

Rule Change Notice

Clarification of Reviewable Decisions and Definition of Regulations (RC_2012_06)

This notice is given under clause 2.5.7 of the Market Rules.

Date Submitted: 7th November 2012

Submitter: Suzanne Frame, IMO

The Proposal

The IMO has developed the Rule Change Proposal: Clarification of Reviewable Decisions and Definition of Regulations (RC_2012_06) to improve the clarity of the Market Rules as well as providing greater transparency to the definition and referencing of the Regulations in the Market Rules. The IMO has proposed to put forward a recommendation that a decision made by the IMO or System Management under clause 2.10.2A become a Reviewable Decision with the requirement that the decision be published on the Market Web Site. This would ensure procedural fairness when rejecting a Market Procedure suggestion.

In addition, the timeline for Procedural Reviews as well as the definition and specific terms for the Regulations have been clarified and amended to improve the integrity and clarity of the Market Rules.

Appendix 1 contains the Rule Change Proposal and gives complete information about:

- the proposed amendments to the Market Rules;
- relevant references to clauses of the Market Rules and any proposed specific amendments to those clauses; and
- the submitter's description of how the proposed amendments would allow the Market Rules to better address the Wholesale Market Objectives.

Decision to Progress the Rule Change

The IMO has decided to progress the Rule Change Proposal to allow interested parties an opportunity to provide submissions as part of the rule change process.

The IMO has decided to subject the Rule Change Proposal to the Fast Track Rule Change Process described in section 2.6 of the Market Rules, on the grounds that it satisfies the criteria in clauses 2.5.9(a) and (b) 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

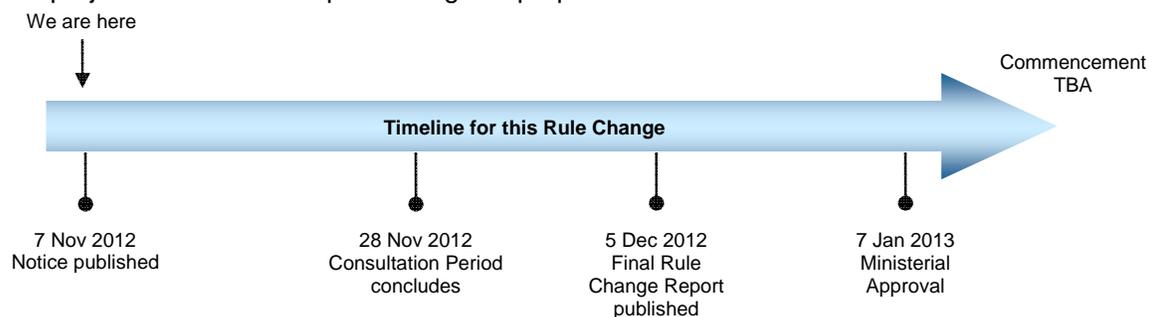
(c) is urgently required and is essential for the safe, effective and reliable operation of the market or the SWIS.

In particular, the IMO considers that:

- Issue 1 is of a procedural nature as the proposed amendments will clarify the procedure to be followed by the IMO or System Management when a Rule Participant suggests an amendment or replacement of a Market Procedure and does not impact on the intended substantive effect of the clause;
- Issue 2 relates to a minor clarification to provide consistency between the WEM Regulations and the Market Rules, which does not affect the operation of the Market Rules (as the relevant timeframe specified in the WEM Regulations prevails under the current drafting);
- Issue 3 relates to the correction of a manifest error in the Market Rules, as outlined in the issue description above;
- Issue 4 relates to a minor clarification to improve the transparency and integrity of the Market Rules; and
- Issue 5 relates to the correction of a manifest error, namely an incorrect reference to a regulation in the WEM Regulations.

Timeline

The projected timelines for processing this proposal are:





INDEPENDENT
MARKET
OPERATOR

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 13 November 2012.

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 27 November 2012.

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

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

Independent Market Operator

Attn: Group Manager, Market Development
PO Box 7096
Cloisters Square, PERTH, WA 6850
Fax: (08) 9254 4399

Wholesale Electricity Market Rule Change Proposal

Change Proposal No: RC_2012_06
Received date: 7 November 2012

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Date submitted:	7 November 2012
Urgency:	Fast Track Rule Change Process
Change Proposal title:	Clarification of Reviewable Decisions and Definition of Regulations
Market Rules affected:	Clauses 2.1.1, 2.1.3, 2.2.1, 2.8.1, 2.10.2A, 2.11.1, 2.17.1, 2.17.2, 6.6.3A, 7A.2.19, 7B.2.17 and the Glossary.

Introduction

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

This Change Proposal can be posted, faxed or emailed to:

Independent Market Operator
Attn: Group Manager, Market Development
PO Box 7096
Cloisters Square, Perth, WA 6850
Fax: (08) 9254 4339
Email: market.development@imowa.com.au

The Independent Market Operator will assess the proposal and, within 5 Business Days of receiving this Rule Change Proposal form, will notify you whether the Rule Change Proposal will be further progressed.

In order for the proposal to be progressed, all fields below must be completed and the change proposal must explain how it will enable the Market Rules to better contribute to the achievement of the wholesale electricity market objectives. The objectives of the market are:

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

Details of the proposed Market Rule Change

1. Describe the concern with the existing Market Rules that is to be addressed by the proposed Market Rule change:

Background

The new Balancing and Load Following Markets introduced a principles based drafting approach, resulting in a substantive amount of detail being included in the Market Procedures. During the development of the design of the new markets the IMO received suggestions from industry that the Procedure Change Process needed to be strengthened to enhance the current process outlined in section 2.10 of the Wholesale Electricity Market Rules. In particular it was suggested that there should be more transparency with respect to decisions by the IMO and System Management following a suggestion from a Rule Participant under clause 2.10.2.

Subsequently the IMO incorporated into the Amending Rules for the Rule Change Proposal: Competitive Balancing and Load Following (RC_2011_10) a requirement for the IMO or System Management, as applicable, to publish details of its decision where it determines to not progress a Procedure Change Proposal following receipt of a suggestion under clause 2.10.2 (new clause 2.10.2A). The IMO also put forward a recommendation that the decision made by the IMO or System Management under clause 2.10.2A become a Reviewable Decision under the Electricity Industry

(Wholesale Electricity Market) Regulations 2004 (WEM Regulations). This would ensure procedural fairness when rejecting a proposed amendment or replacing a Market Procedure.

Issue 1: Reviewable Decisions relating to clause 2.10.2A

During the regulatory change process for RC_2011_10 the Public Utilities Office (PUO) indicated that it would not be possible to make new clause 2.10.2A a Reviewable Decision, because as currently drafted clause 2.10.2A does not explicitly require a decision to be made by the IMO or System Management. A decision to progress a suggested change is only implicit in the current drafting of this clause. Without the embedded requirement of a decision being made, the PUO suggested it would be inappropriate to make this clause a Reviewable Decision under the WEM Regulations.

Based on the advice of the PUO the IMO did not pursue a change to the Regulations to include clause 2.10.2A as a Reviewable Decision as part of the regulatory process for RC_2011_10, but rather at a later date clarify the drafting of clause 2.10.2A through a separate rule change process and separately request regulatory amendments that would allow clause 2.10.2A to become a Reviewable Decision.

Proposed Solution: The IMO proposes to amend clause 2.10.2A so that it expressly refers to the decision to be made by the IMO or System Management, as applicable, on whether to progress an amendment to or replacement of a Market Procedure following receipt of a suggestion under clause 2.10.2.

The IMO is also seeking to clarify the timeframe allocated to the IMO or System Management when ascertaining whether to progress a Procedure Change Proposal. The IMO considers that the proposed timeframe of 20 Business Days will allow sufficient time for the IMO or System Management to consider the proposed changes and seek any necessary clarification. The IMO notes that extensions of these timelines will be possible under clause 2.10.17. Furthermore, the IMO proposes to require publication on the Market Web Site of the IMO or System Management's decision to either progress or not progress a Procedure Change Proposal along with the reasons for the decision. The IMO notes that this will align more closely with the requirements for Rule Change Proposals under clause 2.5.7(e).

During the rule change process the IMO will work with the PUO to ensure that decisions on whether to progress Procedure Change Proposals under clause 2.10.2A(a) can be made Reviewable Decisions. As an extension of this reasoning the IMO will also put forward a recommendation to the PUO requesting clause 2.5.7(e) (which relates to the IMO's decision as to whether to progress a proposed change to the Market Rules) also be made a Reviewable Decision under the WEM Regulations.

Following from the IMO's proposed solution to Issue 1, clause 2.17.1 (which lists Reviewable Decisions) and clause 2.17.2 (which lists decisions subject to Procedural Reviews) will need to be updated to reflect that clauses 2.5.7(e) and 2.10.2A(a) are

Reviewable Decisions which are subject to Procedural Reviews. In addition, clause 2.17.2 needs to include reference that decisions made by System Management can also be subject to a Procedural Review. The IMO considers it appropriate that in these instances the Electricity Review Board may be requested to reconsider the process surrounding the IMO or System Management's (as applicable) decision as it will provide adequate oversight over both entities decision making processes.

The IMO considers that these proposed changes will ensure procedural fairness and transparency with respect to decisions by the IMO and System Management as to whether to progress a suggested change to a Market Procedure.

Issue 2: Timelines for Procedural Reviews (Clauses 2.8.1 and 2.11.1)

Currently clauses 2.8.1 (rule change process review) and 2.11.1 (Procedure Change Process review) provide that Rule Participants may apply for a Procedural Review within 10 Business Days of the relevant decision. This is inconsistent with the 28 day period for applications to the Electricity Review Board for a Procedural Review currently stipulated in regulation 44 of the WEM Regulations.

The IMO notes that in accordance with the order of precedence under clause 1.5.2, the timeframe in the WEM Regulations (currently 28 days) would prevail over the timeframe in the existing rule requirements.

Proposed Solution: The IMO proposes to amend the timeframe for applying for a Procedural Review specified in clauses 2.8.1 and 2.11.1 to reflect the relevant timelines prescribed in the WEM Regulations. This will ensure consistency between the WEM Regulations and the Market Rules.

Issue 3: Definition of the Regulations

At Market Start, Regulations were defined under the Market Rules as "any regulations made under the Electricity Industry Act 2004 but excluding the Electricity Industry (Wholesale Market) Regulations 2004." The Electricity Industry (Wholesale Market) Regulations 2004 were introduced to provide top-up and spill wholesale arrangements for the SWIS in preparation for the introduction of the Market Rules. Given that a top up and spill market no longer existed once the electricity market was implemented, the Electricity Industry (Wholesale Market) Regulations 2004 were no longer relevant and therefore were excluded from the definition of Regulations.

The Amending Rules resulting from RC_2011_10 incorrectly and unintentionally amended the definition of Regulations to exclude the Electricity Industry (Wholesale Electricity Market) Regulations 2004 rather than the Electricity Industry (Wholesale Market) Regulations 2004. The IMO considers this to be a manifest error as the references to Regulations contained in the Market Rules are predominantly to the WEM Regulations (given its direct implications for the operation of the WEM and more specifically with regard to the application for civil penalties and reviewable decisions under the Market Rules).

Proposed Solution: The IMO proposes to amend the definition of Regulations to correct this manifest error and to ensure that when referring to the Regulations in the Market Rules all those Regulations that have been created under the Electricity Industry Act 2004 (Act) are referenced as appropriate. The IMO notes the definition of Regulations no longer needs to expressly exclude the Electricity Industry (Wholesale Market) Regulations 2004 as those Regulations have been repealed¹.

Issue 4: Specific terms for the Regulations

The IMO has identified several references to the Regulations in the Market Rules where it is unclear as to which of the various Regulations created under the Act the relevant clause refers. The IMO considers it inappropriate that where the Market Rules reference a specific regulation, that the relevant clause refers to the wider definition of Regulations instead of the specific Regulations. This is because it would not allow an interested party to immediately identify which Regulations were relevant.

Proposed Solution: The IMO proposes to introduce specific defined terms for the Electricity Industry (Independent Market Operator) Regulations 2004 and the Electricity Industry (Wholesale Electricity Market) Regulations 2004, namely IMO Regulations and WEM Regulations respectively². This will enable the Market Rules to make reference to the Regulations relevant to a clause rather than to the broader definition of Regulations.

The IMO has reviewed the Market Rules to determine whether a specific reference to either the IMO Regulations or WEM Regulations is required in each clause which currently refers to the Regulations. Following this review of the Market Rules, the IMO proposes a number of amendments to refer to either the IMO Regulations or WEM Regulations, as relevant, where a specific regulation is specified in the Market Rules, and to align that reference to the relevant Regulations as defined. The IMO notes that in the majority of cases the broader definition of Regulations (which consist of a number of other Regulations created under the Act) remains appropriate. The IMO considers that these amendments will enhance the integrity and transparency of the Market Rules as well as removing any potential ambiguity when referring to the Regulations.

Issue 5: Reference to regulation 17(l) in clause 2.1.3

The IMO has identified that the reference under clause 2.1.3 to regulation 17(l) is incorrect and should be a reference to regulation 17(m) of the WEM Regulations.

¹ For further details refer to the following webpage:

http://www.slp.wa.gov.au/legislation/statutes.nsf/main_mrtitle_1354_homepage.html

² The IMO notes that these Regulations relate more directly to the operation of the WEM and the IMO's specific governance obligations.

Proposed Solution: The IMO proposes to correct the referencing error in clause 2.1.3.

2. Explain the reason for the degree of urgency:

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 submits that this Rule Change Proposal should be fast tracked, on the basis that it satisfies the criteria in clauses 2.5.9(a) and (b) of the Market Rules.

In particular, the IMO considers that:

- Issue 1 is of a procedural nature as the proposed amendments will clarify the procedure to be followed by the IMO or System Management when a Rule Participant suggests an amendment or replacement of a Market Procedure and does not impact on the intended substantive effect of the clause;
- Issue 2 relates to a minor clarification to provide consistency between the WEM Regulations and the Market Rules, which does not affect the operation of the Market Rules (as the relevant timeframe specified in the WEM Regulations prevails under the current drafting);
- Issue 3 relates to the correction of a manifest error in the Market Rules, as outlined in the issue description above;
- Issue 4 relates to a minor clarification to improve the transparency and integrity of the Market Rules; and
- Issue 5 relates to the correction of a manifest error, namely an incorrect reference to a regulation in the WEM Regulations.

3. Provide any proposed specific changes to particular Rules: (for clarity, please use the current wording of the Rules and place a ~~strikethrough~~ where words are deleted and underline words added)

- 2.1.1. The Independent Market Operator, or IMO, is established under the ~~Electricity Industry (Independent Market Operator-IMO) Regulations-2004.~~
- 2.1.3. The IMO may delegate any of its functions under the Market Rules (other than the power to do the things indicated as not able to be delegated in regulation 17(~~lm~~) of the WEM Regulations) to a person or body of persons that is, in the IMO's opinion, competent to exercise the relevant functions. A function performed by a delegate is to be taken to be performed by the IMO. A delegate performing a function under this clause 2.1.3 is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown. Nothing in this clause 2.1.3 limits the ability of the IMO to perform a function through an officer, employee or agent.
- 2.2.1. Western Power, acting through the segregated business unit known as System Management, has the function of operating the SWIS in a secure and reliable manner for the purposes of regulation 13(1) of the WEM Regulations.
- 2.8.1. A Rule Participant may apply to the Electricity Review Board for a Procedural Review of a decision by the IMO contemplated by clause 2.5.7(e), 2.5.9, 2.6.4(f) or 2.7.8(e) within ~~40 Business Days~~ the time specified in regulation 44 of the WEM Regulations 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.
- 2.10.2A. ~~Where the IMO or System Management has decided not to amend or replace a Market Procedure following a notification under clause 2.10.2, the IMO or System Management, as applicable, must publish reasons for that decision on the Market Web Site. Within 20 Business Days of receipt of a notification under clause 2.10.2, the IMO or System Management, as applicable, must:~~
- (a) determine whether an amendment to or replacement of a Market Procedure is appropriate; and
 - (b) publish on the Market Web Site details of whether a Procedure Change Proposal will be progressed with respect to the suggested amendment to or replacement of a Market Procedure and the reasons for that decision.
- 2.11.1. A Rule Participant may apply to the Electricity Review Board for a Procedural Review of a decision by the IMO or System Management

contemplated by clause 2.10.2A(a), 2.10.13 or 2.10.14 within 40 Business Days ~~the time specified in regulation 44 of the WEM Regulations 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.

2.17.1. Decisions by the IMO or System Management, as applicable, made under the following clauses are Reviewable Decisions:

- (a) clause 2.3.8;
- (b) clauses 2.5.7(e) and 2.5.9;
- (c) clause 2.6.4(f);
- (d) clause 2.7.8(e);
- (e) clause 2.10.2A(a);
- (f) clause 2.10.13;
- (g) clause 2.10.14;
- (h) clause 2.13.28;
- (i) clause 2.28.16;
- (j) clauses 2.30.4 and 2.30.8;
- (k) clause 2.31.10;
- (l) clause 2.32.7E(b);
- (m) clause 2.34.7;
- (n) clause 2.34.7A(b)(ii);
- (o) clause 2.34.7C(c);
- (p) clause 2.34.11;
- (q) clauses 2.37.1 to 2.37.3;
- (r) clause 4.9.9;
- (s) clause 4.15.1;
- (t) clause 4.27.7;
- (u) clause 4.28.7;
- (v) clause 7A.1.11; and
- (w) clause 10.2.1.

- 2.17.2. Decisions by the IMO or System Management, as applicable, made under the following clauses may be subject to a Procedural Review:
- (a) clauses 2.5.7(e), 2.5.9, 2.6.4(f) and 2.7.8(e); and
 - (b) clauses 2.10.2A(a), 2.10.13, and 2.10.14.
- 6.6.3A. For the purpose of ~~Regulation 37(a) of the Electricity Industry (Wholesale Electricity Market) WEM Regulations 2004~~, where a civil penalty is imposed for a contravention of clause 6.6.3, the civil penalty amount should be distributed amongst all Market Customers in proportion to their Market Fees calculated over the previous full 12 months, or part thereof if Market Commencement was less than 12 months prior to the date the civil penalty is received.
- 7A.2.19. For the purpose of regulation 37(a) of the ~~WEM Electricity Industry (Wholesale Electricity Market) Regulations 2004~~, where a civil penalty is imposed for a contravention of clauses 7A.2.8, 7A.2.9, 7A.2.13 or 7A.2.17 the civil penalty amount should be distributed amongst all Market Participants in proportion to their Market Fees calculated over the previous full 12 months, or part thereof if the Balancing Market Commencement Day was less than 12 months, prior to the date the civil penalty is received.
- 7B.2.17. For the purpose of regulation 37(a) of the ~~WEM Electricity Industry (Wholesale Electricity Market) Regulations 2004~~, where a civil penalty is imposed for a contravention of clauses 7B.2.10, 7B.2.11 or 7B.2.15, the civil penalty amount must be distributed amongst all Market Participants in proportion to their Market Fees calculated over the previous full 12 months, or part thereof if the Balancing Market Commencement Day was less than 12 months, prior to the date the civil penalty is received.

Glossary

IMO Regulations: Means the Electricity Industry (Independent Market Operator) Regulations 2004.

Regulations: Any regulations made under the Electricity Industry Act 2004 (WA) including the IMO Regulations and the WEM Regulations, ~~but excluding the Electricity Industry (Wholesale Electricity Market) Regulations 2004 (WA).~~

WEM Regulations: Means the Electricity Industry (Wholesale Electricity Market) Regulations 2004.

4. Describe how the proposed Market Rule change would allow the Market Rules to better address the Wholesale Market Objectives:

The IMO considers that the proposed changes will improve the integrity and clarity of the Market Rules and are consistent with the Wholesale Market Objectives.

5. Provide any identifiable costs and benefits of the change:

Costs:

No costs associated with implementing these proposed changes have been identified. Likewise the IMO considers that there will be no operational impacts.

Benefits:

The IMO considers that the proposed changes will provide sufficient clarity to allow the PUO to propose that clauses 2.10.2A(a) and 2.5.7(e) become Reviewable Decisions under the WEM Regulations. This will enhance procedural fairness and transparency for Market Participants.

The proposed amendments to the definition of Regulations will improve the clarity of the Market Rules by removing the manifest error as well as providing greater transparency as to the relevant Regulations applicable to a clause.