

13 April 2017

Economic Regulation Authority
Level 4, Albert Facey House,
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Perth WA 6000 PERTH
mailto: publicsubmissions@erawa.com.au

Dear sir or madam

PROCEDURE CHANGE PROPOSAL: MONITORING PROTOCOL

Synergy welcomes the opportunity to make a submission in response to the Economic Regulation Authority's (ERA's) proposed market procedure - monitoring protocol (**protocol**).

Overarching comments

The protocol purpose is to state how the ERA will implement its obligations under the market rules to monitor rule participant compliance with the market rules and procedures¹. Further the ERA must comply with the protocol and ensure it has processes and systems in place to allow it to monitor rule participant compliance with those rules and procedures consistent with the protocol².

In performing its monitoring functions under the market rules, the ERA must also have due regard to the matters specified under section 26 of the *Economic Regulation Authority Act 2003 (Act)*. Those matters relevant to the protocol include:

- the need to promote regulatory outcomes that are in the public interest;
- the legitimate business interests of investors and service providers in relevant markets;
- the need to promote transparent decision making processes that involve public consultation; and
- the need to promote competitive and fair market conduct.

¹ Refer clause 2.15.3 of the market rules

² Refer clauses 2.9.7B and 2.13.3 of the market rules

Synergy considers it important the ERA's processes for assessing compliance are transparent so market rule participants have an awareness and understanding of the essential criteria for rule and procedure governance as well as the framework that governs how the ERA will perform its monitoring functions on an on-going basis. In that regard, Synergy considers the increased level of detail contained within the protocol to be a significant improvement compared to the earlier versions.

Our specific comments are:

1.2 Purpose (page 3)

- Synergy considers it appropriate the protocol refers to the ERA's obligations under clauses 2.9.7B and 2.13.3 of the market rules for transparency.

1.4.1(e) Compliance approach (page 5)

- The ERA will “apply a risk based model to its compliance activities, including its monitoring processes, investigation processes and enforcement actions”. Synergy notes this will involve a large degree of discretion around the risk based approach. However, in our view clause 2.15.3(a) of the WEM rules requires the protocol to specify what actions the ERA must take rather than simply stating what it may take. Synergy recommends the ERA's protocol includes reasonable detail on its risk based model approach to compliance monitoring. (Synergy cites appendix 2 of the ERA's audit and review guidelines: electricity and gas licences in that regard.)

2.1.2 Monitoring (page 5)

- Targeted compliance activities. Synergy understands the intent of conducting targeted reviews but given the limited detail contained within the protocol, Synergy is concerned the requirement could transpire into a significant audit function.
- Further, Synergy considers the level of detail provided in (protocol) paragraph 2.15.2(a) is unlikely to meet the test required by market rule 2.15.3(a) in terms of specifying a “monitoring process for assessing compliance....” Synergy considers this matter could be addressed if the protocol specified:
 - how the ERA forms a view a targeted review is required e.g. evidence based decision;
 - the matters a targeted review will address;
 - how a targeted review will be conducted;
 - how a targeted review differs from the ERA's audit functions under the WEM rules³;
 - how a targeted review will apply to rule participants (i.e. simultaneously to all, limited to specific participants or both?); and

³ For example, refer clauses 3.11.12 and 3.11.6

- Rule participant engagement. For example, will rule participants be engaged on proposed targeted reviews in advance of decisions being made on review subject matter? Will the ERA publish a forward schedule of targeted reviews 6 or 12 months in advance to enable rule participants to schedule and resource the required work?

3.1.2 Breach reporting (page 6)

- Synergy considers reference to “breach reporting” in section 3.1.2 and “alleged breach” in section 4 should refer to “notification of alleged non-compliance” as per the reference in section 3.1.3. as in many instances at the point of investigation notification it will not have been determined whether a breach has occurred.

4.1.4 Investigation outcomes (page 8)

- This section states “Where the ERA forms the view that a matter identified through its monitoring processes is not an alleged breach, then the investigation processes set out in this Monitoring Protocol do not apply and the ERA may choose to deal with the matter by other means.” If the matter is not an alleged breach it is unclear what matter(s) the ERA is intending to progress and how (i.e. what is meant by “by other means”?) It would be useful for the ERA to clarify.

4.2.4 Investigation powers (page 10)

- From Synergy’s experience regulatory requests for information can involve significant effort, time and cost. Synergy considers the ERA should informally consult with a rule participant prior to lodging a formal information request to enable the participant to provide feedback in terms of request clarity, whether the requested information can be provided and the timeframe complied with.

4.3.3 Investigation outcomes (page 11)

- Synergy considers “electricity consumer impacts” should be added to the listed matters.

Synergy has no objections to this submission being made public. Please contact me on 6282 7622 should you have any queries with respect to the above comments.

Yours sincerely



**SIMON THACKRAY
MANAGER, REGULATION AND COMPLIANCE**

