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## Wholesale Electricity Market - Market Rule Change Proposal

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**Change Proposal No:** RC\_2007\_07

**Received date:** 11/06/2007

### Submitted by

<b>Name:</b>	Anne Nolan
<b>Phone:</b>	9254 4300
<b>Fax:</b>	
<b>Email:</b>	<a href="mailto:imo@imowa.com.au">imo@imowa.com.au</a>
<b>Organisation:</b>	Independent Market Operator
<b>Address:</b>	Level 22, Forest Centre, 221 St Georges Tce, Perth WA 6000
<b>Date submitted:</b>	11 June 2007
<b>Urgency:</b>	High
<b>Change Proposal title:</b>	<b>Discretion of IMO to decide whether to issue warning</b>
<b>Market Rule(s) affected:</b>	Clause 2.13.10

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### Introduction

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

This Change Proposal can be posted, faxed or emailed to:

**Independent Market Operator**

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

Fax: (08) 9420 5755

Email: [dora.guzeleva@imowa.com.au](mailto:dora.guzeleva@imowa.com.au)

The Independent Market Operator will assess the proposal and, within 5 Business Days of receiving this Rule Change Proposal form, will notify you whether the Rule Change Proposal will be further progressed.

In order for the proposal to be progressed, all fields below must be completed and 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; and
- (e) to encourage the taking of measures to manage the amount of electricity used and when it is used.

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## Details of the proposed Market Rule Change

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### 1. Outline the issue concerning the existing Market Rules that is to be addressed by the proposed Market Rule change:

A rule change is proposed to 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.

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 prevents 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 is aware of the importance of maintaining an auditable process. To achieve this the IMO proposes that the results of every investigation be recorded, and the proposed rule change reflects this.

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## **2. Explain the reason for the degree of urgency:**

Non-compliance that has occurred in the Market so far has been minor or technical, and the IMO's view is that it has not been appropriate for the IMO to issue a formal warning. Without an amendment to the Rules the IMO will be compelled to issue formal warnings even when this is inappropriate in all of the circumstances, or commit a breach of the Rules itself.

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## **3. Provide any proposed specific changes to particular Rules:**

Amendments to clause 2.13.10 are 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
- (e) it must record the response of the Rule Participant to the any warning issued under clause 2.23.10(d).

#### **4. Describe how the proposed Market Rule change would allow the Market Rules to better address the Wholesale Market Objectives:**

The objectives of the market as set out in clause 1.2.1 of the Market Rules 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.*

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.

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## **5. Provide any identifiable costs and benefits of the change:**

### **Costs**

No tangible increase in costs will result from this proposal.

### **Benefits**

The IMO will have increased flexibility in the management of alleged rule breaches and this will benefit participants. Compliance bureaucracy will be reduced and this will improve the regulatory environment.

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