

Independent Market Operator



Rule Change Notice

Title: Discretion of IMO to decide whether to issue warning

Ref: RC_2007_07

Date: 19 June 2007

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Independent Market Operator

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INTRODUCTION

Market Rule 2.5.1 of the Wholesale Electricity Market Rules provides that any person (including the Independent Market Operator) may make a Rule Change Proposal by completing a Rule Change Proposal Form and submit this to the Independent Market Operator (IMO).

The IMO will assess the proposal and, within 5 Business Days of receiving the Rule Change Proposal Form, will notify the proponent whether the Rule Change Proposal will be progressed further.

In order for the proposal to be progressed the change proposal must explain how it will enable the Market Rules to better contribute to the achievement of the Wholesale Market Objectives. The objectives of the market are:

- (a) to promote the economically efficient, safe and reliable production and supply of electricity and electricity related services in the South West interconnected system;
- (b) to encourage competition among generators and retailers in the South West interconnected system, including by facilitating efficient entry of new competitors;
- (c) to avoid discrimination in that market against particular energy options and technologies, including sustainable energy options and technologies such as those that make use of renewable resources or that reduce overall greenhouse gas emissions;
- (d) to minimise the long-term cost of electricity supplied to customers from the South West interconnected system; and
- (e) to encourage the taking of measures to manage the amount of electricity used and when it is used.

A Rule Change Proposal can be processed using a Standard Process or a Fast Track Process. The Standard Process involves a combined 10 weeks public submission period, while the Fast Track Process involves the IMO consulting with Rule Participants who either advise the IMO that they wish to be consulted or the IMO considers have an interest in the change.

THE RULE CHANGE PROPOSAL

The Submission

The IMO submitted, on 11 June 2007, a Rule Change Proposal regarding a change to clause 2.13.10 of the Wholesale Electricity Market Rules.

This Rule Change Notice is published according to Market Rule 2.5.7, which requires the IMO to publish a notice within 7 Business Days of receiving a Rule Change Proposal.

Submission details

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Date submitted: 11/06/2007
Urgency: High
Change Proposal title: Discretion of IMO to decide whether to issue warning

Details of the Proposal

The rule change proposes to give the IMO discretion whether to issue a warning letter once it has completed an investigation into an alleged rule breach.

Clause 2.13.10 of the Wholesale Electricity Market Rules provides that if an investigation into an alleged rule breach leads the IMO to reasonably believe that a breach of the Market Rules or Market Procedures has taken place, the IMO must issue a warning to the person concerned.

The warning must:

- Identify the clauses that the IMO believes were breached
- Describe the behaviour that comprises the alleged breach
- Request an explanation
- Request that the breach be rectified by a specified time.

This process can be inappropriate where the event is minor or has already been corrected by the time the IMO becomes aware of it. It may also discourage Rule Participants from volunteering information about behaviour which may constitute a rule breach, and to that extent prevents the IMO from being able to engage constructively with Rule Participants to provide assistance in the development of compliance systems.

By contrast, when, under clause 2.13.21, an alleged breach of the rules by the IMO is investigated by a person appointed by the Minister, that appointee has discretion, at the end of its investigation, whether to issue a warning to the IMO.

The IMO considers that the investigation processes followed by the IMO and by the Minister's appointee should be aligned, and that the IMO should have the same discretion as is given to the Minister's appointee.

The IMO proposes that the change would also bring the Market Rules closer in design to the National Electricity Law. That Law and the National Electricity Rules made pursuant to it give the Australian Energy Regulator (AER) both the option to investigate an alleged breach and the option to apply for a penalty if it finds that a breach has occurred.

The proposed additional flexibility would not, prevent the IMO from being able to take all steps necessary to enforce a serious breach of the Market Rules or Market Procedures should it need to do that, but rather would allow the IMO to support participants in their compliance endeavours.

In its proposal, the IMO states that it is aware of the importance of maintaining an auditable process. To achieve this, the IMO proposes that the results of every investigation be recorded, and the proposed rule change reflects this.

The Proposal and the Market Objectives

The objectives of the market as set out in clause 1.2.1 of the Market Rules are:

- (a) *to promote the economically efficient, safe and reliable production and supply of electricity and electricity related services in the South West interconnected system.*

The IMO considers that reducing bureaucracy will decrease compliance costs for participants and result in more economically efficient operation of the Market in the South West interconnected system. This is consistent with the operation of objective (a) of the Market Objectives.

- (b) *to encourage competition among generators and retailers in the South West interconnected system, including by facilitating efficient entry of new competitors.*

The IMO considers that the burden of compliance should be minimised, especially regarding new competitors in the Market who generally have fewer resources to deal with compliance matters. The compliance culture of these participants should be encouraged, but the current rules require the IMO to take a rigid and bureaucratic approach when a flexible one would be better suited to certain circumstances.

Granting this discretion to the IMO, when dealing with non-compliance by Rule Participants, would result in a better process for handling minor rule breaches, especially in the early days of the market. However, this would not prevent the IMO from taking more serious steps should that be appropriate in the circumstances.

The IMO considers that the proposed changes, therefore, are consistent with the operation of objective (b) of the Market Objectives.

- (c) *to avoid discrimination in that market against particular energy options and technologies, including sustainable energy options and technologies such as those that make use of renewable resources or that reduce overall greenhouse gas emissions.*

The IMO considers that the proposed changes do not impact on, and therefore are consistent with, the operation of objective (c) of the Market Objectives.

- (d) *to minimise the long-term cost of electricity supplied to customers from the South West interconnected system*

The IMO considers that the proposed changes will reduce compliance bureaucracy and as a result long-term costs of compliance both for the IMO and for participants will be minimised. This is consistent with the operation of objective (d) of the Market Objectives.

- (e) *to encourage the taking of measures to manage the amount of electricity used and when it is used.*

The IMO considers that the proposed changes do not impact on, and therefore are consistent with, the operation of objective (e) of the Market Objectives.

WHETHER THE PROPOSAL WILL BE PROGRESSED FURTHER

The IMO has decided to proceed with this proposal on the basis that the IMO's preliminary assessment indicated that the proposal is consistent with the Market Objectives.

The proposal will be progressed according to the Standard Rule Change Process described in section 2.7 of the Market Rules.

As this change relates to a protected provision, see clause 2.8.13 in the Market Rules, any change resulting from this proposal must be approved by the Minister for Energy after the Final Report is published.

The projected timelines for processing this proposal are:

- This Rule Change Notice published 19/06/2007
- Submission period 20/06/2007 - 31/07/2007
- Draft Report published 28/08/2007
- Second submission period 29/08/2007 - 25/09/2007
- Final Report published 23/10/2007
- Final Report to be approved by the Minister 20/11/2007

PROPOSED AMENDING RULE

Amendments to clause 2.13.10 are proposed as follows:

2.13.10 If the IMO becomes aware of an alleged breach of the Market Rules or Market Procedures, then ~~it must~~:

- (a) it must record the alleged breach;
- (b) it must investigate the alleged breach;
- (c) it must record the results of each investigation;
- (d) where it reasonably believes a breach of the Market Rules or Market Procedures has taken place, it may issue a warning to the Rule Participant to rectify the alleged breach. The warning must:
 - i. identify the clause or clauses of the Market Rules or the Market Procedures that the IMO believes has been, or are being, breached;
 - ii. describe the behaviour that comprises the alleged breach;
 - iii. request an explanation; and
 - iv. request that the alleged breach be rectified and a time (which the IMO considers reasonable) by which the alleged breach should be rectified; and
- (e) it must record the response of the Rule Participant to ~~the~~ any warning issued under clause 2.23.10(d).

CALL FOR SUBMISSIONS

The IMO wishes to receive submissions regarding this proposal. The submission period is 6 weeks from the publication date of this notice. Submissions must be delivered to the IMO by close of business on **Tuesday 31 July 2007**.

The IMO prefers to receive submissions by email to marketadmin@imowa.com.au, using the submission form available on the IMO website, http://www.imowa.com.au/10_5_1_a_v_open_rule_change_proposals.htm

Submissions may also be sent to the IMO by fax or post, addressed to:

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