



Economic Regulation Authority

Procedure Change Report

Monitoring Protocol WEM Procedure

EEPC_2024_02

4 November 2024

Acknowledgement of Country

At the ERA we value our cultural diversity and respect the traditional custodians of the land and waters on which we live and work.

We acknowledge their continuing connection to culture and community, their traditions and stories. We commit to listening, continuously improving our performance and building a brighter future together.

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

© 2024 Economic Regulation Authority. All rights reserved. This material may be reproduced in whole or in part provided the source is acknowledged

Contents

Executive summary	1
1. Reason for the Procedure Change.....	2
2. Market Advisory Committee and Working Groups	3
3. Submissions Received.....	4
4. WEM Objectives	5
5. Amended WEM Procedure.....	6
6. Commencement Date	7

List of appendices

Appendix 1 Submissions Received	8
Appendix 2 Summary of Submission Feedback.....	9
Appendix 3 Amended Monitoring Protocol (clean)	16
Appendix 4 Amended Monitoring Protocol (marked up)	17

Executive summary

On 5 September 2024, the Economic Regulation Authority published Procedure Change EEPC_2024_02: Review of the Monitoring Protocol WEM Procedure.¹

The Monitoring Protocol is required under clause 2.15.1 of the Wholesale Electricity Market (WEM) Rules. The purpose of the Monitoring Protocol is to state 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.²

The WEM Rules require the ERA to consult on the Procedure Change Proposal and prepare and publish a Procedure Change Report following the closing date for submissions.³

The consultation period for the Procedure Change Proposal closed on 3 October 2024 at 4:00PM. The ERA has now prepared this Procedure Change Report containing the information required by the WEM Rules as set out further below.⁴

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

¹ Procedure Change [EEPC_2024_02](#).

² Wholesale Electricity Market Rules, 7 October 2024, clause 2.15.2, ([online](#)).

³ Wholesale Electricity Market Rules, 7 October 2024, clauses 2.10.7, 2.10.10 and 2.10.12B, ([online](#)).

⁴ Wholesale Electricity Market Rules, 7 October 2024, clause 2.10.13, ([online](#)).

1. Reason for the Procedure Change

Clause 2.10.13(b) of the WEM Rules requires this report to set out the reasons for the proposed WEM Procedure amendment.

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

The proposed changes are required to align the Monitoring Protocol with the changes to the WEM Rules expected to come into effect from 8:00 am on 20 November 2024.⁵ The relevant WEM Rules and the proposed changes to these rules are presented in Appendix 1.

The ERA has also taken the opportunity to refine wording in sections of the Monitoring Protocol and to clarify the risk assessment processes referred to in sections 2.1, 4.5 and Appendix 1 of the Monitoring Protocol.

Updates to the Monitoring Protocol have been made in accordance with feedback received from Rule Participants.

⁵ Energy Policy WA, Exposure Draft of FCESS Cost Review Amendments, 8 August 2024, ([online](#)).

2. Market Advisory Committee and Working Groups

Clause 2.10.13(d) of the WEM Rules requires this report to provide a summary of the views expressed by the Market Advisory Committee (MAC) and any relevant working group.

Clause 2.10.9(a) of the WEM Rules requires the independent Chair of the Market Advisory Committee 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.

On 5 September 2024 the ERA provided an outline of the proposed changes to its Monitoring Protocol and other Guidelines as fulfilment of the ERA's obligation to inform the MAC of these changes.

The minutes of the 5 September 2024 MAC meeting reflect discussion of the ERA's proposed changes and public consultation on the procedures and guidelines, including the Monitoring Protocol. No comments addressing the proposed changes to the Monitoring Protocol WEM Procedure are recorded in the minutes.⁶

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

⁶ Market Advisory Committee meeting – 5 September 2024 – Minutes, ([online](#)).

3. Submissions Received

Clause 2.10.13(c) of the WEM Rules requires this report to include all submissions received, including a summary of the submissions and the ERA's response to the issues raised in the submissions.

The ERA issued a notice on 21 June 2023 with its Procedure Change Proposal for the Monitoring Protocol WEM Procedure calling for submissions on the proposed changes to the Monitoring Protocol. The submission period closed on 18 July 2023 at 4:00PM.

Submissions (refer to Appendix 1) were received from:

- Alinta
- Synergy

Amendments to the Monitoring Protocol WEM Procedure made in response to submission feedback were:

- Changing the use of 'alleged breach' and 'suspected breach' to align with the use of these terms in the WEM Rules.
- Reinstating and updating the alleged breaches that the ERA must investigate per the WEM Rules (see section 4.5.6; previously 4.5.3).
- Refining how timeframes are referred to in paragraphs 4.2.2 and 5.2.8 (previously 5.2.7(b)(vii)).

A query regarding how the ERA's Offer Construction Guideline's requirement for Market Participants to have an independent expert verify the allocation of start-up costs would be considered under the Monitoring Protocol will be addressed through clarification of the intent of this requirement in the Offer Construction Guideline.

Drafting changes and ERA responses to the submissions received are listed in detail in Appendix 2. The ERA also made some minor updates to the Monitoring Protocol WEM Procedure to correct typographical errors, apply consistent terminology or update rule references.

4. WEM Objectives

Paragraph 2.7.2 of the Coordinator's WEM Procedure: Procedure Administration requires the ERA to assess whether the proposed changes are consistent with the WEM Objectives, the WEM Rules, Electricity Industry Act and Regulations.

The ERA considers that the changes to the Monitoring Protocol are consistent with these instruments.

The changes made to the Monitoring Protocol ensure the Monitoring Protocol remains aligned with the WEM Rules.

5. Amended WEM Procedure

Clause 2.10.13(a) of the WEM Rules requires this report to include the wording of the amended Monitoring Protocol.

The final amended Monitoring Protocol is attached to this report. The clean version, including the changes noted in Appendix 2 is at Appendix 3 and the marked-up version, showing the changes noted in, is at Appendix 4.

6. Commencement Date

Clause 2.10.13(h) of the WEM Rules requires this report to specify a proposed date and time for the amended Market Procedure to commence.

The amendments to the Monitoring Protocol are in response to the WEM Rules changes published in the FCESS Cost Review - Exposure Draft Proposed Wholesale Electricity Market (WEM) Amending Rules due to commence at 8:00 am on 20 November 2024.⁷

The ERA intends to commence the amended Monitoring Protocol WEM Procedure at 8:00 am on 20 November 2024.

⁷ Energy Policy WA, Exposure Draft of FCESS Cost Review Amendments, 8 August 2024, ([online](#)).

Appendix 1 Submissions Received

Alinta Energy submission

Synergy submission

Appendix 2 Summary of Submission Feedback

Section/Topic	Submitter	Summary of feedback	Response
Interchangeable use of the terms 'alleged breach' and 'suspected breach' throughout the document	Alinta	<p>While the terms 'alleged breach' and 'suspected breach' are both used in the WEM Rules, they do not appear to be used in an interchangeable manner. The specific term 'suspected breach' is only used in clause 2.13.23 and 2.15.3(c) in reference to notification of a breach or suspected breach by a Rule Participant to the ERA. All other references throughout clause 2.13 and 2.15 use the term 'alleged breach'.</p> <p>Generally, the term 'suspected breach' refers to a situation where there is a reasonable belief that a breach has occurred, but it has not yet been confirmed while an 'alleged breach' is a claim or assertion that a breach has occurred.</p> <p>The interchangeable use of the terms throughout sections 4 and 5 is confusing, particularly the assessment and risk rating processes set out under paragraph 4.5, where it is noted that ERA must determine whether an 'alleged breach' is a 'suspected breach' as the associated WEM Rules only use the term 'alleged breach'.</p> <p>As the terms are used separately in the WEM Rules and have different meanings/connotations at law, we recommend that the use of the terms in the Monitoring Protocol should be amended to be consistent with the WEM Rules.</p>	The use of 'suspected' or 'alleged' in the Monitoring Protocol has caused unintended confusion. The Monitoring Protocol has been amended to mirror the use of 'alleged' and 'suspected' in the WEM Rules.
The risk-based approach including risk ratings and the WEM Monitoring Priorities	Alinta	<p>Section 2.2 of the Monitoring Protocol sets out the ERA's risk-based approach, introducing the concepts of Baseline Risk, Breach Risk and Final Risk.</p> <p>Paragraph 2.2.5 sets out that the baseline risk ratings have been used to determine a list of risk-based monitoring priorities and these are published on the ERA's website.</p> <p>As the ERA's baseline risks should underpin its compliance activities and areas of focus, all market participants should be informed, by way of notice, of any changes to the WEM Monitoring Priorities as a result of a reassessment of the baseline risk ratings.</p>	Addressed in paragraph 3.2.1. Market participants that have subscribed to receive updates from the ERA, including Wholesale Electricity Market updates, will be notified if the WEM monitoring priorities are updated.

Section/Topic	Submitter	Summary of feedback	Response
		Notification to market participants should be reflected in section 2.2.6.	
		<p>There appears to be no relationship between the baseline risk rating (ie the determined WEM Monitoring Priorities) and the determination of a breach risk rating in any of the Risk Framework (Tables at Appendix 1), the process for assessing suspected breaches (paragraphs 4.5.1 and 4.5.5), or the process for assigning the breach risk rating (paragraph 4.5.7).</p> <p>If the consequence and likelihood rating tables used to determine the baseline risk rating are different to those in Appendix 1, we recommend that they are included in the Monitoring Protocol for completeness.</p> <p>It is not clear which of the three priority monitoring categories the determined and published WEM Monitoring Priorities are derived from. This should be transparent to market participants (ie mandatory or risk-based or trend based).</p>	<p>The consequence and likelihood tables in Appendix 1 of the Monitoring Protocol are used to determine the baseline risk ratings.</p> <p>The ERA has published the mandatory monitoring priorities, derived from the WEM Rules.</p>
		<p>Without fettering the ERA's discretion, we consider that it should be clear in the Monitoring Protocol (or otherwise in its publication of the monitoring priorities) how the ERA is monitoring Rule Participants to identify potential breaches within the monitoring priorities. For example, at a high level, what data or analyses it will use as indications of potential breaches. This transparency may help Rule Participants improve their own self-monitoring processes.</p>	<p>The ERA has published the Market Surveillance Data Catalogue (MSDC) and AEMO Compliance Monitoring Requirements List.</p> <p>The ERA also uses data made public available by AEMO.</p> <p>The ERA complies with WEM Rule 2.13.6 and will notify a Rule Participant (or group of Rule Participants) if it requests AEMO to provide data that is not one of the types disclosed in the combined list referred to in clause 2.16.2A(b).</p> <p>The ERA reserves the right to use any other data or analyses deemed relevant to the matter.</p>
		<p>The Risk Framework and investigation process should require ongoing reassessment of the initial breach risk rating throughout an investigation as material facts and circumstances come to light. If the breach risk rating falls below the investigation threshold, this</p>	<p>Regardless of the risk rating, under clause 2.13.27(c) the ERA may choose to investigate an alleged breach where it considers this is reasonably required.</p>

Section/Topic	Submitter	Summary of feedback	Response
		should be reason to close an investigation under section 5.4, rather than suspend (see paragraph 5.4.3).	
Matters the ERA must take into account that will determine whether the alleged breach is required to be investigated (clause 2.15.3(d))	Alinta	While the Monitoring Protocol sets out the process to assign a risk rating to each alleged breach, it does not clearly set out the matters the ERA will take into account, that will determine whether the alleged breach is required to be investigated, as required by clause 2.15.3(d).	Matters the ERA considers are outlined in the risk Consequence and Likelihood rating tables. The ERA retains the right to investigate any matter, regardless of its risk rating.
3.2.7	Alinta	It is not clear if an investigation commenced by the ERA into an alleged breach or other matter (as identified in paragraph 4.5.6) will follow the same assessment and investigation processes set out in sections 4 and 5 of the Monitoring Protocol.	Paragraph 4.5.8 of the Monitoring Protocol confirms that breach risks will be assigned to suspected breaches referred to in 4.5.6 and that this breach risk rating will be used to assess the priority of the investigation of that suspected breach. The investigation process described in section 5 of the Monitoring Protocol will be followed for all suspected breaches.
Section 4.5	Alinta	This section should distinguish between an 'alleged breach' and a 'suspected breach' and align with the relevant WEM Rules including Compliance Investigation clause 2.13.27. In accordance with clause 2.13.27(b), if the ERA becomes aware of an alleged breach of the WEM Rules or WEM Procedures, it must investigate the alleged breach in accordance with the risk rating assigned to the type of alleged breach in the WEM Procedure. We note that only alleged breaches are required to be recorded and investigated under 2.13.27, subject to the risk rating applied under 2.15.1.	Paragraphs 4.5.1 and 4.5.1(a) have had 'alleged breach' changed to 'suspected breach' for consistency within this section.
	Alinta	All matters that the ERA must investigate should be included here, including Irregular Price Offers, as required by clause 2.16C.5.	All matters originally listed have been reinstated with amendment to 4.5.6(d) to refer to 2.16C.5.

Section/Topic	Submitter	Summary of feedback	Response
4.5.7	Alinta	<p>It is not clear how the baseline risk ratings the ERA has assigned to all WEM Rules and the determined/published WEM Monitoring Priorities influence the assignment of risk ratings to individual alleged breaches and ultimately the priority order assigned for the purposes of investigation.</p> <p>The specifics of the criteria used in the process for determining the investigation priority order should be included. More clarity should be provided about how alleged breaches that are assessed as Moderate will be determined for investigation or otherwise. Are there aspects of the consequence rating or likelihood rating that would distinguish an alleged breach for investigation?</p> <p>To ensure that responses to breaches are proportionate to the circumstances, the ERA should consider applying a public interest type test – of which the individual breach risk rating would be one component. This would enable consideration of the alleged breach in the context of the broader market, the individual circumstances as well as the importance of the investigation in the context of other matters that the ERA has on foot at any point in time. This will assist in ensuring resources are always focused on the right matters at the right time.</p>	Alleged breaches are assessed against the likelihood and consequence rating tables and the details provided in the notification of a suspected breach submitted to the ERA.
Investigations	Alinta	<p>It is not clear how the key principles guiding the investigations process, as set out in the Compliance Framework and Strategy (Compliance, Fairness, Consistency, Timeliness, and Transparency), are implemented through this process.</p> <p>There should be a difference between alleged and suspected breaches to align with the relevant WEM Rules.</p>	The ERA considers that the Compliance Framework and Strategy and Monitoring Protocol operate in tandem and does not want to duplicate information.
5.1.6	Alinta	It should be made clear that the suspension of the timeframe for the ERA to make certain determinations only applies to investigations under 2.16C.6, Irregular Price Offers.	There is reference to proposed clause 2.16C.8A in the footnote of 5.1.6.
5.2.1	Alinta	The Monitoring Protocol does not specify how investigations will commence in accordance with its priority. The Protocol only	The priority order will be determined by the ERA in line with the table and factors presented in paragraph 4.5.7(c).

Section/Topic	Submitter	Summary of feedback	Response
		indicates that the risk rating will be used to determine if it will be investigated not how the priority order will be determined.	
5.2.2	Alinta	If the ERA commences an investigation, the rule participant alleged to be in breach should be notified on commencement of the investigation in all instances. This would align with the key investigation principles of transparency and procedural fairness. It is unclear how notification can prejudice an investigation as 'just cause' for the investigation should have already been established as there should be reasonable evidence that the breach has occurred for it become alleged and therefore progress to the investigation stage. If the conduct or breach is continuing, notification is necessary to prevent the continuation of harm, as the breach is likely to have a risk rating of significant or extreme to progress to the investigation stage.	In most instances the ERA expects to notify a participant that an investigation is being started but reserves the right to delay this notification where it deems such notification may prejudice the investigation (see Monitoring Protocol 5.2.2).
5.2.8	Alinta	The standard timeframes have not been provided in the protocol and do not appear to be published. The target/standard timeframes should be specified in the Protocol.	Proposed change to 5.2.8, removal of the following text: “Amendments to standard time frames will be considered on a case-by-case basis and assessed by exception.” Proposed change to 4.2.2, as below: “If a Rule Participant is unable to submit a formal self-reported breach notification within 20 Business Days, it should contact the ERA as soon as possible to request an extension. The ERA will reasonably consider extensions to these timeframes where sufficient justification has been made by the Rule Participant. Amendments to <u>the self-reporting standard</u> time frames will be considered on a case-by-case basis.”
5.2.8	Alinta	It should be clear that the suspension of determination timeframes only relates to investigations under 2.16C.6, Irregular Price Offers.	There is reference to proposed clause 2.16C.8A in the footnote of 5.2.8.

Section/Topic	Submitter	Summary of feedback	Response
5.2.13	Alinta	The Monitoring Protocol should specify how investigation outcomes will be determined, particularly where delegations may be used. Who is making decisions with regard to investigation outcomes is important for the purposes of transparency.	The ERA makes decisions about investigation outcomes and any delegations are an internal matter.
Notification of outcomes	Alinta	As a general principle, the rule participant who is alleged to have breached a WEM Rule or WEM Procedure as well as the rule participant who reported the suspected breach, if applicable, should be kept informed of the progress of the matter and provided with as much information as is appropriate as the matter progresses through all stages of the reporting, assessment, investigation and outcome processes.	<p>The ERA does not propose to notify participants except as indicated below:</p> <p>The ERA will inform the allegedly breaching rule participant when it opens an investigation, unless the ERA considers that such a notification could prejudice the investigation (Monitoring Protocol 5.2.2).</p> <p>The ERA will inform the allegedly breaching rule participant when it suspends or closes an investigation (WEM Rule 2.13.34; Monitoring Protocol 5.3.7 and 5.4.4(a)).</p> <p>If the ERA has determined that a breach has not taken place it will notify the rule participant that self-reported the suspected breach (WEM Rule 2.13.35; Monitoring Protocol 5.2.7(c)(v)).</p> <p>The ERA may inform a rule participant that reported the breach, if not self-reported, of the investigation outcome if the ERA considers this to be appropriate and permitted under the confidentiality provisions of the WEM Rules (Monitoring Protocol 5.3.9).</p>
Irregular Price Offers and Determination of Inefficient Market Outcomes	Alinta	<p>It is not clear how AEMO's obligations to monitor and report alleged breaches will be used by ERA to determine a breach of 2.16C.5.</p> <p>It is not clear if the focus on monitoring compliance with WEM Rule clause 2.16C.5 is on the identification of inefficient market outcomes and or on the identification of irregular price offers.</p> <p>Prices should not be considered distorted or manipulated merely because they are changed as a result of a market participant's</p>	The ERA will monitor compliance of Rule 2.16C.5 from a range of perspectives which enable it to identify potential breaches.

Section/Topic	Submitter	Summary of feedback	Response
		<p>behaviour. The clearing price for all services should reflect the forces of supply and demand in the market.</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, without fettering discretion, consideration should be given to how such tests will be applied by the ERA in determining the enforcement action it will take in circumstances where the ERA determine that a breach has occurred</p>	
"independent expert" obligation	Synergy	<p>2. Clarify 'independent expert' obligation</p> <p>Synergy also seeks clarity as to what is the intended legal effect of the obligation that the distribution of costs "must" be supported by the "Independent expert advice"? Is this intended to state that the approach used by a Market Participant for cost determination is appropriate? For example, does it mean:</p> <ul style="list-style-type: none"> (a) if a Market Participant does not obtain independent expert advice the Market Participant will be in breach of a WEM Rule and, if so, which WEM Rule; or (b) if a Market Participant does obtain independent expert advice, and allocates start-up costs consistently with that advice, the Market Participant will effectively be deemed to have included start-up costs in a manner consistent with the OCG. <p>Synergy also would like to understand how the requirement to obtain independent expert advice, as implied via the phrase "independent expert advice must support", is considered under the ERA's Monitoring Protocol. Further, this requirement appears to be beyond the requirements of the WEM Rules, and the costs incurred for an independent expert do not appear to be recoverable in the WEM under the OCG or considered within the determination of the Benchmark Reserve Capacity Price.</p>	<p>The ERA acknowledges that the intent was not accurately reflected in the proposed amendment in the Offer Construction Guideline. The principle to be applied is that the allocation of start-up costs across runtime, output and starts should be able to be independently verified in accordance with good electricity industry practice.</p> <p>The Market Participant may choose to use their internal experts and methods to determine this cost allocation, however, if the Market Participant's method was called into question, an independent expert acting reasonably should be able to arrive at a similar determination.</p> <p>The ERA will amend the relevant clause of the Offer Construction Guideline accordingly.</p>

Appendix 3 Amended Monitoring Protocol (clean)

[Amended Monitoring Protocol \(clean\)](#)

Appendix 4 Amended Monitoring Protocol (marked up)

[Amended Monitoring Protocol \(marked up\)](#)