



Economic Regulation Authority

Procedure Change Report: Portfolio Determination

(EEPC_2024_03)

27 November 2024

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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.

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1. Introduction

The Wholesale Electricity Market (WEM) Rules require the ERA to conduct portfolio assessments that examines the registration, ownership and operational control of registered facilities in the WEM as part of the market power mitigation framework. Entities with common ownership or control of multiple facilities may have the opportunity to engage in market conduct that is inconsistent with the general trading conduct obligations.

The ERA must assign facilities to portfolios based on registration, ownership or operational control, and assign facilities to constrained portfolios where they are subject to a binding network constraint during a Rolling Test Window. The WEM Rules prescribes when a portfolio is a Material Portfolio or Material Constrained Portfolio, which places enhanced record-keeping obligations on these facilities' market participants.¹

The ERA must set out the methods and processes it uses in making Portfolio Determinations in the *WEM Procedure: Portfolio Determination*.²

1.1 Amending Rules for Portfolio Determination

On 8 August 2024, Energy Policy WA (EPWA) published an exposure draft of proposed Amending Rules for FCESS Cost Review.³ These rules have a consequential impact on the ERA's portfolio determinations. The relevant Amending Rules allow for:

- A more general definition of “wholly or partly owned” to allow for a broader application of portfolio assessment:
 - EPWA's Exposure Draft notes that the current WEM principles, including the definition of associated entities, have failed to achieve the desired outcomes indicated in the Market Power Mitigation Strategy: Information Paper.⁴
 - This is largely because the *Corporations Act 2001 (Cth)* applies a specific meaning to the term “associated entities” in the context of corporate structures.⁵
- A reduction in the frequency of portfolio assessments from twice yearly to once a year unless the facility is new or there has been a change in ownership.
- A requirement on Market Participants to provide ownership and control declarations by 1 August each year to enable the ERA to meet its deadline of portfolio determinations by 1 October of that year.
- Replacing the current Market Power Test with a new Materiality Test:
 - This is consistent with the removal of the requirement of market power for violation of WEM Rule 2.16C.5.

¹ Wholesale Electricity Market Rules (WA), 20 November 2024, section 2.16C ([online](#)).

² Wholesale Electricity Market Rules (WA), 20 November 2024, Rule 2.16D.15 ([online](#)).

³ Energy Policy WA, Exposure Draft of FCESS Cost Review Amendments ([online](#)).

⁴ Energy Policy WA, Market Power Mitigation Strategy, 10 November 2022 ([online](#)).

⁵ *Corporations Act 2001 (Cth)*, ([online](#)).

On 29 October 2024, the Amending Rules for FCESS Cost Review were gazetted.⁶ These Amending Rules include two further amendments:

- Removing the reference to a ‘shared trading desk’ for portfolio determinations
- A registered facility can only be allocated to the same portfolio as another facility where it is:
 - registered to the same Market Participant
 - wholly or partly owned by the same entity (either directly or indirectly); or
 - wholly or partly controlled by the same entity (either directly or indirectly).

Schedule 2 of the gazetted Amending Rules, which contains these amendments that affect portfolio determinations, commenced on 20 November 2024.

1.2 Procedure change process

On 13 September 2024, the ERA initiated the procedure change process for the *WEM Procedure: Portfolio Determination* to incorporate the changes arising from EPWA’s exposure draft for FCESS cost review.⁷ The ERA’s Procedure Change Proposal identified the consequential amendments proposed to the WEM Procedure. The ERA published the Procedure Change Proposal on its website and issued a call for stakeholder submissions.⁸

The public consultation period was open for 20 Business Days, as required under WEM Rule 2.10.7, and closed on 14 October 2024.

WEM Rule 2.10.10 requires the preparation of a Procedure Change Report on the Procedure Change Proposal. The ERA has prepared this Procedure Change Report and the accompanying amended WEM Procedure as part of the procedure change process for the *WEM Procedure: Portfolio Determination*.

1.3 The procedure change report

The ERA must publish a Procedure Change Report that contains the matters outlined in WEM Rule 2.10.13 as follows:

- the wording of the proposed changes to the WEM Procedure.
- the reason for the proposed changes to the WEM Procedure.
- a summary of all submissions received before the due date and the ERA’s responses to the issues raised in those submissions.
- a summary of the views expressed by the Market Advisory Committee and, if the Market Advisory Committee has delegated its role to consider the Procedure Change Proposal

⁶ Energy Policy WA, WEM Amendment (FCESS Cost Review) Rules 2024 ([online](#)).

⁷ Economic Regulation Authority, Notice of changes to ERA WEM Procedures, 13 September 2024 ([online](#)).

⁸ Economic Regulation Authority, Procedure Change EEPC_2024_03: Review of the Portfolio Determination WEM Procedure ([online](#)).

to a Working Group under clause 2.3.17(a), a summary of the views expressed by that Working Group.

- whether any advice from the Market Advisory Committee regarding the Procedure Change Proposal reflects a consensus view or a majority view, and, if the latter, any dissenting views included in or accompanying the advice and how these views have been taken into account by the ERA.
- a proposed date and time for the changes to the WEM Procedure to commence.

The matters contained within this Procedure Change Report meet the requirements of WEM Rule 2.10.13.

2. Consultation Process

2.1 Notification to the Market Advisory Committee

The ERA notified the Market Advisory Committee (MAC) at the MAC meeting held on 5 September 2024 regarding the initiation of the relevant procedure change process and its intent to discuss the proposed amendments at a dedicated stakeholder forum.⁹ The ERA held the stakeholder forum on 19 September 2024.

The views presented by stakeholders both at the MAC meeting and the stakeholder forum were pertinent to the Offer Construction Guideline and Trading Conduct Guideline that the ERA was also consulting on at the same time. No views were expressed in relation to the amendments to the *WEM Procedure: Portfolio Determination*.

2.2 Public consultation period

The public consultation period on the *WEM Procedure: Portfolio Determination* was conducted from 13 September – 14 October 2024. Three submissions were received during this period. The responses to the matters raised in the submissions are provided in Appendix 3.

⁹ Energy Policy WA, Market Advisory Committee meeting minutes, 5 September 2024, ([online](#)).

3. Amendments to the WEM Procedure

Table 1 provides a summary of the changes to the *WEM Procedure: Portfolio Determination*.

Table 1: Amendments to the WEM Procedure: Portfolio Determination with reasons

| Amendments to the WEM Procedure: Portfolio Determination | Reason for change(s) |
|--|---|
| 1.2.1 – amended reference | Added reference to “WEM Regulations” which is referred to in paragraph 1.2.4 of the WEM Procedure. |
| 1.2.3 – corrected reference | Words changed to correctly reference the WEM Rules that commenced on 20 November 2024. |
| 1.3.1 – addition to be consistent with WEM Rules | Added paragraph 1.3.1(d) to be consistent with the WEM Rules and link the declaration under WEM Rule 2.16B.4. |
| 2.1 – Amending general trading obligations to include materiality test obligations | This section is amended to align with the removal of the concept of market power when forming price offers and relate to the concept of an Irregular Price Offer that results in an inefficient market outcome. |
| 2.3.2 – Replacing reference to WEM Rule 2.16A.1 with WEM Rule 2.16C.6A | The Amending Rules delete WEM Rule 2.16A.1 which governs Market Participants’ general trading obligations related to offers in the real time market and STEM. Replacing the reference to WEM Rule 2.16A.1 with the concept of an Economic Price Offer ensures consistency with the Amending Rules. |
| 2.3.3, 2.3.4, 2.3.6, 2.3.9 - Deleted | These sections may create confusion as to how the ERA’s investigation processes apply to portfolio determination and have therefore been deleted as they are not directly related to portfolio determination. References to the market power test is deleted to be consistent with the Amending Rules. Reference to trading conduct is deleted as it repeats the WEM Rules. Note the deletion of these sections results in a change to the numbering of the sections in the WEM Procedure. |
| 3.1 – ERA assessment of portfolios | The amendments in this section ensure consistency with the Amending Rules. |
| 3.1.1 – corrected Procedure references | Correction to paragraph references within the WEM Procedure and added a reference to paragraph 3.1.11 of the WEM Procedure. |
| 3.1.8(a) – correction | Wording amended to enhance clarity. |
| 3.1.10 – amended for consistency | Amendment to be consistent with WEM Rule 2.16B.5 and corrected reference to the WEM Rule. |
| 3.1.11 – amended for consistency | Amended to be consistent with WEM Rule 2.16B.4. |
| 3.1.12 – added for clarity | Added paragraph 3.1.12 in the WEM Procedure to link the declaration that Market Participants must use that is in the WEM Procedure’s Appendix. |

| Amendments to the WEM Procedure: Portfolio Determination | Reason for change(s) |
|--|---|
| 3.1.14 – publication of portfolio assessments | This section is updated to allow for the 20 Business Days timeframe within which the ERA must now publish an updated list when the ERA has determined the portfolios. This timeframe was created under WEM Rule 2.16B.1(c). |
| 3.1.15 – Market Participants providing declarations | This section is updated to outline the timeframes provided in the WEM Rules for declarations to be made to the ERA. |
| 3.2 – Constrained Portfolio determination | This section is updated to outline the timeframes provided to the ERA to determine Constrained Portfolios. |
| 4.1.3 – publication of the list | This section is updated to include the requirement created in WEM Rule 2.16C.1(c)(i) to publish a list specifying the name of each facility within each portfolio. |
| 4.2.1 – timeline for the determination of material constrained portfolio | This section is updated to include the timeframe provided to the ERA to determine Material Constrained Portfolios. |
| 4.2.2 – Rolling Test Window definition | This section is updated with the new Rolling Test Window definition. |
| 4.2.4 – amended for clarity | Added words to provide clarity on the ERA's obligation to publish results for Material Constrained Portfolios. |
| 5.1.1 – record-keeping | The changes specify which facilities the record-keeping obligations apply to. |
| 6.1.5 – request for guidance | The changes to this section are to maintain consistency with the additional timeframe provided under WEM Rule 2.16D.7 to consider and resolve a request for guidance. |
| 6.18 – amended for clarity | Added words to clarify that it is a reference to an extension of time. |
| Appendices | Updated the forms in Appendix 1 and Appendix 2 of the Procedure to prompt Market Participants to provide the information the ERA requires for portfolio assessment. |

4. ERA's assessment

4.1 Consistency with Electricity Industry Act 2004, WEM Regulations, WEM Rules and Wholesale Market Objectives

The ERA considers that the amended Procedure is consistent with the:

- Electricity Industry Act 2004 (WA)
- WEM Regulations
- WEM Rules
- Wholesale Market Objectives.

4.2 Commencement of the WEM Procedure

The ERA proposes to commence the amended *WEM Procedure: Procedure Determination* at 8:00 AM on 27 November 2024.

The ERA considers the processes for Market Participants to provide declarations to enable portfolio assessments has not fundamentally changed, and as such no additional time is required for Market Participants to implement any changes arising from this WEM Procedure. Additionally, the ERA has existing processes in place to ensure it is able to discharge its obligations in accordance with the amended WEM Procedure by the proposed commencement date and time.

Appendix 1 WEM Procedure (in track changes)

The *WEM Procedure: Portfolio Determination* (version 2) is available on the ERA's website ([online](#)).

Appendix 2 WEM Procedure (clean)

The *WEM Procedure: Portfolio Determination* (version 2) is available on the ERA's website ([online](#)).

Appendix 3 Summary of stakeholder feedback

| Topic | Summary of Feedback | Submitter | Response |
|---------------------|--|---------------|--|
| Consultation period | <p>Acknowledging that the proposed changes align with the Exposure Draft of WEM Amending Rules released by EPWA, Entego would like to voice concern with the ERA's decision to propose changes to the WEM Procedure based on an Exposure Draft and not the final version of the WEM Amending Rules.</p> <p>At the time of writing of this submission, a final version of the WEM Amending Rules is yet to be released, however based on published submissions EPWA received as part of their public consultation on the Exposure Draft, it is our opinion that the final version of the WEM Amending Rules will differ from the Exposure Draft.</p> <p>As an example, the proposed drafting of Section 3.1.2 of the WEM Procedure utilises wording from WEM Rule 2.16B.1(a) contained in the Exposure Draft verbatim, however several submissions made to EPWA call for alternative drafting.</p> <p>Should there be any difference between the Exposure Draft and Final version of WEM amending rules, we would encourage the ERA to review and amend procedure drafting accordingly, as well as undertake further public consultation to allow appropriate feedback to be given.</p> | Entego | <p>The ERA has reviewed EPWA's further changes to the Amending Rules and has made changes to the procedure to maintain consistency with those changes.</p> <p>Since Energy Policy WA's changes were made to address specific issues raised in submissions, no further consultation is required by the ERA as the changes address those issues.</p> |
| | <p>As the proposed amendments to this WEM Procedure are to accommodate the WEM Rule changes in the Exposure Draft for amending WEM Rules under the FCESS Cost Review that are anticipated to take effect on 20 November 2024, the reference to the WEM Rules in paragraph 1.2.3 should be to the anticipated 20 November 2024 version rather than the superseded version dated 27 July 2024.</p> | Alinta Energy | <p>Noted. References to the WEM Rules throughout the WEM Procedure have been updated to 20 November 2024.</p> |

| Topic | Summary of Feedback | Submitter | Response |
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| Procedure scope | Paragraph 2.1.1(a) of the WEM Procedure relates to WEM Rule 2.16A.3, paragraph 2.3.4 relates to WEM Rule 2.16A, paragraph 2.3.5 relates to WEM Rule 2.16A.3, and paragraph 2.3.6 relates to WEM Rule 2.16A.6. These WEM Rules are outside the scope of this WEM Procedure required by WEM Rule 2.16D.15, as outlined in paragraph 1.3.1, and should be removed from the Procedure. | Alinta Energy | The ERA has reviewed the relevant paragraphs for consistency with the WEM Rule 2.16D.15 and the Amending Rules from the FCESS Cost Review and made amendments accordingly. |
| Reinstating deleted paragraphs | Synergy considers that the ERA should also have regard to the Offer Construction Guideline when investigating suspected breaches of WEM Rule 2.16C.5, noting that this is required by the WEM Rules under clause 2.16C.6(b). Synergy therefore proposes that an amended version of the previous paragraph 2.3.3 should be reinstated into the proposed Portfolio Paper. Synergy proposes new paragraph 2.3.2A be included to address this concern. | Synergy | Paragraph 2.3.3 in the WEM Procedure relates to the now deleted WEM Rule 2.16A.1 and is no longer relevant. Similarly, this paragraph is not relevant for portfolio determinations and the removal of this paragraph from the Procedure will not diminish the ERA's requirement to have regard to the Offer Construction Guideline when assessing price offers. |
| | Synergy seeks clarity as to the reasoning behind the proposed removal of existing paragraph 2.3.9. Synergy considers that this paragraph should be reinstated into the Portfolio Paper to provide guidance to Market Participants. Synergy proposed that the original drafting is reinstated as new paragraph 2.3.5A. | Synergy | Paragraph 2.3.9 is not relevant for the ERA's portfolio determination process as it is a reference to matters that are contained within the Trading Conduct Guideline. Deleting this paragraph does not remove the ERA's obligations in assessing conduct that contravenes a Market Participant's trading conduct obligations. |
| Portfolio assessment | Synergy considers that the portfolio assessment undertaken needs to consider the level of control for shared trading desks and does not consider that a service only arrangement, where there is no element of control, should not be captured under this test. If these arrangements are captured, it could lead to unintended consequences and create barriers for | Synergy | The revised Amending Rules no longer reference 'shared trading desks' which requires that we remove this from the WEM Procedure. As a result, the ERA considers this concern has been addressed through Energy Policy WA's revisions. |

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| | smaller Market Participants. Synergy proposes that the paragraph is amended to address this concern. Synergy also raised this concern in its submission to EPWA on the FCESS Rules. | | |
| | As raised above, Synergy considers that the portfolio assessment needs to be cognisant of the level of control for shared trading desk arrangements, and such arrangements should be captured under this test. This approach to shared trading desk arrangements should be applied in general throughout section 3.1 of the Portfolio Paper. | Synergy | As above. |
| | The methodologies and processes set out in this section [section 3.1 ERA assessment of portfolios] appear reasonable and straightforward. We recommend that a step to provide notification to relevant Market Participants be added to the process set out to comply with WEM Rule 2.16C.1(c)(ii). | Alinta Energy | Noted. Paragraph 4.1.3 of the WEM Procedure includes a requirement on the ERA to notify each Market Participant that has a facility assigned to a Material Portfolio. |
| Typographical error | Synergy considers that the reference to WEM Rule 2.16B.3A may be in error as this considers that the reference should instead refer to WEM Rule 2.16B.4. | Synergy | The ERA agrees and has corrected the WEM Procedure. |
| Definition of Rolling Test Window | Suggest the definition of the Rolling Test Window is amended to use the already defined term Trading Month for ease of reading. Note that Synergy proposed similar suggestion in relation to the definition of the Rolling Test Window in its submission to EPWA on the FCESS Rules. | Synergy | EPWA has amended the definition of the Rolling Test Window to reflect Synergy's suggestion which has been adopted in the WEM Procedure. |
| General trading obligations and Materiality Test Obligations | There are no Materiality Test Obligations set out in this section. We suggest that the section heading be amended to align with the content of the section. | Alinta Energy | The ERA has amended the title of section 4 to reflect that this section is about portfolio assessments. |

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| Processes and methodologies | <p>With respect to monitoring prices and making associated determinations, under WEM Rule 2.16D.15 the purpose of this WEM Procedure is to document ‘the <u>methodologies</u> and <u>processes</u> to be followed by the ERA in relation to (iii) <u>monitoring prices</u> offered by a Market Participant under clause 2.16C.4 and <u>making determinations</u> under clauses 2.16C.6 and 2.16C.7 in relation to those price offers’ (underline added).</p> <p>WEM Rule 2.16C.4 provides that ‘the ERA must monitor the following price offers for compliance with clause 2.16C.5:</p> <ul style="list-style-type: none"> a) the prices offered by a Market Participant in its STEM Portfolio Supply Curve; and b) the prices offered by a Market Participant in its Real-Time Market Submissions for each of its Registered Facilities.’ <p>WEM Rule 2.16C.5 provides that ‘a Market Participant must not make an <u>Irregular Price Offer</u> that results in an inefficient market outcome.’</p> <p>It would therefore be expected that section 2.3 of the WEM Procedure would set out the methodologies and processes that will be used by the ERA to monitor price offers made by Market Participants with respect to any potential or suspected:</p> <ul style="list-style-type: none"> 1. irregular Price Offers made; and 2. inefficient market outcomes, | Alinta Energy | <p>The Portfolio determination procedure is about how the ERA determines portfolios as required by the WEM Rules and is not the definitive source for the ERA’s monitoring and investigation obligations.</p> <p>The inclusion of this part was for the ease of the reader. The ERA has updated this section to align with the final Offer Construction Guideline and Trading Conduct Guideline words and add a reference to those documents for readers seeking more information.</p> |

| Topic | Summary of Feedback | Submitter | Response |
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| | <p>and the methodologies and processes that will be used by the ERA to make determinations in regard to these matters.</p> <p>Section 2.3 does not relate to WEM Rule 2.16C.4 and does not set out any methodologies or processes for monitoring prices and making determinations. We recommend that this section of the Procedure clearly set out the relevant methodologies and processes that will be used to monitor price offer compliance for STEM and Real-Time Market price submissions with respect to irregular price offers and inefficient market outcomes, as required under WEM Rule 2.16D.15(a)(iii).</p> <p>We recommend that potential and likely scenarios are provided as examples of how the ERA will apply the methodologies and processes set out in the Procedure for the purposes of monitoring price offers and making associated determinations under WEM Rules 2.16C.6 and 2.16C.7.</p> | | |
| | <p>With respect to Constrained Portfolios, under WEM Rule 2.16D.15 the purpose of this WEM Procedure is to document ‘the <u>methodologies and processes</u> to be followed by the ERA in relation to (i) identifying each Constrained Portfolio operating in the Wholesale Electricity Market pursuant to clauses 2.16B.2’ (underline added).</p> <p>The Procedure does not set out any methodologies and processes in this section.</p> <p>The process set out in Appendix 3 of the Material Constrained Portfolio Determination document,</p> | Alinta Energy | <p>The ERA’s determination of constrained portfolios and material constrained portfolios is comprehensively detailed in the WEM Rules.</p> <p>In the ERA’s Material Constrained Portfolio Determinations, the ERA has stated the process it uses in an Appendix to the determination to provide transparency of the process. Due to possible changes in data, this approach provides maximum flexibility to the ERA to change the assessment process if required to ensure the outcomes in the WEM Rules are accomplished.</p> |

| Topic | Summary of Feedback | Submitter | Response |
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| | <p>published quarterly by the ERA, could be documented in this section of the procedure.</p> <p>To improve understanding potential and likely scenarios should be provided as examples of how the ERA will apply the methodologies and processes set out in the Procedure for the purposes of identifying Constrained Portfolios as set out in Explanatory Note 1 in section 3.1.</p> | | |
| Request for guidance | <p>As time will be of the essence in circumstance where a Market Participant seeks guidance from the ERA (i.e. a three-month period for compliance from the date of the notice) it is recommended that the following be included in the process to improve transparency and procedural fairness:</p> <ul style="list-style-type: none"> • an acknowledgement receipt to the Market Participant. • a notice of advice to the Market Participant if the ERA is unable to respond within 20 Business Days of the request. • processes to enable the market participant to request expedition of the guidance. • updates to inform the Market Participant of progress through the relevant stages. | Alinta Energy | <p>The ERA's process of dealing with a request for guidance includes acknowledging receipt of a Market Participant's request and where possible, providing an indication of when the ERA can consider the request when there are multiple requests for guidance. The ERA will communicate with Market Participants on the progress of their request for guidance as it is processed.</p> <p>Where the ERA is considering multiple requests for guidance, Market Participants can approach the ERA to demonstrate the importance of their request relative to other requests for guidance.</p> |