chapter 3, Section 3.8.8 of the Market Rules as follows:

Chapter 3, Section 3.8.8

- 3.8.8 The *dispute resolution counselor* shall select a person from the *mediation panel* to mediate the dispute (the "*mediator*") and notify the parties to the dispute of his selection in writing. The *dispute resolution counselor* shall make the selection within 20 *business days* of the notice referred to in section 3.8.7. The *mediator's* appointment takes effect from the date of the written notice informing the parties to the dispute of the selection.

Chapter 3, Sections 3.9.11 and 3.9.13 further states the selection process for the arbitration tribunal, as follows:

Chapter 3, Sections 3.9.11 and 3.9.13

- 3.9.11 The parties to the dispute shall select one or three persons from the *arbitration panel* to act as the *arbitration tribunal*. The parties to the dispute shall try in good faith to agree on this selection within 20 *business days* of the notification in section 3.9.8.
- 3.9.13 If the parties fail to select an *arbitration tribunal* within the time limit in section 3.9.11 the *dispute resolution counselor* shall:
- 3.9.13.1 select a person from the *arbitration panel* to be the *arbitration tribunal*. If any party requests, the *dispute resolution counselor* shall select three persons to be the *arbitration tribunal*;
 - 3.9.13.2 notify the parties in writing of his selection; and
 - 3.9.13.3 advise the members of the *arbitration tribunal* of their appointment. These appointments take effect from the date of that advice.

The current selection process for a mediator and for an arbitration tribunal reflected above differs on two aspects:

a. Party that selects mediator versus arbitration tribunal

Under mediation, a mediator is selected by the DRC, while the arbitration tribunal is selected by parties to the dispute under arbitration. The DRC only selects the arbitration tribunal in the event dispute parties fail to do so, as described under section 3.9.13.

b. Number of mediators versus number of arbitrators on tribunal

Under mediation, the DRC only selects 1 representative to be a mediator. Under arbitration, however, parties to a dispute can select 1 or 3 persons to form the arbitration tribunal.

4.2 Proposed Alignment between Selection Process for a Mediator and that of the Arbitration Tribunal

PSO proposes that the 2 selection processes be aligned, citing consistency as a reason. This alignment can be implemented from 2 aspects:

- b. Allow parties to dispute to select a mediator or allow DRC to select the arbitration tribunal
- c. Enable 3 mediators to be selected under mediation or restrict the number of members on the arbitration tribunal to 1 arbitrator.

4.3 Analysis

There are a few considerations when analysing if the selection processes should be aligned, specifically:

- Rationale behind differences between the 2 selection processes
- Merit in aligning number of mediators with number of arbitrators

DRC's Views

EMC put up PSO's proposal, along with the above considerations, to the DRC for his comments. He reverted with the following:

As a mediator cannot bind the parties, and the rationale was to set up the mediation quickly, it was felt that it would be better to have one mediator appointed by the DRC. No need for 3 mediators, as there is no adjudication, and the mediator's role is to facilitate.

Originally, I had proposed the appointment of one arbitrator. As he acts as an adjudicator with binding powers (and the parties are paying for his time), I had suggested that the parties select him from the Panel, failing which I would do so. As arbitration is an expensive process, the original proposal was to have 3 arbitrators only where the parties agreed to it. However, my proposal was not accepted, and the current position was decided by the market.

As the two processes are different, there is no added value in aligning the selection process.

EMC's Views

We agree with the DRC that in the case of mediation, only one mediator needs to be appointed since the mediator only plays a facilitation role. In addition, we agree that the DRC should continue to appoint the mediator to expedite process.

In the case of arbitration, since the tribunal acts as an adjudicator with binding powers, there is merit in having:

- parties to dispute appoint the tribunal, if they can agree, and,
- a provision for 3 arbitrators if the parties wish to.

4.4 RCP's Discussion and Recommendations on Proposal 3

The RCP also considered Proposal 3 at the 57th RCP Meeting, taking into account the DRC's comments and EMC's views above. The RCP concurred with the DRC that mediation and arbitration are effectively two different processes. The selection processes for these two channels of dispute resolution should thus be kept separate.

RCP's Recommendations

The RCP **agreed** on the DRC's response to keep the 2 processes separate and **retain** the existing selection criteria.

5. Summary of Proposed Changes Arising from Review of DRP

Table 2 overleaf summarises the 3 proposed changes, along with the DRC's comments and RCP's recommendations.

Table 2: Summary of Proposed Changes Arising from Review of DRP

Proposed Changes	DRC's Comments	RCP's Recommendations
<p>Proposal 1 Introduce a detailed set of arbitration procedures as part of the Market Rules</p>	N.A. Changes are proposed by the DRC.	<p>The RCP decided not to include the proposed arbitration rules as part of the Market Rules due to:</p> <ul style="list-style-type: none"> • Costs of legal review • No arbitration case thus far <p>The RCP instead recommends that the DRC use these proposed additional procedures as a guide in carrying out arbitration. After the guide has been refined with adequate experience, the RCP can then consider if they should be incorporated into the Market Rules.</p>
<p>Proposal 2 Require the DRCP to have at least one member with experience in power system operations</p>	Proposal can be implemented without a rule change but panel might be larger	The RCP agreed to retain the existing criteria and instead, have the DRC appoint a member with experience in power system operations when selecting members to the DRCP.
<p>Proposal 3 Process for selecting a mediator and for selecting the arbitration tribunal to be aligned.</p>	Mediator acts as a facilitator while arbitrator acts as an adjudicator. There is no value add in aligning the 2 processes given their differences.	The RCP agreed on the DRC's response to keep the 2 processes separate and retain the existing selection criteria.

6. Response from DRC on RCP's Decision

The RCP's recommendations at the 57th RCP Meeting were submitted to Mr. George Lim for feedback. He reverted with the following comments:

DRC's Comments:

For Section 2, my counterproposal is to amend only two sections of the Market Rules to make a "reference" to the arbitration rules. This way, the arbitration rules will not form part of the Market Rules but is still legitimized. The two proposed changes are as follows:

1. Insertion of a **new clause** itemised as **Section 3.9.1.6 of Chapter 3 of the Market Rules** as follows:

3.9.1.6 The Parties by submitting the dispute to arbitration under Section 3.9 .1 agree that the arbitration shall be conducted in accordance with the Arbitration Rules of the Singapore Electricity Market ("the SEM Arbitration Rules") for the time being in force and as amended from time to time.

2. Amendment of **Section 3.9.21 of Chapter 3 of the Market Rules** as follows:

3.9.21 Once the application period to intervene in section 3.9.19.3 has expired, the arbitration tribunal shall consider the applications received. Then, **subject to section 3.9.1.6 and** taking into account the urgency of the matter, it shall decide:

3.9.21.1 where and when it will hold the arbitration; and

3.9.21.2 what procedures it will follow.

EMC's Response

At the 57th RCP Meeting, the RCP decided to use the proposed additional procedures as a guide in carrying out arbitration. After the guide has been refined with adequate experience, the RCP can then consider if they should be incorporated into the Market Rules.

Since Chapter 3, Section 3.9.21 already provides for the arbitration tribunal to decide on the procedures to follow, the arbitration tribunal can use the proposed additional procedures as appropriate.

As such, EMC recommends that the RCP **do not support** the DRC's counter-proposal to make a reference to the SEM Arbitration Rules in the Market Rules.

7. Timeline for Next Review of Dispute Resolution Procedures

Given the above RCP decisions, we do not recommend any changes for this review of the DRP. The next review will be conducted by 31 December 2014. As such, there is a need to **update** the current timeline in Chapter 3, Section 3.15 of the Market Rules, as set out in Annex 4.

8. Recommendations

The RCP unanimously recommends that the EMC Board:

- a. **do not support** the DRC's counter-proposal to make a reference in the Market Rules to the SEM Arbitration Rules;
- b. **adopt** the rule modification proposal as set out in **Annex 4**.
- c. **seek** EMA's approval of the rule modification proposal as set out in Annex 4; and
- d. **recommend** that the rule modification proposal come into force **one business day** after the date on which the approval of the Authority is published by the EMC.

ANNEX 1: Background on Dispute Resolution Procedures

1. Introduction

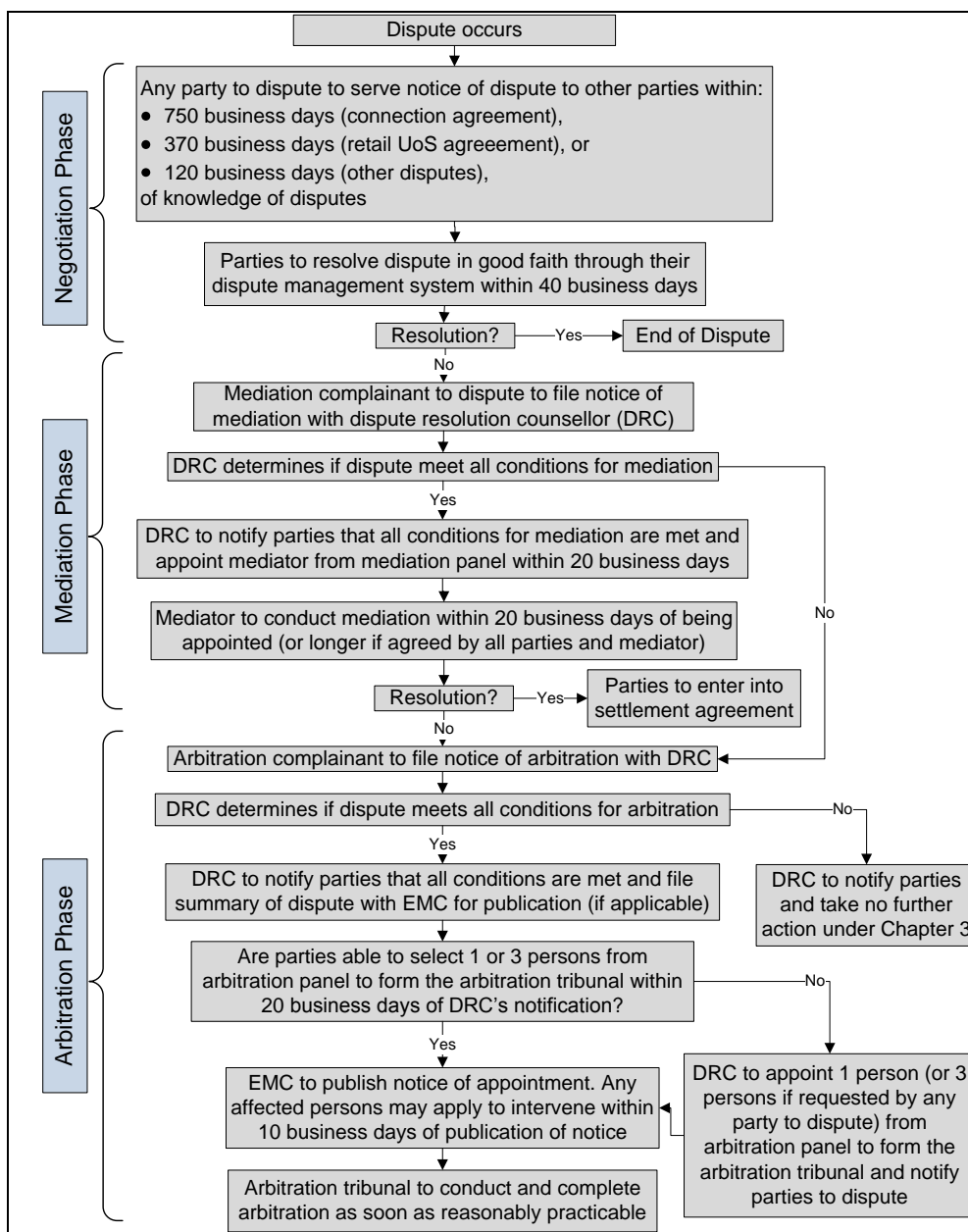
This section describes the current dispute resolution procedures (DRP) and areas under which stakeholders can file for disputes.

2. Dispute Resolution Process

Chapter 3, Sections 3.5 to 3.9 of the Market Rules describes the current DRP in the Singapore Wholesale Electricity Market (SWEM). These are summarised in Chart 1 below³.

Chart 1: Current Dispute Resolution Procedures

³ This is process applies to most disputes. For other disputes, only certain portions of this process apply (Discussed in Section 3).



3. Scope

- a) The DRP can only be invoked under selected scenarios and applied in disputes between certain stakeholders, as stipulated under Chapter 3, Section 3.3.1 of the Market Rules. These are reproduced in Table 1 below.

Table 1: Areas where DRP applies

No	Disputes between	Dispute in respect of			
		Market Rules (MR)	Market Manual (MM)	System Operation Manual (SOM)	Agreement(s)
1	EMC and an MP/MSSL	✓	✓	✓	Any agreement referred to in MR, MM and SOM

No	Disputes between	Dispute in respect of			
		Market Rules (MR)	Market Manual (MM)	System Operation Manual (SOM)	Agreement(s)
2	PSO and an MP/MSSL				
3	EMC and PSO	✓	✓	✓	Any agreement which relates to the functions, powers and duties of the EMC or PSO in MR, MM or SOM
4	Two MPs	✓	✓	✓	<ul style="list-style-type: none"> - MP-MSSL - Market Support Services - Connection - Retailer UoS - Any other agreement that parties agree to apply DRP to
5	MP and MSSL				
6	EMC and a participation applicant	EMC's denial to any of the following: <ul style="list-style-type: none"> - Register applicant as an MP - Authorise applicant as an MSSL - Request to transfer a registered facility to the applicant 			

b) Chapter 3, Section 3.3.2 further states the areas where DRP does not apply. These are summarised in Table 2 below.

Table 2: Areas where DRP shall not apply

No.	Areas	Description
1	Electricity licence/MR/MM/SOM	Where documents state a different dispute resolution mechanism or that section 3 does not apply
2	Market Rules modifications	Dispute over the EMC Board's or urgent rule modification committee's decision to modify or not modify the MR
3	PSO/EMC fees	Dispute over EMC/PSO fees which has been approved by EMA
4	Arbitration tribunal	Dispute over determination of an arbitration tribunal

c) The Market Rules also provide for limited application of the DRP under certain types of disputes, as summarised in Table 3 overleaf.

No.	Areas	First Stage	If Dispute Persists
1.	Disputes over final settlement statements (FSS)	Employ procedures set out in Chapter 7, Section 5.6.7 of the Market Rules	Employ only "Arbitration" stage of the DRP.
2.	Compensation relating to sections referred to in Chapter 3, Section 3.3.1.5 of the Market Rules	Employ procedures set out in Chapter 3, Section 3.11 of the Market Rules	

Table 3: Areas where only the Arbitration stage of the DRP applies

ANNEX 2: Proposed Rules by the Dispute Resolution Counsellor**Proposed Changes/Comments on Existing Dispute Resolution Procedures**

Submitted by: George Lim, Dispute Resolution Counsellor

Date: 8 August 2011

Title: Arbitration Rules

Proposed Rule Change: Section 3.9.1 of Chapter 3

3.9.1 *The Parties by submitting their dispute to arbitration under Section 3.9.1, agree that the arbitration proceedings shall be conducted in accordance with the Singapore Electricity Market Arbitration Rules for the time being in force and as amended from time to time.* Either party (the “*arbitration complainant*”) may submit the matter to the *dispute resolution counsellor* for arbitration if:

- 3.9.1.1 the *dispute resolution counsellor* informs the parties in writing that mediation is not an appropriate means of resolving their dispute;
- 3.9.1.2 the parties fail to resolve their dispute after attending a mediation session;
- 3.9.1.3 the dispute is not resolved within 40 *business days* after the *mediator* is appointed (or longer if the parties agree in writing);
- 3.9.1.4 the dispute is over a request for compensation in section 3.3.1.5 that is not resolved under section 3.11; or
- 3.9.1.5 the dispute is over a *final settlement statement* in section 5.6.6 that is not resolved under section 5.6.7 of Chapter 7.

Reason for Proposed Change

To introduce a set of Arbitration Rules for the market. These rules are attached in **Appendix 1**.

Implications on stakeholders

The proposed Arbitration Rules seek to provide clarity on arbitration proceedings, the obligations of the parties involved in the arbitration and the powers of the arbitration tribunal.

DRAFT SINGAPORE ELECTRICITY MARKET
ARBITRATION RULES

The Parties agree that their disputes referred to arbitration under Section 3.9.1 of the Singapore Electricity Market Rules (“the SEM Rules”) shall be conducted and finally determined in accordance with the following Arbitration Rules or such amendments made to these Rules (hereinafter referred to as “these Rules”).

1. COMMENCEMENT OF ARBITRATION – NOTICE OF ARBITRATION

1.1 Subject to its compliance with all relevant provisions of the SEM Rules, any Party (“the Complainant”) may commence an arbitration under Section 3.9.1 of the SEM Rules by filing a Notice of Arbitration with the Dispute Resolution Counsellor appointed under Section 3.4 of the SEM Rules.

1.2 The Notice of Arbitration shall contain the following :

1.2.1 the names, addresses, telephone number(s), facsimile number (s) and electronic address (es) of the Parties and their representatives if any;

1.2.2 a short description of the nature and circumstances of the dispute; and

1.2.3 the relief or remedy sought.

1.3. The Dispute Resolution Counsellor shall immediately send the Notice of Arbitration to the Respondent.

2.1 NOTICE BY DISPUTE RESOLUTION COUNSELLOR UNDER SECTION 3.9.7 OF THE SEM RULES

2.1 In the event that the Dispute Resolution Counsellor gives Written Notice to the Parties pursuant to Section 3.9.7 of the SEM Rules that any of the conditions in Section 3.9.6 of the SEM Rules have not been met, the arbitration proceedings shall be deemed as terminated with the consent of the Parties.

2.2 APPOINTMENT OF ARBITRATOR

- 2.2.1 The Parties may appoint either a sole arbitrator or three arbitrators from the Arbitration Panel as the arbitration tribunal. The appointment of a sole arbitrator instead of a three person arbitration tribunal shall require the consent of all the Parties. The Parties shall appoint the arbitration tribunal within 20 business days of the date of the written notification by the Dispute Resolution Counsellor under Section 3.9.8 of the SEM Rules that all of the conditions in Section 3.9.6 of the SEM Rules have been met. For the avoidance of doubt, the term “arbitration tribunal” in these Rules shall, where appropriate, also mean the sole arbitrator appointed by the Parties or the Dispute Resolution Counsellor.
- 2.2.2 Immediately after the Parties have appointed the arbitration tribunal, they shall notify the Dispute Resolution Counsellor in writing of the person or persons so appointed. The Dispute Resolution Counsellor shall thereafter notify the sole arbitrator or the members of the arbitration tribunal of their appointment in writing. The appointment of the sole arbitrator or the members of the arbitration tribunal shall take effect from the date of the written notification by the Dispute Resolution Counsellor of their appointment.
- 2.2.3 In the event that the Parties fail, neglect or are unable to agree to the appointment of the arbitration tribunal within the time period set out in Rule 2.2.1 of these Rules or Section 3.9.11 of the SEM Rules, then upon a written request by a Party, the Dispute Resolution Counsellor shall:
- a. from the Arbitration Panel, appoint a sole arbitrator or if so requested, appoint three persons to act as the arbitration tribunal. Where the arbitration tribunal comprises of three persons, the Dispute Resolution Counsellor shall appoint one of the three persons as the chairperson of the arbitration tribunal;
 - b. notify the Parties in writing of his appointment of the sole arbitrator or the arbitration tribunal; and

- c. notify the sole arbitrator or members of the arbitration tribunal in writing of their appointment and inform them that their appointments shall only take effect from the date of his written notice.
- 2.2.4 Any sole arbitrator or member of the arbitration tribunal whether appointed by the Parties or by the Dispute Resolution Counsellor shall at all times during the arbitration proceedings remain independent and impartial.
- 2.2.5 Any sole arbitrator or member of the arbitration tribunal who has any real or potential conflict of interest in acting as arbitrator or is aware of circumstances that may give rise to justifiable doubts as to his impartiality or independence prior to his appointment and at all times during the arbitration proceedings shall immediately notify the Dispute Resolution Counsellor and the Parties of such real or potential conflict.
- 2.2.6 Where any sole arbitrator or member of the arbitration tribunal gives notice of a conflict of interest or justifiable doubts as to his impartiality under Rule 2.2.5 of these Rules, the Dispute Resolution Counsellor, if he is satisfied that there may be conflict of interest or justifiable doubts as to the independence or impartiality of that sole arbitrator or member of the arbitration tribunal, replace him with another person from the Arbitration Panel. The sole arbitrator or member of the arbitration tribunal who has been replaced shall not dispute or challenge the decision of the Dispute Resolution Counsellor to replace him.
- 2.2.7 The Dispute Resolution Counsellor shall have the power to replace the sole arbitrator or any member of the arbitration tribunal in any of the following events:
 - a. upon the demise of the sole arbitrator or any member of the arbitration tribunal;
 - b. where the sole arbitrator or any member the arbitration tribunal with the concurrence of the Dispute Resolution Counsellor has resigned his appointment; or

- c. upon the request of all the Parties, in the case of a sole arbitrator or any member of the arbitration tribunal who neglects, refuses or fails to act as arbitrator or is unable to fulfill his functions in accordance with these Rules.

3. CONDUCT OF THE PROCEEDINGS

- 3.1 The arbitration tribunal shall complete the arbitration as soon as reasonably practicable and shall have the widest discretion to ensure the just, expeditious, economical and final determination of the dispute.
- 3.2 As soon as practicable after its appointment, the arbitration tribunal shall hold a preliminary meeting with the Parties to discuss the procedure for the future conduct of the arbitration including the submission of the Statement of Case, the Defence and Counterclaim and Reply by the Parties within such time as the arbitration tribunal may direct. The arbitration tribunal may direct the Parties to submit further written submissions and fix the time period for such submissions as it deems fit.
- 3.3 Pursuant to the invitation by the EMC under Section 3.9.19 of the SEM Rules to allow persons affected by the determination or Award of the arbitration tribunal to intervene in the arbitration proceedings, the arbitration tribunal may upon the application of such a person and after hearing the Parties, allow such a person to intervene in the arbitration proceedings on such terms that the arbitration tribunal deems fit. The person applying to intervene in the arbitration proceedings must satisfy the arbitration tribunal that:
 - a. he has an interest in the subject matter of the dispute and that he will be directly affected by the Award or determination of the arbitration tribunal;
 - b. his application to intervene was made within the time period set out in Section 3.9.19 of the SEM Rules; and that
 - c. he has notified the Parties in writing of his application to intervene in the arbitration proceedings.

4. SUBMISSIONS BY THE PARTIES

- 4.1 Unless otherwise directed by the arbitration tribunal, the Parties shall submit their written statements and proceed in accordance with this Rule.
- 4.2 The Complainant shall within the period of time as directed by the arbitration tribunal send to the Respondent and to the arbitration tribunal, a Statement of Case which shall contain (but not limited to) the following:
- a. a statement of the facts supporting the claim;
 - b. the contentions of law and fact in support of the claim; and
 - c. the relief claimed and the quantifiable items of claim.
- 4.3 The Respondent shall within the period of time as directed by the arbitration tribunal send to the Complainant and the arbitration tribunal, a Statement of Defence and Counterclaim (if any) which shall contain (but not limited to) the following:
- a. a statement of the facts in support of the Respondent's defence of the claim;
 - b. the contentions of law or fact relied on in defending the claim; and
 - c. where the Defence includes a Counterclaim, it shall contain the same information that a Complainant is required to provide in his Statement of Case under Rule 4.2 above.
- 4.4 The Complainant shall within the period of time directed by the arbitration tribunal send to the arbitration tribunal and the Respondent, a Reply and Defence to the Counterclaim (if any) which shall contain (but not limited to) the following:
- a. a confirmation or denial of the Respondent's defence ;
 - b. a statement of the facts in support of the Complainant's reply to the defence;
 - c. contentions of law or fact relied on in support of the Complainant's reply;
- and

- d. where there is a Counterclaim, a defence to the Counterclaim containing the same information that the Respondent is required to provide in his Defence to the claim under Rule 4.3 above.
- 4.5 All submissions and written statements referred to in this Rule shall be accompanied by copies of all supporting documents which have not been previously submitted by any Party.
- 4.6 Where a Party sends any communication (including statements, documents and reports) to the arbitration tribunal or to the Dispute Resolution Counsellor, such communication shall be copied simultaneously to the other Party.
- 4.7 Notwithstanding that the Respondent fails to submit his Statement of Defence, or the Complainant his Reply and Defence to the Counterclaim, the arbitration tribunal may still proceed with the arbitration.

5. HEARINGS

- 5.1 Unless the Parties have agreed on a documents only arbitration, the arbitration tribunal shall hold a hearing for the presentation of evidence and/or oral submissions by the Parties. In the case of a documents only arbitration, physical attendance by the Parties at the hearing shall not be required unless the arbitration tribunal deems it necessary for the resolution of the dispute.
- 5.2 Where pursuant to Section 3.9.19 of the SEM Rules, the EMC has invited persons who may be directly affected by the determination or Award to apply to intervene in the arbitration proceedings, the arbitration tribunal shall only after the expiry of the application period for intervening provided in Section 3.9.19.3 of the SEM Rules, fix the date, time and place of the meeting or hearing. In any other case, the arbitration tribunal shall as soon as practicable, fix the date, time and place of the hearing.
- 5.3. If any Party fails to appear at a meeting or hearing of which written notice has been given without providing sufficient reason for such failure to appear, the arbitration

tribunal may proceed with the meeting or hearing and may proceed to make its Award based on the evidence and submissions presented.

- 5.4 All meetings and hearings shall be conducted in private and save with the approval of the arbitration tribunal and the Parties, a person who is not involved in the arbitration proceedings shall not be admitted at the hearing or meeting.
- 5.5 After the conclusion of the hearing and when the arbitration tribunal is satisfied that all of the Parties have had a reasonable opportunity of presenting their respective cases, the arbitration tribunal shall declare the hearing closed. Thereafter, the Parties shall not be allowed to make any further submissions or arguments or produce any evidence unless specifically requested or allowed by the arbitration tribunal. The arbitration tribunal may on its own motion or upon the application of a Party re open the hearing provided that the Award has not yet been made.

6. WITNESSES

- 6.1 The arbitration tribunal has the discretion to allow, refuse or limit the appearance of any witness at the hearing.
- 6.2 Any witness who gives oral evidence may be cross examined by each of the Parties or its representative and by the arbitration tribunal in such manner as may be determined by the arbitration tribunal.
- 6.3 The arbitration tribunal may direct that the testimony of witnesses be presented in written form either as a signed statement or sworn affidavit. Subject to Rule 6.1 of these Rules, any Party may request that such a witness attend the hearing for cross examination. If the witness fails to attend despite such a request, the arbitration tribunal may place such weight on the written testimony of the witness as it thinks fit, or exclude such testimony altogether.

7. TRIBUNAL APPOINTED EXPERT OR ASSESSOR

- 7.1 Unless the Parties have agreed otherwise, the arbitration tribunal:

- a. may with the consent of the Parties, appoint an expert or assessor to assist it on technical issues during the arbitration; and
- b. may require a Party to give such expert or assessor any relevant information and to produce or provide access to any relevant documents, goods or property for inspection by the expert or assessor.

8. POWERS OF THE ARBITRATION TRIBUNAL

8.1 In addition to the powers of the arbitration tribunal as set out in these Rules and the SEM Rules, the arbitration tribunal shall have the power to:

- a. consolidate or join two or more disputes for resolution in the same arbitration proceedings if appropriate and provided all the Parties consent ;
- b. direct a Party to do anything or not do anything and specify a time limit;
- c. order a Party to make any property or item available for inspection in that Party's presence by the arbitration tribunal or any expert or assessor;
- d. order the preservation, storage, sale or disposal of any property or item which is the subject matter of the dispute;
- e. order any Party to produce to the arbitration tribunal and to the other Parties for inspection, documents in his possession or control which are relevant to the dispute, and to supply copies of such documents to the other Parties;
- f. allow any Party, upon such terms (as to costs or otherwise) as the arbitration tribunal shall determine, to amend claims, defences and counterclaims;
- g. extend or abbreviate any time limits under these Rules or in the directions or orders of the arbitration tribunal;
- h. correct any contract or arbitration agreement in accordance with the substantive applicable law;
- i. order any Party to provide security for legal or other costs in such manner as the arbitration tribunal deems fit;

- j. order any Party to provide security for all or any amount in dispute in the arbitration;
- k. proceed with the arbitration notwithstanding the failure or refusal of any Party to:
 - i. attend any meeting or hearing provided notice of the meeting or hearing has been given to that Party; or
 - ii. comply with these Rules, or with any of the arbitration tribunal's orders or directions or any partial Award made;
- l. at the request of a Party, issue an order or an Award granting an injunction or any interim relief it deems fit and order the Party seeking the interim relief to provide appropriate security for the relief sought; and
- m. rule on its jurisdiction including any objections with respect to the existence, termination or validity of the arbitration agreement either as a preliminary question or in the Award itself.

9 THE AWARD

- 9.1 Where the arbitration tribunal consists of three persons and they fail to agree on any issue, the determination shall be made by a majority. The dissenting person may deliver written reasons for his dissent. If the dissenting arbitrator refuses or fails to sign the Award, the signatures of the majority of the arbitration tribunal shall be sufficient for the issue of the Award provided the reason for the omitted signature is stated.
- 9.2 The arbitration tribunal may make interim awards or separate awards on different issues and at different times.
- 9.3 Where the arbitration tribunal assesses the quantum of damages against any Party, it shall have regard to and take into consideration any limits on liability so provided in the *market rules* of the SEM Rules or in the contract.

- 9.4 The arbitration tribunal shall make its Award in writing within 45 business days from the date of which the hearing is declared closed under Rule 5.5 of these Rules and shall state the reasons upon which its Award is based. Subject to Rule 9.1 of these Rules, the Award shall state the date and place in which it was made and shall be signed by the arbitration tribunal.
- 9.5 The arbitration tribunal may award simple or compound interest on any sum which is the subject of the dispute at such interest rate and for such period which the arbitration tribunal determines to be appropriate.
- 9.6 In the event of any settlement made between the Parties before the Award is made, the arbitration tribunal may upon the request of a Party make a Consent Award and record the terms of settlement in the Consent Award. The arbitration tribunal shall then be discharged from further acting and the arbitration proceedings shall be deemed concluded upon the payment of any outstanding Costs of the Arbitration.

10. EXTENSION OF TIME FOR PUBLICATION OF THE AWARD

- 10.1 If it appears to the arbitration tribunal that the Award may not be made within the time limits provided under these Rules, the arbitration tribunal shall before the expiry of the time limit, notify the Dispute Resolution Counsellor and the Parties in writing of the extended estimated time for the making of the Award for the purpose of information only.

11. CORRECTION OF AWARD

- 11.1 The arbitration tribunal may on its own initiative correct any clerical, computational or typographical error or any errors of a similar nature in its Award within 20 business days of the date of the Award.
- 11.2 Within 20 business days of the receipt of the Award, a Party may by written notice to the arbitration tribunal copied to the Dispute Resolution Counsellor and the other Party, request the arbitration tribunal to correct in the Award, any clerical,

computational or typographical error or errors of a similar nature. Any Party may respond to such a request by giving his written comments to the arbitration tribunal within 10 business days of receipt of the copy of such request. If the arbitration tribunal considers the request to be justified, it shall make the correction within 20 business days of the receipt of the request. Any correction made shall be notified in writing to the Parties and to the Dispute Resolution Counsellor and shall be deemed as part of the Award.

12. COSTS OF THE ARBITRATION

- 12.1 The arbitration tribunal shall in its Award specify the amount of the Costs of the Arbitration and determine by whom and in what proportions the Parties shall pay the Costs of the Arbitration.
- 12.2 The term “Costs of the Arbitration” shall include:
- a. the arbitration tribunal’s fees and expenses;
 - b. the costs of any expert or assessor appointed; and
 - c. any other costs or expense incurred by the arbitration tribunal in connection with the arbitration.
- 12.3 Pending the publication of the Award, the Costs of the Arbitration shall be borne equally by all the Parties.
- 12.4 The Parties shall be jointly and severally liable to the arbitration tribunal for payment of the Costs of the Arbitration until all such costs have been paid in full. If the arbitration tribunal has determined that all or any part of the Costs of the Arbitration shall be paid by a Party other than a Party which has already paid them to the arbitration tribunal, the latter shall have the right to recover the appropriate amount from the former.

13. PARTY'S LEGAL COSTS AND OTHER EXPENSES

- 13.1 The arbitration tribunal shall have the power in its Award to determine and order that all or part of the legal costs and other expenses incurred by a Party in connection with the arbitration proceedings (other than the Costs of the Arbitration) be paid by another Party or Parties. Such legal costs and other expenses shall be assessed or taxed by the arbitration tribunal and form part of its Award.

14. EXCLUSION OF LIABILITY

- 14.1 The EMC its directors, officers , employees, the Dispute Resolution Counsellor, the sole arbitrator or members of the arbitration tribunal shall not be liable to any person for any claim whatsoever arising from negligence or any act or omission in connection with the arbitration proceedings conducted under these Rules or in the Award.
- 14.2 Save as expressly provided in the SEM Rules, the EMC its directors, officers, employees, the Dispute Resolution Counsellor, the sole arbitrator or members of the arbitration tribunal shall not be obliged to make any statement to any person in connection with the arbitration proceedings conducted under these Rules. No Party shall make or attempt to make any director, officer or employee of the EMC (save and except where the EMC is a party to the arbitration proceedings), the Dispute Resolution Counsellor, the sole arbitrator or a member of the arbitration tribunal act as a witness in any legal proceedings in connection with any arbitration conducted under these Rules.

15 CONFIDENTIALITY

- 15.1 The Parties and the arbitration tribunal shall keep all matters relating to the arbitration proceedings and the Award as confidential.

- 15.2 A Party or the arbitration tribunal shall not without the prior written consent of all the Parties make any disclosure of any matter relating to the arbitration proceedings except for the following:
- a. matters expressly allowed to be disclosed under Section 3 of the SEM Rules;
 - b. for the purpose of making an application to the Singapore Court or any competent Court of any State to enforce the Award;
 - c. pursuant to the Order of a subpoena issued by a Singapore Court or a Court of competent jurisdiction;
 - d. for the purpose of complying with the laws of Singapore or any other State which are binding on the Party making the disclosure; or
 - e. to comply with the request or requirement of any regulatory body or other authority.

16. GENERAL PROVISIONS

- 16.1 These Rules shall not in any way prejudice or affect the application of the SEM Rules nor shall they or limit or affect in any way the Parties' and the arbitration tribunal's obligation to comply with and observe the SEM Rules.
- 16.2 These Rules are to be read together and in conjunction with the SEM Rules and are supplementary to the SEM Rules. In the event of any conflict or inconsistency between these Rules and the SEM Rules, the SEM Rules shall prevail.

Title	Dispute Resolution Procedures
Proposed Rule Change (State relevant portion of the Market Rules, if applicable)	For the mediation/arbitration panel members to fully comprehend the issue for dispute relating to operation of the power system, suggest that the mediation/arbitration panel members should have at least 1 member with experience in power system operation.
Reasons for Proposed Change	The mediation/arbitration panel members would be in a better position to provide the mediation/arbitration service.
Implications on stakeholders, e.g. EMC, PSO, Market Participants, Consumers (optional)	NIL
Title	Dispute Resolution Procedures
Proposed Rule Change (State relevant portion of the Market Rules, if applicable)	Suggest that the process to select mediator from the mediation panel be similar to that of selection of arbitrator from the arbitration tribunal members. For example, Section 3.8.8 states that the DRC select the mediator from the mediation panel, whereas section 3.9.11 states that the parties to the dispute select arbitration tribunal from the arbitration panel.
Reasons for Proposed Change	For consistency.
Implications on stakeholders, e.g. EMC, PSO, Market Participants, Consumers (optional)	NIL

Annex 4: Proposed Rules Changes to Reflect Update in Timeline for Next Review

Existing Rules (Release: 1 July 2011)	Proposed Rules Changes (Deletions represented by strikethrough text and additions represented by double underlined text)	Remarks
CHAPTER 3	CHAPTER 3	
<p>3.15 EMC REVIEW OF DISPUTE RESOLUTION PROCEDURES</p> <p>3.15.1 The <i>EMC Board</i> shall conduct a review of the dispute resolution procedures in section 3 by 31 December 2011.</p>	<p>3.15 EMC REVIEW OF DISPUTE RESOLUTION PROCEDURES</p> <p>3.15.1 The <i>EMC Board</i> shall conduct a review of the dispute resolution procedures in section 3 by 31 December 2011 <u>2014</u>.</p>	<p>To update the timeline for the next review to be conducted in 3 years time.</p>