

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

Independent Market Operator

Rule Change Notice

Title: **Change of Review
Board name**

Ref: RC_2010_18

Fast Track Rule Change Process

Date: 21 June 2010

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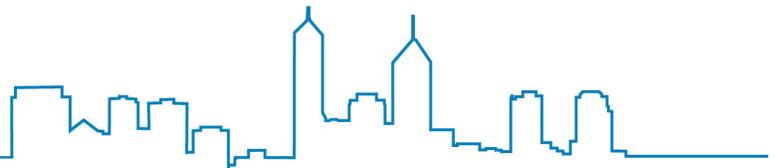
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DOCUMENT DETAILS

IMO Notice No.: RC_2010_18
Report Title: Rule Change Notice: Change of Review Board name
Release Status: Public
Confidentiality Status: Public domain
Published in accordance with Market Rule 2.5.7

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1. THE RULE CHANGE PROPOSAL

1.1. The Submission

On 18 June 2010 the Independent Market Operator (IMO) submitted a Rule Change Proposal regarding amendments to clauses 2.8.1, 2.8.2, 2.11.1, 2.11.2, 2.13.17, 2.13.18, 2.13.22, 2.13.23, 2.13.24, 2.13.26, 2.13.28, 2.15.3(f), 2.16.9G, 2.16.9H, 2.17.3, 2.31.13(e), 2.32.1, 2.32.5(b), 2.32.6, 2.32.7, 10.2.2 and 10.5.1(r) and the Glossary of the Wholesale Electricity Market Rules (Market Rules).

This Rule Change Notice is published according to clause 2.5.7 of the Market Rules, which requires the IMO to publish a notice when it has developed a Rule Change Proposal.

1.1.1 Submission details

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Address:	Level 3, Governor Stirling Tower, 197 St Georges Terrace, Perth
Date submitted:	18 June 2010
Urgency:	Low
Change Proposal title:	Change of Review Board name
Market Rules affected:	Clauses 2.8.1, 2.8.2, 2.11.1, 2.11.2, 2.13.17, 2.13.18, 2.13.22, 2.13.23, 2.13.24, 2.13.26, 2.13.28, 2.15.3(f), 2.16.9G, 2.16.9H, 2.17.3, 2.31.13(e), 2.32.1, 2.32.5(b), 2.32.6, 2.32.7, 10.2.2 and 10.5.1(r) and the Glossary

1.2. Details of the Proposal

The Energy Review Board is the primary appeals body for the Wholesale Electricity Market, having the functions of:

- imposing penalties for more serious categories of breaches of the Market Rules;
- hearing appeals against the IMO's decisions relating to rule breaches;
- hearing claims from Rule Participants that the IMO has breached the Market Rules;
- hearing appeals against reviewable decisions by the IMO; and
- at the request of a Rule Participant, conducting a procedural review as to whether the IMO has correctly followed the rules relating to Rule Changes, and where appropriate overturning Rule Change decisions by the IMO if the IMO has failed to follow the correct process.



The Market Rules define the Energy Review Board as “the Board within the meaning of the Electricity Industry Act”. Until early this year, the Electricity Industry Act 2004 stated that “**Board** has the meaning given to that term in the Gas Pipelines Access (Western Australia) Act 1998 section 49”. Section 49 defined this Board as the Western Australian Gas Review Board, established under section 50 of the same Act.

The initial role of the Western Australian Gas Review Board was expanded to include electricity related functions, after which it was commonly referred to as the Energy (Gas) Review Board. Prior to market start, while the Market Rules were still under development, the Office of Energy planned to make legislative amendments to change the name to Energy Review Board, and this name was used in the Market Rules in anticipation. However, the legislative amendment never occurred.

Earlier this year, legislation was passed to introduce the new gas access regime under the National Gas Access (WA) Act 2009 (the NGA Act). The NGA Act changed the names of other legislation and entities to reflect their revised roles and responsibilities, as follows:

- the Gas Pipelines Access (WA) Act 1998 was renamed the Energy Arbitration and Review Act 1998; and
- the Western Australian Gas Review Board was renamed the Western Australian Electricity Review Board.

To reflect these changes, the definition of “Board” in the Electricity Industry Act 2004 has been updated to refer to the Energy Arbitration and Review Act 1998. It should be noted that in relation to the Wholesale Electricity Market, the amendments are changes in name only. The panel members appointed under the Gas Pipelines Access (WA) Act 1998, from which an Electricity Review Board may be convened, continue as the same panel members under the renamed Energy Arbitration and Review Act 1998.

To avoid any confusion in the future, the IMO proposes to amend the Market Rules to reflect the amended name of its primary appeals body. This involves replacing “Energy Review Board” with “Electricity Review Board” in the relevant clauses of the Market Rules (the prefix “Western Australian” has been omitted for the sake of brevity, as the IMO does not consider it to be necessary in this context).

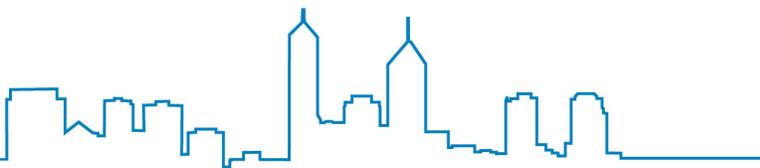
1.3. The Proposal and the Wholesale Market Objectives

The IMO considers that the proposed changes, which will improve the integrity of the Market Rules, are consistent with the operation of the Wholesale Market Objectives.

2. WHETHER THE PROPOSAL WILL BE PROGRESSED FURTHER

The IMO has decided to process this Rule Change Proposal using the Fast Track Rule Change Process, described in section 2.6 of the Market Rules, on the basis that it satisfies the criteria in clause 2.5.9(a) of the Market Rules. Clause 2.5.9 states:

The IMO may subject a Rule Change Proposal to the Fast Track Rule Change Process if, in its opinion, the Rule Change Proposal:



(a) is of a minor or procedural nature; or

(b) is required to correct a manifest error; or

(c) is urgently required and is essential for the safe, effective and reliable operation of the market or the SWIS.

The IMO considers that the proposed changes are minor amendments which will improve the integrity of the Market Rules. The changes do not seek to amend the operation of the Market Rules. As such, the proposal fulfils sub-clause 2.5.9(a), in that it is of a minor nature, and therefore may be fast-tracked.

The projected timeline for processing this proposal is:



Please note that the Commencement Date is provisional and may be subject to change in the Final Rule Change Report.

3. CALL FOR SUBMISSIONS

Any Rule Participant wishing to be consulted regarding this Rule Change Proposal is invited to notify the IMO within 5 Business Days of this notice being published (**28 June 2010**).

The consultation period is 15 Business Days from the publication date of this Rule Change Notice. Submissions must be delivered to the IMO by 5.00pm on **Monday 12 July 2010**.

The IMO prefers to receive submissions by email to market.development@imowa.com.au using the submission form available on the IMO website: <http://www.imowa.com.au/rule-changes>

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

Independent Market Operator
Attn: General Manager Development
PO Box 7096
Cloisters Square, Perth, WA 6850

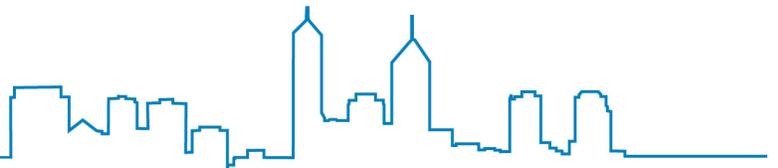
Fax: (08) 9254 4399

4. PROPOSED AMENDING RULES

The IMO proposes the following amendments to the Market Rules (~~deleted text~~, added text):

- 2.8.1. A Rule Participant may apply to the ~~Energy~~ Electricity Review Board for a Procedural Review of a decision by the IMO contemplated by clause 2.5.9, 2.6.4(f) or 2.7.8(e) within 10 Business Days of the relevant decision, on the grounds that the IMO has not followed the rule change process set out in clauses 2.5, 2.6 and 2.7.
- 2.8.2. Following an application for a Procedural Review under clause 2.8.1, if the ~~Energy~~ Electricity Review Board finds that the IMO has not followed the rule change process set out in clauses 2.5, 2.6 and 2.7 the ~~Energy~~ Electricity Review Board may set aside the IMO's decision and direct the IMO to reconsider the relevant Rule Change Proposal in accordance with the process set out in clauses 2.5, 2.6 and 2.7.
- 2.11.1. A Rule Participant may apply to the ~~Energy~~ Electricity Review Board for a Procedural Review of a decision by the IMO or System Management contemplated by clause 2.10.13 or 2.10.14 within 10 Business Days of the decision, on the grounds that the IMO or System Management has not followed the process set out in clause 2.10 or the Administration Procedure.
- 2.11.2. Following an application for a Procedural Review under clause 2.11.1, if the ~~Energy~~ Electricity Review Board finds that the IMO or System Management has not followed the process set out in clause 2.10 or the Administration Procedure, the ~~Energy~~ Electricity Review Board may set aside the IMO's decision or System Management's decision and direct the IMO or System Management to reconsider the relevant Procedure Change Proposal in accordance with clause 2.10 and the Administration Procedure.
- 2.13.17. Where the IMO issues a penalty notice under clause 2.13.16(a), the Rule Participants that received the penalty notice may seek a review of that decision by the ~~Energy~~ Electricity Review Board in accordance with the Regulations.
- 2.13.18. Where:
- (a) the alleged breach relates to a Category B or Category C Market Rule (as determined in accordance with the Regulations); and
 - (b) following the investigation referred to in clause 2.13.10(b), the IMO reasonably believes that a breach of the Market Rules has taken place,
- the IMO may bring proceedings before the ~~Energy~~ Electricity Review Board.

- 2.13.22. Where the person referred to in clause 2.13.1 considers that the alleged breach has not been rectified within the time set out in accordance with clause 2.13.21(a)(iv) it may bring proceedings before the Energy Electricity Review Board.
- 2.13.23. The orders that the Energy Electricity Review Board may make for a breach of the Market Rules and the procedures for the operation of the Energy Electricity Review Board are set out in the Regulations.
- 2.13.24. The IMO may direct a Rule Participant to do or to refrain from doing any thing that the IMO thinks necessary or desirable to give effect or to assist in giving effect to any order of the Energy Electricity Review Board.
- 2.13.26. The IMO must release a report at least once every six months setting out a summary for the preceding six months of:
- (a) proceedings that have been brought before the Energy Electricity Review Board;
 - (b) findings of the Energy Electricity Review Board on matters referred to them;
 - (c) orders made by the Energy Electricity Review Board; and
 - (d) civil penalties imposed by the IMO under clause 2.13.16(a), where these have not been set aside by the Energy Electricity Review Board.
- 2.13.28. In addition to the regular publication described in clause 2.13.26, the IMO may release a report on any one or more matters where the IMO has made a decision under clause 2.13.16(a) or which have been referred to the Energy Electricity Review Board, the findings of the IMO and the Energy Electricity Review Board, as applicable, on those matters and any sanctions imposed by the IMO or the Energy Electricity Review Board in relation to those matters.
- 2.15.3. The Monitoring Protocol must specify:
- ...
- (f) the procedure for bringing proceedings in respect of Category B or C Market Rule breaches before the Energy Electricity Review Board.
- 2.16.9G. Where the Economic Regulation Authority determines that prices in the Portfolio Supply Curve, subject to the investigation, did not reflect the Market Generator's reasonable expectation of the short run marginal cost of generating the relevant electricity, the Economic Regulation Authority must request that the IMO applies to the Energy Electricity Review Board for an order for contravention of clause 6.6.3.



- 2.16.9H. Where the IMO receives a request under clause 2.16.9G the IMO must refer the relevant matter to the ~~Energy~~ Electricity Review Board requesting that a civil penalty be imposed on the relevant Market Participant.
- 2.17.3. In accordance with the Regulations, a Rule Participant may apply to the ~~Energy~~ Electricity Review Board for a review of Reviewable Decisions or a decision made under clauses subject to Procedural Review.
- 2.31.13. The IMO may only reject an application if:
- ...
- (e) in the case of an application to register as a Rule Participant in any class where the person has previously been de-registered as a Rule Participant following an order from the ~~Energy~~ Electricity Review Board, the IMO is not satisfied that person has remedied the reason for or underlying cause of the prior de-registration;
- ...
- 2.32.1. Where the IMO receives notice that the ~~Energy~~ Electricity Review Board has made a decision in accordance with the Regulations that a Rule Participant be suspended, the IMO must issue a Suspension Notice to the Rule Participant.
- 2.32.5. The IMO must withdraw a Suspension Notice where:
- (a) if the notice was issued under clause 9.23, the defaulting Rule Participant has remedied the relevant suspension event and is complying with its Prudential Obligations; and
- (b) if the notice was issued under clause 2.32.1, it receives a further notice that the ~~Energy~~ Electricity Review Board has withdrawn the suspension, and no other circumstances exist that would entitle the IMO to issue a Suspension Notice.
- 2.32.6. Where a Rule Participant has been suspended for 90 days, the IMO may apply to the ~~Energy~~ Electricity Review Board for a de-registration order in accordance with the Regulations.
- 2.32.7. Where the IMO receives notice that the ~~Energy~~ Electricity Review Board has made a decision in accordance with the Regulations that a Rule Participant be de-registered, the relevant Rule Participant ceases to be a Rule Participant from the time specified in the notice. The IMO must de-register all of the Facilities registered by the Rule Participant by the time specified in the notice.



10.2.2. The classes of confidentiality status are:

- (a) Public, in which case the relevant information or documents may be made available to any person by any person;
- (b) SWIS Restricted, in which case the relevant information or documents may only be made available to:
 - i. Rule Participants;
 - ii. the Market Advisory Committee;
 - iii. the IMO;
 - iv. the ~~Energy~~ Electricity Review Board;
 - v. the Economic Regulation Authority; and
 - vi. other Regulatory or Government Agencies in accord with applicable laws;
- (c) Rule Participant Market Restricted, in which case the relevant information or documents may only be made available to:
 - i. a specific Rule Participant;
 - ii. the IMO;
 - iii. the ~~Energy~~ Electricity Review Board;
 - iv. the Economic Regulation Authority; and
 - v. other Regulatory or Government Agencies in accord with applicable laws;
- (d) Rule Participant Dispatch Restricted, in which case the relevant information or documents may only be made available to:
 - i. a specific Rule Participant;
 - ii. System Management
 - iii. the IMO;
 - iv. the ~~Energy~~ Electricity Review Board;
 - v. the Economic Regulation Authority; and
 - vi. other Regulatory or Government Agencies in accord with applicable laws;
- (e) System Management Confidential, in which case the relevant information or documents may only be made available to:
 - i. System Management;



- ii. the IMO;
 - iii. the ~~Energy~~ Electricity Review Board;
 - iv. the Economic Regulation Authority; and
 - v. other Regulatory or Government Agencies in accord with applicable laws;
- (f) IMO Confidential, in which case the relevant information or documents may only be made available to:
- i. the IMO;
 - ii. the ~~Energy~~ Electricity Review Board;
 - iii. the Economic Regulation Authority; and
 - iv. other Regulatory or Government Agencies in accord with applicable laws; and
- (g) Rule Participant Network Restricted, in which case the relevant information or documents may only be made available to:
- i. a specific Rule Participant;
 - ii. the relevant Network Operator;
 - iii. System Management;
 - iv. the IMO;
 - v. the ~~Energy~~ Electricity Review Board;
 - vi. the Economic Regulation Authority; and
 - vii. any other Regulatory or Government Agencies in accord with applicable laws.

10.5.1. The IMO must set the class of confidentiality status for the following information under clause 10.2.1, as Public and the IMO must make each item of information available from the Market Web-Site after that item of information becomes available to the IMO:

...

- (r) Public Reports pertaining to the Wholesale Electricity Market issued by:
- i. the IMO;
 - ii. System Management;
 - iii. the ~~Energy~~ Electricity Review Board;
 - iv. the Economic Regulation Authority; or

v. the Minister.

...

Chapter 11:

Energy Electricity Review Board: The Board within the meaning of the Electricity Industry Act.

Reviewable Decision: Decisions made by the IMO in respect of which an eligible person may apply to the ~~Energy Electricity~~ Review Board in accordance with section 125 of the Electricity Industry Act and the Regulations, and does not include any decisions of a class specified for this purpose in the Regulations under section 125 of that Act.

5. ABOUT RULE CHANGE PROPOSALS

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

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

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

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

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

