

# Independent Market Operator



## **Draft Market Rule Change Report**

**Title: Discretion of IMO to decide  
whether to issue warning**

Ref: RC\_2007\_07

Date: 28 August 2007

## CONTENTS

1.	INTRODUCTION .....	2
1.1.	General Information about Rule Changes.....	2
1.2.	About this Rule Change .....	2
2.	THE RULE CHANGE PROPOSAL.....	4
2.1.	The Submission.....	4
2.2.	Details of the Proposal .....	4
2.3.	Amending Rules Proposed by the IMO.....	5
2.4.	The IMO's Initial Assessment of the Proposal .....	6
3.	SUBMISSIONS.....	7
3.1.	Market Advisory Committee .....	7
3.2.	Submission from Synergy .....	7
3.3.	Public Forums and Workshops .....	7
4.	THE IMO'S ASSESSMENT AND DECISION.....	8
4.1.	Assessment.....	8
4.2.	IMO's Draft Decision .....	10
5.	CALL FOR SUBMISSIONS .....	11
6.	PROPOSED AMENDING RULES.....	12
6.1.	Clause 2.13.10 .....	12

## DOCUMENT DETAILS

IMO Notice No.: RC\_2007\_07  
Report Title: Draft Rule Change Report: Discretion of IMO to decide whether to issue warning  
Release Status: Public  
Confidentiality Status: Public domain  
Published in accordance with Market Rule 2.7.6

## Independent Market Operator

Level 22, The Forrest Centre  
221 St George's Terrace, Perth WA 6000  
PO Box 7096, Cloisters Square, Perth WA 6850  
Tel. (08) 9254 4300  
Fax. (08) 9254 4399  
Email: [imo@imowa.com.au](mailto:imo@imowa.com.au)  
Website: [www.imowa.com.au](http://www.imowa.com.au)

## 1. INTRODUCTION

### 1.1. *General Information about Rule Changes*

Clause 2.5.1 of the Wholesale Electricity Market Rules provides that any person (including the Independent Market Operator) may make a Rule Change Proposal by completing a Rule Change Proposal Form and submitting this to the Independent Market Operator (IMO).

In order for the proposal to be progressed, the change proposal must explain how it will enable the Market Rules to better contribute to the achievement of the wholesale electricity market objectives. The objectives of the market are:

- (a) to promote the economically efficient, safe and reliable production and supply of electricity and electricity related services in the South West interconnected system
- (b) to encourage competition among generators and retailers in the South West interconnected system, including by facilitating efficient entry of new competitors
- (c) to avoid discrimination in that market against particular energy options and technologies, including sustainable energy options and technologies such as those that make use of renewable resources or that reduce overall greenhouse gas emissions
- (d) to minimise the long-term cost of electricity supplied to customers from the South West interconnected system
- (e) to encourage the taking of measures to manage the amount of electricity used and when it is used

A Rule Change Proposal can be processed using a Standard process or a Fast Track process. The Standard process involves a combined 10 weeks public submission period. Under the shorter Fast Track process the IMO consults with Rule Participants who either advise the IMO that they wish to be consulted or the IMO considers have an interest in the change.

### 1.2. *About this Rule Change*

On 11 June 2007, the IMO submitted a Rule Change Proposal titled Discretion of IMO to Decide Whether to Issue Warning.

This Proposal is being processed using the Standard Rule Change Process, described in section 2.7 of the Wholesale Electricity Market Rules.

The Standard Process adheres to the following timelines, outlined in section 2.7 of the Market Rules:

- The Public Submission period is 6 weeks after the IMO has published the Rule Change Notice for the proposal
- The IMO must publish a Draft Rule Change report within 20 Business Days of the end of the submission period.

## Public Domain

- The second Public Submission period is for a minimum of 20 Business Days from the date the Draft Rule Change Report is published.
- Within 20 Business Days after the end of the second Public Submission period, the IMO must publish a Final Rule Change Report.

The key dates in processing this Rule Change Proposal are:

- The Rule Change Notice for this proposal was published on the IMO website on 19 June 2007.
- The first Public Submission period on the Rule Change Proposal ended on 31 July 2007.
- This Draft Rule Change Report is published on 28 August 2007.
- The second Public Submission period is from 29 August to 25 September 2007.
- The Final Rule Change Report will be published by the IMO on 23 October 2007.
- The Minister decision on the Final Rule Change Report and the Market Rule Change Proposal is expected by 20 November 2007.

Based on the submissions received, the IMO's draft decision is to accept the Rule Change in the proposed form described in Chapter 6 of this report.

This Draft Rule Change Report on the Rule Change Proposal has been prepared by the IMO in accordance with clause 2.7.6 of the Market Rules.

Interested parties are invited to provide further submissions in relation to this Draft Rule Change Report. In accordance with the Market Rules timelines, the deadline for submissions is 25 September 2007.

## 2. THE RULE CHANGE PROPOSAL

### 2.1. *The Submission*

The IMO submitted, on 11 June 2007, a Rule Change Proposal regarding changes to clause 2.13.10 of the Wholesale Electricity Market Rules.

#### 2.1.1. *Submission Details*

**Name:** Anne Nolan  
**Phone:** (08) 9254 4300  
**Email:** [imo@imowa.com.au](mailto:imo@imowa.com.au)  
**Organisation:** Independent Market Operator  
**Date submitted:** 11/06/2007  
**Urgency:** High  
**Change Proposal title:** Discretion of IMO to Decide Whether to Issue Warning.

### 2.2. *Details of the Proposal*

The IMO's proposed Rule Change will give the IMO discretion whether to issue a warning letter once it has completed an investigation into an alleged rule breach.

Clause 2.13.10 of the Wholesale Electricity Market Rules provides that if an investigation into an alleged rule breach leads the IMO to reasonably believe that a breach of the Market Rules or Market Procedures has taken place, the IMO must issue a warning to the person concerned.

The warning must:

- Identify the clauses that the IMO believes were breached
- Describe the behaviour that comprises the alleged breach
- Request an explanation
- Request that the breach be rectified by a specified time

The IMO submitted that this process can be inappropriate where the event is minor or has already been corrected by the time the IMO becomes aware of it. It also may discourage Rule Participants from volunteering information about behaviour which may constitute a rule breach, and to that extent prevent the IMO from being able to engage constructively with Rule Participants to provide assistance in the development of compliance systems.

By contrast, when, under clause 2.13.21, an alleged breach of the rules by the IMO is investigated by a person appointed by the Minister, that appointee has discretion, at the end of its investigation, whether to issue a warning to the IMO.

The IMO considers that the investigation processes followed by the IMO and by the Minister's appointee should be aligned, and that the IMO should have the same discretion as is given to the Minister's appointee.

The proposed change would also bring the Market Rules closer in design to the National Electricity Law. That Law, and the National Electricity Rules made pursuant to it, give the Australian Energy Regulator (AER) both the option to investigate an alleged breach and the option to apply for a penalty if it finds that a breach has occurred.

The proposed additional flexibility would not prevent the IMO from being able to take all steps necessary to enforce a serious breach of the Market Rules or Market Procedures should it need to do that, but rather would allow the IMO to support Participants in their compliance endeavours.

The IMO submitted that it is aware of the importance of maintaining an auditable process. To achieve this, the IMO proposed that the results of every investigation be recorded.

### **2.3. Amending Rules Proposed by the IMO**

Amendments to clause 2.13.10 were proposed as follows:

2.13.10 If the IMO becomes aware of an alleged breach of the Market Rules or Market Procedures, then ~~it must~~:

- (a) it must record the alleged breach;
- (b) it must investigate the alleged breach;
- (c) it must record the results of each investigation;
- (d) where it reasonably believes a breach of the Market Rules or Market Procedures has taken place, it may issue a warning to the Rule Participant to rectify the alleged breach. The warning must:
  - i. identify the clause or clauses of the Market Rules or the Market Procedures that the IMO believes has been, or are being, breached;
  - ii. describe the behaviour that comprises the alleged breach;
  - iii. request an explanation; and
  - iv. request that the alleged breach be rectified and a time (which the IMO considers reasonable) by which the alleged breach should be rectified; and

it must record the response of the Rule Participant to ~~the~~ any warning issued under clause 2.23.10(d).

#### **2.4. *The IMO's Initial Assessment of the Proposal***

The IMO decided to proceed with the proposal on the basis of its preliminary assessment which indicated that the proposal was consistent with the Market Objectives. This preliminary assessment was published in a Rule Change Notice on 19 June 2007.

### **3. SUBMISSIONS**

IMO received one submission, from Synergy. A summary of the submission is listed below. The submission can be found on the IMO website.

#### **3.1. *Market Advisory Committee***

The Rule Change Proposal was presented to the Market Advisory Committee (MAC) at its meeting on 9 May 2007.

MAC expressed general support for this proposal. To ensure accountability, MAC was of the view that the IMO internal procedures should ensure that the decision making process in exercising the discretion whether to issue a warning is properly documented, and each circumstance where the IMO does not issue a warning is registered. MAC recommended that the Rules be further amended to ensure the IMO was required to record the results of every investigation.

The IMO acknowledged the concerns raised by MAC in its formal Rule Change Proposal.

At the MAC meeting on 11 July, members were again invited to express their view on the formal proposal. MAC supported the revised change. No member expressed concerns with the proposed change.

#### **3.2. *Submission from Synergy***

Synergy expressed its support for the Rule Change Proposal.

Synergy noted that the current requirements under Clause 2.13.10 of the Wholesale Electricity Market Rules are overly prescriptive and do not allow the IMO to exercise discretion in carrying out its regulatory functions.

In particular, Synergy saw the current requirement as being inappropriate in circumstances where the event is minor or has already been corrected by the time the IMO becomes aware of it.

Synergy submitted that the current Market Rules may actively discourage other Rule Participants from volunteering information about a current or potential rule breach.

#### **3.3. *Public Forums and Workshops***

No public forums or workshops were held in relation to this Rule Change.



## 4. THE IMO'S ASSESSMENT AND DECISION

### 4.1. Assessment

#### 4.1.1. Submissions

MAC and Synergy supported the changes. There were no responses indicating concern with the proposed changes.

#### 4.1.2. The IMO's Assessment

According to clauses 2.4.2 of the Market Rules *"the IMO must not make Amending Rules unless it is satisfied that the Market Rules, as proposed to be amended or replaced, are consistent with the Wholesale Market Objectives"*.

The IMO' assessment against each of the Market Objectives is as follows:

- (a) *to promote the economically efficient, safe and reliable production and supply of electricity and electricity related services in the South West interconnected system.*

The IMO considers that reducing bureaucracy will decrease compliance costs for Participants and result in more economically efficient operation of the Market in the South West Interconnected System. This is consistent with the operation of objective (a) of the Market Objectives.

- (b) *to encourage competition among generators and retailers in the South West interconnected system, including by facilitating efficient entry of new competitors.*

The IMO considers that the burden of compliance should be minimised, especially regarding new competitors in the Market who generally have fewer resources to deal with compliance matters. The compliance culture of these Participants should be encouraged, but the current Rules require the IMO to take a rigid and bureaucratic approach when a flexible one would be better suited to certain circumstances.

Granting this discretion to the IMO when dealing with non-compliance by Rule Participants would result in a better process for handling minor rule breaches, especially in the early days of the market, but would not prevent the IMO from taking more serious steps should that be appropriate in the circumstances.

The IMO considers that the proposed changes, therefore, are consistent with the operation of objective (b) of the Market Objectives.

- (c) *to avoid discrimination in that market against particular energy options and technologies, including sustainable energy options and technologies such as those that make use of renewable resources or that reduce overall greenhouse gas emissions.*

The IMO considers that the proposed changes do not impact on, and therefore are consistent with, the operation of objective (c) of the Market Objectives.

- (d) *to minimise the long-term cost of electricity supplied to customers from the South West interconnected system*

The IMO considers that the proposed changes will reduce compliance bureaucracy and as a result long-term costs of compliance both for the IMO and for Participants will be minimised. This is consistent with the operation of objective (d) of the Market Objectives.

- (e) *to encourage the taking of measures to manage the amount of electricity used and when it is used.*

The IMO considers that the proposed changes do not impact on, and therefore are consistent with, the operation of objective (e) of the Market Objectives.

In accordance with Clause 2.4.3(b) of the Market Rules, in deciding whether or not to make Amending Rules, the IMO must also have regard to the practicality and cost of implementing the Amending Rules.

The proposed changes to clause 2.13.10 will not require changes to the Wholesale Electricity Market System operated by the IMO. The IMO's assessment indicates that there will be no other practical implications or additional costs in implementing the changes for the IMO or any other Participant.

#### **4.2. IMO's Draft Decision**

The IMO's proposed decision is to:

- Accept the proposed changes to clause 2.3.10 as proposed.

The IMO has made its draft decision on the basis that the resulting amended Rules will allow the Market Rules to better address the Market Objectives.

The wording of the relevant amending Rule is presented in section 6 of this Report.

Clause 2.13.10 is a protected provision, as specified in clause 2.8.13 of the Market Rules. The proposed changes will therefore, as prescribed in clause 2.8.3, require approval from the Minister for Energy once the Final Report is published.

## 5. CALL FOR SUBMISSIONS

The IMO wishes to receive submissions regarding this Draft Rule Change Report. The submission period is 20 Business Days from the publication date of this Report.

Submissions must be delivered to the IMO by close of business on Tuesday, 25 September 2007.

The IMO prefers to receive submissions by email to [marketadmin@imowa.com.au](mailto:marketadmin@imowa.com.au) using the submission form available on the IMO website:  
[http://www.imowa.com.au/10\\_5\\_1\\_a\\_v\\_open\\_rule\\_change\\_proposals.htm](http://www.imowa.com.au/10_5_1_a_v_open_rule_change_proposals.htm)

Submissions may also be sent to the IMO by fax or post, addressed to:

**Independent Market Operator**

Attn: Dora Guzeleva, Manager Market Administration  
PO Box 7096  
Cloisters Square, Perth, WA 6850

Fax: (08) 9254 4399

## 6. PROPOSED AMENDING RULES

### 6.1. *Clause 2.13.10*

2.13.10 If the IMO becomes aware of an alleged breach of the Market Rules or Market Procedures, then ~~it must~~:

- (e) it must record the alleged breach;
- (f) it must investigate the alleged breach;
- (g) it must record the results of each investigation;
- (h) where it reasonably believes a breach of the Market Rules or Market Procedures has taken place, it may issue a warning to the Rule Participant to rectify the alleged breach. The warning must:
  - i. identify the clause or clauses of the Market Rules or the Market Procedures that the IMO believes has been, or are being, breached;
  - ii. describe the behaviour that comprises the alleged breach;
  - iii. request an explanation; and
  - iv. request that the alleged breach be rectified and a time (which the IMO considers reasonable) by which the alleged breach should be rectified; and

it must record the response of the Rule Participant to ~~the~~ any warning issued under clause 2.23.10(d).