Government of **Western Australia**
Department of **Mines, Industry Regulation and Safety**
Energy Policy WA

Response to Stakeholder Submissions

Market Power Mitigation and Compliance and Enforcement Exposure Drafts

3 April 2023

Working together for a **brighter** energy future.

An appropriate citation for this paper is: Response to Stakeholder Submissions

Energy Policy WA
Level 1, 66 St Georges Terrace
Perth WA 6000

Locked Bag 100, East Perth WA 6892
Telephone: 08 6551 4600

www.energy.wa.gov.au
ABN 84 730 831 715

Enquiries about this report should be directed to:

Email: energymarkets@dmirs.wa.gov.au

Overview

Energy Policy WA released two Exposure Drafts for public consultation on 21 February 2023. The Exposure Drafts proposed changes to the Market Power Mitigation and Compliance and Enforcement frameworks in the Wholesale Electricity Market (WEM), as part of the Energy Transformation Strategy.

Stakeholders were invited to provide written feedback by 7 March 2023. Energy Policy WA's responses to the stakeholder submissions can be found in the below summary tables.

Market Power Mitigation – Exposure Draft #2

Energy Policy WA published an initial Exposure Draft of the Market Power Mitigation Wholesale Electricity Market (WEM) Amending Rules to implement the revised Market Power Mitigation framework outlined in the Information Paper. Exposure Draft #1 was published on 10 November 2022.

The Market Power Mitigation Exposure Draft #2 incorporated the proposed Wholesale Electricity Market (WEM) Amending Rules from Exposure Draft #1, along with some further amendments made in response to stakeholder submissions. Additional information on the exposure drafts and design of the Market Power Mitigation Strategy can be found on the Energy Policy WA website.

Compliance and Enforcement – Exposure Draft

The Compliance and Enforcement Exposure Draft combined proposed amendments to the WEM Rules and the Energy Regulations Amendment Regulations 2023 to enact changes to the compliance and enforcement frameworks. The proposed amendments to the regulations included changes to the civil penalty and reviewable decisions frameworks under the WEM, Gas Services Information and Pilbara Networks Regulations.

An initial consultation paper on the amendments was released in July 2022. Additional information on the amendments and previous consultation processes can be found on the Energy Policy WA website.

Submissions

A session of the Transformation Design and Operation Working Group was held on 28 February 2023 to facilitate discussion on the Exposure Drafts.

Energy Policy WA received written submissions from:

- Synergy
- Alinta Energy
- Australian Energy Market Operator (AEMO)
- Collgar

Energy Policy WA considered all stakeholder feedback before finalising the WEM Amending Rules, and has provided a response to the feedback in the tables below.

The Wholesale Electricity Market Amendment (Tranche 6A Amendments) Rules 2023, incorporating the final Market Power Mitigation and Compliance and Enforcement rules, were approved by the Minister for Energy and published in the Government Gazette on 31 March 2023.

Market Power Mitigation – Exposure Draft #2

Submission	Comments/Issues Raised	Clause ref	Requested Changes/Action	EPWA Responses
Amnesty Period				
Synergy	Considers that the Revised MPM Rules need to take into consideration the time needed by Market Participants to implement the required changes into their systems and processes. A transitional period providing for a limited amnesty is required to ensure implementation and any new record keeping obligations can be reasonably achieved.	2.16.3C, 2.16C.6, 2.16D.4 and 2.16D.15	Suggested that Market Participants should be excused from non-compliance with the WEM Rules subject to: • the Market Participant using reasonable endeavours to implement systems and processes to comply with the new requirements; and • the relevant act or omission constituting gross negligence, fraud or wilful breach of the relevant new obligations.	The review of the Market Power Mitigation (MPM) strategy and the relevant Wholesale Energy Market (WEM) Amending Rules has involved numerous rounds of public consultation. The final MPM Strategy Information Paper was published in December 2022. As explained in the MPM Information Paper, EPWA's final design does not fundamentally change the MPM mechanisms currently in place in the WEM. Instead it: • defines market power and replaces the uncertainty around short run marginal cost (SRMC) with a better-expressed General Trading Obligation; • clarifies the obligations on participants and what conduct is expected of them; and • provides certainty and clarity on how the components of the MPM framework will be implemented and conducted by the ERA. The current WEM Rules already place conduct obligations on all Market Participants, including obligations to offer at their SRMC if they have market power. Based on the above EPWA expects that those Market Participants able to exercise market power should already have all necessary systems and processes to comply with their obligations, including record keeping obligations. Further, Market Participants will have three months following a notification by the Economic Regulation Authority (ERA) under the first stage of the Market Power Test to meet any additional record keeping requirements. Therefore, EPWA does not consider that an "amnesty" period is necessary.

Submission	Comments/Issues Raised	Clause ref	Requested Changes/Action	EPWA Responses
General trading obligations				
Alinta Energy (Alinta)	Generators should be permitted to incorporate the following factors in their STEM offers: • The opportunity cost of selling their capacity in the Real-Time Market instead; and • Appropriate risk margins.	2.16A.1	Recommends that 2.16A.1 not apply to the STEM, or otherwise, that EPWA clarify whether these factors would be permitted or otherwise amend the obligations to ensure that they are for the above reasons.	Applying clause 2.16A.1 to the STEM is in line with the Market Power Mitigation Strategy Information Paper, published in December 2022. The ERA is ultimately responsible for interpreting the General Trading Obligations, and the principles in the WEM Rules upon which the market power test is to be conducted. EPWA considers that the wording of these obligations and assessment principles provides adequate scope for the ERA to account for all relevant costs, factors and circumstances.
Alinta	Questions whether 2.16A.2 is necessary in the WEM. If retained – Alinta recommended that the obligation should more closely replicate the sections of the Competition and Consumer Act it is based on.	2.16.A.2	Proposed drafting: c) is for the purpose of distorting or manipulating ~~distorts or manipulates, or is likely to distort or manipulate~~, prices in the Wholesale Electricity Market	This clause has been amended to closely replicate the relevant sections of the Competition and Consumer Act, as suggested by Alinta.
Alinta	Alinta notes the intent but is uncertain how withholding accredited FCESS capacity would be interpreted under the general trading obligations	2.16.A.2	Recommended that these obligations clarify the situations where not offering accredited FCESS capacity should not be considered as a potential breach.	The ERA is ultimately responsible for interpreting the General Trading Obligations, and the principles in the WEM Rules upon which the market power test is to be conducted. EPWA considers that the wording of these obligations and assessment principles provides adequate scope for the ERA to account for all relevant costs, factors and circumstances. EPWA expects that the ERA will clarify in the Trading Conduct Guideline the situations in which not offering accredited FCESS capacity should not be considered as a potential breach. These would focus on examples of relevant conduct, and EPWA strongly encourages Alinta to engage with the consultation on the draft Guidelines once published by the ERA.
Alinta	Supportive of the change to 2.16A.3(a)	2.16A.3(a)		Noted

Submission	Comments/Issues Raised	Clause ref	Requested Changes/Action	EPWA Responses
Collgar	Collgar notes that the removal of the "with market power" criterion from clause 2.16A.1 may have a material impact on smaller Market Participants. As a result, participants who submit offers into the STEM or Real Time Markets will now be required to offer as if they had significant market power and: • will likely increase the regulatory burden on smaller Market Participants; • may result in material changes to the way smaller Market Participant s are required to offer which in turn could impact their competitiveness in the market; • Market Participants who would not typically be captured by the ERA's test may now be required to offer in materially different ways than they would otherwise.	2.16A.1	There is currently insufficient definition in the WEM Rules and guidelines as to what constitutes "costs". Removal of the market power criterion without additional information may exacerbate the issues.	Clause 2.16A.1 was amended in response to feedback provided at TDOWG and in a number of stakeholder submissions, to remove “with market power”. New clause 2.16A.32 will require the ERA to consider the extent to which a Market Participant held market power when investigating a breach of 2.16A.1. As a consequence, a new clause 2.26A.3 has been inserted providing that the ERA must not determine that a Market Participant has engaged in conduct prohibited by clause 2.16A.1 unless the ERA has first determined that the Market Participant had market power. Importantly, EPWA notes that a Market Participant without market power will offer prices 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. Therefore, there is no apparent reason why a Market Participant without market power should offer in materially different ways than they would otherwise.
Synergy	Synergy’s primary concern with the Revised MPM Rules is the use of objective tests that are proposed in clauses 2.16A.1 and 2.16C.5 of the Revised MPM Rules. These tests assume that there exists a single, objectively discoverable and ‘correct’ market price and agrees with Alinta's comment on their submission on recent submission about the ERA’s draft Offer Construction Guideline.	2.16A.1 2.16C.5	To address the above concern, Synergy submits the Revised MPM Rules should be amended so that the relevant MPM test is whether a Market Participant’s offer prices are a “reasonable estimate” of the objective ‘efficient price’, taking into account the relevant Market Participant’s circumstances.	Reintroducing phraseology such as “reasonable estimates” reintroduces the ambiguity in the pre-existing rules, which the revised MPM strategy is aiming to avoid. The ERA is responsible for interpreting the General Trading Obligations, and compliance with the WEM Rules. EPWA considers that the wording of these obligations provides adequate scope for the ERA to account for all relevant costs, factors and circumstances. EPWA expects that the ERA will clarify what constitutes a “reasonable estimate” in the Offer Construction Guideline. EPWA strongly encourages Synergy to engage with the second consultation on the draft Guidelines once the next draft is published by the ERA.

Submission	Comments/Issues Raised		Requested Changes/Action	EPWA Responses
Portfolio Assessment				
Alinta	Alinta supports changes to clause 2.16B and glossary, 2.16C.3 (b) and (c)	2.16B		Noted
Market Power Test				
Alinta	Alinta supports changes to 2.16C.3 (b) and (c) – especially the changes to require the Offer Construction Guideline to permit the recovery of long term take or pay fuel contracts.	2.16C.3 (b) and (c)		Noted
Record Keeping for a Registered Facility identified in a Material or a Material Constrained Portfolio				
Alinta	Alinta noted it would be impractical to require participants to include records for how all these costs are calculated, noting that offers can include cost inputs which a not calculated mechanistically. Non-fuel opportunity costs and how all costs are amortised are based on many uncertain market variables and human perceptions of risks. Alinta recommend a new clause 2.16D.4 to clarify the expectation for these records.	2.16C.3 2.16D.1.	(b) maintain adequate records (that are capable of independent verification) of the methods, assumptions and cost inputs the Market Participant used to develop the prices in the Portfolio Supply Curve offered in its STEM Submissions or Standing STEM Submissions, ~~which must include, for each relevant Facility, the information referred to in clause 2.16D.1(a)(i);~~ and (c) maintain adequate records (that are capable of independent verification) of the methods and cost inputs the Market Participant used to develop the prices offered, quantities and Ramp Rate Limits in its Real-Time Market Submissions~~, which must include, for each relevant Facility, the information referred to in clause 2.16D.1(a)(i).~~ 2.16D.4. For the avoidance of doubt, 2.16C.3 does not require Market Participants to maintain records that stipulate precisely how each offer was calculated.	EPWA has removed the reference to the information in clause 2.16D.1 from both limbs of 2.16C.3 as suggested by Alinta. It has not included, however, the new proposed clause 2.16D.4 as it considers that this would undermine the intent of clause 2.16.C.3.

Submission	Comments/Issues Raised	Clause #	Requested Changes/Action	EPWA Responses
Stages 2 and 3 of the Market Power Test				
Alinta	Alinta considers that this clause, and the term "Irregular Price Offer" is duplicative, noting that participants are already obliged to offer consistently with 2.16A.1 and 2.16A.2.	2.16C.5	Proposed drafting: ~~2.16C.5. A Market Participant must not make an Irregular Price Offer that results in inefficient market outcomes~~	This clause cannot be removed as it is the clause to which the relevant civil penalty will apply i.e. it will be a civil penalty provision.
Alinta	These clauses duplicate 2.13.27 and in doing so, apply a different standard for investigation compared with 2.13.27. The current drafting of 2.16C.6, 2.16C.7 and 2.13.27 are inconsistent with the reforms objective to make regulatory effort proportional to the risk it aims to mitigate and also contradicts 2.16E.1. It would be better to augment 2.13.27, so that it applies the effects tests to general bidding obligations, rather than creating duplicative and parallel requirements for ERA to investigate new clauses 2.16C.6-9. 2.16E.1 should also be amended to clarify that ERA must not investigate unless it considers it is likely to pass the effects test, and clarify the concept of an "inefficient market outcome":	2.16C.6 -9. 2.13.27 2.16E.1-2	Recommended deletions: ~~2.16C.6. The Economic Regulation Authority must investigate a potential breach of clause 2.16A.1 in accordance with clause 2.13.27 and the WEM Procedure referred to in clause 2.16D.15, and having regard to the Offer Construction Guideline, and if it considers that: (a) prices offered by a Market Participant in its Portfolio Supply Curve are inconsistent with the prices that a Market Participant without market power would offer in a profit-maximising Portfolio Supply Curve; or~~ ~~(b) prices offered by a Market Participant in its Real-Time Market Submissions are inconsistent with the prices that a Market Participant without market power would offer in a profit-maximising Real-Time Market, must determine that the prices were an Irregular Price Offer. 2.16C.7. The Economic Regulation Authority must investigate and determine, in accordance with clause 2.13.27, and the WEM Procedure specified in 2.16D.15, whether an Irregular Price Offer determined under clause 2.16C.6 has resulted in an inefficient market outcome.~~ ~~2.16C.7. The Economic Regulation Authority must investigate and determine, in accordance with clause 2.13.27, and the WEM Procedure specified in 2.16D.15, whether an Irregular Price Offer~~	These clauses implement Stages 2 and 3 of the Market Power Test in line with the MPM Strategy Information Paper and cannot be removed. Clause 2.16E.1 precludes the ERA from taking compliance action or investigation for a breach of clause 2.16A.1 where it has made a determination that a price offer does not constitute an Irregular Price Offer under clause 2.16C.6, or that the Irregular Price Offer has not resulted in an inefficient market outcome under clause 2.16C.7. EPWA expects the ERA to clarify the concept of an "inefficient market outcome" in its Guidelines and the relevant WEM Procedure (the Market Power Monitoring Protocol). Under clause 2.16C.7, the ERA must investigate and determine, in accordance with clause 2.13.27, and **the WEM Procedure** referred to in clause 2.16D.15, whether an Irregular Price Offer determined under clause 2.16C.6 has resulted in an inefficient market outcome.

Submission	Comments/Issues Raised	Clause #	Requested Changes/Action	EPWA Responses
			~~determined under clause 2.16C.6 has resulted in an inefficient market outcome.~~	
Alinta	Alinta notes that as drafted, 2.16C.11 appears to make a contradictory statement that there is "nothing" in the WEM Rules to prohibit an investigation because 2.16E.1 and 2.13.27 could prohibit an investigation in these circumstances.	2.16C.11	Proposed drafting: 2.16C.11 For the avoidance of doubt, ~~nothing in these WEM Rules prohibits~~ the Economic Regulation Authority may still ~~from~~ commence~~ing~~ an investigation into an alleged breach of clause 2.16A.1, subject to 2.16E.1 and 2.13.27 if the Economic Regulation Authority was not monitoring the Market Participant's price offers at the time of the alleged breach because the Market Participant was not captured under clause 2.16C.4.	Some additional drafting changes have been implemented to this clause following the consultation process. This clause now provides, for the avoidance of doubt, that the ERA may still investigate any alleged breach of clause 2.16A.1 **even if the Economic Regulation Authority was not monitoring the Market Participant's price offers under clause 2.16C.4 at the time of the alleged breach occurred.** The rest of the relevant restrictions will still apply to the investigation so the proposed changes are not necessary.
Alinta	Alinta notes that with the suggested changes, 2.16E.2 would only be required to the extent that ERA initially considers that an investigation is warranted under 2.16E.1 but subsequently finds that the market outcomes do not warrant proceeding with the investigation or enforcement actions. As a less preferable alternative to the above changes, we recommend that 2.16C.6-7 are made subject to our proposed amended version of 2.16E.2. And there is not a mandatory requirement to investigate (consistent with 2.13.27).	2.16E.1 2.16E.2	2.16E.1. ~~Subject to clauses 2.16C.6 and 2.16C.7~~, the Economic Regulation Authority must not, in respect of a price offer described in clause 2.16C.4, investigate a Market Participant under clause 2.13.27, or take enforcement action under clause 2.13.36 for a breach of clause 2.16A.1, where the Economic Regulation Authority does not reasonably consider ~~has determined under clause 2.16C.7~~ that an ~~Irregular Price Offer~~ alleged breach of 2.16A.1 by the Market Participant has had material impacts on market outcomes; and that these impacts would be proportional to the regulatory effort required to investigate and address the alleged breach. ~~not resulted in an inefficient market outcome.~~.	EPWA considers that these changes are unnecessary as: • The ERA "must not, in respect of a price offer described in clause 2.16C.4, investigate a Market Participant under clause 2.13.27, or take enforcement action under clause 2.13.36 for a breach of clause 2.16A.1, where the ERA has determined under clause 2.16C.7 that an Irregular Price Offer by the Market Participant has not resulted in an inefficient market outcome"; and • the provisions of 2.13.17 apply to any relevant investigation. Also see response regarding the meaning of "inefficient market outcome" above.
Collgar	Collgar notes there may be circumstances where the ERA determines that there is little or no public benefit in investigation a breach of market power or irregular pricing offer.	2.16C.5 2.16C.6	It may be beneficial to make these clauses discretionary by amending "must" to "may".	EPWA does not consider giving the ERA discretion as to whether to investigate a potential breach of 2.16A.1 is appropriate. Under clause 2.13.33, the ERA may already decide to close or suspend an investigation, if certain factors are met.

Submission	Comments/Issues Raised	Clause #	Requested Changes/Action	EPWA Responses
Collgar	Collgar notes the current drafting of the clause requires the ERA to notify a Market Participant of a breach of clause 2.16C.5 one day prior to the publication.	2.16C.10	Proposes amending this to at least five business days.	We have changed this to two business days, noting that this notification is just to allow time for the participant to advise its management, Board, etc.
Synergy	Synergy considers: 1. In order for the ERA to be empowered to investigate or take enforcement action against a Market Participant, the ERA should be required to determine that the relevant offer price has resulted in 'material' inefficient economic outcomes; and 2. Clause 2.16E.1 should refer to clause 2.16A.1 and clauses 2.16A.2 and 2.16C.5, particularly noting that, unlike clauses 2.16C.5 and 2.16A.2, EPWA is not proposing that clause 2.16A.1 will be a civil penalty provision.	2.16E.1	Alternatively, if the amendment suggested in paragraph 2 is not made to clause 2.16E.1, the amendment suggested in paragraph 1 must also be made to clause 2.16C.7.	The civil penalty provision related to a breach of 2.16A.1 is clause 2.16C.5. Clause 2.16E.1 already refers to clause 2.16A.1 and it would not be appropriate to also refer to clause 2.16A.2 (now 2.16.A.3), as the conduct described in 2.16A.2 does not necessary relate to offers described in clause 2.16C.4. EPWA, therefore, does not understand what the proposed changes are aiming to achieve. Also see response regarding the meaning of "inefficient market outcome" above.

Submission	Comments/Issues Raised	Clause #	Requested Changes/Action	EPWA Responses
Offer Construction Guideline				
Alinta	Support the changes to require the Offer Construction Guideline to permit the recovery of long term take or pay fuel contracts.			Noted
Collgar	The ERA's offer construction guidelines are currently limited in their ability to consider contractual arrangements when assessing offers made into the market. Amendments to the WEM Rules in this Exposure Draft #2 may require the ERA to further amend its Offer Construction Guideline. It is imperative for the guideline and exposure draft to be released simultaneously to avoid material compliance risks on Market Participants. There remains ambiguity as to what constitutes a legitimate cost and the drafting of this clause may place Market Participants in a position of compliance risk due to lack of clarity.	2.16D.1	Subclause (a)(iii) includes costs applicable to take or pay contracts. There may be other contractual costs that may be relevant to include un a profit maximising offer. Collgar suggests amending the wording to include “or other contractual costs.”	The ERA is ultimately responsible for interpreting the General Trading Obligations, and the principles in the WEM Rules upon which the market power test is to be conducted. EPWA considers that the wording of these obligations and assessment principles provides adequate scope for the ERA to account for all relevant costs, factors and circumstances. EPWA expects that the ERA will clarify in the Offer Construction Guideline what other contract costs can be included in the relevant offers. EPWA strongly encourages Collgar to engage with the second consultation on the draft Guidelines once the next draft is published by the ERA.
Synergy	Synergy notes that the Offer Construction Guideline appears to expressly prohibit Market Participant s from including in their market offers either: • a general risk margin (unless risks were effectively asymmetric); nor • any margin to allow for a reasonable rate of return.	2.16D.1	EPWA should amend the Revised MPM Rules to ensure the ERA allows Market Participants to include such risk margins and earn such reasonable rates of return.	As above, the ERA is ultimately responsible for interpreting the General Trading Obligations, and the principles in the WEM Rules upon which the market power test is to be conducted. EPWA considers that the wording of these obligations and assessment principles provides adequate scope for the ERA to account for all relevant costs, factors and circumstances. EPWA expects that the ERA will clarify in the Offer Construction Guideline what, if any, margins can be included in offers that meet the obligation in clause 2.16A.1 i.e. that “reflect only the costs that a Market Participant without market

Submission	Comments/Issues Raised	Clause #	Requested Changes/Action	EPWA Responses
				power would include in forming profit-maximising price offers in a STEM Submission or Real-Time Market Submission". EPWA strongly encourages Synergy to engage with the second consultation on the draft Guidelines once the next draft is published by the ERA.
Synergy	Synergy reiterates its view that, due to the illiquid nature of the WA spot gas markets, it is virtually impossible for a Market Participant to estimate the prevailing 'market price' of gas at any point in time. This is a relatively material issue in light of the fact that clauses 2.16C.1 and 2.16C.5 contain objective tests for determining the market price. A Market Participant can breach these clauses even if it uses reasonable endeavours to estimate the prevailing market price of gas. The WEM Rules should provide an express avenue to resolve the above issues associated with the current requirement for Market Participants calculate their market offers based on the objective, actual, prevailing market price of gas.	2.16D.1(a) (iii)	Revised MPM Rules should be amended so that the relevant MPM test is whether a Market Participant's offer prices are a "reasonable estimate" of the objective 'efficient price', taking into account the relevant Market Participant's circumstances. Proposed drafting: ... iii. permits the recovery of a reasonable estimate of all efficient variable costs of producing the relevant electricity, including costs incurred under long-term take or-pay fuel contracts; ...	As above, reintroducing phrases such as "reasonable estimates" reintroduces the ambiguity in the pre-existing rules, which the revised Market Power Mitigation strategy is aiming to avoid. The ERA is ultimately responsible for interpreting the General Trading Obligations, and the principles in the WEM Rules upon which the market power test is to be conducted. EPWA considers that the wording of these obligations and assessment principles provides adequate scope for the ERA to account for all relevant costs, factors and circumstances. EPWA expects that the ERA will clarify what constitutes a "reasonable estimate" in the Offer Construction Guideline. EPWA strongly encourages Synergy to engage with the second consultation on the draft Guidelines once the next draft is published by the ERA.
Synergy	Synergy welcomes EPWA's proposed amendment to clause 2.16.1D(a) require the ERA to prepare an Offer Construction Guideline that allows for the recovery of costs under a long-term take-or-pay fuel contract. Unclear whether 2.16.1D(a)(iii) as drafted allows for the recovery of: 1. 'all' $/GJ costs incurred under a long-term take-or-pay contract; or	2.16.1D(a) (iii)	Suggests this clause is further amended to clarify that all costs incurred under a long-term take-or-pay contract can compliantly be included in market offers, potentially by deeming such costs to be variable costs	Amendments to clause 2.16.1D have been made to address this concern.

Submission	Comments/Issues Raised	Clause #	Requested Changes/Action	EPWA Responses
	2. only costs under such contracts that are 'variable'. Concerned that this clause could be interpreted to only apply to any variable component of a long-term take-or-pay contract and, therefore, not allow a Market Participant to include its $/GJ costs.			
Synergy	Synergy notes that, under the WEM Regulations, a Market Participant only has standing to apply to the ERB to review a reviewable decision when the Market Participant's "interests are adversely affected by [the] reviewable decision". Synergy is concerned that, until a Market Participant is found to be in breach of a provision of the Offer Construction Guideline, the Market Participant will not have standing to have the guideline reviewed by the ERA, even if the Offer Construction Guideline is materially inconsistent with the WEM Rules. This could mean that the erroneous, or potentially erroneous, Offer Construction Guideline could remain in force, and have a consequential negative effect on the efficiency of Market Participants' pricing decisions, for some time before it can legally be challenged.	2.16D.4	This could be addressed by extending standing in the case of a review of a guideline to a Market Participant whose interests would potentially be adversely affected by a decision in accordance with the guideline. Alternatively, suggests that EPWA consider, in addition to this being a reviewable decision, whether the WEM Rules could provide another avenue for reviews of the Offer Construction Guideline. Proposed drafting: Electricity Industry (Wholesale Electricity Market) Regulations 2004 Regulation 42(1): A person whose interests are adversely affected by a reviewable decision or, in the case of the making of a guideline, a person whose interests would be adversely affected if a decision were made in accordance with the guideline, may apply to the Board for a review of the decision"	EPWA is unclear what the proposed change to the Regulations is aiming to achieve. Under the WEM Regulations, reviewable decisions are decisions made (by the Coordinator, AEMO or the ERA) under a provision of the WEM Regulations or the WEM Rules. The Offer Construction Guideline provides guidance to participants on their obligations, it is not itself a decision. If the Offer Construction Guideline is "materially inconsistent" with the WEM Rules it will have no effect, as the Guideline must be consistent with the WEM Rules. Participants will also have the opportunity to respond to consultations on the Offer Construction Guideline. The relevant reviewable decision in this instance would be a merits review of the decision to apply a civil penalty for a breach of clause 2.16C.5, which can only happen after the decision is made.

Submission	Comments/Issues Raised	Clause #	Requested Changes/Action	EPWA Responses
WEM Procedures and guidance				
Alinta	Alinta notes that the ERA's current Compliance Framework and Strategy and its Compliance Monitoring Protocol states that: The ERA's approach is aimed at encouraging compliance by Rule Participants with the Market Rules and Market Procedures with the target of achieving high levels of compliance. Under this approach the ERA will seek to: (a) assist Rule Participants to understand their obligations, noting that the responsibility for meeting compliance obligations rests with the individual participant. Alinta is concerned clauses 2.16D.6 to 2.16D.13 adds unnecessary prescription to the process for seeking guidance and that by requiring the formulaic responses within set timeframes, the rules would undermine the opportunity for Market Participants and the ERA to build collaborative, transparent and good faith working relationships which are critical to compliance outcomes. Alinta commends the ERA Market Compliance team for its work in supporting this culture within the WEM and suggests removing the prescription to avoid hampering opportunities to build on this in the new market	2.16D.6 to 2.16D.13		These provisions are in line with the final Market Power Mitigation Strategy Information Paper, which was published in December 2022.

Submission	Comments/Issues Raised	Clause #	Requested Changes/Action	EPWA Responses
Review of Energy Offer Price Ceiling				
Alinta	As evidenced by the most recent review, the current method uses normal distributions of fuel and run times, rather than minimum run times or the maximum fuel price reasonably expected during the period, causing participants to under-recover costs in many intervals.	2.26.2	Recommend that 2.26.2 also note that the price ceiling should be based on the shortest feasible run of the highest cost generating unit. Noting that the bidding obligation considers the opportunity cost of fuel, and that it is proposed the limit is reviewed every three years rather than annually (like it is now). Also suggest that the fuel input be based on the maximum fuel price which may reasonably occur during the three-year period, considering the forecast supply and demand balance.	EPWA does not consider that it is appropriate to change the current methodology given that the lower Energy Offer Price Ceiling has now been removed.
Synergy	Considers that a decision by the ERA under clause 2.26.2, 2.26.2B or 2.26.2F, to not include an indexation process in the pricing for the Energy Offer Price Ceiling, an FCESS Offer Price Ceiling or the Energy Offer Price Floor, should be able to be reassessed under clause 2.26.2N if a change in circumstances has occurred and a Rule Participant considers the indexation should be applied. A decision to include (or not include) an indexation process will be less complex than undertaking an early review of the ceiling prices, and may enable quicker responses to emerging issues.	2.26.2, 2.26.2B, 2.26.2F, 2.26.2N and 2.26.2O	2.26.2NA. (new clause) proposed drafting: Where a Rule Participant considers there has been a material change in market circumstances since the Economic Regulation Authority's most recent review of a Market Price Limit pursuant to clauses 2.26.1, 2.26.2A or 2.26.2C, as applicable, the Rule Participant may, subject to clause 2.26.2O(a), notify the Economic Regulation Authority that it considers that for a Market Price Limit, the determination to apply or not apply indexation to a Market Price Limit is no longer appropriate in accordance with clause 2.26.2O. 2.26.2O. A notice by a Rule Participant under clause 2.26.2N or 2.26.2NA must: (a) be given no earlier than six months after completion of the most recent review of the relevant Market Price Limit by the Economic Regulation Authority under clauses	The changes suggested by Synergy have been implemented.

Submission	Comments/Issues Raised	Clause #	Requested Changes/Action	EPWA Responses
			2.26.1, 2.26.2A or 2.26.2C, as applicable; and (b) set out the Rule Participant's reasoning, with any supporting analysis, as to why it considers there has been: i. a material change in circumstances such that the relevant Market Price Limit is no longer appropriate~~,~~; or ii. a change in circumstance such that the determination to apply or not apply indexation to a Market Price Limit is no longer appropriate, having regard to the relevant matters in this section 2.26.	
	Synergy agrees that the application of different ceiling prices for each FCESS market may be required and notes that the opportunity costs are likely to differ significantly between raise and lower services.	2.26.2A and 2.26.2B	Notes that these issues will need to be considered by the ERA when undertaking the review of each FCESS Offer Price Ceiling.	Noted

Submission	Comments/Issues Raised	Clause #	Requested Changes/Action	EPWA Responses
Essential Systems Services Mechanism				
AEMO	Generally supports the proposals made but notes that it is unable to implement different price ceilings for each FCESS by 1 October 2023 (looking at 1 March 2024 for implementation)		Proposed an addition to section 1.60 to require the ERA to set a single FCESS Offer Price Ceiling for all of the relevant FCESS for the period from 1 October 2023 to at least 1 March 2024	The changes proposed by AEMO have been implemented.
Alinta	Alinta remains concerned about the planned approach to ESS pricing and ESS uplift payments and the uncertainty and complications it could impose on constructing ESS and energy offers. Participants would not be able to co-optimise their offers but must rely on uncertain estimated uplift payments in pricing their capacity. We consider that this creates a compliance risk and a risk of under-recovery.	ESS offers	Recommended that rules clarify whether ESS offers may include energy opportunity costs	The mechanism under the current WEM Rules already includes energy opportunity costs in the ESS clearing price and compensation for energy opportunity costs will be calculated by the dispatch engine, and therefore no change is required.
Alinta	Strongly question the need for these benchmarks, and we are concerned they will become a de facto price limit, triggering investigations or the SESSM and duplicate the current offer requirements. Strongly oppose the trigger for the SESSM based on efficient market outcomes.. considering...the uncertainty and revenue gaps facing new storage capacity and how new entrants in the FCESS market dramatically reduces revenue for incumbents, further undermining the incentive to invest.	3.15A.2A	If retained, we recommend that the rules outline how these benchmarks should be determined.	This requirement has been removed from the WEM Rules, as recommended by Alinta.

Submission	Comments/Issues Raised	Clause #	Requested Changes/Action	EPWA Responses
Real-time Market Submissions Obligations and Meaning				
Alinta	Supports the record keeping concept in principle. However, we are concerned with the requirement to be "adequate detailed records". To ensure there is balance between maintaining sufficient records to allow a proper investigation to be held and minimising compliance risk and cost, Alinta considers the word "detailed" should be deleted.	7.4.26 and 7.4.27	Considers the word "detailed" should be deleted. This drafting has been removed in other clauses, so should be removed here as well for consistency. The level of detail required should then be detailed in a WEM procedure. Recommend that the requirement for participants to note the time of a change in circumstances impacting an offer, and the time they became aware is excessively burdensome for a trader and operators in a real time market. If any part of this requirement is retained, we recommend that only the estimated time of the change should remain.	EPWA considers that the use of the word "detailed" here is appropriate and removing it would undermine the intent of the requirement. EPWA agrees that the level of detail required should be outlined in the relevant WEM Procedure.

Compliance and Enforcement Provisions – Exposure Draft

Submission	Comments/Issues Raised	Clause #	Requested Changes/Action	EPWA Responses
General Comments				
Alinta	Alinta notes some issues and recommendations in response to the Consultation Paper for EPWA's consideration are not reflected in the Exposure Draft.	N/A	N/A	EPWA is happy to meet and discuss any outstanding issues Alinta may have following the publication of this response to submissions.
Synergy	Synergy appreciates EPWA addressing a number of material issues raised in the August letter (such as the deeming of breaches, the issuance of infringement notices and rectification orders). However, a number of key matters still remain as detailed in this submission.	N/A	N/A	Noted.
Compliance Amnesty Period				
Alinta	Alinta considers that although the market start has been delayed, so have the finalisation of key technical specifications WEM Rules and Procedures. This means that despite the delay, participants must still develop and trial key systems and processes within a similar timeframe initially contemplated. Alinta strongly recommends an amnesty period from market start to "enable participants to adjust and become familiar to the new WEM requirements without the threat of compliance action."	N/A	Alinta recommends the implementation of a compliance amnesty period – as previously proposed by the Energy Transformation Taskforce. Alinta considers this would involve AEMO and the ERA still being required to monitor and record alleged breaches, and Rule Participants to self-report breaches, however, compliance responses will not be issued.	As noted by Alinta the start of the new WEM has been delayed with 12 months. EPWA does not consider that an additional amnesty period is necessary. EPWA is also concerned about the potential impact an "amnesty" period may have on the effectiveness and efficiency of the New WEM. Further – under clause 2.13.42 of the WEM Rules, the ERA must consider all relevant matters before it decides to take an enforcement action or issue a civil penalty notice. This means all factors (including any steps taken to rectify, self-reporting, the impact of the breach, the circumstances in which the breach took place) will be taken into account when determining the appropriate compliance action.

Submission	Comments/Issues Raised	Clause #	Requested Changes/Action	EPWA Responses
				EPWA expects that the ERA will take into account the proximity to the start of the New WEM in conduction any investigations or considering any enforcement actions, and the ERA has made comments to this effect at a number of industry forums.
Synergy	Synergy notes an amnesty period remains appropriate.	N/A	Synergy reiterates its views that an amnesty period should be applied at the commencement of the new market.	Please see above answer – EPWA does not consider that an additional amnesty period is necessary. There are other compliance actions available to the ERA other than issuing civil penalties. For example, the ERA may decide to issue a warning to the Market Participant when a breach has taken place. The warning must describe the behaviour constituting the contravention, may request an explanation, and may request that the contravention rectified within a timeframe. The ERA will then record the response to any warning issued.
Change to Objective Test				
Synergy	Synergy is concerned by the introduction of new objective tests in a number of new and amended WEM Rules that are now civil penalty provisions. In attempting to make ex post enforcement more certain and cost-effective, the new WEM Rules compromise the transparency and fairness objectives of ex ante regulation, resulting in potentially unreasonable outcomes for Market Participant s. This will result in regulatory uncertainty for Market Participant s.	N/A	Clause 3.21.2(a) replaces the current clause 3.21.4 and will be a Category C civil penalty provision. Currently, a Market Participant will only breach clause 3.21.4 if it does not advise AEMO of a Forced Outage "as soon as practicable" after the Market Participant "becomes aware" of the relevant Forced Outage. However, under the new WEM Rules, the Market Participant is required to advise AEMO of the Forced Outage "as soon as practicable" after the facility "suffers, or will suffer, a Forced Outage". That is, the WEM Rules have been amended to remove the subjective requirement for the Market Participant to be "aware" of the Forced	EPWA notes Synergy's concerns with regard to clause 3.21.2(a) and has amended this provision to reflect the original wording of this clause. The requirement that the Market Participant must be "aware" of the outage has been reinstated. EPWA is happy to discuss this matter further if Synergy identifies other provisions of this nature.

Submission	Comments/Issues Raised	Clause #	Requested Changes/Action	EPWA Responses
	Concerned that a Market Participant can be exposed to potentially very large amounts of daily Civil Penalties in circumstances where the participant and the ERA have been engaged in good faith discussions.		Outage" before it will be in breach of the WEM Rules.	
Matters the ERA must have regard to				
Synergy	Clause 2.13.42 specifies the matters that the ERA must have regard to before the Authority issues a civil penalty notice. However, regulation 31(1) does not reflect this. Further, regulation 30(1A) specifies alternate (and in Synergy's view, inconsistent) criteria that the ERA must consider when making a decision to impose a civil penalty daily amount.	Regulation 31(1A) Clause 2.13.42	Synergy considers that clause 2.13.42 should be the sole criteria for the ERA to have regard to when considering whether to impose either a maximum civil penalty or a civil penalty daily amount.	EPWA received similar feedback from the ERA and notes that the regulation 31(1A) and the requirements for issuing a daily amount have been removed from the regulations. Instead, clause 2.13.42 has been expanded to account for the factors that the ERA consider before it issues a daily amount.
Synergy	Synergy reiterates its view that, to properly comment on the proposed changes to the compliance and enforcement regime, it needs to also review the ERA's proposed Monitoring Protocol Market Procedure. A key issue that remains under the proposed WEM Rules and WEM Regulations is the possibility that a Market Participant can be exposed to potentially very large amounts of daily civil penalties in circumstances where the participant and the ERA have been engaged in good faith discussions in relation to a genuine dispute about the proper interpretation and application of a civil penalty provision.	Clause 2.13.42 Regulation 33	Synergy recommends that the WEM Rules (cl 2.13.42) and WEM Regulations (reg 33(4)) should expressly require the ERA and the Electricity Review Board (Board) (respectively) to consider favourably the extent to which the Market Participant has a genuine dispute with respect to the application of a Rule when determining whether to impose a daily civil penalty amount. Similar changes should also be made to the equivalent GSI Regulation (reg 18(20)).	EPWA notes that the ERA will publish and consult on its Market Monitoring Protocol WEM Procedure, in accordance with the WEM Rules. EPWA has not made the requested additional changes. As discussed above, under clause 2.13.42, the ERA must already consider all relevant matters, including self-reporting and any steps taken by the Market Participant to rectify, before it may apply a civil penalty notice (including daily amounts). Where a Market Participants considers it has been negatively impacted by a decision to apply a civil penalty, it may apply for review of that decision by the Board. The Board will considers all matters it considers relevant and will make its own determination on whether it considers there is a genuine dispute.

Submission	Comments/Issues Raised	Clause #	Requested Changes/Action	EPWA Responses
Civil penalty categories				
Alinta	Rule participants to be exposed to the maximum category amount for any clause within that category, regardless of the level of risk associated with non-compliance. Alinta considers that consultation has not provided sufficient justification for why the ERA should have broader discretion to apply up to maximum amount for all clauses within each category. For example, why having differing limits for certain clauses has presented potential issues or may not be fit for purpose in the new WEM. Alinta suggests that it's reasonable to foresee that certain clauses within a category will never cause the same level of risk (e.g. in terms of health and safety, damage to plant and equipment, system security/reliability, WEM operation, and financial impacts) as others, and therefore that it is appropriate to limit the maximum amount for these less risky clauses.	Schedule 1 (Regulations)	Alinta requests that the ERA publish a framework for maximum penalties. Alinta suggests that EPWA does not rule out the potential for different maximum amounts for each civil penalty clause within each category until the following information is published: - ERA's decision matrix on how it will determine penalties; - The criteria for what must be taken into account when determining civil penalties; and - How the categories are determined and the rationale of what is allocated to a particular category.	EPWA does not expect the changes to the civil penalty categories to have a material effect with regard to breaches of clauses that Alinta has identified as "less risky." While the ERA may apply up to the maximum amount, it will only use its discretion to do so if it is appropriate in the circumstances. Under clause 2.13.42 this decision must be based on all matters relevant to the breach, including the nature and extent of the loss or damage and any impact on the market. The determination of any civil penalty amount is also generally shaped by precedent. These changes do allow the ERA to apply a maximum amount where the nature and impact of the breach is such that the maximum penalty is warranted. The ERA is already required to publish guidance on these matters in its Monitoring Protocol WEM Procedure. EPWA has also made an amendment to Clause 2.15.3(j) which requires the ERA to specify the processes to be followed and matters to be taken into account when decided to issue a civil penalty notice and when determine the amount to be imposed. Furthermore, any participant who considers it has been negatively impacted by a decision may apply to the Electricity Review Board for review of that decision. EPWA does not consider it efficient or prudent to continue to assign different maximum amounts for each individual civil penalty provision. EPWA also considered the model implemented in the National Energy Market when designing these reforms, which also

Submission	Comments/Issues Raised	Clause #	Requested Changes/Action	EPWA Responses
				includes a three tier civil penalty system with maximum amounts for each tier.
Synergy	Synergy notes a drafting note correction.	Regulation 30	Drafting note correction - the note under regulation 30 should be amended to reflect the civil penalty categories A, B and C are specified in Schedule 1.	The proposed correction has been made in the note to regulation 30.
Application of daily amounts (civil penalties)				
Alinta	Alinta is concerned that the ERA has discretion to specify daily amounts for any civil penalty clause, rather than limit which rules may be subject to a daily amount penalty. Alinta considers that neither the Exposure Draft nor the previous Consultation Paper justifies why all civil penalty provisions should be subject to a daily amount. Alinta suggests that it may not be appropriate to apply daily amounts to scenarios where contraventions will always be for discrete periods, for example where obligations relate to a Trading Interval, as there would already be sufficient scope to apply sufficient penalties and daily amounts may cause excessive penalties.	Schedule 1 (Regulations)	Alinta recommends that EPWA does not decide to allow daily amounts for all clauses until this information is published for consultation. It is difficult to assess the appropriateness of this without being able to review the criteria that the ERA will weigh in deciding whether a daily amount should apply. Alinta recommends the ERA be required to publish a framework for daily penalties	Currently, there are a number of civil penalty provisions in the current Schedule 1, that could relate to behaviour which is ongoing over an extended period, but do not have a daily amount applied to them. A single civil penalty applied for a breach of this nature may not constitute enough of a disincentive. The ERA is already required to consider all relevant circumstances relating to a specific breach. EPWA therefore considers that the ERA is the entity best suited to determine whether a daily penalty should apply to a specific breach. Like all civil penalties, the ERA is required to consider all relevant matters, but must also consider additional factors under new clause 2.13.42(g) before it may apply a daily amount. An amendment to clause 2.15.3 by EPWA means that the ERA's Monitoring Protocol will need to include details of the processes to be followed by the ERA and the matters to be taken into account when issuing determining a daily amount.
Synergy	Regulation 33(1) is arguably ambiguous. It is not clear whether this regulation contemplates that a participant is only	Regulation 33(1)	Synergy recommends the drafting in Schedule 1 and regulation 33 are amended to be consistent.	EPWA confirms that the intent is that the both a civil penalty and/or a daily amount may be applied (depending on the circumstances).

Submission	Comments/Issues Raised	Clause #	Requested Changes/Action	EPWA Responses
	required to pay a maximum fixed penalty or a maximum daily penalty but not both			The drafting in 31(1) and 33(1) has been amended slightly for clarity on this matter.
Synergy	Synergy considers that a key issue that remains is the possibility that a Market Participant can be exposed to potentially very large amounts of daily civil penalties in circumstances where the participant and the ERA have been engaged in good faith discussions in relation to a genuine dispute about the proper interpretation and application of a civil penalty provision.	Schedule 1 (Regulations)	N/A	Like all civil penalties, the ERA is required to consider all relevant matters, but must also consider additional factors under new clause 2.13.42(g) before it may apply a daily amount. An amendment to clause 2.15.3 by EPWA means that the ERA's Monitoring Protocol will need to include details of the processes to be followed by the ERA and the matters to be taken into account when issuing determining a daily amount.
Distribution of Financial Penalty a non-rule participants				
Alinta	Rule participants may need to compensate non-Rule Participants for any impacts they experience due to a breach of the WEM Rules. ERA would need to decide how to determine this compensation.	Clause 2.13.43A	Alinta recommends that EPWA provide an example of where a breach of a WEM Rule may impact a non-Rule Participant to the extent they require compensation via the WEM Rules and why this would not already be dealt with by existing laws.	One example relates to the potential impact a breach by existing Rule Participant may have had on a party which is not currently registered in the WEM, including where that party was previously registered in the WEM when the breach occurred.
Synergy	Synergy does not support this outcome. Synergy considers that the reference to persons "negatively impacted by a breach" is too wide and there is no guidance as to how the ERA should determine the amount of the "specified portion" to be distributed. It is not reasonable that non-market participants receive a distribution when they are not contributing to the on-going cost of market operation	Clause 2.13.43A	Synergy recommends this clause should be limited to persons who are materially negatively impacted and further guidance should be provided as to the basis on which the distribution should be calculated.	As suggested, EPWA has amended clause 2.13.43A to clarify that the negative impact on the person must have been material.
ERA Orders				

Submission	Comments/Issues Raised	Clause #	Requested Changes/Action	EPWA Responses
Alinta	ERA interim orders- Alinta notes that a Rule Participant would be required to change their behaviour (on pain of further breaches), before it is confirmed they have breached the rules.	N/A	The consultation paper does not provide adequate justification for what issues interim orders may avoid in the new WEM and suggests that EPWA provide an example relating to the new rules where interim orders would be warranted.	As highlighted in the Exposure Draft, PCO has advised that the ERA cannot make orders under the regulations, and so this has been removed as an enforcement action under the WEM Rules.
Alinta	Alinta comments on ERA orders to implement 'compliance programs' and 'remedies.' While Alinta broadly supports ERA having the ability to require further action following a breach to avoid the risk of future breaches, it considers that EPWA have not provided sufficient detail on how these compliance programs or remedies would work and differ from the current 'orders', the circumstances under which they can be issued, what limits may be applied to ERA's powers to direct participants, and what potential issue they are addressing in the current or new WEM Rules.	N/A	Alinta recommends requiring the ERA to publish a procedure for compliance programs and remedies, and seek stakeholder comment to inform a procedure change process.	As highlighted in the Exposure Draft, PCO has advised that the ERA cannot make orders under the regulations, and so this has been removed as an enforcement action under the WEM Rules.
ERA Investigations				
Synergy	ERA results of compliance investigations.	Clause 2.13.27	Clause 2.13.27 should be amended to impose an obligation on the ERA to notify the Rule Participant the subject of an alleged breach investigation of the outcome of the ERA's alleged breach investigation.	The ERA is already required to notify a Rule Participant of the decision to suspend or close an investigation under clause 2.13.34, and where it determines a breach has not taken place under clause 2.13.35. Where the ERA determines a breach has taken place, the ERA will notify the Rule Participant through its choice of enforcement action under clause 2.13.36.
ERA investigations – public register				

Submission	Comments/Issues Raised	Clause #	Requested Changes/Action	EPWA Responses
Alinta	Alinta is pleased that ERA will not publish any identifying information, however requests to be informed of the specific detail that it intends to publish. Alinta considers the register may conflict with the proposed self-report regime, as it could: - dilute the benefit of self-reporting, with all investigations being made public regardless of whether the issue was self-reported. - introduce risk that self-reports will result in reputational damage due to public investigations. - undermine the intent of the self-report regime regarding early identification and rectification of compliance issues.	Clause 2.13.51	Alinta considers these risks are not outweighed by the benefit of more transparency of the compliance actions the ERA is focusing on, noting that the ERA already notifies participants of their focus in their 6 monthly reports, and that should a breach be found, participants would generally be notified of this via the register only shortly after they would have otherwise been notified, had the investigation initiation been published in the register.	EPWA has retained the compliance investigations register and considers the benefit of transparency to outweigh any potential negatives. EPWA considers the compliance investigation register to be a matter distinct from the purpose of the self-reporting regime. As identified by Alinta, this information is already published in 6-monthly reports, the register will simply provide current information on the focus of the ERA.
Synergy	Given proposed WEM Rule clause 2.13.51(c) and the breadth of Synergy's wholesale market operations and activities, it will be obvious when an investigation relates to Synergy without Synergy needing to be named in the public register. If it were to apply without any information that could identify Synergy, then Synergy questions the purpose and benefit of having a public register that publishes incidents the subject of an ERA investigation.	Clause 2.13.51	Synergy does not support the public reporting of breach investigations by the ERA.	EPWA has retained the register publishing the initiation and close of compliance investigations, with some amendments to the relevant clauses. EPWA considers the transparency benefits to the market from publishing the investigations the ERA is focussing on, outweigh any negatives associated with a particular Market Participant being identified through a specific clause being investigated. Many compliance regimes globally utilise this type of tool.
Electricity Review Board – reviewable decisions				
Synergy	Regulation 42(2A) provides the Board may refuse a reviewable decision if it considers that the application for a review	Regulation 42	For consistency, Synergy considers similar amendments should be made to the equivalent	EPWA has instructed PCO to amend regulation 42 to ensure that written reasons are provided

Submission	Comments/Issues Raised	Clause #	Requested Changes/Action	EPWA Responses
	is trivial or vexatious. On the basis of procedural fairness, the regulations should require the Board to give the person who has applied to the Board for a review, written reasons for its decision that an application is trivial or vexatious as per regulation 42(3)		regulations in the Pilbara Regulations (reg 13B(3)) and the GSI Regulations (reg 26(3)).	where the Board has determined the application is trivial or vexatious.
Electricity Review Board – Timeframes for a review				
Synergy	Regulation 45A(3) permits the Board to extend or further extend the period in subregulation (2) by 30 days in relation to a reviewable decision. The drafting of regulation 45A(3) contemplates there is no limit to the number of times the Board may further extend the period in sub-regulation (2).	Regulation 45A(3)	Synergy considers that in the interests of ensuring proceedings are expedited and consistent with best practice regulation, regulation 45A(3) should specify a limit to the number of times the Board may further extend the period in sub-regulation (2). Regulation 45A(1) should apply to a decision on a procedural review for the same reasons timeframes have been introduced for a reviewable decision. For consistency Synergy considers similar amendments should be made to the equivalent regulations in the Pilbara Regulations (reg 13F(3)) and the GSI Regulations (reg 30(3)).	EPWA notes Synergy's comment, and has consulted with PCO on this matter, and received advice that placing time restrictions of this nature on the Board goes against generally held precedent for such tribunals and courts, and is essentially enforceable if it were broken. There are many reasons why the Board may be delayed, and the Board must publish reasons for its decisions to extend the timeframe. If an applicant considers these reasons to be invalid they make apply to the State Administrative Tribunal and object to the reasons.

Energy Policy WA
Level 1, 66 St Georges Terrace, Perth WA 6000
Locked Bag 100, East Perth WA 6892
Telephone: 08 6551 4600
www.energy.wa.gov.au

We're working for Western Australia.