

Notice of the Minister's Decision Regarding the Amending Rules from Rule Change Proposal RC_2018_05

This notice is given under clause 2.8.9 of the Market Rules.

Submitter: Adrian Theseira, Economic Regulation Authority (ERA)

Date Submitted: 27 September 2018

Date of Notice: 10 January 2020

The Rule Change Proposal

In Rule Change Proposal RC_2018_05 (ERA access to market information and SRMC investigation process), the ERA sought to address three issues with the Market Rules that arose following the transfer of the compliance function from the Independent Market Operator to the ERA:

1. the inability of the ERA to require AEMO to provide it with market information for compliance monitoring;
2. restrictions on the ERA's compliance functions from using information already provided by AEMO to the ERA; and
3. the processes for investigating short run marginal cost non-compliance matters, which currently require two separate investigations to bring proceedings to the Electricity Review Board.

A copy of the Rule Change Proposal is available on the Rule Change Panel's website.¹

Processing of the Rule Change Proposal

The Rule Change Panel published the Rule Change Proposal on 3 October 2018 and the first submission period for the proposal was from 4 October 2018 to 21 November 2018.

The Rule Change Panel extended its timeframe for drafting the Draft Rule Change Report three times – on 9 November 2018, 17 December 2018 and 25 March 2019; and published its Draft Rule Change Report on 18 April 2019.

The second submission period for the Rule Change Proposal was from 18 April 2019 to 30 May 2019.

Copies of the Extension Notices, the Draft Rule Change Report, and all submissions from the first and second submission periods are available on the Rule Change Panel's website.¹

¹ https://www.erawa.com.au/rule-change-panel/market-rule-changes/rule-change-rc_2018_05.

The Rule Change Panel's Decision

The Rule Change Panel published its Final Rule Change Report on 28 June 2019. The Rule Change Panel's final decision was to accept the proposal in a modified form on the basis that the Amending Rules will:

- ensure that the ERA can explicitly require AEMO to provide it with data, information and documents to carry out its compliance monitoring function;
- provide a more efficient avenue for the ERA to access information held by AEMO that the ERA requires for its compliance monitoring function, the absence of which would require the ERA to use inefficient, administratively cumbersome processes to obtain that same information (inside the Market Rules or external to them);
- continue AEMO's obligations to support the ERA's compliance monitoring function;
- minimise the administrative costs to the market by not requiring the ERA to separately obtain the same information requested under section 2.16 of the Market Rules for the ERA's other functions;
- restore the mechanism to allow the ERA to bring proceedings before the Electricity Review Board pursuant to a clause 2.16.9B investigation; and
- allow the Market Rules to better achieve Wholesale Market Objectives (a) and (d) and will not affect, and thus be consistent with, the remaining Wholesale Market Objectives.

Details of the analysis behind the Rule Change Panel's decision is provided in section 7 of the Final Rule Change Report.

A copy of the Final Rule Change Report is available on the Rule Change Panel's website.¹

The Minister's Decision

The Amending Rules change clauses 2.13.3A, 2.13.9A, 2.13.9B, 2.16.9G and 2.16.14 of the Market Rules, which are Protected Provisions under clause 2.8.13 of the Market Rules. The Amending Rules therefore require Ministerial approval under clause 2.8.3 of the Market Rules, so the Rule Change Panel submitted the Amending Rules to the Minister for approval on 28 June 2019.

The Minister extended his timeline to consider the Amending Rules six times – on 26 July 2019, 23 August 2019, 9 September 2019, 18 October 2019, 18 November 2019, and 16 December 2019. Copies of the extension notices are available on the Rule Change Panel's website.¹

The Minister provided his decision regarding the Amending Rules to the Rule Change Panel on 6 January 2020.

The Minister decided under clause 2.8.5(c) of the Market Rules to send the proposed Amending Rules back to the Rule Change Panel with some revisions that the Minister considers are required to ensure that the Market Rules, as amended by the Amending Rules, are consistent with the Wholesale Market Objectives. The Minister provided reasons for his decision in accordance with clause 2.8.9 of the Market Rules.

The Minister has proposed two additional changes to the Amending Rules to:

- insert a new clause 2.13.3B regarding information disclosure; and
- overwrite a blank clause 2.15.4 with a clause regarding procedural fairness.

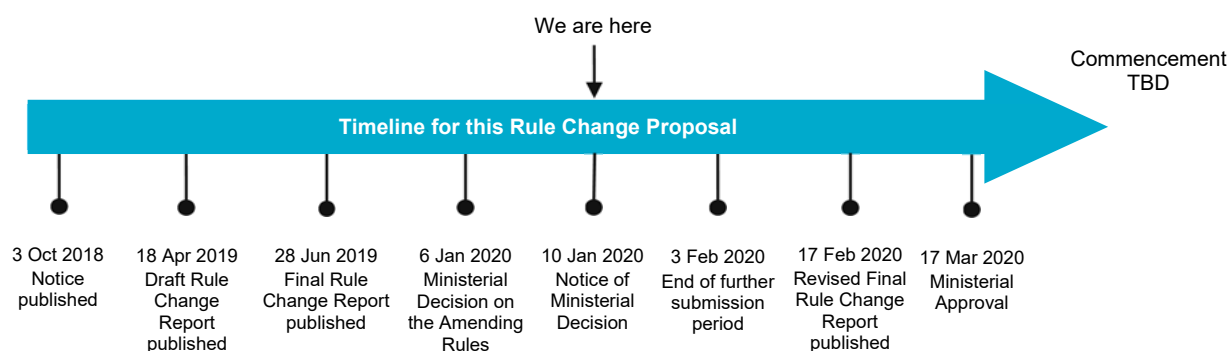
A copy of the Minister's decision is provided in Attachment 1 to this notice.

Next Steps and Timeline

In accordance with clause 2.8.10 of the Market Rules, the Rule Change Panel is required to:

- publish the revised Amending Rules and a call for submissions on the revised Amending Rules within 15 Business Days of publication; and
- provide a revised Final Rule Change Report, including any submissions received on the Minister's revised Amending Rules to the Minister within 25 Business Days with clauses 2.8.4 to 2.8.10 of the Market Rules applying to the revised Final Rule Change Report.

The projected timeline for progressing this proposal is:



Call for Submissions

The Rule Change Panel invites interested stakeholders to make submissions on the Minister's proposed revised Amending Rules.

To assist interested parties with formulating their submissions, the Rule Change Panel notes that it previously considered the matters raised by the Minister as follows:

- regarding information disclosure – see Appendix A, Issue 3 of the Final Rule Change Report; and
- regarding procedural fairness – see Appendix A, Issue 1 of the Final Rule Change Report.

Submissions must be delivered to RCP Support by **5:00 PM** on **Monday 3 February 2020**.

The Rule Change Panel prefers to receive submissions by email, using the submission form available at: <https://www.erawa.com.au/rule-change-panel/make-a-rule-change-submission> sent to support@rcpwa.com.au.

Submissions may also be sent to the Rule Change Panel by post, addressed to:

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

Attachment 1: The Minister's Decision Regarding the Amending Rules from RC_2018_05



Hon Bill Johnston MLA
Minister for Mines and Petroleum; Energy; Industrial Relations

Our Ref: 71-11866
Your Ref: RC_2018_05

MR STEPHEN ELIOT
EXECUTIVE OFFICER
RULE CHANGE PANEL

RULE CHANGE AFFECTING PROTECTED PROVISIONS (CLAUSES 2.13.3A, 2.13.9A, 2.13.9B, 2.16.9G AND 2.16.14)

I refer to your correspondence of 28 June 2019 regarding proposed amendments to the Wholesale Electricity Market Rules (Market Rules) titled 'ERA access to market information and SRMC investigation process (RC_2018_05)'.

I have considered the proposed Amending Rules and, in accordance with clause 2.8.5(c) of the Market Rules, consider that further revisions are required to these proposed Amending Rules to ensure consistency with the Wholesale Electricity Market Objectives. I am also required to provide you with reasons for these revisions, pursuant to clause 2.8.9 of the Market Rules.

The revisions that I require to the Amending Rules are specified in Attachment 1 to this memorandum, together with the reasons for these revisions.

I understand that further stakeholder consultation will be required on these revisions and look forward to receiving a finalised version of the Amending Rules for my consideration in due course.



Hon Bill Johnston MLA
Minister for Mines and Petroleum; Energy; Industrial Relations

6 JAN 2020

RULE CHANGE AFFECTING PROTECTED PROVISIONS (CLAUSES 2.13.3A, 2.13.9A, 2.13.9B, 2.16.9G AND 2.16.14) - FURTHER REVISIONS TO PROPOSED AMENDING RULES

Information Disclosure

Insert the following additional clause:

- "2.13.3B. The Economic Regulation Authority must inform Rule Participants of specific market related data, information or documents provided by AEMO to the Economic Regulation Authority as part of the systems and processes the Economic Regulation Authority must have in place in accordance with clause 2.13.3A and the Economic Regulation Authority may perform this obligation by doing one or more of the following as applicable:
- (a) publishing on the Market Web Site details of market related data, information or documents to be periodically provided by AEMO as part of the systems and processes in place under clause 2.13.3A;
 - (b) where market related data, information or documents provided by AEMO as part of the systems and processes in place under clause 2.13.3A relates to a specific Rule Participant, informing that Rule Participant;
 - (c) where market related data, information or documents provided by AEMO as part of the systems and processes in place under clause 2.13.3A relates to a group of Rule Participants (more than one) informing those Rule Participants."

Reason

Industry stakeholders have noted that the proposed Amending Rules will require the Australian Energy Market Operator (AEMO) to give the Economic Regulation Authority (ERA) access to a similar scope of information for compliance monitoring activities, as it would have to provide for market monitoring and effectiveness assessment purposes.

I note that stakeholders are of the view that as the ERA will be required to conduct a process to specifically identify the information required for compliance monitoring, outcomes of the process should be made available to rule participants accordingly.

The ERA should be required to inform participants of the specific information that it believes will assist its compliance monitoring activities as part of the processes and systems the ERA must establish under clause 2.13.3 of the Market Rules.

Although it is acknowledged that this requirement may place additional administrative burdens on both AEMO and the ERA, it has the potential to increase the transparency of the compliance regime and will therefore contribute towards greater process efficiency, consistent with the Market Objectives.

Procedural Fairness

"2.15.4. The monitoring processes referred to in clause 2.15.3(a) that are to be specified in the Market Procedure specified in clause 2.15.1 must include:

- (a) where monitoring by the Economic Regulation Authority has identified potential non-compliance by a Rule Participant, a requirement for notice to be given by the Economic Regulation Authority to that Rule Participant that identifies the potential non-compliant behaviour; and
- (b) a process through which the Rule Participant may make submissions to the Economic Regulation Authority seeking to explain the relevant behaviour."

Reason

It is acknowledged that the Rule Change Panel and the ERA consider that the ERA is already required as a matter of Administrative Law to adhere to the principle of procedural fairness when making administrative decisions, including when undertaking its compliance function.

However, stakeholders consider that the proposed Amending Rules could limit procedural fairness for participants, by allowing the ERA to access market participant information in a manner that is not transparent, particularly as the ERA has capacity to approve its own amendments to its Monitoring Protocol (following stakeholder consultation).

Including an express requirement in the Market Rules that the ERA's monitoring processes afford participants procedural fairness when assessing compliance with the Market Rules and Market Procedures, has the potential to improve the efficiency of the market monitoring and compliance regime, thereby furthering the Market Objectives.