



Economic Regulation Authority

Wholesale Electricity Market Rules and Gas Services Information Rules

Compliance report for the period 1 January 2023 to
30 June 2023

31 July 2023

Economic Regulation Authority

Level 4, Albert Facey House

469 Wellington Street, Perth WA 6000

Telephone 08 6557 7900

Email info@erawa.com.au

Website www.erawa.com.au

This document can also be made available in alternative formats on request.

National Relay Service TTY: 13 36 77

© 2023 Economic Regulation Authority. All rights reserved. This material may be reproduced in whole or in part provided the source is acknowledged.

Contents

1.	Summary	3
2.	Compliance Update	1
2.1	Alleged breach reports	1
2.2	Dispatch instruction, balancing submissions and outage quarterly investigation process	3
2.3	Compliance monitoring.....	4
2.4	Completed investigations and compliance responses	4
2.5	Stakeholder engagement and reports	6
2.5.1	New Compliance Framework	6
3.	Report on Electricity Review Board matters	7
3.1	Proceedings brought before the Electricity Review Board	7
3.2	Findings of the Electricity Review Board	7
3.3	Orders made by the Electricity Review Board.....	8
3.3.1	Statement by Synergy	9
3.4	Civil penalties imposed by the ERA	10

1. Summary

The Economic Regulation Authority is responsible for the compliance and enforcement functions in the Wholesale Electricity Market (WEM) Rules and in the Gas Services Information (GSI) Rules.¹

This report provides participants and other interested parties with a summary of the ERA's compliance activities for the reporting period 1 January 2023 to 30 June 2023. The report includes information to assist participants to meet their compliance obligations.

Reducing the current backlog of investigations remains a compliance priority for the ERA. The ERA completed 110 investigations into market participants' compliance with the WEM Rules and GSI Rules this reporting period. Most of these matters, 77, concerned the WEM Rules, and 33 were related to the GSI Rules. The largest breach categories for the completed investigations were late payment of invoices (20) and failure to comply with dispatch or dispatch instructions (11).

Section three of this report includes information to satisfy the requirements of clause 2.13.26 of the WEM Rules and clause 167(1) of the GSI Rules. These clauses require the ERA to publish six-monthly reports summarising matters brought before the Electricity Review Board, and details of any civil penalties imposed by the ERA.

Terms capitalised in this report include terms defined under Chapter 11 of the WEM Rules and Schedule 1 of the GSI Rules.

¹ Comparative data is presented in this report from the 1 July 2016. This is the date that the ERA became responsible for the compliance and enforcement functions in the WEM Rules and the GSI Rules.

2. Compliance Update

The ERA's compliance functions include monitoring market participants' compliance with the WEM Rules and GSI Rules and investigating alleged breaches of these rules.

The WEM Rules provide the ERA with compulsory information gathering powers so that it can perform its functions. These powers not only concern compliance processes but also information and data required to inform the ERA's determination and review functions (for example, administered pricing determinations). This includes information requested under clause 2.16.6 of the WEM Rules. Where information is requested using a compulsory information gathering power, the information must be provided by the deadline specified in the request, unless an extension has been authorised.

In recent determination processes some responses to compulsory information requests have been received after the due date, with no authorised extension having been granted. Failure to provide requested information by the specified timeframe may result in a breach of the WEM Rules. The ERA understands that market participants have many competing priorities, particularly in the current state of WEM reforms, and encourages participants to contact the ERA to discuss an extension if additional time is required to respond to a compulsory information request.

2.1 Alleged breach reports

Participants, including AEMO, may report alleged breaches of the WEM Rules and GSI Rules to the ERA. The ERA also identifies alleged breaches of the WEM Rules and the GSI Rules.^{2,3} The ERA records details of alleged breaches that it becomes aware of in its compliance monitoring register⁴ and investigates all alleged breaches to determine whether a breach occurred.

In this reporting period, 1 January 2023 to 30 June 2023, the ERA recorded 67 alleged WEM Rule non-compliance matters and 13 alleged GSI Rule non-compliance matters in its compliance monitoring register (Figure 1).⁵

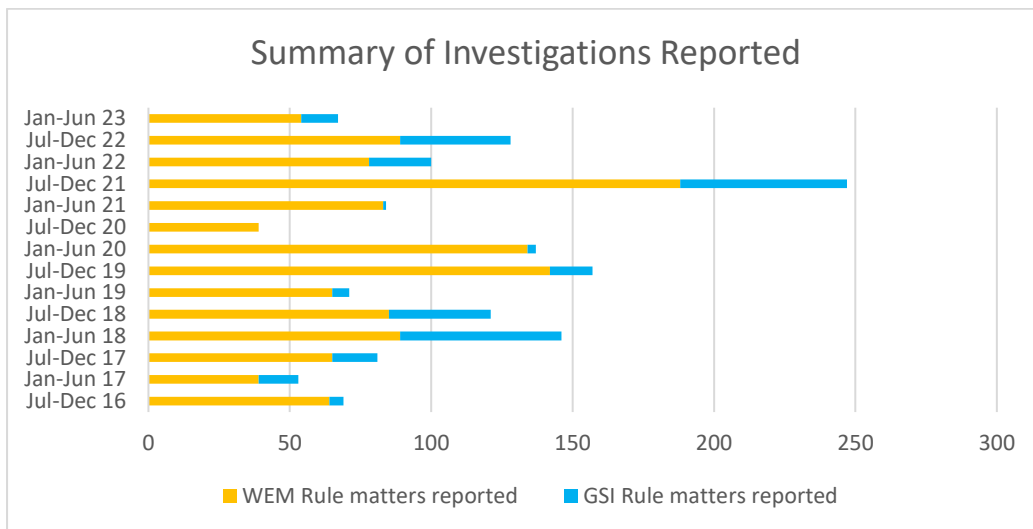
Of the 67 alleged breaches recorded this reporting period (Figure 1), eight were self-reported by participants (excluding AEMO). The overall number of alleged breaches is lower than the previous period when 128 alleged breaches were recorded.

² Wholesale Electricity Market Rules (WA), 1 January 2023, Rules 2.13.2, 2.13.4, 2.13.8, 2.13.9A and 2.13.9C, ([online](#)).

³ Gas Services Information Rules (WA), 1 December 2022, Rule 165A(1) and 165A(3), ([online](#)).

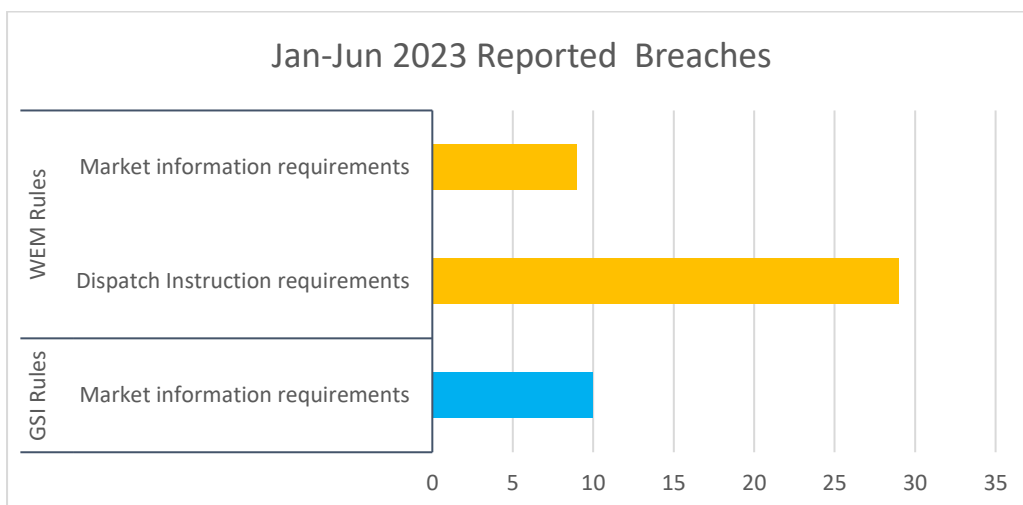
⁴ Economic Regulation Authority, 2020, Market Procedure Monitoring Protocol, step 6.1, ([online](#)).

⁵ The ERA became responsible for the compliance and enforcement functions in the WEM Rules and the GSI Rules on 1 July 2016. Between 1 July 2016 and 30 June 2023, the ERA recorded 1,571 alleged WEM Rules and GSI Rules breaches in the compliance monitoring register.

Figure 1: Alleged breach reports recorded as of 30 June 2023

Source: ERA data

The largest category of alleged WEM Rule breaches has typically concerned compliance with outage obligations and dispatch instructions. This continued to be the case for this reporting period and is shown in Figure 2.

Figure 2: Largest categories of alleged breaches reported 1 January 2023 to 30 June 2023

Source: ERA data

There were 29 alleged breaches in the “dispatch instruction requirements” category recorded this reporting period. This is consistent with the overall levels of non-compliance with dispatch and balancing submission clauses discussed in section 2.2.

Fifteen alleged breach reports concerned the WEM Rules’ “market information requirements”. In most cases, the reports concerned late provision of information to AEMO.⁶ Participants should be aware that where information is provided after a rule deadline, this will constitute non-compliance. The late provision of information may also cause delays to other market processes.

⁶ Wholesale Electricity Market Rules (WA), 1 January 2023, Rule 3.24.5, 4.27.10(a), 4.5.4, ([online](#)).

Of the 13 GSI Rules matters recorded for this reporting period, 10 concerned market information requirements⁷ and three matters concerned late payment of invoices⁸. The late payment of invoices category of alleged breaches has been high in past reporting periods (28 in the most recent reporting period). Evidently most participants have improved their business process and implemented procedures to mitigate non-compliance with the GSI Rules.

2.2 Dispatch instruction, balancing submissions and outage quarterly investigation process

The ERA determines market participants' compliance with dispatch instructions, outages and balancing submissions during a quarterly investigation process.

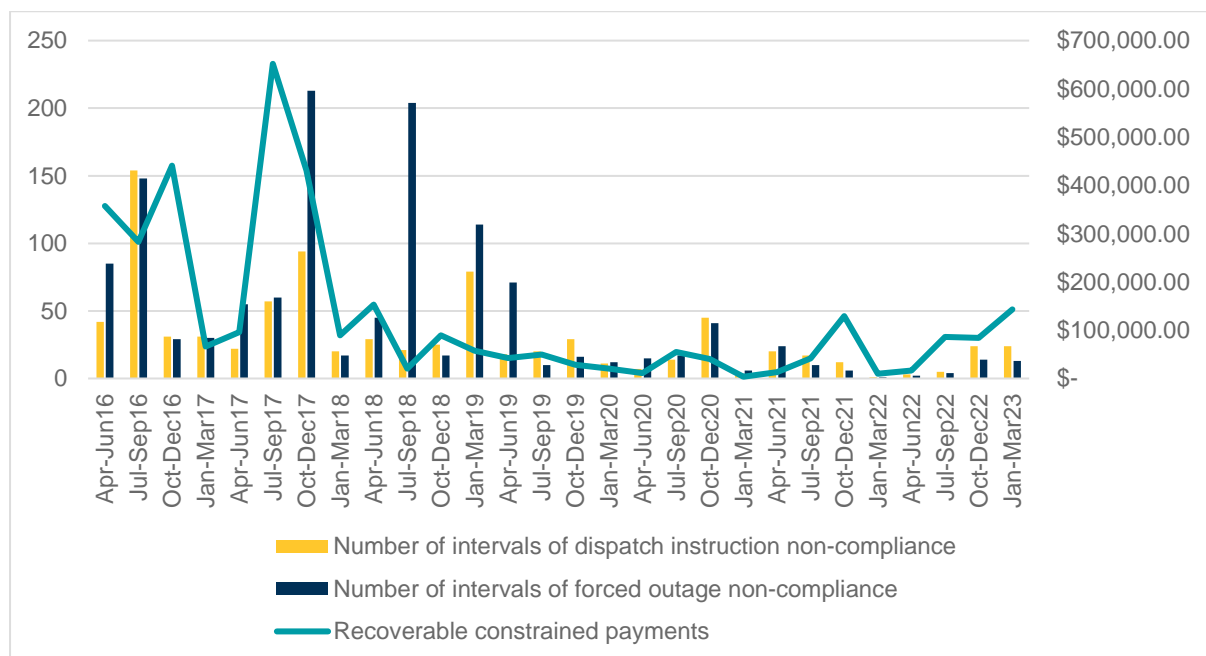
During this process, the ERA analyses market data, information contained in non-compliance reports and constrained payment data provided by AEMO to determine whether market participants have complied with the WEM Rules.

The quarterly investigation process is carried out to meet the requirements of clause 7.10.8 of the WEM Rules. The ERA also considers whether any constrained payments received by participants resulting from non-compliant behaviour should be recovered.⁹

As part of the quarterly investigation process, the ERA meets with relevant market participants to discuss the circumstances of the matters being investigated.

Figure 3 shows quarterly results from this process between April 2016 and March 2023.

Figure 3: Quarterly non-compliance with dispatch instructions process (Source: ERA data)



⁷ Gas Services Information Rules (WA), 1 December 2022, Rule 71(1) and Rule 106(2), ([online](#)).

⁸ Gas Services Information Rules (WA), 1 December 2022, Rule 118(1), ([online](#)).

⁹ Where a market participant's facility's actual generated quantity was materially different from its balancing submission quantities then it may be entitled to out of merit constrained off or on compensation as per section 6.16A of the WEM Rules, unless it was non-compliant with a dispatch instruction under clause 7.10.1.

The data in Figure 3 shows that the number of intervals where participants did not comply with dispatch instructions or submit correct outages remained low during this reporting period. The low level of non-compliance follows ongoing actions taken by participants to improve their compliance.

Participants have improved compliance by placing emphasis on the importance of communicating relevant matters to AEMO and logging outages.

2.3 Compliance monitoring

The ERA commenced a monitoring project in the reporting period, 1 January to 30 June 2022. The project considered market participants' compliance with notification requirements if balancing submissions are made after balancing gate closure.

Notifications to AEMO for balancing submissions made after gate closure are necessary to ensure that submissions are made in compliance with the reasons outlined in chapter 7A.2.10 of the WEM Rules. In circumstances where no notification has been provided to AEMO, there is less certainty as to the reason an after gate closure submission was made. This may provide the opportunity for some non-compliant participants to act on new information, such as a change in forecast balancing price, where compliant participants do not have the same opportunity.

To prevent this, clause 7A.2.11¹⁰ of the WEM Rules requires the participant to provide AEMO with written details of the after gate closure including the nature of the constraint, its start time and its duration.

The ERA assessed 223 instances from nine market participants in the 1 January to 31 December 2022 period where a balancing submission was made after gate closure. These investigations were continued through the 1 January to 30 June 2023 reporting period. The ERA is concerned that a number of participants are repeatedly failing to provide notification to AEMO that an after gate closure submission was necessary. Preliminary determinations have been communicated with the relevant market participants. The ERA is investigating whether participants benefitted from their after gate closure submissions and whether there was an impact on the market.

The new WEM compliance framework that will be introduced as part of the Energy Transformation Strategy reforms will require market participants to keep certain records of submission changes. This means that market participants will need to ensure that their information technology systems have sufficient controls to identify and report their own activities when the new market commences.

2.4 Completed investigations and compliance responses

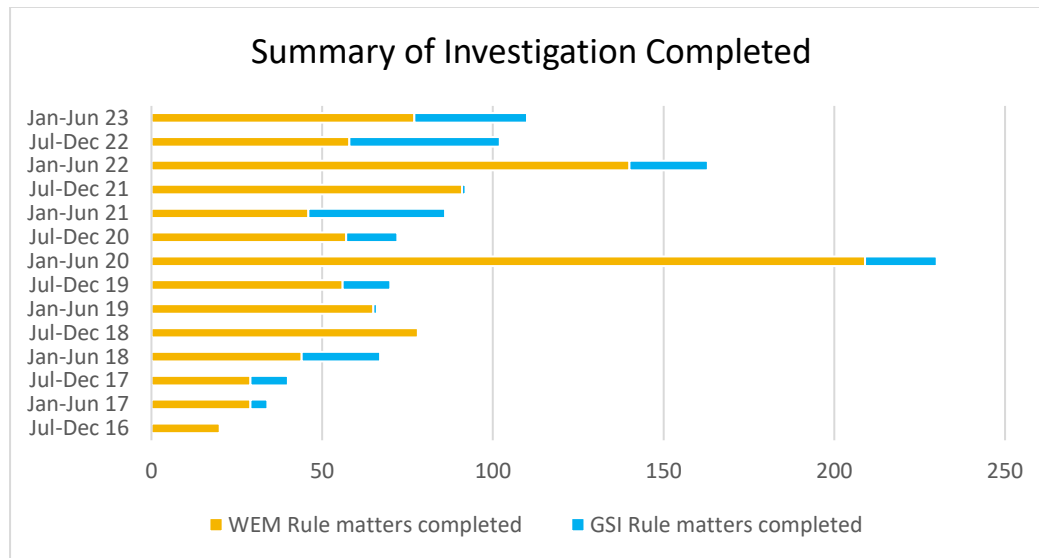
The ERA currently has a backlog of 266¹¹ investigations as of 30 June 2023 and remains committed to reducing this backlog in anticipation of the commencement of the new market compliance framework in October 2023.

¹⁰ 7A.2.11. Where a Market Participant has submitted a Balancing Submission in accordance with clauses 7A.2.10(a) or 7A.2.10(b) after Balancing Gate Closure, the Market Participant must, as soon as reasonably practicable, provide AEMO with written details of the nature of the Internal Constraint or External Constraint, when it occurred and its duration.

¹¹ An additional investigation was resolved in the 1 July to 31 December 2022 period but was not captured in the compliance report for that period.

Figure 4 shows the number of investigations completed in each reporting period since 1 July 2016¹². The ERA completed 110 investigations in the most recent reporting period. The ERA intends to continue to use a batch investigation process to reduce the current backlog. The batch investigation process improves efficiency through the concurrent investigation of matters with same or similar WEM rules and pertaining to the same participant. The investigations are carried out to the same standard but applying the same knowledge or working with the same participants streamlines the process.

Figure 4: Investigation completed between 1 July 2016 to 30 June 2023 (Source: ERA data)



Where a participant has breached the WEM Rules or GSI Rules, the ERA may issue a participant a warning, impose penalties, or commence proceedings before the Electricity Review Board.^{13,14,15} The ERA may also issue administrative responses including education advice.

Figure 5 summarises the outcomes of the 110 investigations completed this reporting period. There were 90 investigations where a breach was determined but as the matters were considered low impact no further action was required. For these matters, the ERA was satisfied that most market participants had implemented controls to mitigate the risk of non-compliances re-occurring.

The largest breach category concerned market participants' compliance with Outage requirements. During this period, 29 investigations were combined into two batch processes and the ERA investigated multiple breach allegations in one batch concerning the notification and provision of information to AEMO regarding forced outages.^{16,17}

¹² The ERA became responsible for the compliance functions in the GSI and WEM Rules on 1 July 2016. Between 1 July 2016 and 30 June 2023, the ERA has completed 1,230 investigations.

¹³ Wholesale Electricity Market Rules (WA), 1 January 2023, Rule 2.13.10, ([online](#)).

¹⁴ Electricity Industry (Wholesale Electricity Market) Regulations (WA), 1 July 2021, Regulation 31, ([online](#)).

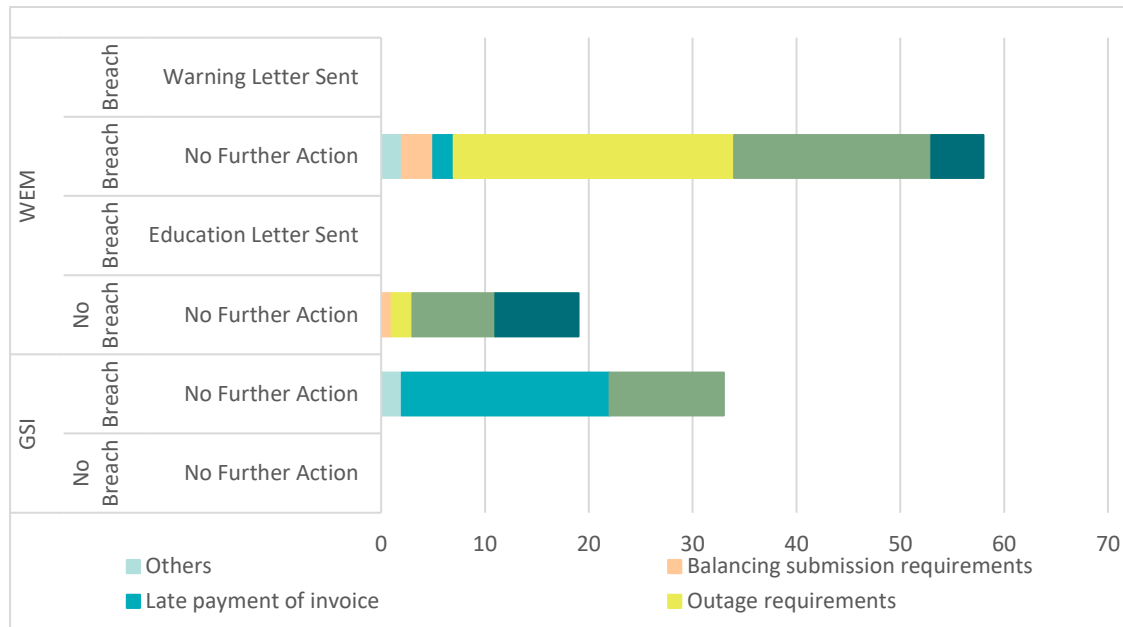
¹⁵ Gas Services Information Rules (WA), 1 December 2022, Rule 171(3), ([online](#)).

¹⁶ Wholesale Electricity Market Rules (WA), 1 January 2023, Rule 2.13.10, ([online](#)).

¹⁷ Electricity Industry (Wholesale Electricity Market) Regulations (WA), 1 July 2021, Regulation 31, ([online](#)).

Market participants who breached this requirement advised the ERA that they had implemented processes to ensure outages are logged when required to prevent future breaches of the WEM Rules' outage requirements.

Figure 5: Investigation outcomes for the period 1 January 2023 to 30 June 2023 (Source: ERA data)



The second largest breach category in this reporting period concerned market participants' failure to comply with the requirements of GSI Invoice payments (20 investigations). The ERA's investigations revealed that most late invoice payments were caused by internal business process failures. This included circumstances where obligations were not performed because authorised personnel were on leave. There were also inconsistencies between payment terms coded in participants' payment systems and those required for GSI invoices. Participants must ensure they have sufficient controls in place to ensure the timely payment of invoices. Market participants who were found to have breached this requirement advised the ERA that they had implemented mitigating controls to prevent future breaches.

2.5 Stakeholder engagement and reports

2.5.1 New Compliance Framework

On 14 March 2023, the ERA held an online workshop with participants to discuss the changes to the WEM Rules and Regulations that had occurred since the workshop held in March 2022. This included changes to the ERA's WEM Procedure: Monitoring Protocol in response to feedback from the previous workshop and the WEM Rules and Regulation changes.

On 21 June 2023, the ERA published Procedure Change Proposal EEPC_2023_01 and invited Participants to make submissions on the proposed changes to the ERA's WEM Procedure: Monitoring Protocol. Submissions for Procedure Change Proposal EEPC_2023_01 closed at 4.00pm (WST) on 18 July 2023. The changes to the ERA's WEM Procedure: Monitoring Protocol are required to ensure the ERA will be compliant with the new WEM Rules on New WEM Commencement Day.

3. Report on Electricity Review Board matters

The ERA reports on the following matters for the reporting period, as required by clause 2.13.26 of the WEM Rules and clause 167(1) of the GSI Rules:

- a. Proceedings that have been brought before the Electricity Review Board.
- b. Findings of the Electricity Review board on matters referred to it.
- c. Orders made by the Electricity Review Board.
- d. Civil penalties imposed by the ERA under clause 2.13.16(a) of the WEM Rules or regulation 16 of the GSI Regulations, where the Electricity Review Board has not set these aside.

3.1 Proceedings brought before the Electricity Review Board

Application 1 of 2019

The ERA's application to the Electricity Review Board for an order of contravention of clause 7A.2.17 of the WEM Rules by Synergy pursuant to regulation 32(1) of the Electricity Industry (Wholesale Electricity Market) Regulations 2004 (WA), concluded in this reporting period.

The ERA had commenced proceedings against Synergy by making a formal Application for Orders to the Electricity Review Board on 31 May 2019, in which the ERA sought a number of orders at paragraph 22, which included an order that the respondent has contravened clause 7A.2.17 of the Market Rules in respect of the prices offered in its balancing submissions for the 12,908 trading intervals during the Investigation Period.

On 7 November 2022 the Board released its decision in favour of the ERA. On 22 November 2022 the Board made programming orders that required the ERA and Synergy to put an agreed position towards the Board on penalty and failing that, made orders to program a contested hearing on 25 May 2023. The ERA and Synergy agreed to the terms of settlement in a settlement deed on 12 May 2023 resolving all other outstanding issues in these proceedings. This settlement was submitted for consideration by the ERB on 16 May 2023. On 27 June 2023, the Board made orders between the ERA and Synergy, which concluded the proceedings.

3.2 Findings of the Electricity Review Board

Application 1 of 2019

In the Electricity Review Board (ERB) declaration dated 22 November 2022, the ERB stated:

- (a) on each day between 16 April 2016 and 10 July 2017 inclusive; and
 - (b) in respect of the Trading Intervals commencing at 6.00am and ending at the end of the 11.30pm Trading Interval for which the prices offered by Synergy in Balancing Submissions exceeded \$40/MWh;
- (being 11,012 Trading Intervals) (Affected Trading Intervals), engaged in conduct in contravention of clause 7A.2.17 of the Wholesale Electricity Market Rules by offering prices in its Balancing Submissions (being 11,012 Balancing Submissions) in excess of Synergy's

reasonable expectation of the short run marginal cost of generating the relevant electricity by the Balancing Facility, when such behaviour related to market power, by reason of the matters set out below:

1. In respect of Affected Trading Intervals on Trading Days from 16 April 2016 to 13 July 2016 inclusive, Synergy calculated its prices offered in its Balancing Submissions by including a component in respect of start-up costs which exceeded Synergy's reasonable expectation of those costs as short run marginal costs insofar as they:

- (a) included costs associated with inspections and maintenance work which were double counted;
- (b) were not appropriately based on a life cycle assessment of the need for maintenance and therefore involved an unwarranted over recovery
- (c) were based on the original equipment manufacturer's recommendations whereas actual maintenance work was carried out less frequently; and
- (d) included costs for maintenance that were time-based, as opposed to depending on the number of starts, and therefore included costs that are not properly characterised as marginal costs.

2. In respect of Affected Trading Intervals on Trading Days from 14 July 2016 to 10 July 2017 inclusive, Synergy calculated its prices offered in its Balancing Submissions by including components in respect of start-up costs and gas input costs which exceeded Synergy's reasonable expectation of those costs as short run marginal costs insofar as:

- (a) the start-up costs were affected by the matters identified in paragraph 1(a) to (d);
- (b) the gas input costs were not based on Synergy's opportunity cost of gas (which is the proper measure for the purpose of calculating short run marginal cost), but were based on the price of gas under Synergy's Gorgon Contracts which was:
 - (i) not a marginal cost of gas;
 - (ii) higher than Synergy's weighted average price of gas paid, and Synergy's opportunity cost of gas, for the Trading Days from 14 July 2016 to 30 November 2016; and
 - (iii) higher than Synergy's opportunity cost of gas for the Trading Days from 1 December 2016 to 13 July 2016.

3. Using cost inputs that were above Synergy's reasonable expectation of the short run marginal cost of those inputs, as set out in paragraphs 1 and 2 above, had the consequence that each Balancing Submission submitted by Synergy in the Affected Trading Intervals contained at least one price that was in excess of Synergy's reasonable expectation of the short run marginal cost of generating the relevant electricity by the Balancing Facility.

4. At all times between 16 April 2016 to 10 July 2017 inclusive, Synergy operated in the market for the generation of electricity in the region served by the South-West Interconnected System and had market power during the Affected Trading Intervals.

5. Synergy's conduct as set out in paragraphs 1 – 3 above related to market power during the Affected Trading Intervals in the market for the generation of electricity in the region served by the South-West Interconnected System.

3.3 Orders made by the Electricity Review Board

Application 1 of 2019

On 22 February 2023 the Board issued a summons to the Australian Energy Market Operator (AEMO) for material related to the Application and made orders to protect the confidentiality of material sought in the summons.

On 22 February 2023 the Board made programming orders on when the parties were to file evidence in the penalty proceedings, when to lodge objections to evidence, the ERA's delivery of a Hearing Book, the filing of written evidence by the parties and the date in which the penalty proceeding hearing was to be heard.

The ERA and Synergy agreed to a settlement in respect of the Application 1 of 2019 proceedings. The agreement was that the ERA would withdraw its application for relief if Synergy paid the sum of \$30 million for its contravention of the Wholesale Electricity Market Rules. This sum will be distributed to non-contestable residential customers. Households will receive a direct credit ('Customer Offset for Synergy Compliance Breach') of approximately \$28 off their Synergy electricity bill within six months of 27 June 2023. The agreement also required Synergy to conduct a governance review of its internal processes within 6 months of the ERB making any final orders, and that Synergy would provide a confidential report to the ERA of the results of that review.

On 27 June 2023, the Board made final orders between the ERA and Synergy, which concluded the proceedings.

The Electricity Review Board orders and directs that:

1. The Applicant's request for relief in paragraphs 22(b), (c) and (d) of the Application for Orders filed 31 May 2019 is withdrawn.
2. The evidence filed by the Applicant in respect of the penalty hearing on 30 March 2023 will be subject to the confidentiality regime as set out in the Orders dated 20 December 2019 as amended by the Orders dated 14 November 2022.
3. The Orders made by the Board on 22 November 2022 as amended by the Orders dated 22 February 2023 are vacated.
4. The proceeding being Application 1 of 2019 before the Electricity Review Board (No.1/2019) are hereby concluded.
5. There be no order made as to costs.

The full list of past orders published by the ERB are available on its website.¹⁸

3.3.1 Statement by Synergy

As part of the agreement between the ERA and Synergy, Synergy published a statement on its website¹⁹ including the following acknowledgement:

Synergy admits the contraventions of clause 7A.2.17 of the Wholesale Electricity Market Rules. The ERA has agreed that it will not seek that Synergy pay a civil penalty and to resolve the proceedings Synergy and the ERA have agreed that Synergy would:

- (a) implement the 'Customer Offset for Synergy Compliance Breach';
- (b) implement a review of the circumstances giving rise to the contraventions of the Wholesale Electricity Market Rules; and
- (c) publish this Statement.

As a result of the settlement agreement between the parties, the Electricity Review Board has concluded the proceedings.

¹⁸ Western Australian Energy Disputes Arbitrator. Electricity Review Board, ([online](#)), [accessed 13 Jul 2023].

¹⁹ Customer Offset for Synergy Compliance Breach ([online](#)) [accessed 14 July 2023]

3.4 Civil penalties imposed by the ERA

The ERA has not imposed any civil penalties under WEM Rule 2.13.16(a) or regulation 16 of the GSI Regulations in this reporting period.