



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

WEM Procedure:

Dispute Resolution Mechanism for the release of
Market Information

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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: EPWA-info@dmirs.wa.gov.au

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1. PROCEDURE OVERVIEW

1.1 Relationship with the WEM Rules and other legislation

- 1.1.1. This Wholesale Electricity Market (WEM) Procedure has been developed in accordance with, and should be read in conjunction with, chapter 10 of the WEM Rules.
- 1.1.2. The *Electricity Industry Act 2004* (the Act), the *Electricity Industry (Wholesale Electricity Market) Regulations 2004* (WEM Regulations) and the WEM Rules prevail over this Procedure to the extent of any inconsistency.
- 1.1.3. Reference to particular clauses or sections of the WEM Rules within the WEM Procedure in bold and square brackets **[WR XX]** are current as of 1 October 2023, and these references are included for convenience only, and are not part of this WEM Procedure.

1.2 Purpose of this WEM Procedure

- 1.2.1. This WEM Procedure documents the Coordinator's process for resolving a dispute about the confidentiality status and disclosure of Market Information, as required under clause 10.5.2 of the WEM Rules.
- 1.2.2. This WEM Procedure:
 - (a) describes the methods by which notices of dispute are to be provided to the Coordinator of Energy (Coordinator) under clauses 10.4.14, 10.4.21 and 10.4.22 of the WEM Rules;
 - (b) outlines the process by which the Coordinator will resolve disputes regarding the disclosure of Market Information under section 10.5 of the WEM Rules;
 - (c) outlines the timeframes for the dispute resolution process; and
 - (d) outlines the related processes to be followed by the Coordinator, Information Stakeholders, Information Managers and any person lodging a dispute under section 10.4 and 10.5 of the WEM Rules.

1.3 Application of this WEM Procedure

- 1.3.1. This WEM Procedure applies to the Coordinator, Information Stakeholders, Information Managers and any person disputing the classification, disclosure or non-disclosure of Market Information under section 10.4 of the WEM Rules.

1.4 Associated WEM Procedures

- 1.4.1. This WEM Procedure is associated with the [WEM Procedure: Notices and Communications](#).

1.5 Interpretation

- 1.5.1. In this WEM Procedure, the conventions specified in clauses 1.3-1.5 of the WEM Rules apply.

1.6 Terminology and Definition

- 1.6.1. A word or phrase defined in the WEM Rules, the Act or the Regulations has the same meaning when used in this WEM Procedure.
- 1.6.2. Market Information means any information or document that is required to be produced, provided or exchanged under the WEM Rules or a WEM Procedure.
- 1.6.3. The Information Manager is the party responsible for managing the relevant Market Information, in accordance with clauses 10.2.11 and 10.2.12 of the WEM Rules.
- 1.6.4. An Information Stakeholder is any Rule Participant to which the relevant Market Information relates, in accordance with clause 10.2.7A of the WEM Rules.

2. PROVISION OF NOTICE OF DISPUTE

2.1 Provision of Notice of Dispute

2.1.1. A notice of dispute may be provided by:

- (a) an Information Stakeholder that, under clause 10.4.11(a), has been advised by the relevant Information Manager of its intention to disclose Market Information that the Information Stakeholder requested to be confidential under clause 10.2.7 of the WEM Rules **[WR 10.4.14]**;
- (b) an Information Stakeholder that, under clause 10.4.20 of the WEM Rules, has been advised by the relevant Information Manager of its intention to disclose Confidential Information under clause 10.4.19 of the WEM Rules **[WR 10.4.21]**; or
- (c) a requesting party that is advised under clause 10.4.18(b) of the WEM Rules that the Market Information requested under clause 10.4.6 of the WEM Rules is Confidential Information and is unable to be disclosed **[WR 10.4.22]**.

2.1.2. A notice of dispute under paragraph 2.1.1 of this WEM Procedure must be lodged within the following timeframes:

- (a) for a notice provided under clause 10.4.14 of the WEM Rules, within 5 Business Days of receiving a notification under clause 10.4.11(a) of the WEM Rules **[10.4.11(a)(iii)]**;
- (b) for a notice provided under clause 10.4.21 of the WEM Rules, within 5 Business Days of receiving a notification under clause 10.4.20(a) of the WEM Rules **[10.4.20(a)(iii)]**; and
- (c) for a notice provided under clause 10.4.22 of the WEM Rules, at any time after receiving an advice under clause 10.4.18(b) of the WEM Rules.

2.1.3. A notice of dispute must:

- (a) be provided by email to the Coordinator using the contact details specified in paragraph 2.1.4 of this WEM Procedure; and
- (b) be provided by email to the Information Manager, using the contact details specified on the Information Manager's website or provided in the notice or advice under clauses 10.4.11(a), 10.4.18(b) or 10.4.20 of the WEM Rules
- (c) includes a completed notice of dispute as specified in paragraph 2.2.2 of this WEM Procedure; and
- (d) be provided within the relevant timeframe specified in paragraph 2.1.2 of this WEM Procedure.

2.1.4. The contact details for the Coordinator are:

- (a) Telephone number: +61 (8) 6551 4600
- (b) Email: energymarkets@dmirs.wa.gov.au

2.2 Notice of Dispute Form

- 2.2.1. The Coordinator must develop and publish on the Coordinator's website a notice of dispute form detailing the information required to make a determination. The notice of dispute form is provided in Appendix A of this procedure.
- 2.2.2. The notice of dispute form must request the following information:
- (a) the date on which the notice of dispute was lodged;
 - (b) the identity of the Information Stakeholder, Rule Participant or person issuing the notice of dispute, including the name of a contact person and their contact details;
 - (c) the identities of any other relevant parties to the dispute;
 - (d) the details of the Market Information in dispute, including:
 - i. for a dispute lodged under clause 10.4.14 of the WEM Rules:
 - 1. the reasons for disputing the Information Manager's assessment that the relevant Market Information is not Confidential Information; and
 - 2. a copy of the submission provided under clause 10.2.7 of the WEM Rules.
or
 - ii. for a dispute lodged under clause 10.4.21 of the WEM Rules, the reasons why the Confidential Information should not be disclosed in accordance with clause 10.4.19 of the WEM Rules; or
 - iii. for a dispute lodged under clause 10.4.22 of the WEM Rules, the reasons why:
 - 1. the relevant Market Information should be classified as Public Information against the criteria in clause 10.2.3 of the WEM Rules; or
 - 2. the requesting party should be eligible to have access to the relevant Confidential Information under clause 10.4.19 of the WEM Rules; and
 - (e) a copy of the Information Manager's notice or advice that is disputed.

3. PROCESS

3.1 Initiation of the Dispute Resolution Mechanism

- 3.1.1. The Coordinator must, within one Business Day of receiving a notice of dispute under clauses 10.4.14, 10.4.21 or 10.4.22 of the WEM Rules that satisfies the criteria in part 2.1 of this WEM Procedure, acknowledge the notice of dispute via email.
- 3.1.2. An Information Manager must, within one Business Day of receiving a notice of dispute under clauses 10.4.14, 10.4.21 or 10.4.22 of the WEM Rules that satisfies the criteria in part 2.1 of this WEM Procedure, acknowledge the notice of dispute via email.
- 3.1.3. Until the Coordinator has made a determination under clause 10.5.8 of the WEM Rules, the Market Information in dispute will be deemed to be Confidential Information and may not be disclosed by the Information Manager to any party, except as otherwise required under the WEM Rules **[WR 10.5.9.]**.

3.2 The Coordinator's Determination

- 3.2.1. The Coordinator must resolve the dispute in accordance with section 10.5 of the WEM Rules and as outlined in this WEM Procedure.
- 3.2.2. The Coordinator may dismiss a notice of dispute, if the Coordinator considers that the notice of dispute or the dispute **[WR 10.5.3.]**:
 - (a) lacks sufficient substance;
 - (b) is trivial; or
 - (c) is frivolous or vexatious.
- 3.2.3. If the Coordinator decides to dismiss the dispute under paragraph 3.2.2 of this WEM Procedure, they must advise the disputing party and the relevant Information Manager of the decision and the reasons for the decision, via email to their designated contacts, within 10 Business Days of being notified of a dispute **[WR 10.5.3.]**.
- 3.2.4. If the Coordinator dismisses the dispute under paragraph 3.2.2 of this WEM Procedure, the original decision of the Information Manager will be final **[WR 10.5.3.]**.
- 3.2.5. The Coordinator is not required to resolve a dispute in accordance with section 10.5 of the WEM Rules, if the Coordinator has already made a prior determination on the same type of Market Information on the same or similar grounds as those specified in the notice of dispute **[WR 10.5.14]**.
- 3.2.6. If the Coordinator decides not to resolve the dispute in accordance with paragraph 3.2.5 of this WEM Procedure, they must advise the disputing party and the relevant Information Manager of their decision and direct them to the relevant determination, which is to apply to the information subject to the dispute, via email to their designated contacts, within 10 Business Days of being notified of a dispute **[WR 10.5.14]**.
- 3.2.7. If the Coordinator is the Information Manager, the Coordinator must delegate to a person that is not involved in the management of the relevant Market Information, the determination for the dispute as outlined in paragraph 3.2.8 of this WEM Procedure.
- 3.2.8. Subject to paragraphs 3.2.2, 3.2.5 and 3.2.7 the Coordinator must assess the dispute and determine **[WR 10.5.8]**:
 - (a) for a dispute under clause 10.4.14 or under clause 10.4.22(a), whether the relevant Market Information is classified as Public Information or Confidential Information; and

- (b) for a dispute under clause 10.4.20 or 10.4.22(b), whether the relevant Confidential Information should be disclosed to the requesting party under clause 10.4.19 of the WEM Rules, and direct the Information Manager to either **[WR 10.5.8(b)]**:
 - (i) disclose all or part of the Market Information to the requesting party; or
 - (ii) disclose all or part of the Market Information to the requesting party, subject to specified conditions; or
 - (iii) not release or disclose the Market Information to the requesting party.

3.2.9. The Coordinator's assessment must include, as applicable, a review of:

- (a) the Information Manager's disputed assessment;
- (b) any consultation outlined in paragraph 3.2.10 of this WEM Procedure;
- (c) any submission provided under clause 10.2.7 of the WEM Rules by a Rule Participant to an Information Manager about the Market Information that the Rule Participant considers to be Confidential Information;
- (d) whether the relevant Market Information must be classified as Confidential Information under clause 10.2.3 of the WEM Rules **[WR 10.5.5]**;
- (e) whether the relevant Market Information must be classified as Public Information under clauses 10.2.4 and 10.2.6 of the WEM Rules **[WR 10.5.5]**;
- (f) whether relevant Market Information that is aggregated, arranged or combined with other data or information must be classified as Public Information or Confidential Information under clause 10.2.5 of the WEM Rules **[WR 10.5.5]**;
- (g) whether the Market Information is deemed Confidential Information and must be disclosed under clause 10.4.19 of the WEM Rules **[WR 10.5.5]**; and
- (h) for a dispute under clause 10.4.20 or 10.4.22(b), whether the requesting party meets the eligibility criteria under clause 10.4.19 of the WEM Rules to have access to the Confidential Information.

3.2.10. Within the timeframes specified in part 3.3 of this WEM Procedure, the Coordinator must conduct reasonable consultation with the Information Manager, each relevant Information Stakeholder and the requesting party **[WR 10.5.4.]**, including to:

- (a) clarify aspects of the dispute and request additional information, if necessary;
- (b) clarify aspects of the Market Information and request additional information, if necessary;
- (c) determine whether any of the circumstances outlined in clauses 10.2.3, 10.2.4, 10.2.5, 10.2.6, 10.2.8 and 10.4.19 of the WEM Rules apply; and
- (d) determine whether there are any other aspects that may be relevant to the decision.

3.2.11. For the purpose of paragraph 3.2.10 of this WEM Procedure, the Coordinator must notify the relevant parties via email of:

- (a) the matters requiring consultation;
- (b) a date by which the consultation must be completed, which must be at least 10 Business Days after the day of the notification; or
 - i. as agreed upon by the Coordinator and relevant parties; or
 - ii. as determined by the Coordinator, if agreement cannot be reached under sub-paragraph 3.2.11(b)(i).
- (c) whether the consultation will be undertaken via email, telephone or in person.

3.2.12. An Information Manager, Information Stakeholder or requesting party that receives a notice under paragraph 3.2.11 of this WEM Procedure, must consult with the Coordinator as requested under paragraph 3.2.11(c) of this WEM Procedure and within the timeframe specified under paragraph 3.2.11(b) of this WEM Procedure.

3.3. Timeframe for the Coordinator's Decision

- 3.3.1. Within 20 Business Days of being notified of a dispute, the Coordinator must inform the parties to the dispute, via email to their designated contacts, of either **[WR 10.5.6]**:
- (a) the Coordinator's determination **[WR 10.5.10(a)]**; or
 - (b) if more time is required for a determination, the expected date for that determination **[WR 10.5.6(b)]**.
- 3.3.2. If the Coordinator extends the timeframe for a determination under clause 10.5.6(b) of the WEM Rules, the Coordinator must advise the parties to the dispute, via email to their designated contacts, of their determination within that extended timeframe **[WR 10.5.7]**.

3.4. Publication of the Coordinator's decision

- 3.4.1. Within 5 Business Days of making a determination under clause 10.5.8 of the WEM Rules, the Coordinator must publish the determination on the Coordinator's website, redacting any commercially sensitive or other Confidential Information, **[WR 10.5.10.(b) and WR 10.5.11]**. The publication of the determination must include the following:
- (a) the nature of the Market Information that has been determined to be Public Information or Confidential Information;
 - (b) submissions or justifications put forward by the parties to the dispute or any other parties consulted by the Coordinator; and
 - (c) the rationale for the determination.

Notice of Dispute Form

A word version of the notice of dispute form is published with this WEM Procedure on the Coordinator's website.



NOTICE OF DISPUTE

Market Information – notice of dispute form

Template

The dispute resolution mechanism for the release of Market Information under Section 10.5 of the Wholesale Electricity Market (WEM) Rules requires the Coordinator of Energy (Coordinator) to resolve disputes regarding the disclosure of Market Information.

This notice is required to be submitted to both the Coordinator of Energy (Coordinator) (energymarkets@dmirs.wa.gov.au) and the Information Manager for the relevant Market Information and in accordance with the process outlined in the [WEM Procedure: Dispute Resolution Mechanism for the release of Market Information](#).

1. Timing

Once this notice of dispute is lodged:

- (a) the Coordinator and the Information Manager must acknowledge the notice of dispute within one Business Day of receiving the notice of dispute;
- (b) the Coordinator will resolve the dispute in accordance with section 10.5 of the WEM Rules and WEM Procedure: Dispute Resolution Mechanism for release of Market Information; and
- (c) the Information Manager must not disclose the Market Information under dispute to the requesting party while the dispute is being assessed by the Coordinator, except where clause 10.4.11(b) applies.

2. Submission

This form and any supporting documents, including evidence to support this notice of dispute and the Information Manager's notice or advice that is disputed, are to be submitted to both the Coordinator and the Information Manager by email in accordance with the process outlined in the [WEM Procedure: Dispute Resolution Mechanism for the release of Market Information](#).

3. Type of Notice of Dispute

This notice of dispute is lodged to:

- dispute the Information Manager’s decision to disclose the Market Information as Public under clause 10.4.14 of the WEM Rules
- dispute the Information Manager’s decision to disclose the Confidential Information under clause 10.4.21 of the WEM Rules
- dispute the Information Manager’s decision that the Market Information is Confidential Information under clause 10.4.22(a) of the WEM Rules
- dispute the Information Manager’s decision not to disclose the Confidential Information under clause 10.4.22(b) of the WEM Rules

4. Supporting Documents

List of supporting documents enclosed with this notice of dispute:

- Information Manager’s notice or advice that is disputed
- Evidence to support this notice of dispute
- for a dispute lodged under clause 10.4.14 of the WEM Rules, a copy of the submission provided by the Information Stakeholder under clause 10.2.7 of the WEM Rules.
- for a dispute lodged under clause 10.4.22 of the WEM Rules, documents that support the requesting party entitlement to dispute the disclosure of the Market Information under clause 10.4.19A of the WEM Rules.
- for a dispute lodged under clause 10.4.22 of the WEM Rules, documents that support the requesting party eligibility to have access to the relevant Confidential Information under clause 10.4.19 of the WEM Rules.
- Other supporting documents

5. Details of the party lodging the notice of dispute

Party’s Identity

Organisation:

Contact person: <name>

Phone:

Email:

Date submitted: <date submitted>

[WR10.4.15(a), WR10.4.15(b) and WR10.4.15(e)] [WR10.4.23(a), WR10.4.23(b) and WR10.4.23(e)]

6. Detail of any party considered to be relevant to the dispute

Relevant parties' Identities

Information Manager:

Other Information Stakeholders

Information Stakeholder:

Information Stakeholder:

Information Stakeholder: *< add additional row if required >*

Other Relevant Parties

Organisation:

Provide reasons why this organisation is a relevant party:

Organisation:

Provide reasons why this organisation is a relevant party:

Organisation: *< add additional row if required >*

Provide reasons why this organisation is a relevant party: *< add additional row if required >*

7. Details on Market Information in dispute

Details of the Market Information in dispute

Market Information

Details

<describe the Market Information in dispute>

Producer: *If applicable*

Provider: *If applicable*

Exchange requirement: *If applicable*

How does this Market Information relate to your organisation:

<specify your relationship with the Market Information in dispute>

What are your reasons for disputing the Information Manager's assessment:

<Provide a detailed description of your reason to dispute the Information Manager's assessment.>

[WR10.4.15(d)] [WR10.4.23(d)]

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