



Government of Western Australia
Energy Policy WA

Energy Sector Governance: Changes to the Regulatory Framework

Consultation Response Paper

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Abbreviations

The following table provides a list of abbreviations and acronyms used throughout this document. Defined terms are identified in this document by capitals.

Term	Definition
AEMO	Australian Energy Market Operator
ERA	Economic Regulation Authority
Coordinator	The Coordinator of Energy
GAB	Gas Advisory Board
GSI	Gas Services Information
MAC	Market Advisory Committee
RCP	Rule Change Panel
RLM	Relevant Level Methodology
Taskforce	Energy Transformation Taskforce
WEM	Wholesale Electricity Market
WOSP	Whole of System Plan

1. Background

Overview

The Government has agreed to clarify and enhance the governance arrangements whereby:

- the Coordinator of Energy (the Coordinator), supported by Energy Policy WA, will undertake policy, market development, strategic planning and overall coordination of the energy sector;
- the Economic Regulation Authority (ERA) will undertake economic regulation and price setting, licencing and compliance; and
- the Australian Energy Market Operator (AEMO) will undertake system operation, market operation and associated market administration (e.g. registration, settlement etc.).

To give effect to this, Government has agreed to:

- transfer responsibility for administration of the Wholesale Electricity Market (WEM) Rules and Gas Services Information (GSI) Rules from the Rule Change Panel (RCP), as well as allocate responsibility for the new rules for the North West Interconnected System, to the Coordinator;
- transfer responsibility for WEM and GSI market development functions, in particular some reviews of a policy or technical nature, from the ERA to the Coordinator; and
- allocate responsibility for the development of future, periodic Whole of System Plans (WOSPs) to the Coordinator.

On 13 November 2020, Energy Policy WA released a Consultation Paper outlining the proposed amendments to various regulations and rules to give effect to the Government's proposed amendments to the governance arrangements for the Western Australian energy sector.

The Consultation Paper included appendices detailing draft amendments to the WEM Rules (WEM Amending Rules) and GSI Rules (GSI Amending Rules), as well as drafting instructions for amendments to the Electricity Industry (Wholesale Electricity Market) Regulations 2004 and the Gas Services Information Regulations 2012, and to repeal the Electricity Industry (Rule Change Panel) Regulations 2016 (Amendment Regulations).

The draft WEM Amending Rules and GSI Amending Rules proposed amendments to the rule change process, composition of the Market Advisory Committee (MAC) and Gas Advisory Board (GAB), the allocation of certain reviews, WEM and GSI fee arrangements, and other consequential amendments.

The consultation process included:

- liaison with the ERA and RCP Secretariat on the proposed amendments and transitional matters;
- presentations to the MAC and GAB on 17 November 2020; and
- a four-week public consultation process on the draft WEM Amending Rules, draft GSI Amending Rules and drafting instructions for regulation changes, which closed on 11 December 2020.

Formal written submissions were received from eleven interested stakeholders and are publicly available on the webpage: [Consultation: Energy Sector Governance](#). Submissions were received from the RCP Secretariat, ERA, Perth Energy, Synergy, AEMO, Mr Noel Schubert, Eastern Metropolitan Regional Council (EMRC), Western Power, Alinta Energy, ATCO and the Australian Energy Council.

While stakeholders were broadly supportive of the proposed changes, they raised several concerns which are detailed in this paper. Stakeholder feedback has been incorporated into the attached Amendment Regulations, WEM Amending Rules and GSI Amending Rules, where appropriate.

The Amendment Regulations and WEM Amending Rules also include three amendments that are not part of the sector governance changes but are required to assist in the delivery of the Energy Transformation Strategy, most notably in relation to generator performance standards (discussed further in section 2.6).

The remaining aspects of the governance changes approved by Government are being progressed via other reform processes, including:

- WEM Rule changes developed by the Energy Transformation Taskforce (the Taskforce), for future WOSPs¹ (published on 24 December 2020 and available on the Rule Change Panel website); and
- regulations and rules for the Pilbara Reforms, for administration of the relevant Pilbara rules by the Coordinator².

¹ Published as part of the Taskforce's 'Tranche 3' amendments on 24 December 2020, available at <https://www.erawa.com.au/rule-change-panel/wholesale-electricity-market-rules>

² Information on the Pilbara reforms is available at <https://www.wa.gov.au/organisation/energy-policy-wa/electricity-industry-reform>

2. Stakeholder feedback and resulting amendments to the WEM Amending Rules and the GSI Amending Rules

MAC, GAB and several stakeholder submissions expressed support for the proposed energy sector governance reforms. MAC was particularly supportive of the Government's decision to have an ongoing market development function vested in the Coordinator.

Stakeholder submissions generally acknowledged the challenges noted in the consultation paper, as well as the means of addressing these challenges. A number of stakeholders raised concerns, which are outlined below along with the changes made to respond to these concerns. A summary table of the changes is also provided in Appendix 1.

2.1 Potential for conflict of interest and government influence

Stakeholder feedback summary

- Several stakeholders expressed concerns regarding the potential conflict of interest of the Coordinator and the Minister for Energy, as the Government is the owner of Western Power and Synergy. The concerns relate to the potential for the Coordinator and the Minister for Energy to be conflicted in balancing the roles of developing the energy market and overseeing the Government Trading Enterprises.
- Some stakeholders were concerned about the potential for the Coordinator to be influenced by the Government of the day in making decisions regarding rule change proposals and in developing the market.
- Concerns were also raised about the Coordinator' undertaking a review of the effectiveness of her/his own rule change processes.
- A concern was raised in one of the submissions about the current requirement for the Minister to seek the Coordinator's views before issuing a policy statement to the Coordinator. The view was that the policy statement is likely to be prepared by the Coordinator, as the policy advisor to the Minister, in the first instance.

While the Taskforce is delivering a substantial package of reforms within its two-year remit, the need for the market and regulatory arrangements to evolve will continue well beyond the Taskforce's life. This evolution will require careful coordination and management.

Stakeholders have continued to raise concerns about the potential gap in the development and evolution of the market beyond the Taskforce, which Government is now addressing. The changes seek to rationalise and clarify governance roles to reduce existing overlaps and address ongoing gaps.

These changes will make better use of the different skills across the governance bodies by clarifying their focus and seek to ease the pressure on administration costs across the sector as a whole over the medium to longer term. They also acknowledge the need for strategic leadership and coordination by Government, beyond the life of the Taskforce, in the delivery of essential energy services.

While the governance reforms address many present challenges, perceptions around the potential for conflict of interest have been raised in several stakeholder submissions. The following changes have been made to address these concerns:

- In addition to the rigorous consultation processes currently prescribed in the rules, the Coordinator will be required to seek and give consideration to advice provided by MAC and GAB in evolving and developing the market and the rules.
- The Coordinator will be explicitly required to consider dissenting views expressed at MAC, and to provide rationale for any decisions that differ from MAC/GAB's advice as part of its rule change process.
- Small-use customer representatives to be nominated by the Minister as members of MAC and GAB will be independent of Government, as proposed in submissions.
- A review of the effectiveness of the rule and procedure change process will be carried out every three years by a person who is independent of the Coordinator.
- Before giving a statement of policy principles to the Coordinator, the Minister may seek the feedback of MAC/GAB on the proposed statement.

2.2 The importance of procedural review

Stakeholder feedback summary

- Some concerns were raised that rules developed by the Coordinator which are required to be approved by the Minister for Energy could not be referred to the Electricity Review Board for procedural review.

The concerns raised by industry are acknowledged and changes have been made to ensure that all decisions by the Coordinator to approve rule changes, including those that cannot take effect unless approved by the Minister, are subject to procedural review (as was intended but, based on stakeholder comments, needed to be clarified).

2.3 Market fees

Stakeholder feedback summary

- Two submissions expressed concern regarding the trend towards higher market fees and the lack of transparency around the setting of the fees for both the ERA and the Coordinator.

Changes have been made to require the Coordinator to publish a breakdown of the Coordinator's fees by function (e.g. rule changes, market development, WOSP development, market reviews) to improve transparency.

2.4 MAC/GAB

Stakeholder feedback summary

- One submission suggested that the independent Chair of MAC and GAB should be appointed for a fixed term to ensure regular rotation of this key role.
- Several submissions suggested that the number of consumer representatives on MAC/GAB should be limited.

Changes have been made to appoint the independent Chair of MAC and GAB for a three-year term, with the potential to extend to a maximum of two terms.

While a change has been made to limit the number of small end-use customer representatives on GAB to a maximum of two, this is not considered to be appropriate or necessary for consumer representation on MAC. The development of the WEM involves a significant number of issues with direct impact on consumers and, therefore, adequate consumer representation on MAC is paramount. It is very unlikely, however, that the number of consumer representatives would overwhelm the membership of MAC at any time.

2.5 Out-of-scope feedback

Stakeholder feedback summary

- One submission requested a modification to require the ERA to substantiate, with evidence, any specific events or systemic behaviours that it believes have impacted on the effectiveness of the market prior to providing the Coordinator and the Minister for Energy with a report.
- Changes were requested to the procedure change process to include deadlines by which changes should be initiated.
- One submission primarily focussed on the cost of supply to consumers, specifically network costs. It was suggested that any reviews include the cost of electricity to the customer as a specific focus.
- One submission requested that future WOSPs include scenarios that consider customer gas usage.

While these proposals are outside of the scope of the governance changes, the following is noted:

- Currently only the ERA, AEMO, the Coordinator and Network Operators can initiate changes to their own WEM/GSI Procedures. While timely implementation of procedures changes it is out of scope for these changes, is an important issue that could be considered by the MAC as part of its existing issue prioritisation process.
- Market efficiency and costs to consumers are objectives of the market and already considered as part of the rule change process and the various market reviews.

2.6 Additional changes

Most stakeholder submissions provided helpful drafting suggestions. These have been incorporated into the WEM Amending Rules and GSI Amending Rules, where appropriate.

In addition to changes resulting from the consultation, Energy Policy WA also proposes changes to the WEM Amending Rules and GSI Amending Rules to:

- allow for the Minister for Energy to appoint an interim Chair for the MAC and GAB if necessary. This may be useful in instances where the Chair cannot fulfil his/her duties at short notice (i.e. resignation, serious illness etc), or if a permanent Chair cannot be found before the 1 July 2021 commencement date;
- allow the Coordinator to appoint an interim member representing small-use customers if both positions on MAC or GAB are vacant for any reason; and
- give discretion to the Coordinator to recover costs associated with the remuneration of the small-use customer representatives on MAC and GAB.

A minor amendment to Appendix 12 of the WEM Amending Rules (as part of the Taskforce's [‘Tranche 1’ Amending Rules](#) gazetted on 24 November 2020) was also included to clarify generators' ability to comply with the standard under section A12.6. This change is not part of the governance reforms and has been included within this package for convenience. The changes relocate and clarify clauses A12.6.3.2 (e) and A12.6.3.2(f) to explicitly allow for the standard to be subject to negotiation. This change responds to industry concerns expressed as part of the Taskforce's project to improve the framework for generator performance standards.

3. Stakeholder feedback and subsequent amendments to the Amendment Regulations

Stakeholder feedback summary

- One submission expressed support for the extension of the Minister for Energy's rule making power to 31 March 2023 and indicated it would support a further extension, if required.
- No other specific comments were made by stakeholders in relation to the drafting instructions provided for the Amendment Regulations.

There are only minor variations between the drafting instructions, published as part of the stakeholder consultation, and the Amendment Regulations [gazetted](#) on 15 January 2021. These variations:

- include an obligation on the ERA to provide any legal advice obtained by the RCP in undertaking its functions. Obtaining this advice, which was procured using industry funding, may assist in future rule change processes and avoid additional cost to industry;
- implement a civil penalty framework for generator performance standards by amending to Schedule 1 and inserting a new Division 2 of Part 2. These amendments relate to generator performance standards, but could not be made until after the [Tranche 1 Amending Rules](#) were gazetted on 24 November 2020. These changes do not relate to the governance reforms and have been implemented through this package for convenience only; and
- make minor administrative amendments that improve consistency in the use of terms between the WEM Regulations and WEM Rules.

Appendix 1 Summary of changes to WEM Amending Rules and GSI Amending Rules

The following table contains the amendments to the WEM Amending Rules and the GSI Amending Rules outlined in section 2.1 above. Several amendments, not presented in the table, were also progressed after the public consultation period concluded to address drafting oversights or typographical errors, as well as drafting suggestions in stakeholder submissions.

Table 2.1: Summary of amendments

Amending Rules	Section/Rule	Description of change
WEM	2.3.5(e)	Changed to ensure the independence from Government of the small end-use customer representatives to be nominated by the Minister as members of MAC, as proposed in submissions.
	2.3.8B.	Provision added for each independent Chair of the MAC to be appointed for a term of three years, with the possibility of just one three-year extension, in response to a stakeholder suggestion.
	2.3.8D.	Provision added allowing the Minister to appoint an interim Chair of the MAC in the event that the independent Chair becomes temporarily unavailable or the position is otherwise vacant for any reason. The interim Chair may be appointed for an initial term of up to six months and may be reappointed for further six months. The interim Chair must meet, so far as is practicable, the criteria for independence.
	2.3.8E.	Provision added allowing the Coordinator to appoint an interim member representing small end-use consumers if both positions are vacant for any reason, to make sure consumer representatives are always present at MAC meetings.
	2.4.3(dA)	Changed to provide that, in deciding whether to make Amending Rules, the Coordinator must have regard to any dissenting views included in MAC advice to address a concern raised in submissions.
	2.5.2	Changed so that, before giving a statement of policy principles, the Minister may provide a draft of the proposed statement to the MAC and seek MAC's views on it, to address a concern raised in submissions.
	2.5.3A.	Amended to ensure that the Coordinator has regard to any advice received from the MAC regarding the evolution or the development of the Wholesale Electricity Market or the WEM Rules.
	2.5.8A.	Amended in response to submissions to clarify that a decision by the Coordinator to accept a Rule Change Proposal, which was initiated by the Coordinator, does not take effect until it receives the Minister's approval. The changed wording will also ensure that Market Participants do not lose their right to seek procedural review of a decision to change the WEM Rules.

Amending Rules	Section/Rule	Description of change
	2.7.7(dA) & 2.7.8(bA)	Provisions added that a Draft Rule Change Report and a Final Rule Change Report, respectively, must contain reasons if the Coordinator does not propose to follow partially or fully the advice received from the MAC, to address a stakeholder proposal that the Coordinator must “act” on the MAC advice.
	2.10.13(dA)	Changed to provide that a Procedure Change Report must contain how dissenting views by MAC members have been taken into account by the Coordinator, to address a concern raised in submissions.
	2.16.13E.	In response to stakeholders’ concern about the Coordinator monitoring its own rule change activities, provision added that the Coordinator must ensure that an independent person carries out an audit of the effectiveness of the WEM Rule change process and Procedure Change Process no less that every three years.
	2.24.3(d)(iii)	Added to provide the Coordinator with the discretion to recover costs associated with the remuneration and other expenses of the representatives of small-use consumers on the MAC.
	2.24.5C(b)	Added to require the Coordinator to publish on its Website the proportion of costs corresponding to each of its functions under the WEM Rules, to address a concern raised in submissions.
GSI	12(1)	Changed to ensure the independence from Government of the small end-use customer representatives to be nominated by the Minister as members of GAB, as proposed in submissions. Also changed to limit the number of small end-use customer representatives to a maximum of two.
	12(4)	Provision added for each independent Chair of the GAB to be appointed for a term of three years, with the possibility of just one three-year extension, to address a stakeholder suggestion.
	12(6).	Provision added allowing the Minister to appoint an interim Chair of the GAB in the event that the independent Chair becomes temporarily unavailable or the position is otherwise vacant for any reason. The interim Chair may be appointed for an initial term of up to six months and may be reappointed for further six months. The interim Chair must meet, so far as is practicable, the criteria for independence.
	12(7)	Provision added allowing the Coordinator to appoint an interim member representing small-use consumers if both positions are vacant for any reason, to make sure consumer representatives are always present at GAB meetings.
	110B(2)(b)	Added to require the Coordinator to publish on its Website the proportion of costs corresponding to each of its functions under the GSI Rules, to address a concern raised in submissions.
	126(2)	Changed so that, before giving a statement of policy principles, the Minister may provide a draft of the proposed statement to the GAB and seek GAB’s views on it, to address a concern raised in submissions.

Amending Rules	Section/Rule	Description of change
	128(1)(aa)	Amended to ensure that, in deciding whether to make Amending Rules, the Coordinator has regard to any advice received from the GAB regarding the evolution or the development of the GSI Rules (not only advice received on the proposed amendments).
	128(1)(ea)	Changed to provide that, in deciding whether to make Amending Rules, the Coordinator must have regard to any dissenting views included in GAB advice, to address a concern raised in submissions.
	148A	Amended in response to submissions to clarify that a decision by the Coordinator to accept a Rule Change Proposal, which was initiated by the Coordinator, does not take effect until it receives the Minister's approval. The changed wording will also ensure that Market Participants do not lose their right to appeal a decision to change the WEM Rules.