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Dear Energy Policy WA

CONSULTATION – DRAFT RULES - MARKET POWER MITIGATION FRAMEWORK

Synergy welcomes the opportunity to provide a submission on Energy Policy WA's (**EPWA**'s) Market Power Mitigation WEM Amending Rules – Exposure Draft (**MPM Draft Rules**) regarding the implementation of the Market Power Mitigation (**MPM**) framework (**MPM Framework**) in the Wholesale Electricity Market Rules (**WEM Rules**).

Provided **below** are Synergy's key concerns with the MPM Draft Rules. This is followed by detailed comments and suggested drafting amendments for the MPM Draft Rules.

Key Concerns

Synergy welcomes EPWA's MPM Framework and its implementation through the MPM Draft Rules, noting that the Offer Construction Guideline, the Trading Conduct Guideline and the Market Power Monitoring Protocol are still to be developed by the Economic Regulation Authority (**ERA**).

However, Synergy considers that the MPM Draft Rules do not provide clarity and certainty to Market Participants and that some elements do not align with the overall intent of the MPM Framework. Synergy notes that many of its concerns in general are a result of the MPM Framework delegating the detailed content of the MPM regime to the ERA through the use of discretionary guidelines, while also expanding the ERA's enforcement role, side-lining the role of the Electricity Review Board (**ERB**). The effect is that a key part of the energy market policy-making function will be delegated to the ERA, an independent regulatory agency which is not required to consider government policy in its decision making, and without an opportunity for the ERB to review the decisions. At a minimum, Synergy suggests the guidelines should require government oversight to ensure the ERA's decision-making does not diverge from government energy policy and its long-term energy market objectives. As previously suggested[1] , a possible solution could be for the Coordinator to have ownership of the Offer Construction Guidelines.

[1] MPM Paper [at 39 and 48].

Synergy suggests that further refinements (as set out in detail in the **attached** table) are required to address the following concerns.

1 *Deemed breach removes right to review:* EPWA's proposal to deem any Irregular Price Offer, being an offer that the ERA considers would not be offered by a Market Participant without market power, to *automatically* constitute a breach of clause 2.16A.1 effectively removes the ability for Market Participants to apply to the ERB to review the substance of any ERA determination that a price is an Irregular Price Offer. This appears to conflict with the substance of EPWA's response in its *Market Power Mitigation Strategy - Information Paper* (10 November 2022) (**MPM Paper**) to Synergy's previous submission on this topic where EPWA indicated the ERA's determination of a breach of cl 2.16A.1 would be reviewable by the ERB.

2 *Removing market impact element:* Synergy is concerned that a consequence of the proposal in clause 2.16C.10 to separate the determination of a market power breach from the market impact test, making the latter a matter of ERA enforcement discretion, is that a Market Participant may be *deemed* to have breached clause 2.16A.1 without any evidence of a causal connection between the pricing conduct and the Market Participant's alleged breach of market power. The effect is that the ERA is relieved of the requirement to prove a critical element of clause 2.16A.1, being the need to establish that a Market Participant without market power would not have priced in the same way as the Market Participant 'deemed' to be in breach.

3 *Inability to fully consider the MPM Framework:* Synergy notes that the guidelines (Offer Construction Guideline, Trading Conduct Guideline and the Market Power Monitoring Protocol) are still to be developed by the ERA. The guidelines are critical to the implementation and enforcement of the MPM Framework and, as Market Participants are still waiting to be consulted on the guidelines, the full implications of the MPM Framework cannot be properly understood without knowledge of these key elements of the MPM regime. Additionally, delaying finalisation of the MPM Draft Rules until there has been an opportunity to consult with Market Participants will ensure that there are no unintended outcomes on a total basis across the WEM Rules and the guidelines. Synergy proposes that EPWA consider deferring approval of the MPM Draft Rules until after the guidelines have been released for consultation.

4 *No guarantee of recovery of efficient costs:* Synergy remains concerned that clause 2.16D.1(a) does not compel the ERA to ensure that its Offer Construction Guideline entitles Market Participants to recover at least their efficient costs from the energy markets together with a reasonable return on investment The clause also does not require the ERA to allow Market Participants to recover the costs expressly listed in the clause. Rather, it provides only that the question of what is a recoverable cost is a matter for the ERA's discretion, to be addressed at a future time in its Offer Construction Guideline.

For example, if the ERA's Offer Construction Guideline reflects the ERA's position in its recent application to the ERB about the current SRMC clause[2], Synergy is

[2] *Economic Regulation Authority v Electricity Generation and Retail Corporation t/as Synergy* (ERB No 1 of 2019).

concerned Market Participants will be required to price based on prevailing market prices for fuel and not be able to reflect efficient long term fuel contract prices in their offers. This will have the obvious outcome of incentivising Market Participants to not enter into long-term fuel contracts, even when it is efficient to do so. This would likely increase volatility in wholesale electricity prices and may ultimately increase electricity costs to consumers. At a minimum, Synergy proposes that EPWA consider endorsing in the MPM Draft Rules the principle that the ERA must allow all efficient costs to be included in market offers and that the ERA is required to consider the long-term security and reliability requirements of the WEM in developing its Offer Construction Guideline. In addition, it would be preferable for the Market Rules to require the ERA to include in its Offer Construction Guideline an allowance for the recovery of the costs listed in clause 2.16D.1(a).

5 *No materiality threshold for market impact test:* Synergy previously raised the issue that the market impact test does not direct the ERA's enforcement activity to situations where a Market Participant's activities result in "sustained and substantial hindrance" to competitive market outcomes. EPWA's response was that the principle of "inefficient market outcomes" is sufficient to allow the ERA to identify only outcomes that have had a material impact on the market[3]. However, there is nothing in the MPM Draft Rules (such as a materiality threshold) that prevents the ERA from taking action for breaches with insignificant market impacts, such as a breach of a single trading interval. Nor is there a requirement that the ERA consider a 'real world' counterfactual when assessing market impact, taking into account the likely conduct of other Market Participants in response to the relevant bidding behaviour.

Conclusion

Synergy thanks EPWA for their work on the MPM Framework and MPM Draft Rules and looks forward to EPWA's continued consultation on market reform matters.

Yours sincerely

MARK CHAMBERS
GENERAL MANAGER WHOLESALE

[3] MPM Paper, at [50].

Detailed Comments on the MPM Draft Rules

Market Power Mitigation Framework – Draft Amending WEM Rules for Consultation				
#	**Rule ref.**	**Classification**	**Issue**	**Suggestion**
1	2.16.13B	Moderate	Suggest that the Coordinator also reviews the efficiency and effectiveness of the methodology used to determine the Benchmark Reserve Capacity Price under this clause.	**2.16.13B.** In carrying out its responsibilities under clause 2.16.13A, the Coordinator must also monitor: … (c) the effectiveness of Network Operators in carrying out their functions under the WEM Rules and WEM Procedures; ~~and~~ (d) the efficiency and effectiveness of the methodologies for determining the Market Price Limits~~.~~; and (e) the efficiency and effectiveness of the methodology for determining the Benchmark Reserve Capacity Price.
2	2.16A.1	Major	Synergy notes that the drafting is inconsistent with the MPM Paper. The MPM Paper states that "*EPWA considers that the checks and balances that will occur as a result of the General Trading Obligations under clauses 2.16A.1 and 2.16A.2 of the Exposure Draft of the WEM Rules will mitigate any potential risks, as these obligations will apply to all Market Participants, not only those identified by way of the Standard or Constrained Gateway Tests*"[4]. Synergy notes that this clause was discussed at the TDOWG meeting held on 29 November 2022 and there appeared to be general industry agreement that the clause should apply to all Market Participants.	**2.16A.1**. A Market Participant ~~with market power~~ must offer prices for Market Services in each of its STEM Submissions and Real-Time Market Submissions that reflect only the costs that a Market Participant without market power would include in forming profit-maximising price offers in a STEM Submission or Real-Time Market Submission.

[4] MPM Paper, at [11].

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#	**Rule ref.**	**Classification**	**Issue**	**Suggestion**
3	2.16C.1	Major	Synergy suggests that the use of the term "Declared Sent Out Capacity" is in error and suggests that the term System Size may be an appropriate replacement as this term compares the capacity of the facility and the DSOC. Synergy notes that facilities are able to over and under build to their allowable DSOC. Further the term DSOC is used inconsistently within subitem (a) to refer to two different values (a portfolio percentage, and the facility sent out capability). Suggested amendments to address both of these issues.	**2.16C.1.** The Economic Regulation Authority must, in accordance with the WEM Procedure referred to in clause 2.16D.14: (a) within 10 Business Days of identifying each Portfolio under clause 2.16B.1(a), for each Portfolio p, calculate: ~~the Declared Sent Out Capacity of each such Portfolio as a percentage of the sum of the Declared Sent Out Capacity for all Portfolios in the Wholesale Electricity Market;~~ $PSOTSS(p) = \frac{\sum_{f \in p} System\_Size_f}{\sum_{p \in P} \sum_{f \in p} System\_Size_f}$ where: i. PSOTSS(p) is the Portfolio p's percentage share of the sum of the System Size for all Facilities in all Portfolios in the Wholesale Electricity Market; $System\_Size_f$ is the System Size of Facility f; p is a Portfolio identified under clause 2.16B; f is a Registered Facility within a Portfolio p as published under clause 2.16B.1(b); P is the set of all Portfolios identified in 2.16B.1(a); $f \in p$ the set of all Registered Facilities f that belong to Portfolio p; and $p \in P$ is the set of Portfolios identified under clause 2.16B.1(a) where Portfolio p is a member in that set; (b) identify each Portfolio where value determined under clause 2.16C.1(a) is ~~with a Declared Sent Out Capacity proportion~~ equal to or greater than 10% ~~as calculated under clause 2.16C.1(a)~~ ("**Material Portfolio**"); and …

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#	**Rule ref.**	**Classification**	**Issue**	**Suggestion**
4	2.16C.2	Minor	Suggest a sub clause item is added that requires AEMO to identify each Material Constrained Portfolio similar to that in clause 2.16C.1(b) rather than using the definition of the term to "identify" the portfolios.	**2.16C.2.** … (a)ii. NC is the total number of Dispatch Intervals in which the Network Constraint relevant to the identification of the Constrained Portfolio identified under clause 2.16B.2(a) bound during the Rolling Test Window; ~~and~~ (b) identify each Constrained Portfolio with a Constrained Uplift Payment Ratio equal to or greater than 10% as calculated under clause 2.16C.2(a) ("**Material Constrained Portfolio**"); and (c) ~~(b)~~ within 10 Business Days of identifying each Material Constrained Portfolio pursuant to clause 2.16C.2~~(a)~~(b): … **Glossary:** **Material Constrained Portfolio**: Has the meaning given in clause 2.16C.2(b). ~~A Constrained Portfolio with a Constrained Uplift Payment Ratio equal to 10 percent or greater as calculated under clause 2.16C.2(a).~~
5	2.16C.1 and 2.16C.2	Moderate	Synergy notes that a 10% threshold may be appropriate currently. However, Synergy suggests that threshold should be formally reconsidered within the next few years given the retirement of Muja G6 in October 2024, ongoing planned Synergy coal plant retirements, and the increasing importance of gas plants in the transition to net zero. To address these concerns, Synergy proposes a new clause is added that requires the Coordinator to review the value used in the clauses every three years.	**2.16C.2A. (new)** The Coordinator is required to review: (a) the value used in clause 2.16C.1b to identify a Material Portfolio; and (b) the value used in clause 2.16C.2(b) to identify a Material Constrained Portfolio, every three years to ensure that an appropriates mix of portfolios is captured under each clause.
6	2.16C.3	Clarity	Synergy seeks clarity as to what record keeping obligations will meet the requirement to be "capable of independent verification". Will output results from market models be suffice, and what is the process if a Market Participant changes its market models? Synergy notes that Market Participants may be exposed to unnecessary costs if the requirements are unreasonable.	

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#	**Rule ref.**	**Classification**	**Issue**	**Suggestion**
7	2.16C.4(a)	Clarity	Suggest the wording of the clause is amended to ensure that it is clear that expected network constraints are not considered in the ERA's determination (as stated in the Explanatory Note above the clause).	**2.16C.4.** The Economic Regulation Authority must monitor the following price offers for compliance with clause 2.16A.1: (a) the prices offered by a Market Participant in its Portfolio Supply Curve for each of its Registered Facilities within a Material Portfolio, irrespective of expected Network Constraints; and …
8	2.16C.5	Typographical	Suggested rewording for clarity and ease of reading.	**2.16C.5.** The Economic Regulation Authority must investigate a potential breach of clause 2.16A.1, in accordance with clause 2.13.27, the WEM Procedure referred to in clause 2.16D.14, ~~clause 2.13.27,~~ and having regard to the Offer Construction Guideline, if it considers that: …
9	2.16C.6	Moderate	Synergy advocates that the WEM Rules should provide guidance as to what must be considered by the ERA when making its impact assessment. In particular, to avoid excessive regulatory costs for little or no market benefits, the market impact test should direct the ERA's enforcement activity only to situations where a Market Participant's activities result in material uncompetitive market outcomes. In the absence of an express materiality threshold, nothing prevents the ERA from prosecuting isolated instances of breach of market power in a single trading interval or which result in minor market impacts. This risk is exacerbated by the decision of the ERB in Application No 1 of 2019 in which the ERB held that a Market Participant breaches the current SRMC clause where it offers even one price in any Price-Quantity Pair for a single trading interval. Nor is there a requirement that the ERA consider a 'real world' counterfactual when assessing market impact, taking into account the likely conduct of other Market Participants in response to the relevant bidding behaviour. Additionally, suggest slight rewording to sub item (a) for clarity and ease of reading.	**2.16C.6.** The Economic Regulation Authority must: (a) investigate, in accordance with clause 2.13.27 and the WEM Procedure specified in 2.16D.14 ~~and clause 2.13.27~~, whether an Irregular Price Offer determined under clause 2.16C.5 has resulted in an inefficient market outcome~~.~~; and (b) in considering whether an Irregular Price Offer results in an inefficient market outcome, determine whether the offer is, or is likely to, result in increases in prices from levels that would have arisen in the absence of the offer by comparison with a counterfactual scenario to determine what efficient offers for the relevant time periods would have been and what market outcomes would have resulted from efficient offers.

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10	2.16C.9	Moderate	Suggest that the ERA is required to notify the Market Participant prior to publishing the details of the determination on its website.	**2.16C.9.** If, following an investigation, the Economic Regulatory Authority has determined pursuant to clause 2.16C.5 and clause 2.16C.6 that: (a) an Irregular Price Offer has been made; and (b) the Irregular Price Offer resulted in an inefficient market outcome, the Economic Regulation Authority must: (c) at least 1 day prior to publication under (d), notify the relevant Market Participant of the determination; and (d) publish details of its determination, including the name of the relevant Market Participant and the Irregular Price Offer to which the determination relates on its website.
11	2.16C.10 (and 2.16E.1)	Major	Synergy considers that the drafting of this clause is not consistent with the MPM Paper and should be removed. The deeming under this clause removes the ability for a breach to be a reviewable decision by the ERB. Synergy's concerns with this clause are provided above in the main document under items 1 and 2.	**2.16C.10.** ~~Where the Economic Regulation Authority has determined under clause 2.16C.5 that a Market Participant has made an Irregular Price Offer, the Market Participant will be deemed to be in breach of clause 2.16A.1~~. [Blank]
12	2.16D.1(a), Chapter 9, Glossary (Enablement Losses)	Major	To minimise the risk of future disputes, Synergy urges EPWA to reconsider identifying specific costs in clause 2.16D.1(a) that the ERA is required to allow in a Market Participant's offer where to do so is efficient and consistent with the Market Objectives. *Recovery of ramping and ride-through costs:* Synergy considers it needs to be clear that it is permissible for a Market Participant to recover its costs and enablement losses during 'ramping' in the trading intervals before and after a facility clears for the provision of energy and/or Frequency Co-optimised Essential System Services (**FCESS**). Suggest this is addressed by the proposed new subitem (a)(iii)2 which will allow Market Participants to include these costs in their FCESS offers. Alternatively, the definition of Enablement Losses and the calculations within Chapter 9 of the MPM Draft Rules could be amended to also capture these losses (this could be done by allowing for a limited number of consecutive intervals where enablement losses are still paid when the FCESS offer price is equal to or below the Energy Market Clearing Price). Similarly, Synergy considers pricing to avoid shut down and start-up costs should be expressly permitted where this results in a more efficient outcome for the market. For example, where	2.16D.1. The Economic Regulation Authority must develop, maintain and publish on its website, the following guidelines: (a) an Offer Construction Guideline that: i. provides guidance to Market Participants in relation to their offer price obligations under clause 2.16A.1;~~, and~~ ii. details how the Economic Regulation Authority will assess prices offered under clause 2.16C.5 ~~including, but not limited to how the ERA considers:~~ and permits recovery of all efficient costs of producing the relevant electricity in their offer prices; iii. permits Market Participants to take into account the following in their offer prices and outlines the principles to apply to their recovery: 1. the start-up and shutdown costs of relevant Facilities, including the costs of fuel, water, internal power, additional labour and lost asset value directly attributable to the start-up or shutdown; 2. the recovery of losses incurred during ramping and efficient ride-through; 3.~~2.~~. the variable costs of production for relevant Facilities, including: i. fuel or charging costs; ii. opportunity costs;

#	Rule ref.	Classification	Issue	Suggestion
			a facility is in merit for morning and evening peak, an efficient outcome may be for the facility to ride-through low prices in the midday trough rather than decommit and recommit at a higher overall cost to the market. This same requirement should be considered for the FCESS markets to ensure that facilities are able to ride-through periods of low price where this minimises total costs. *Uncertainty of dispatch:* With increasing penetration of intermittent generation and demand volatility due to Distributed Energy Resources (**DER**), it is becoming unachievable to accurately forecast how often facilities will be dispatched, the facility dispatch volumes and duration, and the expected market prices. Synergy considers that Market Participants need to be able to account for these uncertainties and risks in their offer prices. The clause should be amended to explicitly list dispatch uncertainties for consideration in the Offer Construction Guideline. *Offering at the price caps* Synergy considers there are times where a Market Participant should be allowed to offer at the Energy Offer Price Floor to reflect a facility's inability to respond to price signals, for example, where a facility is physically incapable of changing output after commencing commitment or decommitment processes. Additionally, Synergy suggests that further consideration is required in the MPM Draft Rules as to how the following issues can be taken into account within energy offers: • Costs associated with fuel storage (such as gas storage or coal stockpiles, stockpile reclaim costs, opportunity cost of replenishing stockpiles). Fuel storage reduces supply security risks for the WEM as a whole however Market Participants are not adequately compensated for these costs; and • Opportunity costs of dispatch for Electric Storage Resources (ESR). Can an ESR Facility offer to account for lost opportunities of dispatch in later higher priced intervals noting that it has limited dispatch?	iii. variable operating and maintenance costs attributable to the production of output; iv. water costs; and v. other costs; 4. uncertainty of dispatch outcomes and risks; 5.~~3.~~ any relevant regulatory costs or allowances; ~~and~~ 6. any other costs the Economic Regulation Authority considers are relevant for offer prices; and 7.~~4.~~ amortisation of costs associated with relevant Facilities across Trading Intervals and Dispatch Intervals; iv.~~ii.~~ provides examples illustrating the types of conduct that the Economic Regulation Authority considers would be likely to contravene the price offer obligations under clause 2.16A.1; v. ~~iii.~~ provides guidance to Market Participants on the records required to be maintained under clause 2.16C.3 and the manner in which they may be recorded and verified; and (b) trading conduct guidelines that must provide clarity and guidance to Market Participants regarding the prohibited conduct described in clause 2.16A.2.

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#	**Rule ref.**	**Classification**	**Issue**	**Suggestion**
13	2.26.2D, 2.26.2E, 2.26.2F	Major	Synergy considers that the Energy Offer Price Floor needs to be cognisant of the costs to consumers and that the price should not be set unnecessarily negative as it may not result in the best market outcome overall. As the penetration of DER and intermittent generation increases, it is expected that there will be increasing requirement for FCESS. With an excessively negative Energy Offer Price Floor, the enablement losses of FCESS facilities will be significant and these costs will be passed on to consumers which is unlikely to result in an overall efficient outcome for the customer. In order to address this concern Synergy suggests that the determination of the Energy Offer Price Floor needs to also consider efficient market outcomes.	
14	2.26.2E	Typographical	Suggest that the "and" at the end of sub item (a) should be an "or".	**2.26.2E**. In determining whether the current value of the Energy Offer Price Floor is appropriate for the purposes of clause 2.26.2D(a), the Economic Regulation Authority must consider, without limitation, if, since the previous review of the value of the Energy Offer Price Floor under this section 2.26: (a) the Real-Time Market for energy has cleared at the Energy Offer Price Floor in one or more Dispatch Intervals due to, in the Economic Regulation Authority's reasonable opinion, the Energy Offer Price Floor being too high; ~~and~~ or (b) there has been a change in the generation fleet in the SWIS that, in the Economic Regulation Authority's reasonable opinion, is likely to result in: ….,
15	2.26.2F	Moderate	Synergy suggests that part (a) of the clause needs to be mindful of facilities needing to ride through for ESS delivery or meeting peak demand.	
16	2.26.2H(a)iv.	Moderate	Synergy notes that, in determining the Facility with highest cycling costs, there may be facilities that are inappropriate for consideration due to the length of time needed for the facility to cycle. If the time window between the low price intervals and the peak demand intervals is not sufficient to allow for a facility to decommit and recommit, the cycling costs for those facilities should be excluded.	

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#	**Rule ref.**	**Classification**	**Issue**	**Suggestion**
17	3.15A.2A	Moderate	Synergy suggests that further consideration may be needed to ensure that this clause does not result in a creating a de facto offer price cap for FCESS markets that is below the actual FCESS Offer Price Ceiling.	
18	Glossary	Typographical	Suggest the trading conduct guideline becomes a defined term.	**Glossary.** **Trading Conduct Guideline**: The guideline published by the Economic Regulation Authority under clause 2.16D.1(b), as may be amended in accordance with clause 2.16D.2.
19	Glossary and Chapter 9	Moderate	As discussed above in item 12 (clause 2.16D.1) of the table, the calculations under Chapter 9 and the definition of Enablement Losses do not allow for the recovery of enablement losses incurred during ramping or allow for an FCESS Facility to ride-through efficiently when this would result in a lower cost overall to the market. In order to address this concern; the MPM Draft Rules need to be amended to allow for Market Participants to include these costs in their offer prices or alternatively Chapter 9 and the definition of Enablement Losses are required to be amended to allow for cost recovery in these situations.	