

Procedure Change Report – Monitoring Protocol

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Economic Regulation Authority

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1. Introduction

On 28 May 2020 the Economic Regulation Authority published a Procedure Change Proposal for its Monitoring Protocol.¹

The Monitoring Protocol is required under clause 2.15.1 of the Wholesale Electricity Market Rules. The purpose of the Monitoring Protocol is to state how the ERA will implement its obligations under the Market Rules to monitor Rule Participants' compliance with the Market Rules and Market Procedures (Market Rule 2.15.2).

The Market Rules require the ERA to consult on the Procedure Change Proposal (Market Rule 2.10.7) and prepare a Procedure Change Report following the closing date for submissions (Market Rule 2.10.10).

The consultation period for the Procedure Change Proposal closed on 26 June 2020. The ERA has now prepared this Procedure Change Report containing the information required under clause 2.10.13 of the Market Rules as set out further below.

All capitalised terms in this document are defined terms under the Market Rules.

¹ Refer to the ERA Procedure Changes link at: <https://www.erawa.com.au/electricity/wholesale-electricity-market/market-procedures>

2. Reason for the Procedure Change

Clause 2.10.13(b) of the Market Rules requires this report to set out the reasons for the proposed Market Procedure amendment.

The Minister for Energy approved a Rule Change concerning ERA access to market information and SRMC investigation process (RC_2018_05) on 7 April 2020.² This Rule Change codified many of the ERA's existing monitoring practices into the Market Rules, including the types of information it receives from AEMO for monitoring purposes. The changes also set out the process the ERA follows to notify market participants that it has identified a possible breach of the Market Rules and to provide market participants with the opportunity to provide further information.

Updates to the Monitoring Protocol have been made in accordance with feedback received by Rule Participants.

A complete list of the updates is set out in Appendix 2 of the Procedure Change Proposal.³

² Refer to Rule Change RC_2018_05 at: https://www.erawa.com.au/rule-change-panel/market-rule-changes/rule-change-rc_2018_05

³ Refer to the ERA Procedure Changes link at: <https://www.erawa.com.au/electricity/wholesale-electricity-market/market-procedures>

3. Market Advisory Committee and working groups

Clause 2.10.13(d) of the Market Rules requires this report to provide a summary of the views expressed by the Market Advisory Committee (MAC) and any relevant working group.

Clause 2.10.9(a) of the Market Rules requires the Rule Change Panel to convene a meeting of MAC if the ERA considers that advice from MAC is required, or two or more MAC members consider that advice on the Procedure Change Proposal is required.

On 28 May 2020 the ERA notified MAC by email of the Procedure Change Proposal. In this notification, the ERA confirmed that it did not require advice from MAC on the proposal. This email advised that in accordance with clause 2.10.9(b) of the Market Rules, the Rule Change Panel would convene another meeting of the MAC to discuss the proposal, if two or more members informed the Rule Change Panel in writing that they considered that further advice on the proposal was required.

MAC did not establish any relevant working groups for the Monitoring Protocol Procedure Change Proposal.

4. Submissions received

Clause 2.10.13(c) of the Market Rules requires this report to include all submissions received, including a summary of the submissions and the ERA's response to the issues raised in the submissions.

The ERA issued a notice on 28 May 2020 with its Procedure Change Proposal calling for submissions on the proposed changes to the Monitoring Protocol. The submission period closed on 26 June 2020.

Submissions were received from Alinta and Perth Energy (refer to Appendix 1).

Alinta's submission supported the proposed changes, considering they are consistent with RC_2018_05 and aim to support Procedural Fairness. Alinta noted that the additional step 2.1.9 codifies the ERA's existing processes. Alinta did not suggest any amendments to the Monitoring Protocol.

Perth Energy's submission noted the ERA's proposed changes largely reflects the procedural processes required in relation to RC_2018_05. Perth Energy's supports the proposed changes designed to provide greater transparency and procedural fairness and made three recommendations to further these objectives.

This feedback considered that further amendments can be made to the Monitoring Protocol to:

- Provide detail on timeframes or criteria the ERA takes into account when considering response timeframe for Rule Participants.
- Include the basis for which preliminary views were determined.
- Notification and publication requirements where the ERA makes an interpretation of an undefined term.

The ERA generally agrees with the suggestions and has largely incorporated this feedback into the Monitoring Protocol with some amendments.

Appendix 2 sets out in more detail the issues raised in the submissions received and the ERA's response to each of the feedback items.

5. Market Objectives

Paragraph 2.7.2 of the Market Procedure for Procedure Administration requires the ERA to assess whether the proposed changes are consistent with the Wholesale Market Objectives, the Market Rules, Electricity Industry Act and Regulations.

The changes made to the Monitoring Protocol are predominantly aimed at improving transparency and providing more information on the ERA's approach to, and processes for, compliance. The ERA considers that the changes are consistent with these instruments.

6. Amended Market Procedure

Clause 2.10.13(a) of the Market Rules requires this report to include the wording of the amended Monitoring Protocol.

In addition to the drafting changes made as a result of the submissions received as listed in Appendix 2, the ERA also made further updates to the Monitoring Protocol to correct typographical errors, apply consistent terminology or update rule references. These updates are listed in Appendix 3.

The final amended Monitoring Protocol is attached to this report. The clean version is at Appendix 4 and the marked-up version, showing the changes noted in Appendices 2 and 3, is at Appendix 5.

7. Commencement date

Clause 2.10.13(h) of the Market Rules requires this report to specify a proposed date and time for the amended Market Procedure to commence.

The amendments to the Monitoring Protocol are aimed at improving transparency and do not seek to introduce any new obligations on participants. In the submissions received, no parties indicated a need for any additional time to prepare for the amended Monitoring Protocol.

The ERA intends to commence the amended Monitoring Protocol at 8:00 am 27 June 2020.

Appendix 1 Submissions received

- [Alinta Energy Submission](#)
- [Perth Energy submission](#)

Appendix 2 Summary of issues raised

Party	Issue (as directly quoted in submission)	ERA Response
Perth Energy	The Monitoring Protocol should provide detail how these new requirements will be achieved such as establishing minimum timeframe requirements or criteria the ERA must take into account when considering the amount of time provided for a Rule Participant to respond to the allegations.	<p>This proposal is consistent with the ERA's current practices when requesting information from Rule Participants.</p> <p>The ERA has amended step 4.1.7 (b) by including: <u>"The ERA will consider appropriate timeframes when requesting a response to preliminary findings. Longer timeframes will be given to Rule Participants where a matter is complex. In some instances, a matter may require urgent redress (e.g. a behaviour that could result in a risk to the safety of a person) and minimum timeframes may not be appropriate. The ERA will reasonably consider extensions to these timeframes where sufficient justification has been made by the Rule Participant. Amendments to standard time frames will be considered on a case by case basis and assessed by exception;"</u></p>
Perth Energy	Clause 2.1.9 of the Monitoring Protocol states the ERA will "give notice of the ERA's preliminary findings" to the Rule Participant. This should be amended to not only include the findings, but also the basis on which these findings were determined. This will ensure the Rule Participant is able to respond to the allegations with all relevant information and analysis that led to this conclusion.	<p>This proposal is consistent with the ERA's approach when investigating matters.</p> <p>At step 2.1.9 insert <u>"in accordance with step 4.1.7(b)"</u></p> <p>At step 4.1.7(b) insert <u>"including the reasons, rationale or basis for which these findings were determined"</u>.</p>
Perth Energy	<p>An additional clause should be inserted into the Monitoring Protocol at clause 4.1.7 (b) to ensure that:</p> <ul style="list-style-type: none"> o where the ERA has made an interpretation of the meaning of a term or word or concept used in the WEM Rules that is not defined in those rules; and o that interpretation is a key determinant in the allegation of a breach by a Rule Participant, 	<p>It is the intent of clause 4.1.7 to provide enough information for Rule Participants to understand the rational behind the ERA's preliminary views and determinations, including where the ERA has used an undefined term as a key determinant in assessing compliance. In order to ensure sufficient opportunity to respond to an allegation where an interpretation of a term has been made, the wording <u>"including the reasons, rationale or basis for which these findings were determined"</u> has been included.</p>

Party	Issue (as directly quoted in submission)	ERA Response
	<p>the ERA must provide that determination and its rationale to the Rule Participant in breach to allow it to respond. The ERA must publish that definition to ensure continuity in application and must have that definition considered by the Rule Change Panel for inclusion in the WEM Rules.</p>	<p>Each investigation undertaken by the ERA requires some level of interpretation of defined terms and undefined terms. A requirement to publish each interpretation that is a key determination may be administratively infeasible, particularly for matters where there are very minor levels of non-compliance. Where trends are identified, or where the ERA considers guidance should be issued, the ERA may publish its views. As such, at clause 4.7.1(b) insert <u>“Where the ERA makes an interpretation of a term that is undefined by the Market Rules, the ERA may publish a definition of that term or have that definition considered by the Rule Change Panel for inclusion in the Market Rules”</u></p>

Appendix 3 Minor drafting updates

Step	Issue	ERA Response
1	Drafting inconsistent with ERA style.	Removal of "(ERA)".
1.3.1	Change phone number to ERA switchboard	Removal of "6557 7901" inserted "6557 7900"
2.1.9	Drafting indicated that the ERA will provide notice to the party who reported the matter to the ERA, not the party alleged in the breach.	Removed "that identifies the alleged breach".

Appendix 4 Amended Monitoring Protocol (clean)

[Amended Monitoring Protocol \(clean\)](#)

Appendix 5 Amended Monitoring Protocol (marked up)

[Amended Monitoring Protocol \(marked up\)](#)