

MODEL ARBITRATION RULES OF THE SINGAPORE

ELECTRICITY MARKET

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.

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 APPOINTMENT OF ARBITRATOR

2.1.1 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.

2.1.2 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.

2.1.3 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.

2.1.4 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.

2.1.5 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.

2.1.6 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.

2.1.7 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.