

Notice of Market Rules Modification

Paper No.:	EMC/RCP/61/2012/310
Rule Reference:	Market Rules/Chapter 3 Section 3.9.1.3
Proposer:	Energy Market Company
Date Received by EMC:	5 April 2012
Category Allocated:	3
Status:	Approved by EMA
Effective Date:	20 June 2012

This paper assesses the proposal by Dispute Resolution Counsellor (DRC) to allow a disputing party to submit the matter for arbitration if the dispute is not resolved within 20 business days, instead of existing 40 business days, after the appointment of a mediator.

Under the Market Rules, a mediator is required to conduct a mediation session within 20 business days of its appointment. Most mediation sessions can be completed within one day. Even if it cannot be completed within one day, the Market Rules also allow the disputing parties to extend the timeline to complete the mediation.

The DRC is of the view that if the disputing parties could not reach an agreement on resolving the dispute or on the extension of the timeline at the end of the 20 business days, they would not be able to resolve their dispute through mediation. Thus it would be more appropriate to allow disputing parties to submit the matter for arbitration immediately, instead of waiting until the end of the 40 business days after the appointment of a mediator.

EMC agrees with DRC's view and concludes that the proposed rules changes would allow for a more efficient dispute resolution process.

The RCP unanimously support the rules change proposal.

Date considered by Rules Change Panel:	15 May 2012
Date considered by EMC Board:	01 June 2012
Date considered by Energy Market Authority:	18 June 2012

Proposed rule modification:

See attached paper.

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

PAPER NO : **EMC/BD/xx/2012/xx**

RCP PAPER NO. : **EMC/RCP/61/2012/310**

SUBJECT : **NUMBER OF BUSINESS DAYS ALLOWED FOR
DISPUTE TO BE RESOLVED THROUGH MEDIATION**

FOR : **DECISION**

PREPARED BY : **WANG JING
SENIOR ANALYST**

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

DATE OF MEETING : **1 JUNE 2012**

Executive Summary

This paper assesses the proposal by Dispute Resolution Counsellor (DRC) to change the number of business days allowed for a dispute to resolved through mediation, beyond which the dispute may be submitted to DRC for arbitration, from existing 40 business days after the appointment of a mediator to 20 business days instead.

We conclude that the proposal will allow for a more efficient dispute resolution process.

The RCP unanimously **recommends** that the EMC Board **adopt** the rules change proposal.

1. Introduction

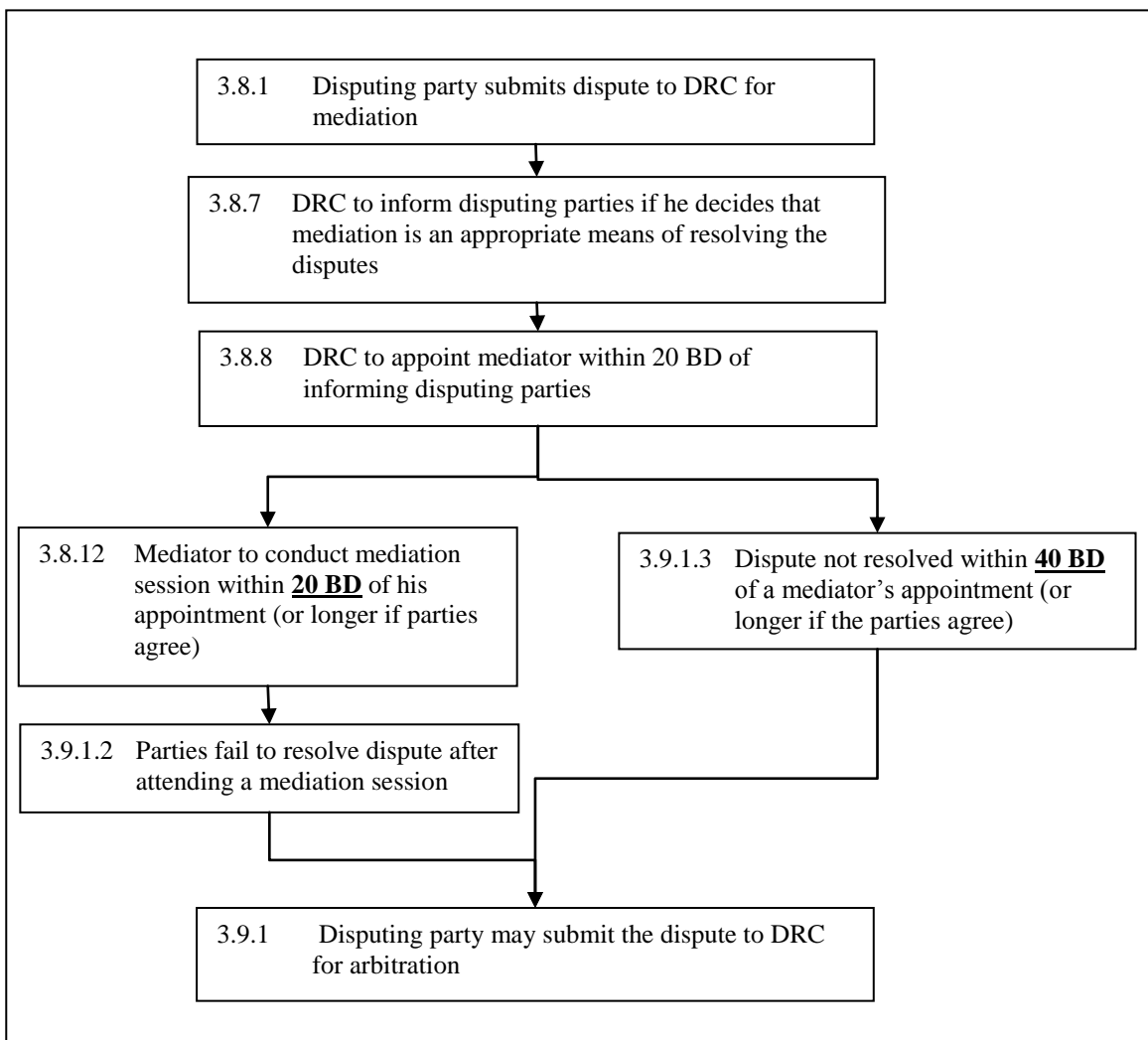
This paper assesses the proposal by Dispute Resolution Counsellor (DRC) to allow a disputing party to submit the matter for arbitration if the dispute is not resolved within 20 business days, instead of existing 40 business days, after the appointment of a mediator.

2. Background

Section 3 of Chapter 3 of the Market Rules sets out how disputes are resolved in the Singapore Wholesale Electricity Market (SWEM). Generally, the dispute resolution process is as follows:

- First, the parties are expected to resolve their dispute by **negotiation** using their dispute management systems.
- Second, if negotiation fails, a party may submit the dispute to **mediation** which is carried out by a mediator.
- Third, if mediation fails, a party may submit the dispute to **arbitration** which is carried out by an arbitration tribunal.

Specifically, the timelines for mediation process are described in sections 3.8 and 3.9 of Chapter 3. This process is illustrated in the diagram below.



We received a proposal from the DRC (Mr. George Lim) to change the timeline of 40 business days (as set out in section 3.9.1.3 illustrated above) to 20 business days such that the timeline is aligned with that set out in section 3.8.12.

3. Analysis

Mediation is a non-binding dispute resolution method that involves a neutral third party attempting to help the disputing parties reach a mutually agreeable solution. As mediation offers an expeditious and inexpensive means of dispute resolution, mediation was introduced into the Market Rules as a mandatory step of dispute resolution process on 14 February 2006. This process helps to "foster an attitude and commitment towards using mediation as a means of resolving disputes amicably".

The mediator does not impose a solution on the disputing parties. For a mediation session to be successful, the solution must be acceptable to all parties.

According to the timelines set out in Chapter 3, Sections 3.8 and 3.9 of the Market Rules, it is observed that:

- a. the mediator must conduct a mediation session within 20 business days of being appointed (unless the parties and the mediator agree on a longer period of time); and
- b. a disputing party may submit the dispute to the DRC for arbitration if it is not resolved within 40 business days of the appointment of mediator (unless the parties and the mediator agree on a longer period of time)

The current Market Rules allows a 20 business days gap between events (a) and (b).

If the timeline for event (b) above is reduced to the proposed 20 business days, then there is essentially no gap between the time where the mediator must conduct a mediation session and the time where the dispute may be submitted for arbitration. If the mediation session is conducted exactly 20 business days after the appointment of a mediator, this implies that a mediator must conclude a mediation session within the same day . Otherwise, a dispute could be referred to the DRC for arbitration while mediation is still on-going.

EMC has thus consulted the DRC on the practicability of the proposal, whose view is that:

- a. In practice, most mediation sessions can be completed in a single session within one day;
- b. If a mediation session is not completed within one day, and a few more mediation sessions are required, the disputing parties can extend the timeline to complete the mediation session (which is allowed under the current rules); and
- c. If disputing parties are not even able to agree to extend the timeline to continue the mediation, it is unlikely that the parties would be able to reach a settlement agreement through mediation. Under such circumstances, it would then be more appropriate to refer the dispute to arbitration immediately instead of waiting for another 20 business days.

Considering the above, we agree that the proposal is practicable and would reduce unnecessary waiting time for a disputing party to submit the issue to arbitration if he is unable to resolve the dispute through mediation.

4. Conclusion

We conclude that the proposal will allow for a more efficient dispute resolution process, especially for cases where the disputing parties are unable to reach an agreement on resolving the dispute or on the extension of the timeline after attending a mediation session.

5. Consultation

EMC has consulted the DRC on the rules change proposal, whose view is that the proposed rules are practical.

EMC has published the rules changes paper for consultation on 5 April 2012. The following comments have been received.

Comments from Tuas Power Generation

We support the change so as to make the dispute resolution process more efficient.

EMC's response

We noted that Tuas Power Generation supports the proposed rules changes.

6. Legal sign off

Text of the rule modification has been vetted by EMC's external legal counsel whose opinion is that the modification reflects the intent of the rule modification proposal as expressed in the analysis section of this paper.

7. Recommendations

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

- a. **adopt** the rule modification proposal to amend Section 3.9.1.3, Chapter 3 as set out in the Annex 1;
- b. **seek** EMA's approval of the rule modification proposal as set out in Annex 1; and
- c. **recommend** that the rule modifications come into force **one business day** after the date of which the approval of the Authority is published by the EMC.

ANNEX 1

Existing Rules (Release 1 Jan 2012)	Proposed Rules (Deletions represented by strikethrough text and addition double underlined)	Reason for Modification
<u>CHAPTER 3</u>	<u>CHAPTER 3</u>	
ADMINISTRATION, SUPERVISION & ENFORCEMENT	ADMINISTRATION, SUPERVISION & ENFORCEMENT	
<p>3.9 ARBITRATION</p> <p>3.9.1 Either party (the “<i>arbitration complainant</i>”) may submit the matter to the <i>dispute resolution counsellor</i> for arbitration if:</p> <p>...</p> <p>3.9.1.3 the dispute is not resolved within 40 <i>business days</i> after the <i>mediator</i> is appointed (or longer if the parties agree in writing);</p>	<p>3.9 ARBITRATION</p> <p>3.9.1 Either party (the “<i>arbitration complainant</i>”) may submit the matter to the <i>dispute resolution counsellor</i> for arbitration if:</p> <p>...</p> <p>3.9.1.3 the dispute is not resolved within 40 <u>20</u> <i>business days</i> after the <i>mediator</i> is appointed (or longer if the parties agree in writing);</p>	<p>To allow arbitration complainant to submit the matter to dispute resolution counsellor for arbitration if the dispute is not resolved within 20 business days, instead of 40 business days, after the mediator is appointed.</p>