

Final Rule Change Report:
Managing Market Information (RC_2014_09)

Standard Rule Change Process

13 December 2019

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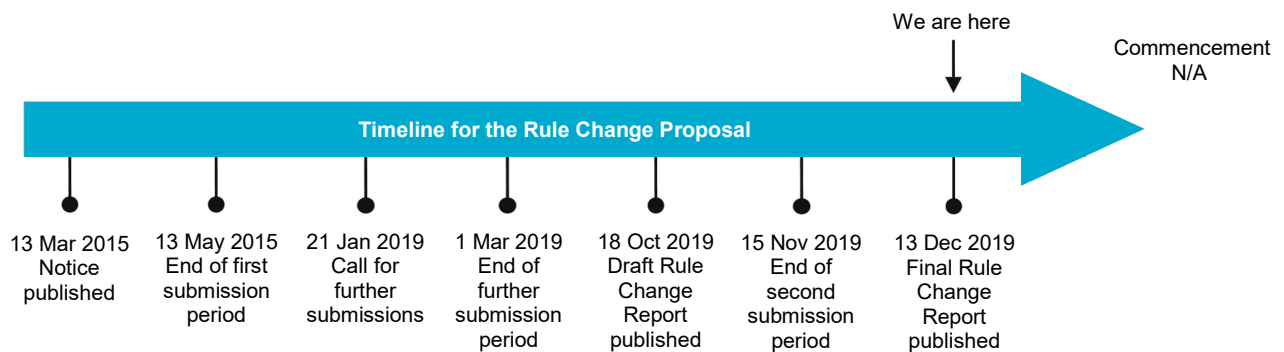
1. Rule Change Proposal, Process and Timeline

On 13 March 2015, the Independent Market Operator (**IMO**) submitted a Rule Change Proposal titled “Managing Market Information” (RC_2014_09).

The administration of the Market Rules involves the production and exchange of a large volume of information. The Rule Change Proposal sought to replace the current framework for managing market information in Chapter 10 of the Market Rules, with a new framework that was purported by the IMO to promote greater disclosure and transparency of market information relating to the Wholesale Electricity Market (**WEM**).¹

The Rule Change Proposal was processed via the Standard Rule Change Process described in section 2.7 of the Market Rules. The timeframes for the first submission period and the preparation of the Draft Rule Change Report were extended by the IMO under clause 2.5.10; and the timeframe for the preparation of the Draft Rule Change Report was further extended by the Rule Change Panel under clauses 1.18.3(b) and 2.5.10.

The key dates for progressing the Rule Change Proposal, as amended in the extension notices, are:



This Final Rule Change Report is drafted on the basis that the reader has read all the related documents, including the Rule Change Proposal, the first period submissions, the call for further submissions (**CFFS**), the further submissions, the Draft Rule Change Report and the second period submissions. All documents related to the Rule Change Proposal are available on the Rule Change Panel’s website at https://www.erawa.com.au/rule-change-panel/market-rule-changes/rule-change-rc_2014_09.

2. The Rule Change Panel’s Final Decision

The Rule Change Panel’s final decision is to reject the Rule Change Proposal.

¹ The following terms are used for the purposes of this Final Rule Change Report:

- **market information** refers to information and documents that have been produced or exchanged in accordance with the Market Rules or Market Procedures;
- **other market information** refers to information and documents that relate to the WEM but have not been produced or exchanged in accordance with the Market Rules or Market Procedures (for example, a piece of information given by a Rule Participant to AEMO that it was not obliged or required to provide in accordance with the Market Rules or Market Procedures); and
- **market-related information** refers to market information and other market information, collectively.

2.1 Reason for the Rule Change Panel's Decision

The Rule Change Panel has not changed its views on the Rule Change Proposal from those indicated in the Draft Rule Change Report.

As indicated in the Draft Rule Change Report, the Rule Change Panel has considered the issues raised in the Rule Change Proposal and has not seen any compelling evidence that demonstrates that the current framework is deficient. However, the Rule Change Panel considers the effectiveness of the current framework depends on how AEMO implements its obligations under clause 10.2.1 to assign a confidentiality status for each type of market information.

The Rule Change Panel has determined that there are serious issues with the proposed framework, and therefore considers that the proposed Amending Rules do not better achieve, and may be inconsistent with, the Wholesale Market Objectives.

The Rule Change Panel has made its decision on the basis that:

- The proposed amendments do not better achieve, and may be inconsistent with, Wholesale Market Objectives (a), (b) and (d).
- The proposed framework will not increase the transparency of market information. Instead, it may have the contrary effect in that AEMO would have the discretion to decide what market-related information and documents are published, when they are published and, as applicable, how often published information is updated.²
- The proposed framework will not effectively reduce the number of confidentiality classes. This is because AEMO would be able to place conditions on the disclosure of confidential market-related information such that the number of persons, or combination of persons, to which confidential market-related information could be disclosed is actually increased. This would, in effect, create additional confidentiality classes that may not be transparent to stakeholders.
- The proposed framework lacks certainty regarding who would be entitled to use or receive confidential market information:
 - Proposed clause 10.2.11(c) would give AEMO the discretion to specify conditions that would:
 - enable confidential market information to be used by, or disclosed to, a person other than the prescribed persons in proposed clause 10.2.3; or
 - preclude confidential market information being used by, or disclosed to, a person in the list of prescribed persons entitled to receive confidential market information in proposed clause 10.2.3.
 - Proposed clause 10.2.4 would prevent a person who received confidential market-related information (including a person in the list of prescribed persons entitled to receive confidential market-related information in proposed clause 10.2.3) from using the information it received, except to the extent the use:
 - is authorised by each person to whom the confidential market-related information relates; or

² Except where specific Market Rules require market information or documents to be published on the Market Web Site.

- is permitted by AEMO under a condition pursuant to proposed clause 10.2.11.

This would create risks for Rule Participants that confidential market information may be inappropriately disclosed or may not be available to those stakeholders that require confidential market information to perform their functions in the WEM; and would increase the administrative burden for AEMO and other relevant stakeholders to manage market information.

- Extending the scope of the market information governed by the proposed framework³ would create risks for Rule Participants that market-related information may be inappropriately disclosed. It may also lead to inconsistencies between the treatment of other market information under the proposed framework and the confidentiality status of that other market information under other regulatory instruments and laws.
- The proposed framework would increase risks to Rule Participants of inappropriate disclosure of confidential market information by classifying all market-related information as public by default.
- The proposed framework would remove some of the existing protections for Rule Participants against their confidential market information being inappropriately disclosed (e.g. the proposed deletion of provisions in the current framework that require a specific confidentiality status be assigned to certain market information).
- The proposed framework would require AEMO to undertake a significant program of work without delivering a robust and improved framework for managing market information.

The analysis supporting the Rule Change Panel's decision is set out in section 6 of the Draft Rule Change Report and section 7 of this Final Rule Change Report.

3. Proposed Amendments

3.1 The Rule Change Proposal

This section 3.1 provides a summary of the key issues and the proposed amendments to the Market Rules specified in the Rule Change Proposal.

3.1.1 Overview

The purpose of the Rule Change Proposal was to replace the current framework for managing market with a new framework. The Rule Change Proposal also sought to extend the new framework to include other market information.

The IMO considered that the proposed framework would reduce the administrative effort to determine the appropriate treatment of market information; and would increase the transparency of market-related information in the WEM, which would support more efficient decision-making and improve risk management.

The IMO stated that it faced considerable challenges in managing market information under the current framework. Consequently, the IMO reviewed the efficiency and effectiveness of the current framework by assessing it against a range of requirements that the IMO considered were key to an efficient and effective confidentiality framework.

³ The proposed framework seeks to regulate the confidentiality status of other market information, not just market information.

As a result of its review, the IMO determined that the current framework met only some of the requirements for an efficient and effective information management regime. The IMO's assessment of the current framework is set out in Table 1 in section 4.1.1 of the Draft Rule Change Report.

The IMO also identified several specific issues with the current framework during its review. These are summarised in Table 2 in section 4.1.1 of the Draft Rule Change Report.

The IMO asserted that the issues outlined in Tables 1 and 2 of the Draft Rule Change Report had:

- resulted in difficulty for the IMO and other Rule Participants in understanding and using the current framework to determine the confidentiality status of new or amended market information; and
- led to inconsistent interpretations and outcomes between applications for information and governing documents, and an out of date confidentiality list; which resulted in operational inefficiencies, an increased risk of non-compliance with the Market Rules by the IMO and other Rule Participants, and an overly conservative approach to sharing information that should have been made publicly available.

3.1.2 Proposed Amendments

The Rule Change Proposal sought to replace the current framework for managing market information with a new framework that was purported by the IMO to promote greater disclosure and transparency of market-related information.

Except for the proposed amendments to section 10.3 of the Market Rules, the IMO's drafting approach was to delete sections 10.2 to 10.8 in their entirety and replace them with new clauses giving effect to the proposed framework. The proposed Amending Rules (updated to reflect the changes made to the Market Rules since the Rule Change Proposal was published) are set out in Appendix D of the Draft Rule Change Report.

3.1.2.1 Administration of the Framework for Managing Market-Related Information

The IMO proposed amendments to the Market Rules to give effect to the proposed framework for managing market-related information, including:

- amending the IMO's existing head of power to determine for each type of market information whether it is Public Information or Confidential Information;
- introducing a new head of power that would give the IMO discretion to determine for each type of other market information whether it is Public Information or Confidential Information; and
- making market-related information Public Information by default.

The proposed amendments, and the IMO's reasons (if any), are described in Table 3 in section 4.1.2.1 of the Draft Rule Change Report.

3.1.2.2 Consolidation of Confidentiality Classes

The IMO proposed to consolidate the six confidentiality classes specified in clause 10.2.2 into two classes – Public Information or Confidential Information. The confidentiality status of market information dictates the parties to whom certain market information may be disclosed. The amendments to give effect to the proposed change are described in Table 4 in section 4.1.2.2 of the Draft Rule Change Report.

3.1.2.3 Determining whether Market-Related Information is Confidential

Clause 10.2.3 describes the principles that the IMO must have regard to when setting the confidentiality status of market information. In place of this, the IMO proposed to introduce a list of considerations in proposed clause 10.2.2 that would inform the IMO's decision as to whether market-related information should be disclosed.

Table 5 in section 4.1.2.3 of the Draft Rule Change Report describes the IMO's proposed amendments to the Market Rules with respect to determining whether market-related information is Confidential Information or Public Information.

3.1.2.4 Disclosure of Confidential Information

The IMO proposed to introduce new clauses to deal with the rights and obligations of recipients of Confidential Information, including that:

- Confidential Information must not be used by, or disclosed to, persons other than:
 - a person to whom the market-related information relates;
 - the IMO;
 - System Management;
 - the Minister;
 - the Public Utilities Office in its capacity as the government agency responsible for advising the Minister in relation to the WEM;⁴
 - the Economic Regulation Authority; and
 - the Electricity Review Board and courts and tribunals for the purposes of civil or criminal proceedings;
- a person who receives Confidential Information (including the persons listed above) cannot use or disclose it to any other person except in certain circumstances; and
- the IMO would be able to specify conditions with respect to the use or disclosure of Confidential Information, including whether Confidential Information could be used by or disclosed to the persons listed above, or used by or disclosed to another person in certain circumstances.

These proposed amendments are described in Table 6 in section 4.1.2.4 of the Draft Rule Change Report.

3.1.2.5 Availability of Public Information

The IMO proposed several amendments relating to the availability of market information, including (amongst other things):

- deleting the clauses in section 10.5;⁵ and

⁴ The Public Utilities Office is now part of Energy Policy WA.

⁵ Clauses 10.5.1 to 10.5.3 list market information that AEMO must assign a confidentiality status of public and indicate the publication requirements for each piece of market information:

- clause 10.5.1 lists information that must be made available from or via the Market Website after it becomes available to AEMO;
- clause 10.5.2 lists information that has no specific publication requirements; and
- clause 10.5.3 lists information that AEMO make available to Market Participants via the Market Participant Interface as soon as practicable and via the Market Web Site on a weekly basis.

- removing the requirement in clause 1.7.1 for the IMO to make information or documents that it is required to publish available on the Market Web Site, in a place which is generally accessible by members of the class of persons entitled to access that document or information, given AEMO's determination of its confidentiality status in accordance with section 10.2; and replacing it with the requirement in proposed clause 10.2.8 for Public Information to be made available by the IMO on the Market Web Site or in an alternative form that is available to, and accessible by, Rule Participants and other interested stakeholders.

These proposed amendments are described in Table 7 in section 4.1.2.5 of the Draft Rule Change Report.

3.1.2.6 Minor Administrative Changes

The IMO proposed some minor administrative changes which are described in Table 8 in section 4.1.2.6 of the Draft Rule Change Report.

3.2 The IMO's Initial Assessment of the Proposal

The IMO decided to progress the Rule Change Proposal because it considered that the proposed changes would improve the operation and administration of the market by introducing a confidentiality framework for the WEM that was easier to use and administer and would increase the transparency of information in the WEM. The IMO considered that Rule Participants should be given an opportunity to provide submissions as part of the Standard Rule Change Process and that it would be beneficial to commence consultation prior to the completion of the State Government's Electricity Market Review.

4. Consultation

Although the Rule Change Panel has summarised the submissions received in the first, further and second submission periods; and the views expressed by the Market Advisory Committee (**MAC**) in accordance with clause 2.7.7, the Rule Change Panel has reviewed the information in its entirety and taken into account each matter raised by stakeholders and the MAC in making its decision on the Rule Change Proposal.

4.1 The Market Advisory Committee

The Rule Change Proposal was discussed with the MAC on 3 December 2014 as a Concept Paper and on 12 February 2015 as a Pre-Rule Change Proposal. An extract of the summary of the key points discussed at each meeting is set out in Appendix A of the Draft Rule Change Report. The Rule Change Proposal has not been discussed with the MAC since then.

The IMO Procedure Change and Development Working Group discussed a draft Procedure Change Proposal (PC_2015_02) with respect to the processes specified in proposed clause 10.2.9 at its 22 April 2015 meeting. However, no minutes of the meeting are available, and the Procedure Change Proposal was not formally submitted in accordance with section 2.10 of the Market Rules.

4.2 Submissions Received During the First Submission Period

The first submission period took place between 16 March 2015 and 13 May 2015. Submissions were received from Community Electricity, Perth Energy and Alinta Energy.

Section 5.2 of the Draft Rule Change Report contains a summary of the submissions from Community Electricity, Perth Energy and Alinta Energy.

4.3 The Rule Change Panel's Response to Submissions Received During the First Submission Period

The Rule Change Panel's response to each of the specific issues raised in the first submission period is presented in Appendix B of the Draft Rule Change Report. A more general discussion of the Rule Change Proposal, which addresses the main issues raised in submissions and the Rule Change Panel's response to these issues is presented in section 6.1 of the Draft Rule Change Report.

4.4 Call for Further Submissions

The Rule Change Panel published a CFFS on 21 January 2019 because a significant period had passed since the IMO consulted on the Rule Change Proposal and the Market Rules had undergone numerous changes since the Rule Change Proposal was published.

The Rule Change Panel sought submissions from stakeholders on the Rule Change Proposal generally, and feedback on specific questions that would help the Rule Change Panel better understand the problems with the current framework that the Rule Change Proposal purported to address.

In the CFFS, amendments were made to the proposed Amending Rules to reflect the changes to the Market Rules since the Rule Change Proposal was published. A summary of the changes is set out in Appendix D of the Draft Rule Change Report.

4.5 Submissions Received During the Further Submission Period

The further submission period was held between 21 January 2019 and 1 March 2019. The Rule Change Panel received submissions from AEMO, Synergy, Western Power and Perth Energy. Section 5.5 of the Draft Rule Change Report contains a summary of the further submissions from AEMO, Synergy, Western Power and Perth Energy.

4.6 The Rule Change Panel's Response to Submissions Received During the Further Submission Period

The Rule Change Panel's response to each of the specific issues raised in the further submission period is presented in Appendix C of the Draft Rule Change Report. A more general discussion of the Rule Change Proposal, which addresses the main issues raised in the further submissions and the Rule Change Panel's response to these issues, is presented in section 6.1 of the Draft Rule Change Report.

4.7 Submissions Received During the Second Submission Period

The second submission period was held between 18 October 2019 and 15 November 2019. The Rule Change Panel received one submission from Alinta Energy.

Alinta Energy noted that while it had been generally supportive of the initial Rule Change Proposal, it was concerned that:

- the broad discretion afforded under the proposed framework would create a risk to Market Participants that commercially sensitive information could be released; and

- there could be retrospective application of changes in the confidentiality status of commercially sensitive information that had been previously provided by participants to AEMO.

Given these concerns, and the other issues identified by the Rule Change Panel in the Draft Rule Change Report, Alinta Energy supported the Rule Change Panel's proposed decision to reject the Rule Change Proposal.

Alinta Energy also agreed with the Rule Change Panel that the effectiveness of the current market information framework depends on how AEMO implements its obligations under clause 10.2.1 to assign a confidentiality status for each type of market information. Alinta Energy considered that AEMO must work with the industry to ensure that the confidentiality list is updated to record each type of market information and the associated confidentiality status.

4.8 Public Forums and Workshops

No public forums or workshops were held regarding the Rule Change Proposal.

5. The Rule Change Panel's Draft Assessment

The Rule Change Panel's draft assessment of the Rule Change Proposal against clauses 2.4.2 and 2.4.3 of the Market Rules is provided in section 6 of the Draft Rule Change Report.

6. The Rule Change Panel's Proposed Decision as set out in the Draft Rule Change Report

The Rule Change Panel's proposed decision in the Draft Rule Change Report was to reject the Rule Change Proposal. The reasons for the Rule Change Panel's proposed decision are set out in section 2.1 of the Draft Rule Change Report.

7. The Rule Change Panel's Final Assessment

In preparing a Final Rule Change Report, the Rule Change Panel must assess the Rule Change Proposal in light of clauses 2.4.2 and 2.4.3.

Clause 2.4.2 states that the Rule Change Panel "*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 that, when deciding whether to make Amending Rules, the Rule Change Panel must have regard to:

- any applicable statement of policy principles the Minister has issued to the Rule Change Panel under clause 2.5.2;
- the practicality and cost of implementing the proposal;
- the views expressed in submissions and by the MAC; and
- any technical studies that the Rule Change Panel considers necessary to assist in assessing the Rule Change Proposal.

In making its final decision, the Rule Change Panel has had regard to each of the matters identified in clauses 2.4.2 and 2.4.3 as follows:

- the Rule Change Panel's assessment of the Rule Change Proposal against the Wholesale Market Objectives is available in section 7.3 of this report;
- there has not been any applicable statement of policy principles from the Minister in respect of the Rule Change Proposal;
- the Rule Change Panel's assessment of the practicality and cost of implementing the Rule Change Proposal is available in section 7.5 of this report;
- a summary of the views expressed in submissions and by the MAC and the Rule Change Panel's response to these views is available in section 4 of this report; and
- the Rule Change Panel does not believe a technical study in respect of the Rule Change Proposal is required and therefore has not commissioned one.

The Rule Change Panel's assessment is presented in the following sections.

7.1 Assessment of the Proposed Changes

The Rule Change Panel's assessment of the proposed amendments has not changed from its assessment detailed in section 6.1 of the Draft Rule Change Report.

7.2 Additional Amendments to the Proposed Amending Rules

The Rule Change Panel's final decision is to reject the Rule Change Proposal, so the Rule Change Panel does propose any changes to the proposed Amending Rules.

7.3 Wholesale Market Objectives

The Wholesale 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; and
- (e) to encourage the taking of measures to manage the amount of electricity used and when it is used.

The Rule Change Panel considers that the proposed amendments do not better achieve, and may be inconsistent with, Wholesale Market Objectives (a), (b), and (d). The Rule Change Panel's assessment of the Rule Change Proposal against the Wholesale Market Objectives remains as presented in section 6.3 of the Draft Rule Change Report.

7.4 Protected Provisions, Reviewable Decisions and Civil Penalties

The IMO proposed to amend several clauses that are Protected Provisions. Under clause 2.8.3, the Amending Rules in a Rule Change Proposal require approval by the Minister if they affect a Protected Provision. The proposed Amending Rules also include changes to clause 10.2.1, which is a Reviewable Decision, and to clause 10.2.4, which is a civil penalty provision.

However, the Rule Change Panel's final decision is to reject the Rule Change Proposal, so there are no Amending Rules for the Minister to approve, and consideration does not need to be given to the impact of the proposal on Reviewable Decisions or civil penalties.

7.5 Practicality and Cost of Implementation

The Rule Change Panel's assessment of the practicality and cost to implement the proposed market information framework remains as presented in section 6.5 of the Draft Rule Change Report.

The Rule Change Panel also continues to consider that AEMO's current Market Procedure: Information Confidentiality does not adequately set out how AEMO performs its function to manage market information, and notes that the confidentiality list has not been updated since 1 July 2012.

Now that the uncertainty about the outcome of this Rule Change Proposal has been resolved, the Rule Change Panel suggests that AEMO update the Market Procedure and the confidentiality list as soon as possible, subject to its budget and resource availability.