

Wholesale Electricity Market Rule Change Proposal Submission

RC_2018_05: ERA access to market information and SRMC investigation process

Submitted by:

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Submissions on Rule Change Proposals can be sent by:

Email to: rcp.secretariat@rcpwa.com.au

Post to: Rule Change Panel
 Attn: Executive Officer
 C/o Economic Regulation Authority
 PO Box 8469
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1. Please provide your views on the proposal, including any objections or suggested revisions.

Alinta Energy (**Alinta**) welcomes the opportunity to provide a submission to the Rule Change Panel on its Draft Rule Change Report for RC_2018_05 ERA access to market information and SRMC investigation process (**Draft Report**).

Alinta notes that the Rule Change Panel's draft decision is to accept the Rule Change Proposal in a modified form.

Specifically, the Rule Change Panel has decided to amend clause 2.13.3A from the Rule Change Proposal to "maintain the current scope of information accessible by the ERA from AEMO" by explicitly referring to "any market related data, information and document produced or exchanged in accordance with the Market Rules or Market Procedures in AEMO's possession or control (including in AEMO's role as System Management)" with the added requirement that the ERA believes that the data, information and documents may assist it to monitor Rule Participants' behaviour with the Market Rules and Market Procedures.

Alinta considers that the modified drafting of clause 2.13.3A is a vast improvement on the original. However, Alinta has some residual concerns, as outlined below.

A. Administrative efficiency for the ERA could limit procedural fairness for Market Participants

The Rule Change Panel considers that its modified approach is administratively more efficient than requiring the ERA to access any market related data, information and document produced or exchanged in accordance with the Market Rules or Market Procedures under clause 10.4.1 of the Market Rules, or by enacting its rights under section 51 of the *Economic Regulation Authority Act 2003 (WA) (ERA Act)*.

While Alinta accepts that this process may be administratively more efficient for the ERA (subject to its comments under section C below), Alinta considers that the modified Amending Rules will allow the ERA to obtain Market Participants' information through the AEMO in a manner that is not transparent and could limit procedural fairness for the Market Participant, recognising that this risk already exists within the Market Rules.

Generally, procedural fairness requires processes to be consistent with, among other things, the "hearing rule" - which provides people likely to be adversely affected by decisions an opportunity to:

- present their case; and
- have their response taken into consideration **before** the decision is made.

Alinta notes that the ERA's Compliance and Monitoring Framework¹ includes a "fairness" principle such that the investigation process is conducted in a professional manner, including applying procedural fairness and ensuring investigation decisions are informed by the relevant facts.

The ERA's Monitoring Protocol² then goes on to say that the ERA may seek further information from participants when deciding whether an alleged breach has occurred³. Once the ERA has decided an alleged breach has occurred it is obliged to investigate that alleged breach. In these circumstances, the Monitoring Protocol indicates that the ERA may meet with a Rule Participant alleged to be in breach of the rules at any stage during an investigation. Further, the Rule Participant alleged to be in breach will be informed of the ERA's preliminary findings in an investigation, once formed, and will be given the opportunity to respond to these preliminary findings.

Alinta considers that the current compliance and monitoring framework (as outlined above) affords a participant procedural fairness.

However, Alinta notes that the ERA can approve its own amendments to the Monitoring Protocol (albeit being subject to stakeholder consultation). Given this, Alinta recommends that the Rule Change Panel consider adding the following requirement to section 2.15 of the Market Rules:

The processes set out in the Monitoring Protocol must be in a manner that affords procedural fairness to affected parties.

For the avoidance of doubt, Alinta considers that the current version of the Monitoring Protocol adheres to the above principle, and its suggestion is to ensure that procedural fairness is maintained in any future amendments.

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<https://www.erawa.com.au/cproot/19763/2/Compliance%20Strategy%20and%20Framework%20for%20WEM%20and%20GSI%20Rules.PDF>

² <https://www.erawa.com.au/cproot/17925/2/FINAL%20Monitoring%20Protocol%20clean%20version.pdf>

³ Step 4.1.3 of the ERA's Monitoring Protocol.

B. New clause 2.13.3A should only apply to information provided to the AEMO after the Amending Rules commence

The Rule Change Panel argues that the amendments to clause 2.13.3A are required to maintain the ERA's current level of access to information (in a more administratively efficient manner), noting that the ERA has always been able to access information under chapter 10 of the rules.

Alinta notes that when chapter 10 was developed the ERA's primary function was to monitor the effectiveness of the market. This is the original basis upon which the ERA was afforded the opportunity to request information under clause 10.4.1 of the Market Rules. Alinta considers that at the time chapter 10 was drafted it is highly unlikely that a change in functions was contemplated.

The basis for allowing the ERA to access all information via chapter 10 has not been revisited even though the ERA's functions have changed. When implementing the institutional changes from 30 November 2015 through to 28 April 2018 the amendments to chapter 10 were simply adding and/or removing references to AEMO, AEMO (in its capacity as System Management) and IMO rather than a complete review of the principles outlined in chapter 10. Further, participants were not afforded the opportunity to review and comment on the Market Rule amendments through this period.

Given there has been no formal review (that participants have been able to participate in) of how chapter 10 should operate under the new institutional arrangements, Alinta considers that it is reasonable that new clause 2.13.3A should only apply to information provided to the AEMO after the Amending Rules commence. This will give participants the opportunity to develop and implement internal protocols to ensure that all staff are aware that any information produced or exchanged under the Market Rules and/or Market Procedures can be used by the ERA for any of its functions.

C. There is some uncertainty as to how modified clause 2.13.3A will work in practice

Alinta considers that the ERA already has appropriate information sources to trigger its investigative powers in that AEMO and System Management, in their day to day operational roles, are required to report any alleged breaches to the ERA. Any Rule Participant can also bring to the ERA's attention any alleged breaches of another Market Participant. In relation to the specific concerns around market power and price bidding behaviour of Market Generators, the ERA is given access to a range of confidential information of Market Participants for the purpose of monitoring that behaviour given the significant and material impact that such behaviour is likely to have on the market and end users overall.

Therefore, it is difficult to see why the ERA asserts that it does not currently have sufficient access to information to carry out its monitoring function for the purposes of its compliance and enforcement function.

Nevertheless, the Rule Change Panel has modified the proposed amendments to clause 2.13.3A to require AEMO to give the ERA access to the same scope of information that it would have to provide under Chapter 10 of the Market Rules, with the added requirement that the ERA believes that the data, information and documents may assist it to monitor Rule Participants' behaviour with the Market Rules and Market Procedures.

Alinta interprets modified clause 2.13.3A to mean that the ERA is going to have to undertake a process to specifically identify the data, information and documents it would like to obtain from AEMO that may assist it to monitor Rule Participants' behaviour with the Market Rules and Market Procedures. Alinta cannot think of any justifiable reason why the outcomes of this process should not be made available to participants.

Therefore, Alinta recommends that the Rule Change Panel consider adding a requirement that the Monitoring Protocol be amended to require the ERA to inform participants of the specific information that the ERA believes will assist its monitoring under clause 2.13.3A.