



Final Rule Change Report Title: Delegation by the IMO

Ref: RC_2008_18

Standard Rule Change Process

Date: 20th October 2008

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DOCUMENT DETAILS

IMO Notice No.: RC_2008_18
Report Title: Final Rule Change Report: Delegation by IMO
Release Status: Public
Confidentiality Status: Public domain
Published in accordance with Market Rule 2.7.6

Independent Market Operator

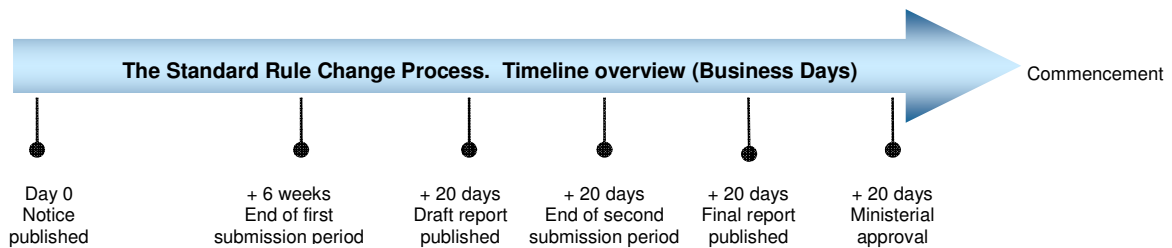
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1. INTRODUCTION

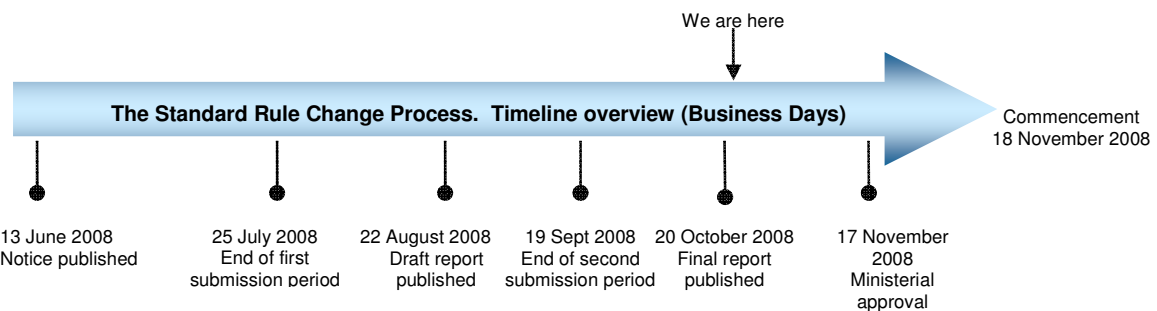
On 4 June 2008 the IMO submitted a Rule Change Proposal regarding changes to clauses 2.1.3 and 2.2.3 to the Wholesale Electricity Market Rules (Market Rules).

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

The standard process adheres to the following timelines, outlined in section 2.7 of the Market Rules:



The key dates in processing this Rule Change Proposal are:



Based on its own analysis and the submissions received, the IMO's final decision is to implement the Rule Change in the form outlined 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 2.7.6 of the Market Rules.

Subject to the approval of the Minister, the amendments to the Market Rules made as a result from this Rule Change Proposal will commence at 08.00am on 18 November 2008.

2. THE RULE CHANGE PROPOSAL

2.1 Submission Details

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Organisation:	Independent Market Operator
Address:	Level 3, 197 St Georges Terrace, Perth WA 6000
Date submitted:	4/06/2008
Urgency:	Low
Change Proposal title:	Delegation by the IMO

2.2 Details of the Proposal

The IMO submitted that clause 2.1.3 of the Market Rules gives the IMO the power to delegate any of its functions under the Market Rules (other than certain powers that are not able to be delegated) to a person or persons that in the IMO's opinion are competent to exercise those functions. Delegations made under this provision do not need to be in any particular form.

Regulation 25 of the *Electricity Industry (Independent Market Operator) Regulations 2004* (the IMO Regulations) also contains a provision allowing the IMO to delegate any power or duty of the IMO under the IMO Regulations or under the Wholesale Electricity Market Regulations. Any such delegation may be made to the persons listed in the Regulation, who include members of the IMO staff. Delegations made under the Regulation must be made in writing.

The delegation power in Regulation 25 specifically states, in subregulation (6), that '[n]othing in this regulation limits the ability of the IMO to perform a function through an officer or agent'. There is no similar provision in the delegation provision in the Market Rules which appears to be aimed at delegations to persons outside of the IMO umbrella, for example to third parties such as System Management or to committees formed to assist the IMO in relation to particular functions.

Although some decisions are made by the IMO Board, in practice the IMO carries out most of its functions and exercises its powers through appropriately authorised and competent members of its staff. Operational matters, for example, are carried out by operational staff. Some authorisations, such as those that relate to expenditure, are made in formal written documents. Others, however, are found in less formal writings or are given orally and often exist because of past practice.

The IMO submitted that it has been advised that there are conflicting authorities as to whether it should rely on the power to delegate that derives from the Regulations, in which case all delegations must be written, or the power to delegate that derives from the Market Rules, which does not require that delegations be written and is therefore more flexible.

In order to put the matter beyond doubt, the IMO proposed to amend clause 2.1.3 to clarify that the power to delegate given by the Market Rules extends to any delegation made to officers or employees of the IMO.

The IMO also submitted that clause 2.2.3 of the Market Rules, which gives System Management the power to delegate, is phrased in the same way as clause 2.1.3 – it permits System Management to delegate to competent persons but, because it is in the same terms as the IMO delegation provision, could be read to mean only to persons outside of System Management. In order to clarify that the clause was intended to permit delegation to the officers and staff of System Management, the same changes were proposed to be made to clause 2.2.3.

2.3 *The Proposal and the Market Objectives*

The IMO's submission regarding how the amendments will allow the Market Rules to better address the market objectives can be found in section 6.1. of this Report.

2.4 *Amending Rules proposed by the IMO*

The amendments to the Market Rules proposed by the IMO are available in section 7 of this report.

2.5 *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 Wholesale Market Objectives. This preliminary assessment was published in a Rule Change Notice on 13 June 2008.

3 SUBMISSIONS RECEIVED IN THE FIRST SUBMISSION PERIOD

The IMO received two submissions on the changes proposed by the IMO, from Synergy and from Landfill Gas and Power Pty Ltd. The submissions are summarised in the paragraphs below, and the full text is available on the IMO web site.

3.1 *Market Advisory Committee*

The Market Advisory Committee (MAC) was first advised of the proposed rule change at its meeting on 14 May 2008, before it was formally submitted by the IMO.

At the meeting, no members of MAC expressed any concerns regarding the rule change as proposed.

3.2 *Submission from Synergy*

In its submission Synergy expressed its support for the Rule Change Proposal. Synergy acknowledged that although some decisions are made directly by the IMO Board, in all practicality the IMO carries out the majority of its functions and powers via its senior staff, employees and agents, and in some instances, those of System Management.

Synergy therefore considered that the proposed Rule change would facilitate those arrangements.

Further, Synergy agreed with the IMO that clarifying the operation of the power to delegate in the Market Rules would allow the IMO to operate more effectively and efficiently, and potentially reduce the cost of unnecessary bureaucracy.

3.3 *Submission from Landfill Gas and Power Pty Ltd (LGP)*

In its submission LGP expressed its support for the Rule Change Proposal on the grounds that it sought to clarify that the IMO and System Management delegation powers are not confined to the appointment of independent parties, but may be applied to agent's officers and employees.

The LGP submission supported the IMO's contention that the Rule Change would provide certainty and confidence that the IMO is operating within the scope of the Market Rules and Regulations in the manner in which it organises its affairs, and would reduce the cost of unnecessary bureaucracy.

3.4 *Public Forums and Workshops*

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

4 THE IMO'S DRAFT DECISION

4.1 *The IMO's Draft Decision*

The IMO's draft decision was to implement the proposed amendments to clauses 2.1.3 and 2.2.3 of the Wholesale Electricity Market Rules as proposed.

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

5 SUBMISSIONS RECEIVED IN THE SECOND SUBMISSION PERIOD

Following the publication of the Draft Rule Change Report on the IMO web site, the second submission period was between 25 August 2008 and 19 September 2008. The IMO did not receive any submissions during this time.

6 THE IMO'S ASSESSMENT AND THE IMO'S FINAL DECISION

6.1 Assessment

6.1.1 Submissions

All parties responding within the prescribed submission periods expressed support for the Rule Change Proposal. No party proposed any changes to the proposed amendments to the Market Rules.

6.1.2 The IMO's Assessment

According to clause 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 considers that the proposed Amending Rules will have the following impact on how the Market Rules address the Wholesale Market Objectives:

Impact	Wholesale Market Objectives
Allow the Market Rules to better address objective	a
Consistent with objective	b, c, d and e
Inconsistent with objective	-

The IMO's assessment against market objective (a) 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 proposed amendments will allow the IMO to operate more effectively and efficiently, and potentially reduce the cost of unnecessary bureaucracy. This will be accomplished by clarifying the operation of the power to delegate as set out in the Market Rules.

The proposed change will provide certainty and confidence to existing and new participants that the IMO operates within the scope of the Market Rules and Regulations in the manner in which it organised its affairs.

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 will not require any changes to the Wholesale Electricity Market Systems operated by the IMO. No other costs have been identified in relation to the implementation of the proposed changes.

6.2 The IMO's Final Decision

The IMO's final decision is to implement the amendments to clauses 2.1.3 and 2.2.3 of the Wholesale Electricity Market Rules as proposed by the IMO.

The wording of the relevant Amending Rules is presented in section 7 of this Report.

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

6.3 Amending Rules Commencement

The amendments to the Market Rules resulting from this Rule Change Proposal will commence at **08.00am** on **18 November 2008**.

7. AMENDING RULES

The IMO proposed the following new clauses to the Market Rules (~~deleted words~~, added words):

- 2.1.3. The IMO may delegate any of its functions under the Market Rules (other than the power to do the things indicated as not able to be delegated in regulation 17(l) of the Regulations) to a person or body of persons that is, in the IMO's opinion, competent to exercise the relevant functions. A function performed by a delegate is to be taken to be performed by the IMO. A delegate performing a function under this clause 2.1.3 is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown. Nothing in this clause 2.1.3 limits the ability of the IMO to perform a function through an officer, employee or agent.
- 2.2.3. System Management may delegate any of its functions under the Market Rules (other than the power to do the things indicated as not able to be delegated in the Regulations) to a person or body of persons that is, in System Management's opinion, competent to exercise the relevant functions. A function performed by a delegate is to be taken to be performed by System Management. A delegate performing a function under this clause 2.2.3. is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown. Nothing in this clause 2.2.3 limits the ability of System Management to perform a function through an officer, employee or agent.

8. GENERAL INFORMATION ABOUT RULE CHANGE PROPOSALS

Clause 2.5.1 of the Wholesale Electricity Market Rules (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 Market Objectives. The market objectives 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 Rule Change Process or a Fast Track Rule Change 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.