



**Independent Market Operator**

**Final Market Rule Change  
Report**

**Title: Change of Review Board  
name**

**Ref: RC\_2010\_18**

**Date: 19 July 2010**

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### Independent Market Operator

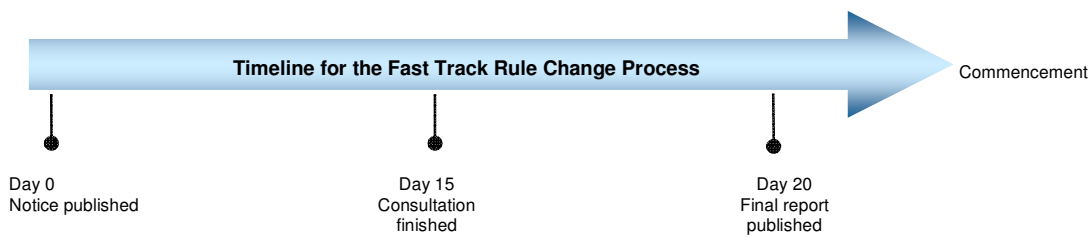
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## 1. INTRODUCTION

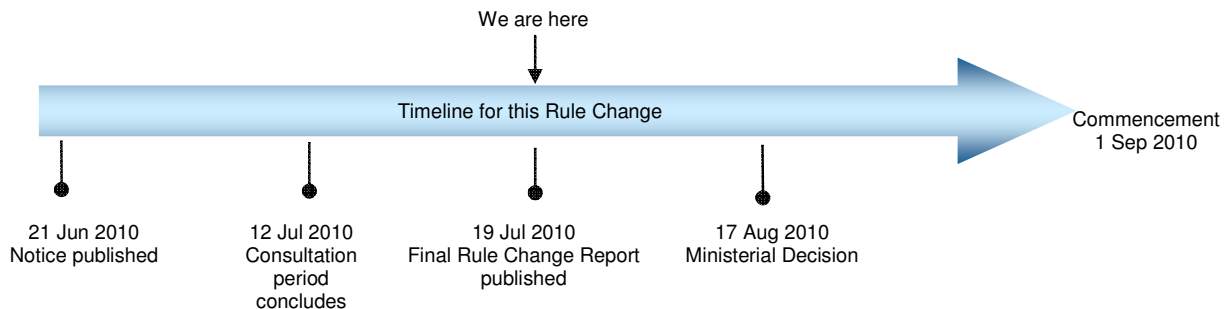
On 18 June 2010 the Independent Market Operator (IMO) submitted a Rule Change Proposal regarding amendments to clauses 2.8.1, 2.8.2, 2.11.1, 2.11.2, 2.13.17, 2.13.18, 2.13.22, 2.13.23, 2.13.24, 2.13.26, 2.13.28, 2.15.3(f), 2.16.9G, 2.16.9H, 2.17.3, 2.31.13(e), 2.32.1, 2.32.5(b), 2.32.6, 2.32.7, 10.2.2 and 10.5.1(r) and the Glossary of the Wholesale Electricity Market Rules (Market Rules).

This Proposal was processed using the Fast Track Rule Change Process, described in section 2.6 of the Market Rules.

The fast track process adheres to the following timelines:



The key dates in processing this Rule Change Proposal are:



The IMO's final decision is to implement the Rule Change Proposal in the form outlined in section 6.2 of this report. The decision is based on the IMO's assessment of the Rule Change Proposal against the:

- Wholesale Market Objectives;
- practicality and cost of implementing the proposal; and
- outcomes from the public consultation period.

The amendments to the Market Rules made as a result of this Rule Change Proposal will commence at 8.00am on 1 September 2010.

All documents related to this Rule Change Proposal can be found on the IMO website: [http://www.imowa.com.au/RC\\_2010\\_18](http://www.imowa.com.au/RC_2010_18)

## 2. THE RULE CHANGE PROPOSAL

### 2.1 Submission Details

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<b>Date submitted:</b>	18 June 2010
<b>Urgency:</b>	Low
<b>Change Proposal title:</b>	Change of Review Board name
<b>Market Rules affected:</b>	Clauses 2.8.1, 2.8.2, 2.11.1, 2.11.2, 2.13.17, 2.13.18, 2.13.22, 2.13.23, 2.13.24, 2.13.26, 2.13.28, 2.15.3(f), 2.16.9G, 2.16.9H, 2.17.3, 2.31.13(e), 2.32.1, 2.32.5(b), 2.32.6, 2.32.7, 10.2.2 and 10.5.1(r) and the Glossary

### 2.2 Details of the Proposal

The Energy Review Board is the primary appeals body for the Wholesale Electricity Market, having the functions of:

- imposing penalties for more serious categories of breaches of the Market Rules;
- hearing appeals against the IMO's decisions relating to rule breaches;
- hearing claims from Rule Participants that the IMO has breached the Market Rules;
- hearing appeals against reviewable decisions by the IMO; and
- at the request of a Rule Participant, conducting a procedural review as to whether the IMO has correctly followed the rules relating to Rule Changes, and where appropriate overturning Rule Change decisions by the IMO if the IMO has failed to follow the correct process.

The Market Rules define the Energy Review Board as “the Board within the meaning of the Electricity Industry Act”. Until early this year, the Electricity Industry Act 2004 stated that “**Board** has the meaning given to that term in the Gas Pipelines Access (Western Australia) Act 1998 section 49”. Section 49 defined this Board as the Western Australian Gas Review Board, established under section 50 of the same Act.

The initial role of the Western Australian Gas Review Board was expanded to include electricity related functions, after which it was commonly referred to as the Energy (Gas) Review Board. Prior to market start, while the Market Rules were still under development, the Office of Energy planned to make legislative amendments to change the name to Energy Review Board, and this

name was used in the Market Rules in anticipation. However, the legislative amendment never occurred.

Earlier this year, legislation was passed to introduce the new gas access regime under the National Gas Access (WA) Act 2009 (the NGA Act). The NGA Act changed the names of other legislation and entities to reflect their revised roles and responsibilities, as follows:

- the Gas Pipelines Access (WA) Act 1998 was renamed the Energy Arbitration and Review Act 1998; and
- the Western Australian Gas Review Board was renamed the Western Australian Electricity Review Board.

To reflect these changes, the definition of “Board” in the Electricity Industry Act 2004 has been updated to refer to the Energy Arbitration and Review Act 1998. It should be noted that in relation to the Wholesale Electricity Market, the amendments are changes in name only. The panel members appointed under the Gas Pipelines Access (WA) Act 1998, from which an Electricity Review Board may be convened, continue as the same panel members under the renamed Energy Arbitration and Review Act 1998.

To avoid any confusion in the future, the IMO proposed to amend the Market Rules to reflect the amended name of its primary appeals body. This involves replacing “Energy Review Board” with “Electricity Review Board” in the relevant clauses of the Market Rules (the prefix “Western Australian” has been omitted for the sake of brevity, as the IMO does not consider it to be necessary in this context).

### **2.3 The Proposal and the Wholesale Market Objectives**

Details of the IMO’s assessment of the proposal against the Wholesale Market Objectives were presented in the Rule Change Notice published on the IMO’s webpage.

### **2.4 The Amending Rules Proposed by the IMO**

The amendments to the Market Rules proposed by the IMO are provided in section 6.2 of this final report.

### **2.5 The IMO’s Initial Assessment of the Proposal**

The IMO decided to process the Rule Change Proposal using the Fast Track Rule Change Process, described in section 2.6 of the Market Rules, on the basis that it satisfies the criteria in clause 2.5.9(a) of the Market Rules. Clause 2.5.9 states:

*The IMO may subject a Rule Change Proposal to the Fast Track Rule Change Process if, in its opinion, the Rule Change Proposal:*

- is of a minor or procedural nature; or*
- is required to correct a manifest error; or*
- is urgently required and is essential for the safe, effective and reliable operation of the market or the SWIS.*



The IMO considered that the proposed changes are minor amendments which will improve the integrity of the Market Rules. The changes do not seek to amend the operation of the Market Rules. As such, the proposal fulfils sub-clause 2.5.9(a), in that it is of a minor nature, and therefore may be fast-tracked.

### 3. CONSULTATION

An invitation for all Rule Participants to contact the IMO, should they wish to be consulted on this Rule Change, was published on the IMO website on 21 June 2010, together with the Rule Change Notice.

The consultation period for this Rule Change Proposal was between 21 June 2010 and 12 July 2010. Interested stakeholders were requested to inform the IMO if they wished to be consulted on this Rule Change Proposal by 28 June 2010. In response, Perth Energy advised the IMO of its wish to lodge a submission on the Rule Change Proposal on 23 June 2010.

#### 3.1 Submissions received

The IMO received one submission from Perth Energy and out-of-session submissions from Landfill Gas & Power (LGP) and Synergy. The full text of these submissions is available on the IMO's website.

All submissions received support the Rule Change Proposal. LGP and Synergy agree with the IMO that the proposed changes will improve the integrity of the Market Rules. LGP agrees that the proposed changes are consistent with the Wholesale Market Objectives, while Perth Energy considers that the changes will better facilitate the achievement of Wholesale Market Objective (a) as they will ensure no confusion exists as to the identity of the appeals body.

No issues were raised in the submissions received by the IMO.

### 4. THE IMO'S ASSESSMENT

In preparing this Final Rule Change Report, the IMO must assess the Rule Change Proposal in light of clauses 2.4.2 and 2.4.3 of the Market Rules.

Clause 2.4.2 outlines that 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".

Additionally, clause 2.4.3 states, when deciding whether to make Amending Rules, the IMO must have regard to the following:

- any applicable policy direction from the Minister regarding the development of the market;
- the practicality and cost of implementing the proposal;
- the views expressed in submissions and by the MAC; and

- any technical studies that the IMO considers necessary to assist in assessing the Rule Change Proposal.

The IMO notes that there has not been any applicable policy direction from the Minister, nor any technical studies commissioned in respect of this Rule Change Proposal.

This IMO's assessment is outlined in the following sections.

#### 4.1 Wholesale Market Objectives

The IMO considers that the Market Rules as a whole, if amended, will be consistent with the Wholesale Market Objectives.

Wholesale Market Objective	Consistent with objective
(a) to promote the economically efficient, safe and reliable production and supply of electricity and electricity related services in the South West interconnected system	Yes
(b) to encourage competition among generators and retailers in the South West interconnected system, including by facilitating efficient entry of new competitors	Yes
(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	Yes
(d) to minimise the long-term cost of electricity supplied to customers from the South West interconnected system	Yes
(e) to encourage the taking of measures to manage the amount of electricity used and when it is used	Yes

#### 4.2 Practicality and cost of implementation

**Cost:** The proposed amendments will require minor changes to some IMO Market Procedures. The update costs fall within the IMO's normal operating budget.

The proposed amendments do not require any change to the Wholesale Electricity Market Systems operated by the IMO and are not expected to require changes to any of the systems operated by System Management. In addition there have been no identified changes to other Rule Participants' costs.

**Practicality:** The IMO has not identified any issues with the practicality of implementing the proposed changes.

#### 4.3 Views expressed in submissions

Perth Energy's submission and the out-of-session submissions from LGP and Synergy all supported the Rule Change Proposal. No issues were raised.

#### 4.4 Views of the Market Advisory Committee



The MAC did not meet to discuss this Rule Change Proposal.

## 5. THE IMO'S FINAL DECISION

The IMO's final decision is to implement the Rule Change Proposal in the form outlined in section 6.2 of this report.

### 5.1 *Reasons for the decision*

The IMO has made its decision on the basis that the Amending Rules:

- are consistent with the Wholesale Market Objectives;
- will improve the integrity of the Market Rules;
- have the support of those Market Participants formally consulted during the consultation period; and
- can be easily implemented at no additional cost to the Market.

Additional detail outlining the analysis behind the IMO's reasons is outlined in section 4 of this Final Rule Change Report.

## 6. AMENDING RULES

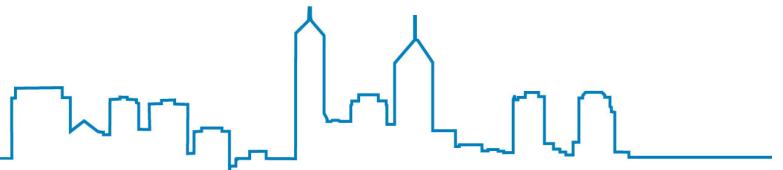
### 6.1 *Commencement*

The amendments to the Market Rules resulting from this Rule Change Proposal will commence at **8:00am** on **1 September 2010**.

### 6.2 *Amending Rules*

The following clauses are amended (~~deleted wording~~, new wording):

- 2.8.1. A Rule Participant may apply to the ~~Energy~~ Electricity Review Board for a Procedural Review of a decision by the IMO contemplated by clause 2.5.9, 2.6.4(f) or 2.7.8(e) within 10 Business Days of the relevant decision, on the grounds that the IMO has not followed the rule change process set out in clauses 2.5, 2.6 and 2.7.
- 2.8.2. Following an application for a Procedural Review under clause 2.8.1, if the ~~Energy~~ Electricity Review Board finds that the IMO has not followed the rule change process set out in clauses 2.5, 2.6 and 2.7 the ~~Energy~~ Electricity Review Board may set aside the IMO's decision and direct the IMO to reconsider the relevant Rule Change Proposal in accordance with the process set out in clauses 2.5, 2.6 and 2.7.
- 2.11.1. A Rule Participant may apply to the ~~Energy~~ Electricity Review Board for a Procedural Review of a decision by the IMO or System Management contemplated by clause





2.10.13 or 2.10.14 within 10 Business Days of the decision, on the grounds that the IMO or System Management has not followed the process set out in clause 2.10 or the Administration Procedure.

2.11.2. Following an application for a Procedural Review under clause 2.11.1, if the ~~Energy Electricity~~ Review Board finds that the IMO or System Management has not followed the process set out in clause 2.10 or the Administration Procedure, the ~~Energy Electricity~~ Review Board may set aside the IMO's decision or System Management's decision and direct the IMO or System Management to reconsider the relevant Procedure Change Proposal in accordance with clause 2.10 and the Administration Procedure.

2.13.17. Where the IMO issues a penalty notice under clause 2.13.16(a), the Rule Participants that received the penalty notice may seek a review of that decision by the ~~Energy Electricity~~ Review Board in accordance with the Regulations.

2.13.18. Where:

- (a) the alleged breach relates to a Category B or Category C Market Rule (as determined in accordance with the Regulations); and
- (b) following the investigation referred to in clause 2.13.10(b), the IMO reasonably believes that a breach of the Market Rules has taken place,

the IMO may bring proceedings before the ~~Energy Electricity~~ Review Board.

2.13.22. Where the person referred to in clause 2.13.1 considers that the alleged breach has not been rectified within the time set out in accordance with clause 2.13.21(a)(iv) it may bring proceedings before the ~~Energy Electricity~~ Review Board.

2.13.23. The orders that the ~~Energy Electricity~~ Review Board may make for a breach of the Market Rules and the procedures for the operation of the ~~Energy Electricity~~ Review Board are set out in the Regulations.

2.13.24. The IMO may direct a Rule Participant to do or to refrain from doing any thing that the IMO thinks necessary or desirable to give effect or to assist in giving effect to any order of the ~~Energy Electricity~~ Review Board.

2.13.26. The IMO must release a report at least once every six months setting out a summary for the preceding six months of:

- (a) proceedings that have been brought before the ~~Energy Electricity~~ Review Board;
- (b) findings of the ~~Energy Electricity~~ Review Board on matters referred to them;

- (c) orders made by the ~~Energy Electricity~~ Review Board; and
- (d) civil penalties imposed by the IMO under clause 2.13.16(a), where these have not been set aside by the ~~Energy Electricity~~ Review Board.

2.13.28. In addition to the regular publication described in clause 2.13.26, the IMO may release a report on any one or more matters where the IMO has made a decision under clause 2.13.16(a) or which have been referred to the ~~Energy Electricity~~ Review Board, the findings of the IMO and the ~~Energy Electricity~~ Review Board, as applicable, on those matters and any sanctions imposed by the IMO or the ~~Energy Electricity~~ Review Board in relation to those matters.

2.15.3. The Monitoring Protocol must specify:

...

- (f) the procedure for bringing proceedings in respect of Category B or C Market Rule breaches before the ~~Energy Electricity~~ Review Board.

2.16.9G. Where the Economic Regulation Authority determines that prices in the Portfolio Supply Curve, subject to the investigation, did not reflect the Market Generator's reasonable expectation of the short run marginal cost of generating the relevant electricity, the Economic Regulation Authority must request that the IMO applies to the ~~Energy Electricity~~ Review Board for an order for contravention of clause 6.6.3.

2.16.9H. Where the IMO receives a request under clause 2.16.9G the IMO must refer the relevant matter to the ~~Energy Electricity~~ Review Board requesting that a civil penalty be imposed on the relevant Market Participant.

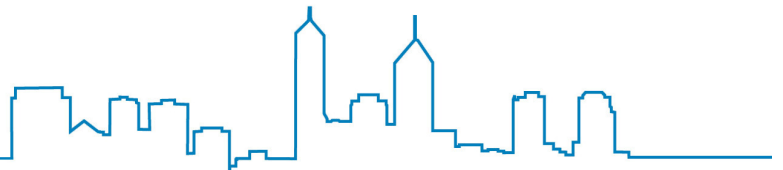
2.17.3. In accordance with the Regulations, a Rule Participant may apply to the ~~Energy Electricity~~ Review Board for a review of Reviewable Decisions or a decision made under clauses subject to Procedural Review.

2.31.13. The IMO may only reject an application if:

...

- (e) in the case of an application to register as a Rule Participant in any class where the person has previously been de-registered as a Rule Participant following an order from the ~~Energy Electricity~~ Review Board, the IMO is not satisfied that person has remedied the reason for or underlying cause of the prior de-registration;

...



- 2.32.1. Where the IMO receives notice that the ~~Energy Electricity~~ Review Board has made a decision in accordance with the Regulations that a Rule Participant be suspended, the IMO must issue a Suspension Notice to the Rule Participant.
- 2.32.5. The IMO must withdraw a Suspension Notice where:
- (a) if the notice was issued under clause 9.23, the defaulting Rule Participant has remedied the relevant suspension event and is complying with its Prudential Obligations; and
  - (b) if the notice was issued under clause 2.32.1, it receives a further notice that the ~~Energy Electricity~~ Review Board has withdrawn the suspension, and no other circumstances exist that would entitle the IMO to issue a Suspension Notice.
- 2.32.6. Where a Rule Participant has been suspended for 90 days, the IMO may apply to the ~~Energy Electricity~~ Review Board for a de-registration order in accordance with the Regulations.
- 2.32.7. Where the IMO receives notice that the ~~Energy Electricity~~ Review Board has made a decision in accordance with the Regulations that a Rule Participant be de-registered, the relevant Rule Participant ceases to be a Rule Participant from the time specified in the notice. The IMO must de-register all of the Facilities registered by the Rule Participant by the time specified in the notice.
- 10.2.2. The classes of confidentiality status are:
- (a) Public, in which case the relevant information or documents may be made available to any person by any person;
  - (b) SWIS Restricted, in which case the relevant information or documents may only be made available to:
    - i. Rule Participants;
    - ii. the Market Advisory Committee;
    - iii. the IMO;
    - iv. the ~~Energy Electricity~~ Review Board;
    - v. the Economic Regulation Authority; and
    - vi. other Regulatory or Government Agencies in accord with applicable laws;
  - (c) Rule Participant Market Restricted, in which case the relevant information or documents may only be made available to:

- i. a specific Rule Participant;
  - ii. the IMO;
  - iii. the ~~Energy~~ Electricity Review Board;
  - iv. the Economic Regulation Authority; and
  - v. other Regulatory or Government Agencies in accord with applicable laws;
- (d) Rule Participant Dispatch Restricted, in which case the relevant information or documents may only be made available to:
- i. a specific Rule Participant;
  - ii. System Management
  - iii. the IMO;
  - iv. the ~~Energy~~ Electricity Review Board;
  - v. the Economic Regulation Authority; and
  - vi. other Regulatory or Government Agencies in accord with applicable laws;
- (e) System Management Confidential, in which case the relevant information or documents may only be made available to:
- i. System Management;
  - ii. the IMO;
  - iii. the ~~Energy~~ Electricity Review Board;
  - iv. the Economic Regulation Authority; and
  - v. other Regulatory or Government Agencies in accord with applicable laws;
- (f) IMO Confidential, in which case the relevant information or documents may only be made available to:
- i. the IMO;
  - ii. the ~~Energy~~ Electricity Review Board;
  - iii. the Economic Regulation Authority; and
  - iv. other Regulatory or Government Agencies in accord with applicable laws; and
- (g) Rule Participant Network Restricted, in which case the relevant information or documents may only be made available to:

- i. a specific Rule Participant;
- ii. the relevant Network Operator;
- iii. System Management;
- iv. the IMO;
- v. the ~~Energy~~ Electricity Review Board;
- vi. the Economic Regulation Authority; and
- vii. any other Regulatory or Government Agencies in accord with applicable laws.

10.5.1. The IMO must set the class of confidentiality status for the following information under clause 10.2.1, as Public and the IMO must make each item of information available from the Market Web-Site after that item of information becomes available to the IMO:

...

- (r) Public Reports pertaining to the Wholesale Electricity Market issued by:
  - i. the IMO;
  - ii. System Management;
  - iii. the ~~Energy~~ Electricity Review Board;
  - iv. the Economic Regulation Authority; or
  - v. the Minister.

...

## Chapter 11:

**~~Energy~~ Electricity Review Board:** The Board within the meaning of the Electricity Industry Act.

**Reviewable Decision:** Decisions made by the IMO in respect of which an eligible person may apply to the ~~Energy~~ Electricity Review Board in accordance with section 125 of the Electricity Industry Act and the Regulations, and does not include any decisions of a class specified for this purpose in the Regulations under section 125 of that Act.