

The background of the lower half of the page is a photograph of a wind farm and power lines, overlaid with a semi-transparent blue filter. On the left, several white wind turbines are visible, with their blades extending outwards. On the right, a tall, lattice-structured power line tower stands prominently. The overall scene is set against a clear sky.

**Independent Market Operator**

**Final Rule Change Report:  
Market Advisory Committee  
Constitution and Operating  
Practices**

**Ref: RC\_2009\_28**

**Date: 7 December 2009**

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### **Independent Market Operator**

Level 3, Governor Stirling Tower  
197 St George's Terrace, Perth WA 6000  
PO Box 7096, Cloisters Square, Perth WA 6850  
Tel. (08) 9254 4300 Fax. (08) 9254 4399  
Email: [imo@imowa.com.au](mailto:imo@imowa.com.au) Website: [www.imowa.com.au](http://www.imowa.com.au)

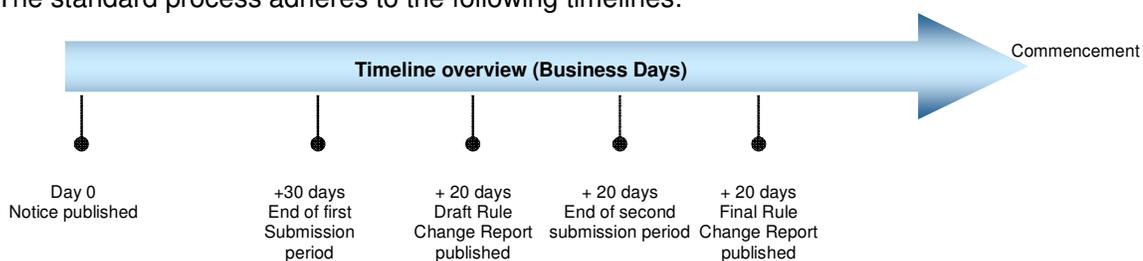
## 1. INTRODUCTION

On the 17 July 2009 the Independent Market Operator (IMO) submitted a Rule Change Proposal regarding the amendment of clauses 2.3.1, 2.3.2, 2.3.5, 2.3.10, 2.3.14, 2.3.15, 2.3.17, 2.7.4, 2.7.5, 2.7.7, 2.10.8, 2.10.9, 2.10.13, the glossary and the new clause 2.3.1A to the Wholesale Electricity Market Rules (Market Rules).

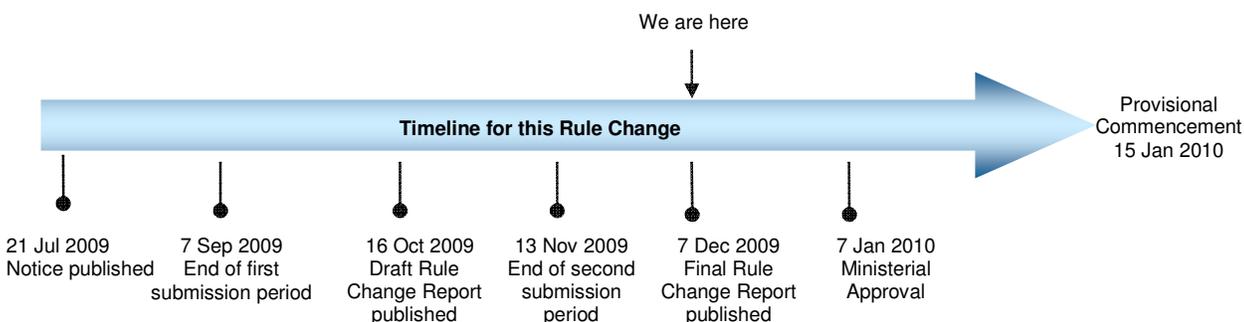
This proposal was processed using the Standard Rule Change Process, described in section 2.7 of the Market Rules.

In accordance with clause 2.5.10 of the Market Rules the IMO decided to extend the timeframe for the first submission period and for preparing the Draft Rule Change Report for this Rule Change Proposal. Extension notices, under clause 2.5.12, were published on the IMO website.

The standard process adheres to the following timelines:



The key dates in processing this Rule Change Proposal, as amended in the extension notices, are:



The IMO's final decision is to accept the Rule Change Proposal in a modified form. The detailed reasons for the IMO's decision are set out in section 7 of this report.

In making its final decision on the Rule Change Proposal, the IMO has taken into account:

- the Wholesale Market Objectives;
- the practicality and cost of implementing the proposal;
- the views of the Market Advisory Committee (MAC); and
- the submissions received.

All documents related to this Rule Change Proposal can be found on the IMO website: [http://www.imowa.com.au/RC\\_2009\\_28](http://www.imowa.com.au/RC_2009_28)

## 2. THE RULE CHANGE PROPOSAL

### 2.1 Submission Details

<b>Name:</b>	Troy Forward
<b>Phone:</b>	9254 4304
<b>Fax:</b>	(08) 9254 4399
<b>Email:</b>	<a href="mailto:imo@imowa.com.au">imo@imowa.com.au</a>
<b>Organisation:</b>	IMO
<b>Address:</b>	Level 3, Governor Stirling Tower, 197 St George's Terrace
<b>Date submitted:</b>	20 July 2009
<b>Urgency:</b>	Standard Rule Change Process
<b>Change Proposal title:</b>	Market Advisory Committee Constitution and Operating Practices
<b>Market Rule(s) affected:</b>	2.3.1, new clause 2.3.1A, 2.3.2, 2.3.5, 2.3.10, 2.3.14, 2.3.15, 2.3.17, 2.7.4, 2.7.5, 2.7.7, 2.10.8, 2.10.9, 2.10.13 and the glossary.

### 2.2 Summary Details of the Proposal

During the annual assessment of the composition of the Market Advisory Committee (MAC) for 2009 a number of areas of the Market Rules and the MAC Constitution were identified as potentially benefitting from review. Such a review was seen as being timely, given that the Wholesale Electricity Market (WEM) and the MAC itself had been operational for a period of almost three years.

While a requirement existed for the IMO to annually assess the composition of the MAC, neither the Market Rules nor the MAC Constitution contained defined processes or formal criteria for undertaking such an assessment. Therefore, a key deliverable from the review was the development of an annual assessment methodology within the key MAC governance arrangements. This was in addition to ensuring that the MAC Constitution was up to date and reflective of the proposed amendments to the annual assessment methodology.

The IMO's Rule Change Proposal identified a number of changes to the Market Rules to enact the reviews recommendations. In addition, the IMO also proposed to amend the MAC Constitution and develop a new document, the MAC Appointment Guidelines, to introduce the outcomes from the IMO's review. These documents were submitted for public consultation as a suite of changes. Full details of this Rule Change Proposal are contained within Appendix 1 of this report.

### 2.3 The Proposal and the Wholesale Market Objectives

The details of the IMO's assessment of the Rule Change Proposal against the market objectives were published in the Rule Change Notice on 21 July 2009.

### 2.4 The Amending Rules Proposed by the IMO

The Amending Rules originally proposed by the IMO were presented in the Rule Change Notice, available on the IMO website.

## **2.5 The IMO's Initial Assessment of the Proposal**

The IMO decided to proceed with the proposal on the basis of its preliminary assessment, which indicated that the proposal was consistent with the Wholesale Market Objectives.

### **3. FIRST SUBMISSION PERIOD**

The first submission period for this Rule Change Proposal was between 21 July 2009 and 7 September 2009.

#### **3.1 Submissions received**

The IMO received submissions from Alinta, Landfill Gas & Power (LGP), System Management and Verve Energy. The main points raised in submissions are noted below. Additional detail of the submissions received along with the IMO's response is contained in Appendix 2 of this report. The full text of all submissions is available on the IMO website.

##### **3.1.1 Submission from Alinta**

Alinta supported the Rule Change Proposal. However, in its submission Alinta suggested that the proposal may benefit from further amendments to achieve greater clarity in relation to the:

- delegation of MAC functions to Working Groups; and
- MAC's role in addressing Market Rule evolution matters.

Alinta also suggested a number of changes to the drafting of clauses 2.3.1, 2.3.2, 2.3.15, 2.3.17, 2.7.7 and 2.10.13 to reflect its submission.

Alinta supported that the proposed rule changes were consistent with the Wholesale Market Objectives in general.

##### **3.1.2 Submission from Landfill Gas & Power**

LGP provided support for the Rule Change Proposal and the Constitution and Appointment Guidelines (supporting documents) on the grounds that they clarify and tidy the administration and role of the MAC.

However, in its submission, LGP suggested that the proposal and supporting documents may benefit from further amendments to achieve greater clarity in relation to the:

- rights of Compulsory Class members; and
- processes for obtaining MAC recommendations when a consensus is not reached.

LGP also suggested revised drafting to further improve the clarity of the supporting documents.

LGP contended that the Rule Change Proposal was consistent with the Wholesale Market Objectives by clarifying the administration and role of the principal consultative body in the WEM.

### **3.1.3 Submission from System Management**

System Management noted that the proposed amendments fall within two categories:

- minor clarification and drafting amendments which it generally agrees with; and
- major amendments that System Management considers alter the function of the MAC and IMO by:
  1. expressly granting the MAC the powers to consider market evolution matters; and
  2. implicitly granting the IMO the power to initiate and direct market evolution matters.

System Management also noted that the amended MAC Constitution contained a number of clauses which may inadvertently be inconsistent with the Market Rules, a requirement under clause 2.3.3 of the Market Rules.

### **3.1.4 Submission from Verve Energy**

Verve Energy supported the need to undertake the review to make appointments to the MAC more transparent. However, Verve Energy raised the following concerns about:

- the principles introduced regarding the skills, knowledge and experience of representatives and proxies;
- the nomination and appointment processes of compulsory class members; and
- removal and replacement of compulsory class members.

Verve Energy supported the proposed rule changes and stated that they are consistent with the Wholesale Market Objectives in general.

### **3.3 The IMO's assessment of First Submission period responses**

All four submission received during the first submission period supported the intent of the Rule Change Proposal. There was however a range of clarifications, concerns and recommendations put forward for further amendment to the Rule Change Proposal and supporting documents. These matters can be considered in two distinct categories:

- those relating to the drafting of the Amending Rules, MAC Constitution and MAC Appointment Guidelines; and
- those relating to the functions, powers, and procedures of the MAC (and outlined in the supporting documents).

The IMO responded to each of the issues raised during the first submission period in the Draft Rule Change Report. For further details refer to the Draft Rule Change Report or Appendix 2 of this report.

### **3.4 Public Forums and Workshops**

No public forums or workshops were held in relation to this Rule Change Proposal.

### **3.5 Further Clarifications**

As part of the IMO's review following the first submission period the IMO considered that the following clarifications to the proposed Amending Rules were also appropriate:

- Market Rules to contain definitions for "Secretariat" and "Working Group";
- remove the reference to "of the Market Advisory Committee" in sub-clause 2.3.5(h);
- replace "a" with "the" in clause 2.3.14 to reflect that Secretariat is a defined term;
- amend clause 2.3.15 (c) to reflect the wording change to clause 2.3.1(c); and
- a grammatical amendment to clause 2.10.8.

### **3.6 Additional Amendments**

Following the first public submission period the IMO made some additional changes to the proposed Amending Rules to address the issues raised in submissions. The IMO also determined a number of changes were required to the MAC Constitution and MAC Appointment Guidelines to address the issues raised in submissions. The additional amendments to the MAC Constitution and MAC Appointment Guidelines following the first submission period are provided in the Draft Rule Change Report. The additional amendments to the proposed Amending Rules are provided in Appendix 3.

## **4. THE IMO'S DRAFT ASSESSMENT**

The IMO's assessment, as contained in its Draft Rule Change Report, can be viewed on the IMO's website.

## **5. THE IMO'S DRAFT DECISION**

Based on the matters set out in the Draft Rule Change Report, the IMO's draft decision, in accordance with clause 2.7.7(f) was to accept the proposed amendments to the addition of clauses 2.3.1A and the amendment of clauses 2.3.1, 2.3.2, 2.3.5, 2.3.10, 2.3.14, 2.3.15 2.3.17, 2.7.4, 2.7.5, 2.7.7, 2.10.8, 2.10.9, 2.10.13 and the glossary of the Market Rules as proposed in the Rule Change Proposal and amended following the first submission period.

The IMO made its decision on the following basis:

- The Amending Rules:
  - Are consistent with the Wholesale Market Objectives;
  - Have the general support of the MAC; and
  - Have the general support of the submissions received during the first submission period.

## **SECOND SUBMISSION PERIOD**

Following the publication of the Draft Rule Change Report on the IMO website, the second submission period was between 19 October 2009 and 13 November 2009.

### **6.1 Submissions received**

The IMO received submissions from Alinta, LGP, Synergy and System Management.

The submissions received during the second submission period are summarised below. The full details of the public submissions are available on the IMO website.

#### **6.1.1 Submission from Alinta**

Alinta notes that in its first submission it supported the intent of the amendments to the Market Rules but suggested a number of further amendments to the Market Rules. Alinta supports the further proposed changes to the Market Rules, as presented in the IMO's Draft Rule Change Report.

Alinta suggests that further consideration should be given to the proposed drafting of clauses 2.7.7(d) and 2.10.13(d). Further details of Alinta's suggestion and the IMO's response are provided in section 6.2 of this report.

Alinta supports the IMO's contention that the proposed Amending Rules are consistent with the Wholesale Market Objectives and are unlikely to be inconsistent in any event.

#### **6.1.2 Submission from Landfill Gas & Power**

LGP supports the IMO's decision to implement the modified Amending Rules as per the Draft Rule Change Report.

#### **6.1.3 Submission from Synergy**

Synergy supports the Rule Change Proposal and agrees with the IMO that, in the future, the focus of MAC meetings should be on addressing strategic high risk and evolutionary Market Rules matters and it is therefore imperative that the MAC is comprised of suitably qualified representatives.

Synergy agrees that MAC members should be appointed as individuals and should act in the interests of all stakeholders that they represent. Synergy notes that this is consistent with the Market Participant committees in other jurisdictions.

Synergy suggests minor amendments to the proposed changes in the MAC Constitution and the Appointment Guidelines document. These suggestions and the IMO's response are contained in the table in section 6.2 of this report.

Synergy agrees that the proposed changes will be consistent with the Wholesale Market Objectives.

#### **6.1.4 Submission from System Management**

System Management is pleased to note the contents of the Draft Rule Change Report.

In particular, System Management:

- supports the change of phrase from “Market Rules evolution” to “ evolution of the Market Rules”;
- notes that inconsistencies between the Market Rules and the MAC Constitution appear to have been remedied;
- supports the removal of the express confidentiality requirement in clause 3.11 of the MAC Constitution, on the basis that it would present considerable practical difficulties; and
- supports the change to the MAC Constitution such that proxies for Compulsory Class members do not require approval of the Chairperson.

System Management however raises two further points regarding:

- the drafting of clause 5.2 of the MAC Appointment Guidelines; and
- the requirement for members and proxies to act “in the best interest of the Wholesale Electricity Market”.

Further details of System Management’s submission are presented in section 6.2 of this report along with the IMO’s response.

## **6.2                    *The IMO’s assessment of Second Submission period responses***

The IMO received some drafting suggestions and requests for greater clarification of the proposed Amending Rules, MAC Constitution and Appointment Guidelines in the submissions received during the second submission period. The IMO also notes the continued concern regarding the requirement for members and proxies to act “in the best interest of the Wholesale Electricity Market” raised by System Management.

The IMO’s response to each of these points is provided in the table over the page.

Clause	Submitter	Comment/Change Requested	IMO's response
<b>Market Rules</b>			
Clause 2.7.7(d) & 2.10.13(d)	Alinta	<p>Alinta queries whether the proposed Amending Rules 2.7.7(d) and 2.10.13(d) achieve the outcome that is sought by the IMO. In particular Alinta notes that as currently worded it appears that these two clauses may result in a Draft Rule Change Report or a Procedure Change Report that contains either:</p> <ul style="list-style-type: none"> <li>○ a summary of the views expressed by the members of the MAC, where the MAC met to consider the Rule Change Proposal or the Procedure Change Proposal; or</li> <li>○ a summary of the views expressed by the Working Group where the MAC has delegated its role to consider the Rule Change Proposal or Procedure Change Proposal to a Working Group for consideration.</li> </ul> <p>Alinta states that it may however appear reasonable to expect that there may be instances where the MAC has delegated the consideration of a Rule Change Proposal or a Procedure Change Proposal to a Working Group but has also discussed the proposal at a meeting. Alinta considers that in such circumstances it would be desirable to include both a summary of the views expressed by the members of the MAC and the Working Group.</p>	<p>The IMO agrees with Alinta that the drafting of the Amending Rules, as proposed in the Draft Rule Change Report, would preclude the views of the MAC being included in the case where a Working Group meet to discuss a proposal.</p> <p>The IMO has amended the proposed Amending Rules to take into account Alinta's suggestion.</p>
<b>MAC Constitution</b>			
2.3	System Management	<p>In its submission System Management notes that it retains concerns with clause 2.3 and the requirement for members and proxies for act "in the best interest of the Wholesale Electricity Market".</p> <p>System Management state that the difficulty with this requirement is that the best interests of the market encompass the divergent interests of all participants. However, in the opinion of System Management MAC members must, by definition, represent and</p>	<p>The IMO notes that it specifically requested participants to submit on this issue during the second submission period. This was in light of concerns raised in the first submission period regarding the confidentiality amendments potentially placing MAC members in a difficult position with respect to their employers and the class of Market Participant they represent.</p> <p>During the second submission period the IMO received one submission from Synergy which supported the premise that</p>

Clause	Submitter	Comment/Change Requested	IMO's response
		<p>advocate the views of their participant constituency or membership class.</p> <p>System Management notes that on occasion there may be conflict between the perceived interest of the market as a whole, and the interests of a particular class. System Management therefore considers that the intended requirement may present a practical difficulty for members. System Management also notes that the role of the IMO is to apply the market objectives in its decision making and administration and therefore pursue and outcomes to achieve the best interests of the market.</p>	<p>MAC members should be appointed as individuals and should act in the interests of all stakeholders they represent. Synergy considers that this is consistent with the Market Participant committees in other jurisdictions.</p> <p>The IMO considers that at times the various classes of representation on the MAC may have differing interests and that despite this the MAC should still operate in the best interests of the market. The IMO notes that such a requirement is in place in other jurisdictions. After discussing this issue further with System Management it was agreed to clarify this understanding in the MAC Constitution.</p>
3.10	Synergy	<p>Synergy suggests the following amendment:</p> <p>“Each member <del>(or proxy for a Compulsory class member)</del> is required to make him or herself reasonably available for all meetings. Members who have not been reasonably available for all meetings may be removed by the IMO under clause 4.6 of the Constitution. Proxies sent by Compulsory class members count towards attendance by the Compulsory class member. Proxies sent by Discretionary class members do not count towards attendance by the Discretionary <del>Member class member.</del>”</p>	<p>The IMO agrees with Synergy's suggestion to remove the reference to “(or proxy for a Compulsory class member)” as this is redundant. This clause has been amended.</p> <p>The IMO also agrees with Synergy's suggestion to amend the reference to a “Discretionary class member” in the MAC Constitution.</p>
4.10	Synergy	<p>Synergy suggests the following amendment:</p> <p>“When appointing and removing members of the Market Advisory Committee, the IMO will consult with, and take nominations from, Rule Participants and industry groups, that it considers relevant to the Wholesale Electricity Market. If practicable, and taking into account the requirements of the Market Rules regarding the Market Advisory Committee composition, the IMO will choose members from among those persons nominated. Further details of the nomination process are provided in the Market Advisory Committee Appointment Guidelines.”</p>	<p>The IMO agrees with Synergy's typographical suggestion and has amended the MAC Constitution accordingly.</p>

Clause	Submitter	Comment/Change Requested	IMO's response
<b>MAC Appointment Guidelines</b>			
5.2	System Management	<p>System Management suggests the following amendment as the excluded words are unnecessary as the membership criteria set out in clause 4.2 of the MAC Appointment Guidelines address skills, knowledge and experience requirements:</p> <p>“Compulsory Class members are individuals who represent a single entity. Compulsory Class members must demonstrate their eligibility against the criteria for membership <del>and necessary skills, knowledge and experience. This is to allow the IMO to consider the skills and experience of the Compulsory Class members when making discretionary appointment decisions to ensure that the MAC is a well rounded committee.</del>”</p>	<p>The IMO has considered System Management's suggestion and does not agree that the additional information around the requirements for necessary skills, knowledge and experience to be demonstrated in an application is unnecessary.</p> <p>The IMO notes that the inclusion of these details provides greater transparency around the appointment process and will ensure that applicants are aware of the basis on which the IMO will make discretionary appointment decisions. The IMO did not amend the MAC Appointment Guidelines as suggested by System Management.</p>
6.1	Synergy	<p>Synergy suggests the following amendment:</p> <p><del>“Inaugural membership</del> <u>Membership</u> on the MAC for the <del>year</del> <u>2010 year</u> for both Discretionary and Compulsory class members will be for either one or two years with the opportunity for reappointment after this time period has lapsed. “</p>	<p>The IMO agrees with Synergy's suggestion to remove the reference to “Inaugural membership” and replace it with simply Membership on the MAC for the 2010 year. This change has been made in the MAC Appointment Guidelines document.</p> <p>The IMO notes that it has not adopted Synergy's suggestion to refer to the year 2010 as this would be inconsistent with the style adopted for other documents published by the IMO.</p>

### **6.3 Additional Amendments to the Amending Rules**

Following the second public submission period the IMO has made some changes to the proposed Amending Rules to address the issues discussed in sections 6.2 of this report. The IMO also made a number of minor changes to improve the integrity of the proposed Amending Rules. The amended MAC Constitution and MAC Appointment Guidelines are contained in Appendix 4 of this report

These changes are as follows (~~deleted text~~, added text):

- 2.3.1. The Market Advisory Committee is a committee of industry representatives convened by the IMO:
- (a) to advise the IMO regarding Rule Change Proposals;
  - (b) to advise the IMO and System Management regarding Procedure Change Proposals; ~~and~~
  - (c) to advise the IMO regarding market operation and SWIS operation matters; and
  - (d) to advise the IMO regarding matters concerning the evolution of these Market Rules.
- 2.3.2. The IMO must develop and publish a constitution for the Market Advisory Committee detailing:
- (a) the process for convening the Market Advisory Committee;
  - (b) the terms of reference of the Market Advisory Committee;
  - (c) the membership terms of Market Advisory Committee members;
  - (d) the process for appointing and replacing Market Advisory Committee members by the IMO;
  - (e) the conduct of Market Advisory Committee meetings;
  - (f) the role of the Market Advisory Committee ~~s~~Secretariat;
  - (g) interaction between the Market Advisory Committee and the IMO; ~~and~~
  - (h) the ability of the Market Advisory Committee to delegate any of the roles described in clause 2.3.1 to a Working Group; and
  - (i) the governance arrangements to apply between the Market Advisory Committee and any Working Groups where the Market Advisory Committee delegates any of the roles described in clause 2.3.1 to a Working Group.
- 2.3.17. The Market Advisory Committee may:
- (a) establish one or more Working Groups comprised of Representatives of Rule Participants and other interested stakeholders, to assist the

Market Advisory Committee in advising the IMO on any of the matters listed in clause 2.3.1 of these Market Rules; and

- (b) disband any Working Groups where it considers that the Working Group is no longer required, or will no longer be required, to assist the Market Advisory Committee in advising the IMO on any of the matters listed in clause 2.3.1 of these Market Rules.

2.7.7. The Draft Rule Change Report must contain:

- (a) the information in the notice of the Rule Change Proposal under clause 2.5.7;
- (b) all submissions received before the due date for submissions, a summary of those submissions, and the IMO's response to issues raised in those submissions;
- (c) a summary of any public forums or workshops held;
- (d) a summary of the views expressed by the members of the Market Advisory Committee where the Market Advisory Committee met to consider the Rule Change Proposal and ~~or~~, if the Market Advisory Committee has delegated its role to consider the Rule Change Proposal to a Working Group under clause 2.3.17(a), a summary of the views expressed by that Working Group;
- (e) the IMO's assessment of the Rule Change Proposal in light of clauses 2.4.2 and 2.4.3;
- (f) a proposal as to whether the Rule Change Proposal should be accepted in the form proposed. The proposal may be that:
  - i. the Rule Change Proposal be accepted in the proposed form; or
  - ii. the Rule Change Proposal be accepted in a modified form; or
  - iii. the Rule Change Proposal be rejected; and
- (g) if the IMO proposes to make Amending Rules arising from the Rule Change Proposal:
  - i. the wording of the proposed Amending Rules; and
  - ii. a proposed date and time the proposed Amending Rules will commence.

2.10.13. The Procedure Change Report must contain:

- (a) the wording of the proposed Market Procedure or amendment to or replacement for the Market Procedure;
- (b) the reason for the proposed Market Procedure or amendment to or replacement for the Market Procedure;
- (c) all submissions received before the due date for submissions, a summary of those submissions, and the response of the IMO or System

- Management, as applicable, to the issues raised in those submissions;  
~~and~~
- (d) a summary of the views expressed by the Market Advisory Committee ~~and~~ ~~or~~, if the Market Advisory Committee has delegated its role to consider the Procedure Change Proposal to a Working Group under clause 2.3.17(a), a summary of the views expressed by that Working Group;

...

## 6. THE IMO'S FINAL ASSESSMENT

In preparing its Final Rule Change Report, the IMO must assess the Rule Change Proposal in light of clauses 2.4.2 and 2.4.3 of the Market Rules.

Market Rule 2.4.2 outlines that the IMO “*must not make Amending Rules unless it is satisfied that the Market Rules, as proposed to be amended or replaced, are consistent with the Wholesale Market Objectives*”.

Additionally, clause 2.4.3 states, when deciding whether to make Amending Rules, the IMO must have regard to the following:

- Any applicable policy direction from the Minister regarding the development of the market;
- The practicality and cost of implementing the proposal;
- The views expressed in submissions and by the MAC; and
- Any technical studies that the IMO considers necessary to assist in assessing the Rule Change Proposal.

The IMO notes that there has not been any applicable policy direction from the Minister in respect of this Rule Change nor has it commissioned a technical review in respect of this Rule Change Proposal.

The IMO's assessment is outlined in the following sections.

### 7.1 Market Objectives

The IMO considers that the Market Rules as a whole, if amended, will be consistent with the Wholesale Market Objectives.

Wholesale Market Objective	Consistent with objective
(a) to promote the economically efficient, safe and reliable production and supply of electricity and electricity related services in the South West interconnected system	Yes
(b) to encourage competition among generators and retailers in the South West interconnected system, including by facilitating efficient entry of new competitors	Yes
(c) to avoid discrimination in that market against particular energy options and technologies, including sustainable energy options and	Yes

<b>Wholesale Market Objective</b>	<b>Consistent with objective</b>
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	Yes
(e) to encourage the taking of measures to manage the amount of electricity used and when it is used	Yes

## **7.2 Practicality and cost of implementation**

### **Cost:**

The proposed changes do not require any change to the Wholesale Electricity Market Systems operated by the IMO or any of the systems operated by System Management. There have been no additional costs identified with the implementation of this Rule Change Proposal.

The IMO notes that currently it is required to annually assess the membership of the MAC. As such the proposed suite of changes will result in a more efficient assessment of potential candidates. Given that this process is within the general day to day operation of the IMO, it considers that there will be no additional personnel costs associated with the implementation of the proposed changes.

### **Practicality:**

In making its assessment of the Rule Change Proposal the IMO must have regard to the practicality of implementing the proposal. The IMO considers that better defined processes and greater transparency will result in a more practical solution to the current MAC appointment processes. The IMO considers that the solution regarding the appointment criteria and processes proposed by the IMO will remove the current impractical situation of no review framework created by the Market Rules and MAC Constitution.

## **7.3 Views expressed in submissions**

### First Submission Period

All four submission received during the first submission period supported the intent of the Rule Change Proposal. There was however a range of clarifications sought, and concerns and recommendations put forward for further amendment to the Rule Change Proposal and supporting documents. These matters can be considered in two distinct categories:

- those relating to the drafting of the Amending Rules, MAC Constitution and MAC Appointment Guidelines; and
- those relating to the functions, powers, and procedures of the MAC (and outlined in the supporting documents).

The IMO responded to each of the issues raised in the Draft Rule Change Report. The IMO's response is also available in Appendix 2 of this report.

### Second Submission Period

During the second submission period the IMO received submissions from Alinta, LGP, Synergy and System Management. All four submissions support the intent of the Rule Change Proposal, albeit with some drafting suggestions. An overview of these suggestions and the IMO's response is provided in section 6.2.

As an outcome of these suggestions, the IMO made a number of minor amendments to the Amending Rules, as set out in section 6.3 of this report. The amendments to the MAC Constitution and MAC Appointment Guidelines are contained in Appendix 4 of this report and are outlined in red font for ease of reference.

In its submission System Management noted concerns with the requirement for MAC members and proxies to act in the best interests of the market. In particular, System Management considered that the requirement for members and proxies to represent a constituency or membership class may at time be at odds with the best interests of the market.

The IMO agrees with System Management that at times the various classes of representation on the MAC may have differing interests. The IMO considers that despite this the MAC should still operate in the best interests of the market. After consultation with System Management the IMO clarified in the MAC Constitution that despite differing interests, members and proxies should act in the best interests of the market.

#### **7.4 Views expressed by the Market Advisory Committee**

The MAC met to discuss the proposal at various stages:

- 29 April 2009: Concept Paper (CP\_2009\_03);
- 6 June 2009: Concept Paper (CP\_2009\_03) - Response to submissions from MAC; and
- 9 September 2009: Rule Change Proposal (RC\_2009\_28).

An overview of the discussion from the various MAC meetings is presented below. Further details are available in the MAC meeting minutes available on the IMO website: <http://www.imowa.com.au/market-advisory-committee>

#### **April 2009 MAC meeting**

At the 29 April 2009 MAC meeting the IMO first presented the outcomes of its project to:

- review the relevant provisions in the Market Rules and MAC Constitution;
- set defined appointment criteria and terms; and
- better clarify and enhance the operating practices of the MAC.

All members were generally in favour of the proposal.

During the meeting, a member noted that the proposed solution was too bureaucratic. The IMO explained that there is now 'excess demand' for membership on the MAC and a robust process for appointing members is needed to ensure fairness. Companies wishing to obtain membership on the MAC need a framework detailing how members are appointed and the proposed changes would facilitate that.

The IMO clarified that one company can only have one individual member representing one class at any time.

The IMO advised that the next review of the MAC's composition is to occur in December 2009 and any rule changes to facilitate the proposed changes needed to be initiated by August 2009.

The IMO noted that the observer membership had presented problems with regard to speaking rights. In particular it was noted that the Economic Regulation Authority (ERA)

may feel conflicted at MAC as a full member. After the MAC meeting the IMO consulted with the ERA and it was agreed that the ERA remain as an observer member.

One member raised the question as to whether companies such as Verve Energy and Synergy should be classed as a compulsory members or whether compulsory membership should be based on market share instead. The IMO noted that compulsory membership will be further reviewed as the market develops and structural change occurs. The IMO noted that currently Verve Energy's compulsory class membership is due to its role as the balancer and Synergy's compulsory class membership is due to its role as the retailer for all franchise customers.

It was noted that there may be value in working groups being able to instigate rule changes. The question was raised as to whether a working group constitutes a legal entity and is therefore able to propose a rule change. The IMO investigated this following the meeting and ascertained that Working Groups are able to propose rule changes under the Market Rules.

### **June 2009 MAC meeting**

During the 10 June 2009 meeting, the IMO presented the outcomes from the further consultation on the concept paper with the MAC.

In particular the IMO noted the following points:

- The ERA and Office of Energy will remain as observer members but there needs to be some definition around the observer member role;
- There was some concern from System Management and Western Power about the requirements around compulsory class members and the IMO requesting CVs. The IMO stated that these requirements will help ensure that the MAC is well rounded by allowing the skills and experience of compulsory class members to be taken into account when making discretionary class membership decisions. It was agreed that the CV requirement would be around one page and the IMO will outline what is required when requesting nominations;
- A MAC member question if CVs would be required for proxies. The IMO noted that this would not be the case. In particular the IMO noted that:
  - with agreement with the Chairperson compulsory class members will be able to send appropriate proxies with similar skills and experience to represent the entity at meetings; and
  - discretionary class members will not be able to send a proxy by right as they will have been chosen for their personal skills, qualities and qualifications. They will however be able to recommend an appropriate proxy (from any organisation which belongs to the same class as the appointee) who must have similar skills and experience. Permission for attendance by proxies will be at the Chairpersons discretion;
- One submitter suggested that Rule Participants should have full access to both information and the IMO, and have their concerns properly addressed. The IMO noted the importance of access to information for all key stakeholders and agreed that exclusion from the MAC should not be a detriment. Further the IMO noted that to better facilitate transparency of the MAC decision making and allow external parties an opportunity to provide feedback on relevant issues, the IMO

will note on the IMO webpage that anyone can contact the Chairperson or secretariat to raise an issue at a MAC meeting.

The MAC provided broad support following the consultation on the concept paper and confirmed that there were no further issues that need addressing as part of this review.

The MAC unanimously supported the IMO's recommendations and that the IMO should progress the necessary changes through the rule change process and undertake consultation on the MAC Constitution.

### **September 2009 MAC meeting**

The MAC noted the Rule Change Proposal at the 9 September 2009 meeting.

### **October 2009 MAC meeting**

The MAC noted the Rule Change Proposal at the 14 October 2009 meeting.

### **November 2009 MAC meeting**

The MAC noted the Rule Change Proposal at the 11 November 2009 meeting.

## **8. THE IMO'S FINAL DECISION**

The IMO's final decision is to accept the addition of clause 2.3.1A and the amendment of clauses 2.3.1, 2.3.2, 2.3.5, 2.3.10, 2.3.14, 2.3.15 2.3.17, 2.7.4, 2.7.5, 2.7.7, 2.10.8, 2.10.9, 2.10.13 and the glossary of the Market Rules as proposed in the Draft Rule Change Report and amended following the second submission period.

### **8.1 Reasons for the decision**

The IMO has made its decision on the following basis:

- The Amending Rules:
  - Will allow the Market Rules are consistent with the Wholesale Market Objectives;
  - Have the general support of the MAC; and
  - Have the general support of the submissions received during the first submission period.

Additional detail outlining the analysis behind the IMO's reasons is outlined in section 7 of this Final Rule Change Report.

The wording of the relevant Amending Rules is presented in Section 9 of this report and the updated MAC Constitution and MAC Appointment Guidelines are contained in Appendix 4.

## 9. AMENDING RULES

### 9.1 Commencement

The amendments to the Market Rules resulting from this Rule Change Proposal will commence at **8:00am** on **15 January 2010**.

### 9.2 Amending Rules

The following clauses are amended (~~deleted text~~, added text):

2.3.1. The Market Advisory Committee is a committee of industry representatives convened by the IMO:

- (a) to advise the IMO regarding Rule Change Proposals;
- (b) to advise the IMO and System Management regarding Procedure Change Proposals; ~~and~~
- (c) to advise the IMO regarding market operation and SWIS operation matters; and
- (d) to advise the IMO regarding matters concerning the evolution of these Market Rules.

2.3.1A. The Market Advisory Committee is a non voting committee.

2.3.2. The IMO must develop and publish a constitution for the Market Advisory Committee detailing:

- (a) the process for convening the Market Advisory Committee;
- (b) the terms of reference of the Market Advisory Committee;
- (c) the membership terms of Market Advisory Committee members;
- (d) the process for appointing and replacing Market Advisory Committee members by the IMO;
- (e) the conduct of Market Advisory Committee meetings;
- (f) the role of the Market Advisory Committee ~~s~~Secretariat; ~~and~~
- (g) interaction between the Market Advisory Committee and the IMO;
- (h) the ability of the Market Advisory Committee to delegate any of the roles described in clause 2.3.1 to a Working Group; and
- (i) the governance arrangements to apply between the Market Advisory Committee and any Working Groups where the Market Advisory Committee delegates any of the roles described in clause 2.3.1 to a Working Group.

2.3.5. Subject to clause 2.3.13-, the Market Advisory Committee must comprise:

- (a) three members representing ~~generators~~ Market Generators, of whom one must represent the Electricity Generation Corporation;
  - (b) one member representing Contestable Customers;
  - (c) at least one and not more than two members representing Network Operators, of whom one must represent the Electricity Networks Corporation;
  - (d) three members representing ~~retailers~~ Market Customers, of whom one must represent the Electricity Retail Corporation;
  - (e) one member nominated by the Minister to represent small-use consumers;
  - (f) one member representing System Management;
  - (g) one member representing the IMO; and
  - (h) a chairperson ~~of the Market Advisory Committee~~, who must be a representative of the IMO.
- 2.3.10. When appointing and removing members of the Market Advisory Committee, the IMO must consult with, and take nominations from Rule Participants and industry groups, that it considers relevant to the ~~w~~Wholesale e~~E~~lectricity m~~M~~arket, and, if practicable, must choose members from persons nominated.
- 2.3.14. The IMO must provide a the S~~ecretariat~~ for the Market Advisory Committee. ~~The secretariat must:~~
- ~~(a) — schedule meetings and maintain the diary of the Market Advisory Committee; and~~
  - ~~(b) — prepare and publish the minutes of each meeting of the Market Advisory Committee.~~
- 2.3.15. The ~~s~~S~~ecretariat~~ must convene the Market Advisory Committee:
- (a) on any occasion where these Market Rules require a meeting to discuss a Rule Change Proposal;
  - (aA) on any occasion where these Market Rules require a meeting to discuss a ~~or~~ Procedure Change Proposal;
  - (b) not less than once every six months so as to raise and discuss issues with respect to the operation of the market; and
  - (c) on any occasion when two or more members of the Market Advisory Committee have informed the ~~s~~S~~ecretariat~~ in writing that they wish to bring a matter regarding market operation, the evolution of these Market Rules or the operation of these Market Rules before the Market Advisory Committee for discussion.
- 2.3.17. The Market Advisory Committee may;

- (a) ~~neminate a~~ establish one or more Working Groups comprised of Representatives of Rule Participants and other interested stakeholders, to assist the Market Advisory Committee in advising the IMO on any of the matters listed in clause 2.3.1 of these Market Rules; and
  - (b) disband any Working Groups where it considers that the Working Group is no longer required, or will no longer be required, to assist the Market Advisory Committee in advising the IMO on any of the matters listed in clause 2.3.1 of these Market Rules.
- 2.7.4. Within one Business Day after the publication of a notice of a Rule Change Proposal in accordance with clause 2.5.7, the IMO must notify the members and observers of the Market Advisory Committee as to whether the IMO considers the Rule Change Proposal ~~to be significant enough to~~ requires convening a meeting of the Market Advisory Committee and the reasons why.
- 2.7.5. The IMO must convene a meeting of the Market Advisory Committee concerning a Rule Change Proposal before the due date for submissions in relation to the Rule Change Proposal if:
- (a) the IMO considers that advice on the Rule Change Proposal to be significant is required from the Market Advisory Committee; or
  - (b) two or more members of the Market Advisory Committee have informed the IMO in writing that they consider that advice on the Rule Change Proposal is significant required from the Market Advisory Committee.
- 2.7.7. The ~~d~~Draft Rule Change Report must contain:
- (a) the information in the notice of the Rule Change Proposal under clause 2.5.7;
  - (b) all submissions received before the due date for submissions, a summary of those submissions, and the IMO's response to issues raised in those submissions;
  - (c) a summary of any public forums or workshops held;
  - (d) a summary of the views expressed by the members of the Market Advisory Committee where the Market Advisory Committee met to consider the Rule Change Proposal; and, if the Market Advisory Committee has delegated its role to consider the Rule Change Proposal to a Working Group under clause 2.3.17(a), a summary of the views expressed by that Working Group;
  - (e) the IMO's assessment of the Rule Change Proposal in light of clauses 2.4.2 and 2.4.3;
  - (f) a proposal as to whether the Rule Change Proposal should be accepted in the form proposed. The proposal may be that:

- i. the Rule Change Proposal be accepted in the proposed form; or
    - ii. the Rule Change Proposal be accepted in a modified form; or
    - iii. the Rule Change Proposal be rejected; and
  - (g) if the IMO proposes to make Amending Rules arising from the Rule Change Proposal:
    - i. the wording of the proposed Amending Rules; and
    - ii. a proposed date and time the proposed Amending Rules will commence.
- 2.10.8. Within one Business Day after the publication of a Procedure Change Proposal notice in accordance with clause 2.10.4 or 2.10.5, as applicable, the IMO must notify all members and observers of the Market Advisory Committee as to whether the IMO considers that the Procedure Change Proposal ~~to be significant enough to~~ requires convening the Market Advisory Committee and the reasons why.
- 2.10.9. The IMO must convene a meeting of the Market Advisory Committee concerning the Procedure Change Proposal before the due date for submissions in relation to the Procedure Change Proposal if:
- (a) the IMO considers that advice on the Procedure Change Proposal to be significant is required from the Market Advisory Committee; or
  - (b) two or more members of the Market Advisory Committee have informed the IMO in writing that they consider that advice on the Procedure Change Proposal is significant required from the Market Advisory Committee.
- 2.10.13. The Procedure Change Report must contain:
- (a) the wording of the proposed Market Procedure or amendment to or replacement for the Market Procedure;
  - (b) the reason for the proposed Market Procedure or amendment to or replacement for the Market Procedure;
  - (c) all submissions received before the due date for submissions, a summary of those submissions, and the response of the IMO or System Management, as applicable, to the issues raised in those submissions;
  - (d) 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 to a Working Group under clause 2.3.17(a), a summary of the views expressed by that Working Group;

- (e) in the case of a Procedure Change Proposal developed by the IMO, a proposed date and time for the Market Procedure or amendment or replacement to commence, which must, in the IMO's opinion, allow sufficient time after the date of publication of the Procedure Change Report for Rule Participants to implement changes required by it; and
- (f) in the case of a Procedure Change Proposal developed by System Management, a recommendation for a date and time for the Market Procedure, amendment or replacement to commence which, in System Management's opinion, allows sufficient time after the date of publication of the IMO's approval of the Procedure Change Proposal under clause 2.10.12, for Rule Participants to implement changes required by it.

#### Chapter 11: Glossary

**Secretariat:** the secretariat of the Market Advisory Committee.

**Working Group:** a working group as established under clause 2.3.17 of these Market Rules.

## APPENDIX 1: FULL DETAILS OF THE PROPOSAL

During the annual review of the composition of the Market Advisory Committee (MAC) for the 2009 calendar year, a number of areas of the Wholesale Electricity Market Rules (Market Rules) and MAC Constitution were identified that could benefit from improvement.

In particular, while there is a requirement for the Independent Market Operator (IMO) to annually review the composition of the MAC neither the Market Rules nor the MAC Constitution contains any defined processes or formal criteria for undertaking the review. The IMO does have internal procedures detailing the review process, however these are currently not transparent to interested stakeholders and so the IMO's decisions over appointments to the MAC may not be clear and distinct.

The IMO determined that a project be established to review the relevant provisions in the Market Rules and MAC Constitution. In particular, the issues that the IMO addressed were:

- **Representation and Proxies** – Should appointments be on an individual basis or should appointees represent the organisations they work for?;

The Market Rules only state that the appointment is of a representative. Consequently, a number of interpretations regarding the definition of a representative have been made since the establishment of the MAC.

- **Appointment Process** - What formal process should be followed for annually reviewing the composition of the MAC?;

There is a requirement for the IMO to annually review the composition of the MAC in the Market Rules (clause 2.3.9), however neither the Market Rules nor the MAC Constitution contain any defined processes or formal criterion for undertaking the review.

- **Eligibility Criteria and Key Skills** - What should the formal criteria be for assessment of nominees to the MAC membership?;
- **Tenure** - How often should the IMO review of the composition of the MAC and what is the most optimal length of service of members?;
- **Responsibilities** – What should MAC members responsibilities be and how should the IMO facilitate their ability to achieve these?;
- **Removal and Replacement of Members** - Are there better processes to selecting MAC members so as to achieve the best possible MAC representation, based on the current practices in other jurisdictions?;
- **Reappointment** – Should there be any restrictions on reappointment to the MAC?;
- **Operating Practices** - What are the optimal operating practices for the MAC with regards to the frequency of meetings, voting rights, types of membership and the optimal size and mix?; and

- **MAC Working Groups** - What is the reporting relationship between MAC and its Working Groups and what is the optimal representation for MAC Working Groups?

At the 29 April MAC meeting the IMO presented the MAC Constitution and Operating Practices Concept Paper (CP\_2009\_03) which summarised the broad issues which needed to be addressed to ensure:

- A continual high standard of representation on the MAC; and
- That the MAC operates in the best interests of the Wholesale Electricity Market.

The Concept Paper outlined a number of recommendations to address each of these issues, based on the review of the composition and operation of similar committees in other jurisdictions and industries.

The IMO invited MAC members to provide additional comment on the recommendations. The IMO received submissions from five MAC members. Full details on the original Concept Paper and the outcomes of the consultation with the MAC are also available on the IMO's website:

<http://www.imowa.com.au/ConceptPapers.html>.

Outlined below are the amendments to the Market Rules the IMO notes in its Rule Change Proposal that it considers are necessary to enact the recommendations outlined in Appendix 1. In particular, the IMO proposes:

- Amending clause 2.3.1(b) to allow the MAC appointed Working Groups to advise the IMO and/or System Management on Procedure Change Proposals;
- To state that the MAC is a non voting committee (proposed new clause 2.3.1A);
- Amending clause 2.3.2 to include details of the interaction between the MAC and its Working Groups in the MAC constitution;
- Redrafting clause 2.3.5 to refer to Market Generators, Market Customers and small-use consumers rather than generators ,customers and small consumers;
- Amending clause 2.3.10 to reflect the proposed new appointment process (as outlined in proposed amended MAC constitution);
- Removing unnecessary overlap between the Market Rules and MAC Constitution in clause 2.3.14;
- Expanding clause 2.3.17 to allow other interested stakeholders to be either full or observer members of MAC appointed Working Groups e.g. Office of Energy and potential developers who are not Rule Participants;
- Amending clause 2.7.4, 2.7.5, 2.10.8 and 2.10.9 to remove the current "significance" test for convening a meeting of the MAC with regards to Rule Change Proposals and Procedure Change Proposals; and
- Amending clause 2.10.3 (d) to include a summary of the views of the Working Group in Procedure Change Reports;

Note that these changes proposed by the IMO constitute one part of a suite of changes which also includes amending the MAC constitution and developing a document outlining the “Market Advisory Committee Appointment Guidelines”. The other proposed changes are out for public consultation at the same time as this Rule Change Proposal and should be considered as a whole.

The IMO considers that these changes will improve the clarity of the Market Rules and ensure that the MAC operates in the best interests of the Market.

## **APPENDIX 2: THE IMO'S RESPONSE TO ISSUES RAISED DURING THE FIRST SUBMISSION PERIOD**

The IMO's response to the issues raised in submissions received during the first submission period was as follows:

### ***Section A: Drafting of the Amending Rules, MAC Constitution and MAC Guidelines***

The IMO received a number of drafting suggestions in the submissions received during the first submission period. The IMO's response to each of these is provided in the table over the page.

Clause	Submitter	Comment/Change Requested	IMO's response
<b>Market Rules</b>			
Clause 2.3.1 (d)	Alinta	<p>Market Rule Evolution Matters: Alinta noted that the proposed amendment to clause 2.3.1 (d) may not have been sufficiently clear, defined or understood.</p> <p>Amend to clarify that the MAC's role should be focused on advising the IMO, generally, on the future development of the Market Rules is to advise the IMO regarding potential and future changes to the Market Rules, rather than simply on specific rule or procedural changes and on operational matters.</p> <p>Alinta proposed the following clarification of the MAC's role (clause 2.3.1 (d)): "to advise the IMO regarding potential and future changes to the Market Rules regardless of whether these have been submitted as Rule Change Proposals".</p>	The IMO made an amendment to this clause however did not adopt Alinta's proposed wording. Full details of the IMO's response are provided in section B of this appendix.
Clause 2.3.1	System Management	May be appropriate for the Rule Change Proposal to be delayed to allow MAC members the opportunity to consider changes in the policy landscape expected in the near future given the potential conflicts the proposed amendment to this clause may make.	Details of the IMO's response are provided in section B of this appendix.
Clause 2.3.2	Alinta	Amend to provide an explicit power for the MAC to delegate some of its role in advising the IMO on Rule Change Proposals and Procedural Change Proposals to a Working Group.	The IMO agreed with Alinta's suggestion to provide an explicit power for the MAC to delegate some of its role in advising the IMO on those matters outlined in clause 2.3.1. The IMO considered that this power is contained under clause 2.3.17 of the Amending Rules. The IMO agreed with Alinta's suggestion to include details of this delegation in the MAC Constitution, as outlined in clause 2.3.2.
Clause 2.3.1(b) and 2.3.15	Alinta	<p>The reference to "...if required, or if requested by any Working Groups established under clause 2.3.17" potentially diminishes the role of the MAC. In that it is unclear who would determine if the MAC is required to advise and that a Working Group may be able to determine whether or not that MAC has a role in advising the IMO.</p> <p>Arrangements between the MAC and Working Groups (to</p>	<p>The IMO noted that it is the MAC's role to advise the IMO and System Management.</p> <p>The IMO accepted Alinta's drafting suggestions to clauses 2.3.1 (b) and 2.3.15 of the proposed Amending Rules. The relevant clauses in the MAC constitution were also amended (attached as Appendix 3 to the Draft Rule Change Report).</p>

Clause	Submitter	Comment/Change Requested	IMO's response
		consider the matters referred to in clause 2.3.1 of the Market Rules) may be better encapsulated in a separate set of protocols or governance arrangements contained within the Constitution, specifically for Working Groups constituted under the MAC.	
Clause 2.7.7 & 2.10.13	Alinta	Amend to include details of the summary of views expressed a Working Group to which the MAC has delegated its role to consider Rule Change Proposals and Procedure Change Proposals.	The IMO agreed with Alinta's suggestion and revised the Amending Rules accordingly. An amendment has also been made to refer to clause 2.3.17(a).
Clause 2.3.17	Alinta	Concern with the use of the word "nominate" as this could imply that the Working Groups pre exist and that the MAC chooses from this list. This does not reflect what happens in practice, which could be construed as beyond the powers of clause 2.3.17.  Unclear whether the Market Rules give the MAC the power to establish Working Groups and delegate any of its roles under clause 2.3.1.  Amend to provide an explicit power for the MAC to establish and disband Working Groups.	The IMO agreed with Alinta's suggestion and revised the Amending Rules accordingly. This rewording contains an adjustment to the drafting suggested by Alinta to ensure that Working Groups can also be established to assist the MAC in advising the IMO for all the matters specified under clause 2.3.1 (if required). The IMO has also adopted Alinta's suggestion to include provisions to disband MAC Working Groups.
<b>MAC Constitution</b>			
Clauses 3.7 and 3.8	LGP	Queried the need for the conditional references to clause 2.3 of the Constitution (the requirement to act in the best interests of the market) as this is considered to be self-evident.  LGP questioned whether this condition should instead be skills based and refer to clause 4 of the MAC Appointment Guidelines.	The IMO removed the conditional references to clause 2.3 in these clauses, however the IMO expanded on clause 2.3 to include that both members and their proxies are to act in the best interests of the market.  The IMO did not consider that a reference to clause 4 of the MAC Appointment Guidelines is correct as this clause is the membership of the MAC "as a collective" as opposed to the proxies referred to in clauses 3.7 and 3.8 of the Constitution. The IMO did not amend this clause.
Clause 3.9	LGP	Queried the reference to clause 2.3 of the Market Rules and suggested making it conditional on clause 6.3 of the Constitution (quorum).	The IMO agreed with LGP's suggestion and amended the Constitution accordingly to include a link to clause 6.3 of the Constitution. The IMO did not agree that the reference to clause 2.3 of the Constitution needed to be amended as this simply defines the role of the MAC as that outlined in section 2.3 the

Clause	Submitter	Comment/Change Requested	IMO's response
			Market Rules.
Clause 3.11	LGP	Suggested either referencing clause 6.4 or, preferably, removing the duplication.	The IMO removed the duplication of this clause in the Constitution.
Clause 4.2	LGP	Suggested that this clause mentioning the ballot should be replaced by the detailed description in clause 6.2 of the Appointment Guidelines, or should at least reference it.	The IMO noted that a reference to the Appointment Guidelines document has been included in this clause. The IMO did not consider that the Constitution is the appropriate document to go into detail regarding how the ballot would work.
Clause 4.4	LGP	Clarification of the term "organisation".	The IMO agreed with LGP's suggestion and amended the Constitution to provide clarity that it is the employing organisation. Additionally, see clause 4.4 in the Appointment Guidelines, as provided in Appendix 3 of the Draft Rule Change Report.
Clause 4.5	LGP	The term "new members" should read "replacement members".	The IMO agreed with LGP's suggestion and amended the Constitution accordingly.
Clause 5	LGP	Inclusion of the current MAC practice of agreeing a provisional schedule of meetings each calendar year.	The IMO agreed with LGP's suggestion and amended the Constitution accordingly.
Appendix 2	LGP	3rd dot point should require the IMO's opinion to be reasonable and substantiated.	The IMO agreed with LGP's suggestion and amended the proposed Amending Rules and Constitution accordingly.
All	LGP	Clarification of the term "representative".	<p>The IMO did not consider that being a full time employee of an organisation is a pre-requisite for being a representative on the MAC. The IMO noted that each application for membership would be based on a case by case basis.</p> <p>The IMO did not consider that any changes are required to the Constitution, but has included clause 4.4 in the Appointment Guidelines document to provide additional clarity around this point in that applicants are not required to be full time employees of an entity that is a participant in the class which membership is being sought i.e. it is feasible that an organisation could nominate a consultant to represent it on the MAC. The IMO would assess this on a case by case basis.</p>
<b>MAC Appointment Guidelines</b>			
Clause 4	Verve Energy	Verve supported the view that skills, knowledge and experience of members were a list of skills to be acquired by the MAC as a body, but did not consider that this skill set should be assumed to	The IMO agreed with this suggestion from Verve Energy and revised the Appointment Guidelines accordingly.

Clause	Submitter	Comment/Change Requested	IMO's response
		reside only in a person with managerial experience. Amend to reflect the requirement that the nominee have "preferably middle management experience".	
Clause 5.3	LGP	Should contain a conditional reference to clause 2.3 of the constitution (to act in the best interests of the market).	Section B of this appendix details the IMO's response to LGP's comments. These were made in light of further discussions held with Market Participants.
Clause 6.3	LGP	Clarification of the meaning of "rotated".	The IMO removed the reference to "rotation" and "rotated" and clarified clauses 6.2 and 6.3.
Clause 6.5	LGP	Clarification of the meaning of "are no longer representative of their class".	The IMO agreed with LGP's suggestion and had amended the Appointment Guidelines accordingly.
Clause 6.6	LGP	Clarification of the word "dynamic".	The IMO considered that a dynamic MAC will be characterised by membership that is representative of the market. The clause was amended.
Clause 7.4	Verve Energy	Should establish a simpler process to seek complementary skill sets from discretionary class members. For example a standard form listing all specific skills sets by the MAC group would be designed and completed by all nominees.	The IMO agreed with Verve Energy's suggestion and amended the clause in the Appointment Guidelines to refer to providing a completed MAC Application form rather than providing a CV. The IMO noted that it will develop an application form outlining the required skills for MAC members and publish this on its webpage when requesting nominations.
<b>MAC Constitution and Appointment Guidelines</b>			
All	LGP	Bullet points be avoided and replaced by numerical or alphabetical identifiers to facilitate precise reference.	The IMO agreed with LGP's suggestion and amended the MAC Constitution and Appointment Guidelines documents where appropriate.
Clause 6.3 (Constitution) & 3.3 (Appointment Guidelines)	LGP	MAC should be entitled to make majority recommendations (this is consistent with clauses 8.5 and 8.6).	The IMO considered this matter and resolved that it would be inconsistent with the functions and powers of the MAC as a non-voting committee to allow the committee to make majority recommendations. The IMO did not consider that any changes were required to either the MAC Constitution or MAC Appointment Guidelines.
<b>MAC Constitution and Market Rules</b>			
Clause 2.3.2 (Market Rules) & Clause 9 (Constitution)	Alinta	Amend the concept behind the reference to "interaction" between the MAC and Working Group to "governance arrangements"	The IMO agreed with Alinta's suggestion and amended both the MAC Constitution and Amending Rules to reflect the concept of "governance arrangements"



## **Section B: Functions, Powers and Procedures of the MAC**

### **Removal and Replacement of Members/Rights of Compulsory Class members**

LGP requested that the MAC Constitution and MAC Appointment Guidelines provide more clarity as to the rights of Compulsory Class members in regard to their ability to select their representative.

With regards to the LGP concerns, the IMO noted that Compulsory Class members will be able to nominate an individual as their representative on the MAC, provided that the representative meets the minimum requirements established in the MAC Appointment Guidelines. The IMO noted that at the lapse of tenure the Compulsory Class member will be able to renominate an individual it considers appropriate to serve on the MAC. This was further clarified in the MAC Appointment Guidelines.

LGP also noted concerns about a perception that the IMO could veto the preferred choice of a Compulsory Class member and can rotate the Compulsory Class member's preferred representative off the MAC on completion of the member's term, thereby forcing the Market Participant to nominate a replacement.

In response the IMO noted that it will request a suitably qualified replacement nominee is provided to attend meetings. The Compulsory Class member then selects a member that it deems appropriate. The IMO further clarified this in section 4.9 of the MAC Constitution as presented in Appendix 3 of the Draft Rule Change Report..

Similarly, Verve Energy expressed concerns as to the method of appointment of Compulsory Class members (clause 3.5 of the MAC Constitution). In particular, Verve Energy advocated that Compulsory Class members were best placed to nominate an appropriately qualified member, including their proxy or permanent replacement should this be required. As such they did not support the IMO having the ability to determine the suitability, or otherwise, of nominated representatives of Compulsory Class members. Verve considered that the Appointment Guidelines for proxies appeared too rigid. Verve contended that Compulsory Class members would only choose an appropriately qualified and experienced representative.

In response the IMO noted that while Compulsory Class member organisations are guaranteed a position on the MAC, they are representing their member class and therefore, like all other nominees for their member class, have the requirement to put forward only those nominees (and proxies) who meet the minimum requirements established in the MAC Appointment Guidelines. The IMO agreed with Verve's contention that Compulsory Class members would choose appropriate members and proxies. As noted above, the IMO amended the Constitution and Appointment Guidelines.

### **Requirement for MAC Constitution to be Consistent with Market Rules**

System Management highlighted the need for the MAC Constitution to be consistent with the Market Rules (clause 2.3.3). In particular, the concern was raised that a number of clauses in the proposed MAC Constitution may in themselves not be compliant with this requirement. System Management proposed that all amended clauses be checked to ensure that they do not introduce inconsistencies with the Market Rules.

System Management questioned whether the IMO's proposed rule change extends beyond the existing legislative frameworks governing the Wholesale Electricity Market.

The IMO noted that after further discussion with System Management on this matter it undertook a further review of the MAC Constitution from a legal perspective on the proposed Amending Rules, amended MAC Constitution and MAC Appointment Guidelines.

As a result of this the IMO and made a number of changes in the Draft Rule Change Report to improve the clarity of the documents and ensure consistency of the supporting documents with the Market Rules. The following amendments were made to the Constitution (and Appointment Guidelines where appropriate):

- Clause 1.5 (b): removal of the words "Electricity Industry" as the Act is defined in clause 1.1;
- Clause 2.1(d): reworded to ensure consistency with proposed Amending Rule clause 2.3.1 (the corresponding amendments has been made to clause 3.1 of the Appointment Guidelines);
- Clause 2.3: clarified to note that both members and their proxies are to act in the best interests of the market. As a result, remove the "subject to clause 2.3" from clauses 3.7 and 3.8;
- Clause 2.4: clarified that the views expressed by the MAC are of members only and exclude observer members;
- Clause 2.5: amended to remove the reference to MAC focussing on high level or strategic matters;
- Clause 3.3: included a Market Rule reference;
- Clause 3.4: clarified to note that the observers speaking rights apply at meetings of the MAC;
- Clause 3.7: amended to allow compulsory class members to send appropriate proxies with similar skills and experience to attend meetings in their place to meetings;
- Clause 3.10: amended to note that any member that does not make him or herself reasonably available for meetings may be removed as opposed to stating that any member missing four meetings in a year will be removed;
- Clause 4.1: amended to note that appointment and termination of members is in accordance with the Market Rules, as well as the relevant sections of the Constitution;
- Clauses 4.11 and 4.12: clarified to note that the nominations are for the Market Advisory Committee;

- Clause 5.1(d): reworded to ensure consistency with proposed Amending Rule clause 2.3.1;
- Clause 7.2: grammatical amendments; and
- Clause 8.5: clarified to refer to the Market Rule references for both Draft and Final Rule Change Reports.

The updated MAC Constitution was included as Appendix 3 of the Draft Rule Change Report. Amendments as a result of the first submission period were indicated in red font for ease of reference.

Following this review, the IMO considered that the amended MAC Constitution is consistent with the Market Rules and the proposed rule change is within the existing legislative frameworks governing the Wholesale Electricity Market.

Further the IMO noted that following any changes that result from the second round of submissions it will undertake a final review of the MAC Constitution and Appointment Guidelines to ensure consistency with the Market Rules.

### **Responsibilities of members**

In its submission System Management highlighted concerns with regard to the confidentiality amendments, noting that they may place MAC members in a difficult position with respect to their employers and the class of Market Participant they represent.

The IMO noted that further discussions with other Market Participants raised the issue of whether this is an appropriate obligation to place on MAC members given that the MAC members represent a particular class of Market Participant and that this representative process would naturally bring forward a range of different views to the IMO.

In response, the IMO noted that such a requirement is in place in other jurisdictions whereby members of Market Participant organisations are appointed to advisory committees as individuals and as such are required to act broadly in the interests of all industry stakeholders (participant classes). They do not represent their own organisations (although the range of commercial and technical experience inevitably adds diversity to the group's capabilities). Any views expressed by these members are not taken as being those of their employer or nominating organisation.

The IMO further noted that this matter has not previously been raised as being a matter of significant concern by MAC members. However, in order to fully assess this issue the IMO requested that participants specifically submit on this during the second consultation period.

The IMO noted that it will address this in the Final Rule Change Report following the outcomes of the second submission period.

## Market Rule Evolution Matters

Alinta noted that the MAC's role should be focused on advising the IMO, generally, on the future development of the Market Rules, rather than simply on specific rule or procedural changes and on operational matters. Alinta proposed the following clarification of the MAC's role (clause 2.3.1 (d)):

*"to advise the IMO regarding potential and future changes to the Market Rules regardless of whether these have been submitted as Rule Change Proposals".*

System Management expressed concerns that many areas of market evolution involve issues of energy policy and that the relevant legislations vest policy decision making responsibility in the Office of Energy. System Management noted that it is unclear how the role of the IMO in making policy choices would reconcile with the role of the Office of Energy.

The issues of potential conflict with the State Government's energy policy initiatives (such as the Verve Energy Review by Peter Oates) and the need for jurisdictional clarity were also noted in System Management's submission. In response to these concerns System Management suggested that it may be appropriate for this Rule Change Proposal to be delayed to allow MAC members the opportunity to consider changes in the policy landscape expected in the near future.

The IMO acknowledged the jurisdictional concerns of System Management. The IMO notes that it has always been its intent to restrict the focus to matters relating to Market Rule evolution.

The IMO stated that given the substantial volume of Rule Change Proposals which have been contemplated in the three years since market start, as well as the substantial volume of work identified in the IMO's Operational Plan, it is reasonable to expect that MAC members will be confronted with a significant volume of Market Rule evolution matters for their consideration in the foreseeable future. Further, Market Participants have recently been asked to prioritise the focus of market development/rule change activities in the near future. This process has indicated a desire by Market Participants in general to focus on those strategic, high risk and evolutionary Market Rule issues which will require substantial collaborative consideration and industry knowledge to develop and progress an appropriate solution. Therefore, while the IMO does not preclude considering more routine matters at MAC meetings, it considers that the focus of meetings should be on addressing these more strategic, high risk and evolutionary Market Rule matters.

The IMO noted that it has amended the drafting of clause 2.3.1 to clarify that the MAC's role is to advise the IMO regarding matters concerning the evolution of the Market Rules as opposed to Market evolution matters.

### APPENDIX 3: ADDITIONAL AMENDMENTS FOLLOWING THE FIRST SUBMISSION PERIOD

Following the first submission period the IMO made a number of changes to the proposed Amending Rules to address the issues raised in submissions. These changes are as follows (~~deleted text~~, added text):

- 2.3.1. The Market Advisory Committee is a committee of industry representatives convened by the IMO:
- (a) to advise the IMO regarding Rule Change Proposals;
  - (b) to advise the IMO and System Management regarding Procedure Change Proposals, ~~if required, or if requested by any Working Groups established under clause 2.3.17;~~
  - (c) to advise the IMO regarding market operation and SWIS operation matters; and
  - (d) to advise the IMO regarding matters concerning the evolution of the Market Rules ~~evolution matters.~~
- 2.3.2. The IMO must develop and publish a constitution for the Market Advisory Committee detailing:
- (a) the process for convening the Market Advisory Committee;
  - (b) the terms of reference of the Market Advisory Committee;
  - (c) the membership terms of Market Advisory Committee members;
  - (d) the process for appointing and replacing Market Advisory Committee members by the IMO;
  - (e) the conduct of Market Advisory Committee meetings;
  - (f) the role of the Market Advisory Committee ~~s~~Secretariat; ~~and~~
  - (g) interaction between the Market Advisory Committee and the IMO;
  - (h) the ability of the Market Advisory Committee to delegate any of the roles described in clause 2.3.1 to a Working Group; and
  - (i) interaction the governance arrangements to apply between the Market Advisory Committee and any Working Groups established under clause 2.3.17 where the Market Advisory Committee delegates any of the roles described in clause 2.3.1 to a Working Group.
- 2.3.5. Subject to clause 2.3.13-, the Market Advisory Committee must comprise:

- (a) three members representing ~~generators~~ Market Generators, of whom one must represent the Electricity Generation Corporation;
- (b) one member representing Contestable Customers;
- (c) at least one and not more than two members representing Network Operators, of whom one must represent the Electricity Networks Corporation;
- (d) three members representing ~~retailers~~ Market Customers, of whom one must represent the Electricity Retail Corporation;
- (e) one member nominated by the Minister to represent small-use consumers;
- (f) one member representing System Management;
- (g) one member representing the IMO; and
- (h) a chairperson ~~of the Market Advisory Committee~~, who must be a representative of the IMO.

2.3.10. When appointing and removing members of the Market Advisory Committee, the IMO must consult with, and take nominations from Rule Participants and industry groups, that it considers relevant to the ~~w~~Wholesale e~~m~~Electricity m~~M~~arket, and, if practicable, must choose members from persons nominated.

2.3.11. The IMO may remove a member of the Market Advisory Committee at any time in the following circumstances:

- (a) the person becomes an undischarged bankrupt;
- (b) the person becomes of unsound mind or his or her estate is liable to be dealt with in any way under law relating to mental health; or
- (c) an event specified for this purpose in the constitution for the Market Advisory Committee occurs; or
- (d) in the IMO's reasonable opinion the person no longer represents the person or class of persons that they were appointed to represent in accordance with clause 2.3.5.

2.3.14. The IMO must provide a ~~the~~ s~~Secretariat~~ for the Market Advisory Committee.

2.3.15. The ~~s~~Secretariat must convene the Market Advisory Committee:

- (a) on any occasion where these Market Rules require a meeting to discuss a Rule Change Proposal;
- (aA) on any occasion where these Market Rules require a meeting to discuss a Procedure Change Proposal, ~~if considered necessary by any Working Groups established under clause 2.3.17;~~

- (b) not less than once every six months so as to raise and discuss issues with respect to the operation of the market; and
- (c) on any occasion when two or more members of the Market Advisory Committee have informed the ~~s~~Secretariat in writing that they wish to bring a matter regarding market operation, the evolution of these Market Rules ~~evolution~~ or the operation of these Market Rules before the Market Advisory Committee for discussion.

2.3.17. The Market Advisory Committee may:

- (a) ~~nominate a~~ establish one or more Working Groups comprised of Representatives of Rule Participants and other interested stakeholders, to assist the Market Advisory Committee in advising the IMO on any of the matters listed in clause 2.3.1 of the Market Rules; and
- (b) disband any Working Groups where it considers that the Working Group is no longer required, or will no longer be required, to assist the Market Advisory Committee in advising the IMO on any of the matters listed in clause 2.3.1 of the Market Rules.

2.7.7. The ~~d~~Draft Rule Change Report must contain:

- (a) the information in the notice of the Rule Change Proposal under clause 2.5.7;
- (b) all submissions received before the due date for submissions, a summary of those submissions, and the IMO's response to issues raised in those submissions;
- (c) a summary of any public forums or workshops held;
- (d) a summary of the views expressed by the members of the Market Advisory Committee where the Market Advisory Committee met to consider the Rule Change Proposal; or, if the Market Advisory Committee has delegated its role to consider the Rule Change Proposal to a Working Group under clause 2.3.17(a), a summary of the views expressed by that Working Group;
- (e) the IMO's assessment of the Rule Change Proposal in light of clauses 2.4.2 and 2.4.3;
- (f) a proposal as to whether the Rule Change Proposal should be accepted in the form proposed. The proposal may be that:
  - i. the Rule Change Proposal be accepted in the proposed form; or
  - ii. the Rule Change Proposal be accepted in a modified form; or
  - iii. the Rule Change Proposal be rejected; and

- (g) if the IMO proposes to make Amending Rules arising from the Rule Change Proposal:
  - i. the wording of the proposed Amending Rules; and
  - ii. a proposed date and time the proposed Amending Rules will commence.

2.10.8. Within one Business Day after the publication of a Procedure Change Proposal notice in accordance with clause 2.10.4 or 2.10.5, as applicable, the IMO must notify all members and observers of the Market Advisory Committee as to whether the IMO considers that the Procedure Change Proposal requires convening the Market Advisory Committee and the reasons why.

2.10.13. The Procedure Change Report must contain:

- (a) the wording of the proposed Market Procedure or amendment to or replacement for the Market Procedure;
- (b) the reason for the proposed Market Procedure or amendment to or replacement for the Market Procedure;
- (c) all submissions received before the due date for submissions, a summary of those submissions, and the response of the IMO or System Management, as applicable, to the issues raised in those submissions; and
- (d) a summary of the views expressed by the Market Advisory Committee or, if the Market Advisory Committee has delegated its role to consider the Procedure Change Proposal to a Working Group specifically appointed by the Market Advisory Committee under clause 2.3.17(a), a summary of the views expressed by that Working Group to consider such Procedure Change Proposals;

Chapter 11: Glossary

**Secretariat:** the secretariat of the Market Advisory Committee.

**Working Group:** a working group as established under clause 2.3.17 of these Market Rules.



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## **CONSTITUTION OF THE MARKET ADVISORY COMMITTEE**

### **1. Introduction**

- 1.1. The Wholesale Electricity Market Rules (Market Rules) are made under the *Electricity Industry (Wholesale Electricity Market) Regulations 2004* (Regulations) and in accordance with section 123 of the *Electricity Industry Act 2004* (the Act).
- 1.2. The Wholesale Market Objectives are as contained within section 122 of the Act (see Appendix 1 of this Constitution) and clause 1.2.1 of the Market Rules.
- 1.3. The Independent Market Operator (IMO) is responsible for administering the Wholesale Electricity Market, and, as part of this for developing:
  - a) amendments to the Market Rules and replacements for them; and
  - b) Market Procedures, and amendments and replacements for them, where required by the Market Rules.
- 1.4. IMO must not make Amending Rules unless it is satisfied that the Market Rules, as proposed to be amended or replaced, are consistent with the Wholesale Market Objectives.
- 1.5. The IMO must ensure that proposed amendments to Market Procedures are:
  - a) consistent with the Wholesale Market Objectives; and
  - b) consistent with the Market Rules, the Act, and Regulations.
- 1.6. Terms used in this Constitution have the same meaning as defined in the Market Rules.
- 1.7. The purpose of this document is to set out the Constitution of the Market Advisory Committee.

- 1.8. This Constitution has been issued under the Market Rules and as such if a provision of a document which is higher in order of precedence, such as those noted in clause 1.5 (b) of this Constitution, is inconsistent with a provision of this Constitution, then the higher provision prevails, but only to the extent of the inconsistency.

## 2. Terms of Reference

- 2.1. The Market Advisory Committee is a committee of industry representatives convened by the IMO:
- a) to advise the IMO regarding Rule Change Proposals;
  - b) to advise the IMO and System Management regarding Procedure Change Proposals;
  - c) to advise the IMO regarding market operation and South West interconnected system operational matters; and
  - d) to advise the IMO regarding matters concerning the evolution of the Market Rules.
- 2.2. The Market Advisory Committee must have regard to the Wholesale Market Objectives in carrying out its functions.
- 2.3. Market Advisory Committee members or their proxies are required to act in the best interests of the Wholesale Electricity Market.<sup>1</sup>
- 2.4. Market Advisory Committee members do not vote on issues. Recommendations of the Market Advisory Committee are based on a consensus of the views expressed by the members, excluding the observers.
- 2.5. The Market Advisory Committee may establish Working Groups comprised of representatives of Rule Participants and other interested stakeholders to assist it in advising the IMO.

## 3. Membership Terms

- 3.1. The Market Advisory Committee must comprise:
- a) three members representing Market Generators, of whom one will represent the Electricity Generation Corporation (Verve Energy);
  - b) one member representing Contestable Customers;
  - c) at least one and not more than two members representing Network Operators, of whom one will represent the Electricity Networks Corporation (Western Power);

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<sup>1</sup> It is acknowledged that at times the classes of representation on the MAC may have varying interests. Despite this members or their proxies are required to act in the overall best interests of the Wholesale Electricity Market.

- d) three members representing Market Customers, of whom one will represent the Electricity Retail Corporation (Synergy);
  - e) one member nominated by the Minister to represent small-use consumers;
  - f) one member representing System Management;
  - g) one member representing the IMO; and
  - h) a Chairperson, who will be a representative of the IMO.
- 3.2. The Minister may appoint a representative to attend Market Advisory Committee meetings as an observer, as outlined in clause 2.3.6 of the Market Rules.
  - 3.3. The Economic Regulation Authority may appoint a representative to attend Market Advisory Committee meetings as an observer, as outlined in clause 2.3.7 of the Market Rules.
  - 3.4. Observers have full speaking rights at meetings of the Market Advisory Committee but are excluded from participating in making any recommendations.
  - 3.5. Members who represent a single entity (System Management, the IMO, the Electricity Generation Corporation, the Electricity Retail Corporation, and the Electricity Networks Corporation) are Compulsory class members.
  - 3.6. Members who represent a class of participants but are not compulsory members (Market Generators<sup>2</sup>, Market Customers<sup>3</sup>, Network Operators<sup>4</sup>, small-use consumers, and Contestable Customers) are Discretionary class members.
  - 3.7. Compulsory class members can send appropriate proxies with similar skills and experience to attend meetings in their place.
  - 3.8. Discretionary class members can recommend an appropriate proxy (from any organisation which belongs to the same class as the member) who must have similar skills and experience. Discretionary class members can not send a proxy by right. Permission for the attendance by proxies will be at the Chairperson's discretion.
  - 3.9. The Market Advisory Committee may continue to perform its functions under clause 2.3 of the Market Rules despite any vacancy, provided that the quorum noted in clause 6.3 of this Constitution is met.
  - 3.10 Each member ~~(or proxy for a Compulsory class member)~~ is required to make him or herself reasonably available for all meetings. Members who have not been reasonably available for all meetings may be removed by the IMO under clause 4.6 of the Constitution. Proxies sent by Compulsory class members count towards attendance by

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<sup>2</sup> Excluding the Electricity Generation Corporation

<sup>3</sup> Excluding the Electricity Retail Corporation

<sup>4</sup> Excluding the Electricity Networks Corporation

the Compulsory class member. Proxies sent by Discretionary class members do not count towards attendance by the Discretionary ~~Member class members.~~

3.11 Each member and observer is required to:

- a) be prepared for all Market Advisory Committee meetings, to read the papers and to actively contribute to the discussions; and
- b) not use their position or information gained as a member or observer improperly to gain an advantage for themselves or anyone else, or cause detriment to the IMO or the market;

3.12 Each member and observer must pay their own expenses associated with participating in the Market Advisory Committee.

3.13 At the discretion of the Chairperson, other persons may be allowed to attend Market Advisory Committee meetings as observers from time to time.

#### **4. Appointing and Rotating members**

4.1. The IMO may appoint members and terminate membership of the Market Advisory Committee, in accordance with the Market Rules, this section 4 and Appendix 2 of this Constitution.

4.2 For the calendar year beginning on 1 January 2010 Market Advisory Committee members will be appointed for a one or two-year term as determined by a ballot conducted by the IMO in accordance with the Market Advisory Committee Appointment Guidelines.

4.3 Thereafter each member will be appointed for a two-year term, subject to any earlier termination.

4.4 With the exception of the IMO and Western Power<sup>5</sup>, there may not be more than one individual from the same employing organisation on the Market Advisory Committee at any one time.

4.5 Each year the IMO will review the performance and attendance of all Market Advisory Committee members. Following the review the IMO may terminate membership of any members that it considers have not met the requirements of members as set out in the Constitution or the Market Advisory Committee Appointment Guidelines, and may appoint replacement members.

4.6 The IMO may remove a member of the Market Advisory Committee at any time in the circumstances described in Appendix 2.

4.7 There are no restrictions on the number of times a member can be reappointed to the Market Advisory Committee.

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<sup>5</sup> Reflecting the operation of the ring fencing provisions between System Management and the Network Operator for market purposes.

- 4.8 A member of the Market Advisory Committee may resign by giving notice to the IMO in writing. The IMO will appoint a replacement member for the duration of the previous member's remaining length of tenure.
- 4.9 When a position on the Market Advisory Committee is vacant at any time, the IMO will use its reasonable endeavours to appoint a suitable person to fill the position. For Compulsory class members, the IMO will request a suitably qualified replacement nominee is provided to attend meetings, consistent with the Market Advisory Committee Appointment Guidelines.
- 4.10 When appointing and removing members of the Market Advisory Committee, the IMO will consult with, and take nominations from, Rule Participants and industry groups, that it considers relevant to the Wholesale Electricity Market. If practicable, and taking into account the requirements of the Market Rules regarding the Market Advisory Committee composition, the IMO will choose members from among those persons nominated. Further details of the nomination process are provided in the Market Advisory Committee Appointment Guidelines.
- 4.11 The IMO will advertise for nominations to the Market Advisory Committee on its public website and via direct contact with appropriate industry groups. Any company or individual can make nominations.
- 4.12 An individual may be nominated Market Advisory Committee for as many categories relevant to the entity to which they belong and for which the nominee meets the eligibility criteria.

## **5 Convening the Market Advisory Committee**

- 5.1. The Market Advisory Committee will be convened:
  - a) in relation to a Rule Change Proposal or Procedure Change Proposal where the IMO considers that advice is required from the Market Advisory Committee, in which case the meeting will be called before the due date for submissions on the proposed changes;
  - b) in relation to a Rule Change Proposal or Procedure Change Proposal where two or more members of the Market Advisory Committee have informed the Secretariat in writing that they consider that advice is required from the Market Advisory Committee;
  - c) not less than once every six months;
  - d) on any occasion when two or more members of the Market Advisory Committee have informed the secretariat in writing that they wish to bring a matter regarding market operation, the evolution of the Market Rules or the operation of the Market Rules before the Market Advisory Committee for discussion; and
  - e) where possible, consistent with the provisional schedule of Market Advisory Committee meetings, issued annually by the IMO.

## **6 Conduct of Meetings**

- 6.1. The Chairperson may determine procedures for meetings of the Market Advisory Committee.
- 6.2. The Market Advisory Committee may make recommendations on an issue if a consensus is achieved. Any recommendations made by the Market Advisory Committee must be based on the consensus decision of members, excluding the opinion of observers.
- 6.3. Unless a quorum of members is present at the time, no recommendations will be made. A quorum requires fifty percent of total current members to be present at the meeting, including at least one representative from each of the Market Generators and the Market Customers in that quorum.
- 6.4. The Chairperson may, in relation to any matter under consideration in the Market Advisory Committee, require all members and observers to treat the matter as confidential until advised otherwise. All members and observers must comply with that requirement.
- 6.5. Meetings of the Market Advisory Committee may be called or held using any technology determined by the Chairperson and at a location nominated by the Chairperson.
- 6.6. A communication between Market Advisory Committee members constituting a quorum under clause 6.3 of this Constitution by telephone or audiovisual means is a valid meeting of the Market Advisory Committee, but only if each participating member or observer is capable of communicating with every other member or observer instantaneously at all times during the meetings.
- 6.7. The Chairperson may, at his or her discretion, approve late papers for a Market Advisory Committee meeting.

## **7 Role of the Market Advisory Committee Secretariat**

- 7.1. The IMO will provide the Secretariat for the Market Advisory Committee.
- 7.2. The Secretariat will:
  - a) schedule meetings and maintain the diary of the Market Advisory Committee;
  - b) compile the meeting papers and send them by email to all members and observers of the Market Advisory Committee at least five days before each meeting (subject to any approved late papers in accordance with clause 6.7);
  - c) prepare the minutes of each market Advisory Committee meeting and send them by email to all members and observers of the Market Advisory Committee within ten Business Days of the meeting; and

- d) subject to the confidentiality status of the matters in meeting minutes (in accordance with clause 10.2 of the Market Rules), publish the minutes on the IMO website.

## **8 Interaction between the Market Advisory Committee and the IMO**

- 8.1. All written communications from the members and observers of the Market Advisory Committee will be sent to the Secretariat.
- 8.2. Communications between the members and observers of the Market Advisory Committee and the IMO will be via email wherever practical.
- 8.3. Subject to clause 10.2.4 of the Market Rules, the IMO will provide the members and observers of the Market Advisory Committee with information in its possession that is directly relevant to the issues being addressed by the Market Advisory Committee.
- 8.4. Within one Business Day after the publication of a notice of a Rule Change Proposal or Procedure Change Proposal the IMO will notify the members and observers of the Market Advisory Committee, via email, as to whether the IMO considers that advice on the proposal is required from the Market Advisory Committee and the reasons why.
- 8.5. The IMO will include in its Rule Change Reports (clauses 2.7.7 and 2.7.8 of the Market Rules) a summary of the views expressed by the members of the Market Advisory Committee, where the Market Advisory Committee has met to consider a Rule Change Proposal, or where a Working Group has been appointed by the MAC to consider a Rule Change Proposal, a summary of the views expressed by that Working Group.
- 8.6. The IMO will include in its Procedure Change Reports (clause 2.10.13 of the Market Rules) a summary of the views expressed by the members of the Market Advisory Committee, where the Market Advisory Committee has met to consider a Procedure Change Proposal, or where a Working Group has been appointed by the Market Advisory Committee to consider a Procedure Change Proposal, a summary of the views expressed by that Working Group.

## **9 Governance Arrangements between the Market Advisory Committee and delegated Working Groups**

- 9.1 In accordance with clause 2.3.17 of the Market Rules, the Market Advisory Committee may delegate its role of advising the IMO, and System Management in the case of Procedure Change Proposals, described in clause 2.3.1 of the Market Rules to a Working Group. The IMO's ability to establish and disband Working Groups comprised of Representatives of Rule Participants and other interested stakeholders is provided under clause 2.3.17 of the Market Rules.
- 9.2 The Market Advisory Committee must determine the scope of work and Terms of Reference for each Working Group. The Market Advisory Committee may approve any amendments to the Terms of Reference or membership of a Working Group.

- 9.3 The Terms of Reference for a Working Group, will be tailored to the specific requirements of each Working Group and would typically include the:
- a) background (reason for the establishment of the Working Group);
  - b) purpose and scope of the Working Group;
  - c) roles and responsibilities of members of the Working Group;
  - d) membership of the Working Group;
  - e) administration, Secretariat and meeting arrangements for the Working Group; and
  - f) reporting arrangements to the Market Advisory Committee.
- 9.4 Working Groups must report back to the Market Advisory Committee at least once every two months. Routine reporting will be via the Working Group secretariat. The Working Group will report to the Market Advisory Committee at other milestones agreed with the Market Advisory Committee. Day-to-day interaction between the Market Advisory Committee and the Working Groups will be via the IMO.
- 9.5 Working Groups must refer issues outside the scope of the Working Group's Terms of Reference back to the Market Advisory Committee for consideration.

[7 December 2009]

## **Appendix 1. The Market Objectives**

The market objectives, as outlined in section 122 of the *Electricity Industry Act 2004* and 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;
- 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.

## **Appendix 2. Removal of Members**

The occurrence of any of the following events will entitle the IMO to terminate a member's membership on the Market Advisory Committee (clause 2.3.11 of the Market Rules):

- a) the person becomes an undischarged bankrupt; or
- b) the person becomes of unsound mind or his or her estate is liable to be dealt with in any way under law relating to mental health; or
- c) in the IMO's reasonable opinion the person no longer represents the person or class of persons that they were appointed to represent in accordance with clause 2.3.5 of the Market Rules; or
- d) the person is not actively participating in the Market Advisory Committee; or
- e) the person breaches any part of this constitution of the Market Advisory Committee.

**END OF DOCUMENT**

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## **MARKET ADVISORY COMMITTEE APPOINTMENT GUIDELINES**

7 December 2009

### **1. Scope and purpose**

- 1.1 The purpose of these guidelines is to provide transparency as to the process to be followed for the appointment of members to the Market Advisory Committee (the MAC). They have been developed to inform industry groups, Rule Participants and their respective nominees of the selection and appointment processes applied by the Independent Market Operator (IMO).
- 1.2 These guidelines set out the details of:
  - a. the background to the MAC;
  - b. the requisite skills, knowledge and experience of MAC members;
  - c. the requirements for representation of MAC members;
  - d. the terms of appointment for MAC members;
  - e. the steps involved in the appointment process; and
  - f. any other matters that the IMO considers will contribute to good governance and the effective operation of the MAC.
- 1.3 The IMO seeks a balanced representation and a diverse mix of knowledge and experience among members of the MAC. These guidelines set out how the IMO aims to achieve this.

### **2. Related documents**

- 2.1 This document has been developed in accordance with, and should be read in conjunction with the following:

- a. clauses 2.3.1 to 2.3.17 of the Wholesale Electricity Market Rules (Market Rules); and
- b. the MAC Constitution.

### **3. Background to the Market Advisory Committee**

3.1 The MAC is established pursuant to section 2.3 of the Market Rules. The MAC is a committee of industry representatives convened by the IMO:

- a. to advise the IMO regarding Rule Change Proposals;
- b. to advise the IMO and System Management regarding Procedure Change Proposals;
- c. to advise the IMO regarding market operation and South West interconnected system operation matters; and
- d. to advise the IMO regarding matters concerning the evolution of the Market Rules.

3.2 In accordance with clause 2.3.5 of the Market Rules, the MAC must comprise of:

- a. three members representing Market Generators, of whom one will represent the Electricity Generation Corporation (Verve Energy);
- b. one member representing Contestable Customers;
- c. at least one and not more than two members representing Network Operators, of whom one will represent the Electricity Networks Corporation (Western Power<sup>6</sup>);
- d. three members representing Market Customers, of whom one will represent the Electricity Retail Corporation (Synergy);
- e. one member nominated by the Minister to represent small-use consumers;
- f. one member representing System Management;
- g. one member representing the IMO; and
- h. a Chairperson, who will be a representative of the IMO.

The Minister and the ERA may also each appoint a representative to attend MAC meetings as observers, as outlined in clauses 2.3.6 and 2.3.7 of the Market Rules.

3.3 The MAC is an advisory committee and does not vote on issues. The MAC may make recommendations to the IMO if a consensus is achieved. Any recommendations made by the MAC are based on the consensus decision of members, excluding the opinion of

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<sup>6</sup> Excluding System Management, who operates as a ring-fenced entity for market purposes.

observers. However, for the avoidance of doubt, observers on the MAC otherwise have full speaking rights.

- 3.4 The MAC must have regard to the Wholesale Market Objectives in carrying out its functions.

#### **4. Skills, knowledge and experience of members**

- 4.1 The applicants for appointment to the MAC should collectively possess the skills, knowledge and experience specified in clause 4.2 below.

- 4.2 The IMO will take into account, but is not limited to, the following expected skills, knowledge and experience of the MAC (as a body) when making appointment decisions:

- a. Knowledge and/or demonstrated experience of energy sector issues;
- b. Broad understanding of the technical, design and commercial aspects of the WEM;
- c. Ability to contribute to the MAC and the Wholesale Market Objectives;
- d. Ability to work as a member of a small team;
- e. Ability to assess proposed rule and procedure changes against the Wholesale Market Objectives;
- f. Demonstrated ability to understand the subject matter proposals made to the MAC;
- g. Ability to consider market design issues and options for the evolution of the Market Rules;
- h. Understanding of the Market Rules and other relevant legislation; and
- i. Knowledge of the powers and obligations of both the IMO and System Management and the frameworks in which they operate.

- 4.3 The IMO anticipates that nominations will be of people with preferably middle management experience or above, or similar.

- 4.4 Applicants are not required to be full time employees of an entity that is a participant in the class which membership is being sought.

#### **5. Representation of members**

- 5.1 MAC members are required to act in the best interests of the Wholesale Electricity Market.

- 5.2 Compulsory Class members are individuals who represent a single entity. Compulsory Class members must demonstrate their eligibility against the criteria for membership and

necessary skills, knowledge and experience. This is to allow the IMO to consider the skills and experience of the Compulsory Class members when making discretionary appointment decisions to ensure that the MAC is a well-rounded committee.

- 5.3 Discretionary Class members are individuals that represent a class of participants but are not Compulsory Class members. Discretionary Class members are expected to act in a way that properly reflects the interests of the group that they have been chosen to represent i.e. Market Generators, Market Customers or Contestable Customers. Discretionary Class members must demonstrate their eligibility against the criteria for membership and necessary skills, knowledge and experience.

## **6. Term of appointment**

- 6.1 ~~Inaugural m~~Membership on the MAC for the 2010 year for both Discretionary and Compulsory class members will be for either one or two years with the opportunity for reappointment after this time period has lapsed.
- 6.2 For the calendar year beginning 1 January 2010 the term of membership will be determined by the IMO conducting a ballot. Half of the then current members will be appointed for one year and the remainder will be appointed for a two-year term. The ballot will be designed so that no particular class of membership will be completely rotated out in a single year. For example all Market Generator representatives would not be up for renewal in a single year. Members chosen by ballot for a one year term will be eligible for reappointment to an additional two year term if they meet the appointment criteria at the time.
- 6.3 Thereafter, the term of appointment of Discretionary Class members will be two years. This is to ensure consistency in decision making and that all sections of the industry are adequately represented as the market matures.
- 6.4 Compulsory Class membership, after inaugural membership has expired, is for two years to ensure consistency of representation. At the lapse of tenure Compulsory Class members will be able to renominate an individual to serve on the MAC.
- 6.5 The IMO may appoint new members into Compulsory and Discretionary Class positions, if necessary, when members are no longer representative of the class. This includes situations where the member's employment changes to being employed by an entity outside of the member's class of representation or upon occurrence of any of the events listed clause 2.3.11 of the Market Rules.
- 6.6 There are no restrictions on the number of times a member can be reappointed to the MAC, but in making appointments the IMO's objective is to get the best representation of the industry over time to ensure a dynamic MAC that is representative of the market.
- 6.7 MAC members will be reappointed based on the IMO's assessment of individuals against the appointment criteria to ensure that they conform to the requirements and are representative of their class.

## **7. The nominations and appointment process**

- 7.1 Each year the IMO will review the performance and attendance of MAC members. If any changes are required these will be addressed at the same time the IMO commences the annual appointment process for Discretionary and Compulsory Class members whose tenure has lapsed.
- 7.2 On completion of the annual review the IMO will seek nominations from industry groups and Rule Participants. Industry consultation includes, but is not limited to:
- a. Chamber of Commerce and Industry of Western Australia;
  - b. Chamber of Minerals and Energy of Western Australia; and
  - c. Western Australian Sustainable Energy Association
- 7.3 The IMO will advertise for nominations on its public website and via direct contact with appropriate industry groups. The IMO will also send an email notification to people/entities on its market advisory mailing list maintained by the Market Development team.
- 7.4 Any company or individual can make nominations. Nominations must:
- a. Be in writing;
  - b. Address the eligibility criteria for appointment to the MAC as set out in the Market Rules, MAC Constitution and this document;
  - c. Have attached a completed MAC application form, available on the IMO webpage, outlining the skills set of applicants with respect to the class(es) of nomination;
  - d. Include contact details of the nominee (to demonstrate evidence of the persons willingness for appointment); and
  - e. Be received by the IMO by the published due date.
- 7.5 Nominee details provided to the IMO will be kept private. A high-level assessment of all the nominees against the appointment criteria may be made publically available by the IMO if requested by an interested party.
- 7.6 An individual may be nominated for as many categories relevant to the entity to which they belong and for which the nominee meets the eligibility criteria. For example an entity which is both a Market Generator and Market Customer may nominate individuals for both of these categories.
- 7.7 With the exception of the IMO and Western Power, the IMO can only appoint one individual from any one entity to serve on the MAC at any one time.

- 7.8 The IMO will consider nominations received, determine the appropriate composition of the MAC, and finalise appointment arrangements by ~~15 December of~~ the publicised date every year.

**END OF DOCUMENT**