



Economic Regulation Authority

Procedure Change Report: Portfolio Determination

(EEPC_2023_02)

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1. Introduction

The Wholesale Electricity Market (WEM) in the Western Australian South-West Interconnected System operates under the *Electricity Industry Act 2004*, *Electricity Industry (Wholesale Electricity Market) Regulations 2004* and Wholesale Electricity Market Rules (WEM Rules).^{1,2,3}

The Economic Regulation Authority is responsible for monitoring and enforcing compliance with the WEM Rules. In conducting its functions, the ERA aims to provide businesses and consumers with confidence that the WEM operates efficiently and effectively.⁴

The State Government has published amendments to the WEM Rules in a Consolidated Companion version to take effect on the New WEM Commencement Day. This report and corresponding WEM Procedure apply the amended WEM Rules and capitalise terms defined in the WEM Rules.⁵

Twice a year in the new WEM, the ERA will identify Material Portfolios and Material Constrained Portfolios to assist the ERA to monitor behaviour and to identify the potential exercise of market power by a Market Participant.

The publication of this Procedure Change Report is the final step in the process to develop the Portfolio Determination WEM Procedure. The WEM Procedure is due to commence on the New WEM Commencement Day.

1.1 Background

The Portfolio Determination WEM Procedure has been developed in accordance with WEM Rule 2.16D.15 to document:

- a. The methodologies and processes to be followed by the ERA in relation to:
 - i. Identifying each Portfolio and Constrained Portfolio operating in the WEM pursuant to WEM Rules 2.16B.1(a) and 2.16B.2, respectively.
 - ii. Carrying out the calculations in relation to identifying each Material Portfolio and Material Constrained Portfolio under WEM Rules 2.16C.1(a) and 2.16C.2(a), respectively.
 - iii. Monitoring prices offered by a Market Participant and making determinations in relation to those price offers under WEM Rules 2.16C.4, 2.16C.6 and 2.16C.7.
- b. The types and format of the information, and level of detail required to be maintained or recorded by a Market Participant to enable the ERA to carry out its monitoring of price offers under WEM Rule 2.16C.4.

¹ *Electricity Industry Act 2004* (WA), ([online](#)).

² *Electricity Industry (Wholesale Electricity Market) Regulations 2004* (WA), ([online](#)).

³ Wholesale Electricity Market Rules (WA), 22 July 2023, ([online](#)).

⁴ Economic Regulation Authority. Statement of Strategic Intent, 2023-2025 ([online](#)).

⁵ WEM Rules, Consolidated Companion version, 22 July 2023 ([online](#)).

- c. Details of the processes the ERA and Market Participants must follow in respect to a request for guidance, which may include a template that a Market Participant must use for making a request under WEM Rule 2.16D.5.

[WEM Rule 2.16D.15]

On 21 June 2023, the ERA published the Procedure Change Proposal and invited submissions, under the Procedure Change Process specified in section 2.10 of the WEM Rules. Submissions closed on 18 July 2023.⁶ A summary of submissions received during the consultation period and the changes made to the draft WEM Procedure are in Attachment 1.

⁶ ERA, 2023 Procedure Change EEPC_2023_02 (online).

2. Procedure change

The ERA considers that the Portfolio Determination WEM Procedure is consistent with the WEM Objectives. WEM Procedures must be [WEM Rule 2.9.3]:

- 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 2004* 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.

On 22 June 2023 the ERA notified the Market Advisory Committee (MAC) by email of the Procedure Change Proposal and noted that it did not require advice from the MAC on the proposal.

WEM Rule 2.10.13(d) requires that this report provides a summary of views expressed by the MAC and any relevant working group.

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

The MAC did not establish any relevant working groups for the EEPC_2023_02 Procedure Change Proposal.

2.1 Changes from the draft procedure

The Portfolio Determination WEM Procedure has been changed since the draft published on 21 June 2023 to incorporate stakeholder feedback and to improve the clarity of the process that the ERA intends to undertake. Many of the changes are of either a typographical or grammatical nature. The changes include:

- Applying consistent referencing of the WEM Rules and consistent formatting.
- Additional detail relating to transitional steps for the first application of the WEM Procedure after the New WEM Commencement Day.
- Improving the useability of the templates attached to the WEM Procedure.
- Additional clarity on how the ERA will determine control of a Facility and outlining how the ERA will apply discretion in allocation of Facilities with shared control to Portfolios.
- Inclusion of new detail that the ERA will seek to contact and explain to Market Participants who have provided unsatisfactory information.

The WEM Procedure and a marked-up version showing changes to the draft WEM Procedure is attached to this Procedure Change Report.

3. Consultation process

On 30 June 2023, during the consultation period, the ERA held a stakeholder workshop to outline this WEM Procedure and the ERA's other new WEM Procedure, ERA triggering the SESSM.⁷ At the workshop, the ERA also explained its two new Guidelines and answered questions from stakeholders.⁸

In its Procedure Change Proposal, the ERA requested stakeholder feedback on any aspect of the draft WEM Procedure and posed the following three questions:

1. What further clarification, if any, do stakeholders require on how the ERA proposes to identify operational control of Facilities for the purpose of Portfolio determination?
2. What additional detail, if any, do Market Participants require on the request for guidance process?
3. What amendments, if any, are required to the Request for Guidance template?

The ERA did not receive any direct responses to these questions. However, submissions from AGL and Bright Energy Investments both sought further clarification on the determination of operational control of Facilities.

3.1 Submissions received

The ERA received submissions from the following stakeholders, which are published on the ERA's website.⁹

- AGL
- Bright Energy Investments
- Synergy

Stakeholders sought clarification on how the ERA would assess control of a facility for Portfolio determination, including how ownership by associated entities would be treated. Other feedback requested further detail on the timing of the ERA's publication of information. Submissions also included feedback on typographical and grammatical matters.

A summary of the feedback received and subsequent changes to the WEM Procedure are listed in Appendix 1.

⁷ ERA, 2023, Procedure Change EEPC_2023_03 ([online](#)).

⁸ ERA, 2023, Offer Construction Guideline and Trading Conduct Guideline ([online](#)).

⁹ ERA 2023, Procedure Change EEPC_2023_02 ([online](#)).

Appendix 1 Summary of changes made to draft WEM Procedure

Submissions were received from Bright Energy Investments, AGL and Synergy.¹⁰

Table 1: ERA responses to stakeholder submissions

Issue	Paragraph	Stakeholder's issue description	Raised by	Response
1	3.1.4	<p>The requirement for all facilities owned by 'Associated Entities' (as defined by the <i>Corporations Act 2001</i> (Cth)) to be allocated to the same portfolio is "not logical and unrealistic in this complex investor environment."</p> <p>As the <i>Corporations Act 2001</i> (Cth) defines an 'Associated Entity' broadly, situations may be captured where market manipulation is not possible and could lead to reduced market competition when complex investment structures are considered.</p> <p>Requested the ERA to reconsider this aspect of the Procedure "to reflect ownership by Related Body Corporates or to reflect control of the trading strategy."</p>	Bright Energy Investments	<p>The WEM Procedure is consistent with WEM Rule 2.16B.1(a) which sets out the principles that the ERA must follow when identifying each Portfolio. One of the principles is to allocate Registered Facilities owned or registered to Market Participants that are associated entities to the same Portfolio [WEM Rule 2.16B.1(a)(iii)].</p> <p>The ERA will also consider control of the facility when identifying Portfolios.</p>
2	3	<p>Treating generators that are controlled by different organisations as a single portfolio will stifle competition, not protect it.</p> <p>"We don't believe that BEI is an Associated Entity of Synergy as the Synergy's share is less than 20% and Synergy does not have control over BEI..... However, we are concerned that BEI might be considered an Associated Entity and BEI would have to demonstrate why it is not."</p>	Bright Energy Investments	<p>Drafting in this section of the Procedure has been clarified to explain that the ERA will consider registration, ownership and operational control of a registered facility when determining Portfolios, in accordance with the WEM Rules.</p> <p>The Procedure outlines how Market Participants can declare operational control of Registered Facilities, to assist the ERA with Portfolio determination. The ERA will consider all evidence provided by Market Participants and will follow the steps in the WEM Procedure when assigning Facilities to portfolios.</p>

¹⁰ Stakeholder submissions are available at ERA, 2023, Procedure Change EEPC_2023_02 ([online](#))

Issue	Paragraph	Stakeholder's issue description	Raised by	Response
3	1.5 (previously paragraphs 1.4.1 – 1.4.4)	Paragraphs 1.4.1 to 1.4.4 should be a numbered list not individual paragraph.	AGL	Change made
4	3.1	Section 3.1 is predominantly Portfolio Allocation, not Portfolio Assessment. Suggests separating the concepts within the procedure.	AGL	Section 3.1 of the WEM Procedure primarily deals with Portfolio allocation. However, for consistency, the naming of section 3.1 of the WEM Procedure uses the same heading as the relevant part of the WEM Rules, section 2.16B. This is to avoid confusion for participants when they are referencing between both the WEM Rules and WEM Procedure.
5	3.1.4 (previously 3.1.1)	Suggest condensing paragraph 3.1.1.	AGL	Change made to use the same words as section 2.16B.1 of the WEM Rules which set out the five principles that the ERA must apply to identify each Portfolio.
6	3.1.2 (previously 3.1.5)	Paragraph 3.1.5 would be better placed at the start of paragraph 3 as 3.1 as it provides a clear obligation on participants to provide information by 1 Feb and 1 Aug each year and is a precursor to the portfolio assessment.	AGL	Change made
7	3.1.16 (previously 3.1.5(a))	Paragraph 3.1.5 (a) should be a separate paragraph, not a sub-clause of paragraph 3.1.5. Request that the date of publication of this information be linked to the April 1 and October 1 dates.	AGL	Change made to move the previous paragraph 3.1.5(a) into a new, separate paragraph 3.1.16. A change to the date is not required as WEM Rule 2.16B.1 specifies that the ERA must identify each Portfolio by 1 April and 1 October each year. Within 10 Business Days of identifying a Portfolio, the ERA must publish a list of Registered Facilities identified in each Portfolio.

Issue	Paragraph	Stakeholder's issue description	Raised by	Response
9	Table 1 (previously Table 2)	Move Table 2 after 3.1.4 and before obligations to publish information, as the table relates to the portfolio allocations.	AGL	Change made to improve the order of information and table 1 replaced with an Explanatory Note.
10	3.2.1 and 3.2.2 (previously 3.1.7 and 3.1.8)	Paragraphs 3.1.7 and 3.1.8 "are not related to portfolio allocation and would be better placed within section 4, under a new topic – 4.1 Network Constraints."	AGL	Headings in the WEM Procedure are intended to match the WEM Rules. To improve clarity, the paragraphs are now placed under a subsection titled 'Constrained portfolios'.
11	Section 4 Heading	Notes that section 4 is more about Portfolio Assessment.	AGL	Headings in the WEM Procedure are intended to match the WEM Rules, in this case, section 2.16C – Market Power Test. This is to assist stakeholders reading the WEM Rules and WEM Procedure together.
12	4.2.2 and 4.2.3 (previous 4.2.4)	Request that important terms - Fixed Assessment Period and Rolling Test Window are clearly defined with a reference to the WEM Rules.	AGL	Change made and have placed the definition of 'Rolling Test Window' into new paragraph 4.2.2 and 'Fixed Assessment Period' in paragraph 4.2.3.

Issue	Paragraph	Stakeholder's issue description	Raised by	Response
13	4.2.1	<p>Improve clarity in paragraph 4.2.1 on when the ERA must calculate and publish the results of its calculation.</p> <p>Suggest either:</p> <p>4.2.1 The ERA will within 20 Business Days following the end of a Rolling Test Window:</p> <ul style="list-style-type: none"> i. calculate as a percentage the Constrained Uplift Payment Ratio for each Constrained Portfolio and ii. publish the results of the calculation on its website. <p>Or</p> <p>4.2.1 The ERA will within 20 Business Days following the end of a Rolling Test Window calculate as a percentage the Constrained Uplift Payment Ratio for each Constrained Portfolio.</p> <p>4.2.2 The publish the results of the calculation on its website within 5 business days of completing the calculation undertaken in paragraph 4.2.1.</p>	AGL	Change made to accept AGL's first proposed change for paragraph 4.2.1 and the addition of 4.2.1(ii) – see response below.
14	4.2.1(ii) (previously 4.2.5)	<p>Suggests new text for 4.2.5 to be clear on the timeline for publishing results</p> <p>4.2.5 The ERA will publish the results of these calculations of the Constrained Uplift Payment Ratio and Material Constrained Portfolios on its website (clause 2.16C.2(c) of the WEM Rules) within 2 business days of completing the calculation.”</p>	AGL	The previous paragraph 4.2.5 has been deleted and the timeline for publishing has now been included in paragraph 4.2.1(ii).
15	4.2.4 (previously 4.2.7)	<p>Suggests new text for 4.2.7:</p> <p>4.2.7 The ERA will notify in writing the Market Participant with the Material Constrained Portfolio (clause 2.16C.2(d) of the WEM Rules) within 2 business days of completing the calculation.</p>	AGL	The previous paragraph 4.2.7 has been deleted and incorporated into paragraph 4.2.4. This is consistent with the timeline in the WEM Rule 2.16C.2(d) that requires the ERA to notify Market Participants within 20 Business Days following the end of the Rolling Test Window whether a Registered Facility is assigned to a Material Constrained Portfolio.

Issue	Paragraph	Stakeholder's issue description	Raised by	Response
16	5.1.1	<p>Suggests new text for paragraph 5.1.1:</p> <p>5.1.1 By no later than three months from the date of receipt of a notice provided under clauses 2.16C.1(c)(ii) or 2.16C.2(d) of the WEM Rules, <u>a Market Participant must (clause 2.16C.3 of the WEM Rules) of the:</u></p> <p>i. internal governance arrangements the Market Participant has in place to comply with its obligations under clause 2.16A.1 of the WEM Rules;</p> <p>ii. methods, assumptions and cost inputs the Market Participant used to develop the prices in the Portfolio Supply Curve offered in its STEM Submissions or Standing STEM Submissions, including, for each relevant Facility.</p> <p>iii. methods and cost inputs the Market Participant used to develop the prices offered, quantities and Ramp Rate Limits in its Real-Time Market Submissions or Standing Real-Time Market Submissions, including, for each relevant Facility.”</p>	AGL	Change made to incorporate AGL's intent, and further edits made to improve clarity.
17	6.1.4 (previously 6.1.3)	<p>Suggests new text for paragraph 6.1.3 to improve grammar:</p> <p>6.1.3 Appendix 1 contains The ERA may include a template that a Market Participant must use for making a request for guidance <u>under paragraph 6.1.2 (clause 2.16D.15(c) of the WEM Rules)</u>. A template has been provided in Appendix 1 “</p>	AGL	Change made reflecting AGL's suggestion and further edits made to improve clarity.
18	6.1.5 (previously 6.1.4)	<p>Seeking clarity on timing: “Is it 20 b/days to consider the request or 20 b/days to provide guidance. Assuming the second, the clause can be simplified as:</p> <p>6.1.4 Within 20 Business Days of receiving the request for guidance the ERA will consider the request and use reasonable endeavours to provide guidance on the matters specified in the request.”</p>	AGL	Paragraph 6.1.5 has been amended to clarify that the ERA has 20 Business Days from the day of receiving the request for guidance in relation to the Offer Construction Guidelines consistent with WEM Rules 2.16D.5 and 2.16D.7.

Issue	Paragraph	Stakeholder's issue description	Raised by	Response
19	6.1.7 (previously 6.1.5)	<p>The ERA should provide Market Participants with an opportunity to provide satisfactory information. Suggested change to paragraph 6.1.5:</p> <p>6.1.5 The ERA may request further information from a Market Participant that has made a request for guidance. If, within 15 Business Days of the date of the ERA's request for further information:</p> <p>i. the Market Participant does not provide the information requested, or the ERA reasonably considers the information provided is not satisfactory, the Market Participant will be deemed to have withdrawn the relevant request (clause 2.16D.8 of the WEM Rules);</p> <p>ii. the Market Participant provides information which the ERA reasonably considers unsatisfactory, the ERA must:</p> <ol style="list-style-type: none"> a. Advise the Market Participant that the information is unsatisfactory; b. Give the Market Participant 15 business days to respond; c. If there is no response from the market Participant, then the Market Participant will be deemed to have withdrawn the relevant request" 	AGL	<p>Paragraph 6.1.7 added to improve clarity.</p> <p>The ERA will contact the Market Participant that provided unsatisfactory information to explain what is unsatisfactory. The Market Participant will have five Business Days to respond (paragraph 6.1.6).</p>
20	6.1.8 (previously 6.1.6)	<p>Suggestion to improve grammar: "The ERA will reasonably considers requests made by the Market Participant for extensions that, for example, demonstrate that the provision of information will take longer than that specified in the WEM Rules."</p>	AGL	<p>Change made reflecting AGL's suggestion and further edits made to improve clarity.</p>

Issue	Paragraph	Stakeholder's issue description	Raised by	Response
21	6.1.12 (previously 6.1.11)	In addition to considering amendments to the Offer Construction Guideline following a request for Guidance, would the ERA consider amending any WEM Procedure identified as 'lacking'?	AGL	WEM Rule 2.16D.13 requires the ERA to amend the Offer Construction Guideline if the ERA considers that it is needed to reflect guidance provided to Market Participants. The ERA may initiate the Procedure Change Process for this or any WEM Procedure in accordance with WEM Rule 2.10.1. Additionally, WEM Rule 2.10.2 allows for Rule Participants to notify the ERA when they consider a procedure change is required.
22	6.1.13 and 6.1.14 (previously 6.1.12)	Request that the ERA publish an example of the guidance provided to market participants in cases where the specific guidance cannot be released.	AGL	Change made accepting AGL's suggestion. Paragraphs 6.1.13 and 6.1.14 allow the ERA to publish a non-confidential example of the guidance.
23	Appendix 1	Can the template be published in Word for ease of use by participants?	AGL	A Word version of the request for guidance template will be available on the ERA's website.
24	Section 5 Heading	"Typo of heading to section 5 "Market Participant Information Recording" suggested correcting to "Participant"."	Synergy	Change made
25	5.1.2 (previously 5.1.1.(d))	Suggested changes to paragraph 5.1.1(d) from " <i>may to record</i> " to "may use to record".	Synergy	Paragraph 5.1.1(d) has been amended to clearly state that Market Participants are required to record information as set out in the Offer Construction Guideline if the Market Participant is identified as containing a Material Portfolio or Constrained Portfolio. Paragraph 5.1.1(d) has been moved to become a new paragraph, 5.1.2.
26	6.1.13 (previously 6.1.12)	Suggested changes to paragraph 6.1.12 from " <i>will publish</i> " to "must publish" to be consistent with WEM Rule 2.16D.14.	Synergy	Change made

Issue	Paragraph	Stakeholder's issue description	Raised by	Response
27	Section 3.1	During the stakeholder workshop on 30 June 2023, Synergy queried the possibility of assigning a Facility to multiple portfolios.	Synergy	As per the WEM Rules, each Facility will be assigned to a single portfolio based on Market Participants' or entities' control of Facilities. Changes were made to clarify how the ERA assigns Facilities with shared control – by multiple Market Participants or entities – to a single Portfolio (refer to section 3.1).