



**Economic Regulation Authority**

# Procedure Change Proposal: Monitoring Protocol

(EEPC\_2023\_01)

21 June 2023

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## Invitation to make submissions

**Submissions are due by 4:00 pm WST, Tuesday, 18 July 2023**

Clause 2.10.7 of the WEM Rules provides that any person may make a submission to a Procedure Change Proposal.

The ERA invites comment on this paper and encourages all interested parties to provide comment on the matters discussed in this paper and any other issues or concerns not already raised in this paper.

We would prefer to receive your [Procedure Change Submission](#) via our online submission form <https://www.erawa.com.au/consultation>

You can also submit a [Procedure Change Submission](#) form via:

Email: [publicsubmissions@erawa.com.au](mailto:publicsubmissions@erawa.com.au)

Post: Level 4, Albert Facey House, 469 Wellington Street, Perth WA 6000

Please note that submissions provided electronically do not need to be provided separately in hard copy.

All submissions will be made available on our website unless arrangements are made in advance between the author and the ERA. This is because it is preferable that all submissions be publicly available to facilitate an informed and transparent consultative process. Parties wishing to submit confidential information are requested to contact us at [info@erawa.com.au](mailto:info@erawa.com.au).

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# 1. Introduction

The Economic Regulation Authority (ERA) is responsible for the compliance and enforcement functions under chapter 2.13 of the Wholesale Electricity Market Rules (WEM Rules).

Clause 2.15.1 of the WEM Rules requires the ERA to maintain and implement a Monitoring Protocol. The purpose of the Monitoring Protocol is to state how the ERA will implement its obligations under the WEM Rules to monitor Rule Participant's behaviour and compliance with the WEM Rules and WEM Procedures (clause 2.15.2 of the WEM Rules).

Changes to the WEM Rules on New WEM Commencement Day require the ERA to amend its Monitoring Protocol.<sup>1</sup>

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

## 1.1 Process to develop a Procedure Change

The process that the ERA must adhere to when undertaking a Procedure Change Process is outlined in chapter 2.10 of the WEM Rules.

The Procedure Change Process the ERA intends to follow undertaking is as follows:

- Development of a Procedure Change Proposal outlining the amended words and the reasons for the proposed amendments to the WEM procedure.
- Publication of the Procedure Change Proposal.
- Publication of a call for submissions on the Procedure Change Proposal.

The ERA is of the view that the process it intends to follow for this Procedure Change Proposal is consistent with the WEM Rules.

The Relevant WEM Rules are outlined in detail in Appendix 1 and are as follows:

- The Economic Regulation Authority may initiate the Procedure Change Process by developing a Procedure Change Proposal (Clause 2.10.1 of the WEM Rules).
- If an Amending Rule requires the ERA to develop new WEM Procedures or to amend or replace existing WEM Procedures, then the ERA is responsible for the development of, amendment of or replacement for, WEM Procedures to comply with the Amending Rule (Clause 2.10.3 of the WEM Rules).
- The ERA must publish Procedure Change Proposals that it develops (Clause 2.10.5B of the WEM Rules).
- A Procedure Change Proposal must include:
  - a. a proposed WEM Procedure or an amendment to or replacement for a WEM Procedure indicating the proposed amended words, or a proposed WEM Procedure (Clause 2.10.6(a) of the WEM Rules).
  - b. the reason for the proposed WEM Procedure or an amendment to or replacement for a WEM Procedure or proposed WEM Procedure (Clause 2.10.6(b) of the WEM Rules).
- At the same time as it publishes a Procedure Change Proposal notice, the ERA must publish a call for submissions on that proposal. The due date for submissions must be 20

Business days from the date the call for submissions is published. (Clause 2.10.7 of the WEM Rules)

## 1.2 Reason for the Procedure Change

The ERA is responsible for maintaining the Monitoring Protocol under the WEM Rules.

The WEM is undergoing significant reform through the Government's Energy Transformation Strategy including the introduction of the new wholesale electricity market design that is expected to commence on New WEM Commencement Day. There are also changes to the compliance framework that will operate under the new market design. These changes include:

- Providing the ERA with more flexibility on the matters it can investigate.
- Allowing the ERA to suspend or close an investigation.
- Increased powers to issue civil penalties.
- Obligations for the ERA to investigate alleged breaches using a risk-based approach.
- Obligations to publish breaches and investigations in public registers
- Obligations to report to the Minister annually on each Network Operator's self-reported compliance with the WEM Rules and WEM Procedures.

These changes to the compliance framework have resulted in the need for the Monitoring Protocol to be updated.

The WEM Rule requirements for the Monitoring Protocol are summarised in section 1.3. Appendix 2 provides a marked up version of the proposed changes to the Monitoring Protocol.

## 1.3 WEM Procedure requirements

Clauses 2.15.1 to 2.15.4 of the WEM Rules set out the ERA's obligations to maintain the Monitoring Protocol WEM Procedure. Clauses 2.15.2 and 2.15.3 are being amended to reflect the changes to the compliance framework as outlined in section 1.2.<sup>1</sup> The ERA proposes to amend the existing Monitoring Protocol to reflect these changes.

Amended clause 2.15.2 requires the Monitoring Protocol to set out how the ERA will implement its obligations under the WEM Rules to monitor, investigate and enforce Rule Participants' behaviour for compliance with the WEM Rules and WEM Procedures.

Amended clause 2.15.3 requires the Monitoring Protocol to specify:

- a. The ERA's monitoring processes for assessing compliance with the WEM Rules and WEM Procedures by Rule Participants, which must include:
  - i. A process for notice to be given by the ERA to a Rule Participant that identifies the alleged breach to be investigated by the ERA.

<sup>1</sup> Energy Policy WA has published the proposed amendments in the [Consolidated 'Companion' version of the WEM Rules \(as at 29 April 2023\)](#), however no commencement date has yet been specified.

- ii. A process through which a Rule Participant may make submissions to the ERA to explain an alleged breach, prior to the ERA reaching a decision on whether a Rule Participant has breached the WEM Rules or WEM Procedures.
- b. A process for Rule Participants to report alleged breaches of the WEM Rules or WEM Procedures under clauses 2.13.15, 2.13.23 and 2.13.24 including the required information a Rule Participant must provide to the ERA.<sup>2,3,4</sup>
- c. The form that may be used by Rule Participants to report a breach, or suspected breach, of the WEM Rules or WEM Procedures by the Rule Participant to the ERA in accordance with clause 2.15.3(b).
- d. The processes for the ERA to assign a risk rating to each alleged breach, including the matters the ERA will take into account, that will determine whether the alleged breach will be investigated by the ERA.
- e. The processes for investigations of alleged breaches of the WEM Rules or WEM Procedures.
- f. The processes for suspending or closing investigations of alleged breaches of the WEM Rules or WEM Procedures under clause 2.13.33 of the WEM Rules, including the matters the ERA may take into account in making a decision.
- g. The processes and timeframes applying to a suspended investigation of an alleged breach of the WEM Rules or WEM Procedures, including the timeframes under which a suspended investigation may be resumed.
- h. Guidelines for the ERA when issuing warnings about alleged breaches of the WEM Rules or WEM Procedures to Rule Participants under clause 2.13.36(a).
- i. The process for bringing proceedings before the Electricity Review Board (ERB) for an order to be made by the ERB under the WEM Regulations.
- j. The processes to be followed by the ERA, including the matters the ERA may take into account and the circumstances it may have regard to, when deciding to issue a Civil Penalty notice under clause 2.13.36(c) and when determining the Civil Penalty Amount to be imposed.
- k. The processes for keeping a public register of breaches under clause 2.13.49 and publishing the public register in accordance with clause 2.13.53.
- l. The processes it will require AEMO and Network Operator(s) to implement to assist the ERA in monitoring and assessing Rule Participants' compliance with the WEM Rules and WEM Procedures.
- m. Any other relevant matters under sections 2.13, 2.14 and 2.15.

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<sup>2</sup> Clause 2.13.15 is a general obligation for AEMO to notify the ERA where it becomes aware of an alleged breach of the WEM Rules.

<sup>3</sup> Clause 2.13.23 is a general obligation for Rule Participants to self-report their own breaches of the WEM Rules or WEM Procedures.

<sup>4</sup> Clause 2.13.24 allows Rule Participants to report alleged breaches of the WEM Rules by other Rule Participants.

Appendix 3 provides a clean copy of the proposed Monitoring Protocol.

## 1.4 Consistency with the WEM Objectives

Under clause 2.9.3 of the WEM Rules, WEM Procedures must be:

- Developed, amended, or replaced in accordance with the process in the WEM Rules.
- Consistent with the Wholesale Market Objectives.
- Consistent with the WEM Rules, the Electricity Industry Act and the WEM Regulations.
- Amended or replaced in accordance with section 2.10 of the WEM Rules where a change is required to maintain consistency with Amending Rules.

The WEM Objectives are:

- a. to promote the economically efficient, safe and reliable production and supply of electricity and electricity related services in the South West interconnected system;
- b. to encourage competition among generators and retailers in the South West interconnected system, including by facilitating efficient entry of new competitors;
- c. to avoid discrimination in that market against particular energy options and technologies, including sustainable energy options and technologies such as those that make use of renewable resources or that reduce overall greenhouse gas emissions;
- d. to minimise the long-term cost of electricity supplied to customers from the South West interconnected system; and
- e. to encourage the taking of measures to manage the amount of electricity used and when it is used.

The proposed amendments to the Monitoring Protocol support greater transparency and procedural fairness under the WEM Rules. The ERA's proposed changes reinforce and formalise the ERA's existing practice of providing Rule Participants with the opportunity to explain their behaviour and provide relevant information to the ERA, prior to a determination being made.

The additions to the Monitoring Protocol increase the transparency of compliance processes and are consistent with the Wholesale Market Objectives.



## Appendix 1 Relevant WEM Rules

**As at 29 April 2023**

### **WEM Rule 1.2.1**

The objectives of the market are:

- a. to promote the economically efficient, safe and reliable production and supply of electricity and electricity related services in the South West interconnected system;
- b. to encourage competition among generators and retailers in the South West interconnected system, including by facilitating efficient entry of new competitors;
- c. to avoid discrimination in that market against particular energy options and technologies, including sustainable energy options and technologies such as those that make use of renewable resources or that reduce overall greenhouse gas emissions;
- d. to minimise the long-term cost of electricity supplied to customers from the South West interconnected system; and
- e. to encourage the taking of measures to manage the amount of electricity used and when it is used.

### **WEM Rule 2.9.3**

WEM Procedures:

- a. must:
  - i. be developed, amended or replaced in accordance with the process in these WEM Rules;
  - ii. be consistent with the Wholesale Market Objectives; and
  - iii. be consistent with these WEM Rules, the Electricity Industry Act and Regulations; and
- b. may be amended or replaced in accordance with section 2.10 and must be amended or replaced in accordance with section 2.10 where a change is required to maintain consistency with Amending Rules.

### **WEM Rule 2.10.1**

AEMO, the Economic Regulation Authority, the Coordinator or a Network Operator, as applicable, may initiate the Procedure Change Process by developing a Procedure Change Proposal.

### **WEM Rule 2.10.3**

If an Amending Rule requires AEMO, the Economic Regulation Authority, the Coordinator or a Network Operator to develop new WEM Procedures or to amend or replace existing WEM Procedures, then AEMO, the Economic Regulation Authority, the Coordinator or the Network

Operator, as applicable, is responsible for the development of, amendment of or replacement for, WEM Procedures so as to comply with the Amending Rule.

**WEM Rule 2.10.6**

A Procedure Change Proposal must include:

- a. a proposed WEM Procedure or an amendment to or replacement for a WEM Procedure, indicating the proposed amended words, or a proposed WEM Procedure; and
- b. the reason for the proposed WEM Procedure or an amendment to or replacement for a WEM Procedure or proposed WEM Procedure.

**WEM Rule 2.10.7**

At the same time as it publishes a Procedure Change Proposal notice, AEMO, the Economic Regulation Authority, the Coordinator or the Network Operator, as applicable, must publish a call for submissions on that proposal. The due date for submissions must be 20 Business Days from the date the call for submissions is published. Any person may make a submission to AEMO, the Economic Regulation Authority, the Coordinator or the Network Operator, as applicable, relating to a Procedure Change Proposal. A Procedure Change Submission may be made using the Procedure Change Submission form maintained on the Coordinator's Website in accordance with clause 2.9.4.

**WEM Rule 2.15.1**

The Economic Regulation Authority must maintain and implement a monitoring protocol in a WEM Procedure.

**WEM Rule 2.15.2**

The purpose of the WEM Procedure specified in clause 2.15.1 is to state how the Economic Regulation Authority will implement its obligations under these WEM Rules to monitor Rule Participants' behaviour for compliance with the WEM Rules and WEM Procedures.

**WEM Rule 2.15.3**

The WEM Procedure specified in clause 2.15.1 must specify:

- a. the Economic Regulation Authority's monitoring processes for assessing compliance with the WEM Rules and WEM Procedures by Rule Participants;
- b. [Blank]
- c. a process for Rule Participants to report alleged breaches of the WEM Rules or WEM Procedures;
- d. processes for investigations into alleged breaches of the WEM Rules or WEM Procedures;
- e. guidelines for the Economic Regulation Authority when issuing warnings about alleged breaches of the WEM Rules or WEM Procedures to Rule Participants under clause 2.13.10(c); and
- f. the procedure for bringing proceedings in respect of Category B or Category C WEM Rule breaches before the Electricity Review Board.

**WEM Rule 2.15.4**

The monitoring processes referred to in clause 2.15.3(a) that are to be specified in the WEM Procedure specified in clause 2.15.1 must include, where the Economic Regulation Authority has identified an alleged breach by a Rule Participant:

- a. a requirement for notice to be given by the Economic Regulation Authority to that Rule Participant that identifies the alleged breach; and
- b. a process through which the Rule Participant may make submissions to the Economic Regulation Authority to explain the alleged breach, prior to the Economic Regulation Authority reaching a decision on whether a Rule Participant has breached the WEM Rules.

**Proposed as at 29 April 2023****WEM Rule 2.15.1 (no change)**

The Economic Regulation Authority must maintain and implement a monitoring protocol in a WEM Procedure.

**WEM Rule 2.15.2**

The purpose of the WEM Procedure specified in clause 2.15.1 is to state how the Economic Regulation Authority will implement its obligations under these WEM Rules to monitor, investigate and enforce Rule Participants' behaviour for compliance with the WEM Rules and WEM Procedures.

**WEM Rule 2.15.3 (combines current clause 2.15.3 and 2.15.4)**

The WEM Procedure specified in clause 2.15.1 must specify:

- a. the Economic Regulation Authority's monitoring processes for assessing compliance with the WEM Rules and WEM Procedures by Rule Participants, which must include:
  - i. a process for notice to be given by the Economic Regulation Authority to a Rule Participant that identifies the alleged breach to be investigated by the Economic Regulation Authority; and
  - ii. a process through which a Rule Participant may make submissions to the Economic Regulation Authority to explain an alleged breach, prior to the Economic Regulation Authority reaching a decision on whether a Rule Participant has breached the WEM Rules or WEM Procedures;
- b. a process for Rule Participants to report alleged breaches of the WEM Rules or WEM Procedures under clauses 2.13.15, 2.13.23 and 2.13.24 including the required information a Rule Participant must provide to the Economic Regulation Authority;
- c. the form that may be used by Rule Participants to report a breach, or suspected breach, of the WEM Rules or WEM Procedures by the Rule Participant to the Economic Regulation Authority in accordance with clause 2.15.3(b);
- d. the processes for the Economic Regulation Authority to assign a risk rating to each alleged breach, including the matters the Economic Regulation Authority will take into

account, that will determine whether the alleged breach is required to be investigated by the Economic Regulation Authority;

- e. the processes for investigations of alleged breaches of the WEM Rules or WEM Procedures;
- f. the processes for suspending or closing investigations of alleged breaches of the WEM Rules or WEM Procedures under clause 2.13.33, including the matters the Economic Regulation Authority may take into account in making a decision;
- g. the processes and timeframes applying to a suspended investigation of an alleged breach of the WEM Rules or WEM Procedures, including the timeframes under which a suspended investigation may be resumed;
- h. guidelines for the Economic Regulation Authority when issuing warnings about alleged breaches of the WEM Rules or WEM Procedures to Rule Participants under clause 2.13.36(a);
- i. the process for bringing proceedings before the Electricity Review Board for an order to be made by the Electricity Review Board under the WEM Regulations;
- j. the processes to be followed by the Economic Regulation Authority, including the matters the Economic Regulation Authority may take into account and the circumstances it may have regard to, when deciding to issue a civil penalty notice under clause 2.13.36(c) and determining the Civil Penalty Amount to be imposed;
- k. the processes for keeping a public register of breaches under clause 2.13.49 and publishing the public register in accordance with clause 2.13.53;
- l. the processes it will require AEMO and the Network Operator to implement to assist the Economic Regulation Authority in monitoring and assessing Rule Participants' compliance with the WEM Rules and WEM Procedures; and
- m. any other relevant matters under sections 2.13, 2.14 and 2.15.

## **Appendix 2 – Monitoring Protocol marked up version**

[EEPC\\_2023\\_01 Monitoring Protocol \(Track changes\)](#)

## **Appendix 3 – Monitoring Protocol clean version**

[EEPC\\_2023\\_01 Monitoring Protocol \(Clean version\)](#)