



Economic Regulation Authority

# Trading conduct guideline

Draft for consultation

21 June 2023

This document provides general guidance to explain how the ERA currently proposes to interpret the WEM Rules. Courts or tribunals may make decisions that are different from the ERA's interpretation. The ERA intends to update this Guideline to take into account any relevant court or tribunal decisions or other relevant change in circumstances.

Examples provided are for illustration only and are not exhaustive. This Guideline is not a substitute for legal, economic or other technical advice. Market participants are encouraged to obtain legal, economic or other technical advice tailored to their specific circumstances. This Guideline does not reproduce all requirements in the WEM Rules. Market Participants are advised to refer to the WEM Rules for a full list of obligations.

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## Invitation to make submissions

**Submissions are due by 4:00 pm WST, 18 July 2023.**

The ERA invites comment on this paper and encourages all interested parties to provide comment on the matters discussed in this paper and any other issues or concerns not already raised in this paper.

We would prefer to receive your comments via our online submission form <https://www.erawa.com.au/consultation>

You can also send comments through:

Email: [publicsubmissions@erawa.com.au](mailto:publicsubmissions@erawa.com.au)

Post: Level 4, Albert Facey House, 469 Wellington Street, Perth WA 6000

Please note that submissions provided electronically do not need to be provided separately in hard copy.

All submissions will be made available on our website unless arrangements are made in advance between the author and the ERA. This is because it is preferable that all submissions be publicly available to facilitate an informed and transparent consultative process. Parties wishing to submit confidential information are requested to contact us at [info@erawa.com.au](mailto:info@erawa.com.au).

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# 1. Purpose of guideline

The Wholesale Electricity Market (WEM) in the Western Australian South-West Interconnected System operates under the *Electricity Industry Act 2004*, Electricity Industry (Wholesale Electricity Market) Regulations 2004 and Wholesale Electricity Market Rules (WEM Rules).<sup>1,2,3</sup>

The Economic Regulation Authority is responsible for monitoring and enforcing compliance with the WEM Rules. From the commencement of the new WEM in October 2023, all Market Participants will be required to comply with the general trading obligations.<sup>4</sup> The obligation to comply is binding on all participants in the Short Term Energy Market (STEM) and Real-Time Market, which includes the energy and the Frequency Co-optimised Essential System Services (FCESS) markets.

The ERA is publishing the Trading Conduct Guideline and the Offer Construction Guideline to provide regulatory guidance on the general trading obligations. This document aims to provide clarity and guidance regarding the prohibited conduct described in clause 2.16A.3:

A Market Participant must not engage in conduct in the STEM or Real-Time Market that:

- (a) is false, misleading or deceptive, or likely to mislead or deceive;
- (b) is fraudulent, dishonest or in bad faith; or
- (c) has the purpose, or has or is likely to have the effect, of distorting or manipulating prices in the Wholesale Electricity Market.

References to the WEM Rules in this Trading Conduct Guideline are to the Consolidated Companion version of the WEM Rules, which are the WEM Rules intended to be in force from commencement of the new market. Terms that are capitalised in this guideline are defined terms in Chapter 11 (Glossary) of the WEM Rules.

This document provides general guidance to explain how the ERA currently proposes to interpret the WEM Rules. Courts or tribunals may make decisions that are different from the ERA's interpretation. The ERA intends to update this Guideline to take into account any relevant court or tribunal decisions or other relevant change in circumstances.

Examples provided are for illustration only and are not exhaustive. This Guideline is not a substitute for legal, economic or other technical advice. Market participants are encouraged to obtain legal advice tailored to their specific circumstances. This Guideline does not reproduce all requirements in the WEM Rules. Market Participants are advised to refer to the WEM Rules for a full list of obligations.

## 1.1 Updating the guideline

The ERA may amend this guideline at any time following a public consultation process, as specified in the WEM Rules (clauses 2.16D.2 to 2.16D.4).

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<sup>1</sup> *Electricity Industry Act 2004* (WA), ([online](#)).

<sup>2</sup> *Electricity Industry (Wholesale Electricity Market) Regulations 2004* (WA), ([online](#)).

<sup>3</sup> Wholesale Electricity Market Rules (WA), 29 April 2023, ([online](#)).

<sup>4</sup> Clause 2.16A in the Consolidated Companion version of the WEM Rules, 29 April 2023, ([online](#)).

## 2. Trading conduct

The general trading obligations apply to all Market Participants in the STEM and Real-Time Market, including the FCESS markets. This requirement includes Market Participants that:

- offer to supply energy or FCESS
- supply energy or FCESS
- fail to offer to supply energy or FCESS
- fail to supply energy or FCESS.

A Market Participant can demonstrate compliance by keeping records that demonstrate the process it undertakes in relation to each of these activities.

The obligations in clause 2.16A.3 are like the good faith requirements and misleading conduct prohibitions in the current WEM Rules.<sup>5</sup> In assessing conduct, the Market Participant's behaviour, the purpose of that behaviour and the effect of the behaviour will be considered.

When monitoring compliance with clause 2.16A.3, a range of conduct will be considered including but not limited to, forming offers using methods in the Offer Construction Guideline. Historical STEM or Real-Time Market Submissions, timeliness and accuracy of notification of Forced Outages may also be taken into account. Offers and conduct not assessed through the market power test in clause 2.16C for breach of the general trading obligations may also be investigated.

### 2.1 STEM submissions

The STEM is a centrally coordinated forward market that allows Market Participants to trade around their bilateral positions. Market Participants may submit financially binding offers into the STEM up to seven days prior to the trading day (clause 6.2.1).

When monitoring compliance with 2.16A.3 in the STEM, the level of uncertainty expected to be found in making offers several days in advance of the STEM auction will be considered.

### 2.2 Real-Time Market submissions

Real-Time Market Submissions are made in respect to a Registered Facility, a Market Service and a Dispatch Interval.

A Market Participant makes Market Submissions to the Real-Time Market for each Dispatch Interval in the Week-Ahead Schedule Horizon for the following Market Services:

- Energy, for each of its Scheduled Facilities, Semi-Scheduled Facilities and Non-Scheduled Facilities, and
- For each FCESS, for each of its Registered Facilities that is accredited to provide FCESS.<sup>6</sup>

Participation in the Real-Time Market for energy is mandatory for Market Participants that hold Capacity Credits in respect to any of their Registered Facilities. Participation in the FCESS markets is mandatory for the first six months after the New WEM Commencement Day for

<sup>5</sup> Wholesale Electricity Market Rules (WA), 29 April 2023, ([online](#)).

<sup>6</sup> Week-Ahead Schedule Horizon is the seven-day (336 Pre-Dispatch Intervals) period prior to a dispatch.

those Market Participants that have facilities providing any of load following, spinning reserve and load rejection reserve ancillary services in the existing market.<sup>7</sup>

## 2.3 Monitoring

The ERA monitors the behaviour of Market Participants for compliance with the WEM Rules and has set out its monitoring processes in the WEM Procedure.<sup>8</sup>

When considering whether a Market Participant has engaged in conduct prohibited by clause 2.16A.3, the following may be considered:<sup>9</sup>

- (a) Historical STEM Submissions or Real-Time Market Submissions made by the Market Participant with effect on or after the New WEM Commencement Day, including changes to STEM Submissions and Real-Time Market Submissions in which there is, or there appears to be, a pattern of behaviour that may indicate such conduct was engaged in.
- (b) The timeliness and accuracy of notification of Forced Outages by the Market Participant.
- (c) Information regarding whether the Market Participant did not comply with a Dispatch Instruction in respect of its Facility and the reasons for the non-compliance.
- (d) Any other information the ERA considers relevant to its determination.

A Market Participant's behaviour may contravene more than one sub clause of 2.16A.3. In addition, behaviour that contravenes clause 2.16A.3 may contravene other WEM Rules. A Market Participant does not need to intend to cause harm or to obtain a benefit to breach clause 2.16A.3. For example, unintended mistakes that lead to inaccurate information being provided or cause price distortions, could be considered prohibited conduct.

The ERA may use information gathered under its monitoring of the price offer obligations (in clause 2.16A.1) to monitor compliance with clause 2.16A.3. The Offer Construction Guideline outlines the information Market Participants are expected to retain to demonstrate compliance with clause 2.16A.1.<sup>10</sup>

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<sup>7</sup> Obligations are set out in the transitional arrangements in section 1.49 of the WEM Rules, ([online](#)).

<sup>8</sup> Economic Regulation Authority, Monitoring Protocol WEM Procedure, ([online](#)).

<sup>9</sup> Clauses 2.16A.4 in the Consolidated Companion version of the WEM Rules, ([online](#)).

<sup>10</sup> ERA, 2023, Draft offer construction guideline ([online](#))

### 3. Prohibited conduct

Three types of conduct are prohibited by clause 2.16A.3. Conduct that:

1. Is false, misleading or deceptive, or likely to mislead or deceive.
2. Is fraudulent, dishonest or in bad faith.
3. Has the purpose or effect of distorting or manipulating prices.

A breach of clause 2.16A.3 may occur due to the purpose or intent of the Market Participant's conduct, or due to the effect, or likely effect of that conduct. The compliance monitoring process in relation to clause 2.16A.3 will consider the effect of a Market Participant's trading conduct on other Market Participants as well as the WEM.<sup>11</sup>

The following sections provide explanations of the terms used in clause 2.16A.3 and examples to illustrate prohibited conduct.

#### 3.1 False, misleading or deceptive

A Market Participant must not engage in conduct in the STEM or Real-Time Market that is false, misleading or deceptive, or likely to mislead or deceive (clause 2.16A.3(a)).

Participants may not disclose information that at the time the information was disclosed was false, misleading or deceptive, or likely to mislead or deceive when taken in the context of activities in the STEM and Real-Time Market. This includes information disclosed to the market operator, regulator, or other Market Participants.

A Market Participant may be in breach of clause 2.16A.3(a) if the participant's conduct:

- Is intentionally false, misleading or deceptive or
- Is false, misleading or deceptive, or likely to mislead or deceive, regardless of the participant's intent.

The term 'likely', means a real chance of the effect arising because of the Market Participant's conduct. In monitoring compliance with clause 2.16A.3(a), the purpose of the conduct and the effect, or likely effect, of the conduct on the market will be considered. Where the ERA determines that a participant's conduct misled or deceived a market stakeholder, or had a real chance of misleading or deceiving, the ERA will not need to also determine that the Market Participant intended to mislead or deceive to demonstrate a breach of clause 2.16A.3(a).

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<sup>11</sup> When considering if a Market Participant's conduct breaches 2.16A.3, the ERA may, among other sources, consider the electricity spot market prohibitions in part XICA of the *Competition and Consumer Act 2010* (Cwlth), monitored by the Australian Competition and Consumer Commission (ACCC).

See ACCC, May 2020, *Guidelines on Part XICA – Prohibited conduct in the energy market*, ([online](#)).



**Example 1: Timing of generator outage**

Generator D operates three generators, making up a material portfolio in the Real-Time Market for energy. On a hot summer day, electricity demand is high and the WEM has little capacity in reserve. Generator D trips one of its plants (or restricts the output of the plant) and takes that power plant offline for the day, claiming an unplanned outage had occurred and the maintenance had to be done immediately.

However, Generator D knew if it took one plant offline (or restricted the output of the plant) on this particular day, prices would spike and the other two plants would make more revenue than if all three plants were operating. Generator D is likely to have engaged in false, misleading and deceptive behaviour with the purpose of distorting or manipulating prices, in breach of clauses 2.16A.3(a) and 2.16A.3(c).<sup>12</sup>

When the ERA identifies conduct that is false, misleading or deceptive, or likely to mislead or deceive, a Market Participant's intention to mislead or deceive is likely to be treated as an aggravating factor. If a Market Participant does not have reasonable grounds for a price, quantity, or Ramp Rate Limit it included in a Real-Time Market submission at the time it submits that Real-Time Market submission, then the Market Participant is, taken to have known the submission was likely to lead to another participant being misled or deceived as to the existence or non-existence of a material fact relating to the Real-Time Market (clause 2.16A.7).

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<sup>12</sup> Adapted from, Commonwealth of Australia, Revised Explanatory Memorandum, Treasury Laws Amendment Bill 2019 p.23 ([online](#)).

**Example 2: Market Participant false heat rate**

A hypothetical Market Participant has a material portfolio including a 105 MW gas-fired peaking generator.

If it offered its Price-Quantity Pair offers in the Real-Time Market for energy in a manner consistent with a profit-maximising Market Participant without market power, and based off correct technical information, it would make a single Price-Quantity Pair offer in the Real-Time Market for energy of 105 MW at \$96.80/MWh, based on expected electricity production of 60 MW.

This Market Participant is the price-setting facility, so the Real-Time Market for energy would clear at \$96.80/MWh.

However, the Market Participant falsifies its technical heat reports and adds 100 GJ/hour to its heat rate curve at all levels of production. It submits the false heat rate curve to the ERA in its information provision under 2.16C.3(b).

The Market Participant's offer is a single Price-Quantity Pair offer in the Real-Time Market for energy of 105 MW at \$106.80/MWh.

The clearing price for energy in the Real-Time Market for energy price becomes \$106.80, an increase of \$10/MWh over and above what it would have been if the Market Participant did not falsify its technical reports.

This Market Participant's behaviour may be an Irregular Price Offer under clause 2.16A.1.

In addition to the false information provision, evidence emerges that reveal the inflation of the Market Participant's heat rates and offers was a deliberate strategy to inflate prices in the Real-Time Market for energy.

Additionally, the Market Participant's behaviour in submitting its Price-Quantity Pair offer in the Real-Time Market for energy is false, misleading or deceptive in violation of clause 2.16A.3(a), fraudulent, dishonest and in bad faith in violation of clause 2.16A.3(b) as well as it has the purpose and effect of distorting or manipulating prices in violation of clause 2.16A.3(c).

Each Market Participant is obligated to retain evidence of its reasonable grounds for including a price, quantity or Ramp Rate Limit, as applicable, in its Submission (clause 2.16A.8). However, retaining evidence is not sufficient to demonstrate the Market Participant had reasonable grounds for its submission, or that its representation or conduct was not misleading (clause 2.16A.9). Other sources of information will also be considered to assess the Market Participant's conduct.

## 3.2 Fraudulent, dishonest or in bad faith

A Market Participant must not engage in conduct in the STEM or Real-Time Market that is fraudulent, dishonest or in bad faith (clause 2.16A.3(b)).

A Market Participant would be acting fraudulently, dishonestly or in bad faith where its conduct was aimed at obtaining a financial or competitive advantage by unlawful or unfair means, or involved wrongdoing in relation to the WEM. Generators provide information to the market when making offers and when choosing not to offer. For example, when making an offer a Market Participant is representing to the market that it intends to dispatch a certain quantity of electricity at a certain price. If, at the time of making the offer, the Market Participant does not intend to honour the offer, this is likely to be considered dishonest conduct.<sup>13</sup>

When monitoring compliance with clause 2.16A.3(b), the genuine intention of a Market Participant will be considered. A STEM or Real-Time Market submission is not made in bad faith if, at the time it is submitted, the Market Participant had a genuine intention to honour the terms of that Submission if the material conditions and circumstances upon which the submission was based remained unchanged until the relevant Trading Interval (clause 2.16A.5).

### **Example 3: Rebidding for real time outage**

At 2:10pm Market Participant H's generator, currently running at 100 MW, trips unexpectedly. Market Participant H's trader immediately revises its offers to make its generator unavailable from the 2.15pm Dispatch Interval, the rest of that interval and the following Dispatch Interval.

Market Participant H has experienced an unexpected event and pursuant to clause 7.4.2(a) has taken action to ensure that its offers reflect its reasonable expectation of its generator's capability to be dispatched.

While a higher priced generator may have been dispatched next to cover the energy that was to be provided by Market Participant H, and this may have impacted market clearing prices, this is the normal functioning of the market and not a failure to supply that distorts or manipulates prices.

The intention of a Market Participant in making a STEM or Real-Time Market submission may be assessed through inference from (clause 2.16A.6):

- the conduct of the Market Participant;
- the conduct of any other person; or
- the relevant circumstances.

<sup>13</sup> Adapted from, Commonwealth of Australia, Revised Explanatory Memorandum, Treasury Laws Amendment Bill 2019, para 2.89 and 2.90, ([online](#)).

**Example 4: Fraudulent, dishonest, or in bad faith conduct**

Market Participant A declares itself available for a series of Dispatch Intervals between 4pm and 8pm on the following day in the Real-Time Market for energy by offering its capacity of 100 MW into the market in a single Price-Quantity Pair at \$50/MWh.

The facility forecast dispatch indicates it to be the marginal or price-setting Market Participant. In doing so it deters Market Participant B, who would have offered into the market at \$70/MWh. Market Participant B reasonably concludes that – given its supply cost – its facility will be very unlikely to be dispatched (and will not have market power) and offers its capacity at the market price ceiling for the period.

At 9am the following day Market Participant A learns that its available capacity for the 4pm to 8pm period will be 50 MW. Market Participant A expects there will be a large impact on the spot price during the 4pm to 8pm period resulting from its outage. Market Participant A wants to maximise the price it receives for its available capacity and considers the increase in prices would be more substantial the closer to the real-time dispatch it declares its outage, because other market participants would have a shorter time to re-schedule their operation and update their offers before dispatch.

Accordingly, Market Participant A does not update its offer at 9am and instead updates its Real-Time Market for energy submission close to the gate closure for offers, by declaring an outage. The Real-Time Market for energy price rises to \$80/MWh.

This is an example of conduct that is fraudulent, dishonest, or in bad faith and for the purpose of distorting or manipulating prices.<sup>14</sup>

**Example 5: Change in available capacity<sup>15</sup>**

Market Participant A in the previous example declares itself as available for the Dispatch Intervals between 4pm and 8pm on the following day. At 9am the following day it becomes aware that half of its capacity will not be available during the 4pm to 8pm period.

However, Market Participant A does not expect this change in its available capacity would have any material impact on the spot price during the 4pm to 8pm period. Market Participant A considers other Market Participants will incur additional costs to source additional fuel through short-term gas market arrangements if they learn they will be called on to provide additional capacity at short notice. Market Participant A does not update its offer and availability status to reflect its expected available capacity for the period.

Market Participant A's conduct in failing to update its available capacity and offers when it became aware of the change in circumstances was in bad faith and may constitute a breach of clause 2.16A.3(c).

<sup>15</sup> Adapted from: ACCC, *Guidelines on Part XICA: Prohibited conduct in the energy market* May 2020, Example 22, ([online](#)).

### 3.3 Distorting or manipulating prices

Distorting or manipulating prices may undermine competition in the WEM and increase the cost of electricity for end consumers. A Market Participant must not engage in conduct in the STEM or Real-Time Market that has the purpose, or has or is likely to have the effect, of distorting or manipulating prices in the WEM (clause 2.16A.3(c)).

#### Example 6: FCESS market offer calculation<sup>16</sup>

This example considers the dispatch of Regulation Raise service during a Dispatch Interval with the following system requirements:

- Energy demand: 100 MW
- Regulation Raise requirement: 25 MW.

For simplicity, this example assumes two Market Participants participate in the market to supply the energy and Regulation Raise services.

Market Participant A with a 50MW gas-fired generator makes the following offers:

- one in the Real-Time Market for energy of 50 MW at negative \$1000/MWh
- one in the Real-Time Market for Regulation Raise of 50MW at \$0/MW.

Market Participant A's cost of producing energy is \$100/MWh.

Market Participant B with a 100 MW gas-fired generator makes the following offer:

- one in the Real-Time Market for energy of 100 MW at \$500/MWh

Market Participant B does not provide any Regulation Raise service.

The dispatch algorithm for the WEM calculates the clearing price for the Regulation Raise market based on the incremental cost to the power system from increasing the ESS requirement by one more unit.

Market Participant A's energy offer below its cost of production increases the clearing price of the Regulation Raise to \$1,500/MW. This price is substantially larger than \$400/MW that the dispatch engine would have calculated based on Market Participant A's true cost of producing energy.<sup>17</sup>

Market Participant A's energy offer price is below its cost of production and does not result in a breach of clause 2.16A.1. However, Market Participant A's conduct is an example of a conduct that has the purpose, or has or is likely to have the effect, of distorting or manipulating prices in the WEM, which is a breach of clause 2.16A.3(c).

<sup>16</sup> This example is based on Energy Transformation Taskforce, 2019, Essential System Services, Scheduling and Dispatch, Example 1, Attachment C, ([online](#)).

<sup>17</sup> The Regulation Raise clearing price will be capped based the ceiling price applicable to the service. The example does not include the effect of the price ceiling to demonstrate the underlying problem explained through the example.

**Example 7: Withholding capacity for the purpose of distorting FCESS prices**

A Market Participant makes a single Price-Quantity Pair offer into the Real-Time Market for energy of 105 MW. It has also capacity to make a single Price-Quantity Pair offer of 45 MW into the Contingency Reserve Raise Real-Time Market.

However, the Market Participant offers only 30 MW into the Contingency Reserve Raise FCESS market, with the same Real-Time Market for energy offer as before.

Because Market Participant A's Price-Quantity Pair offer into the Contingency Reserve Raise market was 30 MW, rather than an offer of 45 MW, the Real-Time Market for Contingency Reserve Raise increases relative to what it would have been.

Market Participant A's decision not to offer the additional 15 MW into the Contingency Reserve Raise market could be a breach of clause 2.16A.3(c) if it had the purpose, or is likely to have the effect, of distorting or manipulating prices in the WEM.

Where the conduct of a Market Participant seeks to undermine the process by which Market Participants would reasonably expect prices to be determined in a competitive market, this conduct may be considered as having the purpose to distort or manipulate prices.

For example, although price offers to the STEM and Real-Time Market may be below production cost of services (as indicated in the Offer Construction Guidelines) and such offers would not result in a breach of clause 2.16C.5, the offers may constitute a breach of clause 2.16A.3(b) and 2.16A.3(c) if those offers relate to 'predatory pricing'. A commercial entity generally does not sell its products below the cost of producing the product. However, offers below cost of supply may occur when a Market Participant which has market power aims to lessen competition. For example, offers below cost of supply may reduce product prices and deter the entry of new market participants.

When monitoring compliance with clause 2.16A.3(c), the purpose, the effect and the likely effect of a participant's conduct will be considered. The purpose is equivalent to the intention and may be inferred from the participant's conduct. As mentioned in section 3.1, likely effect means a real chance of the effect arising. Manipulation indicates that the Market Participant intended to knowingly disadvantage third parties or the market.

## Appendix 1 List of Examples

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