



**Economic Regulation Authority**

# Wholesale Electricity Market Rules and Gas Services Information Rules

Compliance report for the period 1 July 2022 to 31  
December 2022

31 January 2023

## **Economic Regulation Authority**

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# 1. Summary

The Economic Regulation Authority is responsible for the compliance and enforcement functions in the Wholesale Electricity Market (WEM) Rules and in the Gas Services Information (GSI) Rules.<sup>1</sup>

This report provides participants and other interested parties with a summary of the ERA's compliance activities for the reporting period 1 July 2022 to 31 December 2022. The report includes information to assist participants to meet their compliance obligations.

Reducing the current backlog of investigations remains a priority for the ERA. The ERA completed 102 investigations into market participants' compliance with the WEM Rules and GSI Rules this reporting period. Most of these matters, 58, concerned the WEM Rules, and 44 were related to the GSI Rules. The largest breach categories for the completed investigations were late payment of invoices (40) and failure to comply with dispatch or dispatch instructions (20).

This reporting period the ERA continued assessing market participants' submission of written details to AEMO outlining the reasons they made balancing submissions after balancing gate closure.<sup>2</sup> The preliminary determination from this project is that seven market participants may not have been compliant with the WEM Rules when they failed to provide written notifications to AEMO when they made balancing submissions after gate closure.

Section three of this report includes information to satisfy the requirements of clause 2.13.26 of the WEM Rules and clause 167(1) of the GSI Rules. These clauses require the ERA to publish six-monthly reports summarising matters brought before the Electricity Review Board, and details of any civil penalties imposed by the ERA.

Terms capitalised in this report include terms defined under Chapter 11 of the WEM Rules and Schedule 1 of the GSI Rules.

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<sup>1</sup> Comparative data is presented in this report from the 1 July 2016. This is the date that the ERA became responsible for the compliance and enforcement functions in the WEM Rules and the GSI Rules.

<sup>2</sup> Wholesale Electricity Market Rules (WA), 1 January 2023, Rule 7A.2.11, ([online](#)).

## 2. Compliance Update

The ERA's compliance functions include monitoring participants' compliance with the WEM Rules and GSI Rules and investigating alleged breaches of these rules.

The WEM Rules provide the ERA with compulsory information gathering powers so that it can perform its functions. These powers not only concern compliance processes but also information and data required to inform the ERA's determination and review functions (for example, administered pricing determinations). This includes information requested under clause 2.16.6 of the WEM Rules. Where information is requested using a compulsory information gathering power, the information must be provided by the deadline specified in the request, unless an extension has been authorised.

In recent determination processes some responses to compulsory information requests have been received after the due date, with no authorised extension having been granted. Failure to provide requested information by the specified timeframe may result in a breach of the WEM Rules. The ERA understands that market participants have many competing priorities, particularly in the current state of WEM reforms, and encourages participants to contact the ERA to discuss an extension if additional time is required to respond to a compulsory information request.

### 2.1 Alleged breach reports

Participants, including AEMO, may report alleged breaches of the WEM Rules and GSI Rules to the ERA. The ERA also identifies alleged breaches of the WEM Rules and the GSI Rules.<sup>3,4</sup> The ERA records details of alleged breaches that it becomes aware of in its compliance monitoring register<sup>5</sup> and investigates all the alleged breaches to determine whether a breach occurred.

In this reporting period, 1 July 2022 to 31 December 2022, the ERA recorded 89 alleged WEM Rule non-compliance matters and 39 alleged GSI Rule non-compliance matters in its compliance monitoring register (Figure 1).<sup>6</sup>

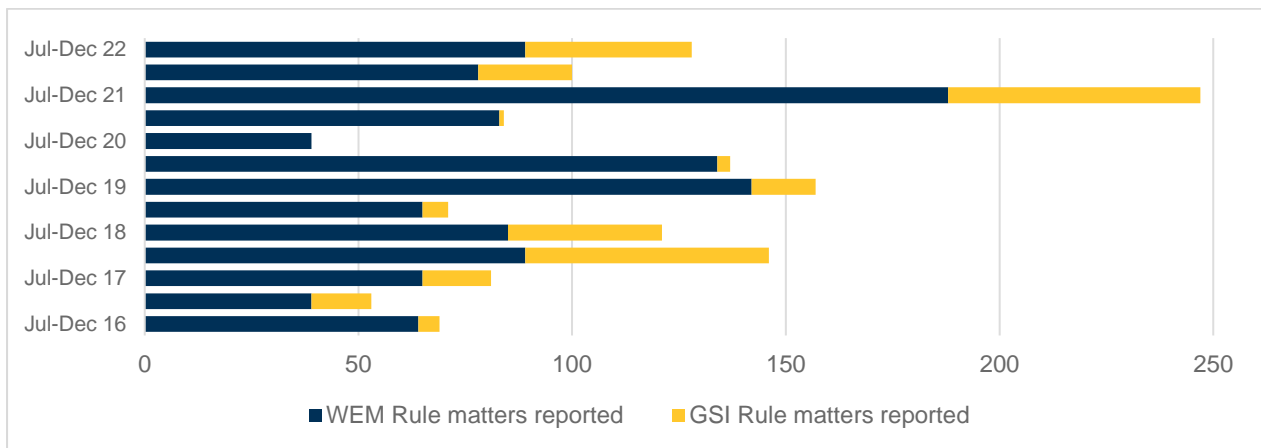
Of the 128 alleged breaches recorded this reporting period (Figure 1), participants (excluding AEMO) self-reported 11. The level of self-reported breaches has remained consistent over the past four years.

<sup>3</sup> Wholesale Electricity Market Rules (WA), 1 January 2023, Rules 2.13.2, 2.13.4, 2.13.8, 2.13.9A and 2.13.9C, ([online](#)).

<sup>4</sup> Gas Services Information Rules (WA), 1 December 2022, Rule 165A(1) and 165A(3), ([online](#)).

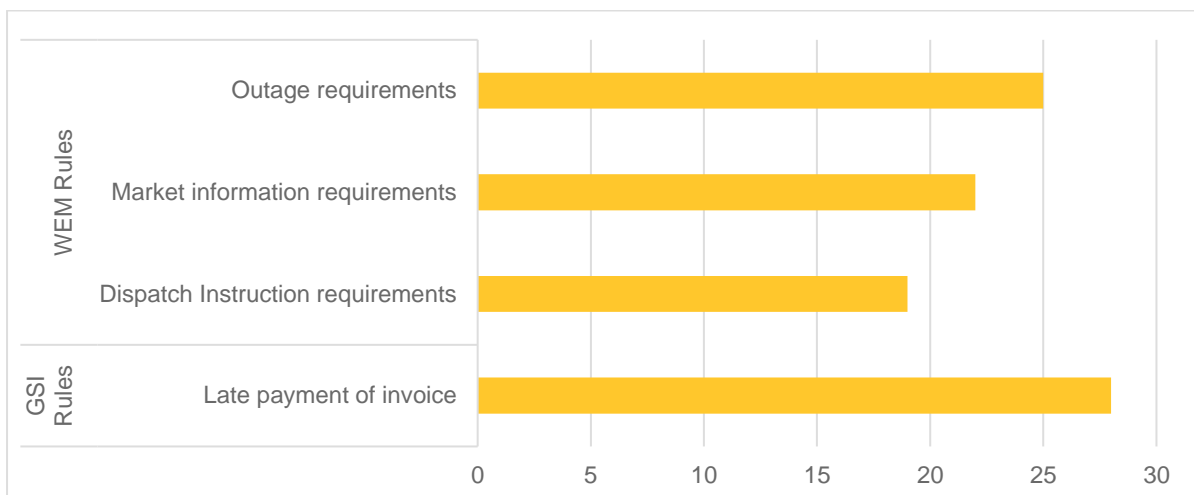
<sup>5</sup> Economic Regulation Authority, 2020, Market Procedure Monitoring Protocol, step 6.1, ([online](#)).

<sup>6</sup> The ERA became responsible for the compliance and enforcement functions in the WEM Rules and the GSI Rules on 1 July 2016. Between 1 July 2016 and 31 December 2022, the ERA recorded 1,433 alleged WEM Rules and GSI Rules breaches in the compliance monitoring register. Since last reporting period, the ERA identified one duplicated matter in the compliance monitoring register. This duplication was corrected. This reduces the number of matters recorded in the 1 January 2022 to 30 June 2022 period from 1,306 to 1,305.

**Figure 1: Alleged breach reports recorded as of 31 December 2022**

Source: ERA data

The largest category of alleged WEM Rule breaches has typically concerned compliance with outage obligations and dispatch instructions. This continued to be the case for this reporting period (Figure 2).

**Figure 2: Largest categories of alleged breaches reported 1 July 2022 to 31 December 2022**

Source: ERA data

There were 25 alleged breaches in the “outage requirement” category between 1 July 2022 and 31 December 2022. The number of alleged breaches concerning outage requirements recorded this reporting period was higher than the prior reporting period. Most of the outage alleged breaches were due to market participants not logging Forced Outages to reflect the unavailability of their Facilities. Eighteen outage related breaches were reported by AEMO and seven breaches were self-reported by market participants.

The number of alleged breaches concerning dispatch instruction requirements recorded this reporting period was lower than the prior reporting period. This is consistent with the lower overall levels of non-compliance with dispatch and balancing submission clauses discussed in section 2.2.

Twenty two alleged breach reports concerned the WEM Rules’ “market information requirements”. AEMO reported 20 of these matters. In most cases, the reports concerned late

provision of information to AEMO.<sup>7</sup> Participants should be aware that where information is provided after a rule deadline, this will constitute non-compliance. The late provision of information may also cause delays to other market processes.

The GSI Rule breach matters recorded this reporting period mostly concerned the late payment of invoices (28 matters).<sup>8</sup> This category of alleged breaches has also been high in past reporting periods. The GSI Rules specify when invoices must be paid. Participants should be aware that where GSI invoices are not paid within 10 business days of receiving the invoice, this will constitute non-compliance with the GSI Rules.

In past ERA investigations, most late invoice payments were caused by internal business process failures. This included circumstances where obligations were not performed because personnel were on leave. There were also inconsistencies between payment terms coded in participants' payment systems and those required for GSI invoices. Participants must ensure they have sufficient controls in place to ensure the timely payment of invoices.

## 2.2 Dispatch instruction, balancing submissions and outage quarterly investigation process

The ERA determines market participants' compliance with dispatch instructions, outages and balancing submissions during a quarterly investigation process.

During this process, the ERA analyses market data, information contained in non-compliance reports and constrained payment data provided by AEMO to determine whether market participants have complied with the WEM Rules.

The quarterly investigation process is carried out to meet the requirements of clause 7.10.8 of the WEM Rules. The ERA also considers whether any constrained payments received by participants resulting from non-compliant behaviour should be recovered.<sup>9</sup>

As part of the quarterly investigation process, the ERA meets with relevant market participants to discuss the circumstances of the matters being investigated. The ERA held 14 meetings with market participants during the reporting period.

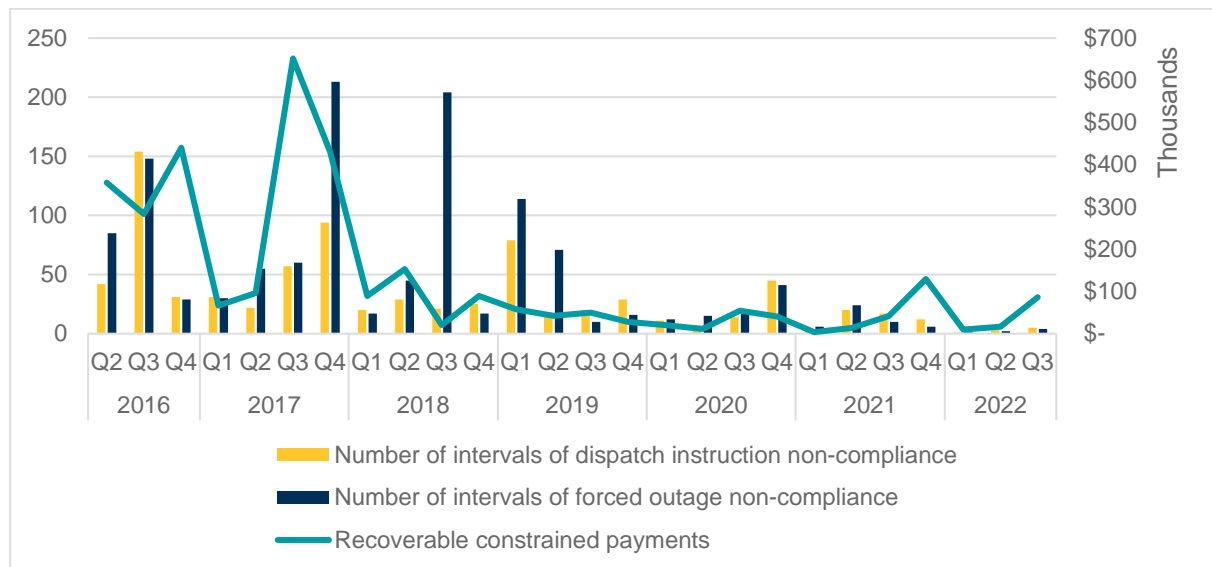
Figure 3 shows quarterly results from this process between April 2016 and September 2022.

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<sup>7</sup> Wholesale Electricity Market Rules (WA), 1 January 2023, Rule 3.24.5, 4.27.10(a), 4.5.4, ([online](#)).

<sup>8</sup> Gas Services Information Rules (WA), 1 December 2022, Rule 118(1), ([online](#)).

<sup>9</sup> Where a market participant's facility's actual generated quantity was materially different from its balancing submission quantities then it may be entitled to out of merit constrained off or on compensation as per section 6.16A of the WEM Rules, unless it was non-compliant with a dispatch instruction under clause 7.10.1.

**Figure 3: Quarterly non-compliance with dispatch instructions process**

Source: ERA data

The data in Figure 3 shows that the number of intervals where participants did not comply with dispatch instructions or submit correct outages remained low during this reporting period. The low level of non-compliance follows ongoing actions taken by participants to improve their compliance.

Participants have improved compliance by placing emphasis on the importance of communicating relevant matters to AEMO and logging outages.

## 2.3 Compliance monitoring

### 2.3.1 *Balancing submission made after gate closure*

The ERA commenced a monitoring project in the last reporting period, 1 January to 30 June 2022. This project continued this reporting period. The project considers market participants' compliance with notification requirements if balancing submissions are made after balancing gate closure.

Where a market participant submits a balancing submission after balancing gate closure, clause 7A.2.11 of the WEM Rules requires the participant to provide AEMO with written details.

Notifications to AEMO for balancing submissions made after gate closure are necessary to ensure that submissions are made in compliance with the reasons outlined in chapter 7A.2.10 of the WEM Rules. In circumstances where no notification has been provided to AEMO, there is less certainty as to the reason an after gate closure submission was made. This may provide the opportunity for some non-compliant participants to act on new information, such as a change in forecast balancing price, where compliant participants do not have the same opportunity.

The ERA assessed 223 instances where a balancing submission was made after gate closure from nine market participants in the last reporting period. The ERA identified seven of the nine participants as potentially failing to provide notification to AEMO. Preliminary determinations



have been communicated with the seven market participants during the current reporting period. The ERA is in the process of consulting with all the relevant market participants to understand the reasons for these discrepancies, following which the ERA will determine whether non-compliance has occurred.

### 2.3.2 GSI monitoring

The ERA performed an analysis of the information submitted to the WA Gas Bulletin Board (WA GBB) by gas market participants during the period 1 July 2021 to 30 June 2022. The purpose of the analysis was to assess gas market participants' compliance with the timing requirements in the GSI Rules for information submissions and the quality of the information submitted.

The ERA identified that during the period 1 July 2021 to 30 June 2022 there were 10 information submissions that may not have been made in accordance with the timing requirements in the GSI Rules. Five of these matters had previously been reported to the ERA by AEMO. Three of these matters have been investigated by the ERA and confirmed to be breaches of the GSI Rules. The ERA is currently investigating the remaining seven matters.

The ERA also compared variances between actual and forecast data and variances between capacity outlooks submitted to the WA GBB to identify if there may be any indicators of non-compliances with the GSI Rules.<sup>10</sup> Whilst there are no specific rule requirements in the GSI Rules on data accuracy, Rule 3(1) of the GSI Rules requires gas market participants to "perform the obligations imposed by the Rules in good faith".<sup>11</sup> The ERA is reviewing the variances noted from initial comparisons.

## 2.4 Completed investigations and compliance responses

The ERA currently has a backlog of 313 investigations as of 31 December 2022 and remains committed to reducing this backlog in anticipation of the commencement of the new market design's compliance framework in October 2023.

Figure 4 shows the number of investigations completed in each reporting period since 1 July 2016.<sup>12</sup> The ERA completed 102 investigations in the most recent reporting period. The ERA intends to further improve the completion rate through the increased use of a batch investigation process in 2023 with the aim of significantly reducing the current backlog. The batch investigation process improves efficiency through the concurrent investigation of matters with same or similar WEM rules and pertaining to the same participant. The investigations are carried out to the same standard but applying the same knowledge or working with the same participants streamlines the process.

Where a participant has breached the WEM Rules or GSI Rules, the ERA may issue a participant a warning, impose penalties, or commence proceedings before the Electricity

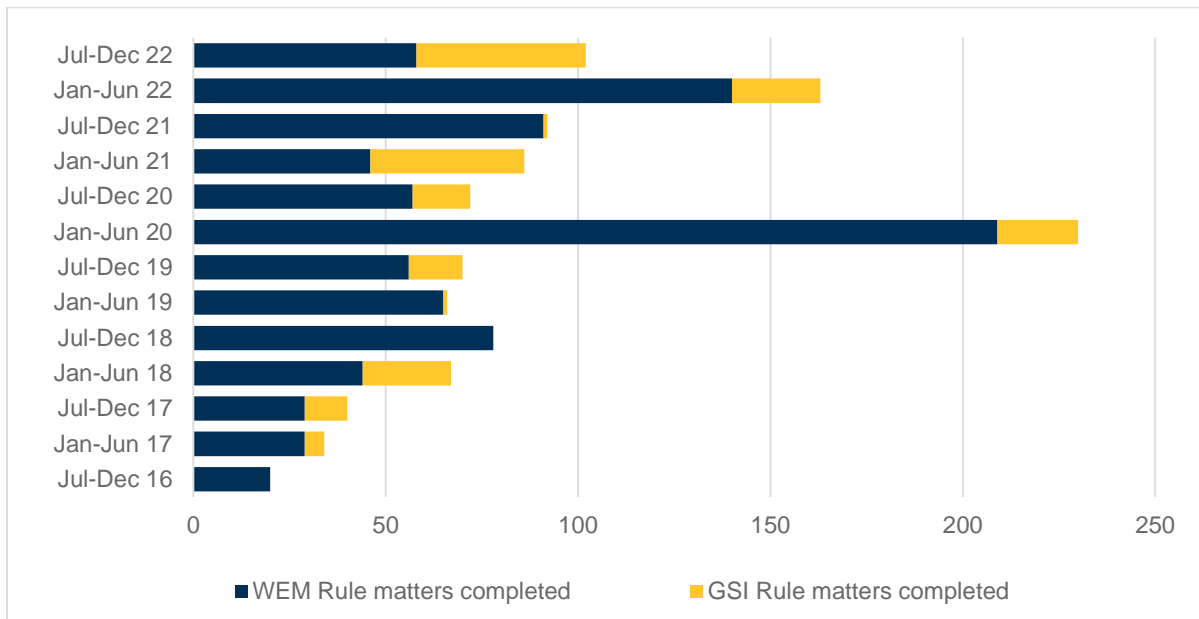
<sup>10</sup> The GSI Rules require Gas market participants to submit medium term capacity outlook data monthly for the next 12 months and 7 day capacity outlook data daily.

<sup>11</sup> Gas Services Information Rules (WA), 1 December 2022, Rule 3(1), ([online](#)).

<sup>12</sup> The ERA became responsible for the compliance functions in the GSI and WEM Rules on 1 July 2016. Between 1 July 2016 and 31 December 2022, the ERA has completed 1,120 investigations.

Review Board.<sup>13,14,15</sup>The ERA may also issue administrative responses including education advice.

**Figure 4: Investigation completed between 1 July 2016 to 31 December 2022**

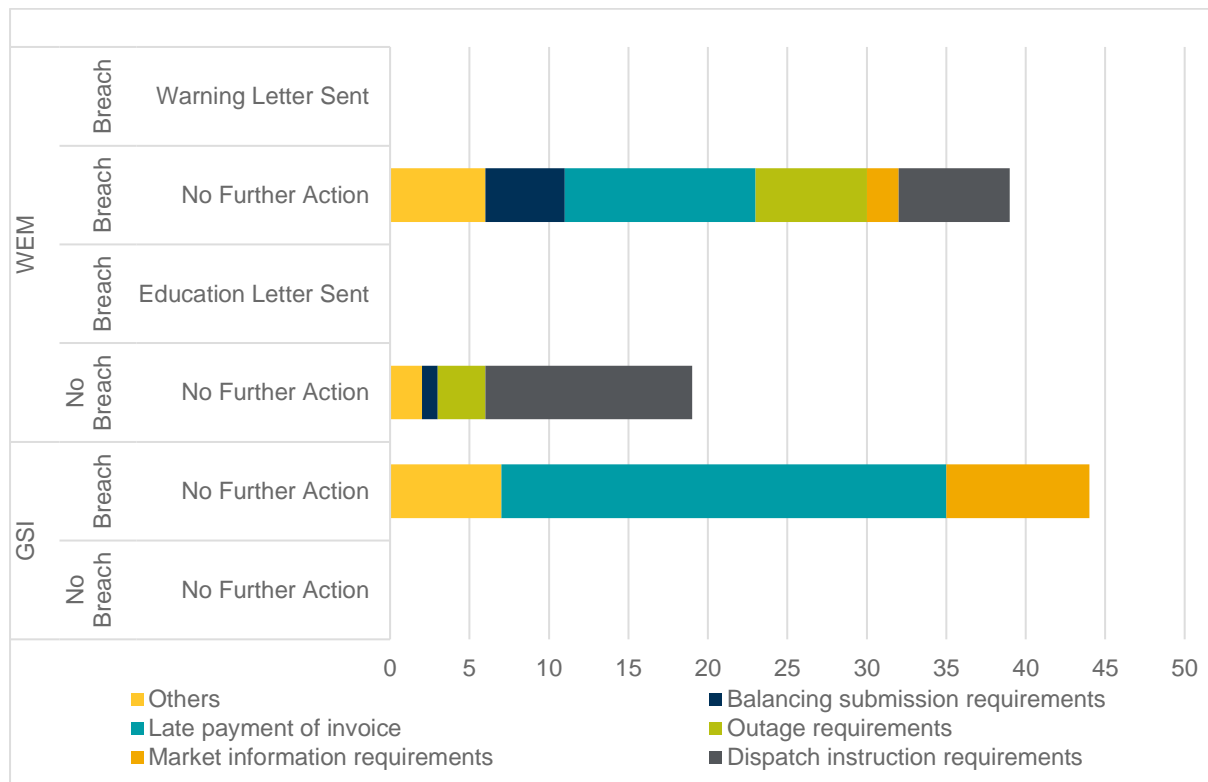


Source: ERA data

<sup>13</sup> Wholesale Electricity Market Rules (WA), 1 January 2023, Rule 2.13.10, ([online](#)).

<sup>14</sup> Electricity Industry (Wholesale Electricity Market) Regulations (WA), 1 July 2021, Regulation 31, ([online](#)).

<sup>15</sup> Gas Services Information Rules (WA), 1 December 2022, Rule 171(3), ([online](#)).

**Figure 5: Investigation outcomes for the period 1 July 2022 to 31 December 2022**

Source: ERA data

Figure 5 summarises the outcomes of the 102 investigations completed this reporting period. There were 83 investigations where a breach was determined but no further action was required, as the matters were considered low risk. For these matters, the ERA was satisfied that the market participants had implemented controls to mitigate the risk of the breach re-occurring.

The largest breach category concerned market participants' late payment of invoices. This is because 40 completed investigations during this period were combined into three batch processes where the ERA investigated multiple breach allegations concerning a single rule breach in one batch.<sup>16,17</sup>

The second largest breach category in this reporting period was concerning market participants' failure to comply with the Dispatch Instruction requirements. The ERA monitors and investigates market participants' compliance on a quarterly basis during the 7.10.1 process.<sup>18</sup> Market participants who were found to have breached this requirement advised the ERA that they have implemented mitigating controls to prevent future breaches.

<sup>16</sup> Wholesale Electricity Market Rules (WA), 1 January 2023, Rule 9.22.6 ([online](#)).

<sup>17</sup> Gas Services Information Rules (WA), 1 December 2022, Rule 118(1) ([online](#)).

<sup>18</sup> The quarterly 7.10.1 process considered whether the market participant complied with its Dispatch Instructions and whether the participant was required to submit Forced Outages where it was unable to comply with these instructions.

## 2.5 Stakeholder engagement and reports

### 2.5.1 Energy markets forum

The ERA held an energy markets forum on 10 November 2022. At the forum, the ERA presented the changes to the ERA's compliance and monitoring obligations resulting from the Energy Transformation Strategy reforms and the regulatory guidance documentation to be provided by the ERA on these changes in 2022/23.

In response to feedback from participants from the previous forum held on 21 October 2022 and the online WEM procedure workshop held on 30 March 2022, the ERA provided an update on the areas of the WEM prioritised for monitoring on new market commencement.

The ERA also intends to hold another workshop in early 2023 with stakeholders on the further changes to the WEM compliance framework proposed by Energy Policy WA (EPWA) on 18 July 2022.<sup>19</sup>

### 2.5.2 Report to the Minister on ERA's compliance

The ERA provides an annual report to the Minister for Energy on its own compliance with the WEM Rules. The ERA published its 2021/22 compliance report to the Minister in November 2022.<sup>20</sup>

The ERA engaged an independent auditor to assess its compliance for 2021/22.

The audit found that the ERA complied with the WEM Rules and WEM Procedures during this audit period, except for two minor matters. The first matter concerned the ERA's failure to review the Relevant Level Methodology, to be applied in setting certified reserve capacity, by 1 April 2022.

The second matter concerned an inadvertent disclosure of confidential information on 26 August 2021, which was previously reported in the 2020/21 audit report.<sup>21</sup> Due to the timing of this matter, it also had to be reported in the 2021/22 audit report.

The audit concluded that no adverse consequences arose from these two non-compliance matters. The ERA has implemented additional controls to mitigate the risk of future non-compliance as discussed in this report

The ERA will continue to ensure that it manages its compliance obligations under the WEM Rules, including its processes and controls for preventing non-compliance.

The 2021/22 report is available on the ERA website.

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<sup>19</sup> Energy Policy WA, 'Proposed Changes to the WEM, GSI, and Pilbara Regulations – Civil Penalties and Reviewable Decisions Consultation Paper', ([online](#)) [accessed 3 January 2023].

<sup>20</sup> Economic Regulation Authority, 2022, Report to the Minister for Energy on the Economic Regulation Authority's compliance 2021/22, ([online](#)).

<sup>21</sup> Economic Regulation Authority, 2021, Report to the Minister for Energy on the Economic Regulation Authority's compliance 2020/2021, p. 3, ([online](#)).

### **2.5.3 Gas Advisory Board Presentation**

On 27 October 2022, the ERA gave a presentation to the Gas Advisory Board (GAB) on the ERA's processes around GSI Rule compliance monitoring and enforcement. The presentation outlined the ERA's compliance functions and responsibilities under the GSI Rules and provided a summary of the alleged breaches and investigations completed during the period 1 July 2021 to 30 June 2022.

The ERA also provided a brief overview of the results of the ERA monitoring of information submitted to the GAB (refer paragraph 2.3.2 above) for the period 1 July 2021 to 30 June 2022. The ERA intends to provide a similar presentation to the GAB on an annual basis.

### 3. Report on Electricity Review Board matters

The ERA reports on the following matters for the reporting period, as required by clause 2.13.26 of the WEM Rules and clause 167(1) of the GSI Rules:

- a. Proceedings that have been brought before the Electricity Review Board.
- b. Findings of the Electricity Review board on matters referred to it.
- c. Orders made by the Electricity Review Board.
- d. Civil penalties imposed by the ERA under clause 2.13.16(a) of the WEM Rules or regulation 16 of the GSI Regulations, where the Electricity Review Board has not set these aside.

#### 3.1 Proceedings brought before the Electricity Review Board

##### Application 1 of 2019

The ERA's application to the Electricity Review Board for an order of contravention of clause 7A.2.17 of the WEM Rules by Synergy pursuant to regulation 32(1) of the *Electricity Industry (Wholesale Electricity Market) Regulations 2004* (WA), continued this reporting period.

On 7 November 2022 the Board released its decision to the parties and sought the parties' views in respect of any necessary redactions.

On 14 November 2022 the Board amended its prior directions to allow the ERA to retain confidential information due to its obligations under the *State Records Act 2000* and issued new directions in respect of provision of embargoed reasons for its decision.

On 22 November 2022 the Board made programming orders that required the ERA and Synergy to put an agreed position towards the Board on penalty and facts by 16 December 2022, and failing that, made orders to program a contested hearing on 25 May 2023.

On 25 November 2022 the Board published its decision and a declaration in respect of its findings in Application 1 of 2019.

#### 3.2 Findings of the Electricity Review Board

##### Application 1 of 2019

In the Electricity Review Board (ERB) declaration dated 22 November 2022, the ERB stated:

- (a) on each day between 16 April 2016 and 10 July 2017 inclusive; and
  - (b) in respect of the Trading Intervals commencing at 6.00am and ending at the end of the 11.30pm Trading Interval for which the prices offered by Synergy in Balancing Submissions exceeded \$40/MWh;
- (being 11,012 Trading Intervals) (Affected Trading Intervals), engaged in conduct in contravention of clause 7A.2.17 of the Wholesale Electricity Market Rules by offering prices in its Balancing Submissions (being 11,012 Balancing Submissions) in excess of Synergy's reasonable expectation of the short run marginal cost of generating the

relevant electricity by the Balancing Facility, when such behaviour related to market power, by reason of the matters set out below:

1. In respect of Affected Trading Intervals on Trading Days from 16 April 2016 to 13 July 2016 inclusive, Synergy calculated its prices offered in its Balancing Submissions by including a component in respect of start-up costs which exceeded Synergy's reasonable expectation of those costs as short run marginal costs insofar as they:

- (a) included costs associated with inspections and maintenance work which were double counted;
- (b) were not appropriately based on a life cycle assessment of the need for maintenance and therefore involved an unwarranted over recovery
- (c) were based on the original equipment manufacturer's recommendations whereas actual maintenance work was carried out less frequently; and
- (d) included costs for maintenance that were time-based, as opposed to depending on the number of starts, and therefore included costs that are not properly characterised as marginal costs.

2. In respect of Affected Trading Intervals on Trading Days from 14 July 2016 to 10 July 2017 inclusive, Synergy calculated its prices offered in its Balancing Submissions by including components in respect of start-up costs and gas input costs which exceeded Synergy's reasonable expectation of those costs as short run marginal costs insofar as:

- (a) the start-up costs were affected by the matters identified in paragraph 1(a) to (d);
- (b) the gas input costs were not based on Synergy's opportunity cost of gas (which is the proper measure for the purpose of calculating short run marginal cost), but were based on the price of gas under Synergy's Gorgon Contracts which was:
  - (i) not a marginal cost of gas;
  - (ii) higher than Synergy's weighted average price of gas paid, and Synergy's opportunity cost of gas, for the Trading Days from 14 July 2016 to 30 November 2016; and
  - (iii) higher than Synergy's opportunity cost of gas for the Trading Days from 1 December 2016 to 13 July 2016.

3. Using cost inputs that were above Synergy's reasonable expectation of the short run marginal cost of those inputs, as set out in paragraphs 1 and 2 above, had the consequence that each Balancing Submission submitted by Synergy in the Affected Trading Intervals contained at least one price that was in excess of Synergy's reasonable expectation of the short run marginal cost of generating the relevant electricity by the Balancing Facility.

4. At all times between 16 April 2016 to 10 July 2017 inclusive, Synergy operated in the market for the generation of electricity in the region served by the South-West Interconnected System and had market power during the Affected Trading Intervals.

5. Synergy's conduct as set out in paragraphs 1 – 3 above related to market power during the Affected Trading Intervals in the market for the generation of electricity in the region served by the South-West Interconnected System.

### 3.3 Orders made by the Electricity Review Board

The Electricity Review Board did not make any new orders during the reporting period concerning Application ERB 1 of 2019 (referred to in section 3.1 above).

Past orders published by the ERB are available on its website.<sup>22</sup>

<sup>22</sup> Western Australian Energy Disputes Arbitrator. Electricity Review Board, ([online](#)), [accessed 19/01/2023].

### **3.4 Civil penalties imposed by the ERA**

The ERA has not imposed any civil penalties under WEM Rule 2.13.16(a) or regulation 16 of the GSI Regulations in this reporting period.