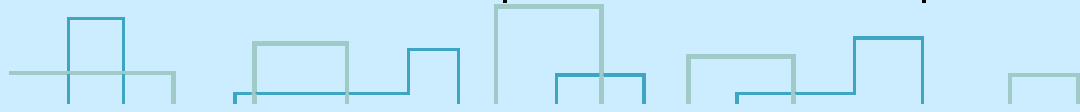


Independent Market Operator



Final Market Rule Change Report

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

Ref: RC_2007_07

Date: 23 October 2007

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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.

The proposal has been processed by the IMO 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 first Public Submission period is 30 Business Days from the date the IMO publishes a 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.
- The second Public Submission period is 20 Business Days from the date the

IMO publishes the Draft Rule Change Report.

- The IMO publishes its Final Rule Change Report within 20 Business Days of the end of the second Public Submissions period.

The key dates in processing this Rule Change Proposal were:

- 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.
- The Draft Rule Change Report was published on 28 August 2007.
- The second Public Submission period was from 29 August to 25 September 2007.
- This Final Rule Change Report is published by the IMO on 23 October 2007.
- The Minister's decision on the Final Rule Change Report and the Market Rule Change Proposal will be available on the 20 November 2007.

Based on the submissions received and the IMO's assessment of the proposed changes against the Market Objectives, the IMO's decision is to accept the Rule Change in the form described in section 7 of this report.

This Final Rule Change Report on the Rule Change Proposal has been prepared by the IMO in accordance with clause 2.7.8 of the Market Rules.

2. THE RULE CHANGE PROPOSAL

2.1. *The Submission*

On 11 June 2007, the IMO submitted 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
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, and found that a breach of the Market Rules or Market Procedures has taken place.

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 a person appointed by the Minister investigates an alleged breach of the rules by the IMO, under clause 2.13.21, 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. *The Proposal and the Market Objectives*

The IMO considered that the suggested changes effectively addressed objectives (a), (b) and (d) of the Wholesale Market Objectives:

2.4. Amending Rules Proposed by the IMO

The IMO proposed the following changes to clause 2.13.10 of the Market Rules to address the issues identified in its Proposal:

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

3. SUBMISSIONS RECEIVED IN THE FIRST SUBMISSION PERIOD

The first submission period for this Rule Change Proposal was between 19 June and 21 July 2007. The IMO received one submission from Synergy. A summary of that submission is provided in paragraph 3.2 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 reflected the concerns raised by MAC in its formal Rule Change Proposal.

At the MAC meeting on 11 July 2007, members were again invited to express their views on the formal proposal. MAC supported the changes. No member expressed concerns with the proposed changes.

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 Proposal.

4. THE IMO'S DRAFT DECISION

Based on the submission received and its own assessment against the Market Objectives, the IMO's draft decision was to accept the proposed changes to clause 2.23.10 of the Market Rules as proposed by the IMO.

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

5. SUBMISSIONS RECEIVED IN THE SECOND SUBMISSION PERIOD

The second submission period was between 29 August and 25 September 2007, following the publication of the Draft Rule Change Report. The IMO received two submissions, from Alinta Sales and the Economic Regulation Authority. A summary of the submissions is provided below. The submissions can be found on the IMO website.

5.1. *Submission from Alinta Sales*

Alinta agreed with the proposed change to the Market Rules and considered that it would better facilitate objectives (a), (b) and (d) of the Market Rules.

5.2. *Submission from the Economic Regulation Authority (ERA)*

The ERA agreed that the current provision in the Market Rules, which does not provide the IMO with the option to issue a warning, is unnecessarily prescriptive. The ERA's view is that normal administrative procedures would ensure that Rule Participants are notified where a Market Rule or Market Procedure breach is recorded.

The IMO takes the submission by the ERA to mean that the Rule Participant that is alleged to have committed a breach of a Market Rule or a Market Procedure should be notified, and confirms that this is the case. In addition, Regulation 38 of the *Electricity Industry (Wholesale Electricity Market) Regulations 2004* requires that where a person provided information about a contravention or possible contravention of the Market Rules, the IMO must notify that person of its decision.

6. THE IMO'S ASSESSMENT AND FINAL DECISION

No interested party expressed concerns regarding the amendments to the Market Rules as proposed in the IMO's Draft Rule Change Report. In their submissions, Alinta Sales, the ERA and Synergy expressed support for the proposed changes.

6.1. *The IMO's Assessment of the Rule Change Proposal*

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's assessment of the Rule Change Proposal against each of the Market Objectives, which was also published in the IMO's Draft Report, 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.*

Assessment: 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.*

Assessment: 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. However, this 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.*

Assessment: 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*

Assessment: 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.*

Assessment: 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 amendments will not require any changes to the IMO market systems. 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.

6.2. The IMO's Final Decision

The IMO's final decision is to accept the proposed rule changes to clause 2.13.10 of the Market Rules as proposed by the IMO.

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

The wordings of the relevant Amending Rules are presented in section 7 of this Report.

6.3. Minister Approval

Clause 2.13.10 of the Market Rules is a Protected Provision, as specified in clause 2.8.13 of the Market Rules. Amendments to Protected Provisions require approval from the Minister for Energy. As required under clause 2.8.3 of the Market Rules, the IMO will submit this Final Rule Change Report to the Minister for Energy for his

consideration. The Minister's decision is expected to be available by 20 November 2007.

6.4. Amending Rules Commencement

Subject to receipt of the Minister's approval, the amendments to clause 2.13.10 of the Market Rules will commence at **08.00am** on **25 November 2007**.

7. AMENDING RULES

The following clause is amended (~~deleted wording~~, new wording):

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