



INDEPENDENT
MARKET
OPERATOR

Draft Rule Change Report

Title: Market Participant Fees – Clarification of GST Treatment

RC_2013_08

Standard Rule Change Process

Date: 31 July 2013

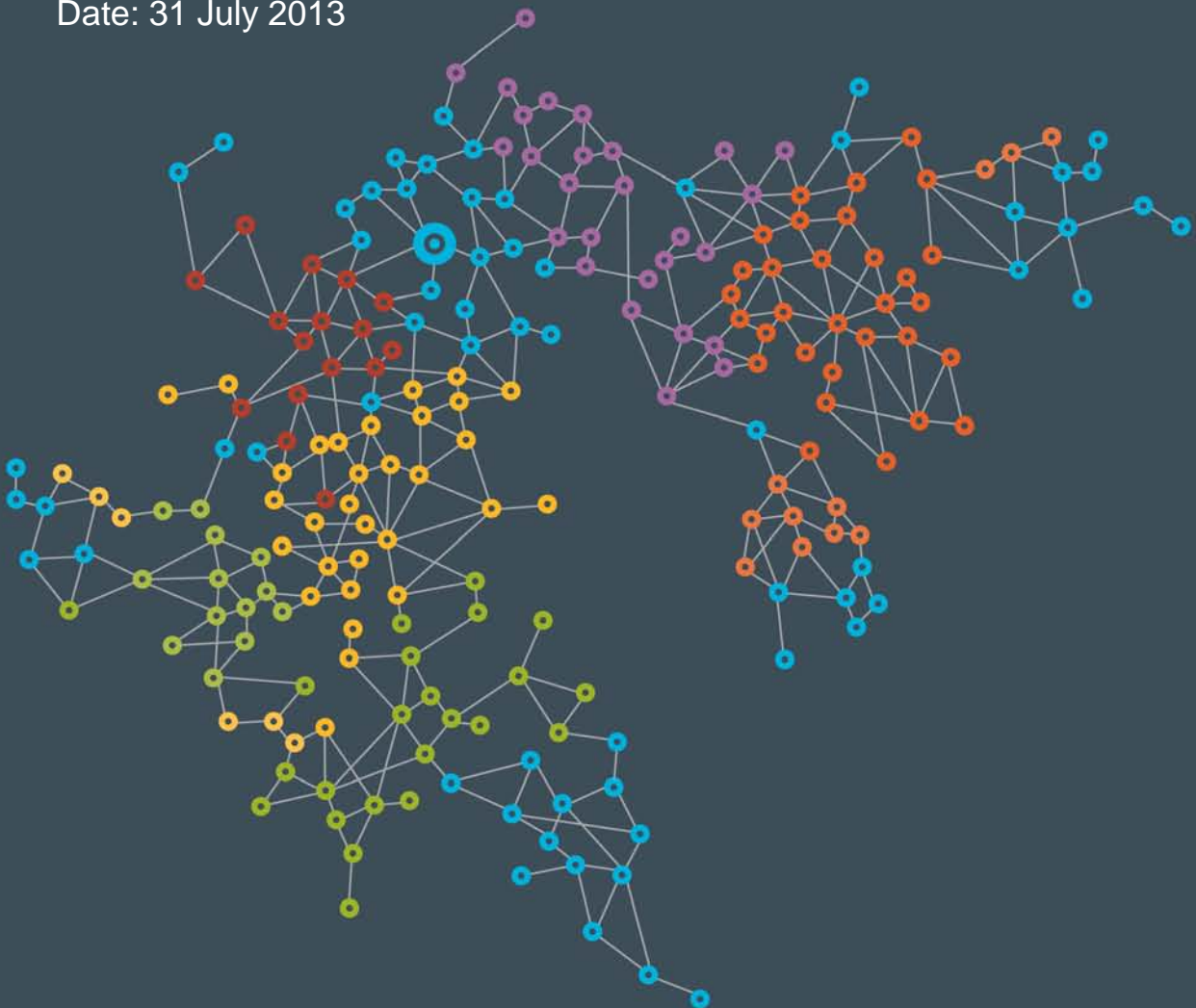


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Executive Summary

The IMO collects Market Fees, Regulator Fees and System Operation Fees (collectively known as the Market Participant Fees) from Market Participants to recover its own costs, and costs on behalf of the Economic Regulation Authority (ERA) and System Management respectively for undertaking functions under the Wholesale Electricity Market Rules (Market Rules).

From market start, all three fees have been invoiced to the Market Participants subject to Goods and Services Tax (GST). However, Private Rulings from the Australian Taxation Office (ATO) have found that, under the Market Rules and taxation laws as they currently stand:

- the IMO is not entitled to invoice Market Participants directly, in its own name, for the Regulator Fees and the System Operation Fees, as it has done since market start; and
- the Market Fees, Regulator Fees and System Operation Fees are exempt from GST.

Proposed amendments

The IMO proposes to amend section 2.25 of the Market Rules to clarify its role as an agent for the collection of these fees and ensure its ability to issue valid invoices to Market Participants directly for services provided by the ERA and System Management.

The IMO also proposes adjustments to definitions of “Regulator Fees” and “System Operation Fees” to clarify that these amounts are paid to the IMO and are therefore included in the calculation of Credit Limits and that the IMO would be able to draw on security for the purposes of making payments to the ERA and System Management in the event of default.

These changes are designed to enable the IMO to continue clearing the market using the IMO’s current systems and processes, avoiding the need for the ERA or System Management to establish their own invoicing arrangements for collecting fees under the Market Rules.

Consultation

The Market Advisory Committee (MAC) discussed a Concept Paper on this issue at the 20 March 2013 meeting, and a pre Rule Change Proposal at the 10 April 2013 meeting. At the April meeting the MAC agreed that, subject to the IMO circulating full details of the proposed changes to the Market Rules (which were under development at the time of the meeting), the proposal should be submitted into the formal rule change process. The proposed drafting was circulated to MAC members on 9 May 2013.

The IMO formally submitted the proposal into the Standard Rule Change Process and published the Rule Change Notice on 21 May 2013.

The first submission period was held between 22 May 2013 and 3 July 2013. Submissions were received from Community Electricity, Perth Energy and System Management. All three submissions supported the Rule Change Proposal. System Management also advised that Western Power had applied for, and received, a Private Ruling from the ATO which confirmed the services provided by System Management in the Wholesale Electricity Market are GST exempt.

Assessment against Wholesale Market Objectives

The IMO considers that the proposed amendments will better achieve Wholesale Market Objectives (a) and (d). The IMO considers the proposal is consistent with the remaining objectives.

Practicality and cost of implementation

The IMO has identified that the cost of amending its settlement systems to remove GST from the Market Participant Fees will be approximately \$14,500, which can be accommodated within existing resources.

No issues relating to the practicality or cost of implementation have been raised in consultation on the Rule Change Proposal to date.

The IMO proposed decision

The IMO's proposed decision is to accept the Rule Change Proposal.

Next steps

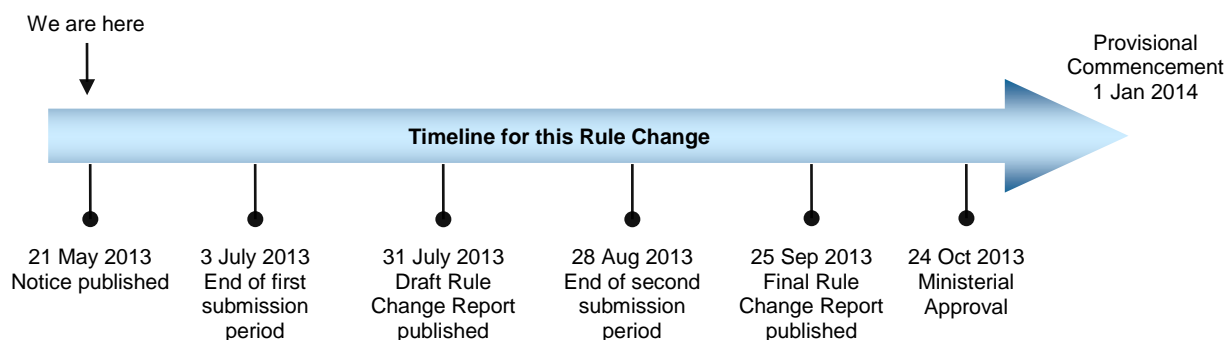
The IMO now invites interested stakeholders to make submissions on this Draft Rule Change Report by 5:00 pm, 28 August 2013.

1. Rule Change Process and Timetable

On 21 May 2013 the IMO submitted a Rule Change Proposal regarding proposed new clauses 2.25.1A and 2.25.1B, and amendments to clauses 2.25.4, 9.1.2, 9.16.3, 9.16.3A, 9.19.1 and the Glossary, of 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 key dates in processing this Rule Change Proposal are:



Please note that the commencement date is provisional and may be subject to change in the Final Rule Change Report.

2. Call for Second Round Submissions

The IMO invites interested stakeholders to make submissions on 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 **5.00pm, 28 August 2013**.

The IMO prefers to receive submissions by email (using the submission form available on the Market Web Site: <http://www.imowa.com.au/rule-changes>) to: market.development@imowa.com.au

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

Independent Market Operator

Attn: Group Manager, Development and Capacity
PO Box 7096
Cloisters Square, PERTH, WA 6850
Fax: (08) 9254 4399

3. Proposed Amendments

3.1. The Rule Change Proposal

The Rule Change Proposal seeks to address issues relating to the collection and taxation treatment of the Market Participant Fees, which are collected by the IMO under the Market Rules.

3.1.1. Background

From market start, the IMO has been collecting Market Fees, Regulator Fees and System Operation Fees (collectively known as Market Participant Fees) from Market Participants to recover its own costs, and costs on behalf of the Economic Regulation Authority (ERA) and System Management respectively.

The Regulator Fees compensate the ERA for the costs of providing the services it is required to perform in undertaking its functions under the Market Rules and, similarly, the System Operation Fees and Market Fees compensate System Management and the IMO, respectively, for the costs of undertaking their functions under the Market Rules.

All three fees have been invoiced to the Market Participants subject to Goods and Services Tax (GST). However, Private Rulings issued by the ATO have identified the following issues with the current approach to collecting and charging GST on these fees:

- while the IMO receives the Regulator Fees and System Operation Fees as a collection agent for the ERA and System Management respectively, the ERA and System Management make supplies directly to the Market Participants;
- the Market Fees, Regulator Fees and System Operation Fees should all be treated as exempt from GST.

While the ATO found that the IMO collected the Regulator Fees and System Operation Fees as a collection agent for the ERA and System Management, the ATO did not go as far as to recognise an agency agreement, either express or implied, between any of the parties. As a result, the IMO is not entitled to issue tax invoices to the Market Participants in respect of these fees, as it has done since market start.

Under the ATO's interpretation, the IMO would need to invoice Market Participants separately (and expressly on behalf of the ERA and System Management) for each of these fees, or the ERA and System Management would need to invoice Market Participants directly.

The prudential security held by the IMO with respect to each of these fees is also affected by the rulings. As the Regulator Fees and the System Operation Fees do not currently represent amounts "owed to the IMO", these amounts may not be covered by the Credit Limit provisions in the current Market Rules, as they are intended to be.

3.1.2. Proposed Amendments to the Market Rules

The IMO proposes to amend section 2.25 of the Market Rules to clarify its role as an agent for the collection of these fees and ensure its ability to issue valid invoices to Market Participants directly for services provided by the ERA and System Management.

The IMO also proposes adjustments to definitions of "Regulator Fees" and "System Operation Fees" to clarify that these amounts are paid to the IMO. This is to ensure these amounts can be included in the calculation of Credit Limits and that the IMO would be able to draw on security for the purposes of making payments to the ERA and System Management in the event of default.

These changes are designed to enable the IMO to continue clearing the market using the current systems and processes. It avoids the need for multiple invoices to be issued and cleared (at a

direct cost to Market Participants) and removes the risk of additional costs associated with amending or creating new settlement processes for the affected fees (either by the IMO or by either of the other entities).

The IMO has also taken the opportunity to address a number of minor typographical and cross referencing errors in several related clauses. This includes specifying each of the Market Participant Fees in clause 9.19.1 for the Adjustment Process so that clause 9.19.1 is consistent with clause 9.16.3. This issue was raised by Verve Energy in its submission to *RC_2012_25: Constrained On/Off Compensation removal where a Facility is non-compliant with Dispatch Instructions*.

For full details of the Rule Change Proposal please refer to the Market Web Site: http://www.imowa.com.au/RC_2013_08

3.2. The IMO's Initial Assessment of the Rule Change Proposal

The IMO decided to proceed with the proposal on the basis that that Rule Participants and stakeholders should be given an opportunity to provide submissions on the Rule Change Proposal.

4. Consultation

4.1. The Market Advisory Committee

The Market Advisory Committee (MAC) discussed a Concept Paper on this issue at the 20 March 2013 meeting. The Concept Paper discussed two options for addressing the issue of whether the IMO is entitled to issue invoices for the Regulator Fees and System Operation Fees in its own right, namely that the IMO be treated as the principal in all transactions under the Market Rules, or as an agent of the ERA and System Management for the collection of the relevant fees.

MAC members discussed the historical GST treatment of the Market Participant Fees and raised the following points in relation to the options presented in the Concept Paper:

- Mr Stephen MacLean questioned who would bear the cost of the problem [recovery of GST on the Regulator Fees that was not passed on to the ATO]. The Chair clarified that it was incorporated into the Market Fee however the Market Participants had effectively faced a lower fee from the ERA over the last five years as a result of including the tax amount as revenue rather than passing it onto the ATO. The result of the tax ruling is that the IMO would be increasing its fee for the next 12 months by half a million dollars to recover the GST that was not remitted to the ATO.
- Mr Andrew Sutherland sought clarification on what had happened to the tax which was paid but not passed onto the ATO. The Chairman clarified that there was no net effect to the market given that the ATO hadn't sought to charge the IMO any penalties. Mr MacLean suggested that Market Participants had been receiving the cash flow from the reduced ERA fees which should have gone to the ATO and now the ATO is expecting to have that money returned (to balance against imputation credits issued for the period). The Chair confirmed this was correct.
- Mr Andrew Stevens raised the topic of the IMO acting as a principal and requested clarification. The Chair clarified that the IMO is seeking to perform a clearing house function, similar to settlement structures in financial, commodity and other electricity

markets, including the National Electricity Market.

- Mr Stevens identified that there may be an issue with this resulting in the need for contracts to be re-negotiated. The Chair clarified that the IMO intended to deal only with the physical transactions and bilateral contracts weren't intended to be affected by the arrangements.
- Mr McLean questioned whether the possible implications for Renewable Energy Certificates (RECs), and specifically whether the how the liability of RECs is determined, had been considered. He pointed out that there had been discussions with the regulator regarding RECs because there were differences between the WEM and NEM and consequently the size of liability that applies.

The pre Rule Change Proposal was discussed at the MAC at its 10 April 2013 meeting. The following comments and questions were raised from MAC members:

- Mr MacLean noted that the drafting in the proposal was not the final proposed drafting. Ms Kate Ryan confirmed that to be the case.
- Mr MacLean noted that while there was little point commenting on the drafting if it was not finalised, he did suggested that the IMO consider whether it was good drafting practice to have two definitions for "GST" and the "GST Act". Ms Ryan acknowledged the point and noted it may be a drafting convention but it would be looked at.
- The Chair noted the intent of the proposal was to continue to deliver a single invoice to Market Participants for monthly Non-STEM settlements with the only impact of the rule change being on 1 January 2014 when GST may not be attached to some market fees. Mr MacLean sought clarification on the date when this change would take effect. The Chair confirmed the tentative date as 1 January 2014.
- Mr Phil Kelloway commented that System Management may need to consider whether there would be an impact on System Management's budgets for the second half of the 2014 financial year. The Chair noted Mr Kelloway's point but clarified that the budget provided by System Management did not include GST and as such this should not be affected by any changes to the GST treatment of System Management fees. Mr Kelloway also noted Western Power would be seeking its own ATO ruling in relation to whether the System Operation Fee would be subject to GST.

The MAC agreed that, subject to the IMO circulating full details of the proposed changes to the Market Rules (which were under development at the time of the April MAC meeting), the proposal should be formally submitted into the Standard Rule Change Process. The proposed drafting was circulated to MAC members on 9 May 2013.

Further details are available in the MAC meeting minutes available on the Market Web Site: <http://www.imowa.com.au/MAC>

4.2. Submissions received during the first submission period

The first submission period was held between 22 May 2013 and 3 July 2013. Submissions were received from Community Electricity, Perth Energy and System Management.

The assessment by submitting parties as to whether the proposal would better achieve the

Wholesale Market Objectives is summarised below:

Submitter	Wholesale Market Objective Assessment
Community Electricity	<p>Considers the Rule Change Proposal corrects a manifest error and enhances the achievement of Wholesale Market Objective (d) minimising electricity costs.</p> <p>Considers the proposal to be harmonious with the other Wholesale Market Objectives.</p>
Perth Energy	<p>Considers that the proposed amendments would improve the efficient operation of the market by enabling all Market Participants to be compliant with the GST legislation.</p> <p>Considers the proposed amendments may positively impact on the achievement of Wholesale Market Objective (a) relating to economic efficiency.</p> <p>Has not identified any impacts on the remaining Wholesale Market Objectives.</p>
System Management	<p>Considers that the proposed amendments will better address the Wholesale Market Objectives (a) and (d) in that they seek to avoid substantial costs that would be incurred by System Management to establish its own invoicing processes and systems.</p>

A copy of all submissions in full received during the first submission period is available on the Market Web Site: http://www.imowa.com.au/RC_2013_08

4.3. The IMO's response to submissions received during the first submission period

All three submissions supported the Rule Change Proposal.

Perth Energy requested urgent clarification of the position in relation to the GST treatment of the System Operation Fees. System Management's submission advised that Western Power had applied for, and received, a Private Ruling from the ATO which confirmed the services provided by System Management in the Wholesale Electricity Market are GST exempt.

Accordingly, the IMO can confirm that all three Market Participant Fees should be treated as GST exempt and the change to the GST treatment of each of the fees will occur at the same time.

4.4. Public Forums and Workshops

No public forums or workshops were held with regard to this Rule Change Proposal.

The IMO has had a series of meetings with the ATO in relation to the GST treatment of the Market Participant Fees and this Rule Change Proposal. The following reflects discussions to date:

- The ATO has indicated that it has no intention of unwinding transactions historically between the IMO and Market Participants and between the IMO and System Management which may have been incorrectly treated.
- The IMO will recover the incorrectly claimed GST credits in relation to the Regulator Fees dating back to market commencement in respect to payments to the ERA in the first year of

its next Revenue Period (2013/14). This cost was included as a one off item in the IMO's Allowable Revenue Submission approved by the ERA on 2 April 2013.

- The ATO agreed that the IMO will not be subject to any penalty or further interest charge on the incorrectly claimed GST credits.
- Consistent with the indication not to unwind any historical transactions, the ATO has also indicated that it does not intend to unwind any transactions relating to the Regulator Fees that Market Participants continue to pay to the IMO and the associated input tax credits being claimed until the IMO makes necessary adjustments to the invoicing and settlement systems.

Further information is available on the Market Web Site: http://www.imowa.com.au/RC_2013_08.

5. The IMO's Draft Assessment

In preparing its Draft 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 or any technical studies commissioned in respect of this Rule Change Proposal. A summary of the views expressed in submissions and by the MAC is available in section 4 of this report.

The IMO's assessment is outlined in the following sub-sections.

5.1. Wholesale Market Objectives

The IMO considers that the Market Rules as a whole, if amended as presented in section 7, will not only be consistent with the Wholesale Market Objectives but also allow the Market Rules to better achieve Wholesale Market Objectives (a) and (d).

The IMO's assessment is presented below.

Wholesale Market Objectives (a) and (d) 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.

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

The proposed changes seek to ensure existing IMO systems and process can be used to collect the Regulator Fees and System Operation Fees, avoiding the need for either of these parties to establish their own invoicing arrangements and ensuring the fees are collected in an efficient and cost-effective manner, which is consistent with applicable GST legislation.

5.2. Practicality and cost of implementation

The IMO, in order to give effect to the findings of the ATO in the ruling, must change the GST treatment of the Market Participant Fees charged to Market Participants and the way these fees are invoiced. This involves changes to the Market Rules (the subject of this Rule Change Proposal), any necessary changes to the Market Procedures and changes to the IMO's settlement and invoicing systems and processes.

There may also be some minor amendments to Market Participant's Credit Limit amounts as a result of the removal of GST from the Market Participant Fees.

The IMO is working to implement these changes by 1 January 2014.

5.2.1. Cost:

The IMO has identified a cost of making the necessary changes to its settlement and invoicing systems of approximately \$14,500. This cost, as well as the resources required to process the necessary rule and procedure changes, can be met within the IMO's existing resourcing.

No other costs associated with implementing the proposed changes have been identified by those parties who provided a submission during the first submission period.

5.2.2. Practicality:

The IMO does not consider that there are any issues with the practicality of implementation of the proposed changes.

The IMO notes that it has raised with the Public Utilities Office, that this Rule Change Proposal includes a proposed amendment to a Protected Provision. The IMO will continue to liaise with the Office on this matter as this rule change progresses.

5.3. Reasons for the decision

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

- better achieve Wholesale Market Objectives (a) and (d);
- are consistent with the remaining Wholesale Market Objectives;

- resolve issues relating to the GST treatment of the Market Participant Fees and the IMO's ability to collect the fees on behalf of the ERA and System Management; and
- have the general support of the MAC and all submissions received during the first submission period.

5.4. Proposed Commencement details

The Amending Rules are proposed to commence at **8:00 AM** on **1 January 2014**.

6. Proposed Amending Rules

The proposed Amending Rules, as presented in the Rule Change Proposal, are as follows (~~deleted text~~, added text):

2.25.1A. The IMO is an agent for the collection of System Operation Fees and Regulator Fees payable by Market Participants to the IMO.

2.25.1B. System Management and the Economic Regulation Authority must, if requested by the IMO, do all things reasonably necessary (including entering into any agreements) to enable the IMO to give effect to clause 2.25.1A.

2.25.4. The relevant proportionality factor for the IMO, System Management or the Economic Regulatory Regulation Authority for a Financial Year is:

- the estimate of the total amount to be earned from Market Fees, System Operation Fees or Regulator Fees (as applicable) in respect of its services published for the relevant year under clause 2.24.3; divided by
- the estimate of the total amount to be earned from Market Fees, System Operation Fees and Regulator Fees in respect of all services published for the relevant year under clause 2.24.3.

9.1.2. With respect to the treatment of GST:

- all prices, fees and other charges under these Market Rules (other than under this clause 9.1.2) are exclusive of GST;
- in this clause 9.1.2, **“adjustment notes”**, **“consideration”**, **“GST”**, **“GST group”**, **“input tax credit”**, **“member”**, **“recipient”**, **“recipient created tax invoice”**, **“representative member”**, **“supplier”**, **“supply”**, **“tax invoice”** and **“taxable supply”** and **“valid tax invoice”** each have the meaning given to the relevant term in the GST Act ~~legislation under which GST is imposed~~;
- where a Rule Participant makes a taxable supply to another Rule Participant or person under these Market Rules, the other Rule Participant or person must also pay the first Rule Participant making the supply an additional amount equal to the GST payable in respect of that supply;

- (d) the IMO must include in Settlement Statements and Invoices issued under these Market Rules the additional amounts contemplated by paragraph (c);
- (e) Rule Participants must, if requested by the IMO, do everything necessary (including the entering into of recipient created tax invoice agreements) to enable the IMO to issue valid tax invoices, recipient created tax invoices and adjustment notes in respect of all taxable supplies made by or to the IMO under these Market Rules;
- (f) however, if the additional amount paid or payable to the IMO or a Rule Participant or another person under this clause 9.1.2 in respect of a taxable supply differs from the actual amount of GST payable by the Rule Participant under the GST Act~~relevant legislation~~ in respect of the relevant supply, then adjustments must be made under clause 9.2419 so as to ensure the additional amount paid under this clause in respect of the supply is equal to the actual amount of GST payable under the GST Act~~relevant legislation~~ in respect of the supply;
- (g) if the IMO determines that:
 - i. a party is entitled to payment of any costs or expenses by way of reimbursement or indemnity; or
 - ii. a price, fee or other charge payable under these Market Rules (other than Market Fees, System Operation Fees and Regulator Fees) is calculated with reference to a cost or expense incurred by a party,

then the payment or cost or expense (as the case may be) must exclude any part of the cost or expense which is attributable to GST for which the party (or a representative member of any GST group of which the party is a member) is entitled to an input tax credit.

9.16.3. The IMO must undertake a process for adjusting settlements (“**Adjustment Process**”) in accordance with clause 9.19. The purpose of the process is to review the ~~Relevant~~ Settlement Statements which were issued in the ~~nine~~ months prior to the commencement of the Adjustment Process (“**Relevant Settlement Statements**”) to facilitate corrections, as applicable, resulting from:

- (a) Notices of Disagreement;
- (b) the resolution of Disputes,;
- (c) revised metering data provided by Metering Data Agents;
- (d) any revised Market Fee rate, System Operation Fee rate or Regulator Fee rate (as applicable); ~~and~~
- (e) any determinations made in accordance with clauses 6.16A.1(b)(i), 6.16A.2(b)(i), 6.16B.1(b)(i) or 6.16B.2(b)(i); and

(f) any adjustment required for GST purposes under clause 9.1.2.

Adjustments may only be made to Relevant Settlement Statements. Adjustments may not be made to Settlement Statements outside of an Adjustment Process.

9.16.3A A Relevant Settlement Statement is:

- (a) Any STEM Settlement Statement or Non-STEM Settlement Statement that requires correction as the result of the resolution of a dispute raised under clause 2.19, ~~or~~ where the IMO has indicated under clause 9.20.7 that it will revise information in response to a Notice of Disagreement, or where an adjustment is required in accordance with clause 9.1.2; and
- (b) Any Non-STEM Settlement Statement for which the Invoicing Date occurred in the month that is three, six or nine months prior to the start of the Adjustment Process, and for which the IMO has received revised metering data from a Metering Data Agent or any determinations in accordance with clauses 6.16A.1(b)(i), 6.16A.2(b)(i), 6.16B.1(b)(i) or 6.16B.2(b)(i).

9.19.1. When undertaking an Adjustment Process the IMO must:

- (a) recalculate the amounts included in the Relevant Settlement Statements in accordance with this Chapter but taking into account any:
 - i. revised metering data which has been provided by Metering Data Agents;
 - ii. actions arising from a Notice of Disagreement;
 - iii. the resolution of any Dispute; ~~and~~
 - iv. determinations made in accordance with clauses 6.16A.1(b)(i), 6.16A.2(b)(i), 6.16B.1(b)(i) or 6.16B.2(b)(i); ~~and~~
 - v. revised Market Fee rate, System Operation Fee rate or Regulator Fee rate; and
 - vi. any adjustment required for GST purposes under clause 9.1.2; and
- (b) provide adjusted STEM Settlement Statements and adjusted Non-STEM Settlement Statements to Rule Participants in accordance with the timeline specified under clause 9.16.4 in respect of the relevant Adjustment Process.

Glossary

GST: means Goods and Services Tax and has the meaning given in the GST Act.

GST Act: means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Market Fees: The fees payable by Market Participants to the IMO determined by the IMO in accordance with clause 2.24, and calculated for each Market Participant in accordance with clause 9.13.1.

Regulator Fees: The fees determined by the IMO in accordance with clause 2.24, and payable by Market Participants to the IMO for the services provided by the Economic Regulation Authority in undertaking its Wholesale Electricity Market related functions and other functions under these Market Rules.

System Operation Fees: The fees determined by the IMO in accordance with clause 2.24, and payable by Market Participants to the IMO for the services provided by System Management in accordance with these Market Rules.