



Our ref: D222648
Contact: Rajat Sarawat

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Ms Kate Ryan
Coordinator of Energy
Energy Policy WA
Locked Bag 11 Cloisters Square
PERTH WA 6850

Sent by email to submissions@energy.wa.gov.au

Dear Ms Ryan

ERA submission to the consultation paper on the Energy Sector Governance changes

Thank you for the opportunity to provide a submission on the consultation paper for Energy Sector Governance: Proposed Changes to the Regulatory Framework.

The Energy Transformation Taskforce is delivering several packages of work to implement the Government's Energy Transformation Strategy. The Strategy aims to ensure that Western Australia's energy market can adapt to the structural challenges brought about by increased renewable generation and the integration of emerging technologies such as batteries. The Taskforce will conclude its operations in May 2021 and so there is a need to ensure that an effective framework is in place for the incremental improvement and evolution of the market beyond the Taskforce's term.

The Economic Regulation Authority welcomes the creation of a function to coordinate the incremental improvement and evolution of the market, having previously raised concerns about this current gap in past reports.¹ This market development function will be assigned to the Coordinator of Energy.

The ERA welcomes many of the other changes proposed in the consultation paper. The creation of the market development function is accompanied by the removal of the obligation for the ERA to annually review the effectiveness of the market. The ERA supports the retention of the requirement for it to conduct three-yearly reviews assessing longer-term market observations, and the added flexibility for the ERA to provide a report on market design problems and inefficiencies at any time the ERA identifies such problems.²

The market development function will require the Coordinator to monitor market design problems and inefficiencies and report on these once every three years. While there could be some overlap in the reporting functions of the Coordinator and the ERA, the risk of duplication

¹ For example, see Economic Regulation Authority, 2020, *Report on the Effectiveness of the Wholesale Electricity Market 2020*, p. 26 ([online](#)).

² Section 128 and of the *Energy Industry Act 2004* requires the ERA to review the operation of the market every three years to assess the extent to which the market objectives are being achieved.

in effort can be mitigated by regular engagement between the two parties. The ERA looks forward to working with the Coordinator to minimise the risk of duplication with the revised functions.

Further complementing these changes is the new function for the ERA to propose a rule change where it has identified a market effectiveness matter. The ERA welcomes this change as it will enable the ERA to pursue the implementation of recommendations arising from its market effectiveness monitoring and reviews.

The proposed governance changes include transferring the responsibility for reporting on the effectiveness of the compliance measures in the market from the ERA to the Coordinator. This transfer of function removes any conflict of interest risk arising from the current requirement for the ERA to review a market function for which it also holds responsibility.

However, the governance changes also transfer the role of reviewing the effectiveness of the rule change process from the ERA to the Coordinator. This will introduce a similar conflict of interest risk as the Coordinator will also be responsible for the administration of the rule change process. The ERA recommends removing this risk by having the ERA retain the function to review the effectiveness of the rule change process, with the flexibility for the ERA to report on this when necessary.

Under the proposed governance changes, the independent Rule Change Panel will be abolished, and its functions transferred to the Coordinator, reporting to the Minister for Energy. These changes mean that there will no longer be an independent decision-maker on rule changes.

The ERA has some concerns with the removal of the independent decision-maker, discussed below. The ERA does not have any concerns with the relocation of support services for the rule change process from the ERA to Energy Policy WA (EPWA).

The current governance framework means that the Panel can apply a diversity of views and expertise when making rule change decisions. The proposed governance changes remove this diversity by placing the decision in the hands of either the Coordinator or the Minister for Energy alone.

The consultation paper does not state why a rule change decision-maker independent from government is likely to result in better outcomes for the market.

The ERA recommends that prior to the finalisation of the proposed rule change governance changes, consideration be given to reviews of governance arrangements in other jurisdictions to ensure consistency with best practice frameworks that separate the decision-making body for rule changes from government.

The 2015 Review of Governance Arrangements for Australian Energy Markets (Vertigan Review) examined the governance arrangements in the National Electricity Market (NEM), including the role of the independent rule making body, the Australian Energy Market Commission. The Vertigan Review considered the requirement for an independent rule maker, observing that for the NEM:

The establishment of a national rule maker independent of energy ministers was a deliberate act by COAG. The intention was for energy ministers to establish the laws as

enacted by each jurisdiction so that gas and energy markets would operate in a largely self-evolving manner supported by effective market regulation.³

The Vertigan Review concluded that in the NEM:

... the division of functions established by the current governance arrangements for Australian energy markets is fundamentally sound and that Australian energy market governance is amongst best practice internationally.⁴

The NEM's governance arrangements were again considered in the more recent Independent Review into the Future Security of the National Electricity Market (Finkel Review). The Finkel Review observed that:

Responsibilities for rule-making, market operation and market regulation functions are divided between three energy market bodies – the AEMC, AEMO, and the AER respectively. Each body is constituted and funded differently, and subject to different legislative arrangements. The independence of market bodies from governments is intended to provide confidence that the market will not be subject to political interference.⁵

Findings from these reviews indicate that the proposed rule change governance changes for Western Australia's energy sector are not consistent with energy sector best practice governance arrangements and may reduce investor confidence in the market.

The ERA therefore recommends that EPWA consider governance design alternatives that retain an independent rule change decision-making body to avoid any new governance problems arising. Alternative designs could be:

- The Panel could be retained, and the secretariat support services currently provided by the ERA to the Panel instead be provided by the Coordinator. This would give the Coordinator a more direct relationship with the Panel and access to the Coordinator's resources.
- There are several changes proposed for the Market Advisory Committee (MAC) and the Gas Advisory Board (GAB) intended to enable these bodies to operate more independently from the rule change decision-maker and enhance the role of industry in the decision-making process. These changes could be implemented in a manner that still retains the role of the independent Panel.

Should the proposed changes go ahead in their current form, there should be adequate processes to manage any conflict of interest. For example, if the requirement for the ERA to review the rule change process is not retained, it may be appropriate to ringfence EPWA's teams, such that those staff undertaking the market monitoring, review and reporting function operate separately from those responsible for rule changes.

Similar conflict of interest risks were raised by market participants following the assignment of the rule change support services function to the ERA.⁶ In response, the ERA documented and published its ringfencing arrangements on its website.⁷ The Coordinator may need to consider

³ Vertigan M, Yarrow G and Morton E, 2015 Review of Governance Arrangements for Australian Energy Markets, p 41, ([online](#)).

⁴ Ibid, p 7.

⁵ Finkel A, 2017, Independent Review into the Future Security of the National Electricity Market, p 159, ([online](#)).

⁶ Rule Change Panel, 2018, MAC meeting papers 8 August 2018, pp 21 – 27, ([online](#)).

⁷ Economic Regulation Authority, 2018, Internal governance arrangements for providing secretariat support to the Economic Regulation Authority and the Rule Change Panel, ([online](#)).

implementing a similar approach if the final design is that the Coordinator will be responsible for the rule change function and also reviewing the effectiveness of that function.

The ERA has also identified some drafting matters in Attachment A for consideration.

The ERA welcomes a discussion on any of the items in this letter. In the first instance please contact Rajat Sarawat, Executive Director Energy Markets on 08 6557 7905.

Yours sincerely



Nicola Cusworth
CHAIR

Attachment A – Drafting suggestions

Table 1: Drafting suggestions for Appendix C to the consultation paper

Clause	Clause text	Drafting comment
2.16.5	AEMO must, on request from the Coordinator or the Economic Regulation Authority (as applicable), and in any event at least once each month, provide the Coordinator or the Economic Regulation Authority (as applicable) with the data identified in the Market Surveillance Data Catalogue and the results of the analysis on that data referred to in clause 2.16.4.	The provision of this data to the ERA should occur at least monthly. The phrase 'and in any event at least once each month, provide the Coordinator or the Economic Regulation Authority (as applicable)' may not achieve this intent because the use of the 'or' could allow AEMO discretion to choose whether it provides the data to the Coordinator or the ERA. The clause should be re-drafted to avoid this (For example, an 'and' in place of the 'or').
2.16.6	Where the Coordinator or the Economic Regulation Authority (as applicable) considers that it is necessary or desirable— — for the performance of its functions, or the functions of AEMO under this clause 2.16, the Coordinator or the Economic Regulation Authority (as applicable) may collect additional information from Rule Participants or the Rule Change Panel as follows: ... (b) Market Participants or the Rule Change Panel (as applicable) must provide any information requested by the Coordinator or the Economic Regulation Authority (as applicable) by the date specified in the notice; and ...	Suggest 'Market Participants' in subclause (b) be replaced with 'Rule Participants'. Note 'Rule Participants' is used earlier in the clause.
2.16.13E	A report referred to in clause 2.16.13D must contain but is not limited to the following: (a) market trends, which may include: (i) a summary of the information and data compiled by AEMO and the Economic Regulation Authority under clause 2.16.1; and ...	Subclause (a)(i) refers to a summary of information and data compiled by the ERA under clause 2.16.1. The ERA is only a recipient of data and information under clause 2.16.1, whereas AEMO is the primary data compiler under that clause. In these circumstances it may be appropriate for the ERA to be removed from subclause (a)(i). Alternatively, if there is an expectation that the ERA will provide its own analysis of market data and information to the Coordinator than the requirements/obligations for this should be specified separately (for example, in the rules or a market procedure).
2.16.15	Where the Economic Regulation Authority provides a report to the Minister in accordance with clause 2.16.11, it must, after consultation with the Minister, publish a	The last sentence in this clause which states 'An assessment of the results of the Economic Regulation Authority's monitoring under clause 2.16.9(b) must be

Clause	Clause text	Drafting comment
	<p>version of the report which has confidential or sensitive data aggregated or removed. An assessment of the results of the Economic Regulation Authority's monitoring under clause 2.16.9(b) must be included in the published version of the report.</p>	<p>included in the published version of the report' may no longer be relevant. This is because the ERA's reports under clause 2.16.11 are now restricted to specific matters rather than the broader matters that were formally listed in clause 2.16.9(b).</p>
3.13.1	<p>The total payments by AEMO for Ancillary Services in accordance with Chapter 9 comprise:</p> <p>...</p> <p>(c) Cost_LRD, the monthly amount for Load Rejection Reserve Service and System Restart Service, determined</p>	<p>Subclause (c) is incomplete.</p>
4.16	<p>The Benchmark Reserve Capacity Price</p>	<p>There are several publishing requirements in section 4.16 where AEMO was formally required to publish BRCP items on the Market Web Site. The amendments transfer these functions to the ERA so in these circumstances the ERA's obligations should be to publish these items on its own website. At the conclusion of the process the ERA should notify AEMO of the revised BRCP and then AEMO is responsible for the remaining processes.</p>
6.20	<p>Energy Price Limits</p>	<p>There are several publishing requirements in this section 6.20 where AEMO was formally required to publish items on the Market Web Site. The amendments transfer these functions to the ERA so in these circumstances the ERA's obligations should be to publish these items on its own website. At the conclusion of the process the ERA should notify AEMO of the revised Energy Price Limits and then AEMO is responsible for the remaining processes. This would then also align with the publishing requirements and processes for the ERA's review of the Minimum STEM price.</p>