

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: support@rcpwa.com.au

Post to: Rule Change Panel
Attn: Executive Officer
C/o Economic Regulation Authority
PO Box 8469
PERTH BC WA 6849

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

The Economic Regulation Authority appreciates the opportunity to provide this submission in response to the call for further submissions for Rule Change: ERA access to market information and SRMC investigation process (RC_2018_05).

It is the ERA's understanding that the intention of the two clauses inserted by the Minister for Energy is to provide a greater degree of transparency of the ERA's monitoring activities, and to ensure that the ERA follows the principle of procedural fairness when undertaking its compliance and enforcement activities.

The ERA supports the inclusion of clauses 2.13.3B and 2.15.4 to support greater transparency and procedural fairness under the Market Rules for the reasons outlined below.

The inclusion of these two clauses formalises the ERA's current approach to identifying monitoring priorities and providing procedural fairness to Rule Participants as outlined in the

ERA's Compliance Framework and Strategy.¹

Comments on proposed clause 2.13.3B

Clause 2.13.3B was added by the Minister to the Rule Change Proposal to increase the transparency of the ERA's compliance regime. The ERA supports its inclusion in a practical and workable way consistent with the reasons outlined by the Minister, specifically, to "contribute towards greater process efficiency."

The ERA takes a risk-based approach to its compliance monitoring practices. Compliance resources are prioritised to the sections of the Market Rules where non-compliance could lead to serious consequences or where there is a high likelihood of non-compliant behaviour.

Including clause 2.13.3B in the Market Rules reinforces the ERA's current risk-based approach to monitoring.

Clause 2.13.3B contains three subclauses, each outlining different publishing or notification requirements. The wording of clause 2.13.3B requires the ERA to undertake "one or more" of the actions outlined in the three subclauses, "as applicable". The report states that clause 2.13.3B "may" place additional administrative burden on the ERA. The use of this terminology indicates that while there may be additional duties required by the ERA, the clause is not intended to be overly administratively burdensome.

The ERA relies on data provided by the Australian Energy Market Operator (AEMO) for its monitoring. AEMO holds thousands of data sets that may be required for monitoring purposes. It would not be administratively feasible or efficient for the ERA to individually list each of the pieces of information or data it may use for monitoring purposes.

The ERA interprets this clause to require the ERA to provide details of specific sections of the Market Rules that the ERA intends to monitor, and examples of the types of data that it may require to undertake this monitoring. Due to the complex and interconnected nature of the power system, the ERA understands that any published list would not limit its monitoring functions but would serve as a general guide to Rule Participants.

As it refines its monitoring functions the ERA is moving towards close to real time monitoring for ongoing compliance with the rules. This monitoring would be undertaken daily as part of the ERA's functions. It would not be practical or efficient to continually inform Rule Participants of these ongoing compliance monitoring programs. In line with the stated reasons for the inclusion of this clause, the ERA interprets the clause to require the ERA to provide notification to Market Participants of the types of monitoring that will be undertaken; for example, a published list of categories of behaviours that the ERA may monitor. The ERA does not consider that this clause is intended to require the ERA to provide individual notification to Market Participants each time the ERA monitors for potential non-compliance.

Should the Rule Change Panel consider that the intention of the drafting of clause 2.13.3B requires the ERA to specifically list each of the data sets it may require for its monitoring program or provide specific and ongoing notification to Rule Participants of each data set accessed, then the ERA considers that this would substantially reduce process efficiency.

If the Rule Change Panel considers that the inclusion of clause 2.13.3B materially affects the ERA's day to day operations (for instance, requiring the ERA to publish specific details of information required, or providing ongoing notification as data is accessed), then the ERA asks

¹ The ERA's compliance Framework and Strategy is available on the ERA's website at <https://www.erawa.com.au/electricity/wholesale-electricity-market/compliance-framework-and-strategy>

that the Rule Change Panel re-draft the clause to clarify the ERA's obligations.

Finally, the term "Market Web Site" is defined in the Market Rules as any website operated by AEMO. The ERA considers that the ERA's website would be the appropriate location for any such list to be published.

Comments on proposed clause 2.15.4:

Clause 2.15.4 provides a guarantee that Rule Participants are afforded the opportunity to be made aware of a potential non-compliance, and the opportunity to explain the relevant behaviour.

The Minister's report states that this clause is to "afford participants procedural fairness when assessing compliance with the Market Rules and Market Procedures, [and] to improve the efficiency of the market monitoring and compliance regime."

The inclusion of clause 2.15.4 reinforces the ERA's current practice of providing a Rule Participant with opportunity to explain its behavior and provide any relevant information or mitigating evidence to the ERA prior to a compliance determination being made.

The ERA undertakes compliance monitoring for many clauses under the Market Rules. To demonstrate the ERA's understanding of the practical implementation of clause 2.15.4, this submission outlines the ERA's approach to monitoring clause 7.10.1 of the Market Rules, as an example, which requires participants to comply with Dispatch Instructions.

The ERA regularly undertakes monitoring for non-compliance with Dispatch Instructions. Under clause 7.10.5(c) of the Market Rules, AEMO is required to warn Market Participants when it considers that the Market Participant is not compliant with its most recently issued Dispatch Instruction pursuant to clause 7.10.1. The ERA uses information provided by AEMO for its monitoring and investigation activities.

During 2018/19, AEMO issued Market Participants with approximately 42,000 warnings under clause 7.10.5(c). When the ERA is made aware of an alleged breach of the Market Rules, it is required to investigate that alleged breach. When investigating these notifications provided by AEMO under clause 7.10.5(c), the ERA identified approximately 100 Trading Intervals that were non-compliant. This is a typical outcome for compliance monitoring.

The Minister's report states that the inclusion of clause 2.15.4 will improve the efficiency of market monitoring by providing procedural fairness to a Rule Participant. Given that stated reason, the ERA has interpreted this clause to maintain its current practice of notifying Rule Participants of potential non-compliance once it has undertaken reasonable initial analysis. This interpretation of the inclusion of clause 2.15.4 would not result in a change of behaviour by the ERA or a cost of undertaking its monitoring actions.

If the intention of the clause is not as the ERA understands, and is for the ERA to be required to notify a Rule Participant for every instance of possibly non-compliant behaviour (for example, the 42,000 warnings issued under clause 7.10.5(c) in 2018/19), then this would make the ERA's monitoring role administratively impossible and would not further the Wholesale Market Objectives.

Should the RCP consider the intention of clause 2.15.4 is to require the ERA to provide notification to Rule Participants where any indication of non-complaint behaviour has been identified, the ERA requests the RCP amend the drafting of this clause to clearly reflect this view, and to consider the resourcing implications.

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

The ERA considers these two clauses are consistent with, and support the Wholesale Market Objectives but will not materially better facilitate achievement of the objectives relative to current practice.

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.

The ERA does not expect the proposed changes to materially affect its day to day activities and does not expect that the inclusion of these two clauses to significantly increase its costs.

If the RCP considers that the clauses require the ERA to materially change its practices by providing notification to Market Participants for each potential non-compliant behaviour, as outlined in the discussion of clause 2.15.4 above, the ERA estimates that it would cost the ERA between \$101,000 and \$127,000 each year for additional staff. This estimate is based upon extrapolating the ERA's resourcing requirements for currently procedural fairness activities across the expected monitoring activities.

This estimate does not include the additional resourcing required by Rule Participants to respond to the increased notifications provided.

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

The ERA expects it may take up to three months to implement the administrative and process changes for the new rules.