Wholesale Electricity Market
Rule Change Proposal Submission Form

RC_2013_18 Verve / Synergy Merger

Submitted by

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Submission

1. Please provide your views on the proposal, including any objections or suggested revisions.

General Comment

Verve Energy (Electricity Generation Corporation) and Synergy (Electricity Retail Corporation) are two Market Participants owned by the same entity (the Government of Western Australia). There is nothing in the Market Rules which prevents an owner from merging its entities. The rule change process should confine itself to assessing a rule change proposal under the criteria and by the processes defined in the Market Rules.

Verve and Synergy are not typical Market Participants – with both specifically being named in; and having unique obligations under the Market Rules. If one assumes that the two entities are merged, then the changes being proposed in RC_2013_18 seem mostly uncontroversial and typically administrative by nature.

It is disappointing however, that these changes have been processed via the Fast Track procedure in order to meet the arbitrarily appointed timeframe for the merger. A better course of action would have been to examine the implications of a proposed merger and set in course a process to remedy any obstacles, such as the changes considered in RC_2013_18. This should have been performed under the Standard Rule Change Process and completed well before a merger deadline. As it stands, the market and its Participants are left to assess potential changes under the expedited Fast Track timeline that, strictly speaking, do not meet

the Fast Track criteria. At the time of lodging RC_2013_18 and indeed until the time the merger actually takes place, there is no reason to make changes to the Market Rules. Manifest errors in the rules will not eventuate until (and if) the merger actually occurs, when sections of the current rules will then contain inconsistencies. Neither is the minor, administrative and procedural nature of these changes valid until the merger occurs and existing entities no longer exist. While it is sensible to enact changes prior to the merger, the use of the Fast Track process in this instance is unwelcome. Its use undermines the integrity of the Rule Change process, which has been built over several years of strictly enforced precedent after an initial period of laissez-faire application of the Fast Track process.

This is not a criticism on the Merger Implementation Group (submitter of RC_2013_18), or the IMO itself. Both have been placed in an invidious position where the owner of the Market Participants being merged also happens to be the Government to which these organisations are responsible to[1]. It is an observation that as an owner of Market Participants wielding monopoly power in an independent, competitive marketplace, Governments are typically not well placed to manage real or perceived conflicts of interest, to the detriment of the market; and that they should manage such interactions in a more judicious and transparent manner.

Specific Comment – Clause 2.3.5

With the Regulations that govern the manner in which the merged monopoly entity will be permitted to operate yet to be made public, it is not possible for Participants to understand the nature of the proposed ring-fencing arrangements of the merged entity.

The Market Rules and the Market Advisory Committee (MAC) constitution require those members of the MAC who represent Market Generators and Market Customers to represent the participant class rather than the individual participants from which they may be affiliated. This is an important aspect of the MAC which allows it to operate effectively and credibly as an advisory body. The proposed change in RC_2013_18 has the effect of reducing the compulsory representation of the merging entities (Verve as a Market Generator and Synergy as a Market Customer) to a single representative. Firstly, it is unclear if this will be achievable under the yet-to-be-released Regulations and until Participants have an opportunity to examine the Regulations, they are simply not able to make a comment on whether this is appropriate. More importantly: as currently drafted, the merged Synergy will be unique among Market Participants in that it has a MAC member representing its interests, rather than representing a class of Participants.

A suggested alternative drafting is offered below. This drafting better aligns with a change that is minor, administrative and procedural in nature and allows the integrity of the MAC to be preserved by having members continue to represent classes. There is also nothing to prevent Synergy from nominating one person to fulfil both member roles (giving the same result as the currently drafted rule change) if it is decided that under the new Regulations, a single member representing the merged Synergy is preferable.

[1] Noting that the IMO is an independent statutory body defined under Regulations.

2.3.5. Subject to clause 2.3.13, the Market Advisory Committee must comprise:

(a) at least three and not more than four members representing Market Generators, of whom one must represent ~~Verve Energy~~ Synergy;

(b) one member representing Contestable Customers;

(c) at least one and not more than two members representing Network Operators, of whom one must represent Western Power;

(d) at least three and not more than four members representing Market Customers, of whom one must represent Synergy;

(e) one member nominated by the Minister to represent small-use consumers;

(f) one member representing System Management;

(g) one member representing the IMO; and

(h) a chairperson, who must be a representative of the IMO.

2. Please provide an assessment whether the change will better facilitate the achievement of the Market Objectives.

The RC_2013_18 submission distinguishes the proposed changes from the merger itself. It claims that as the changes are simply rectifying inconsistencies resulting from the merger, then they better facilitate the Market Objectives by virtue of the Market Rules not containing inconsistencies. While this is a low threshold of assessment, it is similar to previous changes addressing minor and typographical errors or inconsistencies in the rules.

The above circular reasoning, however, assumes the counterfactual as the status quo. If one assumes that the market consists of a merged Synergy, rather than Verve Energy (as the Electricity Generation Corporation) and Synergy (as the Electricity Retail Corporation), then this is appropriate. This is not the case. Merely because the owner of the merging Participants is the Government; and the merger is being facilitated under legislation, does not obviate the Market Rules and the market they define. The changes proposed by RC_2013_18: effectively the removal of the Electricity Generation Corporation from the rules and the allocation of its obligations under the rules to the Electricity Retail Corporation, are therefore likely to have a significant impact on the market as it currently stands – and thus on the Market Objectives. This logic seems to have escaped stakeholders to date. Given there has been no analysis on how such a change will impact the market; nor have the Regulations governing the operation of the merged entity been released, making any analysis impractical at any rate, it is impossible to understand whether these changes will better facilitate the Market Objectives.

Irrespective of the intent of Government to merge its facilities, the proper course of action under the Market Rules is for RC_2013_18 to identify and propose how removing the Electricity Generation Corporation from the rules and allocating its obligations under the rules to the Electricity Retail Corporation would better facilitate the Market Objectives. Interested stakeholders would have the opportunity to make comment. The IMO Board would then make a determination as to whether, on balance, the proposed changes better facilitate the Market Objectives or not. Due to the nature of the proposed changes, this activity could certainly not take place under any Fast Track Rule Change process.

It is unclear whether or not the removal of the Electricity Generation Corporation from the rules and the allocation of its obligations under the rules to the Electricity Retail Corporation better facilitate the Market Objectives. But without detailed analysis or even a proposal for the affirmative, it is difficult to see how the IMO Board can make a determination that they do, and hence allow the changes to commence.

3. Please indicate if the proposed change will have any implications for your organisation (for example changes to your IT or business systems) and any costs involved in implementing these changes.

Minor changes and costs are expected to our internal business systems.

However, it is inappropriate that the Rule Change Proposal does not attempt to quantify the implementation costs to the market resulting from the proposed changes. While it is assumed the costs will not be significant, at least an order-of-magnitude quantification should be offered, especially since implementing the changes will impact IMO systems such as settlements. Market Participants should have the opportunity to comment on the cost to them of the merging of these two participants.

4. Please indicate the time required for your organisation to implement the change, should it be accepted as proposed.

Minor changes to automated submission process software are likely to take 3-4 weeks. Due to the availability of external IT consultants over the Christmas period, it is necessary to incur this cost prior to any IMO Board decision; to royal assent for the legislation; and likely to Regulations being released, to ensure that in the case of the merger proceeding and the rule changes passing, submissions remain compliant. This is undesirable.