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Economic Regulation Authority  
Level 4, Albert Facey House  
469 Wellington Street  
PERTH WA 6000

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

### Procedure Change Proposal: Offer Construction Guideline and trading conduct guideline

Alinta Energy appreciates the opportunity to provide feedback on the proposed changes to the Offer Construction Guideline and the Trading Conduct Guideline.

We firmly oppose ERA's proposal which would prevent Market Participants from recovering Contingency Reserve Raise runway (CRR) costs. These costs are clearly within the definition of an efficient variable costs, and preventing their recovery would expose Market Participants to substantial losses and dissuade investment and would have the exact opposite effect to the ERA's assertion that preventing recovery of these costs will "improve market efficiency". As reported at AEMO's most recent Real Time Market Insights Forum, from 1 March to 31 August 2024, Contingency Reserve Raise costs including uplift payments distributed to Contingency Reserve Raise services exceeded \$70 million.

We do not support the requirement for "Independent Expert Advice". This is outside the scope of the Offer Construction Guideline as set out in the WEM Rules clause 2.16D.1(a). A Market Participant should be free to decide whether and to what extent they engage independent advice as internal experts are likely to be better placed to review many parts of their offer construction methods.

Below, we provide further feedback on these points and address other aspects of the guidelines for the ERA's consideration.

#### Offer Construction Guideline

Reference/Issue	Feedback
Runway costs for Contingency Reserve Raise	<p>We oppose the proposed amendment to 3.5.2 that removes CRR costs from the list of valid efficient variable costs (EVCs) and recommend that 3.5.2 remains unchanged given that:</p> <ul style="list-style-type: none"> <li>CRR costs are clearly within the definition of an efficient variable cost. Per the definition on page 9 of the Offer Construction Guideline, CRR costs 'vary' (increase) with the production of energy and are only incurred by a Market Participant when producing electricity.<sup>1</sup> Additionally, the table listing EVCs on page 11 includes, "Other costs as appropriate (for example, other ESS charges allocated to Facilities that vary with the production of energy)."</li> <li>The proposal is contrary to WEM Rule clause 2.16D.1(a)(iii) which requires the Offer Construction Guideline to "permit the recovery of <u>all</u> efficient variable costs of producing the relevant electricity" (emphasis added).</li> <li>Besides RTM offers, there is no other market mechanism for Market Participants to recover their CRR costs.</li> <li>Not including CRR costs is inefficient because it prevents Facilities from reflecting costs that would reduce their production, making the CRR requirement (and associated costs) higher than they need to be.</li> <li>Issues associated with dispatch efficiency should be addressed at the root cause, and amendments to the dispatch engine – and not via</li> </ul>

<sup>1</sup> The Offer Construction Guideline states that, "A variable cost for a Market Service is one that varies with the production of that Market Service."

Reference/Issue	Feedback
	<p>intervention in Market Participants' offers to prevent unintended and adverse market outcomes.</p> <ul style="list-style-type: none"> <li>• The rationale in ERA's draft report is extremely vague, noting only that removing CRR costs from the list of EVCs would 'improve efficiency' and does not explain how these costs are recovered elsewhere.</li> <li>• This proposal would expose Market Participants to very significant unrecoverable costs and this could force early exits and dissuade future investments, especially if problems with the dispatch engine and tiebreak method persist, inflating FCESS Uplift Payments. Market Participants would have no ability to avoid these costs.</li> </ul>
Expert Advice & Independent Expert Advice	<p>We oppose the proposed requirement that "independent expert advice must support the distribution of costs across run time, output and number of starts" and recommend the removal of this requirement considering that:</p> <ul style="list-style-type: none"> <li>• This is outside the scope of the Offer Construction Guideline as set out in the WEM Rules clause 2.16D.1(a).</li> <li>• This appears to require an independent expert to approve all aspects of a Market Participant's offer construction, noting that all costs are distributed across 'run time, output and number of starts'</li> <li>• Independent experts are unlikely to be better placed to review offer construction compared to experts within a Market Participant's organisation.</li> <li>• This would impose unnecessary costs and may delay efficient changes to offers, undermining market efficiency.</li> <li>• It appears Market Participants would not gain any benefit from engaging the independent expert – there is no 'safe harbour' provision in return.</li> <li>• Market Participants, and particularly those with Material Portfolios already have strict obligations under the Market Power Mitigation Rules and should be free to decide for themselves whether engaging independent advice serves them in supporting their compliance with these obligations.</li> </ul> <p>We suggest that any engagement of an independent expert by a Market Participant to review aspects of their offer construction should be at the participant's discretion and provide them with a level of 'safe harbour'. This would be consistent with the Market Power Mitigation mechanism by providing ex-ante regulatory certainty while reducing the need for ex-post investigation and litigation processes and support regulatory effort being more proportionate to the cost and the risk being managed.</p>
Allocation of costs across time and production	<p>We oppose the proposed requirement to allocate costs "across time and production in a uniform manner" and recommend that it be removed. This language is vague and it is unclear what is meant by "uniform". For example, it could be interpreted as requiring Market Participants to offer the same input costs for every expected run or prohibiting Market Participants for offering below cost for a period (or a certain quantity) to avoid shutting down. This could result in unnecessary shutdowns, increasing a Facility's operating costs and potentially preventing it from maximising its availability during high demand periods.</p>
Other Opportunity Costs	<p>Example 12, page 32 and example 14, page 33, appear to have typographical errors – the amendments state these offers are "Irregular Price Offers" whereas they were previously noted as compliant examples.</p>
Determination of Inefficient Market Outcomes	<p>Further information and guidance is required as to what constitutes an Inefficient Market Outcome in the context of WEM Rule clause 2.16C.5 and how the ERA will assess against those outcomes to determine that a market participant has caused an inefficiency as a direct result of an Irregular Price Offer. Such guidance should answer the following questions:</p> <ul style="list-style-type: none"> <li>• What framework will be used?</li> <li>• What factors will be considered?</li> <li>• What economic principles will be relied upon?</li> </ul> <p>The assessment process should draw on a broad range of measures across structure, conduct, and performance as it is <u>not</u> contrary to the WEM Rule Objectives or the WEM Rules themselves for a market participant to influence prices. Prices should not be considered to bring about Inefficient Market</p>

Reference/Issue	Feedback
	<p>Outcomes merely because prices are changed as a result of a market participant's pricing/bidding behaviour.</p> <p>It should not be the intention to interfere with behaviour which is genuine commercial behaviour as intended by the design of the market, including strategies undertaken by market participants to optimise their operation and the economic rationing of capacity.</p> <p>Courts apply tests of whether the person had knowledge, belief or intent consideration should be given to how such tests will be applied.</p> <p>Further examples that illustrate real life scenarios of offer construction that are considered to create inefficient market outcomes should be provided.</p> <p>Consideration should be given to alignment with the ACCC guidelines on Part XICA – Prohibited conduct in energy market (CCA Guidelines), as appropriate to the circumstances.</p>
General	<p>The offer construction obligations imposed on Market Participants do not recognise the high levels of uncertainty in constructing price bids for the real-time market and the associated increasing cost of the “Regulatory Burden” for Market Participants. Demand forecasts are subject to error, and factors including increasing intermittent generation, large scale storage and unexpected outcomes from the dispatch engine is increasing uncertainty.</p>

#### Trading Conduct Guideline

Reference/Issue	Feedback
Example 8	<p>Example 8 implies that Market Participants should change their capacity type flag to 'In-Service' where the Pre-Dispatch Schedule indicates that they will be dispatched. The Pre-Dispatch Schedule is often inaccurate and volatile (especially considering it is produced 48 hours out from each Dispatch Interval), and there are many reasonable grounds for a Market Participant to not expect that they will be dispatched, despite the Pre-Dispatch Schedule indicating otherwise. For example, where the schedule is changing constantly, showing outcomes that conflict with experience, where it schedules Facilities for RoCoF Control Service only, or where it is simply reflecting the Facility being trapped within its FCESS trapezium. We recommend that example 8 is amended to reflect that Market Participants may not change their capacity type to In-Service, despite the Pre-Dispatch Schedule, where they have reasonable grounds to not do so.</p>
<p>Circumstances where a Market Participant is permitted to amend offers to avoid making a loss, or avoid being trapped within their FCESS trapezium</p>	<p>We request that the Trading Conduct Guideline provide examples outlining situations where a Market Participant is permitted to amend their offers to avoid being trapped within their FCESS trapezium. If Market Participants are not permitted to do so, they would be forced to incur losses.</p> <p>The current design of the dispatch engine traps on Facilities. As outlined in the <i>WEM Design Summary</i>, E[S]-E[T] of the <i>WEM Procedure: Dispatch Algorithm Formulation</i>, and 7.5.8 of the WEM Rules, where a Facility offers to provide FCESS, and it is currently producing energy at a point between the Minimum and Maximum Enablement Limits for the relevant FCESS, its energy dispatch will be restricted to being between those limits, regardless of whether it is dispatched for that FCESS. If the Facility is not dispatched for this FCESS at all and is dispatched for energy at one of the Enablement Limits, it is said to be 'trapped' inside the FCESS trapezium (See the WEM Design Summary p.88). This design attribute, in combination with the current tie-break method and that the dispatch engine dispatches all RoCoF priced at zero, has been a driver of high FCESS Uplift Payments.</p> <p>Market Participants that are trapped on can incur a loss where they are not dispatched for FCESS and are out of merit for energy. Following planned reforms to FCESS uplift payments, they will also incur a loss where they are out of merit for energy and dispatched for RoCoF Control Service only.</p> <p>Market Participants should not be penalised where they appropriately amend their offers to avoid these losses, even where there is a market impact.</p>
2.3 Monitoring	<p>It is concerning that:</p>

Reference/Issue	Feedback
<p>3.1 False, misleading or deceptive 3.3 Distorting or Manipulating Prices</p>	<ul style="list-style-type: none"> <li>• a Market Participant does not need to intend to cause harm or to obtain a benefit to be found as having distorted prices, or engaged in false, misleading or deceptive conduct and being in breach WEM Rule 2.16A.3.</li> <li>• the ERA does not need to determine that a Market Participant intended to mislead or deceive and that there only needs to be a real chance of misleading or deceiving for a Market Participant to found to in breach.</li> </ul> <p>This seems excessively punitive as it:</p> <ul style="list-style-type: none"> <li>• appears to expose Market Participants to the risk that they are found in breach of 2.16A.3 where they appropriately amend offers to remove their FCESS capacity from service to avoid losses, as described above, noting that they may be perceived as being deceptive about their FCESS availability, or distorted prices.</li> <li>• contrasts with part XICA of the Competition and Consumer Act, where corporations must be found to be acting fraudulently, dishonestly and in bad faith, or for the purpose of manipulating or distorting prices to be found in breach.</li> </ul> <p>To avoid prohibiting profit maximising behaviour, on which efficient markets rely, we recommend that the Trading Conduct is amended to better align with part XICA of the Competition and Consumer Act.</p>

Thank you for your consideration of Alinta Energy's submission. Should you wish to discuss this further please contact me at [REDACTED].

Yours sincerely

[REDACTED]  
[REDACTED]