

# WHOLESALE ELECTRICITY MARKET

## Submission to Procedure Change Proposal

### EEPC\_2023\_01 Monitoring Protocol

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### Submission

Clause 2.10.7 of the Wholesale Electricity Market Rules provides that any person may make a submission for a Procedure Change Proposal (including proposals developed by AEMO, the Economic Regulation Authority, the Coordinator of Energy or a Network Operator) by completing this Procedure Change Submission form.

Submissions should be provided by email to the nominated contact in the call for submissions published with the Procedure Change Proposal.

**Please provide your views on the Procedure Change Proposal, including any objections or suggested revisions**

Alinta Energy appreciates the opportunity to provide a submission on the ERA's Monitoring Protocol. Alinta Energy's detailed comments are below:

Clause reference	Comment/ suggested amendment
1.1.1(e)	<p>For consistency with other drafting, amend as follows:            "Regulation" means a regulation in the <del>Market</del> <u>WEM</u> Regulations.</p>
1.3.1, 4.2.3 and 5.2.10	<p>Clause 1.3.1 removes the phone number from the ERA compliance contact points whereas:</p> <ul style="list-style-type: none"> <li>• clause 4.2.3 allows a participant to give early advice to the ERA in writing or by phone; and</li> <li>• clause 5.2.10 allows for matters of a minor nature to be dealt with via telephone enquiries.</li> </ul> <p>To facilitate the operation of clauses 4.2.3 and 5.2.10, Alinta Energy suggests reinstating a phone number into clause 1.3.1.</p> <p>This aligns with the approach taken in clause 1.3.2, whereby the ERA may request rule participants to provide contact details, including phone numbers, to the ERA.</p>
2.1	<p>Clause 2.1 states that the ERA's compliance approach is published in its Compliance Framework and Strategy document which is updated from time to time.</p> <p>Alinta Energy notes that this document was last updated in November 2018 and there may be inconsistencies with the amended Monitoring Protocol (for example both documents contain a risk assessment criteria in the appendices). Given this potential for overlap, Alinta Energy considers that the ERA's Compliance Framework and Strategy should also be updated prior to 1 Oct 2023.</p>
2.2.3	<p>Alinta Energy is very supportive of the ERA's proposal to consider risk from the perspective of the WEM.</p> <p>However, when clause 2.2.3 is read with the appendices<sup>1</sup> Alinta Energy considers that the ERA could unintentionally capture repeated low risk non-compliances as a systemic issue when assessing via absolute number of breaches rather than a percentage of breaches per times the obligation was performed.</p> <p>An example of this is acknowledgment of Dispatch Instructions (DIs). Consider a participant with just 1 facility. In the current WEM, DIs can be received every 10 minutes, which is 6 per hour, 144 per day and 52,560 per year. Not acknowledging "a few" or even "several" DIs wouldn't, in this case, represent a systemic issue, particularly where the more important (and consequential) obligation is to follow a DI.</p>

<sup>1</sup> Referring to the control environment and the quantum of historical breaches.

Clause reference	Comment/ suggested amendment
	<p>Alinta Energy considers that the ERA take into consideration the percentage of breaches per times the obligation was performed rather than just an absolute quantum of breaches when considering potential compliance action.</p>
2.2.4 – 2.2.6	<p>Alinta Energy agrees with the ERA's proposed approach to perform a baseline risk assessment and determine a list of risk-based monitoring priorities. Alinta Energy also agrees that this will change over time. However, Alinta Energy requests that the ERA consider notifying participants of any changes to the risk-based monitoring priorities rather than simply updating its website. This could match the process the ERA has outlined for updating participants on the “trend-based” WEM monitoring processes per footnote 7.</p>
3.2.7, 4.6.1, 5.2.8(b)(iii) and 5.2.8(b)(v)	<p>Clause 2.15.3(a) of the WEM rules requires that the ERA's procedure include:</p> <ol style="list-style-type: none"> <li>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</li> <li>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;</li> </ol> <p>Step 3.2.7 states that if the ERA has identified and commenced an investigation, it will notify the relevant participant of a breach being investigated.</p> <p>Step 4.6.1 states that where a breach has been alleged, a Rule Participant may make submissions to the ERA to explain an alleged breach.</p> <p>Step 5.2.8(b)(v) states that if the ERA's preliminary findings are that the Rule Participant has breached the WEM Rules, the Rule Participant alleged to be in breach will be given notice of the ERA's preliminary findings...and will be requested to make a submission in response to these preliminary findings.</p> <p>Alinta Energy considers that:</p> <ul style="list-style-type: none"> <li>• there is merit in reinstating the drafting in previous step 3.1.22 which allows for a participant to provide information to the ERA to explain or provide context for the alleged breach as this may allow for alleged breaches to be resolved prior to embarking on potentially lengthy investigation processes; and</li> <li>• There does not appear to be any step in inform a participant of an alleged breach, so step 4.6.1 may not be able to be utilised.</li> <li>• 5.2.8(b)(iii) Allows the ERA to gather info about a participants breach from other rule participants as part of the investigation but will only ask the rule participant for a submission after its investigation which does not support procedural fairness.</li> </ul>

Clause reference	Comment/ suggested amendment
3.3.2(e)	<p>We recommend that like ERA's monitoring, AEMO's monitoring and reporting should also be risk-based. Over-reporting immaterial, low risk incidents can needlessly increase its administrative burden, and the burden on the ERA and other rule participants to review, potentially diverting resources from more material compliance risks. This burden is demonstrated by the consequences of the current WEM Rules which in requiring AEMO to report all breaches of which it becomes aware, and for ERA to investigate all reported breaches has created a substantial backlog of issues and diverted time to negligible, and often unavoidable, 'technical' breaches.</p> <p>This could be achieved by expanding 3.3.2(e) to note that AEMO is not required to report immaterial incidents (consistent with ERA's risk framework) and adding a point (3.3.3(f)) noting that AEMO's monitoring should also be consistent with ERA's risk framework and its "list of risk-based monitoring priorities" to its scarce resources are allocated to where they provide the most value.</p>
4.2.2	<p>We recommend that 4.2.2 be subject to best endeavours. We also note that 4.2.2 requires amendment to reflect Figure 2. Figure requires that early advice is required 5 business days after determining the potential breach as major or catastrophic. Whereas 4.2.2 requires early advice within 5 days of becoming aware of the breach.</p>
4.2.4, 4.3.4	<p>We recommend that longer than 20 business days is permitted for batch reporting under 4.3.4. We suggest that these batches be permitted quarterly, noting that such reports will be used for non-urgent, less material matters that tend to accumulate with time and that more material matters would not be suitable for batch reports, making their reporting frequency less important.</p>
4.2.4	<p>There appears to be a drafting error. 4.2.4, Allows for an extension to be requested under 4.2.5. However, 4.2.5 is unrelated to the process for requesting an extension.</p>
4.3.5	<p>We recommend the following amendment:</p> <p>Confidential, personal information, <u>or types of restricted information</u> included in any notification to the ERA should be clearly marked so the ERA can ensure it is appropriately protected.</p> <p>Other laws and regulations including FIRB requirements, can restrict how information is handled. This amendment supports the expectation that these other requirements can be highlighted and fulfilled.</p>
4.5.3	<p>We recommend that the protocol should not require ERA to investigate all rules it became aware of once 2.13.10(b) is repealed.</p> <p>We suggest that clauses b, d and c should be subject to the risk framework. We do not see any reason they should circumvent the assessment process applied to all other breaches. This could undermine the risk-based approach and create needless complexity.</p>

Clause reference	Comment/ suggested amendment
<b>5.1.3 and 5.1.4 and 5.1.6</b>	We note that different timeframes are applied to these requirements. 5.1.3, requires information within five business days, 5.1.4 requires information "in a timely manner" and the 5.1.6 requires responses in "a reasonable timeframe". We recommend that these timeframes are harmonised and all permitted extensions per 5.1.7.
<b>5.1.6</b>	We recommend removing facsimile on the basis that it is now an outdated mode of communication that is unlikely to be used in many (if any) organisations.  We suggest that that email be preferred for communications under this clause.
<b>5.2.8(b)(iii)</b>	As outlined above, the market participant alleged to have committed the breach should be permitted a right of reply before information gathering from other participants, per procedural fairness conventions.
<b>5.2.8(b)(ix) and 5.2.12</b>	There appears to be an inconsistency between these two sections. (5.2.8(b)(ix) At any stage during the investigation, the ERA may suspend or close the investigation in accordance with <u>section 6</u> of this document.  5.2.12 At any time during an investigation, the ERA may suspend or close the investigation in accordance with <u>section 5.5</u> of this document.  We suggest that these two sections should reference 5.4 instead.
<b>5.2.8(c)(iii)</b>	We suggest that a non-mandatory breach is defined, noting that this clause contains the only reference in the protocol.
<b>5.2.12</b>	Should reference notification of investigation suspension/closure (link to 5.4.4.). Limits to suspensions.
<b>5.4.3</b>	We suggest that the ERA also be permitted to close (and not only suspend) an investigation where the breach was technical and immaterial, such that no rectification is possible, or required.
<b>6.1.4</b>	We recommend removing facsimile on the basis that it is now an outdated mode of communication that is unlikely to be used in many (if any) organisations.  We suggest that that email be preferred for communications under this clause.
<b>6.1.5</b>	We recommend removing facsimile on the basis that it is now an outdated mode of communication that is unlikely to be used in many (if any) organisations.  We suggest that that email be preferred for communications under this clause.
<b>6.2.12</b>	We suggest adding guidance clarifying where ERA would apply a civil penalty to a non-rule participant.

Clause reference	Comment/ suggested amendment
<b>Likelihood rating table</b>	We question whether likelihood should factor into the risk rating of breaches that are immaterial and per our commentary above. We note that immaterial breaches might receive high ratings only because they are likely to recur, even where absolutely avoiding these breaches are near-impossible. As above, we recommend that that likelihood, at least for immaterial breaches, should be assessed in proportion to the time that a participant complies with the relevant clause.
<b>General</b>	We recommend that a materiality threshold is applied to the self-reporting requirement, consistent with ERA's risk-based approach, and our recommended approach for AEMO's monitoring and reporting.

**Please provide an assessment whether the Procedure Change Proposal is consistent with the Market Objectives and the Wholesale Electricity Market Rules.**

We consider that the proposal is broadly consistent with the WEM objectives, but per our recommendations above, note some amendments could minimise the administrative burden of rules participants and better support a more efficient, risk-based approach to market monitoring and compliance.

**Please indicate if the Procedure Change Proposal will have any implications for your organisation (for example changes to your IT or business systems) and any costs involved in implementing these changes.**

Implementing the new self-reporting regime may have significant consequences for our organisation, especially considering the proposal that all breaches must be self-reported regardless of their assessment under the risk framework.

**Please indicate the time required for your organisation to implement the changes, should they be accepted as proposed.**

~6 months.